

Tax Audit

A.Y. 2020-21

U/S 44AB of Income Tax Act, 1961

[Guidance Note on Tax Audit (Revised 2014) issued by the ICAI]

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Tax Audit Report

Under Section 44AB r.w. Rule 6G

- Form 3CA/3CB
- Form 3CD

Report of audit u/s 44AB shall be furnished electronically
[Notification No. 34 /2013/ F.No.142/5/2013-TPL dated 1st May, 2013] [Inserted by Income-tax (3rd Amendment) Rules, 2013]

Form No. 3CA/3CB- Rule 6G

Form 3CA

- In case of a person carrying business or profession whose accounts are required to be audited under any other law.

Form 3CB

- Person other than those referred in Form 3CA.
- Person whose accounts are required to be audited under any other law but whose accounting year is different from the financial year.
[Circular : No. 561, dated 22-5-1990]

Form 3CA

Audit Report under section 44AB of the Income Tax Act, 1961 in a case where the accounts of the business or profession of a person have been audited under any other law.

{As amended by Notification No. 33/2014, F.No.133/1/2014-TPL dated 25th July, 2014 *[Inserted by Income-tax (7th Amendment) Rules, 2014]* }

Form 3CA.....

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1. **I/we** report that the statutory audit of ___(**Name & address of the assessee with PAN**)___ was conducted by **me/us/ M/s.** in pursuance of the provisions of the **Act**, and **I/we** annex hereto a copy of **my/our/their** audit report dated along with a copy of each of :-
 - (a) the audited **profit & loss account/ income & expenditure account** for the period beginning from to ending on
 - (b) the audited balance sheet as at,
 - (c) documents declared by the said Act to be part of, or annexed to, the **profit & loss account/ income & expenditure account** and balance sheet.

Form 3CA.....

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2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.
 3. In **my/our** opinion and to the best of **my/our** information and according to examination of books of account including other relevant documents and explanations given to **me/us**, the particulars given in the said Form No. 3CD are true and correct subject to the following observations/ qualifications, if any:
 - a.
 - b.
 - c.
- List provided in
e-utility

Note: Scope of Auditor increased

Form 3CA.....

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Auditor Details

 Income-Tax Final Accounts

Name	First Name <input type="text"/>	Middle Name <input type="text"/>
	Last Name <input type="text"/>	
Membership No.	<input type="text"/>	FRN <input type="text"/>
Address Line 1	<input type="text"/>	
Address Line 2	<input type="text"/>	
City	<input type="text"/>	
State	<input type="text"/>	
Pincode	<input type="text"/>	
Unique Document Identification Number (UDIN)	<input type="text"/>	(UDIN is for printing purpose only, not for e-Filing)

Note:

1. This report has to be signed by person eligible to sign the report as per the provisions of section 44AB of the Income-tax Act, 1961
2. Stamp/ Seal of Signatory to Tax Audit Report required on physical copy of report.

Form 3CB

Audit Report under section 44AB of the Income Tax Act, 1961 in a case of a person referred to in clause (b) of sub-rule (1) of Rule 6G.

{As amended by Notification No. 33/2014, F.No.133/1/2014-TPL dated 25th July, 2014 *[Inserted by Income-tax (7th Amendment) Rules, 2014]* }

Form 3CB.....

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1. I/we have examined the **balance sheet as on,**, and the **profit & loss account/ income & expenditure account for the period beginning from to ending on**, attached herewith, of **_(Name)_, _(Address)_, _(PAN)_**.
2. I/we certify that the balance sheet and the **profit & loss/ income & expenditure account** are in agreement with the books of account maintained at the head office at and branches.

Mention the total number
of branches

Form 3CB.....

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3. (a) **I/we** report the following observations/ comments/ discrepancies/ inconsistencies; if any:

(b) Subject to above, -

(A) **I/we** have obtained all the information and explanations which, to the best of my/our knowledge and belief, were necessary for the purpose of the audit.

(B) In **my/our** opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from **my/ our** examination of the books.

(C) In **my/our** opinion and to the best of **my/our** information and according to the explanations given to **me/us**, the said accounts, read with notes thereon, if any, give a true and fair view :-

(i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31st March _____; and

(ii) in the case of the **profit & loss account/ income & expenditure account** of the **profit/loss** or **surplus/deficit** of the assessee for the year ended on that date.

Form 3CB.....

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4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.
5. In **my/our** opinion and to the best of **my/our** information and according to explanations given to **me/us**, the particulars given in the said Form No. 3CD are true and correct subject to following observations/qualifications, if any:

a.

b.

c.



List provided in
e-utility

Note: Dispensed with Annexures to Form No. 3CD and space provided for specifying observations & qualification.

Form 3CB.....

Auditor Details

 Income-Tax Final Accounts

Name	First Name <input type="text"/>	Middle Name <input type="text"/>
	Last Name <input type="text"/>	
Membership No.	<input type="text"/>	FRN <input type="text"/>
Address Line 1	<input type="text"/>	
Address Line 2	<input type="text"/>	
City	<input type="text"/>	
State	<input type="text"/>	
Pincode	<input type="text"/>	

Unique Document Identification Number (UDIN)

(UDIN is for printing purpose only, not for e-Filing)

Note:

1. This report has to be signed by person eligible to sign the report as per the provisions of section 44AB of the Income-tax Act, 1961
2. Stamp/ Seal of Signatory to Tax Audit Report required on physical copy of report.
- 3. Generating UDIN to file tax audit report is now mandatory.**

Format in e-utility for Observations/ Qualifications in Form No. 3CA/3CB....

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S.No.	Qualification Type	Observations/Qualifications
1	<input type="text" value="Select"/>	<div style="border: 1px solid gray; height: 150px;"></div>

Qualification Type.....

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Select

Proper books of account, to unable reporting in form 3CD, have not been maintained by the assessee.

All the information and explanations which to the best of my/our knowledge and belief were necessary for the purpose of my/our audit has not been provided by the assessee.

Documents necessary to verify the reportable transaction were not made available.

Proper Stock records are not maintained by the assessee.

Valuation of closing stock is not possible.

Yield/percentage of wastage is not ascertainable.

Records necessary to verify personal nature of expenses not maintained by assessee.

TDS returns could not be verified with the books of account.

Records produced for verification of payments through account payee check were not sufficient.

Qualification Type.....

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Select
Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.
Creditors under Micro, Small and Medium Enterprises Development Act, 2006 are not ascertainable.
Prior period expenses are not ascertainable from books of account.
Fair market value of shares u/s 56 (2) (viiia)/(viib) is not ascertainable.
Reports of audit carried by Excise/Service tax Department were not made available.
GP Ratio is not ascertainable from the financial statements prepared by the assessee.
Information regarding demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and Wealth tax Act, 1957 was not made available.
Others

Sample Qualification / Observation

- ❑ In respect of Clause 21(a). In the absence of clear information, it is not possible for us to verify that personal expenses have been debited to Profit and Loss Account or not. However, it has been intimated to us that no expenses have been debited in the Profit and Loss Account.
- ❑ In respect of clause 21(d) and 31. In the case of receipt/payment by way of cheque, drafts, etc. It is not possible for us to verify whether the receipt/payment have been made through crossed cheque instruments or not, as the necessary evidence is not in the possession of the assessee.
- ❑ In respect of Clause 22, as certified by the management, no party is registered under Micro, Small and Medium Enterprises Development Act, 2006 and it is not possible for us to cross verify this certificate of management.

Sample Qualification / Observation

□ Others

- 1) In respect of clause 4, the detail under this clause has been given as per documents and information provided by the assessee
- 2) In respect of clause 13 (d), (e) & (f), the provisions of ICDS are not applicable being books are maintained on Cash Basis.
- 3) In respect of clause 16(d), the observation under this clause has been given to the extent particulars provided by the assessee.
- 4) In respect of clause 23, the observation has been given on the basis of information and list provided by the assessee.
- 5) In respect of Clause 26A, 31(ba), 31(bb), 31(bc) & 31(bd), since we are auditing the business accounts of the assessee. As such, any amount received in the personal account is outside the scope of our audit.

Sample Qualification / Observation

□ Others

- 6) In respect of clause 29A, 29B and 36A, the observation under this clause has been given on the basis of information provided by the assessee.
- 7) In respect of Clause 33, regarding Chapter VI A or Chapter III, the detail under this clause has been given to the extent of information provided by the assessee.
- 8) In respect of clause 34 and 42, the observation under this clause is given on the basis of facts and records produced before us. The books are checked on materiality basis.
- 9) In respect of clause 40, the values of closing stock, material consumed & finished goods produced of the previous year are recasted to align with the current year values.

Issues on Form No. 3CA/ 3CB.....

- While striking off the reference to Annexure to Form No. 3CD in Form No. 3CB, sufficient space provided for specifying the observation or qualification of the Tax Auditor [similar to Form No. 3CA]

However, the scope of tax auditor has been increased in Form No. 3CA only by including ***“examination of books of account including other relevant documents”*** and no such amendment has been made in Form No. 3CB.

Issues on Form No. 3CA/ 3CB.....

- As per Section 34 (4) of Limited Liability Partnership Act, 2008 read with Rule 24(8) of the Limited Liability Partnership Rules (LLP Rules), 2008 mandatory Audit of the accounts of LLP is required if its **turnover exceed, in any financial year, Rs. 40 lakhs or its contribution exceed Rs. 25 Lakhs.**

Thus, in case of LLPs, Audit report under Form 3CA is required to be filed where LLP has been audited under the provisions of LLP Act, 2008.

Issues on Form No. 3CB.....

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Clause
1

I/we have examined the **balance sheet as on,**, and the profit & loss account/ income & expenditure account **for the period beginning from** **to ending on**, attached herewith, of _(Name)_, _(Address)_, _(PAN)_.

In e-utility,
Balance sheet
date has been
specified at 31st
March.

Clause
3(b)(C)

- (i) in the case of the balance sheet, of the state of the affairs of the assessee as at **31st March** _____; and
- (ii) in the case of the profit & loss account/ income & expenditure account of the profit/loss or surplus/deficit of the assessee for the year **ended on that date.**

Period in conflict, not amended in Form or e-utility

Reference to Section 44AB given for the signing of the Forms

Contd....

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Audit report has to be signed by a person eligible to sign the report as per the provisions of Section 44AB of the Income Tax Act, 1961

Section 44AB, "accountant" shall have the same meaning as in the Explanation below sec.288(2)

Explanation to Sec.288(2)

accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or

(b) in any other case,—

- (i) the assessee himself or in case of the assessee, being a firm or AOP or HUF, any partner of the firm, or member of AOP or the HUF;
- (ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;
- (iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;
- (iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);
- (v) an officer or employee of the assessee;
- (vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;

(vii) an individual who, or his relative or partner—

(I) is holding any security of, or interest in, the assessee:

Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;

(II) is indebted to the assessee:

Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;

(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:

Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;

(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;

(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

Observation....

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Form 3CA:-

Balance Sheet date and Period of Profit & Loss A/c to be mentioned

profit and loss account / income and expenditure account for the period beginning from to ending on

balance sheet as at,;

In the case of those assesseees whose business or profession has started during the financial year, the tax auditor can specify the actual period for which tax audit is conducted.

Form No. 3CD- Rule 6G(2)

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- Statement of particulars required to be furnished u/s 44AB of the Income-tax Act, 1961 shall be in Form No. 3CD.
- CBDT has amended tax audit Form No. 3CD vide
 - Circular No. 19/2019 [F.No. 370142/9/2018-TPL], dated 14.05.2019.
 - Notification No. 33/2018 [F.No. 370142/9/2018-TPL] dated 20th July, 2018;
 - Notification No. 58/2017 [F.No.370142/10/2017-TPL] dated 3rd July, 2017;
 - Notification No. 88/2016 [F.No.133/23/2015-TPL] dated 29th September, 2016;
 - Notification No. 33/2014 [F.No. 133/1/2014-TPL] dated 25th July, 2014;
 - Notification No. 208/2006 [F. No. 142/2/2006-TPL], dated 10th August, 2006 and
 - Notification No. 36/2009 [F. No. 149/86/2008 –TPL], dated 13th April 2009.

Key Highlights.....

- Increased reporting requirements for the assessee and the auditor.
- Examination of books of account and relevant documents along with declaration by the assessees.
- Required to visit the locations at which books of account are being maintained.
- Tax auditor to determine assessed or assessable values of properties (land or building or both), value of shares of private company.
- Consolidation of details under various laws.

General principles to be kept in mind while preparing the statement of particulars for Form 3CD:

- a) Assessee can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Form No.3CD.
- b) If there is a conflict of judicial opinion on any particular issue, assessee may refer to the view which has been followed while giving the particulars under any specified clause.
- c) The AS, Guidance Notes, SA issued by the Institute from time to time should be followed.

Important points to be considered by the tax auditor while furnishing the particulars in Form No.3CD....

- ❑ The information in Form No.3CD should be based on the books of account, records, documents, information and explanations made available to the tax auditor for his examination.
- ❑ If a particular item of income/ expenditure is covered in more than one of the specified clauses in the statement of particulars, a suitable cross reference to such items at the appropriate places.
- ❑ If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the view points and also the relevant information in order to enable the tax authority to take a decision in the matter.
- ❑ If any particular clause in Form No.3CD is not applicable, he should state that the same is not applicable.
- ❑ In computing the allowance/ disallowance, the law applicable in the relevant year should keep in view, even though the form of audit report may not have been amended to bring it in conformity with the amended law.
- ❑ In case the auditor relies on a judicial pronouncement, mention the fact as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be
- ❑ The tax auditor may qualify his report on matters in respect of which information is not furnished to him and state in his report that the relevant information has not been furnished by the assessee.

List of Clauses.....

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Part - A

Clause No.	Name
1	Name of the assessee
2	Address
3	PAN
4	Whether the assessee is liable to pay indirect tax. If yes, furnish the registration no./ GST no./identification no. allotted for the same
5	Status
6	Previous year from
7	Assessment year
8	Relevant clause of the section 44AB under which audit has been conducted

List of Clauses.....

Part - B

31

Clause No.	Name
9(a)	Particulars of members/partners and their Profit Sharing Ratio (PSR)
9(b)	Particulars of change in members/partners or in their PSR, if any
10(a)	Nature of business / profession
10(b)	Particular of change in nature of business / profession, if any
11(a)	List of books of accounts as per section 44AA, if applicable
11(b)	List of books of accounts maintained along with address
11(c)	List of books of accounts and documents examined
12	Presumptive income
13(a)	Method of accounting
13(b)	Change in method of accounting <i>vis-à-vis</i> immediately preceding year
13(c)	If there is change in method of accounting then details of such change with its effect on P&L
13(d)	Whether any adjustment to be made to the P&L for complying with ICDS notified u/s 145(2)
13(e)	If any adjustment to be made to the P&L for complying with ICDS, then details of such adjustment
13(f)	Disclosure as per ICDS

List of Clauses.....

Part - B

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Clause No.	Name
14(a)	Method of Valuation of closing stock
14(b)	If there is change in method of valuation prescribe u/s 145A than its effect on P&L
15	Conversion of asset into stock-in-trade
16	Items of income not credited to P&L
16(a)	Items falling within the scope of section 28
16(b)	Details of Proforma Credits/Refund/Drawbacks of Indirect Taxes as due by authorities
16(c)	Escalation claim accepted during the year
16(d)	Any other item of income
16(e)	Capital receipt, if any
17	Valuation of property
18	Particulars of depreciation
19	Amounts admissible u/s 32AC, 35E

Clause No.	Name
20(a)	Any sum paid to an employee as bonus or commission
20(b)	Details of contribution received from employees for various fund like EPF
21(a)	Amount debited to P/L A/c being in the nature of capital, personal, advertisement expenditure etc.
21(b)(i)	Amounts inadmissible u/s 40(a)(i) i.e. Payment to non-resident
21(b)(ii)	Amounts inadmissible u/s 40(a)(ia) i.e. Payment to resident
21(b)(iii)	Amounts inadmissible u/s 40(a)(ib) i.e. Payment to non- resident on which equalisation levy is deductible
21(b)(iv)	Amount inadmissible u/s 40(a)(ic) i.e. Payment of fringe benefit tax
21(b)(v)	Amounts inadmissible u/s 40(a)(ia) i.e. Payment of wealth Tax
21(b)(vi)	Amounts inadmissible u/s 40(a)(iib) i.e. Payment of royalty, license fee, service fee etc. which is appropriated from a State Government undertaking
21(b)(vii)	Amounts inadmissible u/s 40(a)(iii) i.e. salary payable outside India/to non resident without TDS

Clause No.	Name
21(b)(viii)	Amounts inadmissible u/s 40(a)(iv) i.e. Payment to PF/ other Fund to employee without deducted tax at source
21(b)(ix)	Amounts inadmissible u/s 40(a)(v) i.e. Payment of Tax by employer for perquisites
21(c)	Interest, salary, bonus, etc to partners which is inadmissible u/s 40(b)/40(ba)
21(d)	Amounts inadmissible u/s 40A(3)/(3A) i.e. Payment of exp in cash (More than 10,000)
21(e)	Amounts inadmissible u/s 40A(7) i.e. Provision for Payment of Gratuity
21(f)	Amounts inadmissible u/s 40A(9) i.e. Payment by assessee as an employer to any unapproved funds
21(g)	Contingent liabilities
21(h)	Amount inadmissible in terms of section 14A
21(i)	Amount inadmissible under proviso to section 36(1)(iii)
22	Amount inadmissible u/s 23 of MSME Act, 2006
23	Payments to specified persons u/s 40A(2)(b)
24	Deemed profits u/s 32AC/32AD/33AB/33ABA/33AC
25	Profits chargeable u/s 41

Part – B.....

Clause No.	Name
26	Payments u/s 43B
27(a)	Central Value Added Tax Credits/ Input Tax Credit
27(b)	Prior period items
28	Property(shares of Pvt. Co.) received u/s 56(2)(viiia) without/inadequate consideration
29	Consideration for the issue of shares u/s 56(2)(viib) exceeding its FMV (A) - Advance received on capital asset forfeited u/s 56(2)(ix) (B) - Income from gifts exceeding Rs. 50,000 u/s 56(2)(x)
30	Hundi loans
30A	Details about “Primary Adjustment” in transfer price
30B	Limitation of interest deduction for borrowings from Associated Enterprises up to 30% of EBITDA
30C	Details of Impermissible Avoidance Agreement (Deferred further till 31.03.2021)
31(a)	Particular of each Loans / deposits in an amount exceeding the limit specified in section 269SS taken or accepted.

List of Clauses..... Part – B.....

Contd....

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Clause No.	Name
31(b)	Particular of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted.
31(ba)	Receipts of Rs. 2,00,000/- or more u/s 269ST (received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account i.e. Cash Receipts)
31(bb)	Receipts of Rs. 2,00,000/- or more u/s 269ST (received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft)
31(bc)	Payment made of Rs. 2,00,000/- or more u/s 269ST (paid otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account i.e. Cash paid)
31(bd)	Payment made of Rs. 2,00,000/- or more u/s 269ST (paid by a cheque or bank draft, not being an account payee cheque or an account payee bank draft)
31(c)	Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T

Clause No.	Name
31(d)	Repayment of loan or deposit or any specified advance u/s 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account
31(e)	Repayment of loan or deposit or any specified advance u/s 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft
32(a)	Brought forward loss or depreciation
32(b)	Change in shareholding
32(c)	Speculation loss
32(d)	Loss incurred u/s 73A
32(e)	Deemed speculation business
33	Deductions under chapter VIA or chapter III
34(a)	Deductions/ collections of tax – chapter XVII-B or XVII- BB
34(b)	Furnishing of tax deducted or collected statement
34(c)	Interest u/s 201(1A) or 206C(7)

List of Clauses.....(Part – B)

Contd....

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Clause No.	Name
35(a)	Quantitative details of trading concern
35(b)	Quantitative details of manufacturing concern
36	Tax on distributed profits
36A	Dividend received u/s 2(22)(e)
37	Cost audit report
38	Excise audit report
39	Service tax audit
40	Details of turnover, Gross profit etc. for PY and Preceding PY
41	Details of demand & refund
42	Details w.r.t. Form 61, Form 61A and Form 61B
43	Details w.r.t. Country by Country (CBC) reporting as referred in section 286
44	Break-up of total expenditure of entities registered or not registered under the GST (Deferred further till 31.03.2021)

PART –A

Clause no. 1,2,3

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Clause No. 1

Name of the assessee whose accounts are being audited u/s 44AB of the Income tax Act, 1961, should be furnished.

Clause no. 2

Address to be mentioned under this clause should be same as has been communicated by the assessee to the Income Tax Department for assessment purpose as on date of signing of audit report.

ICAI's Comment: It has been observed that in certain tax audit reports address mentioned in Form No. 3CA/ 3CB is different from the one mentioned in Annual report or as registered under MCA.

Clause no. 3

Under this clause, the Permanent Account Number (PAN) allotted to the assessee should be indicated & it is a mandatory field.

Issues on Clause no. 1,2

- If assessee is proprietor give his/her name along with all the Proprietary Firms' names.
- In case of branch tax audit, branch name should be mentioned along with name of the assessee.
- If there is any change in address as per income tax records, the same must be given.

Clauses 1,2,3 as shown in utility

40

1. Name of the assessee:

--	--	--

2. Address:

--	--

--	--	--

3. Permanent Account Number:

--

*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.*

Brief: Registration number under other laws also to be specified.

Clause no. 4

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Format in e-utility.....

Type	State	Other Desc.	Registration / Identification Number
Goods and Services Tax			
Central Excise Duty			
Central Custom Duty			
Service Tax			
Sales Tax/VAT			
Goods and Services Tax			
State Excise Duty			
Other Indirect Tax/duty			

Note: This utility is subject to changes as introduced in this clause vide Notification No. 33/2018 dated 20/07/2018 (As discussed above)

Clause no. 4

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- What if the assessee has not obtained Registration number even though he is liable to pay indirect taxes?
- Whether the Tax auditor needs to have expertise of indirect tax laws?
- The Article 246 of the Constitution of India provides power to the Union or the State Legislature to levy indirect taxes such as Customs duty, Excise Duty, Central Sales Tax and Service Tax, sales tax (Value Added Tax), GST and other indirect taxes, such as Entry Tax, Octroi, Luxury Tax, Entertainment Tax etc (Article 265). *Since, the term “indirect taxes” is not defined, the list should be an inclusive list and may include any other indirect tax levy introduced in India from time to time.*
- Obtain a management representation for the list of indirect taxes applicable to the assessee alongwith registration numbers or any other identification number allotted under said laws. *[Refer Standard on Auditing 580 “Written Representation”].*
- In case of multiple registrations, a copy of all registration certificates is to be obtained. Where there is no registration requirement under Indirect laws appropriate identification number may be reported. For example, in Customs Act, 1962, a copy of Importer Exporter Code (IEC) may be obtained and furnished information accordingly.

Note: Apply due diligence, knowledge and professional judgment in determining the applicability of the Indirect taxes.

Clause no. 5

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Under this clause, status of the assessee is to be mentioned in Part A of Form 3CD.

Issues on Clause no. 5

- **'Status'** means **status as per Sec. 2 (31) of I-T Act & not** **'residential status'** [*Sec 2(31) – “Person” includes an Individual, HUF, Firm, etc.*].

Clause no. 6 & 7

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Clause no. 6

Previous year fromto

Clause no. 7

The assessment year relevant to the previous year for which the accounts are being audited should be mentioned.

Clauses 5,6,7 as shown in utility

5. Status:	<input type="text"/>			
6. Previous Year	From	<input type="text"/>	To	<input type="text"/>
7. Assessment Year:	<input type="text"/>			

Clause no. 8

46

Indicate the **relevant Clause of Section 44AB** under which the audit has been conducted.

Brief: Also, relevant Clause of Section 44AB has to be specified.

Clause (a)- If total sales, turnover or gross receipt in business exceeds **Rs. 1 Crore**

Clause (b)- If his gross receipts in profession exceed **Rs.50 lakh**

Clause (c)- If Profits u/s 44AE, 44BB or 44BBB claimed to be lower than the presumptive profits and gains

Clause (d)- If Profits u/s 44ADA claimed to be lower than the presumptive profits and gains

Clause (e)- If provisions of sec. 44AD(4) are applicable

Third Proviso- Audited under any other law

Issues on Clause no. 8

- Whether the Clause is inserted in view of the limit of audits prescribed by the ICAI?
- Where the assessee is covered under more than one Clause, the same may be specified.

Clause no. 8

47

Format in e-utility

S.No.		Relevant clause of section 44AB under which the audit has been conducted
1	<input type="checkbox"/>	Select

Select

- Clause 44AB(a)- Total sales/turnover/gross receipts in business exceeding Rs. 1 crore
- Clause 44AB(b)- Gross receipts in profession exceeding Rs.50 lakhs
- Clause 44AB(c)-i- Profits and gains lower than deemed profit u/s 44AE
- Clause 44AB(c)-ii- Profits and gains lower than deemed profit u/s 44BB
- Clause 44AB(c)-iii- Profits and gains lower than deemed profit u/s 44BBB
- Clause 44AB(d)- Profits and gains lower than deemed profit u/s 44ADA
- Clause 44AB(e)- Profits and gains lower than deemed profit u/s 44AD
- Third Proviso to sec 44AB : Audited under any other law

Audit of accounts of certain persons carrying on business or profession – Section 44AB

Every person,—

a) Carrying on business shall, if **his total sales, turnover or gross receipts**, as the case may be, in business **exceed or exceeds one crore rupees** in any previous year

Provided that in the case of a person whose—

a. Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

b. Aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment, this clause shall have effect as if for the words "one crore rupees", the words "five crore rupees" had been substituted; or]

b) carrying on profession shall, if **his gross receipts** in profession **exceed fifty lakh rupees** in any previous year; or

c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and **he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business**, as the case may be, in any previous year; or

•**44AE** - Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.

•**44BB** - Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils.

•**44BBB** - Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects.

Audit of accounts of certain persons carrying on business or profession – Section 44AB

- d) carrying on the **profession** shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and **he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year**; or
- e) carrying on the **business** shall, if the **provisions of sub-section (4) of section 44AD are applicable** in his case and **his income exceeds the maximum amount which is not chargeable to income-tax in any previous year**,

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:

Provided that **this section shall not apply** to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and **his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year**:

Audit of accounts of certain persons carrying on business or profession – Section 44AB

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section **if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit** as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

- (i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;
- (ii) "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.

Who has to get accounts audited on compulsory basis

Different taxpayers	When covered by the provisions of compulsory audit u/s 44AB
A person carrying on business (Clause(a) of sec. 44AB)	If the total sales, turnover or gross receipt in business exceed or exceeds <u>Rs. 1 crore</u> in any previous year [limit raised from 60 lakhs w.e.f 1-4-2013 by F.A. 2012]
A person carrying on business (Proviso to Clause(a) of sec. 44AB)	If cash receipts <u>and</u> cash payments during the year does not exceed 5% of total receipt or payment, as the case may be, then such person is liable of compulsory audit u/s 44AB, if his total sales, turnover or gross receipt in business exceed or exceeds <u>Rs. 5 crore</u> (Please refer slide no. 16 & 17 for Detailed Analysis)

Who has to get accounts audited on compulsory basis

Different taxpayers	When covered by the provisions of compulsory audit u/s 44AB
<p>A person carrying on profession (Clause(b) of sec.44AB)</p>	<p>If his gross receipts in profession exceed Rs.50 lakh in any previous year [limit raised from 25 lakhs w.e.f 1-4-2017]</p>
<p>A person covered u/s 44AE, 44BB or 44BBB] (Clause (c) of sec. 44AB)</p>	<p>If such person claims that the Profits and gains from the business are lower than the profits and gains computed under these Sections (irrespective of his turnover).</p>
<p>A person covered u/s 44ADA (Clause (d) of sec. 44AB) <i>[By Finance Act, 2016 w.e.f. 01-04-2017]</i></p>	<p>If such person claims that the Profits and gains from the <u>profession</u> are lower than the profits and gains computed under this Section <u>and his income exceeds the maximum amount not chargeable to income tax in any previous year.</u></p>

Who has to get accounts audited on compulsory basis

Different taxpayers	When covered by the provisions of compulsory audit u/s 44AB
A person covered u/s 44AD (Clause (e) of sec. 44AB) <i>[By Finance Act, 2016 w.e.f. 01/04/2011]</i>	If the provisions of Section 44AD(4) are applicable in his case and <u>his income exceeds the maximum amount which is not chargeable to income-tax in any previous year</u>

Note: 44AB shall not apply to the person who has opt for section 44AD(1) and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Increase in Threshold Limit for Tax Audit u/s 44AB by Finance Act, 2020 [(Proviso to Section 44AB(i))]

The Finance Act, 2020 has increased the threshold limit under section 44AB for the **mandatory audit from Rs. 1 crore to Rs. 5 crores, with effect from the AY 2020-21.** However, the increased threshold limit of Rs. 5 crores shall be **applicable only if cash receipts and cash payments during the year does not exceed 5% of total receipt or payment**, as the case may be. In other words, more than 95% of the business transactions should be done through banking channels.

To incorporate the above amendments, the ITR forms have been amended requiring the assessee to tick the check-box if cash receipts or cash payments exceed 5%.

Issue: if an assessee has T/O of upto Rs. 2CR and more than 95% of total receipts and payments are through electronic mode, and such assessee wants to disclosed his income from business less than 8%, then by virtue of provision of Section 44AD(4), he has to get his accounts audited u/s 44AA(1)(e) of the Act.

However if his T/O is more then 2CR, then his business shall not be treated as eligible business and therefore provision of Section 44AD(4) will not apply in that PY and accordingly he will not be requiered to get his accounts audited u/s 44AB by the virtue of Proviso to Section 44AB(1)(a).

Changes in ITRs [3, 5 & 6] in respect of (Proviso to Section 44AB(1))

a2i	If No, whether during the year Total sales/turnover/gross receipts of business exceeds Rs.1 crore but does not exceed Rs.5 crores? (Tick) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
a2ii	If Yes is selected at a2i, whether aggregate of all amounts received including amount received for sales, turnover or gross receipts or on capital account such as capital contribution, loans etc. during the previous year, in cash, does not exceed five per cent of the said amount? (Tick) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
a2iii	If Yes is selected at a2i, whether aggregate of all payments made including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loans etc. during the previous year, in cash, does not exceed five per cent of the said payment? (Tick) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
b	Whether liable for audit under section 44AB? (Tick) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No

Note: It is to be filled in 'Part A-General' in the respective forms.

Analysis of Section 44AB

“Gross Receipts” is not defined in the Act

- It includes all the receipts in cash or kind.
- Arising from carrying on of the business.
- Which is assessable as business income under the act.

U/s 145(1) “Sales”, “Turnover” or “Gross Receipts” computes either on cash or mercantile system.

As per the Guidance Note on Tax Audit [Para 5.5 on Page No. 21 of Guidance Note on Tax Audit]

“Sales Turnover” means- “The aggregate amount for which sales are effected. The ‘gross turnover’ & ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts.”
For the purpose of Section 44AB, turnover shall be construed taking into consideration the following:

- Normally turnover shall exclude excise duty, custom duty, sales tax and cess etc. *(Depending on the Method of accounting followed by the assessee) [As per the Book “A Compendium of Issues on Income Tax” by Dr. Girish Ahuja & Dr. Ravi Gupta]*
- Trade discounts given in invoice is to be excluded but cash discounts are not to be excluded.
- Commission allowed to third parties shall be included in the turnover.
- Amount of sales returns shall be excluded from the turnover.

Analysis of Section 44AB

Turnover in case of Share Brokers shall be computed in following manner [Para 5.14 on Page No. 25 of Guidance Note on Tax Audit]

- Transaction entered on his personal a/c also included in the sale value for purpose of this section.
- Sub-broker is not different from a share broker.

In case of shares, securities & derivatives:

- a) Speculative Transaction:** The aggregate of both positive and negative differences arising on individual settlement of such contracts is to be considered as Turnover.
- b) Derivative, future and options:**
 - Difference Of Total Favorable & Unfavorable differences:
 - Premium received on sale of option
 - Difference of any reverse trade entered
- c) Delivery based Transactions:** Total value of sales.

Analysis of Section 44AB

- For an **Agent**, turnover is the commission earned by him and not the aggregate amount for which sales are effected or services are rendered. **[ICAI's Guidance Note on Tax Audit]**
- In case of **Chit Fund Companies**, subscriptions are not to be treated as 'income' or 'turnover' for tax audit purposes. **Dy. CIT v. Mangal Dayal Chit Fund (P.) Ltd.[2005] 92 ITD 258 (Hyd.)**
- In the case of **Construction Business**, advance received for booking of flats is to be included in words 'gross receipts' as the same is to be adjusted towards cost of construction and has element of profit. **Dy. CIT vs Gopal Krishan Builders [2004] 91 ITD 124 (Lucknow-ITAT)(SMC)**
- Service tax is to be excluded from gross receipts for purpose of determining income u/s 44BB. **Western Geco International Ltd. Vs Assistant Commissioner of Income-tax [2016] 71 taxmann.com 166 (Delhi - Trib.)**

Analysis of Section 44AB

- Payment for providing various services, where the dominant purpose of the agreement is for prospecting, extraction or production of mineral oils, would be assessable u/s 44BB and not Section 44D. **Oil & Natural Gas Corporation Ltd. Vs CIT [2015] 376 ITR 306 (SC)**
- Section 44BB applies in a case where consideration is for services relating to exploration activity which are not in nature of technical services; if consideration is in nature of fee for technical services, provisions of either section 44DA or section 115A will be applicable. **ONGC as Representative Assessee of University of Calgary, Alberta, Canada vs. ADIT, International Taxation [2017] 81 taxmann.com 419 (Delhi - Trib.)**

Analysis of Section 44AB

- Where the assessee is proprietor of more than one concern, **aggregate of all the businesses** to be taken into consideration for the purpose of compliance with the provisions of Sec. 44AB. **Asst. CIT & Anr. V. Dr. K. Satish Shetty [2009] 310 ITR 366 (Kar.)**
- However, where assessee opts for presumptive taxation u/s 44AD or 44AE etc. for any of the eligible business, then the turnover of such business shall not be included in computing total turnover for the purpose of section 44AB. **(As per Presenter's Opinion)**

Issues/Case laws....

□ **Ghai Construction v. State of Maharashtra - [2009] 184 Taxman 52 (Bom.)**

Individual carrying on business as a sole proprietor has to mandatorily comply with the provisions of Section 44AB only in respect of his/her business income and not in respect of his/her other income.

□ **CIT v. Market Committee, Sirsa [2012] 25 taxmann.com 384 (Punj. & Har.)**

In this case the assessee had no income under the head 'PGBP' and the property income earned by him was exempt u/s 10(20), thus, Section 44AB was not applicable and hence, penalty u/s 271B was not imposable.

Issues/Case laws....

- ❑ **Peroorkkada Service Co-operative Bank Ltd v. ITO [2020] 114 taxmann.com 18 (Kerala)**

Audit conducted under Cooperative Societies Act would not be sufficient for compliance u/s 44AB unless report of audit is furnished in prescribed form accompanied with a further report by an accountant in prescribed form.

- ❑ **Haldar Foods (P.) Ltd v. ITO [2019] 105 taxmann.com 99 (Amritsar - Trib.)**

In this case one director was arrested and the other was ill is not a sufficient and reasonable cause for delay in getting accounts audited u/s 44AB because other executives of the company and one director were freely available to handle the business. Thus, penalty u/s 271B is leviable.

Special provision for computing profits and gains of business on presumptive basis. – Section 44AD

(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an **eligible assessee engaged in an eligible business**, a sum equal to **eight per cent of the total turnover or gross receipts of the assessee** in the previous year on account of such business **or**, as the case may be, **a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee**, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that this sub-section shall have effect as if for the words "**eight per cent**", the words "**six per cent**" had been substituted, in respect of the **amount of total turnover or gross receipts** which is **received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed]** during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

(2) **Any deduction allowable under the provisions of sections 30 to 38** shall, for the purposes of sub-section (1), be **deemed to have been already given full effect to and no further deduction** under those sections **shall be allowed**.

(3) The **written down value of any asset** of an eligible business shall be **deemed to have been calculated as if** the eligible assessee had claimed and **had been actually allowed** the deduction in respect of the depreciation for each of the relevant assessment years.

Special provision for computing profits and gains of business on presumptive basis. – Section 44AD

- (4) Where an **eligible assessee declares profit** for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year **succeeding such previous year not in accordance with the provisions of sub-section (1)**, he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).
- (5) Notwithstanding anything contained in the foregoing provisions of this section, an **eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax**, shall be **required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited** and furnish a report of such audit as required **under section 44AB**.
- (6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—
- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) a person earning income in the nature of commission or brokerage; or
 - (iii) a person carrying on any agency business.

Special provision for computing profits and gains of business on presumptive basis. – Section 44AD

Explanation.—For the purposes of this section,—

(a) "eligible assessee" means,—

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "*C. - Deductions in respect of certain in-comes*" in the relevant assessment year;

(b) "eligible business" means,—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose **total turnover or gross receipts** in the previous year does not exceed an amount of **two crore rupees**.

Comparison between Provision Section 44AD before and after the Amendments made by the Finance Act, 2016, w.e.f. 1st April, 2017

Section	Provision of Section 44AD before 1.04.2017	Provision of Section 44AD after 1.04.2017	Remarks
44AD(1) – Charging Section	Notwithstanding anything contrary contained in section 28 to 43C, in the case of an eligible assessee in an eligible business a sum equal to 8% of the total turnover/gross receipts of the assessee in the PY on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "PGBP".	Notwithstanding anything contrary contained in section 28 to 43C, in the case of an eligible assessee in an eligible business a sum equal to 8% of the total turnover/gross receipts of the assessee in the PY on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "PGBP".	Same, No changes

Section	Provision of Section 44AD before 1.04.2017	Provision of Section 44AD after 1.04.2017	Remarks
Proviso to Sub Section (1)	NA	Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.	Proviso to sub section (1) was newly inserted by Finance Act 2017 w.e.f. 01.04.2017
44AD(2) – No deduction Allowed	Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. Provided that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40	Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.	Proviso to sub – section 2 was omitted by Finance Act 2016 w.e.f. 01.04.2017.

Section	Provision of Section 44AD before 1.04.2017	Provision of Section 44AD after 1.04.2017	Remarks
44AD(3) – WDV of Asset	The WDV of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant AY.	The WDV of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant AY.	Same
44AD(4)	The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.	Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).	Sub Section 4 was replaced by Finance Act, 2016, w.e.f. 01.04.2017

Section	Provision of Section 44AD before 1.04.2017	Provision of Section 44AD after 1.04.2017	Remarks
44AD(5) – Requirement of Audit	<p>Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.</p>	<p>Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.</p>	Sub Section 5 was replaced by Finance Act, 2016, w.e.f. 01.04.2017
44AD(6) – Applicability	<p>The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—</p> <ul style="list-style-type: none"> (i) a person carrying on profession as referred to in section 44AA(1); (ii) a person earning income in the nature of commission or brokerage; or (iii) a person carrying on any agency business. 	<p>The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—</p> <ul style="list-style-type: none"> (i) a person carrying on profession as referred to in section 44AA(1); (ii) a person earning income in the nature of commission or brokerage; or (iii) a person carrying on any agency business. 	Same

Section	Provision of Section 44AD before 1.04.2017	Provision of Section 44AD after 1.04.2017	Remarks
Explanation to Sub-Section 44AD(6)	<p>Explanation.—For the purposes of this section,—</p> <p>(a) "eligible assessee" means,—</p> <p>(i) an individual, HUF or a partnership firm, who is a resident, but not a limited liability partnership firm as defined u/s 2(1)(n) of the Limited Liability Partnership Act, 2008; and</p> <p>(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain incomes" in the relevant assessment year;</p> <p>(b) "eligible business" means,—</p> <p>(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and</p> <p>(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of one crore rupee</p>	<p>Explanation.—For the purposes of this section,—</p> <p>(a) "eligible assessee" means,—</p> <p>(i) an individual, HUF or a partnership firm, who is a resident, but not a limited liability partnership firm as defined u/s 2(1)(n) of the Limited Liability Partnership Act, 2008; and</p> <p>(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain incomes" in the relevant assessment year;</p> <p>(b) "eligible business" means,—</p> <p>(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and</p> <p>(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of <u>two crore rupee</u></p>	<p>Turnover for eligible business is changed from 1 CR to 2 CR by Finance Act, 2016 w.e.f. 01.04.2017.</p>

Analysis of Section 44AD....

- Under the scheme of presumptive taxation, profit earned by an eligible person engaged in eligible business having total turnover or gross receipts lower than or equal to Rs. 2 Crore, shall be deemed to be 8 percent of the total turnover or gross receipts or any sum higher than 8 percent claimed to have been earned during the year.
- Proviso to Sub-section (1) - Profit shall be deemed at 6 percent instead of 8 per cent where the amount of total turnover or gross receipts is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. **[Amended by Finance Act, 2017 w.e.f AY 2017-18]**

Analysis of Section 44AD....

- **Eligible Assessee** includes Resident Individual, Resident HUF and Resident Partnership Firm excluding LLPs who have not claimed deductions u/s 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "*C. - Deductions in respect of certain in-comes*" in the relevant assessment year
- **Eligible Business** include every business with turnover or gross receipts during the year not exceeding Rs. 2 Crore and is not engaged in the business of plying, hiring or leasing goods carriages as referred to u/s 44AE of the act.
- Also, vide sub – section (6), following business activities have been kept out of the scope of provisions of section 44AD:
 - i. A person carrying on profession as referred to in Sec. 44AA(1);
 - ii. A person earning income in the nature of commission or brokerage; or
 - iii. A person carrying on any agency business.

Analysis of Section 44AD....

- For the purpose of computation of deemed profit of 6 percent or 8 percent as the case may be, under sub-section (1), deduction in respect of expenses allowable u/s 30 to 38 of the income tax act shall be deemed to have been allowed already.
- Also, the written down value of fixed assets shall be deemed to have been calculated as if the depreciation allowable u/s 32 of the act under normal provisions have been allowed.
- It may be noted that as the provision of section 44AD starts with non-obstante clause i.e. *“Notwithstanding anything to the contrary contained in sections 28 to 43C”*, section 28 to 43C of Income Tax Act, 1961 is not applicable on eligible assessee carrying on eligible business. Hence, no disallowance / no deemed income u/s 40(a), 40A, 40A(3), 40A(3A), 41 can be made. It has been specifically provided that if the taxable income is to be calculated at eight percent of turnover or gross receipts, then in that case provisions of section 28 to 43C are not to be taken into consideration for the purpose of computing taxable income.

Analysis of Section 44AD....

Issue in relation to Section 43CA

- It may be noted that as the provision of section 44AD starts with non-obstante clause i.e. *“Notwithstanding anything to the contrary contained in sections 28 to 43C”*, section 28 to 43C of Income Tax Act, 1961 is not applicable on eligible assessee carrying on eligible business but provisions of section 43CA will be applicable. Hence, while computing turnover for person engaged in business of trading of land and building, deemed sale consideration as per section 43CA shall be considered in place of actual sale consideration.

Analysis of Section 44AD....

Issues

- **G. Raja Gopala Rao v. DCIT [2017] 78 taxmann.com 61 (Visakhapatnam - Trib.)**

Since AO had adopted reasonable rate of 8% on gross contract receipts for specified business referred to in provisions of Section 44AD, further deductions towards depreciation could not be allowed as it would result into determination of total income below income returned by assessee.

Analysis of Section 44AD

- As per Clause (e) to section 44AB, eligible assessee carrying on the business are required to get the accounts audited u/s 44AB if the provisions of section 44AD(4) are applicable and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.
- **Section 44AD(4)** – Where an assessee declares profit on presumptive basis u/s 44AD for any previous year but does not declare profit on presumptive basis for subsequent 5 assessment years, the assessee shall not be eligible u/s 44AD for next 5 assessment years subsequent to the year in which the profit was not declared u/s 44AD.
- If a person opts for presumptive taxation scheme then he is also required to follow the same scheme for next 5 assessment years. If he fails to do so, then presumptive taxation scheme will not be available for him for next 5 assessment years calculating from the assessment year in which presumptive taxation scheme is not availed. **For those 5 assessment years, he shall be required to maintain books of account and also liable for tax audit as per section 44AB provided his total income exceeds basic slab exemption.**

Analysis of Section 44AD

- If an eligible person opts for presumptive taxation scheme u/s 44AD(1), he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher threshold for non-audit of accounts has been given only to assessee opting for presumptive taxation scheme under section 44AD.
[Press Release dated 20-06-2016]
- It is noteworthy that an assessee except resident individual/HUF/ Partnership Firm eligible u/s 44AD, such as company or a LLP **shall not be required to get its accounts audited u/s 44AB of the act**, even if there:
 - gross receipts during the year does not exceed Rs. 1 Crore,
 - they report profit lower than the presumptive rate of 6 percent or 8 percent as the case may be, and
 - their taxable turnover exceeds maximum amount of taxable income not chargeable to tax.

Analysis of Section 44AD

- As per the provisions of sub section 6 of section 44AD, if an assessee has earned any income from specified activities such as commission, then provisions of section 44AD shall have no bearing on such assessee.
- **It can be implied that where an assessee have turnover less than threshold specified u/s 44AB(1) and have earned any income as commission or brokerage, then he can file income with lower profits without getting its books of account audited.**

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 1:

Mr. A commenced its business during FY 2019-20. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs. 75 Lakh (*complete same were made in cash*). Mr. A computed profit from the aforesaid business to be Rs. 2.20 Lakh which was his sole income during the year. Whether Mr. A is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Solution:

Firstly, **Mr. A is not required to get its accounts audited u/s 44AB of the act** as total income of assessee for the FY 2019-20 is less than maximum amount not chargeable to tax even if the he had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs. 2.20 Lakh is less than deemed income of Rs. 6 Lakh (8% of 75 Lakh). **[Section 44AD(5)]**

However, **Mr. A is required to maintain such books of account** and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act, as his total turnover is more than limit of Rs. 25 Lakh prescribed under second proviso to section 44AA(2).

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 2:

Mr. A commenced its business during FY 2019-20. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs. 75 Lakh (*complete same were made in cash*). Mr. A computed profit from the aforesaid business to be Rs. 2.80 Lakh which was his sole income during the year. Whether Mr. A is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Solution:

Firstly, **Mr. A is not required to get its accounts audited u/s 44AB of the act** as the assessee had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs. 2.80 Lakh is less than deemed income of Rs. 6 Lakh (8% of 75 Lakh). However the provision of section 44AD(4) shall not be applicable as it is his first year of operation. **[Section 44AD(4)]**

Also, **Mr. A is required to maintain such books of account** and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act, as his total turnover is more than limit of Rs. 25 Lakh prescribed under second proviso to section 44AA(2).

Editor's Note: In case the assessee is other the Individual/ HUF/ Firm, no audit is required u/s 44AB as they are not covered u/s 44AD(4) for the reason that they are not eligible assessee within the explanation to Section 44AD(6).

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 3:

Mr. A commenced its business during FY 2019-20. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs. 75 Lakh (*complete same were made in cash*). Mr. A computed loss from the aforesaid business to be Rs. 3.80 Lakh which was his sole income during the year. Whether Mr. A is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Solution:

Firstly, **Mr. A is not required to get its accounts audited u/s 44AB of the act** as the assessee had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs. 3.80 Lakh is less than deemed income of Rs. 6 Lakh (8% of 75 Lakh). However the provision of section 44AD(4) shall not be applicable as it is his first year of operation. **[Section 44AD(4)]**

Also, **Mr. A is required to maintain such books of account** and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act, as his total turnover is more than limit of Rs. 25 Lakh prescribed under second proviso to section 44AA(2).

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 4:

Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported Total turnover of the business as Rs. 1.25 Crore (*complete same were made in cash*). Mr. A computed profit from the aforesaid business to be Rs. 4.80 Lakh which was his sole income during the year. During FY 2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB?

Solution:

Mr. A is required to get its accounts audited u/s 44AB of the act as the assessee had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs. 4.80 Lakh is less than deemed income of Rs. 10 Lakh (8% of 1.25 Crore). Whereas, total income of assessee for the FY 2019-20 exceeds the maximum amount not chargeable to tax. **[Section 44AD(5)]**

Also, Mr. A shall not be allowed to avail the benefit of presumptive taxation for next 5 assessment years as well i.e. AY 2021-22 to AY 2025-26 as he was eligible for opting for presumptive taxation u/s 44AD for AY 2020-21 but had not opted for the same. **[Section 44AD(4) r.w.s. 44AB(e)]**

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 5:

Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported Total turnover of the business as Rs. 1.25 Crore (*complete sales were made in cash*). Mr. A computed profit from the aforesaid business to be Rs. 2.20 Lakh which was his sole income during the year. During FY 2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB for FY 2019-20?

Solution:

Mr. A is not required to get its accounts audited u/s 44AB of the act as total income of assessee for the FY 2019-20 is less than maximum amount not chargeable to tax even if the he had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs. 2.20 Lakh is less than deemed income of Rs. 10 Lakh (8% of 1.25 Crore). **[Section 44AD(5)]**

However, **Mr. A shall not be allowed to avail the benefit of presumptive taxation for next 5 assessment years as well i.e. AY 2021-22 to AY 2025-26** as he was eligible for opting for presumptive taxation u/s 44AD for AY 2020-21 but had not opted for the same. **[Section 44AD(4) r.w.s. 44AB(e)]**

This implies that if in AY 2021-22 to AY 2025-26, his total income exceeds maximum amount not chargeable to tax, he shall be mandatorily required to get his accounts audited u/s 44AB irrespective of the fact that his profit from such business exceeds deemed profit stipulated u/s 44AD(1).

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 6:

Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported Total turnover of the business as Rs. 2.25 Crore (*complete sales and payments were made in electronic mode*). Mr. A computed profit from the aforesaid business to be Rs. 6.80 Lakh which was his sole income during the year. During FY 2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB for FY 2019-20?

Solution:

Mr. A is not required to get its accounts audited u/s 44AB of the act as assessee's reported total turnover is within limit of Rs. 5 Crore as prescribed u/s 44AB(a) of the act whereas his business is not an eligible assessee u/s 44AD of the act being total turnover is more than Rs. 2 Crore. **[Section 44AB(a) r.w.s. 44AD(1)]**

It is pertinent to note that being Mr. A was not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available in subsequent assessment years.

Issues related to compulsory audit u/s 44AB vis-a-vis 44AD

Illustration 7:

Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported Total turnover of the business as Rs. 2.25 Crore (*50% of total sales were made in cash*). Mr. A computed profit from the aforesaid business to be Rs. 6.80 Lakh which was his sole income during the year. During FY 2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB for FY 2019-20?

Solution:

Mr. A is required to get its accounts audited u/s 44AB(a) of the act as assessee's reported total turnover exceeds the limit of Rs. 1 Crore as prescribed u/s 44AB(a) of the act as he doesn't satisfy the condition of 95% of total receipts and expenses to be incurred in electronic mode. Whereas his business is not an eligible assessee u/s 44AD of the act being total turnover is more than Rs. 2 Crore. ***[Section 44AB(a) r.w.s. 44AD(1)]***

It is pertinent to note that being Mr. A was not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available in subsequent assessment years.

Special provision for computing profits and gains of profession on presumptive basis – Section 44ADA

(1) Notwithstanding anything contained in sections 28 to 43C, **in the case of an assessee, being a resident in India, who is engaged in a profession** referred to in sub-section (1) of section 44AA and whose **total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts** of the assessee in the previous year on account of such profession **or**, as the case may be, **a sum higher than the aforesaid sum claimed to have been earned by the assessee**, shall be **deemed to be the profits and gains of such profession** chargeable to tax under the head "Profits and gains of business or profession".

(2) **Any deduction allowable under the provisions of sections 30 to 38** shall, for the purposes of sub-section (1), be **deemed to have been already given full effect to and no further deduction under those sections shall be allowed.**

(3) The **written down value of any asset** used for the purposes of profession shall **be deemed to have been calculated** as if the assessee had claimed and **had been actually allowed** the deduction in respect of the **depreciation** for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, **an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax**, shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Analysis of Section 44ADA

- The threshold limit in case of profession increased from Rs.25 lakh to Rs.50 lakh from AY 2017-18 onwards.
- The assessee carrying on profession referred to in **sub-section (1) of section 44AA** and having gross receipts of less than **Rs. 50 lakh** in a previous year is required to get its books of account audited u/s 44AB if –
 - the profits and gains from such profession are deemed to be the profits and gains of such person u/s 44ADA (i.e. 50% of the total gross receipts),
 - Such person has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and
 - his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

Section 44AA(1) – Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as notified. [Authorized representative, film artist, Company Secretary, Profession of information technology.]

PART B

Clause no. 9

88

Clause 9(a)

If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.

Format in e-utility

Name	Profit sharing ratio (%)

Clause 9(b)

If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.

Note: The e-utility requires additional information not notified in Notification dated 25-07-2014,

“In case of AOP, whether the shares of members are indeterminate or unknown”

Format in e-utility Clause 9(b)

S.No.		Date of change	Name of Partner /Member	Type of change	Old profit sharing ratio	New profit Sharing Ratio	Remarks
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	Select <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>



- Select
- Addition
- Deletion
- Change in profit sharing ratio

Issues on Clause no. 9

90

- This applies to **Firm, Association of Persons (AOPs) and LLPs**
- **“Profit Sharing Ratio”** would include Loss sharing ratio also as “Loss” is nothing but negative profit.
- All the changes occurring during the entire previous year must be stated.
- **Change in remuneration not to be reported**- The Clause would not cover any change in relation to payment of remuneration or interest to partners or members without change in Profit/ Loss Sharing ratio .

Clause no. 10

a) Nature of business or profession. (if more than 1 business/ profession is carried on during the P.Y, nature of every business/ profession)

Sector	Subsector	code

b) If there is any change in the nature of business or profession, the particulars of such change.

Business	Sector	Subsector	code

Select
Added
Discontinued

Issues on Clause no. 10

92

- Permanent discontinuance of a particular product line of business need to be reported, not temporary suspension.
- Effect on Carry forward of losses :- From A.Y. 2000-01 losses will be carried forward, even if the Business or Profession is discontinued (***Sec 72(1)(i)***)

Clause no. 11

93

Clause 11(a)

Whether books of account are prescribed under Section 44AA, **if yes**, list of books so prescribed.

Clause 11 (b)

List of books of account maintained and the address at which the books of accounts are kept.

*(In case books of account are maintained in a computer system, mention the books of account generated by such computer system. **If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.**)*

Clause 11 (c)

List of books of account and nature of relevant documents examined.

Brief:

To specify List of books of account maintained along with Detail of Address of all locations where books of account are kept.

Scope of Auditor widened by including requirement to specify nature of all the documents examined.

Issues on Clause no. 11.....

94

Format in e-utility

S.No.		Books maintained	Address Line 1	Address Line 2	City or Town or District	State	PinCode
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select <input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>							

State outside India also covered

- ❑ Whether the tax auditor is required to mention the address where books of account were kept during the year or at the time of tax audit?
- ❑ Whether the tax auditor is required to visit all the premises wherever books of account are kept by the assessee? Even where the books of account are maintained in computerized system.
- ❑ Whether the tax auditor should maintain documentary evidences to substantiate his visit to all the premises?

Issues on Clause no. 11.....

95

- ❑ The tax auditor is also required to **specify nature of all the relevant documents on basis of which the tax audit has been conducted** along with list of books of account examined, consequently increasing the scope of Tax Audit.
- ❑ Similar amendment has been made in Form No. 3CA by including ***“examination of books of account including other relevant documents”***.
- ❑ The tax auditor should maintain working papers accordingly.

ICAI's Comment

- Under section 44AA NO Books of accounts are prescribed for business.
- Also, the Companies Act, 2013 does not specifically prescribes books of accounts for a Company.
- Thus, in respect of a businesses, the tax audit report should report “No” under this sub-clause. However, reporting of “Yes” has been noticed in some tax audit reports which should not be there.

Issues on Clause no. 11.....

- ❑ As per the provisions of Section 128 of the **Companies Act, 2013**, the **books of account are mandatorily required to be kept at the Registered Office of the company.**
- ❑ However, in case of Books of accounts being maintained at any other place other than registered office in India, resolution of Board of Directors required to be passed and company shall be required to intimate full address of such place to ROC within 7 days.
- ❑ In respect of Branches (in or outside India), books relating to the transactions effected at the branch office, can be kept at branch office, provided proper summarised returns are sent to the registered office or the other place as intimated to ROC at regular intervals.

Maintenance of accounts by certain persons carrying on profession or business. – Section 44AA

1. Every person **carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession** as is **notified by the Board in the Official Gazette*** shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.
2. Every person **carrying on business or profession [not being a profession referred to in subsection (1)]** shall,—
 - i. if his **income** from business or profession **exceeds one lakh twenty thousand rupees** or his **total sales, turnover or gross receipts**, as the case may be, in business or profession **exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year**; or
 - ii. where the **business or profession is newly set up** in any previous year, if his **income** from business or profession is **likely to exceed one lakh twenty thousand rupees** or his **total sales, turnover or gross receipts**, as the case may be, in business or profession are or is **likely to exceed ten lakh rupees**, during such previous year; or
 - iii. where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or

*For Notified Persons refer Slide No. 4

- iv. where the **provisions of sub-section (4) of section 44AD are applicable** in his case and his **income exceeds the maximum amount which is not chargeable to income-tax** in any previous year, keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act:

Provided that in the case of a **person being an individual or a Hindu undivided family**, the provisions of clause (i) and clause (ii) shall have effect, as if for **the words "one lakh twenty thousand rupees", the words "two lakh fifty thousand rupees" had been substituted** [Inserted by the Finance Act, 2017, w.e.f. 1st April 2018]

Provided further that in the case of a **person being an individual or a Hindu undivided family**, the provisions of clause (i) and clause (ii) shall have effect, as if for **the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted**. [Inserted by the Finance Act, 2017, w.e.f. 1st April 2018]

3. The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.
4. Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or subsection (2) shall be retained.

➤ **Notified Specified Profession**

Authorized representative and **film artist** - vide notification : No. SO 17(E), dated 12-1-1977.

Company Secretary – vide Notification : No. SO 2675, dated 25-9-1992

Profession of information technology – vide Notification : No. SO 385(E), dated 4-5-2001

➤ **Books or Books of account defined in Sec 2(12A) to include:-**

Ledgers, Day Books, Cash books, Account books, Others

As per Section 44AA(1) and notification issued u/s 44AA, exhaustive list of professions covered there under is as follows:-

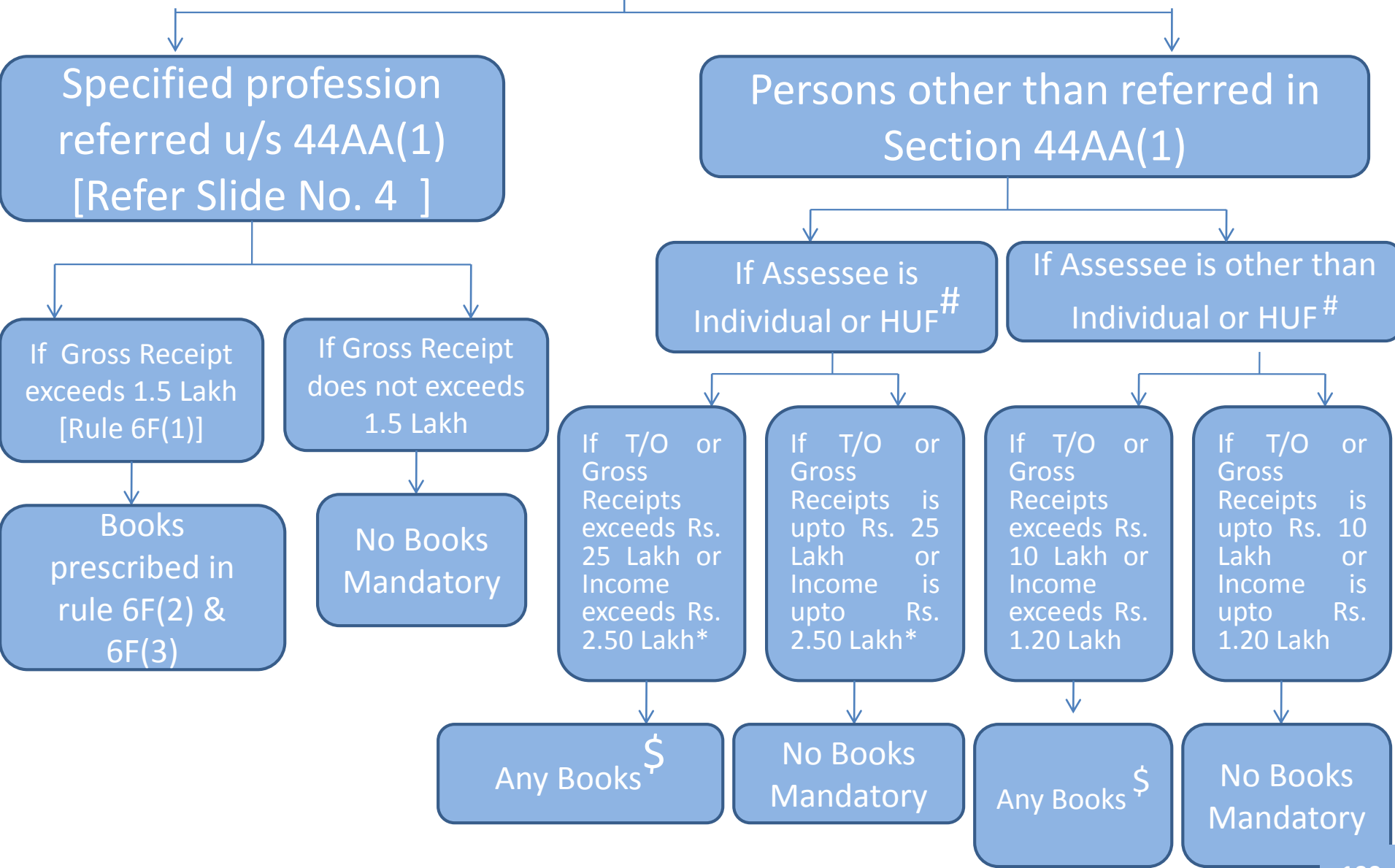
- Legal
- Medical
- Engineering
- Architectural
- Accountancy
- Technical Consultancy
- Interior Decoration
- Authorized Representative
- Film Artist
- Company Secretary
- Professional of Information Technology

S.J Agarwal and Co. v. ITO [2008] 114 ITD 27(Pune) (SMC) :

Whether the books of account as prescribed u/s 44AA are maintained or not, other books of account are subject to audit u/s 44AB.

Analysis of Section 44AA

Section - 44AA



Note:

*For Individual & HUF - Limit for total Income was Rs.1,20,000/- & for T/O or Gross Receipt was Rs.10,00,000/- **[prior to Finance Act, 2017 (w.e.f . 01-04-2018)]**

For limits in relation to Gross Receipts or Turnover –

(A) For Newly Setup Business – For computing threshold limits the Turnover or Gross Receipts shall be considered for that year only.

(B) For Other Business – For computing threshold limits the Turnover or Gross Receipts shall be Limits Shall be considered for three years immediately preceding the P.Y. and books will be required to maintain if such threshold is fulfilled in any one of three years.

\$ **Any books**: means the books so as to enable the AO to compute his total income in accordance with the provisions of this Act.

Where gross professional receipts in 1 of 3 years preceding the previous year in question have not exceeded Rs.1,50,000, assessee is not required to maintain books of account for that previous year even though such gross receipts have exceeded Rs.1,50,000 in the other 2 preceding years. **A. Keshava Bhat v. ITO [2001] 237 ITR 83 (Kar.)**

Analysis of Section 44AA

Prescribed Books Under Rule 6F

Books to be maintained by persons referred in Section 44AA(1) [Rule 6F(2)]

- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bills/ payment vouchers.
- **For a person carrying on medical profession is required to keep the following apart from the aforesaid books of accounts :** A daily case register in Form No. 3C and an inventory of stock of drugs, medicines & other consumable accessories used for his profession as on the 1st & last day of the P.Y. For clarification, these do not constitute books of accounts & thus, same need not be mentioned under Clause 11(a). **[Rule 6f(3)]**

Issue: Profession of CS & IT are not covered under rule 6F(1), therefore they are not required to maintain books of account as prescribed under rule 6F(2). However, they have to maintain books of Account as prescribed under the definition of “Books or Books of Account u/s 2(12A).

- Prescribed books of account are to be kept at the place of profession or principal place of profession, if carried at more than one place **[sub-rule (4)]**
- To be maintained for a period of **6 years** from the end of the relevant assessment year. **[Sub-rule (5)]**

Analysis of Section 44AA

Assessee shall also keep and maintain such books of account & other documents as may enable the AO to compute his total income in accordance with the provisions of this Act where:

1. Profits and gains from business are deemed to be profits and gains of assessee u/s 44AE, 44BB, 44BBB and the assessee has claimed his income to be lower than the profits or gains so deemed, or
2. Profits and gains from the business are deemed to be the profits and gains of assessee u/s 44AD and he has claimed such income to be lower than the profits and gains so deemed and his income exceeds the maximum amount which is not chargeable to income-tax.

However, **in respect point 2 above, w.e.f. AY 2017-18**, the assessee shall keep/maintain such books of account & other documents, if the provisions of Sec. 44AD(4) are applicable {*i.e. withdrawal of benefit u/s 44AD for next 5 A.Y.(s)*} and his income exceeds the maximum amount which is not chargeable to income-tax. **[as amended by Finance Act, 2016]**

Issues/Case laws....

□ CIT v S.C. Naregal [2011] 16 taxmann.com 420 (Karnataka)

Pacca book of cash sales and purchase register are to be considered as account books defined u/s 2(12A). Thus, the contention cant be taken that books were not maintained. Thus, the assessee is required to get its accounts audited u/s 44AB whenever turnover exceeds the prescribed limit. Hence, the assessee would be liable to penalty u/s 271B in this case.

□ Blue Heaven Construction v. ITO [2010] 39 SOT 39 (ITAT - KOLKATA)

Maintenance of books of account and documents as required u/s 44AA means books which are true and correct and are accepted under commercial parlance and which would enable AO to compute total income of the assessee. Since AO did not doubt the correctness of the books and he didn't record any grievance that he was unable to compute income of assessee from such books. It was held that requirements of Section 44AA were duly satisfied. Therefore, penalty u/s 271A was unjust.

□ CIT v. Rajni Kant Dave [2006] 281 ITR 6 (Allahabad)

Where CBDT, in respect of medical profession, by rule 6F prescribed maintenance of certain books of account, it was not open to assessing authority to desire some books of account to be maintained over and above books of account required by rule 6F and on that ground reject books of account of assessee under proviso to section 145.

Clause no. 12

105

Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant Section (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, **Chapter XII-G, First Schedule** or any other relevant Section.)

Brief: **Chapter XII-G** (Special provisions relating to income of Shipping companies) and **First Schedule** (Insurance Business) also covered.

List of Sections.....

Contd....

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S. No.	Section / Chapter/ Schedule	Business Covered
1.	44AD	Special provision for computing profits/gains of business on presumptive basis
2.	44ADA	Special provision for computing profits and gains of profession on presumptive basis
3.	44AE	Transport business
4.	44AF	Retail Business <i>(This Section is inoperative w.e.f. A.Y 2011-2012 and covered in s.44AD itself)</i>
5.	44B	Shipping business of a non-resident
6.	44BB	Providing service/ facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils.

List of Sections.....

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S. No.	Section / Chapter/ Schedule	Business Covered
7.	44BBA	Operation of aircraft by non-resident.
8.	44BBB	Civil construction etc. in certain turnkey power project by non-residents.
9.	Chapter XII-G	Special provisions relating to income of shipping companies
10.	First Schedule	Rules for Section 44- Insurance Business
11.	Any other relevant Section	This refers to the Sections not listed above under which income may be assessable on presumption basis like Section 44D and sec 115A(1)(b) and will include any other Section that may be enacted in future for presumptive taxation.

Issues on Clause no. 12

108

Section:	Other Section	Amount:
44AD		
44AD		
44ADA		
44AE		
44AF		
44B		
44BB		
44BBA		
44BBB		
Chapter XII-G		
First Schedule		
Any other relevant section		

Next >>		Fill Default				Import			
6	7	8	9	10	11	12	13	14	15

- The value of material supplied by the client is not included in Gross receipt and value of work in progress would not constitute turnover.
- In case of **composite business**, if the books of accounts are commonly maintained, apportionment of the common expenses is on reasonable estimate.
- Turnover basis is mostly accepted by I-Tax Dept.

Clause no. 13

109

- a) Method of accounting employed in the previous year.
- b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.
- c) If answer to (b) above is affirmative, give details of such change, and the effect thereof on the profit or loss.

Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

Specific Format provided

Amendment in Clause no. 13

110

(Vide Notification 88/2016 dated 29-09-2016 w.e.f 01-04-2017)

(d) Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2)

(e) If answer to (d) above is in the affirmative, give details of such adjustments:

	<i>ICDS</i>	<i>Increase in Profit (Rs.)</i>	<i>Decrease in Profit (Rs.)</i>	<i>Net Effect (Rs.)</i>
<i>ICDS I</i>	<i>Accounting Policies</i>			
<i>ICDS II</i>	<i>Valuation of Inventories</i>			
<i>ICDS III</i>	<i>Construction Contracts</i>			

Amendment in Clause no. 13

		<i>Increase in Profit (Rs.)</i>	<i>Decrease in Profit (Rs.)</i>	<i>Net Effect (Rs.)</i>
<i>ICDS IV</i>	<i>Revenue Recognition</i>			
<i>ICDS V</i>	<i>Tangible Fixed Assets</i>			
<i>ICDS VI</i>	<i>Changes in Foreign Exchange Rates</i>			
<i>ICDS VII</i>	<i>Governments Grants</i>			
<i>ICDS VIII</i>	<i>Securities</i>			
<i>ICDS IX</i>	<i>Borrowing Costs</i>			
<i>ICDS X</i>	<i>Provisions, Contingent Liabilities and Contingent Assets</i>			

ICAI's Comment

It has been observed that the details required under this sub-clause are not fully disclosed. While reporting is done in respect of some of ICDS, others are just left blank. In order to ensure clarity, if no adjustments are there to be reported, "0" or "Nil" should be mentioned.

Amendment in Clause no. 13

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(f) Disclosure as per ICDS:

- i. ICDS I-Accounting Policies*
- ii. ICDS II-Valuation of Inventories*
- iii. ICDS III-Construction Contracts*
- iv. ICDS IV-Revenue Recognition*
- v. ICDS V-Tangible Fixed Assets*
- vi. ICDS VII-Governments Grants*
- vii. ICDS IX Borrowing Costs*
- viii. ICDS X-Provisions, Contingent Liabilities and Contingent Assets”*

- **U/s 145** - The income chargeable under the head “PGBP” or “Income from other source” must be computed in accordance with either cash or mercantile system of accounting *regularly employed* by the assessee.
- The hybrid system of accounting (i.e. mixture of cash and mercantile) is not permitted.
- **U/s 145(2)**- Accounting Standard to be followed by all assessees following mercantile system of accounting .
- The Central Government has notified two Accounting Standards [**CBDT C. No. 9949 dated July 25, 1996**]
 - Accounting Standard– I** “Disclosure of Accounting Policies”
 - Accounting Standard– II** Disclosure of “Prior Period and Extraordinary Items and changes in Accounting Policies”

Amendment in Section 145 by Finance Act, 2014 [w.e.f. 01.04.2015]

- U/s 145(2) reference to ‘Accounting Standards’ is changed with Income Computation and Disclosure Standards.
- U/s 145(3) it is provided to reject the books of accounts for not regularly following the income computation and disclosure standards.

- Change in accounting policy does not amount to change in method of accounting and thus need not be reported.
- Change in method of valuation of stock is not a matter of change in method of accounting but only a change in accounting policy.
- If there has been any change in the method of accounting employed, the method employed in the immediately preceding P.Y. is to be stated & the effect i.e. Increase or decrease in profits has to be stated.
- **Books maintained in respect of** all items of income on accrual basis and interest income on seed money **loan is accounted** on cash basis- **permitted vide N. No. GSR 770(E) dated 10-9-1990.**

Note: Clause (b) refer sec 145A in which the term “inventory” is used and according to AS-2 “inventory” includes finished goods, raw material, work-in-progress, maintenance supplies, consumables and loose tools.

□ **ITO v. Wasan Exports (P.) Ltd. [2019] 106 taxmann.com 21 (Delhi - Trib.)**

Assessee-company had shown value of goods in closing stock at nil, following the method of cost or market value which it followed year after year and the same was accepted in earlier years by revenue. Also, the nature of the items was to reduce each day in value. Thus, such valuation of closing stock should be accepted.

□ **ACIT v. U.P. Asbestos Ltd. [2019] 105 taxmann.com 102 (Lucknow - Trib.)**

The assessee followed net method of valuation of closing stock, where excise duty, etc., were not added to purchases, sales or valuation of inventories and no excisable item of closing stock was removed from factory premises till the end of accounting year. Such excise duty was rightly excluded.

□ **Zuberi Engineering Company v. DCIT [2019] 103 taxmann.com 196 (Jaipur - Trib.)**

Rejection of books of account in preceding year could not be a reason for rejection of books of account in the current year. Also, there were no material defect found in the books then the same could not have been rejected on the reason that assessee had declared less gross profit for year under consideration or day-to-day moment of material was not reflected in stock register. (Sec 145)

❑ **PCIT v. Swananda Properties (P.) Ltd. [2019] 111 taxmann.com 94 (Bombay)**

If the revenue was not able to show any defect in assessee's records or in the books of account then section 145 could not be invoked for rejecting books of accounts of the assessee.

❑ **Pr. CIT v. Deccan Mining Syndicate (P.) Ltd. [2019] 105 taxmann.com 278 (SC)**

SC dismissed the SLP filed against High Court where HC upheld Tribunal's order deleting addition as well as penalty on ground that excess stock existed only on account of wrong entries in assessee's books of account and not due to purchases made outside books of account.

❑ **DCIT v. AGC Network Ltd. [2019] 111 taxmann.com 61 (Mumbai - Trib.)**

If the assessee had been consistently following a method of revenue recognition over years, assessee had to demonstrate compelling circumstances which necessitated change in revenue recognition policy from invoice based to project completion method.

Issues on Clause no. 13

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❑ **CIT v. Happy Home Corporation [2019] 103 taxmann.com 22 (SC)**

SC dismissed the SLP against High court where it was held that assessee, engaged in construction business, was following project completion method, its income could be brought to tax only in year when sale deeds of units sold were registered even though sale consideration might have been received earlier from buyer.

❑ **Housing & Urban Development Corporation Ltd. V. Addnl. CIT [2020] 115 taxmann.com 166 (Delhi)**

Assessee was following mercantile system for revenue recognition of application fees, front end fees, administrative fees and processing fees for loans from date of signing of loan agreement till date of realisation. However, it changed the accounting policy as per the observation of CAG and began to recognize fees as on the date of its realization since no income accrued at point of mere execution of agreement and financial impact was factored in subsequent year. As it was revenue neutral thus, no addition was to be made on account of such change in accounting policy. (Sec 145)

❑ **DCIT v. Asian Grantio India Ltd [2020] 113 taxmann.com 445 (Ahmedabad - Trib.)**

No specific defect/infirmity signifying that assessee had suppressed production which was sold outside books of account. Thus, AO cant make addition to assessee's income on the basis of estimates.

Section 145A – Method of accounting in certain cases substituted by FA, 2018 w.r.e.f. 01/04/2017

118

Section 145A is substituted (w.r.e.f. 01/04/2017) to provide that, for the purpose of determining the income chargeable under the head “Profits and gains of business or profession,—

- (i)** the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS notified under section 145(2). [Valuation of Inventory as per ICDS -2]
- (ii)** the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation. [same as old proviso of section 145A].
- (iii)** inventory being securities not listed on a recognized stock exchange, or listed but not quoted, shall be valued at actual cost initially recognized in the manner provided in ICDS notified under section 145(2). [Para 12 of ICDS-8, Securities]
- (iv)** inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in ICDS notified under section 145(2) and for this purpose the comparison of actual cost and net realizable value shall be done category-wise. [Para 9, 10, 11 of ICDS-8, Securities]

Effect of Tax on Valuation of inventories

119

- Section 145A, of the Income Tax Act, inter alia, provides that the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.
- The Accounting Standard 2 (Revised) on "Valuation of Inventories" issued by ICAI does not permit the recording of inventory valuation inclusive of taxes for the purpose of accounting.

Effect of Tax on Valuation of inventories

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- However, the net effect of such an adjustment, made for the purpose of taxation, on the profit as shown in the accounts is NIL.
- The statutory adjustments required under section 145A can be better understood with the use of the following example:

Particulars	Qty	Rate excluding GST	Rate of GST
Opening Stock	10	100	Rs.5(i.e. 5%)
Raw material purchased	90	100	Rs.5(i.e. 5%)
Other manufacturing cost	80	100	-
Finished goods manufactured	80	-	-
Sales of finished goods	60	250	Rs.30(i.e. 12%)
Closing stock of raw material	20	100	Rs.5(i.e. 5%)
Closing stock of finished goods	20	200	Rs.30(i.e. 12%)

- Input output ratio of raw material to finished goods is 1:1

(Reference: Guidance Note on Tax Audit u/s 44AB of the Income Tax Act, 1961 issued by the ICAI, Relevant Para 23 on page 83-99)

Effect of Tax on Valuation of inventories

Exclusive Method: The Profit and Loss Account taking valuations net of tax will be:

Item	Particulars	Unit	Rate	Amount	Amount	Item	Particulars	Unit	Rate	Amount
a.	Opening Stock	10	100	1000	8000	h.	Sales	60	250	15000
b.	Purchase of raw material	90	100	9000		i.	Closing stock of finished goods	20	200	4000
	Total	100	100	10000						
c.	Less closing stock of raw material	20	100	2000						
d.	Raw material consumed	80	100		8000					
e.	Manufacturing cost	80	100		8000					
f.	GST on finished goods				0					
g.	Gross profit				3000					
	TOTAL				19000		TOTAL			19000

Effect of Tax on Valuation of inventories

Inclusive Method: The Profit and Loss Account taking valuations inclusive of tax will be:

Item	Particulars	Unit	Rate	Amount	Amount	Item	Particulars	Unit	Rate	Amount	
j.	Opening Stock	10	105	1050	8000	s.	Sales	60	280	16800	
k.	Purchase of raw material	90	105	9450		t.	Closing stock of finished goods	20	230	4600	
	Total	100	105	10500							
l.	Less closing stock of raw material	20	105	2100							
m.	Less GST credit	80	5	400							
n.	Raw material consumed	80	100			8000					
o.	Manufacturing cost	80	100			8000					
p.	GST on finished goods	60	30			1800					
q.	GST on closing stock of finished goods	20	30			600					
r.	Gross profit					3000					
	TOTAL				21400		TOTAL			21400	

Contd...

Effect of Tax on Valuation of inventories

123

- From the above example, it is clearly seen that the profit remained **unchanged** on account of valuation of inventory **taken inclusive or exclusive of tax**.
- Following **other observations** can be made in this regard:
 - The profit and loss account showing valuations inclusive of tax consists of a debit for the amount of tax that has to be ultimately paid to the government, since it showed the sales and closing stock valuations inclusive of tax on the credit side this debit was necessary to give a clear picture of the **income** of the entity.
 - The GST credit availed on the raw materials have been recorded by deducting the same from the valuation of raw material consumed giving the correct picture of the **expense**.

Contd...

Effect of Tax on Valuation of inventories

The adjustments to be made in accordance with Section 145A in the above example are clearly illustrated as under:

Sl. No.	Particulars	Increase in profit (Rupees)	Decrease in profit (Rupees)
1	Increase in cost of opening stock on inclusion of GST on which input credit is available/ availed (j-a)	-	50
2	Increase in purchase cost of raw material on inclusion of GST on which input credit is available/ availed (k-b)	-	450
3	Increase in sale of finished goods on inclusion of GST (s-h)	1800	-
4	GST paid on sale of finished goods as a result of its inclusion in sales (p-f)	-	1800
5	Increase in closing stock of raw material on inclusion of GST (l-c)	100	-
6	Increase in closing stock of finished goods on inclusion of GST (t-i)	600	-
7	Increase in GST on closing stock of finished goods as a result of its inclusion in closing stock of finished goods (q)	-	600
8	Accounting of GST credit availed and utilised on raw materials consumed in payment of GST on finished goods accounted on the basis of raw material consumed (m)	400	-
	TOTAL	2900	2900

Section 145B – Taxability of certain income

Newly Inserted by FA, 2018 w.r.e.f. 01/04/2017

125

New section 145B was newly inserted w.r.e.f. 01//04/2017 through the FA, 2018 to provide that-

- a) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.
- b) the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
- c) income of the nature of Subsidy, Grant, cash incentive or Duty Drawback, etc referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

This amendment was made to standardize the accounting practices to plug the possible leakage of tax revenue.

Clause no. 14

126

- a) Method of valuation of Closing stock employed in the previous year.

ICAI's Comment

- It has been observed that the method of valuation has not been mentioned separately for each item of stock.
- Also, in some cases reference was given in respect of annexure which was not attached.

- b) In case of deviation from the method of valuation prescribed under Section 145A, and the effect thereof on the profit or loss, please furnish:

Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

*Specific Format
provided*

ICAI's Comment

- Inclusive method for valuation of inventory is prescribed under the taxation laws and thus effects of inclusion of duties & taxes are to be properly reported under this clause. It was observed that deviations from 145A remained to be reported while following exclusive method in certain cases.

- **Adjustment of excise duty:** The liability for excise duty arises when the manufacturing of goods is complete, a provision for unpaid liability of Excise duty on stock lying in the factory or **bonded warehouse**, is to be created. **[Guidance Notes on Accounting treatment for Excise duty (in June 2000)]** When closing stock is valued at Market Price (Being lower than cost) there is no need to add Excise duty.
- **Adjustment of sales tax:** In valuation of closing stock - no adjustment of Sales tax (as liability of sales tax arises at the time of sale).
- **Adjustment of Goods and Services tax (GST):** In valuation of closing stock - no adjustment of GST (as liability of GST arises at the time when supply of goods or services takes place).
- **Adjustment of VAT:** in case VAT is included in the purchase value, the same is adjusted in closing stock to neutralize the effect i.e **the inventory of inputs is to be valued at net of the input tax which is refundable**. If the inputs are obtained from the dealers who are exempt from VAT, the **actual cost of purchase** should be considered as a part of 'cost of inventory'.
- Section 145A is **tax neutral** as long as the assessee makes payment of the duty in accordance with the provisions of Sec. 43B. **(Example provided on slide 84-88)**

Clause no. 15

128

Give the following particulars of the **capital asset converted into stock-in-trade**

(a) Description of capital asset	(b) Date of acquisition	(c) Cost of acquisition	(d) Amount at which the asset is converted into stock-in-trade

Issues on Clause no. 15

129

- Such conversion is treated as transfer **u/s 2(47)**
- **U/s 45(2)** notional capital gain arises from such transfer and chargeable to tax in the year in which such stock-in-trade is sold.
- No requirement of details of taxability of 'capital gain' or 'business income' from such deemed transfer.
- **Accounting standards to be followed:**
 - AS-2 for valuation of stock-in-trade
 - AS-10 for valuation of fixed assets.
 - AS-22 for provision of Income Tax as temporary timing difference.
- Sec 47 & 47A are also to be considered.

Issues on Clause no. 15

130

□ Cost of capital asset in case of:

- Purchase – From invoice, books etc
- Self – constructed – Directly related cost
- Acquired in exchange – FMV or Net Book value of asset given up
- Acquired by way of inheritance – In this case if no evidence exists – Auditor should rely upon the report of the experts such as valuers.

- Para 17 of the Accounting Standard (AS) 10, issued by the ICAI, provides that the cost of the fixed assets (i.e. Property, plant and equipment) should include the non- refundable taxes or levies. **If GST on capital goods is in the nature of a refundable tax, it should not be included in the cost of the capital goods.**

Professor P.N. Shetty v. Office of ITO [2019] 112 taxmann.com 218 (Karnataka)

The case where a part of amount deposited in Capital Gains Account Scheme was not utilized for construction/purchase of a new asset within three years then income tax would be chargeable on the said amount in the PY in which period of three years expired.

Issues on Clause no. 15

131

❑ Pradyot B. Borkar v. ACIT [2020] 115 taxmann.com 7 (Mumbai - Trib.)

Where as per development agreement assessee received new residential flat and some amount on account of transfer of old flat to the developer for re-development. Then the said amount was be treated as income u/h capital gain and not income from other sources.

❑ Union Company (Motors) (P.) Ltd. V. ACIT [2020] 113 taxmann.com 449 (Chennai - Trib.)

In this case the assessee converted its undivided interest in land into stock-in-trade, capital gains arising from such conversion was to be brought to tax when transfer/sale of such asset took place and not on date of converting capital asset into stock-in-trade.

❑ P.P. Mahatme v. ACIT [2019] 112 taxmann.com 253 (Bombay)

In this case there was a dispute regarding immovable property amongst the family members. Such dispute was ultimately settled by filing consent terms and consideration was received as a result of such settlement. This could not be styled as a family settlement and was taxable as capital gain.

❑ PCIT v. Hardik Bharat Patel [2018] 100 taxmann.com 410 (Bombay)

As per Circular No. 6 dt. 29-2-16 assessee has an option to treat profit earned on sale of shares as LTCG after holding them for more than 12 months as the circular makes no distinction as to whether investment in those shares was made out of own funds or borrowed funds.

Clause no. 16

132

Amounts not credited to the Profit and Loss Account, being,—

- a) The items falling within the scope of Section 28.
- b) The Performa credits, drawbacks, refund of duty of customs or excise or service tax or refund of sales tax, or Value Added Tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned.

Description	Other Desc.	Amount

- c) Escalation claims accepted during the Previous Year;
- d) Any other item of income;
- e) Capital receipt, if any.

Description	Amount

Issues on Clause no. 16

133

- Only claims accepted during the previous year are required to be reported under **Clause 16(c)**.
- Mere claims under negotiations cannot constitute accepted claims. **CIT v. Hindustan Housing and Land Development Trust Ltd. [1986] 161 ITR 524 (SC)**
- Income is defined u/s 2(24):
 - Report all the items of income ascertained from the books of A/cs available to the tax auditor but state such income excludable u/s 10 (if any).
 - The Tax auditor shall be governed by **AS-9** relating to revenue recognition.
- Any capital receipt adjusted in actual cost for calculation of depreciation allowable is reported here & under Clause 18 d (ii) also. **[Under Sub-Clause (e)]**
- “Capital receipts” for this Clause do not cover share capital or item of gift etc. **[Under Sub-Clause (e)]**

Clause no. 17

134

Where any land or building or both is transferred during the previous year for a consideration less than the value adopted or assessed or assessable by any authority of a State Government referred to in Section 43CA or 50C, please furnish:

Details of property	Address of property	Consideration received or accrued	Value adopted or assessed or assessable
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Brief: Stamp Duty value is to be specified for land or building or both sold whether held in nature of Capital assets or Stock in trade.

Clause no. 17

135

Format in e-utility

Details of Property	Address of Property					Consideration received or accrued	Value adopted or assessed or assessable
	Line 1	Line 2	City/Town	State	Pin code		



State outside India
also covered

Issues on Clause no. 17

136

Sec. 43CA- Special provision for full value of consideration for transfer of assets other than capital assets in certain cases [*Introduced by Finance Act, 2013, w.e.f. 1-4-2014*]

Sec. 50C- Special provision for full value of consideration in certain cases. [*for Capital assets*]

Issues/ Points to be considered.....

- Obtain a list of all properties transferred during the P.Y. and verify the same from the financial statement.
- Under the heading “Consideration Received or Accrued”, the tax auditor should furnish the amount of consideration received or accrued, during the relevant P. Y. in respect of land/building transferred during the year as disclosed in the books of account.

Issues on Clause no. 17

137

Issues/ Points to be considered.....

- For reporting requirement: The value adopted or assessed or assessable, if the property is registered, obtain a copy of the registered sale deed. If the property is not registered, verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of Sec. 43CA/ 50C. And in case unable to obtain relevant documents then state the same through an observation in the report under Form 3CA/CB.
- Auditor would have to apply professional judgment as to what constitutes land or building for e.g. whether leasehold right / development rights / TDR / FSI etc would fall under this provision or not, would require to be evaluated based on facts & circumstances of transactions.

Rationalized the provisions of Section 43CA, Section 50C by FA, 2018 w.e.f. 01/04/2019

138

- ❑ It is provided that the full value of consideration shall not be revised to stamp duty value, where the stamp duty value does not exceed 105% of the consideration received or accruing as a result of the transfer.

Proviso to sub section 1 of Section 43CA inserted w.e.f 3rd [2018] 97 taxmann.com 430 (Madras) proviso to Sub Section 1 of section 50C inserted w.e.f

- ❑ It is provided that in section 43CA where date of agreement fixing the value of consideration for transfer of asset & date of registration are not the same, the value referred to in sub-section (1) may be taken as the stamp duty value in respect of such transfer on the date of the agreement **where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of ECS through a bank account on or before the date of agreement for transfer of the asset [earlier written 'by any mode other than**

Issues on Clause no. 17

139

❑ **PCIT v. Swananda Properties (P.) Ltd. [2019] 111 taxmann.com 94 (Bombay)**

Provisions of section 43CA introduced with effect from 1-4-2014 would be applicable prospectively from assessment year 2014-15

❑ **Ritz Suppliers (P.) Ltd. V. ITO [2020] 113 taxmann.com 349 (Kolkata - Trib.)**

Section 50C applies only to capital asset being land or building or both, it cannot be made applicable to transfer of leasehold rights in a property.

❑ **Eveready Industries India Ltd. v. PCIT [2020] 114 taxmann.com 610 (Kolkata - Trib.)**

Application of Section 50C can only made in cases where income under head capital gain is assessed or assesable in accordance with section 48.

❑ **ITO v. Zain Constructions [2020] 113 taxmann.com 513 (SC)**

SC dismissed SLP against HC ruling that if AO alleged that assessee-firm sold flats at amount lesser than the market value and a partner of the firm declared certain amount to tax towards alleged undervaluation of flats in order to avoid litigation but never admitted that flats were sold at a price higher than what was reflected in documents, then no addition could be made to the assessee in respect of difference between stamp valuation and sale price of property, on basis of such offering made by partner.

Clause no. 18

140

Particulars **of depreciation allowable** as per the Income-tax Act, 1961 in respect of **each asset or block of assets**, as the case may be, in the following forms:-

- a) Description of asset/ block of assets.
- b) Rate of Depreciation (in percentage)
- c) Actual cost or written down value, as the case may be.

ICAI's Comment

- It has been observed that the details of additions/deletions reported in Tax Audit Report are not in line with the figures of additions/ deletions disclosed in Audited financial statements.

Clause no. 18

141

- d) Additions/deductions during the year with dates; in the case of any addition of an asset, date to put to use;

Date of addition/deductions, Particulars, Amount, In case of addition- date put to use. In case of deduction- NA

Adjustments on account of

- i. **Central Value Added Tax** credit claimed and allowed under the central Excise Rule, 1994 in respect of assets acquired on or after 1st march, 1994
- ii. Change in the rate of exchange of currency, and
- iii. Subsidy or grant or reimbursement, by whatever name called.

ICAI's Comment

- It has been observed that in some cases the Amount of adjustment on account of Exchange Fluctuation (due to change of rate of exchange if any) for which a separate column is provided under Additions has not been shown in the TAR uploaded on the Income Tax department website while the same has been reported in the annexure attached to physically signed Tax Audit Report.

- e) Depreciation allowable
- f) Written down value at the end of the year.

Clause no. 18

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Description of the block of Assets/class of assets	Rate of depreciation	Opening WDV/ actual (A)



Additions					
Details	Purchase Value (1)	Adjustments on account of			Total value of purchase (B) (1+2+3+4)
Import CSV		CENVAT (2)	Change in rate of exchange (3)	Subsidy / grant (4)	
Fill Data					
View Data					
Additions CSV Template Deductions CSV Template Help					



Deductions (C)	Depreciation allowable (D)	WDV at the end of the year (A+B+C-D)	Block Nil

Amendment in rates of Depreciation

143

Income-tax (29th Amendment) Rules, 2016.

➤ Proviso after **sub-Rule (1) of Rule 5**

“Provided that in case of a domestic company which has exercised option under sub-section (4) of section 115BA, the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent. shall be restricted to forty per cent. on the written down value of such block of assets.” **w.e.f. 1st day of April, 2016**

➤ In the **New Appendix I**, in the second column of the Table, for the figures “ ‘50’, ‘60’, ‘80’, ‘100’ ”, wherever they occur, the figure “40” shall be substituted w.e.f. 1st day of April, 2017.*

Notification No.103/ 2016 dated 7th November, 2016

*** Applicable from AY 2018-19 & onwards**

Section 115BA

In respect of the total income of a domestic company, from AY 2017-18 and onwards, the assessee shall have option to pay income-tax at rate of 25%., subject to following conditions:

- a) the company has been set up and registered on or after the 01-03-2016;
- b) the company is engaged in the business of manufacturing or production of any article or thing; and
- c) the total income of the company has been computed, –
 - i. without any deduction u/s 10AA or 32(1)(ia) or 32AC or 32AD or 33AB or 33ABA or 35(1) (ii)/(ia)/ (iii) or 35(2AA) or 35(2AB) or 35AC or 35AD or 35CCC or 35CCD or under any provisions of Chapter VI-A under the heading “C.– Deductions in respect of certain incomes” other than the provisions of section 80JJAA;
 - ii. without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and
 - iii. depreciation u/s 32, other than clause (ia) of sub-section (1) of the said section is determined in the manner as may be prescribed.

- It is compulsory for all assessee to claim depreciation or additional depreciation (in terms of S. 32(1)(ii)) in calculating taxable income otherwise no deduction will be allowed & WDV will be treated as reduced – **Explanation 5 to Sec 32 (w.e.f A.Y. 2002-03).**
- **‘Allowable’** implies permissible deduction under provision of Act and Rules.
- **“Used”** means actual use and is not kept ready for use.
- Assets used partly for Business purpose, deduction u/s 32(1) restricted to proportionate part.
- Under ‘Change in the rate of exchange of currency’ – adjustment is contemplated u/s 43A & AS-11. **(u/s 43A deduction on cash basis but AS-11 (revised) deduction on accrual basis)**
- Depreciation debited to P&L A/c as per requirement of Schedule VI not reported under this Clause.

Note: e-utility provides facility to import CSV files to fill the details of additions and deductions. Moreover, it is also providing CSV templates for the same.

Section 43A vis-à-vis AS-11 (Revised)

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- ❑ As per [Section 43A](#), where assessee has acquired any asset in any previous year from country outside India for the purposes of business or profession & due to change in rate of exchange during any previous year after such acquisition, there is increase or reduction in assessee's liability **at the time of making payment** towards such asset or towards the money borrowed in foreign currency, **the amount of such increase or decrease in the liability** during such previous year shall be added to, or, as the case may be, deducted from the actual cost of the asset. Thus, **the extent of addition or reduction will be limited to the exchange difference actually paid during the previous year.**
- ❑ As per Para 46A of [AS-11 \(Revised\)](#), the exchange differences arising on reporting of long term foreign currency monetary items (in case of acquisition of a depreciable capital asset) at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset.
- ❑ **Under ICDS VI (*The effects of changes in foreign exchange rates*)**, recognition of exchange difference under ICDS is subject to the provisions of Section 43A of the Act or Rule 115 of the Rules.

Section 43A vis-à-vis AS-II

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- As per [Section 43A](#), where assessee has acquired any asset in any previous year from country outside India for the purposes of business or profession & due to change in rate of exchange during any previous year after such acquisition, there is increase or reduction in assessee's liability **at the time of making payment** towards such asset or towards the money borrowed in foreign currency, **the amount of such increase or decrease in the liability** during such previous year shall be added to, or, as the case may be, deducted from the actual cost of the asset. Thus, **the extent of addition or reduction will be limited to the exchange difference actually paid during the previous year.**
- As per Para 46A of [AS-11 \(Revised\)](#), the exchange differences arising on reporting of long term foreign currency monetary items (in case of acquisition of a depreciable capital asset) at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset.
- **Under ICDS**, exchange difference on all monetary items should be recognized as **income or expense**. However, initial recognition, conversion & recognition of exchange difference under ICDS is subject to the provisions of Section 43A of the Act or Rule 115 of the Rules.

- Depreciation is not allowed on an amount equivalent to CENVAT/ ITC credit claimed and allowed.
- Depreciation is allowed on “actual Cost”- term defined u/s 43(1) of I.T. Act.
- An assessee can claim depreciation on actual cost even if he follows Cash method of accounting.
- Interest relatable to any period after such asset is first put to use is not a part of actual cost (other than Section 43A).
- In case of dispute between Assessee, Department & Auditor regarding classification of assets, rate of depreciation etc. in earlier year, a suitable disclosure is required.

Clause no. 19

149

Amounts admissible under Sections:

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf

ICAI's Comment

- It has been observed in some cases that amount debited to profit and loss account has been shown in the Tax Audit Report as uploaded on the Income Tax department website while the same has not been reported in the physically signed Tax Audit Report.

Section	Amount debited to P&L Account/Payment	Amounts admissible/Quantum of deduction
32AC	Investment in new plant & machinery	15% of actual cost of new asset (No deduction allowed from A.Y. 2018-19 onwards)
32AD	Investment in new plant & machinery in Backward areas as prescribed	15% of actual cost of new asset <i>(this row entry is introduced by Notification No. 33/2018 dated 20/07/2018)</i>
33AB	Tea Development	sum= amount or aggregate of amounts so deposited; OR Sum= 40% of profits of business; whichever is least
33ABA	Site Restoration Fund: Deposit in ministry of petroleum & natural gas for extraction etc	Sum=amount or aggregate of amounts so deposited; OR Sum= 20% profits of business; whichever is least
35(1)(i)	Revenue expenditure in respect of scientific research related to the business	100% of the expenditure

List of Sections.....

Contd....

Section	Amount debited to P&L Account/Payment	Amounts admissible/ Quantum of deduction
35(1)(ii)	Amount paid to research association which has as its object the undertaking of scientific research or to a university, college or other institution notified & approved by CG to be used for scientific research	100% of amount contributed (from A.Y. 2021-22) 150% of amount contributed (from A.Y. 2018-19 till A.Y. 2020-21) 175% of amount contributed (from A.Y. 2011-12 till A.Y. 2017-18) 125% of amount contributed (till A.Y. 2010-11)
35(1)(iia)	Amount paid to an approved company registered in India to be used for scientific research & development	100% of amount paid (from A.Y. 2018-19) 125% of amount paid (from A.Y. 2009-10 till A.Y. 2017-18)
35(1)(iii)	Amount paid to research association which has as its object the undertaking of research in social science or statistical research OR to a university, college or other institution notified & approved by CG to be used for research in social science or statistical research	100% of amount paid (from AY 2018-19) 125% of amount paid (upto A.Y. 2017-18)
35(1)(iv)	Capital expenditure on scientific research other than on acquisition of land, related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-Section (2)	100% of capital expenditure incurred

Section	Eligible expenditure/payment	Amount/quantum of deduction
35(2AA)	Amount paid to National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction to use such amount for scientific research undertaken under a programme approved by the prescribed authority	100% of amount paid (from A.Y. 2021-22 onwards) 150% of amount paid (from A.Y. 2018-19 till A.Y. 2020-21) 200% of amount paid (from A.Y. 12-13 till A.Y. 2017-18)
35(2AB)	<p>Expenditure on scientific research on in-house research and development facility as approved by the prescribed authority</p> <p><u>From A.Y. 2012-13</u> : By a company engaged in business of bio-technology or business of manufacture/ production of any article or thing other than specified in Eleventh.</p> <p><u>Upto A.Y. 2011-12:</u> Company engaged in business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by board.</p>	100% of expenditure incurred (from A.Y. 2021-22 onwards) 150% of expenditure incurred (from A.Y. 2018-19 till A.Y. 2020-21) 200% of expenditure incurred (from A.Y. 2011-12 till A.Y. 2017-18)

Section	Eligible expenditure/payment	Amount/quantum of deduction
35ABA	Expenditure for obtaining right to use spectrum for telecommunication services	<p><u>Spectrum fees paid before commencement of business:</u> Spectrum fee paid / No. of years from the previous year of commencement of business to the previous year in which spectrum fees expires.</p> <p><u>Spectrum fees paid after commencement of business:</u> Spectrum fee paid / No. of years from the previous year in which spectrum fee actually paid to the previous year in which spectrum fees expires.</p>
35ABB	Capital Expenditure on license to operate telecommunication services	<p><u>License fees paid before commencement of business:</u> License fee paid / No. of years from the previous year of commencement of business to the previous year in which license expires.</p> <p><u>License fees paid after commencement of business:</u> License fee paid / No. of years from the previous year in which license fee actually paid to the previous year in which license expires.</p>

List of Sections.....

Contd....

Section	Amount debited to P&L Account/ Payment	Amounts admissible/ Quantum of deduction
35AC	Payment to public sector Co. or local authority or an association or institution approved by national committee for carrying eligible Projects/Schemes	100% of expenditure (No deduction allowed from A.Y. 2018-19 onwards)
35AD	Deduction in respect of capital expenditure on specified business	<p>100% - laying/setting up/ building/ developing/ operating cross country natural gas pipeline/ a new hotel in India/ a housing project under slum rehabilitation scheme/ inland container depot or freight station/ bee-keeping & production of honey & bee-wax/ warehouse facility for sugar/ slurry pipeline for transportation of iron ore (w.e.f. A.Y. 2015-16)/ wafer fabrication manufacturing unit (w.e.f. A.Y. 2015-16)</p> <p>150% – setting up/ laying/ building/ operating a cold chain facility/ warehousing facility for agriculture produce/a new hospital with at least 100 beds/ a housing project under affordable housing scheme/ production of fertilizer in India</p> <p>From A.Y. 2018-19 onwards, 100% of expenditure.</p>
35CCA	Rural development programme carried on by association & institutions	100% of expenditure

List of Sections.....

Contd....

Section	Eligible expenditure/payment	Amount/quantum of deduction
35CCB	Conservation of Natural resources by associations & institutions*** Deleted from A.Y 2003-04	100% of expenditure
35CCC	Expenditure on agricultural extension project	100% of expenditure (from A.Y. 2021-22 onwards) 150% of expenditure (till A.Y. 2020-21)
35CCD	Expenditure on skill development project by a Company	100% of expenditure (from A.Y. 2021-22 onwards) 150% of expenditure (till A.Y. 2020-21)
35D	Amortization of Preliminary Expenses by Indian resident or Company	(1/5)* expenditure For each of the 5 successive P.Y. beginning with P.Y. in which business commences or extension is completed or new unit commences production/ operation
	With amendment by Finance Act, 2008, an assessee who is not industrial undertaking is also eligible for deduction u/s 35D for extension of unit for AY 2009-10 onwards. Deep Industries Ltd. Vs. CIT [2015] 16 taxmann.com 348 (Ahmedabad-ITAT)	

List of Sections.....

Contd....

Section	Eligible expenditure/payment	Amount/quantum of deduction
35DD	Amortization of Expenditure in case of amalgamation or demerger incurred by an Indian company	(1/5)* expenditure For each of the 5 successive P.Y. beginning with P.Y. in which amalgamation or demerger takes place
35DDA	Amortization of expenditure incurred under Voluntary Retirement Scheme	(1/5)* amount deducted in computing profits/gains of business for P.Y. ;& Balance shall be deducted in equal installments for each of the 4 succeeding P.Y.
35E	Expenditure on prospecting or extraction or production of certain minerals	(1/10)* expenditure For each of 10 successive P.Y.

Section 32AD- Inserted by Finance Act, 2015 [w.e.f. 01-04-2016]

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Section 32AD in the Act was inserted to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if—

- (a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh, State of Bihar, State of West Bengal and the State of Telangana; and
- (b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, within a period of five years from the date of its installation, the amount of deduction allowed under this section in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

Section 35AD – Amendments by Finance Act, 2014 [w.e.f. 01-04-2015]

Contd....

158


- 35AD(3) Where a deduction under this Section is claimed and allowed in respect of the specified business as in Section 35AD (8)(c) for any assessment year, no deduction shall be allowed under the provisions of [*Section 10AA and*] Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes*" in relation to such specified business for the same or any other assessment year.
- Two new businesses are added in the list of specified business u/s 35AD(8)(c) namely:
 - laying & operating a slurry pipeline for the transportation of iron ore;
 - setting up and operating a semi-conductor wafer fabrication manufacturing unit notified by the Board in accordance with such guidelines as may be prescribed.
- Specified Assets should be used at least for 8 years for specified purpose. **(Sub-Sec 7A)**
- Amount of deduction allowable u/s 35AD *reduced by the amount of depreciation allowable as per Sec.32*, is chargeable under PGBP if specified assets are not used for specified purpose during specified period of 8years. **(Sub- Sec 7B)**
- The provisions of Sub-Section 7B do not apply to a company *which has become a sick industrial company u/s 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985* during specified period of 8 years. **(Sub-sec 7C)**

Issues on Clause no. 19

159

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19 Amounts admissible under sections:

S.No.		Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions, if any specified under the relevant 14 provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
1	<input type="checkbox"/>	Select 	<input type="text"/>	<input type="text"/>

- Earlier, Amount debited to the P&L Account as well as amount not debited to the P&L Account was required to be specified by the tax auditor.

However, in the Form, amount debited to the P&L Account and the amount admissible under the provisions of the Income Tax Act/Rules/other guidelines/circular, etc. needs to be reported.

- The tax auditor needs to specify the capital expense incurred and allowed as deduction for Computation of Profit & Gain as per the provisions of Income Tax Act/Rules/other guidelines/circular, etc. under this Clause.
- **The tax auditor is also required to report whether the conditions specified in these Sections have been fulfilled by the assessee or not.**

Clause no. 20

161

Clause 20(a)

Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. **[Section 36(1)(ii)].**

Description	Amount

“Sec. 36(1)(ii)- any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission”

Clause no. 20

162

Clause 20(b)

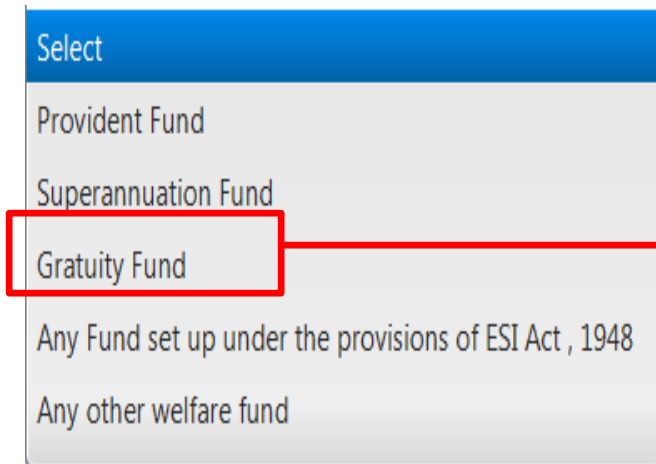
Details of contributions received from employees for various funds as referred to in Section 36(1)(va)

Serial number	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

All Saints School v. ITO [2019] 105 taxmann.com 149 (Delhi - Trib.)

Where deposits towards employees' provident fund were deposited prior to due date of filing of return under section 139, no disallowance could be made under section 36(1)(va).

➤ Funds covered:



A screenshot of a dropdown menu with a blue header labeled 'Select'. The menu items are: 'Provident Fund', 'Superannuation Fund', 'Gratuity Fund', 'Any Fund set up under the provisions of ESI Act , 1948', and 'Any other welfare fund'. The 'Gratuity Fund' option is highlighted with a red rectangular box, and a red arrow points from this box to the right.

Fund not specifically mentioned in Sec 2(24)(x)

- Now, the amount not deposited to the relevant fund but received from the employees are also required to be reported under this Clause.
- Amount received from employees as contributions as referred in Sec. 2(24)(x) is taxable u/s 56(2)(ic) if such income is not chargeable under PGBP.

- Grace period of 5 days available in respect of **Provident Fund** withdrawn w.e.f. February, 2016 i.e. contribution for month of January, 2016 and payable in the month of February, 2016. Thus, the employers shall pay the amount within 15 days of close of every month. **[EPF Circular No.: WSU/9(1)2013/settlement/ 35631 dated 08-01-2016]**
- The contribution of **Employees State Insurance** shall be paid within 15 days of the last day of the month w.e.f. June, 2017 i.e. for June, 2017, the due date shall be 15th July, 2017 **[ESI (General) Amendment Regulation, 2017 dt 03-07-2017]**
- Only amounts which are not in nature of reward for services will be covered by this item.
- Only disclosure of amount is required but the Auditor's opinion about its allowability or otherwise is not required.
- **“Due date”** means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act *[Explanation to Section 36(1)(va)]*. For determining due date of payment, period of grace (If any provided) for making payment may be considered *[Para 29.5 of Guidance Note]*.

ESI corporation vide notice dated 16.03.2020 extended the due date for payment of ESI contribution for the month February & March, 2020 from 15th March & 15th April to 15th April & 15th May respectively.

- For February, 2020 revised due date was 15th April, 2020
- For March, 2020 revised due date was 15th May, 2020

Clause no. 21

165

Clause 21(a)

Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.

Nature	Serial number	Particulars	Amount in Rs.
1. Capital expenditure			
2. Personal Expenditure			
3. Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party			
4. Expenditure incurred at clubs being entrance fees and subscriptions			
5. Expenditure incurred at clubs being cost for club services and facilities used.			

Clause no. 21.....

166

New Clause 21(a).....

Contd....

Nature	Serial number	Particulars	Amount in Rs.
6. Expenditure by way of penalty or fine for violation of any law for the time being force.			
7. Expenditure by way of any other penalty or fine <u>not covered above</u>			
8. Expenditure incurred for any purpose which is an offence or which is prohibited by law			

Format in e-utility.....

21 (a) Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc

Capital expenditure

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Personal expenditure

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Format in e-utility.....

Expenditure incurred at clubs being entrance fees and subscriptions

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Expenditure incurred at clubs being cost for club services and facilities used.

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Expenditure by way of penalty or fine for violation of any law for the time being force

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Format in e-utility.....

Expenditure by way of any other penalty or fine not covered above

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Expenditure incurred for any purpose which is an offence or which is prohibited by law

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Issues on Clause no. 21

170

- Whether the tax auditor should specify each and every transaction? *The format as specified in the notification includes Serial number, particulars, amount.*
- Cost of repairs & current repairs to building – not capital expenditure.
- Current repairs to machinery – Plant & Furniture – not capital expenditure. **Explanation to Sec 30 & 31**

Issues on Clause no. 21

171

- Separately indicate capital expenses allowed as deduction in Computation of total income under the Act.
- **“Personal”** is confined & related with assessee only.
Company cannot have personal expenses because it is an artificial entity, which does not have personal needs and thus use of vehicles for directors cannot be treated as personal use by the company.
[Sayaji Iron and Engg. Co. v. CIT [2002] 253 ITR 749 (Guj.)]

Issues on Clause no. 21

172

- Expenditure by way of penalty or fine for violation of any law is not admissible as expenditure.
- Infraction of law even if not deliberate may discredit the claim for deduction.
- **Allowance of legal expenses** depends on nature & purpose of legal proceeding in relation to business whose profits are under computation & is not affected by final outcome of the proceeding. **Vivek P. Talwar vs Asst. CIT [2010] 8 Taxmann.com 268 (Mum.)**. Also see **CIT v. Hirjee [1953] 23 ITR 427 (SC)**
- In case of illegal business, fine or penalty imposed thereon is not deductible (**Expln. to Sec. 37(1)**).
- It was held that where the assessee is required to pay amount comprising both the element of compensation & penalty, then only the element of compensation is deductible as Business expense. **Malura Vanaspati & Chemical Co Vs CIT (1997) 225 ITR 383 (SC)**

Clause 21(b)

Amounts inadmissible under Section 40(a):-

(i) as payment to **non-resident** referred to in sub-Clause (i)

(A) Details of payment on which tax is not deducted:

Date of payment	Amount of payment	Nature of payment	Name and address of the payee



e-utility also requires PAN, if available

ICAI's Comment

- The reporting has been done in respect of provision for various expenses of sundry parties. Since the amount has not been paid, the exact date has not been mentioned. Instead a random date as 11/11/1111 is mentioned to ensure uploading in the e-filing website. However, the date of crediting the amount of provision in the books of account could have been mentioned.
- In respect of sub-clauses where no information is to be given, instead of leaving the same blank, "Nil" '0" or "NA" could be mentioned for better reporting.

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under Section 200(1)

Date of payment	Amount of payment	Nature of payment	Name and address of the payee	Amount of tax deducted



e-utility also requires PAN, if available

Clause no. 21.....

Format in E-utility

Contd....

175

(b) Amounts inadmissible under section 40(a):-

(i) as payment to non-resident referred to in sub-clause (i)

(A) Details of payment on which tax is not deducted:

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									

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(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of tax deducted
1										

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Section 40(a)(i).....

176

Any **interest** (not being interest on a loan issued for public subscription before 01-04-1938), **royalty, fees for technical services** or **other sum** chargeable under this Act, which is **payable**,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed u/s 200(1).

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed u/s 200(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Section 40(a)(i).....

177

- Vide Finance (No. 2) Act, 2014, w.e.f. 1-4-2015, for words “on or before the due date specified in sub-section (1) of section 139” shall be substituted for “during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200”. Also the proviso to S.40(a)(i) shall be substituted w.e.f 1-4-2015:
- ***“Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.***
- Change is applicable for A.Y. 2016-2017, the corresponding change in Tax Audit Form has not been made but it is to be construed as Section 139(1). Tax auditor may give this note in the observations.

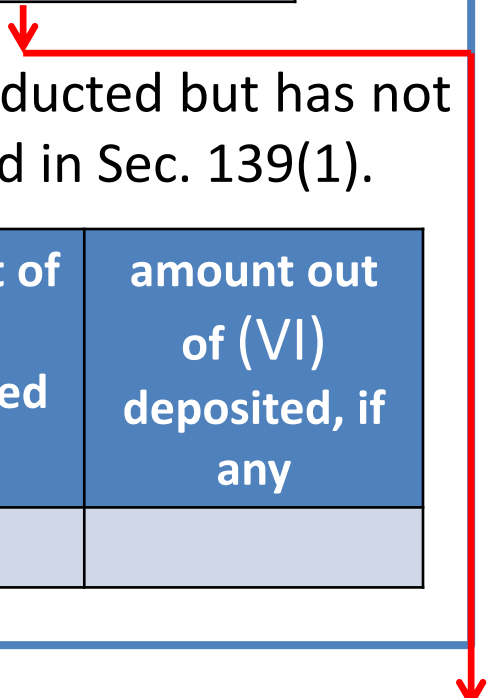
21(b) (ii) as payment referred to in sub-Clause (ia)

(A) Details of payment on which tax is not deducted:

date of payment	amount of payment	nature of payment	name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in Sec. 139(1).

date of payment	amount of payment	nature of payment	name and address of the payer	amount of tax deducted	amount out of (VI) deposited, if any



e-utility also requires PAN, if available

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(ii) as payment referred to in sub-clause (ia)

(A) Details of payment on which tax is not deducted:

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									

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(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub- section (1) of section 139.

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payer	PAN of the Payer, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of tax deducted	Amount out of (VI) deposited, if any
1											

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Section 40(a)(ia).....

180

Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

- **30% of any sum payable to a resident**, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, **30% of such sum shall be allowed as a deduction** in computing the income of the previous year in which such tax has been paid:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.

Issue on Clause no. 2I

181

- ❑ As per amendment by Finance Act, 2014, w.e.f. AY 2015-16, **only 30% of the amount paid to resident is liable to be disallowed** (*where tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139*)
- ❑ Where tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in section 139(1), **30% of such sum shall be allowed as deduction** in the year in which such tax has been paid:
- ❑ **However, the reporting under tax Audit Report is to be made for the entire amount of payment.**

Clause 21 (b)

(iii) As payments referred to in sub-clause (ib)

A. Detail of payment on which levy is not deducted:

Date of payment	amount of payment	nature of payment	name and address of the payee and PAN, if available

B. Detail of payment on which levy has been deducted but has not been paid on or before due date specified in sub-section (1) of section 139.

date of payment	amount of payment	nature of payment	name and address of the payee and PAN, if available	Amount of levy deducted	Amount out of (VI) deposited, if any

Note: This point is not incorporated in Form 3CD but reporting is required in e-Utility

Section 40(a)(ib).....

Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy has not been deducted or after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such consideration, the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid;

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(iii) as payment referred to in sub-clause (ib)

(A) Details of payment on which levy is not deducted:

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									

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(B) Details of payment on which levy has been deducted but has not been paid on or before the due date specified in sub- section (1) of section 139.

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payer	PAN of the Payer, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of levy deducted	Amount out of (VI) deposited, if any
1											

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Clause 21 (b)

(iv) Under Sub-Clause (ic) [Wherever applicable]

Section 40(a)(ic)- Any sum paid on account of **fringe benefit tax** under Chapter - XIII.

(v) Under Sub-Clause (iia)

Section 40(a)(iia)- Any sum paid on account of **wealth-tax**.

Note: These clauses are not applicable. However, reporting still continues.

Clause 21 (b)

(vi) Under Sub-Clause (iib)

Section 40(a)(iib)-

Any amount—

(A) **paid** by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from,

a State Government undertaking by the State Government.

Inserted by Finance Act, 2013, w.e.f. 1-4-2014

Clause no. 21.....

187

Clause 21 (b)

(vii) Under Sub-Clause (iii)

date of payment	amount of payment	name and address of the payee



e-utility also requires PAN, if available

Section 40(a)(iii)- Any payment which is chargeable under the head "Salaries", if it is payable—
 (A) outside India; or
 (B) to a non-resident,
 and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B

Clause no. 21.....

188

Clause 21 (b)

(viii) Under Sub-Clause (iv)

Section 40(a)(iv)- any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries"

Clause no. 21.....

189

Clause 21 (b)

(ix) Under Sub-Clause (v)

Section 40(a)(v)- Any tax actually paid by an employer referred to in Clause (10CC) of Section 10.

Section 10(10CC)- in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment, within the meaning of Sec. 17(2), the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in sec. 200 of Companies act, 1956.

Brief: Detail of each payment is to be provided on which provisions of Section 40(a) are applicable in specific format

Format in e-utility

190

(iv) fringe benefit tax under sub-clause (ic)

(v) wealth tax under sub-clause (iia)

(vi) royalty, license fee, service fee etc. under sub-clause (iib)

(vii) salary payable outside India/to a non resident without TDS etc. under sub-clause (iii)

S.No.	Date of payment	Amount of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1								

Import CSV Fill Data Clear Data [CSV Template](#) [Help](#)

(viii) payment to PF /other fund etc. under sub-clause (iv)

(ix) tax paid by employer for perquisites under sub-clause (v)

Issues on Clause no. 21

191

- ❑ e-utility also provides facility to import CSV template to fill the details in Clause 21(b) along with CSV template with specified format.

Amendment by Finance Act, 2014

- The disallowance u/s 40(a)(ia) is restricted to only 30% of the amount in respect of which either TDS has not been deducted or having been deducted has not been deposited.
- The earlier definition of the specified payments have been enlarged to include ALL PAYMENTS stated under Chapter XVII-B of the Act, including Salary, Cross Word puzzles prizes, etc which have been claimed as expenditure.

[w.e.f. 01.04.2015]

Clause 21(c)
Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under Section 40(b)/40(ba) and computation thereof;

Format in e-utility.....

S.No.	Particulars	Section	Amount debited to P/L A/C	Amount admissible	Amount inadmissible	Remarks
1	Select	Select				

+ Add X Delete

- Select
- Interest
- Salary
- Bonus
- Commission
- Remuneration

- Select
- 40(b)
- 40(ba)

Clause no. 21.....

193

Clause 21(d)

(d) Disallowance/deemed income under Section 40A(3):

- A. On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under Section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

Clause no. 2I.....

B. On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in Section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession **u/s 40A(3A):**

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

Brief: Disallowance u/s 40A(3) to be reported on the basis of examination of books of account. Certificate from Assessee would not be sufficient.

ICAI's Comment

- Where the reporting has been done on the basis of the certificate of the assessee, the fact shall be clearly reported as an observation in clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as the case may be.
- It has been observed that the observation/ qualification under this clause have been provided in the notes attached to Form 3CA. However, the same should be reported under clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as the case may be.

Section 40A....

- (3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds * ten thousand rupees, no deduction shall be allowed in respect of such expenditure.
- (3A) Where an **allowance has been made** in the assessment for any year in **respect of any liability incurred** by the assessee **for any expenditure and subsequently** during any previous year (hereinafter referred to as subsequent year) **the assessee makes payment** in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds * ten thousand rupees.

* Sub. for "exceeds twenty thousand rupees," by the Finance Act, 2017 (w.e.f. 1-4-2018)

Rule 6DD.....

196

Notification No 208/2007, dt 27.06.2007

Rule 6DD- No disallowance of sum exceeding Rs 20,000 made to a person in a day otherwise than by a/c payee cheque or draft for payment for following:

- Payment made to – RBI, SBI, Cooperative/land mortgage Bank, Primary Agricultural Credit Society, LIC
- Payment to Govt. for legal tender
- **Payment made by-** LC, Mail or Telegraphic t/f, Book adjustment in bank or inter bank, BE, ECS, Credit card, Debit card
- Payment made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.

Rule 6DD.....

197

- **Payment for purchase of**
 - Agriculture or forest produce
 - Production of animal husbandry.
 - Fish or fish products
 - Products of horticulture or apiculture
- Payment for purchase of product produced without aid of power in cottage industry.
- Payment made in village or town & date of payment is not served by bank.
- Payment not exceeding Rs 50,000 by an assessee to his employee or his heirs as gratuity, retrenchment compensation etc.
- Payment of Salary to employee (Sec 192).
- Payment made on date when banks were closed.
- Payment made by person to his agent who requires to make cash payment for goods.
- Payment by authorized dealer for purchase of foreign currency

Clause no. 21.....

Clause 21(e)

e) Provision for payment of gratuity not allowable under Section 40A(7);

Section 40A(7)-

- a) Subject to the provisions of Clause (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.
- b) Nothing in Clause (a) shall apply in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year

Clause no. 21.....

199

Clause 21(f)

- f) any sum paid by the assessee as an employer not allowable under Section 40A(9);

Section 40A(9)-

No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or u/s 36(1)(iv)/(iva)/(v), or as required by or under any other law for the time being in force.

Clause no. 21.....

Clause 21(g-h)

g) Particulars of any liability of a contingent nature.

S.No.		Nature Of Liability	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

h) Amount of deduction inadmissible in terms of Section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Issues on Clause 21(h).....

201

- It is the duty of the assessee to provide details of amount inadmissible u/s 14A for examination to the auditor. The tax auditor may place reliance on the management representation (refer Standard on Auditing 580, *Written representations*).
- The tax auditor should provide his opinion as under:
 - a) **If the tax auditor is in agreement** with the assessee, should report the amount with suitable disclosures of material assumptions, if any.
 - b) **If the tax auditor is not in agreement** with the assessee with regard to the amount of expenditure determined, may give qualified opinion or adverse opinion or disclaimer of opinion.

Issues on Clause 21(h).....

202

In the case of **Maxopp Investment Ltd. vs CIT [2018] 402 ITR 640** , Supreme Court held that :-

- If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure.
- If expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure.

Issues on Clause 21(h).....

203

- **PCIT vs Moonstar Securities Trading and Finance Co. (P.) Ltd. [2019] 263 Taxman 458 (SC)**
AO can not straightaway reject expenditure offered for disallowance u/s 14A and apply rule 8D without assigning any reasons.
Also held in the case of **PCIT vs Hero Corporate Service Ltd. [2019] 262 Taxman 29 (SC)**
- **PCIT vs State Bank of Patiala [2018] 259 Taxman 314 (SC)**
Amount of disallowance u/s 14A can only be up to the amount of exempt income.
- **PCIT vs. GVK Project and Technical Services Ltd. [2019] 264 Taxman 76 (SC)**
In absence of any exempt income, disallowance can not be made u/s 14A of the Act.
Also held in the case of **PCIT vs. Oil Industry Development Board [2019] 262 Taxman 102 (SC).**

Clause no. 21.....

204

Clause 21(i)

i) Amount inadmissible under the proviso to Section 36(1)(iii).

Section 36(1)(iii) –

The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession would be allowed as a deduction in computing the income referred to in Section 28 of the Act.

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset ~~for extension of existing business or profession~~ (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

Note: The requirements of this sub-clause are applicable in respect of capital borrowed for acquisition of an asset for extension of the existing business or profession.

Issues on Clause no. 21

205

The broad principles enunciated in the guidelines of the Council of ICAI may be kept in mind while verifying the amount of inadmissible expenditure. After verifying the amount of inadmissible expenditure, if the tax auditor:

- a) is in agreement with the assessee, he should report the amount with suitable disclosures of material assumptions, if any.
- b) is not in agreement with the assessee with regard to the amount of expenditure determined, he may give qualified opinion or adverse opinion or disclaimer of opinion.
- c) For determining the admissible/inadmissible amount requirements of Accounting Standards 16 "Borrowing Cost" as well as ICDS IX should also keep in mind.

Issues on Clause no. 21

206

□ **Tum Nath Shaw v. ACIT [2019] 102 taxmann.com 56 (Kolkata - Trib.)**

Assessee made payment in excess of Rs. twenty thousand towards purchase of jaggery from farmers, in view of fact that those farmers were mostly uneducated and did not know how to operate bank accounts, assessee's case would fall under Rule 6DD and, thus, impugned disallowance made under section 40A(3) was to be deleted.

□ **Surya Merchants Ltd. v. DCIT**

Where assessee developer made payments exceeding Rs. 20,000 for purchase of construction materials on bank holidays. Since assessee's work was time bound manner and construction activities were carried out continuously even during holidays. Therefore, the said payments were made to avoid break in process of construction, so it could not be disallowed under section 40A(3).

□ **Tash Investment (P.) Ltd. v. ACIT [2019] 106 taxmann.com 190 (Ahmedabad - Trib.)**

In absence of any allocable expenses remotely connected to investment activity resulting in tax free income, no disallowance is called for in excess of actual expenditure.

Issues on Clause no. 21

207

□ **Apollo Sugar Clinics Ltd. v. DCIT [2019] 105 taxmann.com 254 (Hyderabad - Trib.)**

Only real dividend income is exempt from tax and not notional recognition of income at balance sheet date. Also, difference between value of actual investment made by assessee in mutual funds and value as on balance sheet was not dividend income. Hence, Section 14A cannot be invoked.

□ **Pr. CIT v. Moonstar Securities Trading and Finance Co. (P.) Ltd [2019] 105 taxmann.com 275 (SC)**

SLP filed against HC order was dismissed where High Court upheld Tribunal's order holding that AO could not straightaway reject expenditure offered for disallowance u/s 14A and apply Rule 8D without assigning any reasons.

□ **Pr. CIT v. Oil Industry Development Board [2019] 103 taxmann.com 326 (SC)**

SLP was dismissed by SC against the order of High Court where HC upheld Tribunal's order that in absence of any exempt income, disallowance under section 14-A of any amount was not permissible.

□ **Pr. CIT v. Hero Corporate Service Ltd. [2019] 103 taxmann.com 200 (SC)**

SLP was dismissed, where High Court upheld order passed by Tribunal deleting disallowance made u/s 14A holding that explanation of assessee and amount offered to tax could not have been rejected by AO in arbitrary manner.

Clause no. 22

208

Insertion by the IT (Tenth Amdt.) Rules, 2009, or CBDT N. No. 36/2009 dated 13-04-2009

Amount of interest **inadmissible** under Section 23 of Micro Small and Medium Enterprises Development Act, 2006.

This will have to be reported upon in all tax audit reports signed on or after 13-4-2009 irrespective of the Assessment Year to which the report pertains

ICAI's Comment

In some cases it has been observed that interest to MSME has been paid which is reflected through the Annual Report. However, the same was not reported in Tax Audit Report.

Provisions of Micro Small and Medium Enterprises Development Act, 2006

209

Section 23 of MSME Act, provides that:

“Notwithstanding anything contained in the Income-Tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.”

Note: The inadmissible interest has to be determined on the basis of the provisions of the MSMED Act, 2006.

Provisions of MSME Act.....

Section 16 of MSME Act,

Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, **at three times of the bank rate notified by the Reserve Bank.**

Section 15 of the MSME Act

It requires the buyer to make payment on or before the date agreed upon in writing, or where there is no agreement in this behalf, before the appointed day. It also provides that the period agreed upon in writing shall not exceed **forty five days** from the day of acceptance or the day of deemed acceptance.

Issues on Clause no. 22

211

- The tax auditor needs to report the amount of interest inadmissible under Section 23 of the MSMED Act, 2006 *irrespective of whether the amount of such interest has been debited to Profit and Loss Account or not*. In case the auditee has adopted mercantile system of accounting, the non-provision may affect true and fair view and the auditor should give suitable qualification.
- The tax auditor should verify that TDS under Section 194A is deducted from interest credited/ paid to MSEs and deposited with Central Government. [Clause 34 of Form No.3CD]

Issues on Clause no. 22

212

- Where the tax auditor is issuing his report in Form No. 3CB, he should verify that the financial statements audited by him contain the information as prescribed u/s 22 of the MSME Act (i.e. Requirement to specify unpaid amount with interest in the annual statement of accounts).
- If no disclosure is made by the auditee in the financial statements, auditor should give an appropriate qualification in Form No.3CB, **in addition to the reporting requirement in Clause 22 of Form No. 3CD.**

Clause no. 23

213

Particulars of any payment made to persons specified under Section 40A(2)(b).

S.No.		Name of Related Person	PAN of Related Person	Relation	Nature of trasaction	Payment Made(Amount)
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

ICAI's Comment

It has been observed that in certain cases Name and PAN of related persons were not reported.

Issues on Clause no. 23

214

- Any Payment made by AOP to its member for supply of goods should be reported.
- **“Specific Person”** means relative, partners, members, directors or person having substantial interest.
- A person will be deemed to have a **substantial interest** in a business or profession if, (in case of a company) the person is beneficially owning the shares (other than the preference shares), carrying not less than 20% of the voting power and in any other case, person is entitled to not less than 20% of the profits of Business or Profession.

- ❑ Tax auditor should obtain, from assessee, the list of 'specified persons' and expenditure/payment made to them and then scrutinize the items with reference to Sec. 40A(2).
- ❑ If information is not available about specified persons with the client, suitable disclaimer may be given.
- ❑ Sec 40A(2) – Payment to Specific Persons & AO is of the opinion that such payments is excessive or unreasonable. Then disallow the excessive or unreasonable amount.
- ❑ Amounts to be reported whether or not debited to Profit and Loss Account.
- ❑ The item does not require report of the auditor as to his own inference, whether the payment is excessive or unreasonable. He is required to specify the amounts paid to such related persons.

Issues on Clause no. 23

216

- **In case of a large Assessee**, it may not be possible to verify the list of all persons covered by this Section. Therefore, the information supplied by the assessee can be relied upon.

Circular No. 143, dated 20-8-1974, issued by the Board, clarifies that tax auditor can rely upon the list of persons covered u/s 13(3) as given by the managing trustee of a Public Trust.

The same analogy may be extended to this case. **Where the tax auditor relies upon the information in this regard furnished to him by the assessee it would be advisable to make an appropriate disclosure.**

Case Laws on Clause no. 23

217

❑ *Dy Cit v Joshi Formulabs (p) Ltd (2000) 67 TTJ 396 (Rajkot)*

A fully vouched and genuine expenditure cannot be disallowed u/s 40A(2)(b) even if made to sister concern.

❑ *Khan Carpets v CIT (2003) ITR 325 (All)*

Only when there was disproportionate increase in salary without showing exceptional circumstances for it, that the increase in salary could be disallowed.

❑ *Pr. CIT v. Patel Alloy Steel Co. (P.) Ltd [2019] 103 taxmann.com 432 (SC)*

SLP dismissed against the order of HC, where High Court upheld Tribunal's order deleting disallowance made by AO u/s 40A(2)(b) holding that once remuneration paid by assessee-company to its directors in preceding year was accepted by revenue, AO was not justified in considering and comparing remuneration paid in AY 2004-05.

Clause no. 24

218

Amounts deemed to be profits and gains under **Section 32AC**, **Section 32AD** or 33AB or 33ABA or 33AC

Format in e-utility.....

S.No.		Section	Description	Amount
1	<input type="checkbox"/>	Select ▼	<input type="text"/>	<input type="text"/>

Clause no. 24

219

Relevant Sections:

S. No.	Section	Particulars
1	32AC	Investment in new plant or machinery
2	32AD	Investment in new plant & machinery in Backward areas as prescribed
3	33AB	Tea development account, coffee development account and rubber development account
4	33ABA	Site Restoration Fund
5	33AC	Reserves for shipping business

Section 32AC- Investment in new plant or machinery.....

Contd....

220

- ❑ In respect of AY 2016-17, no deduction shall be allowed under Sub-Section (1)
- ❑ In respect of AY 2016-17, deduction shall be allowed under Sub-Section (1A) Where a company **engaged in the business of manufacturing or production of any article or thing**, acquires & install new asset and the amount of actual cost of such new assets acquired during any P.Y. exceeds Rs. 25 Crore **and such assets are installed on or before 31-03-2017**, then there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new assets.
 - ❑ **Where the year of installation is different from the year of acquisition, the deduction under sub-section (1A) shall be allowed in the year of installation.**
 - ❑ **No deduction under Sub-Sec.(1A) shall be allowed from AY 2018-19 onwards.**

Section 32AC- Investment in new plant or machinery.....

Contd....

221

Sub-Sec. (2)

- ❑ If any new asset acquired & installed by the assessee is **sold or otherwise transferred**,
- ❑ **except in connection with the amalgamation or demerger**,
- ❑ **within a period of 5 years** from the date of its installation,
- ❑ the amount of deduction allowed under sub-sec. (1) or (1A) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "PGBP" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

Sub-Sec. (3)

- ❑ Where the new asset is **sold or otherwise transferred in connection with the amalgamation or demerger**
- ❑ **within a period of 5 years** from the date of its installation,
- ❑ the provisions of sub-sec. (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

Section 32AC- Investment in new plant or machinery.....

Contd....

222

Sub-Sec. (4)

For the purposes of this Section, "**new asset**" means any new plant or machinery (other than ship or aircraft) but does not include—

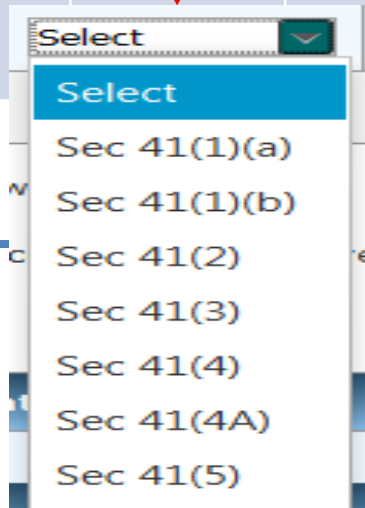
- i. any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;
- ii. any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
- iii. any office appliances including computers or computer software;
- iv. any vehicle; or
- v. any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

Clause no. 25

223

Any amount of profit chargeable to tax under Section 41 and computation thereof.

S. No.	Name of party	Amount of income	Section	Description of transaction	Computation if any



A dropdown menu is shown below the 'Section' column of the table. The menu is titled 'Select' and contains the following options: 'Select', 'Sec 41(1)(a)', 'Sec 41(1)(b)', 'Sec 41(2)', 'Sec 41(3)', 'Sec 41(4)', 'Sec 41(4A)', and 'Sec 41(5)'. A red arrow points to the 'Section' column header, and a green checkmark is visible in the top right corner of the dropdown menu.

Issues on Clause no. 25

224

- ❑ Loss of the Previous Year in which business ceased to exist can be set off from the above deemed profit u/s 41.
- ❑ State Profit chargeable to Tax under this Clause, irrespective of the relevant amount credited to P&L A/c or not.
- ❑ Any amount already credited in P&L A/c is to be reported in this Clause.
- ❑ Computation of chargeable profit to be reported in this Clause.

Clause no. 26

225

In respect of any sum referred to in Clause (a), (b), (c), (d), (e) or (f) or (g) of Section 43B, the liability for which :-

A. Pre-existed on the first day of the Previous Year but was not allowed in the assessment of any preceding Previous Year and was

(a) Paid during the Previous Year;

S.No.	Section	Nature of Liability	Amount

(b) Not paid during the Previous Year

S.No.	Section	Nature of Liability	Amount

Clause no. 26

226

- B. Was incurred in the previous year and was
- (a) paid on or before the due date for furnishing the return of income of the previous year under Section 139(1);

S.No.	Section	Nature of Liability	Amount

- (b) not paid on or before the aforesaid date

S.No.	Section	Nature of liability	Amount

(State whether sales-tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc. is passed through the profit & loss account.)

e-Utility provides space for remarks

Issues on Clause no. 26

227

- **Explanation 3C & 3D to Sec 43B** - Deduction on any unpaid interest or interest payable is allowed when it is 'actually paid' even if it is converted into Loan or Borrowing or Advance just like any other unpaid interest where deduction is allowed when it is 'actually paid'. **(Circular No. 7/2006 dated 17.7.2006)**. The assessee may have to furnish a certificate from the lender bank etc on orders of the assessing officer as an evidence that the 'actual payment' of interest has already been made.
- No deduction in case of waiver of interest as it is not representing actual payment.
- Conversion of interest due to bank into equity shares of the assessee company does not amount to actual payment under section 43B. **ITO vs. Glittek Granites Limited [2012] 25 taxmann.com 267 (Kol.- ITAT)**

Issues on Clause no. 26

- The provision made in the accounts for excise duty payable on the closing stock of finished goods should also be disclosed. The tax auditor should verify that the said goods have been cleared and the excise duty has been paid or adjusted against the Cenvat credit on or before the due date for filing return of income u/s 139(1). **[ICAI's Guidance Note on Tax Audit]**
- If the assessee is following mercantile system of accounting, then only Clause 26 becomes relevant. If assessee is following cash system of accounting, then tax auditor should write **“Not applicable since cash system followed by the assessee”** against this Clause.

Issues on Clause no. 26

229

- [2010] 228 CTR 72 (CAL.) Peerless General Finance & Investment Co. Ltd.v. CIT- Information contained in tax audit report does not enable Assessing Officer to make any prima facie adjustments under Section 143(1)(a) with reference to provisions of sec. 43B.
- CIT Vs S.P. Foundry 185 ITR 555 (All)

In certain cases Sales Tax collected are credited to separate A/c and does not form part of trading receipt, the amount is not charged in P&L A/c. Whether Sec 43B is attracted?

Judgment – The particulars should be reported whether have been debited to P&L A/c or not.

- [CIT vs. Maruti Udyog Ltd \[2010\] 186 TAXMAN 407 \(SC\) \(ruling of DHC in 92 ITD 119 reversed\)](#)- Whether question as to whether unutilized Modvat credit of earlier years adjusted in assessment year-in-question should be treated as actual payment of excise duty u/s 43B is a question of law - Held, yes
- [Vinir Engineering \(P.\) Ltd v. DCIT \[2010\] 186 TAXMAN 72 \(KAR.\)](#)
Whether rescheduling of interest payable to financial institution by means of fresh loan can be treated as interest payment deductible under Section 43B - Held, yes
- [CIT v. Jagdish Prasad Gupta \[2019\] 104 taxmann.com 232 \(Delhi\)](#)
Assessee would be justified in claiming enhanced license fee payable to railways as deduction in year in which such enhancement has accrued even though it has not paid such enhanced license fee in that year.

- In CIT v. Udaipur Distiller Co. Ltd. [2009] 180 Taxman 539 (SC), CIT v. McDowell & Co. Ltd. [2009]180 Taxman 528, 526, 524, 521, 514 (SC)

It was held that bottling fees payable for acquiring a right of bottling of IMFL, which is determined under Excise act and Rules, is neither fee nor tax, but is consideration for grant of approval by Government in respect of exclusive right to deal in bottling of liquor in all its manifestations. Therefore, bottling fee payable under Excise Law for acquiring a right of bottling of IMFL does not fall within purview of Section 43B.

- Manish Films (P.) Ltd. v. ITO[2019] 102 taxmann.com 184 (Indore - Trib.)

AO disallowed interest paid by assessee to State Finance Corporation assessee u/s 43B on basis of evidence being not produced but assessee had categorically stated that it had paid interest to M.P. Finance Corporation. AO should have verified from M.P. Finance Corporation regarding payment of interest. Since there was no such enquiry, disallowance was deleted.

Clause no. 27

232

Clause no. 27(a)

Amount of **Central Value Added Tax/ Input Tax** credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding balance in the accounts.

CENVAT / ITC	Amount	Treatment in Profit & Loss / Accounts
Opening Balance	<input type="text"/>	<input type="text"/>
Credit Availed	<input type="text"/>	<input type="text"/>
Credit Utilized	<input type="text"/>	<input type="text"/>
Closing / outstanding Balance	<input type="text"/>	<input type="text"/>

Brief: Central Value Added is substituted with Central Value Added Tax/Input Tax

Issues on Clause no. 27

233

In reference to Clause no. 27 (a):

- ❑ The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts & relevant excise & service tax records.
- ❑ If the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material, capital goods & service tax paid on input services is debited to the CENVAT/ service tax credit receivable account & not as a part of purchase cost of raw material, capital goods or cost of input services. The credit utilized is debited to the excise duty/service tax payable a/c & credited to CENVAT/ service tax credit receivable A/c. thus, the credit availed & utilized will not have any impact on the P/L A/c.
- ❑ Reporting requirement under Clause 14(b) of form no. 3CD is a requirement distinct & separate from reporting requirement under this Clause.
- ❑ **Similar procedure is to be followed for Input Tax credit on GST with necessary changes.**

Clause no. 27

234

Clause 27(b)

Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

S.No.	Type	Particulars	Amount	Prior period to which it relates (Year in yyyy-yy format)
1	Select			Select

Select
 Income Credited
 Expenditure Debited

the assessee has received any property being share of a company not being a company

Issues on Clause no. 27

235

In reference to Clause no. 27 (b):

- ❑ This Clause is applicable on the assessee following Mercantile System of Accounting.
- ❑ There is difference between expenditure/income of any earlier year debited/credited to P/L A/c & the expenditure/income relating to earlier year, which is crystallized during the relevant year.
- ❑ Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items.
- ❑ U/s 145 - Material Charges (expense) or credit (income) which arise in the current year as a result of error or omission in the account of earlier years will be considered as prior period items. **AS-5 issued by ICAI need to be considered for the purposes of this Clause.**
- ❑ Assessee sustained loss due to theft in one year, but became finally irrecoverable in subsequent year. Held it was allowable in the year in which loss became irrecoverable. **CIT vs Durga Jewelers 172 ITR 134 (M.P)**
- ❑ Expenditure of the earlier years means expenditure which arose or which accrued in any earlier year and excludes any expenditure of an earlier year for which the liability to pay has crystallized during the year. **3i Infotech Limited, Vs. Assistant CIT [2010] 329 ITR 257 [Bom.]**

Clause no. 28

236

Whether during the previous year the assessee has **received any property, being share** of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in **Section 56(2)(viiia)**, if yes, please furnish the details of the same.

Brief: Receipt Detail of shares of Pvt. Ltd. Company without consideration or for inadequate consideration is to be provided

Note: This section requires no reporting requirement in respect of Individual assessee.

Clause no. 28

Contd....

237

Following relevant details should be complied to comply with reporting requirements:

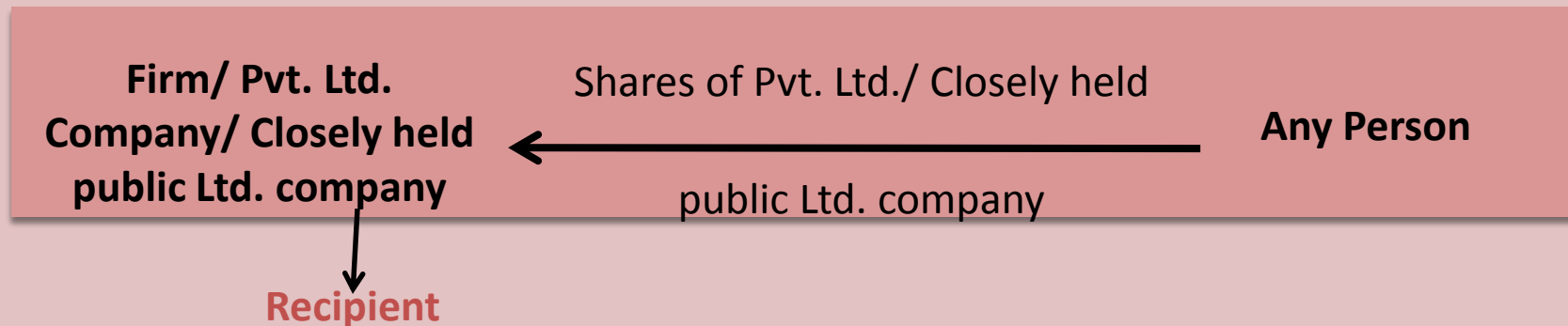
Sr. No.	Name of the person from whom shares have been received	PAN of the person, if available	Nature of shares (Quoted in RSE/Quoted in URSE/unquoted shares etc)	Name of the Company whose shares received	CIN of the company	No. of Shares Received	Fair Market value as per Rule 11UA(1)(c)	Consideration paid	Amount taxable under Section 56(2)(vii) (if the difference (e)-(f) exceeds Rs.50,000)	Remarks
(a)	(b)		(c)			(d)	(e)	(f)	(g)	

Format in e-utility

S. No.	Name of the person from which shares received	PAN of the person, if available	Name of the company whose shares are received	CIN of the company	No. of shares received	Amount of consideration paid	Fair Market Value of Shares

Issues on Clause no. 28

238



Applicable w.e.f 1st day of June, 2010 as inserted by Finance Act, 2010.

Issues/ points to be considered

- Provision of Rule 11UA(1)(c) should be considered.
- Obtain a list containing the details of shares received and verify the same from the books of account & relevant documents. However, if such shares received without consideration then same may be verified from the relevant documents such as share certificates issued, if any, De-mat account statement etc.
- Where the assessee does not disclose the complete information to the Tax Auditor in respect of such transaction.
- **Section 56 (2)(vii-a) doesn't apply to the property received by way of transaction not regarded as transfer u/s 47(via), 47(vic), 47(vicb), 47(vid) & 47 (vii).**

Clause no. 29

239

Whether during the previous year the assessee received any **consideration for issue of shares** which exceeds the fair market value of the shares as referred to in **Section 56(2)(viib)**, if yes, please furnish the details of the same.

Auditor shall maintain the following information:

S. No (a)	Name & status of person to whom shares have been issued (b)	PAN of person, if available (c)	Nature of shares (quoted in RSE/quoted in URSE/unquoted equity shares etc) (d)	No. of shares issued (e)	Consideration received (f)	F.M.V. as per rule 11UA (1)(c)/ 11UA (2) (g)	Face value of shares issued (h)	Amount taxable u/s 56(2) (viib) (report the difference (e)-(f) only if (e) is > than (g) else report 'N.A.')
								(i)

Brief: Detail in respect of shares issued by a Pvt. Ltd. Company at value more than FMV is to be provided

Note: This Clause is only applicable to the private limited companies.

Issues on Clause no. 29

240

Pvt. Ltd. Company/
Closely held public
Ltd. company

Recipient

Consideration for
← issue of shares exceeding FV

Resident

Applicable w.e.f 1st day of April, 2013 as inserted by Finance Act, 2012.

Format in e-utility

S.No.	Name of the person from whom consideration received for issue of shares	PAN of the person, if available	No. of Shares issued	Amount of consideration received	Fair Market value of the shares
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

+ Add X Delete

Issues on Clause no. 29

241

Issues/ points to be considered.....

- ❑ Obtain a list of shares issued to any person being a resident and verify the same from the books of account and other relevant documents.
- ❑ Provisions of Rule 11UA(1) & 11UA(2) should be considered to determine FMV.
- ❑ Where the consideration of the share is greater than Face value of the share, the difference of aggregate consideration received for such shares & FMV of shares, shall be chargeable to income tax u/h 'income from other sources'
- ❑ Where for determining the fair market value of unquoted equity shares, a valuation report has been obtained by the assessee from a merchant banker or an accountant, the auditor should obtain a copy of the same. Here, attention is invited to the Standard on Auditing-620 "Using the work of an Auditor's expert".

Issues on Clause no. 29

242

Issues/ points to be considered.....

- Provisions of this Clause are not applicable where the consideration is received
 - by a venture capital undertaking from a venture capital co./fund
 - by a co. from a class/classes of persons as may be notified by the CG in this behalf.

- **Innoviti Payment Solutions (P.) Ltd. Innoviti Payment Solutions (P.) Ltdv. ITO [2019] 102 taxmann.com 59 (Bangalore - Trib.)**

Where assessee allotted shares to a company on premium and FMV of shares was done by CA on basis of DCF method only depending on information about future projections provided by management of assessee, since assessee could not conclusively establish that such projection/estimation done by its management was on a scientific basis, Assessing Officer was justified in rejecting valuation done by CA.

- **ITO v. Trilok Chand Sain [2019] 101 taxmann.com 391 (Jaipur - Trib.)**

Agricultural lands fall under definition of an immovable property, hence, covered under ambit of section 56(2)(vii)(b), it is immaterial whether it falls under capital asset or stock-in-trade.

Issues on Clause no. 29

243

❑ **Cinestaan Entertainment (P.) Ltd. v. ITO [2019] 106 taxmann.com 300 (Delhi - Trib.):-**

If statute provides that valuation has to be done as per prescribed method and if one of prescribed methods has been adopted by assessee, then AO has to accept the same as there is no express provision under Act or rules, where AO can adopt his own valuation in DCF method or get it valued by some different valuer, approach finding of AO so to take FMV of share at 'Nil' u/s 56(2)(viib) and thereby making addition could not be approved.

❑ **Apollo Sugar Clinics Ltd. V. DCIT [2019] 105 taxmann.com 254 (Hyderabad - Trib.)**

Where Assessing Officer made additions to income of assessee-company u/s 56(2)(viib) in respect of excess share premium received by it, since assessee was 2nd level subsidiary of a company in which public was substantially interested, assessee's case would not fall u/s 56(2)(viib), thus, impugned addition made by AO was unjustified.

❑ **India Today Online (P.) Ltd. V. ITO [2019] 104 taxmann.com 385 (Delhi - Trib.)**

Where assessee allotted shares of a company held by it on premium and substantiated valuation of shares to satisfaction of AO that same was on basis of valuation report provided by valuer of said company whose shares were held by it wherein valuer had applied DCF method and said report was certified by an independent CA & AO accepted such valuation, CIT(A) was unjustified in rejecting impugned valuation or valuation method

Clause no. 29A

Inserted vide Notification No. 33/2018 dated 20/07/2018.

244

Clause 29A - Advance received on capital asset forfeited to be reported under this clause, as under

- a) Whether any amount is to be included as income chargeable under the head income from other sources as referred to in clause (ix) of sub-section (2) of section 56? **(Yes/No)**
- b) If yes, please furnish the following details:
 - i. Nature of income
 - ii. Amount thereof

Format in e-utility.....

S.No.		Nature of income	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Section 56(2)(ix)....

Section 56 (2): *In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:*

(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset;

Clause no. 29B

Inserted vide Notification No. 33/2018 dated 20/07/2018.

246

Clause 29B – Income of gifts exceeding Rs. 50,000 is to be reported under this clause, as under:

- a) Whether any amount is to be included as income chargeable under the head income from other sources as referred to in clause (x) of sub-section (2) of section 56? **(Yes/No)**
- b) If yes, please furnish the following details:
 - i. Nature of income
 - ii. Amount (in Rs.) thereof

Format in e-utility.....

S.No.		Nature of income	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Section 56(2)(x)....

Clause (x) in sub-section (2) of section 56 is inserted by Finance Act 2017 w.e.f. 1st April, 2017

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019 :

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

(c) any property, other than immovable property,—

- (A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;
- (B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of

Provided that this clause shall not apply to any sum of money or any property received—

- (I) from any relative; or
- (II) on the occasion of the marriage of the individual; or
- (III) under a will or by way of inheritance; or
- (IV) in contemplation of death of the payer or donor, as the case may be; or
- (V) from any local authority as defined in the *Explanation* to clause (20) of section 10; or
- (VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (VII) from or by any trust or institution registered under section 12AA; or
- (VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
- (IX) by way of transaction not regarded as transfer under clause (i) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47.
- (X) from an individual by a trust created or established solely for the benefit of relative

Section 56(2)(x)....

250

Brief Impact:

- ❑ The receipt of any sum of money or property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources".
- ❑ Clause (x) is proposed to be applicable to all assessee whereas clause (vii) & (vii-a) are applicable to specific assessees (i.e. Individuals/ HUF and firm or a company not being a company in which the public are substantially interested).

Issues for Consideration u/s 56(2)(x)

251

The section will lead to double taxation of the same income on deeming basis as explained in the example below:

Example:

- 'X' transfers his unquoted shares purchased at a cost of Rs.8 lakhs to 'Y' at Rs. 10 lakhs whereas the FMV of the shares as determined in the prescribed manner is Rs. 1 crore. Then in this situation, the provisions of proposed Section 50CA would be attracted in the hands of the seller, whose full value of consideration for computation of capital gains would be Rs.1 crore. Further, 'Y' who is purchaser would be liable to tax under section 56(2)(x)(c) on Rs. 90 lakhs (i.e. Rs. 1 crore less Rs. 10 lakhs) as income from other sources.

- Hence, the difference of Rs.90 lakhs between FMV & actual consideration will be taxable:
 - a) Under section 50CA, in the hands of seller; and
 - b) Under section 56(2)(x), in the hands of recipient.

- A similar consequence of double taxation resulting on account of the provisions of section 50C/43CA & 56(2)(x)(b).

Clause no. 30A

Inserted vide Notification No. 33/2018 dated 20/07/2018.

253

Clause 30A - Details about “Primary Adjustment” in transfer pricing to be reported as per section 92CE, as under:

- a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? **(Yes/No)**
- b) If yes, please furnish the following details:-
 - i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
 - ii. Amount (in Rs.) of primary adjustment:
 - iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
 - iv. If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
 - v. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

Section 92CE: Secondary adjustment in certain cases (Inserted by the Finance Act 2018, w.e.f. 01.04.2018)

254

- (1) Where a primary adjustment to transfer price,—
- i. has been made suo motu by the assessee in his return of income;
 - ii. made by the Assessing Officer has been accepted by the assessee;
 - iii. is determined by an advance pricing agreement entered into by the assessee under section 92CC;
 - iv. is made as per the safe harbour rules framed under section 92CB; or
 - v. is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

the assessee shall make a secondary adjustment:

Provided that nothing contained in this section shall apply, if,—

- i. the amount of primary adjustment made in any previous year does not exceed one crore rupees; and
- ii. the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

Section 92CE: Secondary adjustment in certain cases (Inserted by the Finance Act 2018, w.e.f. 01.04.2018)

255

(2) Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

"primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

"secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

Clause 30A Format in e-utility....

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S.No.		Under which clause of sub-section (1) of section 92CE primary adjustment is made ?	Amount (in Rs.) of primary adjustment	Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE.	If yes, whether the excess money has been repatriated within the prescribed time.	If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time	Expected date of repatriation of money
1	<input type="checkbox"/>	<input type="text" value="Select"/>	<input type="text"/>	<input type="text" value="Select"/>	<input type="text" value="Select"/>	<input type="text"/>	<input type="text" value="DD/MM/YYYY"/>

Clause no. 30B

Inserted vide Notification No. 33/2018 dated 20/07/2018.

257

Clause 30B – Limitation of interest deduction for borrowings from Associated Enterprises upto 30% of EBITDA is to be reported in this clause, as under:

- a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B?
(Yes/No)
- b) If yes, please furnish the following details:-
 - i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
 - ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)
 - iii. Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above

Clause no. 30B

258

- IV. Details of interest expenditure brought forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

- V. Details of interest expenditure carried forward as per sub-section (4) of section 94B:



A.Y.	Amount (in Rs.)

Contd....

Clause 30B

Format in e-utility....

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S.No.		Amount (in Rs.) of expenditure by way of interest or of similar nature incurred	Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)	Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above.	Details of interest expenditure brought forward as per sub-section (4) of section 94B.		Details of interest expenditure carried forward as per sub-section (4) of section 94B:	
					Assessment Year	Amount (in Rs.)	Assessment Year	Amount (in Rs.)
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select 	<input type="text"/>	Select 	<input type="text"/>

Section 94B: Limitation on interest deduction in certain cases *(Inserted by the Finance Act 2017, w.e.f. 01.04.2018)*

260

Section 94B relates to interest expenses more than Rs.1 crore claimed by an entity, paid or payable to its associated enterprises (non-resident):

- 1) Interest expenses claimed by any entity to its associates enterprises restricted to 30% of its EBITDA or interest paid or payable to associates enterprises whichever is less.
- 2) Applicable to Indian Company or Permanent establishment of a foreign Company in India(Borrower)
- 3) Debt issued to Non Resident or to a permanent establishment of a non-resident and who is associated enterprises. (includes guarantee also)
- 4) Allow to carry forward of disallowed interest expenses for eight assessment years immediately succeeding the assessment year for which the disallowance was first made.
- 5) Maximum allowance in subsequent years is to extent of maximum allowable interest expenditure in that particular year.
- 6) Exclude Banks and insurance business.

Clause no. 30C

Inserted vide Notification No. 33/2018 dated 20/07/2018.

261

Deferred further till 31st
March 2021

Clause no.31 (a) (As amended by Income -tax (18th Amendment) Rules, 2017 w.e.f 19-07-2017)

- (a) Particulars of **each loan or deposit** in an amount exceeding the limit specified in **section 269SS** taken or accepted during the previous year :—
- i. name, address and Permanent Account Number (if available with the assessee) of the lender or depositor;
 - ii. amount of loan or deposit taken or accepted;
 - iii. whether the loan or deposit was squared up during the previous year;
 - iv. maximum amount outstanding in the account at any time during the previous year;
 - v. whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
 - vi. in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

Clause no.31 (b) (As amended by Income -tax (18th Amendment) Rules, 2017 w.e.f 19-07-2017)

264

- (b) Particulars of **each specified sum** in an amount exceeding the limit specified in **section 269SS** taken or accepted during the previous year:—
- i. name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;
 - ii. amount of specified sum taken or accepted;
 - iii. whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
 - iv. in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

Format in e-utility of Clause no. 31(b)

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Clause 31(b)

S. No.	Name of the person from whom specified sum is received	Address of the person from whom specified sum is received	PAN (if available with the assessee) of the person from whom specified sum is received	Amount of specified sum taken or accepted	Whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account	In case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or account payee bank draft

Clause no. 31(ba)

Inserted vide Notification No. 33/2018 dated 20/07/2018.

266

(ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-

- i. Name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. Nature of transaction;
- iii. Amount of receipt (in Rs.);
- iv. Date of receipt

Clause no. 31(bb)

Inserted vide Notification No. 33/2018 dated 20/07/2018.

268

(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:

- i. Name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. Amount of receipt (in Rs.)

Format in e-utility of Clause no. 31(bb)

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Clause 31(bb)

S.No.		Name of the Payer	Address of the Payer	Permanent Account Number (if available with the assessee) of the Payer	Amount of receipt
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Clause no. 31(bc)

Inserted vide Notification No. 33/2018 dated 20/07/2018.

270

(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-

- i. Name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. Nature of transaction;
- iii. Amount of payment (in Rs.);
- iv. Date of payment

Format in e-utility of Clause no. 31(bc)

271

Clause 31(bc)

S.No.		Name of the Payee	Address of the Payee	Permanent Account Number (if available with the assessee) of the Payee	Nature of transaction	Amount of Payment	Date Of Payment
1							

Clause no. 31(bd)

Inserted vide Notification No. 33/2018 dated 20/07/2018.

272

(bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:

- i. Name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. Amount of payment (in Rs.);

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017);

Format in e-utility of Clause no. 31(bd)

273

Clause 31(bd)

S.No.		Name of the Payee	Address of the Payee	Permanent Account Number (if available with the assessee) of the Payee	Amount of Payment
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Section 269ST: Mode of undertaking

transactions (*Inserted by the Finance Act, 2017 w.e.f. 01.04.2017*)

274

- ❑ It is provided that no person shall receive an amount of **two lakh rupees or more** in aggregate from a person **in a day** or in respect of a **single transaction**; or in respect of transactions **relating to one event or occasion from a person, otherwise than** by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.
- ❑ It is further said that **restriction shall not apply to receipts by** Government, any banking company, post office savings bank or co-operative bank, **Transactions of nature referred in Section 269SS or persons or class of persons** central govt may notify.
- ❑ **The newly inserted provision is a move towards cash less economy and to reduce circulation of black Money.**
- ❑ If a person receives any amount in contravention of the said provisions, without a good and sufficient reason, he shall be liable to penalty of a sum equal to the amount of such receipt under Sec. 271DA of the Act.

Circulars & Notification by CBDT in respect of Section 269ST

275

- ❑ CBDT vide **Notification No. 28/2017 dated 05-04-2017** clarified that the Sec. 269ST will not apply to withdrawal of cash from banks, co-operative banks or post office savings banks.
- ❑ the CBDT vide **Circular No. 22/2017 dated 03-07-2017** seeks to clarify issues relating to receipt by Non-Banking Financial Companies ('NBFCs') or Housing Finance Companies ('HFCs') in the nature of repayment of loans.

*“it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a ‘single transaction’ as specified in clause (b) of section 269ST of the Act and **all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST**”*

This Notification shall be deemed to have come in to the force with effect from the 01/04/2017

Circulars & Notification by CBDT in respect of Section 269ST

276

- ❑ CBDT vide **Notification No. 57/2017 dated 03-07-2017** has notified list of transactions on which the provisions of Sec. 269ST of the Act shall not apply.
 - i. The receipt by a business correspondence on behalf of a banking company or co-operative bank according to the guidelines of RBI;
 - ii. Receipt by White Label ATM Operator from retail outlet sources of a banking company or co-operative bank, in accordance with the authorisation of RBI;
 - iii. Receipt by an agent of an issuer of prepaid payment instruments in accordance with the authorisation of RBI;
 - iv. Receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;
 - v. Receipt pertaining to any award / reward which is no included in total income under Section 10(17A).

Circulars & Notification by CBDT in respect of Section 269ST

277

- Sec. 10 (17A) states that, any payment made, whether in cash or in kind —
 - (i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or
 - (ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;shall not included in the total income of the assessee.

- This Notification shall be deemed to have come in to the force with effect from the 01/04/2017

271DA: Penalty for failure to comply with provisions of section 269ST
(Inserted by the Finance Act, 2017 w.e.f. 01.04.2017)

278

(1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Therefore penalty will be leviable u/s 271DA for receiving cash @ rate of 100%

Clause no.31 (c) (As amended by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

279

(c) Particulars of **each repayment of loan or deposit or any specified advance** in an amount exceeding the limit specified in **section 269T** made during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. amount of the repayment;
- iii. maximum amount outstanding in the account at any time during the previous year;
- iv. whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
- v. in case the repayment was made by cheque or bank draft, whether the same was ~~taken or accepted~~ **repaid*** by an account payee cheque or an account payee bank draft.

(This change is introduced by Notification No. 33/2018 dated 20/07/2018)*

Format in e-utility of Clause no. 31(c)

280

Clause 31(c)

Name of the payee	Address of the payee	PAN (if available with the assessee) of the payee	Amount of the repayment	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account	In case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft

Clause no.31 (d) (As amended by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

281

(d) Particulars of **repayment of loan or deposit or any specified advance** in an amount exceeding the limit specified in **section 269T** received **otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account** during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. amount of **repayment of*** loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

(This change is introduced by Notification No. 33/2018 dated 20/07/2018)*

Clause no.31 (e) (As amended by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

282

(e) Particulars of **repayment of loan or deposit or any specified advance** in an amount exceeding the limit specified in **section 269T** received by a **cheque or bank draft which is not an account payee cheque or account payee bank draft** during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. amount of **repayment of*** loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)

(This change is introduced by Notification No. 33/2018 dated 20/07/2018)*

Format in e-utility of Clause no. 31 (d) & (e)

283

Clause 31(d)

S. No.	Name of the payer	Address of the payer	PAN (if available with the assessee) of the payer	Amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year

Clause 31(e)

S. No.	Name of the payer	Address of the payer	PAN (if available with the assessee) of the payer	Amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year

Brief discussion of clause 31 (d) & (e)....

284

- ❑ Clause 31 requires reporting on whether loan or deposit/ specified sum is taken/ repaid by cheque, bank draft or ECS and if taken by cheque or bank draft, whether by account payee cheque/ bank draft.
- ❑ **Clause 31 also requires reporting by the recipient under sub-clause (d) & (e).** The recipient has to furnish the name, address and PAN (if available) of the payer and the amount of loan or deposit or any specified advance received -
 - (1) under sub-clause (d), in case the repayment is received **otherwise than by a cheque or bank draft or ECS****
 - (2) under sub-clause (e), in case repayment is received by a cheque or bank draft, which is **not an account payee cheque or account payee bank draft.****

Amendment by Finance Act, 2015, applicable for A.Y. 2016-17 as effective from 01.06.2015

285

- ❑ **Section 269SS** has been amended w.e.f. 01.06.2015 to include:
 - ❑ taking or accepting of **'specified sum'** (being any sum of money receivable, whether as advance or otherwise, in relation to the transfer of an immovable property, whether or not the transfer takes place),
 - ❑ other than by an a/c payee cheque or a/c payee bank draft or by electronic clearing system through a bank account,
 - ❑ if the amount of such specified sum is Rs. 20,000/- or more.

- ❑ **Section 271D [Penalty for failure to comply with the provisions of section 269SS]** has been amended accordingly.

Amendment by Finance Act, 2015, applicable for A.Y. 2016-17 as effective from 01.06.2015

286

- ❑ **Section 269T** has been amended w.e.f. 01.06.2015 to include:
 - ❑ **Repayment of any specified advance received** by the person.
 - ❑ If the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances
 - ❑ Is Rs. 20,000/- or more
 - ❑ **Specified advance** means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.
- ❑ **Section 271E [Penalty for failure to comply with the provisions of section 269T]** has been amended accordingly.

Issues on Clause no. 31

287

- ❑ ECS, RTGS and NEFT etc. are now allowed as permissible mode to accept or repay the deposit or loan specified u/s 269SS & 269T respectively. (Amendment by Finance Act, 2014)
- ❑ Transaction of Current A/c also covered in 'Deposits'.
- ❑ In case of mixed A/c, transactions only related to Loans/Deposits are to be reported.
- ❑ Opening balance of Loan A/c is to be considered for calculation of 'maximum amount outstanding'.
- ❑ Security Deposit against contract etc are covered under Deposits'.

Accepting/ Repaying Loans/ Advances via Journal Entries:

- ❑ *Commissioner of Income-tax, (Central) IV v. Adinath Builders (P.) Ltd [2019] 102 taxmann.com 57 (SC)* HC held that receipt of any advance or loan by way of journal entries is in breach of section 269SS. But SC held that journal entries constitute a recognized mode of recording of transactions and in absence of any adverse finding by authorities that journal entries were made with a view to achieve purpose outside normal business operations or there was any involvement of money, there was a reasonable cause for not complying with section 269SS and penalty under section 271D was not to be imposed.
- ❑ The provisions of Section 269SS of the Act does not get attracted merely for transfer of amount to a loan account in the form of book entry. *CIT Vs. Worldwide Township Projects Ltd., [2014] 367 ITR 433 (Delhi)*
- ❑ *Contrary view has been taken by High Court of Bombay in CIT vs Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bombay)* wherein held that repayment of loan/deposit by merely debiting account through journal entries contravenes provisions of Section 269T.

Issues on Clause no. 3I

289

- ❑ Further, held by **ITAT- Bombay in Lodha Builders Pvt Ltd vs. ACIT, [2014] 34 ITR(T) 157**, that penalty cannot be levied u/s 271D and 271E if the transactions are bona fide & genuine even where accepting/ repaying loans/ advances via journal entries contravenes s. 269SS & 269T.
- ❑ Where the transaction is by an A/c Payee Cheque and no payment was made in Cash. Provisions of Sec 269SS shall not be attracted. **CIT Vs Noida Toll Bridge Co. Ltd 262 ITR 260 (Del)**
- ❑ If the cheque or bank draft through which loan is received is 'crossed' but words 'account payee' is not written in the crossing but the transaction is otherwise genuine and the bank confirms that these amounts have been deposited in assessee's account and are as per the banking norms and there was no flaw in the transaction, penalty under Section 271D is not imposable for such a trivial violation. **CIT v. Makhija Construction Co. [2002] 123 Taxman 1003 (MP)**
- ❑ **Circular No. 22 of 2017 clarified that receipt in nature of repayment of loan by NBFCs or HFCs the receipt of one installment of loan repayment shall constitute a single transaction and all the installments paid for a loan shall not be aggregated for the purpose of determining applicability of Sec. 269ST.**

Clause no. 32(a)

290

Clause 32 (a)

(a) Details of brought forward loss or depreciation allowance, **in the following manner**, to the extent available

S. No	Assessment Year	Nature of loss/ allowance	Amount as returned	Amount as assessed		Remarks
				Amount	Order u/s & date (according to E- utility)	

Clause no. 32(b)

291

Clause 32(b)

Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.

Note:

- Section 79 - Carry forward and set off of losses in the case of certain companies
- If there is any difference in the opinion of the tax auditor and that of the assessee in respect of information furnished regarding this clause, the tax auditor should state both the view points and also the relevant information in order to enable the tax authority to take a decision in the matter.

Issues on Clause no. 32(b)

Amendment by FA 2018:

- Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent. of the voting power, on the last day of the year or years in which the loss was incurred.
- the aforesaid section is amended to provide that nothing contained in the said section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner. **(w.e.f. 01/04/2018 i.e. A,Y, 2018-19 onwards)**

Issues on Clause no. 32(b)

Issues/ Points to be considered:

- This Clause is not applicable when 51% of the voting power is held by the same persons at the last day of P.Y. & the last day of P.Y. in which loss was incurred.
- This provision also shall not apply to a change in the voting power consequent upon:
 - (a) the death of a shareholder, or
 - (b) on account of transfer of shares by way of gifts to any relative of the shareholder making such gift..
 - (c) any change in the shareholding of an Indian company which is subsidiary of a foreign company arising as a result of amalgamation or demerger of a foreign company subject to the condition that 51 % of the shareholders of the amalgamating or demerged foreign company continue to remain the shareholders of the amalgamated or the resulting foreign company.
- However, the overriding provisions of sec.79 do not affect the set off of **unabsorbed depreciation** (section 32(2)). [*Refer CIT v Concord Industries Ltd. (1979) 119 ITR 458 (Mad)*], *CIT v. Shri Subbulaxmi Mills Ltd. 249 ITR 795 (SC)*].
- If the auditor place reliance on judicial pronouncement, he may mention the fact as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be .

Clause no. 32(c), (d),(e)

294

- c) Whether the assessee has incurred any **speculation loss referred to in Section 73** during the previous year, if yes, please furnish the details of the same.
- d) Whether the assessee has incurred any **loss referred to in Section 73A** in respect of any specified business during the previous year, if yes, please furnish details of the same.
- e) **In case of a company**, please state that whether the company is deemed to be carrying on a **speculation business as referred in explanation to Section 73**, if yes, please furnish the details of speculation loss if any incurred during the previous year.

Issues/ Points to be considered:

- Scrutinize the books of account and other relevant documents as to whether the assessee is carrying on any speculation business.
- Applicability of provisions of Sec. 73 in case of loss in trading of derivatives being shares and stocks
- Whether the term “Speculative Business” should be r.w. the term “Speculative Transactions”

Details to be maintained by auditor

For Clause no. 32(c), (d),(e)

Contd...

❑ For Clause 32 (c)

S. No.	Nature of loss	Amount of loss for the C.Y.	B/f loss of earlier year(s)	Total loss to be C/f to subsequent year	break up of the speculation loss in terms of the no. of years for which it has been C/f	Whether the speculation loss has been set off against any other income other than profit & loss, if any of speculation business
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❑ For Clause 32 (d)

S. No	Nature of specified business	Amount of loss incurred , if any, during the P.Y., with regard to specified business mentioned in (b)	Loss from specified business B/f from the earlier year	Amount of loss being set off against other specified business	Year of loss	Amount of loss being C/f to next A.Y. [(c) - (d)]	Whether loss set off against any other income other than from specified business as per sec 35AD of Act
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

Details to be maintained by auditor

For Clause no. 32(c), (d),(e)

296

Contd...

For Clause 32 (e)

S.No	Applicable Section	Nature of loss	A.Y. of incurring loss	Amount of loss	Amount set off during current A.Y.	Amount to be carried forward
1	2	3	4	5	6	7

Clause no. 32(c), (d),(e)

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Contd...

(c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year.

Select



If yes, please furnish the details of the same.

(d) Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year

Select



If yes, please furnish details of the same.

(e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73.

Select



If yes, please furnish the details of speculation loss if any incurred during the previous year.

Section 73- Losses in speculation business.....

Contd....

298

- 1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.
- 2) Where for any A.Y. any loss computed in respect of a speculation business has not been wholly set off under Sub-Section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following A.Y., and—
 - i. It shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and
 - ii. If the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following A.Y. and so on.
- 3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of Sec. 72(2) shall apply in relation to speculation business as they apply in relation to any other business.
- 4) No loss shall be carried forward under this Section for more than 4 assessment years immediately succeeding the A.Y. for which the loss was first computed.

Section 73A- Carry forward and set off of losses by specified business....

Contd....

299

- (1) Any loss, computed in respect of any specified business referred to in Section 35AD shall not be set off except against profits and gains, if any, of any other specified business.
- (2) Where for any A.Y. any loss computed in respect of the specified business referred to in Sub-Sec. (1) has not been wholly set off under Sub-Sec. (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following A.Y., and—
 - i. It shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that A.Y.; and
 - ii. If the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following A.Y. and so on.

Explanation to Section 73.....

300

- ❑ **Where any part of the business of a company**
- ❑ **other than**
 - ❑ A company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources"; or
 - ❑ A company the principal business of which is the business of banking or the granting of loans and advances
- ❑ **consists in the purchase and sale of shares of other companies,**
- ❑ such company shall, for the purposes of this Section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

Issues/Case laws....

301

ACIT v Hasmukh M. Shah [2003] 85 ITD 99 (AHD.)

The assessee, a registered sharebroker, had been carrying on speculation business on his own account and on account and on behalf of his clients and had been getting brokerage for the same. The assessee did not get its accounts audited under Section 44AB on the ground that his total turnover did not exceed the prescribed limit. The AO, viewed that for the purpose of section 44AB the entire turnover in the *dalali* business including, *inter alia*, transactions in the account of his constituents carried out through the assessee would be aggregated & was liable to get his accounts audited u/s 44AB & initiated penalty proceedings u/s 271B but it was held that where sharebroker does not sell goods of its constituents as his own and only charges commission for bringing two parties together to transactions of sale and purchase of shares, such transactions cannot amount to 'sale, turnover or receipt' of sharebroker himself within meaning of Section 44AB.

Issues/Case laws....

302

- **Om Stock & Commodities (P.) Ltd v DCIT [2014] 48 taxmann.com 186 (Mumbai - Trib.)**

Here it was held that value of sale transactions of commodity through MCX without delivery cannot be considered as turnover for purpose of Section 44AB, therefore, failure on part of assessee to get its accounts audited does not lead to levy of penalty u/s 271B.

- **Banwari Sitaram Pasari HUF v ACIT [2013] 29 taxmann.com 137 (Pune - Trib.)**

In the case above, assessee was engaged in online trading of commodities, as a speculative activity, annual value thereof could not be considered as 'turnover' in order to ascertain liability of assessee to get its accounts audited u/s 44AB.

Clause no. 33

303

Section-wise details of deductions, if any, admissible under Chapter VIA or **Chapter III (Section 10A, Section 10AA)**.

Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.

Brief: Deduction u/s 10A (*Special provision in respect of newly established undertakings in free trade zone, etc.*) and Section 10AA (*Special provisions in respect of newly established Units in Special Economic Zones*) also included and specified format provided .

Issues on Clause no. 33

304

- Chapter VIA of the Act deals with deductions in respect of certain payments, deduction in respect of certain incomes, & other deductions which have to be given effect to by the way of allowance from gross total income of the assessee.
- Chapter III relates to income which don't form part of total income, the reporting under this Clause is required only with respect to exemptions claimed u/s 10A & Section 10AA

(a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

305

Tax deduction and collection Account Number (TAN)	(1)
Section	(2)
Nature of payment	(3)
Total amount of payment or receipt of the nature specified in column (3)	(4)
Total amount on which tax was required to be deducted or collected out of (4)	(5)
Total amount on which tax was deducted or collected at specified rate out of (5)	(6)
Amount of tax deducted or collected out of (6)	(7)
Total amount on which tax was deducted or collected at less than specified rate out of (7)	(8)
Amount of tax deducted or collected on (8)	(9)
Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)	(10)

Issues on Clause no. 34 (a)

Contd....

306

- ❑ In-built checks not provided.

For example, Column (5)- *'Total amount on which tax was required to be deducted or collected out of (4)'*, should not exceed the amount specified in column (4).

- ❑ The detail is to be provided in accordance with the nature of payment.
- ❑ The tax auditor is required to provide the detail irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-b or XVII-BB.

ICAI's Comment

It has been observed that the total of expenses as mentioned under the clause under Tax Audit Report under specific heads like salary, rent etc were not matching with the relevant figures in financial statements.

As per Guidance note issued by the ICAI

- ❑ Rates of deduction is to be consider as per the law relevant to the P. Y.
- ❑ Refer relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source.
- ❑ **In case the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued u/s 195 or 197, the lower rate or nil rate, as the case may be will be considered as the specified rate for the purpose of reporting under this Clause.**
- ❑ As per the provisions of Sections 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source.
- ❑ In case of payment to non-residents, the applicable rate of TDS is to be read along with the Double Taxation Avoidance Agreement.

- ❑ There is no specific column to mention non- deduction of tax at source in the specified format. However, the amount may be calculated as follows

$$\text{Non- deduction} = \text{Column (5) less [(6) plus (8)]}$$

- ❑ Since the reference to Chapter XVII-B is made, it is clear that TDS under Income-tax Act is only covered. TDS under other laws (e.g. TDS on works contracts under State VAT laws) are not covered. The tax auditor is also not responsible for reporting timely deposit with the State Government of Profession Tax deducted from salaries of employees - **ICAI's Issues on Tax Audit.**
- ❑ If tax auditor does not agree with the auditee's views on deductibility/non-deductibility of tax in particular cases, it would be advisable to state both views (his views as well as the auditee's views)

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309

34 (a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

S.No.	Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
1										

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Clause no.34 (b) (As amended by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

Clause 34(b) has been substituted i.e. Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be mentioned.

(b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported.;

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311

b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for Furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported	If not, please furnish list of details/transactions which are not reported

Select
Yes
No

Select

- Form 24
- Form 24G
- Form 24Q
- Form 26
- Form 26A
- Form 26B
- Form 26Q
- Form 26QAA
- Form 26QBB
- Form 27
- Form 27A
- Form 27B
- Form 27BA
- Form 27C
- Form 27D
- Form 27E
- Form 27Q
- Form 27EQ

- ❑ Whether such detail is required to be provided only in case of default on the part of assessee in filing statement of tax deducted or collected?
- ❑ The Tax Auditor cannot merely rely on information provided by the client but have to examine books of account to determine the transaction on which provisions of Chapter-XVII B and Chapter XIIBB apply.
- ❑ Whether it is practically possible for the tax auditor to verify all the transactions to report compliance with provisions of Chapter XVII-B or XVII-BB, where the tax audit is time bound like in Banks.

Option provided in Form 3CA and Form 3CB under Qualification Type -
“TDS returns could not be verified with the books of account”

- ❑ A disclaimer may be provided by the tax auditor

Disclaimer: During the year, it is not possible for us to verify whether all the transactions of the assessee due to voluminous entries in the books of account and the transactions have been verified on test-check basis and explanation provided by the assessee.

Clause no. 34(c)

313

c) whether the assessee is liable to pay interest under Section 201(1A) or Section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest u/s 201(1A)/ 206C(7) is payable	Amount paid out of column (2) along with date of payment.				
		<table border="1"><thead><tr><th data-bbox="1151 776 1460 843">Amount</th><th data-bbox="1466 776 1785 843">Dates of payment</th></tr></thead><tbody><tr><td data-bbox="1164 862 1421 911"><input type="text"/></td><td data-bbox="1479 862 1736 911"><input type="text"/></td></tr></tbody></table>	Amount	Dates of payment	<input type="text"/>	<input type="text"/>
Amount	Dates of payment					
<input type="text"/>	<input type="text"/>					

Brief: Detail in respect of interest u/s 201(1A) & 206C(7), if any to be provided.

Sec. 201(1A)- Levy of simple interest on **failure to deduct** tax or payment thereof to the credit of Central Government

Sec. 206C(7)- Levy of simple interest on **failure to collect** tax or payment thereof to the credit of Central Government

Issues/Case laws....

314

- If the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account & also from part G of the statement generated by the department in form no. 26AS.
- In case the assessee had disputed the levy or calculation of interest under TRACES, in form no. 26AS, the auditor may re-calculate the amount of interest u/s 201(1A) or Section 206C(7) up to the date of audit report for reporting under this Clause & also mention the fact in his observations provided in form no. 3CA & form no. 3CB.

ICAI's Comment

It has been observed that in certain cases the date of payment with respective amount has not mentioned under the relevant columns of this sub-clause.

Clause no. 35

315

(a) In the case of a trading concern, give quantitative details of **principal items** of goods traded:

Item name	Unit	opening stock	purchases during the previous year	sales during the previous year	Closing Stock	Shortage/ excess, if any

Clause 35(b)

In the case of a manufacturing concern, give quantitative details of the **principal items** of raw material, finished products and by- products:

(A) Raw materials:

Item name	Unit name	Opening stock	Purchases during the previous year	Consumption during the previous year			

Sales during the previous year	Closing Stock	Yield of finished products	Percentage of yield	Shortage/ excess, if any

Issues on Clause no. 35

318

- ❑ **“Principal Items”** :- Items which constitute more than **10% of the aggregate value** of purchase, consumption or turnover.
- ❑ The tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons thereof.
- ❑ As required by **SA-501** “Audit Evidence - Additional considerations for specific items”, the tax auditor **(if he is issuing Form No. 3CB also)** should attend the physical stock-taking conducted by the management if the inventories are material unless such attendance is impracticable due to matters such as nature and location of the inventory.

Issues on Clause no. 35

319

- ❑ If the assessee is engaged in the manufacture of goods where the input of raw materials and the output of finished goods are recorded in different units of measurement, unless an alternative method is available to convert the end product into the same unit of measure as the inputs, the yield and shortage cannot be ascertained.

If the end product is a standard item and can be converted back and related to the input of the raw material in the same unit of measurement, it should be done to ascertain the shortage, yield etc. If it is not possible, the tax auditor should state the fact under this Clause.

- ❑ In case of companies, verify that these details tally with details given in annual accounts in the notes to accounts.

ICAI's Comment

It has been observed that in certain cases neither percentage of yield has been reported nor any qualification has been given in the Tax Auditor report.

Clause no. 36

320

In the case of a domestic company, details of tax on distributed profits under Section 115-O in the following form:-

Total amount of distributed profits	Amount of reduction as referred to in sec. 115-O(1A)(i)	Amount of reduction as referred to in sec. 115-O(1A)(ii)	Total tax paid thereon	Date of payment with amounts	
				Amount	Date of payment

Brief: Provisions of Section 115O-(1A) incorporated in the format

Sec. 115O(1A)- Amount of dividend to be reduced by

- (i) The amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary.....
- (ii) The amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in Clause (44) of Section 10.

Issues on Clause no. 36.....

321

Amendments by Finance Act, 2014

The dividend distribution tax is to be computed after grossing up of the Dividend Distribution Tax.

Now, where the amount of dividend paid or distributed by a company is Rs. 85, then DDT under the amended provision would be calculated as follows:

Dividend amount distributed = Rs. 85

Increase by Rs. 15 [i.e. $(85 \times 0.15) / (1 - 0.15)$]

Increased amount = Rs. 100

DDT @ 15% of Rs. 100 = Rs. 15

Tax payable u/s 115-O is Rs. 15

Dividend distributed to shareholders = Rs. 85

[w.e.f. 01-10-2014]

Issues on Clause no. 36.....

322

Amendments by Finance Act, 2018

DDT u/s 115-O is made applicable in respect of deemed dividend u/s 2(22)(e) at 30% (without grossing up). Thus, tax on deemed dividend is to be paid by the company itself.

Further, Section 115Q is amended so as to provide that the Company and the principal officer of the company shall be deemed to be an assessee in default if tax on distributed profits is not paid in accordance with the provisions of section 115-O in respect of deemed dividend u/s 2(22)(e)

[w.e.f. 01-04-2018]

Issues on Clause no. 36.....

323

- ❑ Sec 115-O Tax on distributed profits of Domestic Companies. The special levy at the prescribed rate, on the amount of dividend declared, distributed or paid (interim or other wise) out of current Profits or accumulated Profits.
- ❑ This tax shall be payable even if no Income tax is payable by such Company on its total Income.
- ❑ ***“Dividend”*** means dividend under Clause (22) of Sec 2 exclusive of sub Clause (e) advance or loan out of accumulated profit or shareholders etc.
- ❑ The Date of Payment should be verified from the Challans and Books of Account etc.
- ❑ Tax u/s 115-O should be deposited within 15 days of date of declaration/ distribution or payment which ever is earlier.

Clause no. 36A

Inserted vide Notification No. 33/2018 dated 20/07/2018.

324

Clause 36A - Dividend received u/s 2(22)(e) is required to be reported under this clause, as under:

- a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)
- b) If yes, please furnish the following details:-
 - i. Amount received (in Rs.)
 - ii. Date of receipt

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S.No.		Amount received (in Rs.)	Date of receipt
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Clause no. 37

325

Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/ item/ value/ quantity as may be reported/identified by the cost auditor.

Brief: Now Cost Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.

Issues on Clause no. 37

326

- ❑ The Auditor need not express any opinion if such Audit is ordered and not conducted.
- ❑ The Auditor should state the fact in his report if such Audit which has been ordered is not completed by the time he issues his Audit Report.
- ❑ Make note of any material observation made in such Report.
- ❑ Give information only for that Cost Audit Report which falls within the relevant Previous Year.

Clause no. 38

327

Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported /identified by the auditor.

Brief: Now Excise Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.

Issues on Clause no. 38

328

- ❑ This Clause does not require the tax auditor to verify or examine anything. All that it requires of the tax auditor is to specify (“Yes” or “No”/“N.A.”) whether any audit was conducted under the Central Excise Act, 1944.
- ❑ Tax auditor is not required to study the Central Excise audit report in detail. However, **he should take note of any material observation made in such Central Excise audit report** which may have relevance to the tax audit conducted by him.
- ❑ If excise audit ordered is not completed by the time tax auditor gives his report, then he shall state the same in his report
- ❑ Auditor is supposed to furnish information in respect of excise audit report the time period of which falls within the relevant P.Y.

Clause no. 39

329

Whether any **audit was conducted under Section 72A of the Finance Act, 1994 in relation to valuation of taxable services**, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/ identified by the auditor.

Brief: Detail of disqualification or disagreement in the report of audit u/s 72A of the Finance Act, 1994 (**Special Audit**) also to be specified

****Note:** 1) If such audit is not completed on time then auditor should report the same.
2) If such audit has been ordered but the same has not been carried out then under this Clause no need to express any opinion.

Section 72A of Finance Act, 1994

Special Audit

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person",—
- i. has failed to declare or determine the value of a taxable service correctly; or
 - ii. has availed and utilised credit of duty or tax paid—
 - a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
 - b) by means of fraud, collusion, or any wilful mis-statement or suppression of facts; or
 - iii. has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner,
- he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

1994....

331

The Hon'ble Delhi High Court in the case of **Mega Cabs Pvt. Ltd. v. Union of India [2016] 70 taxmann.com 51 (Delhi) {W.P.(c) No. 5192 of 2015, Date of decision: 03.06.2016}** has held that:

- (i) Rule 5A (2) of the Service Tax Rules, 1994 authorising officers of Service Tax Department or audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand is ultra vires Finance Act and therefore, it is struck down to that extent,
- (ii) Since “verification” in Section 94(2)(k) of the Finance Act, 1994 cannot be construed as audit of the accounts of an Assessee and, therefore, Rule 5A(2) cannot be sustained with reference to Section 94(2)(k) of the F. Act,
- (iii) Circular No. 181/7/2014-ST dt 10-12-2014 of the Central Government and CBEC Circular No. 995/2/2015-CX dt 27-02-2015, fixing power of audit and audit norms are ultra vires the F. Act and thus, struck down.

The hon'ble Supreme Court has stayed the operation of judgement of hon'ble Delhi High Court vide Special Leave to Appeal (C) No(s).26675/2016.

Clauses 37,38,39 as shown in utility

332

37

Whether any cost audit was carried out? Yes No NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

Nil

38

Whether any audit was conducted under the Central Excise Act, 1944? Yes No NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Nil

39

Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, Finance Act, 1994 in relation to valuation of taxable services as may be reported / identified by the auditor. Yes No NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Nil

Clause 40.....

333

Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

Serial number	Particulars	Previous year	Preceding previous year
1	<u>Total turnover of the assessee</u>		
2	Gross profit/turnover		
3	Net profit/turnover		
4	Stock-in-trade/turnover		
5	Material consumed/ finished goods produced		

(The details required to be furnished **for principal items of goods** traded or manufactured or services rendered)

Brief: Detail in respect of principal items to be provided. Detail for preceding year also to be provided

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Serial Number	Particulars	Previous Year			Preceding previous Year		
(a)	Total turnover of the assessee	<input type="text"/>			<input type="text"/>		
(b)	Gross profit / Turnover	Gross Profit	Turnover	<input type="text"/> (%)	Gross Profit	Turnover	<input type="text"/> (%)
(c)	Net profit / Turnover	Net Profit	Turnover	<input type="text"/> (%)	Net Profit	Turnover	<input type="text"/> (%)
(d)	Stock-in-Trade / Turnover	Stock-in-Trad	Turnover	<input type="text"/> (%)	Stock-in-Trad	Turnover	<input type="text"/> (%)
(e)	Material consumed / Finished goods produced	Materials con:	Finished Goods Pr	<input type="text"/> (%)	Materials cons	Finished Goods Pr	<input type="text"/> (%)

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

Issues on Clause no. 40.....

335

- ❑ **Calculate ratios for manufacturing or trading concern in terms of value only.**
- ❑ **Return has separate disclosure for Manufacturing & Trading A/c now. So, carefully reconcile Gross Profit or give observations accordingly.**
- ❑ Calculate Ratios for the business as a whole and not product wise.
- ❑ If Closing stock is Nil, this sub Clause (d) is not applicable.
- ❑ Stock in trade include only closing stock of finished goods not stock of raw material & work in progress.
- ❑ Overall G.P Ratio is enough if gross profit from each product is different.
- ❑ Depreciation on Plant & Machinery considered for valuation of Finished goods [AS-2 (revised)]
- ❑ Depreciation on P&M should be deducted to arrive at gross profit.
- ❑ Exclude extraordinary items for calculation of ratios unless it gives material effect [AS 5].

Issues on Clause no. 40.....

336

- ❑ Take the value of Sales, Purchase & Inventories before the Statutory Adjustment (of Sec 145A).
- ❑ **In case of Share broker**
 - i. Dealing for Commission – Calculate Net Profit Ratio
 - ii. Business – Calculate Gross Profit Ratio

Case Law

N.C. Budharaja & Co, (1993) 204 ITR 412(SC)

In this Case Hon'ble Supreme Court decided that construction of tunnels, bridges, dams etc is only a Service Activity and it cannot amount to manufacturing activity.

ICAI's Comment

According to Para 67.1 of Guidance note on tax audit "These ratios have to be calculated only for assesseees who are engaged in manufacturing or trading activities". The ratios are generally not mentioned in cases where the clause is not applicable. In such circumstances "not applicable" should be reported under this clause instead of leaving the same blank.

Clause no. 4I

337

Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings

Brief: Demand/ refund under laws other than the Income Tax Act, 1961 and Wealth Tax Act, 1957 to be furnished along with assessment particulars.

Clause no. 41

338

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Financial Year	Name of other tax law	State	Other Desc.	Type	Date of demand raised/refund received	Amount	Remarks
	NA					NA	NA

Select

- Central Excise Duty
- Central Custom Duty
- Service Tax
- Sales Tax/VAT
- State Excise Duty
- Goods & Services Tax
- Other Indirect Tax/duty

Select

- Demand raised
- Refund received

Issues / points to be considered on Clause no. 41

Contd....

339

- Legislative intention of insertion of this Clause in the Tax Audit report under Income Tax Act: Probably is to determine whether such demand has been claimed as expenditure by the assessee or not or whether the refund has been included in income or not.
- Generally, under other tax laws the Indirect tax laws such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax, Goods and service Tax, etc should be covered [*However, Octroi Duty, Entry Tax, cess or duty such as Marketing Cess, Cess on Royalty, etc. should not be covered as other tax laws*].
- The tax auditor doesn't need to furnish details in respect of those proceedings in which neither demand is raised nor refund is issued.
- Obtain a copy of all the demand/ refund orders issued by the governmental authorities during the P.Y. under any tax laws other than Income Tax Act and Wealth Tax Act.
- Where the demand/refund order pertains to a period other than the relevant P.Y. but issued during the P.Y., the same should also be reported.
- If there is any adjustment of refund against any demand, the auditor shall also report the same.

Issues on Clause no. 41

340

- ❑ The tax auditor should cross verify the details of demand, if any pending, from clause (vii) of COMPANIES AUDITOR REPORT ORDER (CARO) RULES, 2016
- ❑ The reporting by the tax auditor is subject to availability of information from the assessee.
- ❑ In case of refunds, the tax auditor should also verify whether the interest on such refund has been shown as income or not?
- ❑ The tax auditor should also report the consequential penalty if debited to P&L A/c in Clause No. 21

Clause No. 21(a)

- Expenditure by way of penalty or fine for violation of any law for the time being force.
- Expenditure by way of any other penalty or fine not covered above

Clause no. 42

Inserted vide Notification No. 33/2018 dated 20/07/2018.

341

Clause 42- Details w.r.t. Form 61 (details of No PAN/ Form 60 received), Form 61A (statement of Specified Financial Transactions), Form 61B (Statement of Reportable Account), is to be reported here, as under:

- a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)
- b) If yes, please furnish:

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.

Clause no. 42.

342

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61	Every person who has received any declaration in Form No. 60 (No PAN), on or after the 01.01.2016, in relation to a transaction specified in rule 114B, shall furnish a statement in Form No. 61 containing particulars of such declaration.	<ul style="list-style-type: none"> • where the declarations are received by the 30th Sep., be furnished by the 31st October of that year; and • where the declarations are received by the 31st March, be furnished by the 30th April of the financial year immediately following the financial year in which the form is received. 	The form 61 shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.

Clause no. 42.

343

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61A	Statement of Financial Transactions (SFT) is a record of the statement of specified financial transactions which are required to be furnished u/s 285BA of the Act shall be furnished in Form No. 61A. The nature and value of transaction to be furnished by the reporting person as specified under Rule 114E.	The form 61A shall be furnished on or before the 31 st May, immediately following the FY in which the transaction is registered or recorded. Assessee is not able to do so, the authorities would issue a notice to such an assessee, demanding the assessee to submit the form within 30 days from issuance of such notice.	It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.

Clause no. 42.

344

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61B	<p>This is a statement of reportable account required to be furnished under section 285BA(1)(k) shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account:</p> <p><i>Provided that where pursuant to such due diligence procedures no account is identified as a reportable account, a nil statement shall be furnished by the reporting financial institution.</i></p>	<p>The Form No. 61B shall be furnished for every calendar year by the 31st day of May following that year.</p> <p><i>Provided that the statement pertaining to calendar year 2014 shall be furnished by the 31st day of August, 2015.</i></p>	<p>It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data.</p>

For what and by whom Form 61A is filed?

[Rule - 114 E]

345

S. No	Nature and value of transaction	Class of person (reporting person)
1	<p>a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to <u>ten lakh rupees</u> or more in a financial year.</p> <p>b) Payments made in cash aggregating to ten lakh rupees or more during the financial year for purchase of pre-paid instruments issued by RBI.</p> <p>c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to fifty lakh rupees or more in a financial year, in or from one or more current account of a person.</p>	<p>A banking company or a co-operative bank to which the Banking Regulation Act applies (including any bank or banking institution referred to in section 51 of that Act).</p>
2	<p>Cash deposits aggregating to ten lakh rupees or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.</p>	<ul style="list-style-type: none">• Same as above and,• Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898.

S. No	Nature and value of transaction	Class of person (reporting person)
3	<p>One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to ten lakh rupees or more in a financial year of a person.</p>	<ul style="list-style-type: none"> • Banking company and Post Master General as earlier, • Nidhi Companies • Non-banking financial company which holds a certificate of registration under section 45-IA of the RBI Act, to hold or accept deposit from public.
4	<p>Payments made by any person of an amount aggregating to—</p> <p>(i) one lakh rupees or more <u>in cash</u>; or</p> <p>(ii) ten lakh rupees or more by <u>any other mode</u>, against bills raised in respect of one or more credit cards issued to that person, in a financial year</p>	<p>A banking company as specified earlier and any other company or institution issuing credit card.</p>
5	<p>Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).</p>	<p>A company or institution issuing bonds or debentures</p>

S. No	Nature and value of transaction	Class of person (reporting person)
6	Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares.
7	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013
8	Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

S. No	Nature and value of transaction	Class of person (reporting person)
9	<p>Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ten lakh rupees or more during a financial year.</p>	<p>Authorised person as referred to section 2(c) of the Foreign Exchange Management Act, 1999.</p>
10	<p>Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more or valued by the stamp valuation authority referred to in section 50C of the Act at thirty lakh rupees or more.</p>	<p>Inspector-General appointed u/s 3 of the Registration Act or Registrar or Sub-Registrar appointed under that Act.</p>
11	<p>Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any.)</p>	<p>Any person who is liable for audit under section 44AB of the Act.</p>

S. No	Nature and value of transaction	Class of person (reporting person)
12	<p>Cash Deposits during the period 9th November 2016 to 30th December 2016 aggregating to –</p> <ul style="list-style-type: none"> • 12,50,000 or more in one or more current a/c of a person, or • 2,50,000 or more in one or more a/c (other than a current a/c) of a person 	<p>A banking company and Postmaster General as mentioned above.</p>
13	<p>Cash Deposits during the period of 1st April 2016 to 9th November 2016 in respect of accounts that are reportable under Serial No. 12</p>	<p>A banking company and Postmaster General as mentioned above.</p>

Reportable Account [Rule – 114F(6)]

350

A **Reportable Account** means a financial account, which has been identified pursuant to the due diligence procedure, as held by:

- 1) A reportable person; or
- 2) An entity, not based in United States of America, with one or more controlling persons that is a specified U.S. person; or
- 3) A passive non-financial entity with one or more controlling persons that is a person described in sub-clause (b) of clause (8) of the rule 114F.

Reporting Financial Institution (i.e. RFI)

[Rule – 114F(7)]

351

“Reporting financial institution” means,-

- a) a financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution, that is located outside India; and
- b) any branch, of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India;

Reportable person [Rule – 114F(8)]

352

Reportable person" means,-

- a) one or more specified U.S. persons; or
- b) one or more persons other than,
 - i. a corporation, the stock of which is regularly traded on one or more established securities markets;
 - ii. any corporation that is a related entity of a corporation mentioned in item (i);
 - iii. a Governmental entity;
 - iv. an International organisation;
 - v. a Central bank; or
 - vi. a financial institution,

that is a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory or an estate of a decedent who was a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory;

U.S. Person [Rule – 114F(10)]

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"U.S. person" means,-

- a) an individual, being a citizen or resident of the United States of America ;
- b) a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;
- c) a trust if,-
 - i. (i) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
 - ii. (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
- d) an estate of a decedent who was a citizen or resident of the United States of America;

Information to be maintained and reported [Rule – 114G]

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After the RFI has identified the reportable accounts, RFI needs to report specific information in respect of each reportable account. As per Rule 114G(1), RFI needs to maintain and report the following information in case of each Reportable Account:

- a) **The name, address, taxpayer identification number** (assigned to the account holder by the country or territory of his residence for tax purposes) and **date and place of birth** (in the case of an individual) **of each reportable person**, that is an account holder of the account;
- b) **In the case of any entity which is an account holder** and which, after application of due diligence procedures prescribed in rule 114H, is identified as having one or more controlling persons that is a reportable person,-
 - The name and address of the entity, taxpayer identification number** assigned to the entity by the country or territory of its residence; and
 - The name, address, date and place of birth of each such controlling person and taxpayer identification number** assigned to such controlling person by the country or territory of his residence;

Information to be maintained and reported [Rule – 114G]

Contd....

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- c) **The account number** (or functional equivalent in the absence of an account number);
- d) **The account balance or value** (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of relevant calendar year or, if the account was closed during such year, immediately before closure;
- e) **in the case of any custodial account,-**
 - ❑ the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year; and
 - ❑ the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;

Information to be maintained and reported [Rule – 114G]

Contd....



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- f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year;*
- g) in the case of any account other than that referred to in clause (e) or (f), the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the relevant calendar year; and*
- h) in the case of any account held by a non-participating financial institution, for calendar year 2015 and 2016, the name of each non-participating financial institution to which payments have been made and the aggregate amount of such payments:*

Clause no. 42

Format in e-utility

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S.No.		Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.
1	<input type="checkbox"/>	<input type="text"/>	Select 	<input type="text" value="DD/MM/YYYY"/>	<input type="text" value="DD/MM/YYYY"/>	Select 	<input type="text"/>

Select

- Form No.61
- Form No.61A
- Form No.61B

Select

- Yes
- No

Clause no. 43

Inserted vide Notification No. 33/2018 dated 20/07/2018.

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Clause 43 – Details w.r.t. Country by Country (CbC) reporting as referred in section 286 is required to be reported in this clause, as under:

- a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)
- b) If yes, please furnish the following details:
 - i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
 - ii. Name of parent entity
 - iii. Name of alternate reporting entity (if applicable)
 - iv. Date of furnishing of report

Clause no. 43

Format in e-utility

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(a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286

Select

YES

NO

Not due

(b) if yes, please furnish the following details:

- Select
- Assessee
- Parent entity
- Alternate reporting entity

Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity	Name of parent entity	Name of alternate reporting entity (if applicable)	Date of furnishing of report
<input type="text" value="Select"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="DD/MM/YYYY"/>

c) If Not due , please enter expected date of furnishing the report

In case of Not due, e-Utility provides space for expected date of furnishing of report

Section 286....

- **Section 286** contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co-operation and Development (OECD) and others.
- The country-by-country report requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business; the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

Section 286....

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- The Country-by-Country (CbC) report has to be submitted by parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.
- The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed five thousand five hundred crore rupees (Rs. 5,500 Crore) **[For threshold, Refer Rule 10DB(6)]**
- Non furnishing of this information will entail penalty u/s 271AA and also u/s 271GB.

Section 286....

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	Category	Form	Due Date
1	Parent entity or alternate reporting entity, resident in India [Section 286(2)]	File CbCR in Form 3CEAD (for every Accounting Year) to the Director General of Income-tax (Risk Assessment)	12 months from the end of reporting accounting year [Amended by FA, 2018 w.r.e.f. 01/04/2017]
2	Constituent entity (CE) resident in India, of Parent entity not resident in India [Section 286(1)]	File CbCR in Form 3CEAC to the Director General of Income-tax (Risk Assessment) Vide this form the CE intimates: <ul style="list-style-type: none"> • Whether it is alternate reporting entity of the group; or • The details of Parent entity or the alternate reporting entity and the country/territory of which said entity is a resident 	At least 2 months prior to the date of furnishing of CbCR in Form 3CEAD. [Refer Rule 10DB(2)] <i>Since the deadline for filing of Form 3CEAD is amended, <u>then the deadline for filing the Form 3CEAC should be 10 Months from the end of reporting accounting year</u></i>

Section 286....

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	Category	Form	Due Date
3	Constituent entity (CE) resident in India, of Parent entity not resident in India - Specified Cases <i>[Section 286(4) i.e. where parent entity is not obligated to file CbCR, no agreement for exchange of CbCR or Systematic Failure]</i>	<p>File CbCR in Form 3CEAD (for every Accounting Year).</p> <p>In case there are more than one CEs resident in India, The international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. <i>[Proviso to Section 286(4)]</i>. In that case, the intimation of the same needs to be filed by the designated CE in the Form 3CEAE with the Director General of Income Tax (Risk Assessment)</p>	<p><u>For Filing of CbCR in Form 3CEAD</u> - 12 months from the end of reporting accounting year <i>[Amended by FA, 2018 w.r.e.f. 01/04/2017]</i></p> <p><u>For Filing of intimation of designated CE in Form 3CEAE</u> – the due date of filing this form has not been prescribed. <i>[Refer Rule 10DB(5)]</i></p>

Issues for consideration u/s 286

364

- The due date of filing the form 3CEAE has been mentioned in the rules for Form 3CEAD to be filed two months prior to the date of furnishing of CbCR in Form 3CEAD.
- Lastly, clarity is required with respect to the term 'accounting year' [defined in Section 286]. For CEs of foreign parent companies, the 'accounting year' is defined that the annual accounting period generally followed by such foreign parent in its country of residence. For an India constituent entity, following April to March fiscal year. The aggregation of international transactions on any other basis (calendar year or any other different fiscal year followed by its parent entity) would be a significant challenge.

Clause no. 44 *(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

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***Deferred further till
31st March 2021***

Notes to Form No. 3CD

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- This Form has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB, as the case may be.

Brief: Annexure 1 (Part A & Part B) to Form 3CD
removed

Procedure for e-filing

Notification No. 34 /2013 dt. 01/05/2013

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- **Report of audit u/s 44AB shall be furnished electronically**
- Notification No. 34 /2013/ F.No.142/5/2013-TPL dated 1st May, 2013 provided that where an assessee is required to furnish a report of audit under Sections 44AB, 92E or 115JB of the Act, he shall furnish the same electronically.

Procedure for e-filing

CA to register as
Tax Professional



Assessee will Add
CA to his profile

Procedure



Assessee will
Approve the Form
filed by CA



CA will upload
Tax Audit Report

Overview of Provisions of Sec. 44AB

Compulsory Audit of Accounts.....

371

Accounts of previous year to be 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.

“Accountant” – As per Explanation below Sub-section 2 of Section 288 **[Explanation(i) to S.44AB]**

“Specified date” – means the due date for furnishing the return of income u/s 139(1) i.e. 30th day of September of A.Y. **[Explanation(ii) to S.44AB]**

Compulsory Audit of Accounts.....

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- **Clause (b) of Section 44AB is not applicable in case of company or any other artificial person as a company or artificial person cannot carry on a profession.**
- For the purpose of attracting Sec 44AB, receipts of an assessee by way of sale or trading business and receipts for doing job work can be clubbed to find out whether prescribed limit is exceeding or not. **Bajrang Oil Mills v. ITO [2007] 163 Taxman 154 (Raj.)**
- Requirement of compulsory tax audit u/s 44AB is only in respect of business carried on by a person and not in respect of his income from other sources. **Ghai Construction v. State of Maharashtra [2009] 184 Taxman 52 (Bom.)**
- Where the assessee is proprietor of more than one concern, **aggregate of all the businesses** to be taken into consideration for the purpose of compliance with the provisions of Sec. 44AB. **Asst. CIT & Anr. V. Dr. K. Satish Shetty [2009] 310 ITR 366 (Kar.)**

Tax Auditor.....

373

- A Chartered Accountant in part-time practice cannot be appointed as tax auditor u/s 44AB. *[Para 9.4 of ICAI's Guidance Note on Tax Audit.] 242nd meeting*
- An internal auditor of an assessee, whether working with the organization or independently practicing Chartered Accountant or a firm of Chartered Accountants, cannot be appointed as tax auditor. *(as per the guidelines of the council dated 12-12-2008.)*

Liability of Tax Audit.....

374

- There is no liability of tax audit if the assessee is not covered u/s 44AB.
- If income of an assessee is below the taxable limit, he will also be liable to get his account audited, if the turnover in business exceeds the threshold limit.
- Section 44AB is not applicable to the assessee covered u/s 44B and 44BBA.
- Section 44AB is applicable to NRIs.

Applicability of Sec. 44AB- Where income is exempt u/s 10

375

- **Provisions of Sec 44AB is not applicable to mutual funds whose income is exempt u/s 10(23D)** even though its turnover or gross receipts or sales may have exceeded. **Asstt. CIT v. India Magnum Fund [2002] 81 ITD 295 (Mum.- ITAT)**
- The provisions of S.44AB were not applicable where income of assessee was exempt u/s 10(20) and the assessee had no income which would fall under heading 'PGBP'. **CIT vs Market Committee, Sirsa [2012] 210 Taxman 20 (P&H)**
- However, **ICAI has taken a contrary view** in its **Guidance Note on Tax Audit** on the grounds that neither Section 44AB nor any other provisions of the Act exempt an assessee from tax audit if his total income is exempt from tax. **[ICAI's Guidance Note on Tax Audit].**

Applicability of Sec 44AB to Agriculturist....

376

Agriculturists who do not have any income under the head “Profits and gains of business or profession” and whose sale of agricultural products exceeds prescribed limit, **such a person need not get accounts audited u/s 44AB. [ICAI’s views in Guidance Note of Tax Audit]**

Applicability of sec 44AB to Political Parties....

377

Board are of the view that the income of the political parties are governed by the special provisions i.e. Section 13A of the I.T Act, 1961, and accordingly the provisions of Chapter-IVD which are applicable for 'profits and gains of business or profession' cannot be applied in the cases of political parties. Income of political parties from voluntary contributions cannot be said to be income from profession so as to attract Sections 44AB or 271B of the Income tax Act. **[Instruction No : 1988, [F. No. 225/128/99-ITA-II(Pt.)dt.19.10.2000]**

Issues - Applicability of Section 44AB....

378

Provision of Sec. 44AB are not applicable where assessee is engaged in promoting and developing 'game of hockey' in the country and does not involve any business activity and source of income is 'grant from Government'. **ITO v. Indian Hockey Federation [2011] 009 ITR (Tri.) 692, ITAT - Delhi**

Gross Receipts.....

379

“Gross Receipts” is not defined in the Income Tax Act

- It includes all the receipts in cash or kind, arising from carrying on business or profession, which is assessable as ‘Income from Business/Profession’ under the Act.
- The gross receipts of Business and Profession should not be clubbed to determine whether, the limit prescribed in Section 44AB(a) is exceeded or not.
- U/s 145(1) “Sales”, “Turnover” or “Gross Receipts” is computed either on cash or mercantile system.
- **“Sales Turnover”**- The aggregate amount for which sales are effected or services rendered by an enterprise. The ‘Gross Turnover’ & ‘Net Turnover’ (or ‘Gross Sales’ and ‘Net Sales’) are sometimes used to distinguish the sales aggregate before and after deduction of sales returns and trade discounts.”

Gross Receipts.....

380

- **In case of Share brokers**
 - Transaction entered on his personal A/c is also included in the sale value for the purpose of Sec 44AB.
 - Sub-broker is not different from a share broker.
- **Turnover or Gross receipts - In case of shares, securities & derivatives**
 - a) Speculative Transaction:- Aggregate of Positive or negative differences arising on settlement of contracts is to be considered as turnover.
 - b) Derivatives, futures & options:
 - Total of favourable and unfavourable differences
 - Premium received on sale of option
 - Difference of any reverse trade entered
 - c) Delivery based Transactions:- Total value of sales.

Gross Receipts.....

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- For an **Agent**, turnover is the commission earned by him and not the aggregate amount for which sales are effected or services are rendered. **[ICAI's Guidance Note on Tax Audit]**
- In case of **Chit Fund Companies**, subscriptions are not to be treated as 'income' or 'turnover' for tax audit purposes. **Dy. CIT v. Mangal Dayal Chit Fund (P.) Ltd.[2005] 92 ITD 258 (Hyd.)**
- In the case of **Construction Business**, advance received for booking of flats is to be included in words 'gross receipts' as the same is to be adjusted towards cost of construction and has element of profit. **Dy. CIT vs Gopal Krishan Builders [2004] 91 ITD 124 (Lucknow-ITAT)(SMC)**
- Service tax is to be excluded from gross receipts for purpose of determining income u/s 44BB. **Western Geco International Ltd. Vs Assistant Commissioner of Income-tax [2016] 71 taxmann.com 166 (Delhi - Trib.)**

Issue...

382

- Payment for providing various services, where the dominant purpose of the agreement is for prospecting, extraction or production of mineral oils, would be assessable u/s 44BB and not Section 44D. **Oil & Natural Gas Corporation Ltd. Vs CIT [2015] 376 ITR 306 (SC)**
- Section 44BB applies in a case where consideration is for services relating to exploration activity which are not in nature of technical services; if consideration is in nature of fee for technical services, provisions of either section 44DA or section 115A will be applicable. **ONGC as Representative Assessee of University of Calgary, Alberta, Canada vs. ADIT, International Taxation [2017] 81 taxmann.com 419 (Delhi - Trib.)**



MISCELLANEOUS

Signing of form

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- ❑ While signing the form, **following should be kept in view:**
 - judicial pronouncements may be relied upon in the matter of inclusion or exclusion of any items in the particulars to be furnished under any of the Clauses of the statement.
 - In case of conflict of judicial opinion on any particular issue, view which has been followed may be referred to while giving the particulars under any specified Clause.
 - General accounting principles/guidelines by ICAI/ICWAI should be followed.
 - Relevant changes in law relating to items to be reported on.
- ❑ Since auditor is to report the particulars as true and correct, he should obtain from the assessee the statement of particulars duly authenticated by him.

Penalty for failure to get accounts Audited- Sec. 271B

385

- If the assessee fails to get his accounts audited or furnish a report of such audit u/s 44AB,
 - a flat penalty u/s 271B shall be attracted.
 - ½ of total Sales, turnover or gross receipts in business / profession
 - Or
 - Sum of Rs. 150,000 (w.e.f.1-4-2011) (prior to that max. penalty was Rs. 1 Lac)
 - (Whichever is less)
- No penalty shall be imposed u/s 271B, if assessee proves that there was reasonable cause for such failure. **[Section 273B]**

The penalty order u/s 271B is appealable in view of S.246A(1)(m)

Reasonable Causes

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- a. Resignation of tax auditor and consequent delay;
- b. Bona fide interpretation of the 'turnover' based on expert advice;
- c. Death or physical inability of the partner in charge of the account
- d. Labor problems such as strike, lock-out for a long period, etc;
- e. Loss of accounts because of fire, theft, etc., beyond the control of the assessee;
- f. Non-availability of accounts on account of seizure;
- g. Natural calamities, commotion, etc.

Penalty for failure to get accounts

Contd....

Audited- Sec. 271B.....

387

- No penalty under Section 271B by ITO exceeding Rs. 10,000 in absence of prior approval of Joint Commissioner. **Sagar Dutta Vs. CIT, [2014] 44 taxmann.com 311 (Calcutta)**
- Held that no penalty is imposable u/s 271B for non-compliance with the provisions of Sec. 44AB on the ground that the returns were filed belatedly. Penalty is leviabale only if the assessee fails to get his accounts audited and obtain a report. **CIT v. Apex Laboratories Pvt. Ltd. [2010] 320 ITR 498 (Mad)**

Audited- Sec. 271B.....

388

- For purpose of Sec. 44AB turnover of all businesses carried on by assessee has to be **considered but provisions of Sec. 271B can be applied only in respect of that business, accounts of which have not been audited and not in respect of accounts which have been audited.** **Asst. CIT v. Smt. Bharti Sharma [2011] 44 SOT 230 (Del.)**
- Where assessee, an advertising agent, was under bona fide belief that commission income earned by him was not in excess of limits prescribed under section 44AB and, thus, he was not required to get books of account audited, impugned penalty order passed under section 271B deserved to be set aside. **Manoj S. Gugale vs. ITO [2017] 80 taxmann.com 193 (Pune – Trib.). Also see Off-shore India Ltd. Vs. DCIT [2017] 167 ITD 0635 (Kol.-Trib.)**

Penalty u/s 277A - Falsification of books of account or documents etc.

389

The Finance (No.2) Act, 2004 has inserted Section 277A w.e.f 1-10-2004. According to this Section, any person shall be punishable with rigorous imprisonment, which may extend from 3 months upto 2 years (*as substituted for 3 years by the Finance Act, 2012, w.e.f. 1-7-2012*) and shall be liable to fine if the following conditions are satisfied;

- 1) He willfully and with intent to enable any other person (assessee) to **evade any tax or interest or penalty** chargeable and imposable under the Income Tax Act.
- 2) He makes or causes to be made, any entry or statement in any books or other documents relevant for any proceeding under the Act which is false
- 3) He knows it to be false or does not believe it to be true. However, it shall not be necessary to prove that assessee has actually evaded any tax, penalty or interest chargeable or imposable under the Act.

Relevant Instructions

390

- **Proper utilization of information contained in the audit report submitted u/s 44AB of the I.T. Act, 1961.**

The instruction specifies the steps to be followed by the Assessing Officer on receipt of Tax Audit Report.

Instruction No. 1976, Date of Issue : 3.11.1999

Issue: delay in filing return

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- **CIT v. U.P. Rajya Sahkari Evam Bhoomi Vikas Bank Ltd [2013] 35 taxmann.com 471 (Allahabad)**

Where assessee had provided books of account to auditors in time, but failed to get accounts audited in time due to **delay on part of auditors**, penalty under section 271B was not leviable as there was reasonable cause for delay

- **Thanjavur Silk Handloom Weavers Co-operative Production & Sales Society Ltd. v. Union of India [2003] 132 Taxman 846 (Mad.) & CIT v. Sumer Chand Jain & Sons [2002] 122 Taxman 654 (Punj. & Har.)**

In these cases, the assessee failed to file audit report within specified date, but showed a **reasonable cause** for the same then, the revenue authorities have discretion to accept the said cause for delay in filing the return. Hence, penalty u/s 271B cannot be imposed.

Issue: delay in filing return

Contd...

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- **CIT v. Iqbalpur Cooperative Cane Development Union Ltd. [2013] 37 taxmann.com 421 (Uttarakhand)**

It was **not within assessee's domain to appoint the auditor** or to have auditor appointed by registrar or State Government to complete audit within specified date, thus, penalty u/s 271B is not justified for delay in filing the audit report.

- **Lakshmi Card Clothing Manufacturing Co. (P.) Ltd. v. Deputy CIT [2013] 35 taxmann.com 235 (Madras)**

In this case the delay in filing audit report was due to the illness of assessee's auditor, which amounted to a **reasonable cause** thus, penalty u/s 271B should not be imposed.

- **Metro Agencies v. Deputy CIT [2014] 45 taxmann.com 97 (Kerala)**

In this case, assessee-firm maintained proper documents for conducting its partnership business, but the firm delayed in filing the audit report with a plea of the absence of accountant. The **cause was unreasonable** & was not acceptable and, thus, impugned penalty order passed u/s 271B was to be upheld

Issue: delay in filing return

Contd...

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□ **APL (India) (P.) Ltd. v. Joint CIT [2014] 41 taxmann.com 85 (Mumbai - Trib.)**

In this case, statutory audit was completed late by the auditors and consequently there was a delay in receiving tax audit report. It amounted to a reasonable cause for non-compliance with provisions of section 44AB. Thus, penalty u/s 271B is not justified.

Issue: Failure to get accounts audited

394

□ **Bajrang Oil Mills v. ITO [2007] 163 TAXMAN 154 (RAJ.)**

The assessee was under a **bona fide belief** that it was not required to get its account audited u/s 44AB as its sales and job work receipts did not exceed the prescribed limit on being considered separately. But it was held that the expression 'total' qualifies all the three expressions, viz., 'sales', 'turnover' and 'gross receipts' & total sales indicate aggregate price of sales of commodities carried out by assessee as a trading business. Thus, the receipts by way of sale or trading business and receipts for doing job work is to be clubbed for comparison to the prescribed limit but there was **reasonable cause** for assessee's failure to comply with provision of section 44AB and, therefore, penalty levied was unjustified.

□ **Anahita Nalin Shah v. DCIT [2014] 43 taxmann.com 206 (Mumbai - Trib.)**

Assessee was into speculative business of shares & the transactions entered into by her were more than prescribed monetary limit for tax audit under section 44AB. Moreover, **no bona fide reasons** were furnished by the assessee, for failure to get books of accounts audited. Thus, levying penalty u/s 271B is justified.

Issue: Books cannot be rejected after tax audit u/s 44AB

395

- **R.C. Auto Centre (S.I.) v. ITO [2014] 46 taxmann.com 258 (Madras)**

It was held that books of account cannot be rejected and best judgment assessment cannot be done in a case where accounts have been audited by a qualified Chartered Accountant under section 44AB.

- **Mathura Zila Sahkari Bank Ltd. v. Deputy CIT [2004] 4 SOT 248 (AGRA)**
- Assessee is a co-operative society, thus it was required to get its accounts audited under the Co-operative Societies Act, 1912 or under the State Acts. It was held that if the accounts are audited under other law it will suffice and no further audit under section 44AB is required to be done. Hence, there is no default under the provisions of section 44AB & penalty u/s 271B is unjustified.

Issue: Unsigned report

397

□ **CIT v. Shivalik Medicare (P.) Ltd [2014] 41 taxmann.com 89 (Allahabad)**

In this case, the tax audit report was filed unsigned by mistake by the auditor. It was merely an irregularity and was duly rectified on being pointed out. Thus, any case for levying penalty under section 271B was not justified.

Issue: submission of report without financial statements

398

□ **Pradeep Agarwal v. ITO [2006] 150 taxman 23 (Agra) (Mag.)**

Here assessee had procured report of audit and had furnished the same in Form No. 3CD in specified time period, along with return u/s 139(1), but failed to furnish audited balance sheet, trading account and profit and loss account along with the report. This would not render report of audit, incomplete or illegal. Thus, there was no violation of section 44AB & penalty u/s 271B is unjustified.

Thank You!...

Presented By: CA. Sanjay Kumar Agarwal

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