

**Dilemma**  
**for assesses**  
***as well as***  
**the tax auditors**  
**as to which Form No. 3CD**  
**is to be used for Tax Audit Report**  
***w.e.f.***  
**1.10.2020**  
**for assessment year 2020-21**

1. Section 44AB of the Income Tax Act, 1961 {*hereinafter referred to as the Act*} casts following two obligations on every **person** covered by clause (a), (b), (c), (d) or (e), as the case may be:
  - (i) to get his accounts of such previous year audited by an accountant **before** the ***specified date*** **and**
  - (ii) furnish **by** that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

**First Obligation**

2. As per the first obligation, the specified person is required to get his accounts audited **before** the specified date
3. As per clause (ii) of the *Explanation* to section 44AB, for the purpose of section 44AB “**specified date**”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means ***date one month prior to the due date*** for furnishing the return of income under sub-section (1) of section 139.
4. As per clause (a) of the *Explanation* to section 139(1), in section 139(1) “**due date**” means the 31<sup>st</sup> day of October of the assessment year.
5. Therefore, for the purpose of section 44AB, “**specified date**” is 30<sup>th</sup> September of the assessment year.
6. Thus, every such person is required to get his accounts of the such previous year audited **before** 30<sup>th</sup> September of the assessment year.
7. If we talk about **assessment year 2020-21**, as per section 139(1) the “**due date**” was 31.10.2020.
8. Accordingly, for assessment year 2020-21 for the purposes of section 44AB the “**specified date**” is 30.9.2020.
9. Thus, ss per law for assessment year 2020-21, every such person is required to get his accounts audited **before** 30.9.2020, *i.e.* **by** 29.9.2020.

10. However, as per **clause (vii) of 3<sup>rd</sup> proviso to section 3(1)** of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the “specified date” for *furnishing of* report of audit under section 44AB of the Act **and** “due date” for *furnishing of* report of audit under any other provisions of the Act, has been **extended to 31.10.2020**.
11. It may be pertinent to note that since the “specified date” for furnishing of report has been extended from 30.9.2020 to 31.10.2020, therefore, as per the provisions of section 44AB, **the last date for getting the accounts audited shall be 30.10.2020**.

### **Second Obligation**

12. As per the second obligation, the specified person is required to *furnish* the report of such audit in the **prescribed** form and setting forth such particulars as may be prescribed **by that date**.
13. The second obligation relates to *furnishing* the report of such audit along with the prescribed particulars.
14. Such report is required to be furnished **“by that date”**.
15. The expression **“that date”** refers to the **“specified date”**.
16. As per the provisions of section 44AB of the Act **“specified date”** is 30<sup>th</sup> September of the assessment year.
17. For the assessment year 2020-21, this **“specified date”** has been extended to 31.10.2020 by the Amendment Act (*supra*).
18. Accordingly, for the assessment year 2020-21, “that date” means the extended **“specified date”**, which is now 31.10.2020.
19. It means that for the assessment year 2020-21, tax audit report u/s 44AB of the along with the prescribed particulars is required to be furnished **“by”** 31.10.2020.

### **Conclusion in respect of both the obligations**

20. Conjoint reading of long lines of section 44AB of the Act after clause (e), it will transpire that for assessment year 2020-21 -
  - the last date of getting the accounts audited is **30.10.2020, and**
  - the last date of furnishing report of such audit along with the prescribed particulars is **31.10.2020**.

**Form of such audit report and such particulars**

21. As per the long lines of section 44AB of the Act after clause (e) the report of such audit along with the prescribed particulars is to be furnished in the **prescribed** form.
22. As per the provisions of clause (33) of section 2 of the Act, “prescribed” means prescribed by ***rules made*** under this Act.
23. As per the provisions of section 295(1) of the Act, the Central Board of Direct Taxes (Board) may, subject to the control of the Central Government, *by notification in the Gazette of India, ***make rules**** for the whole or any part of India for carrying out the purposes of this Act.
24. A conjoint reading of section 44AB and Rule 6G transpire that the report of such audit and the prescribed particulars are to be furnished in the **Form notified by the Board in the Gazette of India**.
25. Accordingly, for the purposes of section 44AB the Board made **rule 6G**, which is as follows:

***6G : Report of audit of accounts to be furnished under section 44AB***

(1) *The **report of audit** of the accounts of a person required to be furnished under section 44AB **shall**,—*

*(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in **Form No. 3CA**.*

*(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in **Form No. 3CB**.*

(2) *The **particulars** which are required to be furnished under section 44AB shall be in **Form No. 3CD**.*

26. A conjoint reading of section 44AB and Rule 6G transpire that the report of such audit is to be furnished in **Form No. 3CA or Form No. 3CB**, as may be applicable, **and** the prescribed particulars to be furnished in **Form No. 3CD**.

**Manner of signing and verification of such audit report**

27. As per the long lines of section 44AB of the Act after clause (e) the report of such audit along with the prescribed particulars are required to be ***signed and verified*** by such accountants who has carried the audit.

28. However, the above provision does not specify **or** prescribe the **manner** of such signing **and** verification. It is clear from the following provision:

*“get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form **duly signed and verified by such accountant** and setting forth such particulars as may be prescribed :”*

29. As per above provisions, the report of such audit and the prescribed particular are required to be in the “prescribed form” **and** the **manner** of such signing **and** verification of such report is not prescribed.
30. However, proviso to rule 12(2) provides that where a person is required to furnish a report of audit specified under section 44AB, he shall furnish the same **electronically**. The relevant rule reads as follows:

*“Provided that where an assessee is required to furnish a report of audit specified under sub-clause (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A, section 10AA, clause (b) of sub-section (1) of section 12A, **section 44AB**, section 44DA, section 50B, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, section 115JB, section 115JC or section 115VW or to give a notice under clause (a) of sub-section (2) of section 11 of the Act, he shall furnish the same **electronically**.”*

31. It may be noted that as per above provisions the tax audit report is required to be furnished **“electronically”** **and** it is **nowhere provided** therein that it should be furnished electronically under digital signature, whereas under sub-rule (3), wherever the law intended that a return **or** a report, as the case may be, is to be furnished *electronically under digital signature*, it has provided that it should be furnished **“electronically under digital signature”**.

32. Since the audit report is required to be furnished **“electronically”**, therefore, *vide* sub-rule (4) CBDT has delegated powers to *Principal Director-General of Income-tax (Systems)* **or** *Director-General of Income-tax (Systems)*, as follows:

*“(4) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) **shall** specify the procedures, formats and standards for ensuring **secure capture and transmission** of data **and shall also** be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the returns in the manners (other than the paper form) specified in column (iv) of the Table in sub-rule (3) **and** the report of audit or notice in the manner specified in proviso to sub-rule (2).”*

33. Accordingly, in relation to furnishing the returns in the manners (other than the paper form) specified in column (iv) of the Table in sub-rule (3) **and the report of audit or** notice in the manner specified in proviso to sub-rule (2), Principal Director-General of Income-tax (Systems) **or** Director-General of Income-tax (Systems), **shall** specify the –

- *procedures,*
  - *formats and*
  - *standards*
  - *for ensuring*
    - *secure capture and*
    - *transmission*
  - *of data and*
  - *shall also be responsible for*
    - *evolving and*
    - *implementing*
      - *appropriate security,*
      - *archival and*
      - *retrieval policies*
34. It means that, in so far as furnishing of any audit report in **“electronically”**, despite CBDT having **prescribed and notified** any form of audit report by issuing of a notification through Gazette if India, such report cannot be furnished **“electronically”** unless the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, hosts such Form in the shape of utility, and its schema, on the official e-filing web side **“[incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)”**.
35. Therefore, the Form notified by CBDT cannot be used for electronic furnishing until the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, **specify** the -
- *procedures,*
  - *formats and*
  - *standards*
  - *for ensuring*
    - *secure capture of data and*
    - *transmission of data*
36. Here **“capture of data”** means enabling the assessee to furnish the required details in online utility of the notified form.
37. And, **“transmission of data”** means enabling the Authorities of Income Tax Department to view the data so captured and furnished and process the same in accordance with law.
38. Thus, the Form notified by the CBDT can be enforced for **“electronic”** filing when its online utility and scheme are hosted on the e-filing web site (*supra*).
39. This law and procedure needs to be viewed and analysed from the practical issues relating to financial year 2019-20 relevant for assessment year 2020-21.

40. CBDT has, *vide* **Notification No. 82/2020 dated 1.10.2020, amended** following serial Nos. of Form No. 3CD *w.e.f.* 1.10.2020:

(i) **Inserted** following new serial No. in part A of Form 3CD:

8a. Whether the assessee has opted for taxation under section 115BA / 115BAA / 115BAB ;

(ii) **Inserted** following new serial No. 18(ca) and 18(cb) in part B of Form 3CD:

(ca) Adjustment made to the written down value under section 115BBA (for assessment year 2020-21 only) .....

(cb) Adjusted written down value.....

(iii) In serial No. 32 clause (a) has been **substituted**.

41. CBDT has, in view of the newly inserted sub-section (5E) in section 139A of the Act, inserted **“or Aadhaar Number”** at following twelve serial numbers in Form No. 3CD:

#### **Part A of Form 3CD**

(1) Serial No. 3

#### **Part B of Form 3CD**

(2) Serial No. 21(d)(A)

(3) Serial No. 21(d)(B)

(4) Serial No. 31(a)(i)

(5) Serial No. 31(b)(i)

(6) Serial No. 31(ba)(i)

(7) Serial No. 31(bb)(i)

(8) Serial No. 31(bc)(i)

(9) Serial No. 31(bd)(i)

(10) Serial No. 31(c) (i)

(11) Serial No. 31(d) (i)

(12) Serial No. 31(e) (i)

In **Form No. 3CD** appearing in the official web site of Income Tax Department **“*incometaxindia.gov.in*”** above insertions are shown, however, there is no reference to notification, if any issued, for amending the **Form No. 3CD** in this regards.

42. Despite above amendments in **Form No. 3CD**, **and** more especially amendments in serial No. 8, 18 and 32 of the **Form** *w.e.f.* 1.10.2020, the Directorate of Income Tax (Systems) has **not till date** hosted the amended **Form No. 3CD** on its official e-filing web site **“*incometaxindiaefiling.gov.in*”**, which it manages, *inter alia*, under the delegated powers of Rule 12(4) of the Income Tax Rules, 1962.



: 7 :

FORM-3CB 3CD Part A(1-9) 3CD Part B(9-20) 3CD Part B(21-44)

PART A

1 Name of the Assessee \*

2 Address of the Assessee \*

3 Permanent Account Number (PAN) \*

4 Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. If yes, please furnish the registration number or GST number or any other identification number allotted for the same \*

S.No.	Type	Registration / Identification Number
1	Select	

+ Add X Delete

5 Status \*

6 Previous year from \* to \*

7 Assessment year \*

8 Indicate the relevant clause of section 44AB under which the audit has been conducted \*

S.No.	Relevant clause of section 44AB under which the audit has been conducted
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43. From the above screen shot of Part A Form 3CD taken just now on 14.1.2020 at 09.35 am, after serial No. 8, newly inserted serial No. 8a is missing. It means it is the **old Form**.
44. Similarly, in serial No. 3, only “Permanent Account Number” is mentioned, whereas as per the Form No. 3CD available on the official web site of CBDT “[incometaxindia.gov.in](http://incometaxindia.gov.in)” it should be “Permanent Account Number or Aadhaar Number”. It means it is the **old Form**.
45. As per the *proviso* to sub-rule (2) of Rule 12 of the Income Tax Rules, 1962, tax audit report u/s 44AB is required to be furnished “electronically”, which has to be filed through official e-filing web site “[incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)”. Since the said web site provides till date the old Form No. 3CD, the accountants as defined in section 288 of the Act and the assesses are in **dilemma**, which raises many questions

### **The dilemma**

- (1) Whether the **Form No. 3CD** of the particulars prescribed by the Board for the purpose of tax audit u/s 44AB **can be used** for “*electronic*” furnishing in view of the *proviso* to rule 12(2) of the Rules?
- (2) Whether, for the purposes of “*electronic*” furnishing, the said Form No. 3CD, the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), **is obliged to**, **specify** the –

- *procedures,*
  - *formats **and***
  - *standards*
- for ensuring*
- *secure capture of data **and***
  - *transmission of data?*
- (3) Whether, for the purposes of “**electronic**” furnishing in the amended **Form No. 3CD**, the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), is **yet to specify** the –
- *procedures,*
  - *formats **and***
  - *standards*
- for ensuring*
- *secure capture of data **and***
  - *transmission of data?*
- (4) Whether, for the purposes of “**electronic**” furnishing the Form No. 3CD appearing and available on the official e-filing web site “**incometaxindiaefiling.gov.in**” till this date **can be used or not** after its amendments as details above, especially the notified amendments *w.e.f.* 1.10.2020?
- (5) If **yes**, the Central Board of Direct Taxes (Board) needs to issue necessary clarification in this regard, otherwise the stakeholders are in “**dilemma**”.
- (6) If **no**, how to deal with the following situations?
- (i) If an assessee has **obtained tax audit** report from an accountant (as defined u/s 288) **before 1.10.2010** in the pre amended **Form No. 3CD** **and** the accountant has signed the same before, 1.10.2020, **can** the accountant now upload the same electronically in the **old** online **Form No. 3CD**.
- (ii) If an assessee has **obtained tax audit** report from an accountant (as defined u/s 288) **before 1.10.2010** in the pre amended **Form No. 3CD** **and** the accountant has signed the same **before 1.10.2020** **and** the accountant has generated UDIN from the site of ICAI **before 1.10.2020**, **can** the accountant now upload the same electronically in the **old** online **Form No. 3CD**.
- (iii) If an assessee has **obtained tax audit** report from an accountant (as defined u/s 288) **before 1.10.2010** in the pre amended **Form No. 3CD** **and** the accountant has signed the same **before 1.10.2020** **and** the accountant has generated UDIN from the site of ICAI **before 1.10.2020**, **can** the assessee approve the same after 1.10.2020 **or** he has to reject the same.



- (iv) What will happen if such report, which is **signed before 1.10.2020** by the accountant in **old Form No. 3CD and** UDIN generated **but** could neither be uploaded nor approved after 30.9.2020, even till this date, **and** the assessee has used such report in furnishing to any authority, *e.g.* Bank, RBI or any other Government department? Whether he shall be required to obtain such report from the accountant in revised **Form No. 3CD**? In such situation there will be two such reports.
- (v) If an assessee has **obtained tax audit** report from an accountant (as defined u/s 288) **before 1.10.2010** in the pre amended **Form No. 3CD and** the accountant has signed the same **before 1.10.2020 and** the accountant has generated UDIN from the site of ICAI **before 1.10.2020, can** the assessee **approve** the same after 1.10.2020 **or** he has to **reject** the same.
- (vi) What will happen if such report, which is **signed on or after 1.10.2020** by the accountant in **amended Form No. 3CD but** cannot be uploaded right now as on the e-filing web site "[incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)", till date, **old Form No. 3CD** is available.

**In such situation valuable time of the assessee as well as Chartered Accountants / Advocates / Income Tax Practitioners is being wasted. From 1.1.2020 till this date fourteen (14) have already gone and the extended last date is 31.10.2020.**

- (vii) There is no clarification from the CBDT whether uploading and approval of Form No. 3CD now in the **old and un-amended Form**, which is presently available on the e-filing site, **would be in accordance with law.**

**“This is the dilemma”**

- (viii) It may not be out of place to mention that if we read the provisions of **proviso** to sub-rule (2) of Rule 12 along with sub-rule (4), it appears that in the case of **“electronic”** furnishing, the valid **Form** is the **Form** which **has been** made available by the Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) on the e-filing web site "[incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)", of course it should be in consonance of the **Form** notified / amended by CBDT under Rule 6G.
- (ix) But still, this view needs to be clarified by the competent authorities; till then it will remain **“dilemma”**.

**Disclaimer**

This document has been prepared for academic use only to share predicament being faced by the fellow professionals and the assesses by the dilemma created by the amendments made by CBDT *w.e.f.* 1.10.2020 in the Form No. 3CD of the prescribed particulars under tax audit. Though every effort has been made to avoid errors or omissions in this document yet any error or omission may creep in. Therefore, it is notified that I shall not be responsible for any damage or loss to any one, of any kind, in any manner there from. I shall also not be liable or responsible for any loss or damage to any one in any matter due to difference of opinion or interpretation in respect of the text. On the contrary it is suggested that to avoid any doubt the user should cross check the status from the available materials on the issue including the notification.



***By CA. Rajiv Kumar Jain***

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***14.10.2020***