

Topic: PROFITS AND GAINS OF BUSINESS OR PROFESSION

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PROFITS AND GAINS OF BUSINESS OR PROFESSION

MEANING OF BUSINESS & PROFESSION

Business [Sec. 2(13)] Business includes –

- any trade, commerce or manufacture; or
- any adventure or concern in the nature of trade, commerce or manufacture. Generally, business means recurring economic activity, but for income tax purposes an isolated activity may be termed as business depending upon facts and circumstances.

Following elements shall be considered to judge a transaction as business transaction:

- Nature of commodity
- Intention of the party
- Efforts applied in transaction
- Periodicity of transaction
- Nature of transaction (whether incidental to a business or not)

Profession [Sec. 2(36)]: Profession includes vocation. Profession requires purely intellectual skill or manual skill on the basis of some special learning and qualification gathered through past training or experience e.g. chartered accountant, doctor, lawyer etc. Professional skill can be acquired only after patient study (in a particular system either a college, university or institute) and application (i.e. experience)

Vocation implies natural ability of a person to do some particular work e.g. singing, dancing, etc. The term “vocation” is different from the term “hobby”. Vocation must have the earning feature. It can be treated as an earning means by which a man passes his life. Unlike profession, vocation does not require a degree or special learning.

However, **1.Profit Motive:** If the motive of an activity is pleasure only, it shall not be treated as business activity.

2. Business vs. Profession: An income arising out of trade, commerce, manufacture, profession or vocation shall have the same treatment in Income tax Act. However, a little segregation is required to be made between business and profession while applying sec. 44AA, sec. 44AB, sec. 40AD, sec. 44ADA, etc. (discussed later in this chapter).

INCOME CHARGEABLE UNDER THE HEAD PROFITS AND GAINS OF BUSINESS OR PROFESSION [Sec. 28]

Sec. 28 enlists the incomes, which are taxable under the head ‘Profits & gains of business or profession’:

1. **Profits & gains of any business or profession [Sec. 28 (i)]:** Any income from business or profession including income from speculative transaction shall be taxable under this head.
2. **Compensation to Management agency [Sec. 28(ii)]:** Any compensation/other payment due to or received –
3. **Income of trade or professional association’s [Sec. 28(iii)]:** Income derived by a trade, professional or similar association from rendering specific services to its members shall be taxable under this head.

However this is an exception to the general principle that a surplus of mutual association cannot be taxed.

4. **Export incentive [Sec. 28(iiia) (iiib) & (iiic)]:** An export incentive in form of –

- Profit on sale of import license or duty entitlement pass book. [Sec. 28(iiia)/(iiid)/(iiie)]
- Cash assistance received/receivable by an exporter under a scheme of the Government of India [Sec. 28(iiib)]
- Duty draw back (received/receivable) for export e.g. duty drawback, etc. [Sec. 28(iiic)]

5. Perquisite from business or profession [Sec. 28(iv)]: The value of any benefit or perquisite, whether convertible into money or not, arising from business or profession shall be taxable under this head.

6. Remuneration to partner [Sec. 28(v)]: Any interest salary, bonus, commission or remuneration received by a partner from the firm (or Limited Liability Partnership) shall be taxable as business income in the hands of the partner to the extent allowed in hands of firm (or Limited Liability Partnership) u/s 40(b).

7. Amount received or receivable for certain agreement [Sec. 28(va)]: Any sum, whether received or receivable in cash or in kind, under an agreement for –

- not carrying out any activity in relation to any business or profession; or
- not sharing any know-how, patent, copyright, trade mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provisions for services.

8. Keyman Insurance Policy [Sec. 28(vi)]: Any sum received under a Keyman Insurance Policy including bonus on such policy. As per sec. 10(10D) Keyman insurance policy is a life insurance policy taken by a person on the life of another person who is or was –

- an employee of the first mentioned person; or
- in any manner whatsoever connected with the business of the first mentioned person. and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration

9. Conversion of stock into capital asset [Sec. 28(via)]: The fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset.

10. Recovery against certain capital assets covered u/s 35AD [Sec. 28(vii)]: Any sum received or receivable (in cash or kind) on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction u/s 35AD

EXPENDITURES ALLOWED AS DEDUCTION

1. Capital -vs. - Revenue expenditure: Capital expenditures are not allowed as deduction, unless & until expressly allowed whereas revenue expenditures are allowed as deduction until & unless expressly disallowed under the Income tax Act.

2. Expenditure of non-assessable business: Any expenditure of a non-assessable business is not allowed as deduction. For instance, expenditure for earning agricultural income is not allowed as deduction from income of an assessable business.

3. Expenditure must relate to the business of the assessee: Expenditure must have been incurred by the assessee for its business.

However in case where the assessee incurs expenditure for its own business, the mere fact that the benefit of such expenditure is enjoyed by some other person, cannot deny the admissibility of the expenditure.

4. Anticipated loss or expenditure: Subject to certain exceptions, no deductions are allowed for anticipated losses. E.g. provision for bad & doubtful debts.

5. Notional expenditure: No one can earn income from himself/herself. For instance, rent paid to a sole proprietor, salary to proprietor, interest on capital to proprietor, etc. are not income in the hands of the proprietor. Hence, it is not deductible from the income of business as expenditure.

6. Onus to proof: Onus to proof lies with the assessee. It is the responsibility of the assessee to prove that a particular expenditure is to be allowed as deduction in his case.

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