CHAPTER - III

THE RELEVANT PROVISIONS RELATING TO THE DEPRECIATION ALLOWANCE UNDER THE STATUE

(i) DISALLOWANCE OF DEPRECIATION

From the assessment year 1971-72 onwards no depreciation is allowed under section 37 (4) (ii) in respect of a building used as a guest house. Any asset used therein also does not qualify for depreciation allowance. Under section 40 (C) (ii), if assets of the company are used by a director or a person holding substantial interest or by a relative of the director or such person either wholly or partly for his own purpose, depreciation is disallowed wholly or partly depending upon the user of the asset. Similarly, section 40 A(5) disallows depreciation on assets used by certain employee's either wholly or partly for their personal use.

Where a car is used otherwise than in a business of running it on hire for tourists.

a) Depreciation is not allowed on the excess of the actual cost over Rs. 25,000 if car is acquired between april 1, 1967 and February 28, 1975 (provision to sec. 43(i)) and

b) Depreciation (including terminal depreciation) is wholly disallowed if car is foreign car and has been acquired after February 28, 1975 (Second provision to section 32 (i) (ii)).

It may be noted that for the purpose of depreciation allowance, the actual cost of Indian made motor car acquired after february 28, 1975 will not be restricted to Rs. 25,000.

1. GUEST HOUSE

Section 37 (4), from Assessment year 1971-72 onwards, no depreciation allowance can be claimed in respect of any assets in a guest house. Depreciation can, however, be claimed in respect of a guest house maintained as a holiday home provided that (a) such guest house is maintained by an assessee who, throughout the previous year, has employed not less than 100 whole time employee's in the business or profession carried on by him and (b) the guest house is intended for the exclusive use of such employee's while on leave.

The term 'Guest house' includes -

a) Accomodation hired by the assessee in a hotel for a period exceeding 182 day's during the previous year and
b) Accomodation, by whatever name called, maintained hired, or reserved, or otherwise arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person on tour or visit to the place at which such accomodation is situated.

2. CAR RUN ON HIRE FOR TOURIST

Depreciation is not admissible in respect of any motor car manufactured outside India. Where such a car is

acquired after February 28, 1975 and is used otherwise than in a business of running it on hire for tourist in this case depreciation allowance can't be claimed.

(ii) CONDITIONS FOR CLAIMING DEPRECIATION

In order to avail depreciation one should satisfy the following conditions -

a) Asset must be owned by the assessee

b) It should be used during the relevant accounting year and

c) It must be used for the purpose of business or profession.

The discription of above noted points are given below -

1. ASSET MUST BE OWNED BY THE ASSESSEE

In order to entitled to depreciation allowance, the assessee has to show that such assets are owned by him. It is only the owner of the assets who is entitled to claim depreciation on them.

Registered owner Vs Beneficial owner. The emphasis in the statutory provision contained in section 32 is that in order to claim depreciation asset should be "owned by the assessee". This lends to a more vaxed question as to what is ownership should the depreciation be given to a person who has tbe bare husk of legal title or to the person who has the right of an owner of a property in a practicle sense ? There is two schools of thought, the first supporting the theory that a registered documents conferring legal title is

the only criterion for the purpose of Sec. 32 and second holding the owner for the purpose of claiming depreciation is a person who can exercise the rights of woners

Paton has recognised the following rights as the complete rights of an owner

a) The power of enjoyment.

b) Possession which includes the right to exclude others.

c) Power to alienate or to change as security.

d) Power to leave the res by will.

If the assessee is lessee or licensee of an asset he cannot avail depreciation in respect thereof. The lessor, on the other hand, is entitled for depreication inrespect of such asset. There is, however, one exception to this rule. If an assessee carries on business or profession in a building not owned by him but taken on lease, he is entitled to depreciation in respect of capital expenditure incurred by him after March 31, 1970 on construction of any structure or any work in relation to the building by way of improvement, renovation or extension sec. 32 (1A).

In the case of partnership firm the firm is entitled to claim depreciation on immovable assets brought by partner's as their capital contributions, even if such assets are not registered in the name of the firm under the Transfer of property Act 1882.

2) ASSET MUST BE USED FOR THE BUSINESS OR PROFESSION

The asset, in respect of which depreciation is claimed, must have been used for the purpose of business or profession. In Punjab National Bank Ltd., V CIT (1983) 141 ITR 886 the Delhi High Court held that plant or machinery could be said to be used by somebody else if such other person has control over the same. It is the control which determines who is using it. User means not only getting benefit, but also controlling running stopping repairing replacing etc. In that case, the assessee owned a six floor building, which consisted of common lifts and air- conditioning plant, and though five floors of the building were occupied by the assessee for business, the sixth floor was let out. The court held depreciation was available only five floors and that it had to be allowed in full on lifts and air-conditioning plant since, they were being used by the assessee for the purpose of it's business; the fact that they might also be utilised by the tenant of one of the floors or customers or visitors did not make any difference.

PASSIVE Vs ACTIVE USER

The user of the asset should be understood in a wide sense as to embrace passive as well as active user. If a machine is kept ready for use at any moment in a particular factory, under an express agreement from which taxable profits are earned, the machinery can be said to be "used", for the purpose of business which earned profits,

although in fact it was not worked during the year.

ASSETS USED PARTLY FOR BUSINESS PURPOSES

What happens when assets are only partly used or not exclusively used for business? Can depreciation allowance be claimed on such assets ? U/s 38 (2) where any building machinery, plant or furniture is not exclusively used for the purposes of the business or profession the deduction u/s 32 (1) (ii) shall be x restricted to a fair proportionate part thereof which the Income-Tax officer may determine having regard to the user of such building, machinery plant or furniture for the purposes of the business or profession.

In CIT V Sobharam Jokhiram (1960) 39 ITR 299 (Pat.) the court held that where a car was used by the assessee for the purposes of business as well as private purposes; the depreciation allowance should be confined to an amount proportionate to the business user only.

3. ASSET MUST BE USED DURING THE RELEVANT ACCOUNTING YEAR

Depreciation is allowed only if the asset is used for the purpose of business or profession at least for sometime during not necessarily throughout) the previous year.

Though, in order to avail depreciation, the asset should be used for the purpose of business or profession during the previous year, the degree of utilisation is

immaterial in other words, it is not necessary that the asset should have been used for the purpose of business or profession throughout the previous year. Even user during any part of the year would be sufficient to enable the assessee to claim depreciation for the whole year.

(iii) ASSETS WHICH ARE QUALIFIED FOR DEPRECIATION

Depreciation allowance is confined to building, machinery, plant or funniture. An asset other than building, furniture, plant and machinery is not eligible for depreciation allowance.

1. BUILDING - The word "building" is not defined in the Act. It's meaning has, therefore, to be taken in it's ordinary sense. Webster's New International Dictionary defines the word "building" as - "That which is built, specifically, as now generally used, a fabric or edifice, framed or constructed, designed to stand more or less permanently and covering a space of land, for use as a dwelling, store-house, factory, shelter for beasts or some other useful purpose. Building in this sense does not include a mare wall, fence, monument, harding or similar structure, through designed for permanent use, where it stands not a steam boat, ship or other vessel of navigation.

* Building does not include land - Building means superstructure only and does not include and In other words, value of building on which depreciation is allowed does not include

the cost of land or site on which the superstructure stands because there cannot be any question of the destruction of the site. CIT Vs London Hotel (1968) 68 ITR 62 (Bomb).

* Depreciation on building constructed on leased land is admissible even if the agreement provides that after the expiry of lease, the building would be handed over to the lessor without compensation. Y.V. Srinivasamurthy V CIT (1967) 64 ITR 292 (Mys.).

* "Buildings" includes roads - The word "building" includes roads, bridges, culverts, well and tube well. This is clear from Note 1 to Appendix I to the Income-Tax Rule 1962.

2. MACHINERY - Like "building" the word "machinery" has not been defined anywhere in the Act. Therefore, one has to depend upon natural - meaning and decided cases. The Privy Council in corporation of Calcutta V. Chairman, Cossipore & Chitpore Municipality AIR 1922 PC 27 defined the word machinery as :-

"- - - Some mechanical contravances which, by themselves or in combination with one or more other mechanical contravances, by the combined movement and interdependant operation of their respective parts generation power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite or specific a result - - - ".

* JUDICIAL PRONOUNCEMENTS

The following Judicial pronouncements also highlights meaning of term "machinery"

1. The term machinery is not restricted in it's application only to a self contained unit capable of being put to use in business - George Mathew V CIT (1961) 43 ITR 535 (Ker).
2. "Machinery" is any combination of means working together a complex system of appliences - Burdett Oxygen Co. V Kaner, Ohio Co. Pl. 117 2d 211, 220.

EXAMPLES

The following are held as "machinery"

1. Coal bridges used in handling coal on docks - State Vs. Clarkson Coal and Dock Co. 246 N.W. 538, 539.
2. A trevelling crane - McCarney V. Bettendorf. Axle Co. 136 N.W. 920, 925.
3. An elevator - Chatfield V Zeller 147, P. 'zd 222, 224, 174.
4. A heating boiler - Menne V American Radiator Co. 159 S.W. 24 25.
5. A diesel engine - CIT V Mir Mohammad Ali (1964) 53 ITR 165 (SC).
6. Cold Storage room, Platform for machines and observation and cooling tower in the case of an ice-cream manufacturer CIT V Pure Ice-Cream Co. (1981) 129 ITR 394 (Delhi).

BARR. BALASAHEB KHARDEKAR LIBRARY
SHIVAJI UNIVERSITY, KOLHAPUR.

7. An automobile - Reagor V First Nat life Insurance Co. La App. 28 50 2d 527 530.

3. PLANT

The word "Plant" is defined under section 43(3) to include "ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of the business or profession". As the definition is inclusive and not exhaustive, the word plant includes anything which can be comprehenced within its ordinary meaning, such as fixtures, machinery, tools, apparatus or appliances etc. necessary to carry on any trade or mechanical business or any machanical operation or process, the machinery, apparatus or fixtures by which a business is carried on or the fixtures and tools necessary to carry on any trade or mechanical business - Cleveland C.C.&St. L. Rly. Co., V. Austin, 127 III App 281.

The following principles emerge from the decision of Delhi High Court in R.C. Chemical Industries V CIT(1982) 9 Taxman 181.

1. All Buildings are not "plant" despite the dictionary meaning which includes building, but a building or structure is not per se to excluded from the ambit of the expression "plant".
2. In order for a building or concrete structure to quality for inclusion in the term "plant" it must be established that it is impossible for the equipment to function without the particular type of structure.

Instances of Articles held as plant Designs, drawings, plans and technical data; fencing around the refinery process unit, safe deposit lockers cabinate, coal tubs, poles, cables, internal telephone system, technical manuals etc.

4. FURNITURE :

As the word "Furniture" is not defined in the Act, it's meaning is common parlance has to be ascertained. According to webster's new international English Dictionary, the word "Furniture" means article of conveniences or decoration used to furnish a house, apartment place of business or of accomodation". The shorter exford English Dictionary defines furniture "as movable articles in a dwelling house, place of business or public building. All articles of decoration or convenience used for the purpose of furnishing an office or place of trade or manufacturing would, therefore, be covered by the word "Furniture".

(iv) METHOD OF COMPUTATION OF DEPRECIATION ALLOWANCE FROM THE ASSESSMENT YEAR 1988-89 ONWARDS :

With effect from the Assessment year 1988-89, depreciation is admissible for block of assets. Depreciation is calculated on the basis of written down value method.

To understand method of computation of depreciation one must know meaning of the following terms.

1. BLOCK OF ASSETS (SECTION 2 (11))

The term "block of assets" has been defined by section 2(11) to mean, "a group of assets falling within a class of assets, being building, machinery, plant, or furniture, in respect of which the same percentage of depreciation is prescribed".

For instance, a company owns the following assets on April 1, 1988.

	Rate of depreciation (%)
Building A	5
Building B	10
Building C	10
Building D	20
Plant A	$33\frac{1}{3}$
Plant B	$33\frac{1}{3}$
Plant C	50

The following will be "block of assets" as per the definition.

First Block (Building, Rate of depreciation : 5%)

Building A

Second Block (Buildings, Rate of depreciation : 10%)

Building B

Building C

Third Block (Building, Rate of depreciation : 20%)

Building D

Fourth Blcok (Plants, Rate of depreciation : 33⅓ %)

Plant A

Plant B

Fifth Block (Plant, Rate of depreciation : 50%)

Plant C

2. ACTUAL COST : (SECTION 43 (1))

It means the actual cost to the assessee as reduced by the proportion of the cost there of if any, as has been met, directly or indirectly by any other person or authority. For instance an assessee, who purchases a machine for Rs.70,000/- and gets a cash subsidy of Rs.10,000/- from the Government, "actual cost" will be Rs.60,000/- (i.e. Rs.70,000/- - Rs.10,000/- and he will be entitled for depreciation on Rs.60,000/- and not on Rs.70,000/-.

WHAT IS INCLUDIBLE IN ACTUAL COST :

The accepted accounting rule for determining cost of fixed assets, interest on money borrowed for purchase of the asset, bank charges, expensess necessary to bring the asset, bank charges, to site, instal it make it fit for use. Cost of repairs and modification prior to use of the asset to make it workable, training expensess of the staff before the use of the plant and expensess on insurance, power and fuel, incurred before commencement of business.

3. <u>WRITTEN DOWN VALUE</u> :

With effect from the assessment year 1988-89, written down value of block of assets will be determined as under :

1. Determine the actual cost of assets acquired before the previous year relevant for the assessment year 1988-89.
2. From the Actual Cost deduct depreciation actually allowed upto the assessment year 1987-88. The key word is actually, allowed by income tax officer.
3. The balancing amount is depreciated value of each asset on the first day of the previous year relevant for the Assessment Year 1988-89.
4. Categorise different assets (acquired upto the Assessment Year 1987-88) into the relevant block of assets and aggregate the depreciated values of all the assets falling in a block of assets.
5. Add to the depreciated values of each block of assets the actuals cost of asset acquired during the previous year relevant for the Assessment year 1988-89.
6. From the resultant figure, deduct money's payable inrespect of that asset which is sold discarded, demolished or destroyed, during the previous year relevant for the assessment year 1988-89. The amount of such reduction cannot exceed the value of block of assets *(computed upto 5 stages).
7. The resulting figure would be written down value for the block of assets for the Assessment year 1988-89.

(v) PROVISIONS

Depreciation means decrease in value of an asset used in business due to wear and tear arising from user. Law recognises it as a genuine business expenses. Section 32 (i), therefore, allows deduction in respect of depreciation of building, machinery, plant or furniture owned by the assessee and used for the purposes of the business.

* Ships other than ships playing on island waters : clause(i) - up to the assessment year 1987-88, ships other than those which ordinarily play on inland waters were eligible for deduction on account of depreciation at a prescribed percentage on their actual cost clause (i) of sub-section (i) of section 32 now stands ommitted by the taxation laws (Amendment and Miscellaneous provision) Act, 1986 (the Amendment Act, 1986) with effect from 1st April 1988.

* Building Machinery, Plant or Furniture Clause (ii) - up to the Assessment year 1987-88, the items mentioned here were allowed deduction for depreciation at the prescribed percentage of their written down value. Clause (ii) was Amended by the (Amendment Act, 1986 with effect from 1st April 1988. Now from the Assessment year 1988-89 onwards, the deduction for depreciation shall be allowed at the prescribed percentage of the 'written down value' of the block of assets' in accordance with the amended provision.

Clause (ii) also provides that where actual cost of any machinery or plant does not exceed five thousand Rupees (Rs. 5000/-) the whole of such cost shall be allowed as a deduction in the relevant assessment year. i.e. with reference to the previous year in which it is first put to the business use. It is further provided that no deduction shall be allowed in respect of any motor car - manufactured outside India which is acquired after the 28th Feb. 1975 unless it is used in a business of running it on hire. With effect from 1st April, 1988 the Amendment Act, 1986 has inserted two explainations in clause (ii) Accordingly, any capital expenditure incurred for the purpose of business on the construction of any structure, renovation, extension or imporvement even in respect of any building held under a lease or other right of occupancy has been made eligible for deduction on account of depreciation in as much as it is declared in explanation - I that the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee. In other words, the condition of ownership of building has been relaxed for allowing depreciation on such capital expenditure by the tax payer

Explaination - II

Merely purports to bring home the fact that for the purposes of depreciation 'written down value of the block of asset' shall have the same meaning as in clause (c) of sub-section (6) of section 43 as newly inserted with effect

from 1st April, 1988. The concepts of 'actual cost' and 'written down value' ~~x~~including' written down value of block of assets' are indeed important and basic to depreciation and have been discussed later in the appropriate paras.

* <u>Additional depreciation for new plant and machinery installed between 1st April, 1980 and 31st March 1985 - clause (iia)</u>

A further sum equal to one half of the amount admissible as normal depreciation (excluding any double or triple shift - allowance or extra allowance for any machinery or plant installed in a hotel) is being allowed in respect of the previous year in which the said machinery or plant is installed. If the machinery or plant is first put to use in the immediately succeeding previous year, the additional depreciation is allowed in respect of that previous year. Since, clause (ii a) stands omitted with effect from 1st April 1988, there will be no such additional depreciation allowance to be given for such assets from the Assessment Year 1988-89 onwards. It may be added that machinery or plant installed in any office or residance, office appliances or road transport vehicles are not covered by clause (ii a).

* Terminal allowance or balancing allowance clause (iii) :

This provision existed upto the assessment year 1987-88 and was omited by the Amendment Act, 1986 with effect from 1st April 1988. The omited clause (iii) provided that in the case of any building, machinery, plant or furniture, which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use) the amount by which the moneys payable inrespect of such building, machinery or plant or furniture, together with the amount of scrap value, if any, falls short of the written down value thereof, the same shall be allowed as a deduction on account of 'balancing allowance' provided the defiiiency is actually written off in the books provisions for initial depreciation for certain specified assets are contained in some other clauses of sub-section (i) which also stipulate whether or not the said initial depreciation shall be reduced while computing the written down value of that asset.

* **Newly erected building after 31st March, 1961 and used solely for residance of employee's of business - clause (iv)**

Before ommission of this clause by the Amendment Act, 1986 with effect from 1st April, 1988 a sum equal to forty percent of the actual cost of the building was allowed as a deduction in respect of the previous year of eraction of such building. The necessary condition attached there to was that the income of the employee's chargeable under the

head 'salaries' was Rs.10,000/- or less without any such condition as to 'salaries' the other permissible user of the building so as to quality for such deduction was as hospital, church, school, canteen, library recreational centre shelter, rest-room or lunch room prior to 1st April 1989, the amount of such deduction was not to be taken into account for determining the 'written down value' of such building with effect from 1st April, 1984, this restriction was removed by the finance Act, 1983.

* Newly erected building after 31st March, 1967 owned by the company and used by it as a hotel clause (V) :

Before ommission of clause (V) by the amendment Act, 1986 with effect from 1st April 1988 a deduction of twenty five percent (25%) of actual cost of such building was allowed in respect of the previous year in which it's erection was complited. The deduction was available to an Indian company for it's building used as a hotel which was for the time being approved in this behalf by the central Government.

2. THE RELATED INCOME-TAX RULES :

Rule 5 AA prior to it's ommission -

1. For the purpose of the deductions reffered to in sub section (i) or sub-section (1A) of section 32 and sub section (1) of section 32 A. The following particulars shall be furnished in a columnar form namely :

i) Description of assets.

ii) Written down value of existing assets

iii) Actual cost of assets acquired during the previous year.

SHIVAJI UNIVERSITY LIBRARY KOLHAPUR

iv) Capital expenditure on additions or alterations,

v) Period of user

vi) Amount of money's payable and scrap value in respect of assets sold, discarded, demolished or destroyed.

vii) Amount on which depreciation is allowable

viii) Rate of depreciation.

ix) Total number of day's worked (To be furnished if extra shift allowance is claimed).

x) Total number of day's worked Double and Triple shift.

xi) Depreciation claimed -

a) Initial depreciation

b) Normal depreciation

c) Additional depreciation

d) Extra shift allowance - Double and Triple shift

xii) Total depreciation

xiii) Investment Allowance claimed (Also indicate rate)

xiv) Remarks (Indicate the amount of initial depreciation, investment allowance or Development rebate in respect of asset).

NOTE : Omitted by the Income-Tax (Third Amendment) Rules 1987 w.e.f. 2.4.87. Rules 5 A was originally inserted by the Income-Tax (Amendment)Rules 1981.

3. THE SCHEDULES AND THE APPENDIX CONCERNING THE ALLOWANCE

APPENDIX - I

DEPRECIATION TABLE

(Rates of Depreciation for the A.Y. 1988-89 onwards)

Table of rates at which depreciation is admissible.

Block of Assets	Depreciation Allowance as percentage of written down value
I. BUILDINGS	
1) Building other than those covered by sub-item (3) below which are used mainly for residential purposes	5 %
2) Buildings which are not used mainly for residential purposes and which are not covered by sub item (3) below.	10 %
3) i) Buildings used as hotels ii) Buildings with dwelling units each with plinth area not exceeding 80 sq. mtr.	20 %
4) Purely temporary eractions such as wooden structures	100 %
II. FURNITURE AND FITTINGS	
1) Rate applicable to furniture and fittings not covered by sub item below	10 %

2) Furniture and fittings used in hotels, restaurant and boarding houses; schools; colleges and other educational institutions; libraries; welfare centres, meeting halls; cinema houses, theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions	15 %

III. MACHINERY AND PLANT

1) Machinery and Plant other than those covered by sub-items (2) and (3) below	33.33%
2) i) Aeroplanes, aeroengines ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire. iii) Moulds used in rubber and plastic goods factories. iv) Air Pollution control equipments, being - a) Electrostatic precipitation systems b) Felt-filter system c) Dust collector systems d) Scrubber - counter/cyclonic scrubber.	50 %
v) Water Pollution Control Equipments, being a) Medanical screen systems b) Aerated detritus chambers (including air compressor) c) Mechanically skimmed oil and grease removal systems d) Chemical feed systems and flash mixing equipment d) Mechanical flocculators and mechanical reactor's f) Diffused air/mechanically aerated activated sludge systems. g) Aerated lagoon systems h) Biofilters i) Methane recovery anaerobic digester systems	50 %

j) Air floatation system k) Air/steam stripping systems l) Ured hydrolysis systems m) Marine outfall systems n) Centrifuge for dewatering sludge o) Rotating biological contactor or bio-disc p) Ion exchange resin coloumn	50 %
vi) Solidwaste control equipments, being caustic/lime/chrome/mineral/ cryolite recovery system	50 %
3) i) Wooden parts used in artifical silk manufacturing machinery	100 %
ii) Cinematograph films, bulbs of studio lights	100 %
iii) Energy saving devices, being	
A. Specialised biolers and furnaces : a) Ignifluid/fluidized bed boilers b) flameless furnaces and continuous pusher type furances c) fluidized bed type heat treatment furnaces d) High efficiency boilers (thermal efficiency higher than 75% in case of coal fired and 80 % in case of oil/gas fired boiler's	100 %
B. Instrumentation and monitoring system for monitoring energy flows : a) Automatic electrical load monitoring systems b) Digital heat loss meter's c) Micro-processor based control systems d) Infra-red thermography e) Meters for measuring heat losses, furnace oil flow, steam-flow, electric energy and power factor meters	100 %

g) Exhaust gases analyser h) fuel oil pump test bench	100%
C. Waste heat recovery equipments : a) Economiser's and feed water heaters b) Recuperator's and air pre-heaters c) Heat-pumps d) Thermal eneergy wheel for high and low temperature waste heat recovery	100 %
D. Co-generation systems : a) Back pressure pass-out, controlled extraction, extraction cum condensing turbines for cogeneration alongwith pressure boilers b) Vapour absorption refrigeration systems c) Organic rankine cycle power systems d) low inlet pressure small steam turbines	100%
E. Electrical equipments : a) Shunt capacitor's and synchronous condenser systems b) Automatic power cut-off devices (relays) mounted on individual motors c) Automatic voltage controller d) Power factor controller for AC motor's e) Solid state devices for controlling metor speed	100%
* 1a (f) Thermally energy - efficient stenters (which require 800 or less kilo calories of heat to evaporate one kilogram water	

* 1a - substituted for " (f) stenters" by the IT (Sixth Amdt.) Rules 1987, w.e.f. - 2.4.1987.

F. Burners

a) 0 to 10% excess air burner's
b) Emulsion burner's
c) Burner's using air with high pre-heat temperature (above 300°C)

100 %

G. Other equipments

a) Wet air oxidation equipment for recovery of chemicals and heat
b) Mechanical vapour recompressor's
c) Thin film evaporator's
d) Automatic micro-processor based load demand controller's
e) coal based producer gas plants
f) fluid drives and fluid couplings
g) Turbo charges/super-charges

100 %

iv) Floor milk - Rollers — 100%

v) Gas Cylinders including valves and regulator's — 100 %

vi) Glass manufacturing concern's - Direct fire glass melting furnance — 100 %

vii) Iron and steel industry - Rolling mill rolls — 100 %

viii) Match factories - wooden match frames — 100 %

ix) Mineral oil concerns :

a) Plant used in field operations (above ground) distribution Returnable packages
b) Plant used in field operation (below ground) but not including kurbside pumps including under ground tanks and fittings used in field operations (distributions) by mineral oil concerns.

100 %

x) Mines and quarries :

a) Turbs winding ropes and sand stowing pipes
b) Safety lamps

100 %

xi) Salt works - salt pans, reservoirs and condensers, etc. made of earthy, sandy or clayey material or any other similar material	100 %
xii) Sugar works - Rollers	100 %
xiii) Renewal energy devices being -	
a) Flat plate solar collector's	100 %
b) Concentrating and pipe type solar collectors	
c) Solar coockers	
d) Solar water heaters and systems	
e) Air/gas/fluid heating systems	
f) Solar crop driers and systems	
g) Solar refrigeration, cold storages and air-conditioning systems	
h) Solar steels and desalinations systems	
i) Solar power generating systems	
j) Solar pumps based on solar-thermal and solar photovoltaic conversion.	
k) Solar photovoltaic modules and Panels for water pumping and other applications.	
i) Wind mills and any specially designed devices which run on wind mills	
m) Any special devices including electric generators and pumps running on wind energy.	
n) Biogas - plant and biogas engines.	
o) Electrically operated vehicles including battery powered or fuel cell powered vehicles.	
p) Agricultural and municipal waste conversion devices producing energy.	

q)	Equipment for utilising ocean waste and thermal energy.	100 %
r)	Machinery and plant used in the manufacture of any of the above sub-items	

IV) SHIPS

1)	Ocean-going shipes ships including dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes and fishing vessels with wooden hull	20 %
2)	Vessels ordinarily operating on inland waters, not covered by sub-items (3) below	10 %
3)	Vessels ordinarily operating on inland waters being speed beats (Sec. note 4 below the table)	20 %

NOTES :

1. "Buildings" include roads, bridges, culverts wells and tubewells.
2. A building shall be deemed to be a building used mainly for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two third percent of it's built-up floor area.
3. In respect of any structure or work by way of renovation or important in or in relation to a building referred to in Explanation I of clause (ii) of sub section (1) of section 32, the percentage to be applied will be the percentage specified against sub-item (1),(2) or (3) of item I as may be appropriate to the class of building in or in relation to which the renovati or improvement is effected. Where the structure is constructed or the work is done by way of extension of any such building, the percentage to be applied would be such percentage as woul be ~~such per~~ appropriate, as if the structure of work constituted a seperate building.
4. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding. 24 kilometers per hours in still water and so designed that when running at a speed, it will plane i.e. its bow will rise from the water.

SCHEDULE XIV

(See Section 205 & 350)

RATES OF DEPRECIATION

Nature of assets	Single shift		Double Shift		Triple Shift	
	WDV	SLM	WDV	SLM	WDV	SLM
1	2	3	4	5	6	7
I. a) BUILDINGS (Other than factory Buildings) (N.E.S.D.)	5%	1.63%	-	-	-	-
b) factory buildings	10%	3.34%	-	-	-	-
c) Purely temporary erections such as wooden structure	100%	100%				
II. PLANT AND MACHINERY						
i) General rate applicable to plant and machinery (not being a ship) for which no special rate has been prescribed under (ii) below.	15%	5.55%	22.5%	8.09%	30%	11.31
ii) Special rates						
A. 1. Cinematograph, films machinery used in the exhibition of cinematograph films (N.E.S.D.)						
a. Recording equipment, reporducing, developing machine printing machine editing machines synchronisen and studio lights excepts bulbs.	20%	7.07%				
b. Protecting equipment of film exhibiting concerns						
2. Cycles (N.E.S.D.)						

	3. Electrical machinery Batteries- X ray and electrotherapatic apparatus and accessories thereto(NESD)					
	4. Juice boiling pans (NESD)					
	5. Motor cars, Motor cycles, scooters and other mopeds.					
	6. Electrically operated vehicles including battery powered or fuel call powered vehicles (NESD)	20%	7.07%			
	7. Sugarcane crushers					
	8. Glass mfg.concerns except direct fire glass melting furance	20%	7.07%	30%	11.31%	40%	16.21
	9. Machinery used in the manufacture of electric goods or components					
B.	1. Aeroplanes- Aircraft, photographic apparatus (NESD)					
	2. Ma Concrete pipes manufacture moulds (NESD)					
	3. Drum container manufacture					
	4. Earth moving machinery employed in heavy construction works such as dams, tunnel, canals	30%	11.31%			
	5. Glass mfg. concerns except direct fire glass melting furnances					
	6. Moulds in Iron foundaries					
	7. Minerals, oil concerns field operations (Above ground) portable boilers, drilling tools, well head tanks, rings etc.(NESD)					

	8. Mines & quarries portable under ground machinery and earth moving machinery used in open cost mining (NESD)						
	9. Motor buses and motor lorries other than those used in a business of running them on hire (NESD)	30%	11.31%				
	9A. Motor tractors harvesting combines(NESD)						
	10. Patterns, dies and templates (NESD)						
	11. Ropeway structure						
	12. Shoe and other leather goods factories	30%	11.31%	45%	18.96%	60%	29.
C.	1. Aeroplanes - Aeroplane engines(NESD)						
	2. Motor buses, motor lorries and motor taxies used in a business of running them on hire (NESD)						
	3. Rubber and plastic goods factories (NESD)	40%	16.21%				
	4. Data processing machines including computers (NESD)						
	5. Gas cylinders including valves and regulators (NESD)						
D.	1. Artificial silk manufacturing machinery wooden parts.						
	2. Cinematograph films, Bulbs of studio lights						
	3. Floor mills - Rollers						
	4. Glass mfg. concerns. Direct fire glass melting furnances	100%	100%				
	5. Iron and steel industries-Rolling mills Rolls.						
	6. Match factories - wooden match frames						

7. Mineral oil concerns a) Plant used in field operations(below ground) b) Plant used in field operations (below ground)but not including assets used in field operations including under ground tanks and fittings.		
8. Mines and quarries a) Tubs, winding ropes,haulage ropes and sand stowing pipes b) safety lamps.	100%	100%
9. Salt works - salt plans, reservoirs and condensers etc. made of earthy sandy or clay material or any other similar material.		
10. Sugar works Rollers.		
III. FURNITURE AND FITTINGS		
1. General Rates (NESD)	10%	3.34%
2. Rates for furniture and fittings used in hotels, restaurants and boarding hourses schools, colleges and other educational institutions, circuses, libraries,welfare centres, meeting halls, cinema houses, and theaters and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions (NESD)	15%	5.15%
IV. SHIPS		
1. Ocen qoinq ships -		

i) Fishing vessels with wooden hull(NESD)	27.05%	10%
ii) Dredgers, tugs, barges; survey launches and other similar ships used mainly for dredging purposes (NESD)	19.08%	07%
iii) Other ships (NESD)	14.6%	05%
2. Vessels ordinarily operating on inland waters.		
i) Speed boats (NESD)	20%	7.07%
ii) Other vessels (NESD)	10%	3.34%

W.D.V. Means - written down value

SLM means - striaght line method

NOTES

1. "Building" includes roads, bridges, culverts, wells and tube-wells.
2. "Factory buildings" does not include offices, godowns, officers and employee's quarters. roads, bridges, culverts, wells and tube-wells.
3. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 km per hour in still water.
4. Where, during the any financial year, any addition has been made to any asset or where any asset has been sold, discarded demolished or destroyed the depreciation on such assets shall be calculated on pro-rata basis from the date of such addition or as the case may be upto the date on which such asset has been sold, discarded, demolished cr destroyed.

5. The following information should also be disclosed in the accounts.

   i) Depreciation methods used.
   ii) Depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the schedule.

6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made seperately in the proportion which the number of day's for which the concern worked during the year. For this purpose, the normal number of working day's during the year shall be deemed to be

   a) In the case of a seasonal factory or concern, the No. of day's on which the factory or concern actually worked during the year or 180 day s whichever is greater.

   b) In any other case the number of day's on which the factory or concern actually worked during the year or 240 day's, whichever is greater.

The extra shift depreciation shall nto be charged in respect of any item of machinery or plant which has been specifically expected by inscription of the letters "NESD" (Meaning No extra shift depreciation) against it in sub item above.

TABLE SHOWING DEDUCTION OF DEPRECIATION ALLOWANCE IN A TABULAR FORM

Sr. No.	Caption and Section	Assets to whom applicable	Basis for Deduction	Year of Deduction	Quantum of Deduction	Conditions of Deduction
	a	b	c	d	e	f
26	Depreciation 32(i) (ii)	All Accessees	Written down value of any block of assets "Block of assets means a group of assets falling within a class of assets, being bdgs. machinery, plant or furniture in respect of which the same percentage of depreciation is prescribed.	Year in which assets is used	At the prescribed percentage specified in Appendix - I to the Income tax Rules 1962 which is reproduced herebelow at the end of this table.	a) Assets should be owned by the assessee and should be used for his business or profession. b) No depreciation shall be allowed 1) On the guest house and assets kept there (Sec. 37 (3) (ii)) 2) On the value of land. 3) On a foreign motor car acquired after 28.2.1975 and is used otherwise than in the business of running it on hire for tourists. c) Where the actual cost of any plant or machinery does not exceed Rs. 5,000/- then the actual cost thereof shall be allowed as a deduction in the previous year in which such plant or machinery is first put to use. d) Where the business or profession is carried on in a building not owned by the assessee but in respect of which he holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the

Sr. No.	Caption and Section	Assets to whom applicable	Basis for Deduction	Year of Deduction	Quantum of Deduction	Conditions of Deduction
	a	b	c	d	e	f
						purpose of the business or profession on the construction o structure or doing of any work in or in relation to, and by way of renovation or extension of or improvement to the building, the the provisions of this section shall apply as if the said struc or work is a building owned by the assessee.
						e) Un-absorbed depreciation shall b carried forward. The amount of depreciation not absorbed in computing the net result of any source of income falling under 'speculative business' shall be set-off against any income, if a of any other speculative busines and, if yet, such depreciation remaining unabsorbed, it shall b carried forward for an unlimited period to be set-off in the futu only against the income of any speculative business.

MAHARAJA SAYAJIRAO UNIVERSITY, KOLHAPUR

TABLE V.I.

COMPARATIVE ANALYSIS OF CAPITAL ALLOWANCE (DEPRECIATION) IN SELECT ECONOMICS

Allowance 1		India 2	U.K. 3	U.S.A. 4	Malaysia 5	Nigeria 6	Mexico 7
1) DEPRECIATION							
a) Buildings	Rate Basis	5-100% WDV.	4%-10% Original cost	100% Original cost	40% Total Capital expenditure	10% Cost of I.B.	40% Total cost
b) Plant & Machinery	Rate Basis	33.33%-100% WDV.	25% O.C.	x ACRS.	x x	12.5% O.C.	x x
c) Furniture & Fixture	Rate Basis	10-15% WDV.	x x	x x	x x	x x	x x
d) Ships	Rate Basis	11-20% WDV.	x x	x x	x x	x x	x x
e) Mining	Rate Basis	x x	x x	x x	x x	12.5% cost	x x
2) EXTRA DEPRECIATION FOR HOTELS *	Rate Basis	50% * WDV.	x x	x x	x x	x x	x x
3) EXTRA SHIFT DEPRECIATION *	Rate Basis						
a) Double Shift	Rate Basis	50% Normal Depreciation	x x	x x	x x	x x	x x

Allowance 1		India 2	U.K. 3	U.S.A. 4	Malaysia 5	Nigeria 6	Mexico 7
b) Triple shift*	Rate	100%	x	x	x	x	x
	Basis	Normal Depreciation	x	x	x	x	x
4) INITIAL DEPRECIATION*							
a) New Buildings	Rate	x	50%	x	x	15% cost	x
	Basis	x	cost	x	x	of I.B.	x
b) Building for welfare of low paid employees	Rate	40%	20%	x	x	x	x
	Basis	cost	cost	x	x	x	x
c) Building for Hotels	Rate	25%	20%	x	x	30%	x
	Basis	cost	cost	x	x	cost	x
d) Plant & Machinery	Rate	x	100%	x	x	20%	x
	Basis	x	cost	x	x	cost	x

NOTES : 1) This sign indicate (*) Not applicable in India now.

2) It may also be observed from Table V I. that Initial depreciation Allowance had already been abandoned in the past. This type of allowance is not offered any where else except in the U.K. and Nigeria.

4. CASE LAW STUDY :

CIT. v. J.K. HOSIERY FACTORY (1986) 159 ITR. 85 (sc)

Registered firm can claim set-off of unabsorbed depreciation earned as unregistered firm.

Where the assessee firm, which was assesseel as an unregistered firm for the A.Y. 1949-50, claimed set-off of unabsorbed depreciation determined for that year in the A.Y. 1950-51 when it was granted registration.

Held that neither the provision (b) to section 10(2) (vi) of the 1922 Act or provison (b) to section 24(2) of the said Act prohibited the carry forward of unabsorbed depreciation in case the firm became registered in the subsequent year. The entity being the firm registration makes no differance to that entity. By registration, the firm gets certain additional qualifications and puts upon itself certain additional burden. The assessee in both the cases, however is the same. The scheme of the Act does not indicate any intention to deprive the subsequently registered firm of it's right to carry forward the unabsorbed depreciation. Depreciation is given to the person, who becomes entitled to it. The subsequently registered firm is composed of him also. Therefore, in principle, there is no basis for the proposition that it should not be entitled to get the benefit of depreciation. The deduction of unabsorbed depreciation, was thus allowable.

SITALPUR SUGER WORKS LTD. v. CIT. (1963) 49 ITR. 160 (sc)

No depreciation is admissible on capital expenditure incurred on shifting factory from one site to another. :

In order to entitled to depreciation on capital expenditure for additions, alterations, improvements and extensions envisaged in column 3 of part V of the form of return prescribed by rule 19 of the 1922 rules, there has to be an improvement of the capital asset, an increase in it's value. Accordingly, where the assessee had spent Rs.3,19,766/- on shifting his factory from an uneconomic site to another site, which was treated as capital expenditure, it was held that no depreciation was admissible on capital expenditure incurred on shifting factory from one site to another because no tangible asset was acquired by the expenditure and no improvement was made in any capital asset in the sense that there was an increase in the value thereof.

JUDICIAL ANALYSIS :

Distinguished in CIT. v. Elcon, Engg. Co. Ltd. (1974) 96. ITR. 672. (GUJ.) with the following observations :

"Now, it is true that this ruling i.e. sitalpur suger works ltd. vs. CIT. (1963) 49. ITR, 160 (sc) does support the revenue in so far as it indicates that a claim for depreciation allowance the assessee must show that the expenditure incurred by him resulted in the acquisition of a capital asset of tangible nature and that such capital asset was capable of depreciation. The decision, however, is not of much assistance in deciding the precise questions raised for our determination

namely (i) whether drawings and patterns, which are merely the material vehicle or physical record of know-how (that being the real asset of tangible nature acquired by the assessee) cou be held to be plant and (ii) whether depreciation can be allowed in respect of such asset which did not diminish in valu year after year by wear and tear. In the case before the supreme court, the expenditure was incurred not for acquiring any asset but for shifting the existing asset to a better site for improving business.

The benefit which there accrued to the assessee did not have any material from whatever nor was it capable of any depreciation. It was in the context of those particular facts that the rather ingenious claim for depreciation allowan was disallowed, in that case. In our opinion, the decision, through it was given in the context of a provision which is in pari-meteria with section 32 does not throw any light on the real questions which we have to resolve in this case.