

CHINUBHAI N. SHAH
CHARTERED ACCOUNTANTS

AHMEDABAD.

PROFESSIONAL PROFILE

QUALIFICATION	:-	B.COM. A.C.A. (1967), F.C.A. (1973)
PARTNER IN	:-	C. N. Shah & Co. (Established in 1971)
PRESIDENT	:-	All Gujarat Federation of Tax Consultants 1997-98.
	-	Chartered Accountants Association A'bad 1992-93.
	-	Income Tax Bar Association , Ahmedabad 1983.
CHAIRMAN	:-	Research and Expert Advisory Committee of Chartered Accountants Association, Ahmedabad 1995-96.
	-	Journal Committee of Chartered Accountants Association, Ahmedabad 1994-95 (up to 31/10/94).
	-	Technical Committee of All Bombay Chartered Accountants Conference, Organised by C.A.A. 1993-94.
	-	Study Circle Committee of C.A.A., 1990-91.
	-	Brain Trust Cum Workshop Committee of C.A.A., 1989-90.
	-	Legal & Reresentation Committee, 1999-2000.
	-	Constitution Committee of C.A.A. 2000-2001.
	-	Expert Advisory Committee of C.A.A. 2001-2002.
	-	Exposure Draft Review and Recommendation Committee Ahmedabad Branch if WIRC of Institute of Chartered Accountants of India 2001-2002.
CO-OPETED MEMBER	-	On Committee on Ethical Standards & Unjustified Removal of Auditors (CESURA) of Institute of Chartered Accountants of India New Delhi for the year 2002-2003.

EDITOR IN CHIEF

- "Tax Gurjari ' (Journal of All Gujarat Federation of Tax Consultants 1996-97)
- Ahmedabad Chartered Accountants Journal 1992-93.

MEMBER

- Executive Committee: Gujarat Chamber of Commerce & Industries. (1998-99)
- Taxation Sub-Committee of Gujarat Chamber of Commerce & Industries in 1987,1988,1991-92 to 1999-2000.
- Research Committee of Ahmedabad Branch of Western India Region Council of ICAI on Exposure Draft for "Proposed Accounting Standards for Cash Flow "1996 And member of Study Group Constituted by The Auditing Committee of ICAI to examine and consider the aspects of Valuation of Inventory and to consider revision of AS.8."Accounting for Research and Development Expenditure".

FACULTY MEMBER

- :- Faculty Member of Study Circle meet, Organised by Ahmedabad Branch of Western India Regional Council of ICAI on "Proposed Provision of Mat and Section 32" 1996.
- :- Leader for study circle meet on "Controversies regarding Pre-commencement v/s Expenditure for the same Business Organised by Ahmedabad Branch of Western India Regional Council of ICAI 1996.
- :- Leader for study circle meet as "Provisions Relating to Tax Audit ",Organised by Ahmedabad Branch of Western India Regional Council of ICAI 1993.

LECTURES GIVEN: -

26/06/96 "Controversies Relating to
C.A. Association of A'bad.
Export Incentive Special
Reference to sec.80 HHC
of the I.T. Act.

23/01/96 "Concept of Precommencement
C.A. Association of A'bad.
V/s same Business".

18/10/94 Tax Audit u/s 44AB
C.A. Association of A'bad.

29/04/94 "Capital V/s Revenue Expendi-
C.A. Association of A'bad.

ARTICLES	: -	“Business Connection with reference to Non- Resident” May 1996.
	-	Whether depreciation can be claimed under Income-Tax Rules on obsolete Fixed Assets written off from the books “July 1995”.
	-	“Foreign Collaboration – Some Aspects” February 1992.
	-	Audit of a Social Club-2002.
TROPHY WINNER	: -	Best Article on Taxation Awarded by Chartered Accountants Association Ahmedabad 1996-97.

- Whether depreciation can be claimed under Income-Tax Rules on obsolete Fixed Assets written off from the books “July 1995”.

- Audit of a Social Club-2002.

TROPHY WINNER :- Best Article on Taxation Awarded by Chartered Accountants Association Ahmedabad 1996-97.

**SEMIANAR ORGANISED BY
ALL GUJARAT FEDERATION OF TAX CONSULTANTS
AT JUNAGADH ON 21ST OCTOBER 2011. POSERS BY C.N.SHAH (CHARTERED ACCOUNTANT)**

Posers u/s 37 of the Income Tax Act 1961.

Sr.No	Particulars.	Particulars.
1.	General principal that expenditure on the creation of a capital asset is on capital account applies only where the capital asset belongs to the assessee. But the exception is an amount spent by the assessee may be deductible as revenue expenditure even if it results in the acquisition of capital asset by a third-party. Whether is it a true proposition? Let us discuss following situations?	
1.1	The assessee company a Sugar manufacturing company paid to the Cane Development Council certain amounts by way of contributions for the construction and development of roads between the various sugar producing centers and the sugar factories of the assessee. Whether contribution to Cane Development Council is allowable as revenue expenditure?	<ol style="list-style-type: none"> 1. Laxmi Sugar Mills Co. Pvt Ltd v/s CIT (82 ITR 376) 2. Assam Bengal Cement Co. Ltd v/s CIT (27 ITR 34)
2.	The assessee incurred an expenditure of Rs. 20.46 lacs which was paid to Gujarat Electricity Board being 50% of the cost for laying electric cables and electric supply transmission lines. The ownership of transmission line belonged to GEB. Whether expenditure of Rs. 20.46 lacs was allowable as revenue expenditure. The expenditure of Rs. 20.46 lacs was written off in seven years to profit & loss account. However same was claimed as revenue expenditure in the very first year. Advise your client whether it is admissible as revenue expenditure?	<ol style="list-style-type: none"> 1. CIT v/s GMDC Ltd 132 ITR 377 (Guj) confirmed by Honorable Supreme Court. 2. CIT v/s Bikaner Gypsum Co. Ltd (SC)
3.	The assessee purchased land in the name of District Collector for the purpose of constructing houses for its workers under Subsidized Industrial Housing Scheme sponsored by the State Government. The amount was claimed as a deduction by the assessee under the head 'Labour Welfare expenses'. Whether the cost of the land is allowable as revenue expenditure?	<ol style="list-style-type: none"> 1. CIT v/s Sundaram Iyengar and sons (P) Ltd (95 ITR 428)

	Please consider this issue in context of section 40A (9) of the Income Tax Act 1961.	
3.1.	Whether expenditure incurred by the assessee company by way of contribution to Employees club, ladies club, Sports Tournaments, workers-staff Recreation centre would hit by provisions of section 40A(9)?	Bombay High Court in the case of CIT v/s Bharat Petroleum Corporation Ltd (Bom) 252 ITR 43.
4.	The assessee company donated an amount for construction of a hospital work which was in the vicinity of a mill company; the employees of the assessee could therefore take advantage of the hospital since the assessee was required under Employees' State Insurance Act to maintain a hospital for its staff. The assessee thought to donate this amount to the Government rather than construct and maintain the hospital itself.	CIT v/s Rupsa Rice Mill 104 ITR 249 since incurred for a genuine business purpose and that any expenditure even remotely related to the business would be deductible if it was necessary for the purpose of carrying on the business.
5.	The assessee incurred Rs. 30000/- in respect of repairing a road which connected the main trunk road with the factory premises of the assessee. The approach road belonged to the assessee. Whether the expenditure is allowable as business expenditure?	1. CIT v/s Hindustan Motors Ltd 68 ITR 301 2. Gwalior Rayon Silk Manufacturing (weaving) Co. Ltd 169 ITR 577.
6.	Whether expenditure on school for employee's children is allowable as revenue expenditure?	Anadaval Mills Ltd v/s CIT 110 ITR 742 (Madras)
7.	The assessee is following Mercantile system of accounting. whether earlier years expenses will be allowable in current assessment year?	Saurasthtra Cement and Chemical Industries Ltd. v/s CIT (213 ITR 529) (Guj) CIT v/s Nathmal Tolaram (88 ITR 34) (Gauhati)

Posers u/s 32 of the Income Tax Act 1961.

Sr.No	Particulars.	Particulars.
1.	Whether higher depreciation can be claimed for the vehicles in the business of hire u/s 32 by the lesser?	Ineligible for motor vehicles on lease. Higher depreciation was therefore found inadmissible – Bhagwati Appliance v/s ITO (2011) 337 ITR 286 (Guj) pointing out to the decision of Supreme Court in CIT v/s Gupta Global Exim P.Ltd (2008) 305 ITR 132 (SC).
2.	Whether unabsorbed depreciation of the amalgamating company can be claimed by the amalgamated company?	
3.	Whether depreciation can be claimed on exchange differences arising in foreign currency transactions in respect of imported machinery on repayment of liabilities incurred for the purpose of acquiring fixed assets?	
4.	What effect should be given to grant received on fixed asset for the purpose of calculating depreciation, when there are special subsidy from the government and general subsidy on other Fixed assets.	<p>Example:</p> <p>Fat Ltd gets a subsidy of Rs. 12 lacs for setting up an industrial under taking in a backward area of rajasthan. The cost of project is Rs. 150 lacs (Plant & machinery Rs. 80 lacs, cost of plot Rs. 40 lacs, construction cost of building Rs. 30 lacs). Apart from the above assets, the company also decides to purchase a special machinery for Rs. 75 lacs. For which it is to receive a special subsidy from the Govt. of India of Rs. 50 lacs. The cost of special machinery will be $75 - 50 = \text{Rs. } 25 \text{ lacs}$ & (Directly attributed subsidy)</p> <p>The cost of other assets (Proportional subsidy)</p> <p>Total cost of project Rs. 150 lacs and total subsidy is Rs. 12 lacs to be proportionately distributed in all special assets as follows</p> <p>Plant & Machinery $12 \times 80 / 150 = 6.4$ Building $12 \times 30 / 150 = 2.4$ Plot $12 \times 40 / 150 = 3.2$</p> <p>So cost of:</p> <p>Plant & Machinery $80 - 6.4 = \text{Rs. } 73.6 \text{ Lacs}$ Building $30 - 2.4 = \text{Rs. } 27.6 \text{ Lacs}$ Plot $40 - 3.2 = \text{Rs. } 36.8 \text{ Lacs}$</p>
5.	Whether additional depreciation can be claimed on computers used for data processing?	Statronics & enterprises P. Ltd v/s CIT 288 ITR 455 (Guj)
6.	Whether additional depreciation can be	Nathubhai H. Patel v/s CIT 201 CTR 102

	claimed on Air-Conditioners and fans in a clinic?	(Guj)
7.	Whether depreciation was admissible on entire cost of plant & machinery despite the fact that 30 percent of the value of plant & machinery was received by way of subsidy from the Government.	Mehsana District Co-op Milk Producers Union Ltd v/s CIT 175 CTR 612

Posers u/s 36 of the Income Tax Act 1961.

Sr.No	Particulars.	Particulars.
1.	<p>The assessee has claimed bad debts of Rs. 500000/- for AY 2010-11 out of which Rs. 3 lacs pertained to AY 2010-11. Rs. 1 lac received during the year FY 2009-10 but not ascertainable as to whether the amount so received was against bad debts claim.</p> <p>The assessing officer disallowed rs. 3 lacs on the ground that it related to AY 2010-11 itself i.e. FY 2009-10. The assessing officer disallowed Rs. 1 lac on the ground that the assessee had received certain amount during the year under consideration and it was not ascertainable as to whether the amount so received was against bad debts claims.</p> <p>Advise your client whether both claims of bad debts written off in the account books are allowable in view of provisions of section 36(I)(VII) read with section 36(2)(III)</p>	<p>Reference is invited to the judgment of Honorable Gujarat High Court in the case of CIT v/s Pullen Pump Industries (Guj) 337 ITR 294.</p>
2.	<p>The 'X' company sold one of its division to another company 'Y' for Rs. 4 crores. The amount being huge, it was agreed to be paid by 'Y' company in installments. On remaining amount interest @ 15% per annum was to be paid to assessee company 'X'. In course of time the 'Y' company could not make the payment of installments as well as interest thereon as agreed. The assessee 'X' company offered the sale consideration in its return of income as capital gain. But the department did not accept the sale of the assessee but treated the same consideration as business income and taxed accordingly.</p> <p>The assessee received interest up to certain years and no further interest was received in the subsequent years but the same was offered for taxation as business income. Then the 'X'</p>	<ol style="list-style-type: none"> 1. ITA No. 1731-1735/Ahd/2001 Ahmedabad Bench 'C' – Ahmedabad 2. CIT v/s Veerbhadra Rao K. Koteswala Rao & co. 155 ITR 152 (SC)

	<p>company was amalgamated with another 'Z' company now the assessee i.e. present assessee. While amalgamating all the assets and liabilities of the 'X' company were taken over by the assessee 'Z' company including the payment of sale consideration from 'Y'. The 'Y' company after making payment of one installment of principal and one installment of interest stopped the payment due to bad financial position. The assessee 'Z' company claimed the principle and interest payment to be received from 'Y' company as bad debts but the department did not allow the claim of the assessee regarding the bad debts treating the same as not belonging to the business.</p> <p>Discuss whether non receipt of sale consideration on sale of one of the Division of the 'X' company through amalgamation into 'Z' company can be allowed as bad debts u/s 36(1)(VII) read with section 36(2)(III)</p>	
3.	<p>The amount of interest borrowed for the purpose of business or profession.</p> <p>Question: whether the interest paid by holding company to a subsidiary company on interest free loan out of interest paid on borrowed funds by holding company is allowable u/s 36 (1) (III)?</p>	<p>S.A.Builders Ltd v/s CIT (Appeals) and another (2007) 288 ITR 1 (SC) and Madhav prasad Jatia v/s CIT AIT 1979 SC 1291.</p>