

# *Tax Audit*

A.Y. 2015-16

U/S 44AB of Income Tax Act, 1961

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- Tax Audit Report
- Recent Developments
  - Clausewise analysis of Form No. 3CD
  - Procedure of E-filing of Tax Audit Report
- Overview of Provisions of Section 44AB

# Tax Audit Report

## Under Section 44AB r.w. Rule 6G

- Form 3CA/3CB
- Form 3CD

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

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## 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]*

# Recent Developments

- **Amendment in Form No. 3CA, Form No. 3CB & Form No. 3CD**  
*[Notification No. 33/2014, F.No.133/1/2014-TPL dated 25th July, 2014]*  
*[Inserted by Income-tax (7<sup>th</sup> Amendment) Rules, 2014]*
- **Report of audit u/s 44AB shall be furnished electronically**  
*[Notification No. 34 /2013/ F.No.142/5/2013-TPL dated 1<sup>st</sup> May, 2013]*  
*[Inserted by Income-tax (3<sup>rd</sup> Amendment) Rules, 2013]*

# 1. Amendments in Form 3CA/3CB

Notification No. 33/2014 dated 25<sup>th</sup> July, 2014

## **Amendments in**

- a. Form No. 3CA
- b. Form No. 3CB
- c. Form No. 3CA/3CB
- d. Other Amendments

## a. Amendments in Form 3CA.....

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Scope of Auditor increased

Not provided in e-utility

### Form 3CA

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.3 CD are true and correct subject to the following observations/ qualifications, if any

List provided in e-utility

## b. Amendments in Form 3CB.....

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

Not provided in e-utility

### Form 3CB

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.3 CD are true and correct subject to following observations/qualifications, if any:

a.

b.

c.

List provided in e-utility





## c. Amendments in Form 3CA/3CB.....

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### Format in e-Utility

S.No.		Qualification Type	Observations/Qualifications
1	<input type="checkbox"/>	<div>Select ▼</div>	<div></div>

 Add  Delete

## c. Amendments in Form 3CA/3CB.....

### Format in e-Utility.....

Select
Proper books of account, to unable reporting 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.

## c. Amendments in Form 3CA/3CB.....

### Format in e-Utility.....

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) (viia)/(viib) is 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

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

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- 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.

## d. Other Amendments in Form 3CA/ 3CB.....

- i. Stamp/ Seal of Signatory to Tax Audit Report required**
- ii. Balance Sheet date and Period of Profit & Loss A/c to be mentioned**

### **Form 3CA**

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

**balance sheet as at, ....;**

## d. Other Amendments in Form 3CA/ 3CB.....

### ➤ Form 3CB

**Now amended in e-utility**

1..... Balance sheet as on,..... and the profit and loss account / income and expenditure account for the period beginning from ...to ending on ....

3(b)(C)(i)..... balance sheet, of the state of the affairs of the assessee as at

31st March,.... and

(ii)..... 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 with Clause1, not amended in Revised form or e-utility**

## d. Other Amendments in Form 3CA/ 3CB.....

### iii. Reference to Section 44AB given for the signing of the Forms

**\*\*This 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 CA within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of sec. 226(2) of Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State.*

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

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## Meaning of “Accountant”

- Earlier, *any person who is, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant previous year* was also entitled to conduct tax audit u/s 44AB. However, under the revised Forms, reference to Sec. 44AB is given wherein only an Accountant within the meaning of Sec. 288 can conduct tax audit u/s 44AB which does not include such person.
- Sec. 288(2) refers to Sec. 226(2) of Companies Act, 1956 [**Sec. 141 of Companies Act, 2013**] Corresponding amendment has not been made in IT Act.
- Restricted State Auditors earlier qualified to be auditors of companies u/s 226(2) of the 1956 Act are not qualified u/s 141 of Companies Act, 2013.
- Under Sec. 141 of Companies Act, 2013, **only a Chartered Accountant is qualified to conduct audit of companies.**



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

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- 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 3CD

# 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 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.

Further amended by Notification No. 33/2014, F.No.133/1/2014- TPL dated 25<sup>th</sup> July, 2014.

# Key Highlights.....

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- Increased reporting requirements for the assessee and the auditor.
- 12 new Clauses (including sub-Clauses inserted, amendments made in 19 Clauses (including sub-Clauses) and format specified for 2 Clauses.
- 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.
- Amendments by Finance Act, 2014 under Central Excise Act, 1944- Obligation to furnish information return.

# List of Clauses.....

## 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./ identification no. allotted for the same
5	Status
6	Previous year
7	Assessment year
8	Relevant clause of the section 44AB under which audit has been conducted

# List of Clauses.....

## Part - B

Clause No.	Name
9	Particulars of members/partners
10	Nature of business / profession
11	Books of accounts & relevant documents
12	Presumptive income
13	Method of accounting
14	Valuation of closing stock
15	Conversion of asset into stock-in-trade
16	Items of income not credited
17	Valuation of property
18	Particulars of depreciation
19	Amounts admissible u/s 32AC- 35E

# List of Clauses.....

Contd....

## Part – B.....

Clause No.	Name
20	Bonus, commission, PF recoveries etc
21(a)	Amount debited to P/L A/c being in the nature of capital, personal & advertisement expenditure
21(b)	Amounts inadmissible u/s 40(a)
21(c)	Interest, salary, bonus, etc to partners
21(d)	Amounts inadmissible u/s 40A(3)
21(e)	Amounts inadmissible u/s 40A(7)
21(f)	Amounts inadmissible u/s 40A(9)
21(g)	Contingent liabilities

# List of Clauses.....

Contd....

## Part – B.....

Clause No.	Name
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/33AB/33ABA/33AC
25	Profits chargeable u/s 41
26	Payments u/s 43B
27(a)	Central Value Added Tax Credits
27(b)	Prior period expenditure
28	Property received under section 56(2)(viia)



# List of Clauses.....

Contd....

## Part – B.....

Clause No.	Name
29	Consideration for the issue of shares u/s 56(2)(viib)
30	Hundi loans
31(a)	Loans / deposits accepted
31(b)	Loans / deposits repaid
31(c)	Examining the books of accounts & relevant documents for the loan taken or the repayment
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

# List of Clauses.....

Contd....

## Part – B.....

Clause No.	Name
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)
35(a)	Quantitative details of trading concern
35(b)	Quantitative details of manufacturing concern
36	Tax on distributed profits
37	Cost audit report
38	Excise audit report
39	Service tax audit
40	Details of goods traded/ manufactured or services rendered
41	Details of demand & refund

## General principles kept in mind while preparing the statement of particulars for form 3CD:

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- (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....

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- ❑ The information in Form No.3CD should be based on the books of accounts, 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.

# **PART –A**

## ***Clause no. 1,2,3***

29

### **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.

### **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.

# Clause no. 4

30

Whether the assessee is **liable to pay indirect tax** like excise duty, service tax, sales tax, customs duty, etc. If yes, please **furnish the registration 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.....

S:NO		Type	Registration /Identification Number
1	<input type="checkbox"/>	Select	<input type="text"/>
<div> <span>+ Add</span> <span>- Delete</span> </div>			
		Select	
		Central Excise Duty	
		Central Custom Duty	Select
		Service Tax	01/04/2013 to 31/03/2014
		Sales Tax/VAT	
		State Excise Duty	2014-15
		Other Indirect Tax/duty	
the relevant clause of section 44AB under which the audit has been conducted *			

# Issues / points to be considered -

## Clause no. 4

Contd....

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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) and other indirect taxes 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 Export Import 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.**



# Amendments by Finance Act, 2014 - Obligation to furnish information return.

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## Amendments by Finance Act, 2014

- ❑ Section 15A inserted in the Central Excise Act empowering the Central Government to prescribe an authority or agency to whom the information return shall be filed by the specified persons such as Income-tax authorities, State Electricity Boards, VAT or Sales Tax authorities, Registrar of Companies.
- ❑ Information can be collected for the purposes of the act, such as, to identify tax evaders or recover confirmed dues. It also seeks to insert new Section 15B which provides for imposition of penalty on failure to furnish information return.

Provisions of Sec. 15A & 15B of Central Excise Act, 1944 made applicable in Service Tax and corresponding amendment made in Sec. 83 of Finance Act, 1944.

# Clause no. 5

34

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

35

## **Clause no. 6**

Previous year from .....to .....

## **Clause no. 7**

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

**Brief:** Period & assessment year to be specified

# Clause no. 8

36

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.25 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 44AD claimed to be lower than the presumptive profits and gains

## 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

37

## Format in e-utility

S.No.		Relevant clause of section 44AB under which the audit has been conducted
1	<input type="checkbox"/>	<div>Select</div>
<div><input type="button" value="+ Add"/> <input type="button" value="X Delete"/></div>		

Select

- Clause 44AB(a)- Total sales/turnover/gross receipts in business exceeding Rs. 1 crore
- Clause 44AB(b)- Gross receipts in profession exceeding Rs.25 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 44AD

# Issues/Case laws....

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- **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 the case mentioned above assessee had no income under the head 'PGBP' and the income was exempt under Section 10(20), then, Section 44AB was not applicable and thus, penalty u/s 271B was not imposable
- **Shalini Hospitals vs Asst CIT [2007] 108 ITD 534 (HYD.)**  
The assessee is a partnership firm engaged in running a nursing home wherein penalty was levied upon assessee u/s 271B for failure to get its account books audited under Clause (b) of Section 44AB when its income from profession exceeded specified limit. But in the instant case activities of the nursing home constituted business activity not professional activity and since turnover of assessee during years under appeal was below limit of Rs. 40 lakhs, prescribed in Clause (a) of Section 44AB, assessee was not required to get its accounts audited & the penalty so levied u/s 271B was unjustified.

# PART B

## Clause no. 9

39

### 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 revised 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”**

# Clause no. 9.....

40

## 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"/>



Select

Addition

Deletion

Change in profit sharing ratio



# Issues on Clause no. 9

41

- 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

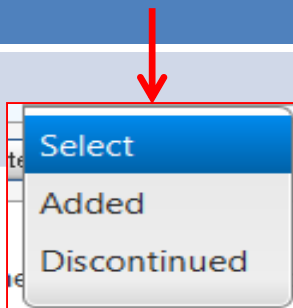
42

- 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

43

- 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

44

## 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.

## 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"/>
<div> Add  Delete</div>							

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?

- Earlier the tax auditor was only required to specify the list of books of account examined.

However, in the revised Form, the tax auditor is also required to specify nature of all the relevant documents on basis of which the tax audit has been conducted, 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.

# Issues on Clause no. 11.....

## Requirement to maintain books.....

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### Sec 44AA

Contd....

Specified  
profession(1\*)

Non specified  
profession or  
business

Limit of Rs  
150000 on  
receipts  
exceeds(2\*)

Limit of Rs  
150000 on  
receipts Does  
not exceed(3\*)

Limit of Rs. 120000  
on total income or  
of Rs. 10,00,000 on  
total sale receipts  
exceeds(3\*)

Limit of Rs. 120000  
on total income or  
of Rs. 10,00,000 on  
total sale receipts  
Does not exceed(2\*)

Books prescribed  
in rule 6F

Any books(4\*)

Any books(4\*)

No books  
mandatory

# Issues on Clause no. 11.....

## Requirement to maintain books.....

Contd....

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### **Note:**

- (1\*) specified person: legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession
- (2\*) In all of the three years immediately preceding the P.Y. or where the business/profession has been newly set up in the P.Y., then such P.Y.
- (3\*) In any one of the three years immediately preceding the previous year, or, where the business/profession has been newly set up in the previous year, then such P.Y.
- (4\*) Any books: means the books so as to enable the AO to compute his total income in accordance with the provisions of this Act.



# Issues on Clause no. 11.....

## Prescribed Books [RULE 6F (2) &(3) ]

- 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 1<sup>st</sup> & 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).
- 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)]

➤ **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 Sec 2(12A) to include:-**

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

➤ **For the purpose of Section 44AB, it is not necessary that any books of account or any accounts maintained by the assessee should at first be such books of account as are required u/s 44AA.**

Whether the books of account as prescribed u/s 44AA are maintained or not, other books of account are subject to be audited u/s 44AB. **S.J Agarwal and Co. v. ITO [2008] 114 ITD 27(Pune) (SMC)**

# Issues/Case laws....

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- ❑ **CIT v S.C. Naregal [2011] 16 taxmann.com 420 (Karnataka)**
- ❑ Pacca book of cash sales and purchase register are account books as defined under Section 2(12A). Thus, the account books maintained by assessee are required to be audited u/s 44AB when turnover exceeds the prescribed limit. Thus, the assessee would be liable to penalty u/s 271B.

# Clause no. 12

52

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....

S. No.	Section / Chapter/ Schedule	Business Covered
1.	44AD	Special provision for computing profits/gains of business on presumptive basis
2.	44AE	Transport business
3.	44AF	Retail Business <i>(This Section is inoperative w.e.f A.Y 2011-2012 and covered in s.44AD itself)</i>
4.	44B	Shipping business of a non-resident
5.	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.
6.	44BBA	Operation of aircraft by non-resident.

# List of Sections.....

54

S. No.	Section / Chapter/ Schedule	Business Covered
7.	44BBB	Civil construction etc. in certain turnkey power project by non-residents.
8.	<b>Chapter XII-G</b>	<b>Special provisions relating to income of shipping companies</b>
9.	<b>First Schedule</b>	<b>Rules for Section 44- Insurance Business</b>
10.	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.

- 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

56

- a) Method of accounting employed in the previous year.
- b) Whether there has 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.

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

*Specific Format provided*

- d) Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed u/s 145 and the effect thereof on the profit or loss.



- **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

- 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.

[w.e.f. 01.04.2015]

- 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.

# Clause no. 14

60

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

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:

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

*Specific Format provided*

- **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 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.

# Clause no. 15

62

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

Description of capital asset	Date of acquisition	Cost of acquisition	Amount at which the asset is converted into stock-in- trade

# Issues on Clause no. 15

63

- 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

64

## 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.



# Issues on Clause no. 15

65

- **Para 9.1** of the Accounting Standard (AS) 10, issued by the ICAI, provides that the cost of the fixed assets should include the non-refundable taxes or levies. **Since the VAT is in the nature of a refundable tax, it cannot be included in the cost of the capital goods.**
- Information under this Clause should be necessary not only in the year of conversion but also in the year of sale of relevant stock-in-trade. Since Sec. 45(2) provides only for the computation of capital gain in the year of conversion **but the due date of payment of tax is in the year of sale of such converted stock-in-trade.**

# Clause no. 16

66

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

In the following format

Description	Amount

# Issues on Clause no. 16

67

- 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)**]
- 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.

# Clause no. 17

68

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	Consideration received or accrued	Value adopted or assessed or assessable
---------------------	-----------------------------------	---

**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

69

## Format in e-utility

S. No.	Details of Property	Address of Property					Considera- tion received or accrued	Value adopted or assessed or assessable
		Line 1	Line 2	City/ Town	State	Pin code		



State outside India  
also covered

**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/ 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.

# Clause no. 18

72

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.



# Clause no. 18

73

- 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. ~~Modified Value Added Tax~~ 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.

- e) Depreciation allowable

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

**Brief:** Central Value Added Tax is substituted with Modified Value Added Tax

# Clause no. 18

## Format in E-utility...

S.No.	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					



Details	Deductions (C)	Depreciation allowable	WDV at the end of the year (A+B+C-D)
Import CSV			
Fill Data			
View Data			

# Issues on Clause no. 18....

75

- 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:** Revised 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.

# Issues on Clause no. 18

76

- Depreciation is not allowed on an amount equivalent to CENVAT 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.
- Subsidy received over & above of WDV of block of asset in the absence of specific provisions not taxable.
- Interest relatable to any period after such asset is first put to use is not a part of actual cost.
- 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

77

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.

## **Brief:**

New Sections Specified- 32AC, 35AD, 35CCC, 35CCD

Section Deleted- 33AC

Breakup of Section 35 provided- 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1)(iv), 35(2A) and 35(2B)

# List of Sections.....

Contd....

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
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
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	175% of amount contributed (from A.Y. 2011-12) 125% of amount contributed (till A.Y. 2010-11)

# List of Sections.....

Contd....

Section	Amount debited to P&L Account/Payment	Amounts admissible/Quantum of deduction
35(1)(ia)	Amount paid to an approved company registered in India to be used for scientific research & development	125% of amount paid (from A.Y. 2009-10)
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	125% of amount paid
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

# List of Sections.....

Contd....

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	200% of amount paid (from A.Y. 12-13 onwards) 175% (for A.Y. 2011-12) 125% (till A.Y. 2010-11)
35(2AB)	Expenditure on scientific research on in-house research and development facility as approved by the prescribed authority <b><u>From A.Y. 2012-13</u></b> : By a company engaged in business of bio-technology or business of manufacture/ production of any article or thing other than specified in Eleventh. <b><u>Upto A.Y. 2011-12:</u></b> 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.	200% of expenditure incurred (from A.Y. 2011-12 & onwards) 150% of expenditure incurred (from A.Y. 2001-02 to A.Y. 11-12) 125% (till A.Y. 2000-01)
35ABB	Capital Expenditure on license to operate telecommunication services	Deduction = (1/total no. of previous years)* amount of expenditure



# 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
35AD	Deduction in respect of capital expenditure on specified business	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 (wef A.Y. 15-16)/ wafer fabrication manufacturing unit (wef A.Y. 15-16) 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
35CCA 81	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	150% of expenditure
35CCD	Expenditure on skill development project by a Company	150% of expenditure
35D	Amortization of Preliminary Expenses by Indian resident or Company	(1/10)* expenditure For each of the 10 successive P.Y. beginning with P.Y. in which business commences

# 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 32AC- Amendments by Finance Act, 2014 [w.e.f. 01-04-2015]

84

## SubSection (1A) of Section 32AC inserted

### [Also, explained with Clause No. 19 earlier]

- ❑ 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 and installed during any P.Y. exceeds Rs. 25 Crore**
- ❑ **then there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new assets.**
- ❑ No deduction under Sub-Sec.(1A) shall be allowed
  - For A.Y. 2015-16 to the assessee, which is eligible to claim deduction under Sub-Sec.(1) for the said A.Y.
  - any A.Y., 2018-19 and onwards.

## SubSection (1B) of Section 32AC inserted

*(1B) No deduction under sub-Section (1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.*

# Amendments in by Finance Act, 2014

85

## ➤ **Section 35AD [w.e.f. 01/04/2015]**




- 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-Section 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 8 years. (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

86

## Format in e-utility

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 14provisions 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"/>
<div> Add  Delete</div>				

# Issues on Clause no. 19

87

- 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 revised 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

88

## 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

89

## 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

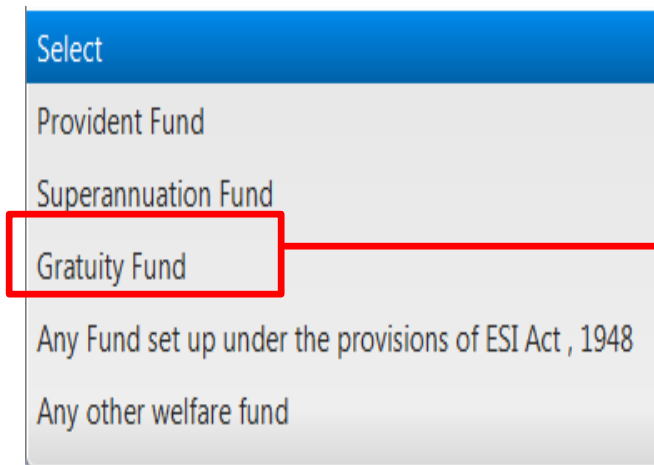
90

## 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

➤ Funds covered:



A screenshot of a software dropdown menu. The menu is titled 'Select' in a blue header. Below the header, the following options are listed: '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 border. A red arrow points from this highlighted option to a separate text box on 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 shown under PGBP.

- 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*].

# Clause no. 21.....

126

## 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.....

127

## 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"/>
<div><input type="button" value="+ Add"/> <input type="button" value="X Delete"/></div>			

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"/>
<div><input type="button" value="+ Add"/> <input type="button" value="X Delete"/></div>			

# Issues on Clause no. 21

98

- 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

99

➤ Separately indicate capital expenses allowed as deduction in computation to 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

100

- 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. Only the amount of compensation deductible as Business expense. **Malura Vanaspati & Chemical Co Vs CIT (1997) 225 ITR 383 (SC)**

## Clause 21(b)

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



Revised e-utility also requires PAN, if available

## New Provision.....

(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



Revised e-utility also requires PAN, if available

# Clause no. 21.....

## Format in E-utility

Contd....

103

(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).....

104

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).....

105

- 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.***
- Since the change is applicable for A.Y. 2016-2017, the corresponding change in Tax Audit Form is awaited.

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

Revised e-utility also requires PAN, if available

# Format in E-utility

(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).....

108

**Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), 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 Sec. 139(1)**

**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 Sec. 139(1), 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 first proviso to Sec. 201(1), 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.

**Clause 21 (b)**

**(iii) Under Sub-Clause (ic) [Wherever applicable]**

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

**(iv) Under Sub-Clause (iia)**

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

**(v) 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***

**(vi) Under Sub-Clause (iii)**

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



Revised 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

**(vii) 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"



**(viii) 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

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

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

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

(vi) 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								

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

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

# Issues on Clause no. 21

115

- ❑ Revised 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				
	<div> <div>+ Add</div> <div>- Debit</div> <div>Select</div> <div>Interest</div> <div>Salary</div> <div>Bonus</div> <div>Commission</div> <div>Remuneration</div> </div>	<div> <div>Select</div> <div>40(b)</div> <div>40(ba)</div> </div>				

**Brief:** Clarification provided

### 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.....

118

- 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.

# Section 40A....

119

(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 twenty 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 twenty thousand rupees.

# Rule 6DD.....

120

## 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.....

121

- **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 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 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 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"/>

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"/>

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

125

- 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.

## 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

127

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” should also keep in mind.

# Clause no. 22

128

*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*



# Provisions of Micro Small and Medium Enterprises Development Act, 2006

129

**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.....

130

## 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

131

- 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

132

- 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.
- 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

133

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="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<div> Add  Delete</div>						

# Issues on Clause no. 23

134

- 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

136

- **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

137

- **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.

# Clause no. 24

138

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

**Format in e-utility.....**

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

**Brief:** Expenditure on prospecting certain minerals u/s 32AC also to be reported.

## Relevant Sections:

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

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

Contd....

140

## Sub-Sec. (1)

- ❑ Where an assessee, being a **company**,
- ❑ **engaged in business of manufacture or production of any article or thing,**
- ❑ **acquires & installs new asset**
- ❑ After 31-03-2013 but before 01-04-2015 and
- ❑ the aggregate amount of actual cost of such new assets exceeds Rs. 100 crore,
- ❑ then, **there shall be allowed a deduction,—**
  - a) For **A.Y. 2014-15**, of a sum equal to 15% of actual cost of new assets acquired & installed after 31-03-2013 but before 01-04-2014, if the aggregate amount of actual cost of such new assets exceeds Rs. 100 crore; and
  - b) For **A.Y. 2015-16**, of a sum equal to 15% of actual cost of new assets acquired & installed after 31-03-2013 but before 01-04-2015, as reduced by the amount of deduction allowed, if any, under Clause (a).

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

# Section 32AC- Amendments by Finance Act, 2014 [w.e.f. 01-04-2015]

141

## SubSection (1A) of Section 32AC inserted

### [Also, explained with Clause No. 19 earlier]

- ❑ 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 and installed during any P.Y. exceeds Rs. 25 Crore**
- ❑ **then there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new assets.**
- ❑ No deduction under Sub-Sec.(1A) shall be allowed
  - For A.Y. 2015-16 to the assessee, which is eligible to claim deduction under Sub-Sec.(1) for the said A.Y.
  - any A.Y., 2018-19 and onwards.

## SubSection (1B) of Section 32AC inserted

*(1B) No deduction under sub-Section (1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.*

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

Contd....

142

## 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.

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

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

Contd....

143

## Sub-Sec. (4)

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

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

144

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

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



# Issues on Clause no. 25

145

- ❑ Loss of the Previous Year in which business ceased to exists 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

146

In respect of any sum referred to in Clause (a), (b), (c), (d), (e) or (f) 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

147

**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.)*

# Issues on Clause no. 26

148

- **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.
- **Case Law: Gopikrishna Gramites Vs DCIT 251 ITR 337 (A.P), Hindustan Liver Ltd Vs K.K Pandey JCIT, 251 ITR 209(Bomb) :-**

If an assessee made Advance Payment of Excise duty without liability, no deduction shall be given on account of Sec. 43B.

# Issues on Clause no. 26

149

- 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

150

- [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.

# Issues on Clause no. 26

151

- ❑ 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

# Issues on Clause no. 26

152

- 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.



# Clause no. 27

153

## Clause no. 27(a)

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

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

**Brief:** Central Value Added Tax is substituted with Modified Value Added Tax

# Clause no. 27

154

## 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	<input type="checkbox"/>	Select ▼	<input type="text"/>	<input type="text"/>	Select ▼

+ Add - Delete

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

155

## **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.

# Issues on Clause no. 27

156

## 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. The Assistant CIT [Bombay High Court] , WRIT PETITION No. 892 of 2010**

# Clause no. 28

157

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:** No reporting requirement in respect of the assessee other than firms and companies in which public is not substantially interested.

# Clause no. 28

Contd....

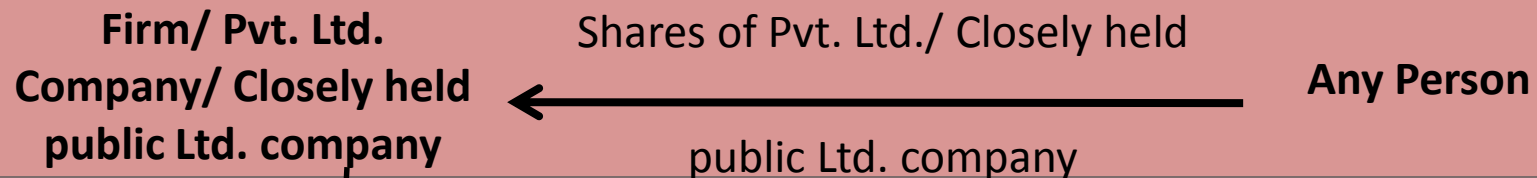
158

**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)(viiia) (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



Applicable w.e.f 1<sup>st</sup> 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)(viia) 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

160

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)
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**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.





## 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="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

# Issues on Clause no. 29

162

## **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

163

## 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.

# Clause no. 30

164

Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque **[Section 69D]**.

## Format in e-utility

S. N o	Name of the person from whom amount borrowed or repaid on hundi	PAN of the person, if available	Address with State & Pin code	Amount Borrowed	Date of Borrowing	Amount due including interest	Amount Repaid	Date of Repayment

# Clause no. 31

165

Clause 31(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 of the lender or depositor;
- ii. Address of the lender or depositor;
- iii. PAN (if available with the assessee) of the lender or depositor;
- iv. Amount of loan or deposit taken or accepted;
- v. Whether the loan or deposit was squared up during the previous year;
- vi. Maximum amount outstanding in the account at any time during the previous year;
- vii. whether the loan or deposit was taken or accepted otherwise than by account payee cheque or account payee bank draft

***\*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)***

# Clause no. 31

166

## Clause 31 (a)

### Format in e-utility

S. n o.	Name of the lender/ depositor	Address of the lender/ depositor	PAN of lender / depositor	Amount of loan/ deposit taken / accepted	Whether the loan/ deposit was squared up during the year	Maximum amount O/S in the A/c at anytime during the year	Whether the loan/deposit was taken/ accepted otherwise than by A/c payee cheque or an A/c payee bank draft

**Clause 31(b)**

Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in Section 269T made during the previous year :—

- i. Name of the payee;
- ii. Address of the payee;
- iii. PAN (if available with the assessee) of the payee;
- iv. Amount of repayment;
- v. Maximum amount outstanding in the account at any time during the previous year;
- vi. Whether the repayment was made otherwise than by account payee cheque or account payee bank draft.

### Clause 31(c)

#### **Reply to be given in Yes/ No/ N.A**

Whether the taking or accepting loan or deposit, or repayment of the same were made by **account payee cheque drawn on a bank** or account payee bank draft based on the

examination of books of account and other relevant documents.

**NOTE:** These particulars need not be given in case of repayment of any loan/deposit taken/accepted from Govt., Govt. Co., Banking Co. or a Corporation established by Centre, State or Provincial Act

**Brief:** Transactions covered under Section 269SS/T to be reported. Certificate from Assessee would not be sufficient.



# Clause no. 31

169

## Format in E-utility

### Clause 31 (b)

S. no.	Name of the payee	Address of the payee	PAN of payee	Amount of the repayment	Maximum amount O/S in the A/c at anytime during the year	Whether the repayment was made otherwise than by A/c payee cheque or an A/c payee bank draft

### Clause 31 (c)

(b) Whether a change in share holding 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.

Select



# Issues on Clause no. 31

170

## Amendment by Finance Act, 2014

[w.e.f. 01.04.2015]

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, 2015, applicable for A.Y. 2016-17 as effective from 01.06.2015]

Substitution of Section 269SS and Amendments to sections 269T, 271D and 271E

Acceptance/ repayment of specified sum / Specified advance in a mode other than through an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account is also being prohibited apart from existing restriction with respect to Loans and Deposits.

"Specified sum" means 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."

"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

# Issues on Clause no. 31

171

- ❑ 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.
- ❑ Advance received against 'Sale & Agreement of Sale' is not a 'Loan or Deposit'.
- ❑ 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:

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., ITA No. 232/2014, Date of Judgment: 21.05.2014, High Court of 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.
- ❑ Further, held by **ITAT- Bombay in Lodha Builders Pvt Ltd vs. ACIT ITA No. 481/M/2014, Date of decision 27-06-2014**, 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)**

# Clause no. 32

174

## 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

175

## **Clause 32(b)**

Whether a change in shareholding of the company has taken place in the previous year due to which the losses accrued 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)

## 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)

177

- 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)

❑ For Clause 32 (c)

**Contd...**

S. N o.	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
1 (a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

# Details to be maintained by auditor

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

179

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)

## Format in E-utility

180

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....

- 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....

182

- (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.....

183

- ☐ **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.

# Explanation to Section 73.....

184

- ☐ **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....

185

## □ **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....

186

- **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

187

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

188

- ❑ 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:

<b>Tax deduction and collection Account Number (TAN)</b>	<b>(1)</b>
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	(8)
<del>(7)</del> [logically it should be (5)]	
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	(10)
<del>(6) and (8)</del> [logically it should be (7) and (9)]	

- ❑ 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.

## 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.

- ❑ In Column No. (8)/ (10), reference of Column no. (5)/ (6) and (8) has been wrongly made instead of (5)/ (7) and (9) respectively.
- ❑ **For example-**
  - The assessee has incurred Legal & Professional expenses amounting to Rs. 2,00,000/- (Rs. 1,00,000/-, Rs. 50,000/-, Rs. 40,000/- and Rs. 10,000/-).
  - Out of this, TDS u/s 194J is required to be deducted on Rs. 1,90,000/-.
  - The person to whom payment of Rs. 40,000/- is made has furnished Certificate u/s 197 to deduct tax @ 5% and TDS has not been deducted on payment of Rs. 50,000/-.
  - Now the detail is to be given as per next slide:



# Issues on Clause no. 34(a).....

Contd....

		ICAI View	Alternate View
Tax deduction and collection Account Number (TAN)	(1)	TAN	TAN
Section	(2)	194J	194J
Nature of payment	(3)	Professional fees	Professional fees
Total amount of payment or receipt of the nature specified in column (3)	(4)	2,00,000/-	2,00,000/-
Total amount on which tax was required to be deducted or collected out of (4)	(5)	1,90,000/-	1,90,000/-
Total amount on which tax was deducted or collected at specified rate out of (5)	(6)	1,40,000/-*	1,00,000/-*
Amount of tax deducted or collected out of (6)	(7)	12,000/- (100000 * 10% + 40000 * 5%)	10,000/-
Total amount on which tax was deducted or collected at less than specified rate out of <del>(7)</del> (5)	(8)	NIL	Rs. 40,000/-
Amount of tax deducted or collected on (8)	(9)	NIL	Rs. 2,000/-
Amount of tax deducted or collected not deposited to the credit of the Central Government out of <del>(6) and (8)</del> (7) and	(10)	1,500/- (assumed)	1,500/- (assumed)

\***Other view**- Specified rate may be considered as rate mentioned in the relevant Section prior to considering Sec. 195/ 197 certificate.

- ❑ 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)

### Format in E-utility

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										

[CSV Template](#) [Help](#)

# Clause no. 34(b)

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)0	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

Select

Yes

No

Select

Form 24

Form 24G

Form 24Q

Form 26

Form 26A

Form 26B

Form 26Q

Form 26QAA

Form 27

Form 27A

Form 27B

Form 27BA

Form 27C

Form 27D

Form 27E

Form 27Q

Form 27EQ

# Issues on Clause no. 34(b)

Contd....

- ❑ 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.
- ❑ 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)

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.
		<div><div>Amount</div><div>Dates of payment</div></div>

**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....

199

- 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.

# Clause no. 35

200

(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 no. 35

201

## 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

**Brief: Earlier relaxation provided** (in respect of yield of finished products, % of yield and Shortage/ excess, if any) to specify the Information to the extent available **now removed**.

# Clause no. 35

202

## (B) Finished Products:

Item name	Unit name	opening stock	purchases during the previous year	Quantity manufactured during the previous year	

sales during the previous year	Closing Stock	Shortage/ excess, if any

## (C) By- Products:

Item name	Unit name	Opening stock	Purchases during the previous year	Consumption during the previous year	

Sales during the previous year	Closing Stock	Shortage/ excess, if any

Should be Quantity manufactured during the year

# Issues on Clause no. 35

203

- ❑ **“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

204

- ❑ 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.

# Clause no. 36.....

205

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.....

206

## 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.....

207

- ❑ 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. 37

208

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

209

- ❑ 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

210

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

211

- ❑ 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

212

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

213

## **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.

# Clause 40.....

214

Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

Serial number	Particulars	Previous year	Preceding previous year
1	<b><u>Total turnover of the assessee</u></b>		
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

# Clause no. 40.....

215

## Format in e-Utility

Serial Number	Particulars	Previous Year			Preceding previous Year		
(a)	Total turnover of the assessee						
(b)	Gross profit / Turnover	Gross Profit	Turnover	(%)	Gross Profit	Turnover	(%)
(c)	Net profit / Turnover	Net Profit	Turnover	(%)	Net Profit	Turnover	(%)
(d)	Stock-in-Trade / Turnover	Stock-in-Trade	Turnover	(%)	Stock-in-Trade	Turnover	(%)
(e)	Material consumed / Finished goods produced	Materials consumed	Finished Goods Produced	(%)	Materials consumed	Finished Goods Produced	(%)

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

# Issues on Clause no. 40.....

216

- ❑ **Calculate ratios for manufacturing or trading concern in terms of value only.**
- ❑ Calculate Ratios for the business as a whole and not product wise.
- ❑ If Closing stock is Nil, this sub Clause (c) 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, AS(IT) II].



- ❑ 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.

# Clause no. 4I

218

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.

## Format in e-utility

S.No		Financial year to which demand/refund relates to	Name of other Tax law	Type (Demand raised/Refund received)	Date of demand raised/refund received	Amount	Remarks
1	<input type="checkbox"/>	Select ▼	Select ▼	Select ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>

- Select
- Central Excise Duty
  - Central Custom Duty
  - Service Tax
  - Sales Tax/VAT
  - State Excise Duty
  - Other Indirect Tax/duty

- Select
- Demand raised
  - Refund received

# Issues / points to be considered on

## Clause no. 41

Contd....

220

- ❑ 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, 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

221

- ❑ 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

# Notes to Form No. 3CD

222

- 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

223

# Procedure for e-filing

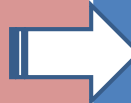
# Notification No. 34 /2013 dt. 01/05/2013

- **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

# Who has to get accounts audited on compulsory basis .....

227

Different taxpayers	When covered by the provisions of compulsory audit u/s 44AB
A person carrying on <b>business</b> (Clause(a) of sec. 44AB)	If the total sales, turnover or gross receipt in business exceed or exceeds <b><u>Rs. 1 crore</u></b> in any previous year <b>[limit raised from 60 lakhs w.e.f 1-4-2013 by F.A. 2012]</b>
A person carrying on <b>profession</b> (Clause(b) of sec.44AB)	If his gross receipts in profession exceed Rs.25 lakh in any previous year <b>[(limit raised from 15 lakhs w.e.f 1-4-2013)]</b>

Different taxpayers	When covered by the provisions of compulsory audit u/s 44AB
A person covered u/s 44AE, 44BB or 44BBB] <b>(Clause (c) of sec. 44AB)</b>	If such person claims that the Profits and gains from the business are lower than the profits and gains computed under these Sections <b>(irrespective of his turnover).</b>
A person covered u/s 44AD <b>(Clause (d) of sec. 44AB)</b> <i>[By Finance (No.2) Act, 2009 w.e.f. 01/04/2011]</i>	If such person claims that the Profits and gains from the business 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>

**Note:** By F. A. (No.2),2009 w.e.f 1-4-2011, assessee covered by Sec. 44AD & 44AF are not covered by Clause (c) of Sec. 44AB. Clause(d) is inserted to cover the assessee referred u/s 44AD.

Section 44AF has become inoperative w.e.f A.Y 2011-2012. The assessee earlier referred specifically u/s 44AF are now covered by Section 44AD itself. As such Clause(d) covers the assessee ref. earlier both u/s 44AD & 44AF.

# Section 44AE.....

229

## ➤ Amendment in Section 44AE by Finance Act, 2014

Removed the distinction made in heavy goods carriage and other than heavy goods carriage and to provide a single amount of Rs. 7500/- to be considered as profit or gain from each goods carriage for every month or part of the month. Corresponding amendment made in Explanation in view of amendment in Sub-Section (2).

**[w.e.f 01-04-2015]**

# Sub-Section (6) of Section 44AD

230

**Special provision for computing profits and gains of business on presumptive basis.**

***Inserted by the Finance Act, 2012, w.e.f. 1-4-2011***

The provisions of Section 44AD, notwithstanding anything contained in the foregoing provisions, shall not apply to—

- 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.

# Compulsory Audit of Accounts.....

231

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. 30<sup>th</sup> day of September of A.Y.  
**[Explanation(ii) to S.44AB]**

# Compulsory Audit of Accounts.....

232

- Clause (b) of Section 44AB is not application 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.....

233

- 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.] 242<sup>nd</sup> 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.....

234

- 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 too.

# Applicability of Sec. 44AB- Where income is exempt u/s 10

235

- **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....

236

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....

237

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....

238

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.....

239

## ***“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.....

240

➤ **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:- Positive or negative difference amount arising on settlement of contracts is to be considered as turnover.
- (b) Derivatives, futures & options:
- Difference of total favorable & unfavorable
  - Premium received on sale of option
  - Difference of any reverse trade entered
- (a) 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)**

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# 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

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- 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. 1Lac*)  
(Whichever is less)
- U/s 271B No penalty shall be imposed, if assessee proves that there was reasonable cause for such failure.

The penalty order u/s 271B is appealable in view of S.246A(1)(m)

# Reasonable Causes

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## Reasonable Cause

- 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

## Audited- Sec. 271B.....

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- ❑ No penalty under Section 271B by ITO exceeding Rs. 10,000 in absence of prior approval of Joint Commissioner. **Sagar Dutta Vs. CIT, ITA No. 150 of 2009, Date of Order: 17.02.2014, High Court of 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 leviable 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)**
- ❑ For purpose of Sec. 44AB turnover of all businesses carried on by assessee has to be considered but provisions of Sec. 271B will be pressed in operation in respect of failure only and not in respect of accounts which have been audited; penalty cannot be imposed in respect of business when its books of account have been audited and filed on or before due date specified in Act. **Asst. CIT v. Smt. Bharti Sharma [2011] 44 SOT 230 (Del.)**

# Penalty u/s 277 A - Falsification of books of accounts or documents etc.

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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 3 years 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

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- **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

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## □ **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 cant be rejected after tax audit u/s 44AB

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- **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

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□ **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

256

## □ **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!...

Team  
Voice of CA