

**UNRAVELLING  
TAX AUDIT  
UNDER SECTION  
44AB  
OF THE  
INCOME TAX ACT, 1961**

[Updated with the related Notifications last issued by the Ministry of Finance, Department of Revenue, Central Board of Director Taxes, bearing G.S.R. 610(E), Notification No.82/2020/F.No.370142/2020, DATED 01-10-2020]

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While every effort has been made to not allow any errors or omissions to crepe in the book, any such error noticed and brought to the notice of the author (**agarwal.s.ca@gmail.com**) will be highly appreciated.

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# ACKNOWLEDGEMENT

Section 44AB was inserted, w.e.f. 1st April 1985, in the Income-tax Act, 1961 through the Finance Act, 1984. The said Section provided for audit of accounts of persons carrying on business or profession in cases where the total sales, turnover or gross receipts (turnover in the case of business or gross receipts in the case of profession) exceeded the specified limit. Introducing the provision, the then Finance Minister had explained, inter alia, that the proposal was "*intended to ensure that the books of account and the records are properly maintained and faithfully reflect the true income of the taxpayer*". In its first related circular bearing number 387 dated 6th July, 1984 issued soon after the insertion of the aforesaid Section 44AB, the Central Board of Direct Taxes (CBDT) mentioned, inter alia, that '*A proper audit for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deductions are correctly made by him. Such audit would help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the authorities.*

Since the insertion of Section 44AB in the year 1984, a number of amendments have been made to the related provisions in the Income-tax Act, 1961, and the Income-tax Rules, 1962 as also the related prescribed forms. Last such amendment came into force as recently as on 1st October 2020. These amendments have considerably enlarged the scope of related work by the Chartered Accountants, thereby widening and adding both to their task and responsibility.

The enactment of aforesaid Section 44AB and the related amendments over the years *vis-à-vis* Report of Audit by a Chartered Accountant demonstrated the perpetual faith in the competence and integrity of the Chartered Accountants. On their part, Chartered Accountants continue to live up the ever-increasing expectations from them.

In order that a Chartered Accountant continue to discharge his onerous duties to the satisfaction not only of the clients, but also of all the stakeholders and the society at large, it is essential that one keeps abreast of the legislative and other developments that almost regularly take place. Besides, one also needs to remain alert to the similar development in the judicial side.

The above being the central concern, coupled with the encouraging response the first edition of *Unravelling Tax Audit under Section 44AB of the Income-tax Act, 1961* received, and to facilitate fellow members and others interested in the subject matter appreciate better the nitty-gritty of amendments brought about from time to time, especially those subsequent to publication of the first edition, this revised edition of the above the book in your hands, incorporating therein all such changes, including with reference to the amendment in October, 2020, has been brought out.

This revised edition of the book, let me acknowledge, would not have been possible without the **valuable inputs of and concerted efforts of my dear friends and well-wishers, especially my son CA Rishabh Agarwal and my team member CA Shagun Jindal, and my entire team who worked in background to execute the project, of course, the efforts of the members of my core team, viz., CA. Monika Aggarwal, CA. Jyoti Kaur and CA. Apporva Bhardwaj, without whose support the first edition itself may not brought out, are no less.**

It is possible, as in any other matter, that there may be a difference of opinion on any matter dealt with in this book, viz. *Unravelling Tax Audit under Section 44AB of the Income-tax Act, 1961*, vis-à-vis the Institute's Guidance Note on Tax Audit (2014 Revised Edition) or any other publication. With due deference to any such difference, I suggest that we may be guided by the Institute's Guidance Note.

This revised *Unravelling Tax Audit under Section 44AB of the Income-tax Act, 1961*, without doubt, will be found helpful by those interested in the subject matter — academically or professionally alike. Any suggestions/inputs that may help in enhancing its usefulness are welcome.

**Allow me to take this opportunity to wish you all a very Happier and Healthier ensuing 2021.**

**CA. SANJAY KUMAR AGARWAL**

**NEW DELHI**

**14 DECEMBER 2020**



## A Brief About the Author

CA. Sanjay Kumar Agarwal, a Graduate in Commerce and in Law, having passed the Final Examination in July 1986, became a member of the Institute of Chartered Accountants of India [ICAI] in July 1986 itself. CA. Agarwal has been in practice— now, for over 33 years.

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He also successfully contested election to the professional body and has been at the helm of affairs of its Regional Council. Later, he was a member of the Central Council.

On the social front, CA. Agarwal is a member of All India Vaish Federation. Besides, having been inclined towards academics and a firm believer in sharing of thoughts, he founded an NPO—Voice of Chartered Accountants (Regd) [VoCAs] in the **year 2009** and continues to accomplish its aims and objectives alongwith likeminded persons. The underlined of VoCAs was to put in a place to facilitate members intermingle and share their thoughts and experiences in the form of latest case laws, news of professional interest etc. for the mutual benefit.

CA. Agarwal has been a prolific speaker and has been a guest speaker during the last two decades or so in over **1000 programmes, like seminars, webinars and conferences. He is one amongst the most in demand speaker on matter of professional interest to the chartered accountants.**

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# CHAPTER

## 1

### Compulsory Audit of Accounts of Certain Persons<sup>1</sup> carrying on Business or Profession u/s 44AB

The tax audit was introduced by section 11 of the Finance Act, 1984, which inserted a new section 44AB with effect from 1st April, 1985 [Assessment Year 1985-86]. This section makes it obligatory for a person carrying on a business or a profession to get his accounts audited by a chartered accountant, and to furnish by the 'specified date', the report in the prescribed form of such audit, if the total sales, turnover or gross receipts in the business in the relevant previous year exceed or exceeds the prescribed limit (Rupees One Crore w.e.f. A.Y. 2013-14). However, in terms of the proviso inserted after clause (a) to section 44AB, w.e.f. 1<sup>st</sup> April, 2020, the said clause shall have effect as if for the words 'one crore rupee', the words "five crore rupees" had been substituted if and where - (a) aggregate of all amounts received including those for sales, turnover or gross receipts, and aggregate of all payments made including amount incurred for expenditure during the previous year **in cash does not exceed five percent of each such aggregate**. As for a professional, the provisions of tax audit become applicable, if his gross receipts in the profession exceed the prescribed limit (Rupees Fifty Lakhs w.e.f. A.Y. 2018-19) in the relevant previous year. Later on, vide Finance Act, 1997 w.e.f. A.Y. 1998-1999, the scope of section 44AB was enlarged to provide that audit u/s 44AB will be required in case of person attracting provisions of section 44AD, 44AE or 44AF. Thereafter, the scope was further enlarged, vide the Finance Act, 2003 w.e.f. A.Y. 2004-2005 to include person attracting provisions of section 44BB or 44BBB, if such person claims that his income is lower than the amount of income deemed under these sections as

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<sup>1</sup> Includes, among others, a Hindu Undivided Family, a company, a firm

presumptive income. The Finance Act, 2009 w.e.f. A.Y. 2011-2012 has enlarged the scope of section 44AD to include the retail trade business to which the provisions of section 44AF were applicable (*In terms of insertion of sub-section (6) by the Finance (No.2) Act, 2009 w.r.e.f. 1<sup>st</sup> April, 2009, the provisions of section 44AF ceased to apply to any assessment year beginning on or after 1<sup>st</sup> day of April 2011*). The amended section 44AD covers all assessee carrying eligible business except

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage;  
or
- (iii) a person carrying on any agency business.

The compulsory audit is intended to ensure proper maintenance of books of account and other records. The audit for tax purposes would ensure that the books of account and other records are properly maintained that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. This also facilitates the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications.

## ANALYSIS OF PROVISIONS OF SECTION 44AB OF THE INCOME TAX ACT, 1961

### 1.1 Who are the assessee falling under the scope of Section 44AB (analysis of clauses (a) to (e) of Section 44AB)

**The following persons are required to get their accounts audited in view of section 44AB of The Income Tax Act, 1961:**

- i. **Every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts of such business exceed or exceeds the prescribed limit (Rs.1 crore w.e.f. A.Y. 2013-14) [Clause (a)]**

However, in terms of the proviso inserted after clause (a) to section 44AB, w.e.f. 1<sup>st</sup> April, 2020, the said clause shall have effect as if for the words 'one crore rupee', the words "five crore rupees" had been substituted, if and where - (a) aggregate of all amounts received including those for sales, turnover or gross receipts, and aggregate of all payments made including amount incurred for expenditure during the previous year **in cash does not exceed five percent of each such aggregate.**

- ii. **Every person carrying on profession is required to get his accounts audited if the gross receipts of such profession exceed the prescribed limit (Rs.50 lakhs w.e.f. 1<sup>st</sup> April, 2017 and correspondingly A.Y. 2018-19 ). [Clause (b)]**
- iii. **Clause (c) of section 44AB [inserted by the Finance Act, 1997 and subsequently amended by the Finance Act, 1988, Finance Act, 2003, Finance (No.2) Act, 2009 and Finance Act, 2012] stipulates that every person covered by section 44AE (special provision for computing profits and gains of business of plying, hiring or leasing goods carriages) or 44BB (special provision for computing profits and gains in connection with the business of exploration, etc. of mineral oils) or 44BBB (special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc.) has to get his accounts audited, if he claims his income to be lower than the deemed profits and gains of his business computed under these sections i.e. u/s 44AE or 44BB or 44BBB.**

iv. Clause (d) of section 44AB [inserted by the Finance (No.2) Act, 2009 w.e.f. 1-4-2011, and subsequently amended by the Finance Act, 2016 w.e.f. 1-4-2017] stipulates tax audit in the case of an assessee carrying on a profession and the profits and gains from such profession are deemed to be profits and gains under section 44ADA (special provision for computing profits and gains of profession on presumptive basis) if he claims his income to be lower than the deemed profits and gains under the said section and such income exceeds the maximum amount not chargeable to income tax (i.e., basic exemption limit).

v. Clause (e) of section 44AB [inserted by the Finance Act, 2016 w.e.f. 1-4-2017] stipulates that in the case of an assessee carrying on a business of the nature specified in *Explanation (b) to section 44AD* (special provision for computing profits and gains of business on presumptive basis), tax audit will be required, if he claims his income to be lower than the deemed profits and gains under the said section and such income exceeds the maximum amount not chargeable to income-tax (i.e. basic exemption limit).

\* Provisions of section 44AB shall not apply with respect to assessee –

➤ who declares profits and gains in accordance with section 44AD (As per first proviso to section 44AB)

➤ who attracts provisions of section 44B or 44BBA. (As per second proviso to section 44AB)

➤ eligible to claim deductions u/s 80-IA or 80-IB or 80- IC etc. the turnover of all the units put together if exceed the prescribed limits, the assessee will have to get the audit report under section 44AB in the prescribed form and separate audit reports in the forms prescribed for different

purposes like sections 80-IA or 80-IB or 80-IC etc. will have to be further obtained by the assessee to meet the specific requirements of the relevant sections.

- who is required by any other law to get his accounts audited, it shall be sufficient compliance with the provision of this section if such an assessee get the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

1.2 What is the format of report for furnishing audit report u/s 44AB of the Income Tax Act, 1961

**1.2.1 Rule 6G of the Income Tax Rules, 1962 determines the forms in which the report of audit u/s 44AB is to be furnished, the text of rule 6G is as under:**

1. *"The report of audit of the accounts of a person required to be furnished under section 44AB shall, –*
  - a. *in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;*
  - b. *in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.*
2. *The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD."*

Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB, as may be applicable and shown in the table below, and the statement of particulars should be furnished in Form No.3CD.

Class of Tax Payers	Audit Report	Statement of Particulars
(a) In the case of person who carries on business or profession and who is required by or under any other law to get his accounts audited.	Form No. 3CA	Form No. 3CD
(b) In the case of person carrying on business or profession, other than as referred to in (a) above.	Form No. 3CB	Form No. 3CD

The CBDT had amended the audit report Form No. 3CD from time to time, including as under:

Notification No.208/2006 [F. No. 142/2/2006-TPL] dated 10<sup>th</sup> August 2006

Notification No.36/2009 [F. No. 149/86/2008-TPL] dated 13<sup>th</sup> April 2009

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

Notification No.88/2016 [F.No.133/23/2015-TPL] dated 29<sup>th</sup> September 2016

Notification No.58/2017 [F.No.370142/10/2017-TPL] dated 3<sup>rd</sup> July 2017

Notification No.33/2018 [F.No.370142/9/2018-TPL] dated 20<sup>th</sup> July 2018 (Note: Amendment to Form No.3CD were w.e.f. 20<sup>th</sup> August 2018)

Reporting under clause 30C and clause 44 of the amended Form No.3CD (pertaining respectively to General Anti-Avoidance Rules and Goods and Services Tax) was kept in abeyance till 31<sup>st</sup> March, 2021 - first till 31<sup>st</sup> March, 2019 vide CBDT's Circular No.6/2018

dated 17<sup>th</sup> August, 2018 and subsequently, vide Circular No. 9/2019 dated 14<sup>th</sup> May, 2019, extended to 31<sup>st</sup> March, 2020. In terms of the Circular No.10/2020 dated 24<sup>th</sup> April 2020, “reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31<sup>st</sup> March,2021” in view of prevailing situation due to COVID-19 pandemic across the country.

Notification No.82/2020 [F.No.370142/30/2020-TPL] dated 1<sup>st</sup> October 2020

\*Revised Forms notified vide Notification No. 33/2014 F.No.133/1/2014-TPL dated 25<sup>th</sup> July 2014 issued by the CBDT.

### 1.2.2 Features of revised form 3CD

- Increased reporting requirements of the assessee and the auditor.
- Examination of books of account and relevant documents along with declaration by the assessees.
- Required to visit the locations at which books of account 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 - **Amendments by Finance Act, 2014 - Obligation to furnish information return.**
  - 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.

Significant features of the revision made in 2018, and subsequent thereto, include the following:

- Reporting on any investment in new plant and machinery in notified backward areas in certain States
- Reporting of any income from other sources

- Reporting on any primary adjustment to transfer price
- Reporting on any expenditure exceeding one crore rupees incurred by way of interest or similar nature
- Reporting on entering into of any impermissible avoidance agreement
- Reporting on any receipts of amount exceeding the limit specified in section 269ST otherwise than by a cheque or bank draft or use of electronic clearing system through bank account
- Reporting on any receipt of above amount by cheque or bank draft which is not an account payee cheque or bank draft
- Reporting similarly on any payments of the above amount made otherwise than by a cheque or bank draft or use of electronic clearing system through bank account
- Reporting on any payments of the above amount made by a cheque or bank draft which not an account payee cheque or bank draft
- Reporting on transaction [clause 34]
- Reporting on receipt of any amount in the nature of dividend w.r.t. sub-clause (e) of clause 22 of section 2
- Reporting on Annual Returns or Statement of Financial Transactions w.r.t section 285BA
- Reporting on break up of total expenditure of entities registered or not registered under the GST
- Reporting whether the assessee opted for taxation under section 115BA/115BAA/115BAB?

<sup>n</sup> **Information can be collected for the purposes of the Act, so as to identify tax evaders or recover confirmed dues from taxpayers by entering into sharing of information agreements with various authorities, e.g. GST, SEBI, MCA, etc.**

1.2.3. Quick reference of change in clauses of revised Form 3CD vis-à-vis old Form:

<i>Form No.3CD</i>		
<b>REVISED</b> <i>subsequent to 25-07-2014 till 01-10-2020</i>	<b>OLD</b> <i>as brought with the substitution w.e.f. 25-07 2014</i>	<b>Remarks</b> <i>[with reference to the position as on 01-10-2020]</i>
<i>Clause No.</i>		
1	1	No Change
2	2	No Change
3	3	Amended - 'Permanent Account Number or <b>Aadhaar Number</b> ' inserted <i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i>
4	4	Amended - ' <b>goods and services tax</b> ' and ' <b>GST Number</b> ' inserted
5	5	No change
6	6	No change
7	7	No Change
8	8	No change
8a.	--	Newly inserted - "Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB?"
9	9	No change
10	10	No change
11	11	No change
12	12	No change
13	13	Sub clause 'a'- No Change Sub clause 'b'- No Change Sub clause 'c'- No Change Sub clause 'd'- Substituted, and Sub clause 'e'- inserted Sub clause 'f'- inserted
14	14	No change
15	15	No change
16	16	No change

17	17	No change
18	18	Sub clause 'a' - No Change Sub clause 'b' - No change Sub clause 'c' - No change Sub clause 'ca' - Newly inserted Sub clause 'd' - Amended - <u>CVAT</u> <u>substituted for MODVAT</u> Sub clause 'e' - No change Sub clause 'f' - No change
19	19	Amended - Row for Section 32AD inserted in the table
20	20	No change
21	21	No change
22	22	No change
23	23	No change
24	24	No change
25	25	No change
26	26	Amended
27	27	No change
28	28	No change
29	29	No change
29A	--	Newly inserted
29B	--	Newly inserted
30	30	No change
30A	--	Newly inserted
30B	--	Newly inserted
30C	--	Newly inserted
31	31	Amended
32	32	Amended
33	33	No change
34	34	Amended
35	35	No change
36	36	No change
36A	--	Newly inserted
37	37	No change
38	38	No change

39	39	No change
40	40	No change
41	41	No change
42	--	Newly inserted
43	--	Newly inserted
44	--	Newly inserted

1.2.4. Quick reference of change in clauses of old form vis-à-vis revised Form 3CD:

<i>Form No.3CD</i>		
<b>OLD</b> <i>as brought with the substitution w.e.f. 25-07 2014</i>	<b>REVISED</b> <i>subsequent to 25-07-2014 till 01-10-2020</i>	<b>Remarks</b> <i>[with reference to the position as on 01-10-2020]</i>
<i>Clause No.</i>	<i>Clause No.</i>	
1	1	No Change
2	2	No Change
3	3	Amended - 'Permanent Account Number or <b>Aadhaar Number</b> ' inserted <i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i>
4	4	Amended - ' <b>goods and services tax</b> ' and ' <b>GST Number</b> ' inserted
5	5	No change
6	6	No change
7	7	No Change
8	8	No change
----	8a.	Newly inserted - "Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB?"
9	9	No change
10	10	No change
11	11	No change
12	12	No change

13	13	Sub clause 'a'- No Change Sub clause 'b'- No Change Sub clause 'c'- No Change Sub clause 'd'- Substituted, and Sub clause 'e'- inserted Sub clause 'f'- inserted
14	14	No change
15	15	No change
16	16	No change
17	17	No change
18	18	Sub clause 'a'- No Change Sub clause 'b'- No change Sub clause 'c'-No change Sub clause 'ca'-Newly inserted Sub clause 'd'-Amended - <u>CVAT</u> substituted for MODVAT <u>Sub clause 'e'-No change</u> <u>Sub clause 'f'-No change</u>
19	19	Amended – Row for Section 32AD inserted in the table
20	20	No change
21	21	No change
22	22	No change
23	23	No change
24	24	No change
25	25	No change
26	26	Amended
27	27	No change
28	28	No change
29	29	No change
-----	29A	Newly inserted
----	29B	Newly inserted
30	30	No change
---	30A	Newly inserted
---	30B	Newly inserted
---	30C	Newly inserted
31	31	Amended
32	32	Amended

33	33	No change
34	34	Amended
35	35	No change
36	36	No change
----	36A	Newly inserted
37	37	No change
38	38	No change
39	39	No change
40	40	No change
41	41	No change
---	42	Newly inserted
---	43	Newly inserted
---	44	Newly inserted

1.3. What is the mode of furnishing audit report u/s 44AB of the Income Tax Act, 1961?

**Report of audit u/s 44AB is required to be furnished electronically [Notification No. 34 /2013/ F.No.142/5/2013-TPL dated 1<sup>st</sup> May, 2013] - (Please refer Annexure-I)**

E-Utility for preparation and uploading tax audit report is available on [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) under the head forms (other than ITR).

1.4. Who can Conduct “Audit” (analysis of Explanation (i) to section 44AB of the Income Tax Act, 1961)

That vide Notification No, 33/2014 dated 25.07.2014, the furnishing of scope audit report has been clearly confined to “accountant” as having the meaning below sub-section (2) of section 288; which means

**“accountant” means a Chartered Accountant 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 section 226(2) of Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State.**

1.4.1 Prior to this Notification No, 33/2014 dated 25.07.2014, below mentioned were allowed to give audit report

A Chartered Accountant within the meaning of clause (b) of sub-section (1) of Section 2 of the Chartered Accountant and a holder of a valid certificate of practice under sub-section ((1) of Section 6 of the said Act alone is eligible, effective from 01-06-2015, to conduct and perform audit under Section 44AB. Simply put, a Chartered Accountant in good standing and holding a valid certificate of practice is eligible to conduct and perform audit under section 44AB.

For better appreciation of the related background, the following is stated :

Section 44AB provides, inter alia, that every specified person shall get his audited by an accountant. In terms of the *Explanation* (i) to the said section, “accountant” shall have the same meaning as in the Explanation below sub-section (2) of Section 288 of the Income-tax Act.

The *Explanation* below the said sub-section (2), prior to its substitution w.e.f. 01-06-2015, by the Finance Act, 2015, provided that "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

Sub-section (2) of Section 226 of the Companies Act, 1956 provided as under :

“(2)(a) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (b), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B

States (Laws) Act, 1951 (3 of 1951) [or of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), as the case may be,] entitling him to act as an auditor of companies [in the territories which, immediately before the 1st November, 1956, were comprised] in that State or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in [India].

(b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in [the territories which, immediately before the 1st November, 1956, were comprised in] Part B States for the purposes of clause (a), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation."

Accordingly, in addition to a Chartered Accountant -,

- a person holding a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 or of the Jammu and Kashmir (Extension of Laws) Act, 1956 entitling him to act as an auditor; and
- any person eligible, by virtue of any other law, to audit the accounts of the assessee for the relevant previous year were also eligible to conduct audit under Section 44AB **prior to 01-06-2015.**

However, Explanation to section 288 was amended w.e.f. 1<sup>st</sup> June, 2015, by the Finance Act, 2015. In terms of the amended Explanation, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act..... It is pertinent to mention that the

explanation also provides that the accounts of an assessee be not got audited from a chartered accountant, if such a chartered accountant is, among others, indebted to the assessee.

The above amendment to the Explanation was in keeping with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 effective from 01-04-2014 (corresponding to the erstwhile section 226 of the Companies Act, 1956).

Therefore earlier, any person who was earlier, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant previous year is no longer eligible to conduct tax audit u/s 44AB.

Under section 141 of Companies Act, 2013, only a Chartered Accountant is qualified to conduct audit of companies.

A question often arises whether the audit under section 44AB is required to be conducted by assessee's statutory auditor? In this connection, it may be stated that Section 44AB stipulates that only Chartered Accountants should perform the tax audit. This section does not stipulate that only the statutory auditor appointed under the Companies Act or other similar Statute should perform the tax audit. As such the tax audit can be conducted either by the statutory auditor or by any other chartered accountant in full time practice.

In a case where statutory auditor is not appointed, where such appointment is required by a statute the chartered accountant appointed to conduct audit under section 44AB can commence and complete his audit without waiting for the appointment of statutory auditor and report on the accounts audited by the statutory auditors. The tax auditor in such cases will, however, have to conduct the financial audit as well in order to enable him to certify whether or not the accounts reported upon by him give a true and fair view of the state of affairs of the assessee whose accounts are audited by him under section 44AB. And, the tax auditor provides his report in Form No. 3CB and to furnishes/certifies the relevant particulars in Form No.3CD.

While accepting tax audit assignment of any assessee, the guidance provided in the “Code of Ethics” Volume-II (Revised 2020) [more particularly its paragraph 2.14.1.8] and the Guideline under Chapter-VII “Appointment of an Auditor in case of non-payment of undisputed fees” of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008, issued under the provisions of the Chartered Accountants Act, 1949, need to be kept in view. A chartered accountant should not accept the tax audit of a person/assessee to whom he is indebted to such a person/assessee, or has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee, or he, or his relative or partner, is holding any security of, or interest in, the assessee. Further, a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking/ Government Company /Listed Company and other Public Company having turnover of Rs. 50 crores or more in a year and accepts any other work or assignment or service in regard to the same undertaking/company on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking/company. The term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include: -

- Audit under any other statute.
- Certification work required to be done by the statutory auditors; and
- Any representation before an authority.

Since the requirement for tax audit has been specified under section 44AB of the Income- tax Act, 1961, tax audit will be considered as an audit under any other statute for the purpose of the above-mentioned Council Guidelines and thus the above restriction shall not apply in respect of tax audit.

### 1.4.2 Other Considerations

1. The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB.
2. The tax auditor is required to upload the tax audit report directly in the e-filing portal. In case of joint auditors, management representation has to be obtained about responsibility of uploading Tax Audit Report & ITR by particular auditor.
3. The appointment of the auditor for tax audit in the case of a company need not be made at the general meeting of the members. It can be made by the Board of Directors or even by any officer, if so authorised by the Board in this behalf.
4. The appointment in the case of an assessee, being a firm or a proprietary concern, can be made by a partner or a person authorized by the assessee in the case of a firm or by the proprietor himself or a person authorised by him in the case of the assessee being a proprietary concern.
5. It is possible for the assessee to appoint two or more chartered accountants as joint auditors for carrying out the tax audit, in which case, the audit report will have to be signed by all such chartered accountants. In case of disagreement, they can give their reports separately. (*Refer: Para 12 of the SA 299 "Responsibility of Joint Auditors" issued by ICAI*)
6. The Act prohibits a relative or an employee of the assessee being appointed as a tax auditor under section 44AB, besides CA Institute has also laid in the code of ethics that a chartered accountant should not express his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest.
7. A chartered accountant who is responsible for writing or maintenance of the books of account of the assessee should not audit such accounts (including tax audits). This principle will apply and extend to any partner of such a chartered

accountant as well as to the firm in which he is a partner.

8. The audit of accounts of a Firm of chartered accountants, under section 44AB, cannot be conducted by any partner or employee of such a firm. Similarly, where such a firm is a proprietary one, the said audit cannot be conducted by the proprietor or his employee.
9. A chartered accountant/ firm of chartered accountants, who is appointed as tax consultant of the assessee, can conduct tax audit under section 44AB. But an internal auditor of the assessee cannot conduct tax audit if he is an employee of the assessee.
10. The tax auditor cannot be removed on the ground that he has given an adverse audit report or the assessee has an apprehension that the tax auditor is likely to give an adverse audit report. If there is any unjustified removal of tax auditors, the Ethical Standards Board constituted by the Council of the Institute if approached, may intervene in such cases.

No chartered accountant should accept the audit assignment if the removal of his predecessor is not on valid grounds.

11. Before accepting a tax audit, the chartered accountant should ensure that taking such audit will not exceed the specified number of tax audit assignments, which at present is 60 in a given financial year. This said specified number of 60 is effective since (and inclusive of) the financial year 2014-15, having been increased from the earlier specified number (limit) of 45. Needless to mention, a chartered accountant in practice, is deemed to be guilty of professional misconduct if, he accepts more than 60 tax audit assignments relating to an assessment year.
12. Audit of books of accounts of persons carrying on businesses covered by sections 44AD and 44AE, is not included in the aforesaid maximum limit.

13. Audit prescribed under any statute which requires the audit report in the form as prescribed under section 44AB of the Income-tax Act, shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the threshold limit specified under section 44AB of the Income-tax Act, 1961. For instance, audit under section 44AD, audit under the erstwhile DVAT, 2004 (for turnover up to Rs. 2 crore) etc. will not be considered for inclusion in the present limit of 60 audits.
14. In case, a member is a partner in a firm of chartered accountants in practice, the ceiling of 60 tax audit assignments shall be computed with reference to each of the partner in the said firm.
15. Where any partner of the firm of chartered accountants in practice is also a partner of any other firm or firms of chartered accountants in practice, the ceiling limit of 60 shall apply with reference to all the firms together in relation to such a partner.
16. Similarly, where any partner accepts one or more tax audit assignments in his individual capacity, the total number of such assignments under section 44AB which may be accepted by him whether directly in his individual capacity or as partner in one or more firms of chartered accountants in practice shall not exceed 60 tax audit assignments.
17. If two chartered accountants already in practice or two of such chartered accountants are appointed as joint tax auditors, then the assignment will have to be included in the case of both the members and firms separately.
18. It is, however, clarified that the audit of an assessee's head office and branch office(s) shall be regarded as one tax audit assignment.
19. The audit of one or more branches of the same concern by one chartered accountant in practice shall be construed as only one tax audit assignment.

1.5. What is the specified date up to which the report under Section 44AB of the Income Tax Act, should be furnished. (Analysis of Explanation (ii) of Section 44AB of the Income Tax Act, 1961)

In terms of section 44AB, report of audit is required to be furnished by the specified date. In terms of the *Explanation (ii)* to the said section, specified date meant the due date for furnishing the return of income under sub-section (1) of section 139. The said *Explanation* has been amended, w.e.f. 01-04-2020 by the Act No.12 of 2020. The amended *Explanation* provides that "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [*date one month prior to*] the due date for furnishing the return of income under sub-section (1) of section 139 [inserted].

In terms of sub-section (1) of section 139, *Explanation 2*, 31<sup>st</sup> day of October of an assessment year is the due date (in cases other than an assessee required to furnish a reported referred to in section 92E).

Accordingly, 30<sup>th</sup> September (of and in relation to an assessment year) would be the specified date by which report of audit under section 44AB is required to be furnished.

1.6. Scope of term “Business” and “profession”.

1.6.1. Section 2(13) of the Income Tax Act, 1961 defines ”business” as under:

“Business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

Below mentioned are some of the judicial pronouncements dealing with the word “business”:

- a. **Buisness is real, substantial & organized course of activity** - The word ‘business’ connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. The question, whether a particular source of income is business or not must be decided according to ordinary notions as to what a business is - *Narain Swadeshi Wvg. Mills v. CEPT* [1954] 26

ITR 765 (SC) see also *CIT v. Prabhu Dayal* [1971] 82 ITR 804 (SC), *CIT v. Distributors (Baroda) (P.) Ltd.* [1972] 83 ITR 377 (SC), *CIT v. Saurashtra Cement & Chemical Industries Ltd.* [1973] 90 ITR 170 (Guj.).

- b. **Business should be understood broadly**- *Mazagaon Dock Ltd. v. CIT/CEPT* [1958] 34 ITR 368 (SC).
- c. **Business implies continuous activity** - 'business' implies continuous activity in carrying on a particular trade or vocation, it may also include an activity which may be called 'quiescent' - *CIT v. Calcutta National Bank Ltd.* [1959] 37 ITR 171 (SC), *CIT v. A. Dharma Reddy* [1969] 73 ITR 75 (SC).
- d. **Activity with an object to earn profit** - The word 'business' is not defined exhaustively in the Income-tax Act, but it denotes an activity with the object of earning profit. To say that a business is being carried on, means no more than that profit is to be earned by a process of production- *Senairam Doongarmall v. CIT* [1961] 42 ITR 392 (SC). *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC).
- e. **Activity undertaken regularly by the application of labour and skill** - The word 'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour and skill with a view to earning an income - *Barendra Prasad Ray v. ITO* [1981] 129 ITR 295 (SC).
- f. **Dealing in real estate is also business** - The definition of 'business' in section 2(13) is of wide amplitude and it can embrace within itself dealing in real property as also the activity of taking a property on lease, setting up a market thereon and letting out shops and stalls in the market- *S.G. Mercantile Corpn. (P.) Ltd. v. CIT* [1972] 83 ITR 700 (SC).
- g. **Business and profession are two mutually exclusive terms** - Though the word 'business' is a word of wide import, it would not take in its ambit activities which may constitute 'profession'. This is because the two expressions 'business' and 'profession' have been used in the Act in mutually exclusive sense. *CIT v. Lallubhai Nagardas &*

*Sons*[1993] 204 ITR 93 (Bom.).

- h. **Business involves different forms** - Production of goods from raw material, buying and selling of goods to make profits and providing services to others are different forms of "Business". Profits arising therefrom are therefore chargeable to tax under the head "profits and gains of business or profession". *Mazagaon Dock Ltd. v. CIT* [1958] 34 ITR 368 (SC), *W.L. Knopp v CIT* [1948] 16 ITR 398 (Mad).
- i. 'Trade' in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture - *State of Punjab v. Bajaj Electricals Ltd.* [1968] 70 ITR 730 (SC), Business includes trade - *State of Punjab v. Bajaj Electricals Ltd* [1968] 70 ITR 730 (SC).
- j. 'The expression 'in the nature of trade' appearing in the definition of 'business' in section 2(13) postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business - *G. Venkataswami Naidu & Co. v. CIT* [1959] 35 ITR 594 (SC).
- k. **When section 2(13) refers to an adventure in the nature of trade**, it clearly suggests that the transaction cannot properly be regarded as trade or business. and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade - *Estate Investment Co. Ltd. v. CIT* [1980] 121 ITR 580 (Bom.).
- l. The very word '**venture**' connotes chance *plus* risk - *CIT v. Smt. Minal Rameshchandra* [1987] 30 Taxman 282/167 ITR 507 (Guj.).

1.6.2. Section 2(36) of the Income Tax Act, 1961 defines “profession” to include Vocation.

Below mentioned include as “profession” for the purpose of Section 44AA:

- (i) Accountancy
- (ii) Architectural
- (iii) Authorised Representative
- (iv) Company Secretary
- (v) Engineering
- (vi) Film Artist
- (vii) Interior Decoration
- (viii) Legal
- (ix) Medical
- (x) Technical Consultancy
- (xi) Information Technology

For better appreciation of the related background, the following is stated :

In terms of sub-section 44AA, every person carrying on legal, medical, engineering or architectural **profession** or accountancy or technical consultancy or interior decoration or any other **profession** as is notified by the Board in the Official Gazette shall keep and maintain such books of accounts and other documents as may enable the Assessing Officer to compute his total income. *[emphasis supplied]*

Similarly, sub-rule of Rule 6F of the Income Tax Rules, 1962 provides that every person carrying on legal, medical, engineering or architectural **profession** or the **profession** of accountancy or technical consultancy or interior decoration or authorized representative or film artist shall keep and maintain the books of accounts and other documents specified in sub-rule (2) *[emphasis supplied]* [‘Authorised Representative’ and ‘Film Artist’ are defined in the *Explanation* to sub-rule (2) of the said Rule 6F]

*Explanation to sub-section (1) of section 194J – Fees for professional or technical services, explains ‘professional services’ to mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural **profession** or the **profession** of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board of for the purposes of section 44AA. [emphasis supplied]*

As for ‘technical services’, the same has been explained by *Explanation 2* to clause (vii) of sub-section (1) of section 9 – Income deemed to accrue or arise in India, to mean rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Salaries”.

It may be pertinent to mention that –

“Company Secretary” was notified as a profession for the purpose of sub-section (1) of section 44AA vide Notification S.O. 2675 dated 25-09-1992 [No.9102/F.No.225/61/92-IT(A-II)].

‘Information Technology’ similarly was notified as a profession for the above-said sub-section, vide S.O.385€ Notification No.116/F.No.23/FB/2001-TPL) dated 4<sup>th</sup> May, 2001.

vide S.O.2085(E) dated 21<sup>st</sup> August, 2008, Notification No.88/2008/F.No.275/43/2008-IT(B), the CBDT notified the services rendered by following persons in relation to the sports activities as ‘Professional Services’ for the purpose of Section 194J :

- Sports Persons
- Umpires and Referees
- Coaches and Trainers

- Team Physicians and Physiotherapists
- Event Managers
- Commentators
- Anchors, and
- Sports Columnist

Further, below mentioned are some of the judicial pronouncement dealing with the word “profession”

- a. Profession is a word of wide import and includes vocation” which is only a way of living. - *CIT v. Ram Kripal Tripathi* [1980] 125 ITR 408 (All).
- b. The expression “profession” involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale, of commodities. - *CIT Vs. Manmohan Das (Deceased)* [1966] 59 ITR 699 (SC), *CIT v. Ram Kripal Tripathi* [1980] 125 ITR 408 (All).

#### 1.7. Scope of word “Sales” “turnover” & “Gross receipts”?

The term “sales”, “turnover” or “gross receipts” are not defined in the Act, and therefore the meaning of the aforesaid terms has to be construed for the applicability of the section, below mentioned include the consideration for evolving/construing the meaning of words “sales”, “turnover” or “gross receipts”, as under:

- a. The words “Sales”, “turnover” and “gross receipts” are commercial terms and it is now well settled that they have to be construed in a commercial sense and in accordance with generally accepted accounting principles (*Chellapalli Sugars Ltd., v. CIT* 98 ITR 167 SC).
- b. As per Central Sales Tax Act, 1956, ‘turnover’ used in relation to any dealer liable to tax under this Act meant “**the aggregate of the sale prices received and receivable by him in respect of sales of any goods** in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of the Act and rules made there under”. Further, section 8A(1) of the said Act provided that in determining turnover, deduction of sales tax should be made from the aggregate of sales price.

- c. In terms of section 2(112), “turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.
- d. As per Section 2(91) of the Companies Act, 2013, the word turnover means –  
*“turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;”*

#### 1.7.1. Turnover

The term “turnover” has been understood for the purpose of Section 44AB to mean:

- a. The aggregate amount for which sales are effected or services rendered by an enterprise. In case the assessee has opted for inclusive method of accounting and the sales price are inclusive of sales tax and excise duty, then no adjustment in respect thereof should be made for considering the quantum of turnover.
- b. Trade discounts can be deducted from sales but not the commission allowed to third parties. In case assessee is following the practice of crediting the Excise duty and / or sales tax recovered separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, then the same will not be included in the turnover.
- c. Sales of scrap shown separately under the heading ‘miscellaneous income’ will form part of turnover.
- d. Further, the words “Sales”, “Turnover” and “Gross receipts” are commercial terms. They should be understood in view of provisions of Section 145(1), which

provide that income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. And as such the method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

In view of discussion / principles here-in-above, a few typical situations are given below:

Whether different types of discounts allowed will form part of 'turnover'?

- (i) **Trade Discount:** Discount allowed in the sales invoice will not form part of turnover for determination of quantum of turnover.
- (ii) **Turnover Discount:** Turnover discount is given to a customer in case of larger sales. This being dependent on the turnover, as per trade practice, this should be deducted from out of turnover even if the same is allowed at periodical intervals by separate credit notes.
- (iii) **Cash Discount:** Cash discount which is not allowed in a cash memo/sales invoice is in the nature of a financing charge and therefore the same should not be deducted from the figure of turnover.
- (iv) **Special rebate:** Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

Other considerations while determining quantum of 'turnover' for the purpose of Section 44AB include:

- (i) Value of sales returns should be deducted from turnover even if the returns are from the sales made in the earlier year/s.
- (ii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover.
- (iii) Sale proceeds of fixed assets will not form part of turnover.

(iv) Sale proceeds of investment property will not form part of turnover.

(v) **Determination of turnover in case of commission agent / consignee** - To determine whether sales by a commission agent or by a person on consignment basis would form part of the turnover, it would need to be seen whether the property in goods, risks attached to goods or ownership of the goods belonged to commission agent or consignee immediately before the transfer by him to a third person. For example, in the event of the property in the goods, or all significant risks and rewards of ownership of such goods belonged to the commission or consignee the related sale price will form part of his turnover. If yes, the commission agent / consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover. If no the relevant sale price shall not form part of the sales/turnover of the commission agent and/or the consignee as the case may be. [Please see, CBDT Circular No.452 dated 17<sup>th</sup> March, 1986].

(vi) In case of share brokers or sub broker, only brokerage is to be taken into account for determining the quantum of turnover. If, however, the broker is undertaking share transaction on his personal account, the sale value should also be taken into account for the purpose of limit under section 44AB.

(vii) The turnover or gross receipts in respect of transactions in shares, securities and derivatives:

- a. **Speculative transaction:** In a speculative transaction, the contract for sale or purchase which is entered into is not completed by delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference amount is 'turnover'. In speculative transactions though the contract notes are issued for full value of the purchased or sold asset, the entries in the books of account are made only for the difference. And therefore, the

aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit *vide* section 44AB.

- b. **Derivatives, futures and options** : Such transactions are completed without the delivery of shares or securities. In respect of derivatives, futures and options the contract notes are issued for the full value of the asset purchased or sold but entries in the books of account are made only for the differences. The turnover in such types of transactions is to be determined as follows:
  - i. The total of favourable and unfavourable differences to be taken as turnover
  - ii. Premium received on sale of options, to be included in turnover.
- c. **Delivery based transactions:** The total value of the sales is to be considered as turnover.
- d. However, auditor can verify the turnover for threshold purpose from Form 10DB (ANNEXURE-XIV) even though the said form has been discontinued since 2009. However, the broker still issues complete detail of buy and sell calculating the related turnover.

(viii) Determination of transaction of purchase and sale of shares whether stock-in-trade or investment – Answer to the Question will depend upon the nature of transactions, frequency, and volume of transactions. In order to facilitate understand the concept, below mentioned are some of the related Judgments

- a. CIT v. PKN and Co. Ltd (1966) 60 ITR 65 (SC)
- b. CIT vs. Sutej Cotton Mills Supply Agency (1975) 100 ITR 706 (SC)
- c. G. Venkataswamy Naidu v. CIT (1959) 35 ITR 594 (SC)
- d. Asst. CIT v. Om Prakash Arora [2011] 16 taxmann.com 396 (ITAT-Delhi)

- Following principles, can be applied on the facts of a case to determine whether transaction(s) in question are in the nature of trade or are merely for investment purposes:

- n **What is the intention of the assessee at the time of purchase of the shares (or any other item)? This can be found out from the treatment it gives to such purchase in its books of account.** Whether it is treated as stock-in-trade or investment. Whether shown in opening/closing stock or shown separately as investment or non-trading asset.
- n **Whether assessee has borrowed money to purchase and paid interest thereon?** Normally, money is borrowed to purchase goods for the purposes of trade and not for investing in an asset for retaining.
- n **What is the frequency of such purchases and disposal in that particular item?** If purchase and sale are frequent, or there are substantial transactions in that item, it would indicate trade. Habitual dealing in that particular item is indicative of intention of trade. Similarly, ratio between the purchases and sales and the holdings may show whether the assessee is trading or investing (high transactions and low holdings indicate trade whereas low transactions and high holdings indicate investment).
- n **Whether purchase and sale is for realizing profit or purchases are made for retention and appreciation in its value ?** Former will indicate intention of trade and latter, an investment. In the case of shares whether intention was to enjoy dividend and not merely earn profit on sale and purchase of shares. A commercial motive is an essential ingredient of trade.
- n **How the value of the items has been taken in the balance sheet?** If the items in question are valued at cost, it would indicate that they are investments and where they are valued at cost or market value or net realizable value (whichever is less), it will indicate that items in question are treated as stock-in-trade.

- n **How the company (assessee) is authorized in memorandum of association/articles of association? Whether for trade or for investment? If authorized only for trade, then whether there are separate resolutions of the board of directors to carry out investments in that commodity and vice versa.**
- n **It is for the assessee to adduce evidence to show that his holding is for investment or for trading and what distinction he has kept in the records or otherwise, between two types of holdings. If the assessee is able to discharge the primary onus and could prima facie show that particular item is held as investment (or , stock-in-trade) then onus would shift to revenue to prove that apparent is not real.**
- n **The mere fact of credit of sale proceeds of shares (or for that matter any other item in question) in a particular account or not so much frequency of sale and purchase of shares, will alone be sufficient to say that assessee was holding the shares (or the items in question) for investment.**
- n **One has to find out what are the legal requisites for dealing as a trader in the items in question and whether the assessee is complying with them. Whether it is the argument of the assessee that it is violating those legal requirements, if it is claimed that it is dealing as a trader in that item ? Whether it had such an intention (to carry on illegal business in that item) since beginning or when purchases were made?**
- n **It is permissible as per the CBDT's Circular No. 4 of 2007 dated 15-6-2007 (for circular please refer - Annexure - IX) that an assessee can have both portfolios, one for trading and other for investment provided it is maintaining separate account for each portfolio, there are distinctive features for both and there is no intermingling of holdings in the two portfolios.**

*n Not one or two factors out of above alone will be sufficient, but the cumulative effect of several factors has to be seen, before reaching a definite conclusion.*

### 1.7.2. Gross Receipts

The term “gross receipts” is also not defined in the Act. It will include all receipts whether in cash or in kind arising out from the activities of carrying on of a business or profession which will normally be assessable under the head “profits and gains from business or profession” under the Income Tax Act, 1961. Following items form part and parcel of the term “gross receipts”:

- a. Profits on sale of a license granted under the Imports (Control) Order, 1955 made under the Imports and Exports (Control) Act, 1947; However, the said Act has since been repealed and presently these are governed by the Foreign Trade (Development and Regulation) Act, 1992.
- b. Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;
- c. Any duty of customs or excise re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1995; However, the said Act has since been repealed and presently these are governed by the Customs and Central Excise Duty Foreign Trade (Development and Regulation) Act, 1992.
- d. The aggregate of gross income by way of interest received by the money lender;
- e. Commission, brokerage, service and other incidental charges received in the business of chit funds;
- f. Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.), in case if credited to separate account then only the net surplus to be considered.
- g. The net exchange rate difference on export sales, in case if

credited to separate account then only the net surplus to be considered.

- h. Hire charges of cold storage;
- i. Liquidated damages;
- j. Insurance claims - except for fixed assets;
- k. Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;
- l. Gross receipts including lease rent in the business of operating lease;
- m. Hire charges and instalments received in the course of hire purchase;
- n. Advance received and forfeited from customers.
- o. Fair market value of any benefit or perquisite derived by the assessee in course of business or profession for example; fair market value of material received by the contractor from the contractee during the course of execution of contract.
- p. Any other additional material / benefit received by the assessee free of cost for achieving various targets.

However, the below-mentioned items do not form part of “gross receipts in business” for purposes of section 44AB:

- a. Sale proceeds of fixed assets including advance forfeited, if any;
- b. Sale proceeds of assets held as investments;
- c. Rental income unless the same is assessable as business income;
- d. Dividends on shares except in the case of an assessee dealing in shares;
- e. Income by way of interest unless assessable as business income;

- f. Reimbursement of customs duty and other charges collected by a clearing agent;
- g. In the case of a recruiting agent, the advertisement charges received by him by way of reimbursement of expenses incurred by him;
- h. In the case of a travelling agent, the amount received from the clients towards payment to the airlines, railways etc. If however, the travel agent is undertaking a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the client should form part of gross receipts;
- i. In the case of an advertising agent, the amount of advertising charges recovered on account of reimbursement will not form part of gross receipts. But if the advertising agent books the advertisement space in bulk and recovers the charges from different clients, in such a case the amount recovered by him will form part of his gross receipts;
- j. Share of profit of a partner of a firm in the total income of the firm excluded from his total income under section 10(2A) of the Income-tax Act;
- k. In the case of professionals, such as solicitors, advocates or chartered accountants - the term "gross receipts" would mean to include all receipts arising from carrying on of the profession. However, out of pocket expenses received if collected separately either in advance or otherwise, should not form part of the "gross receipts" since such out of pocket expenses received in advance are credited in a separate client's account and utilised for making payments for stamp duties, registration fees, counsel's fees, travelling expenses etc. on behalf of the clients. If, such out of pocket expenses are not specifically collected but are included/ collected by way of a consolidated fee, the whole of the amount so collected shall form part of gross receipts.

1.8. Penalty provisions in case of the failure of a person, to get his accounts audited in respect of any previous year or to furnish a copy of such report as required under section 44AB. In order to ensure proper compliance with section 44AB, section 271B was simultaneously inserted by the Finance Act, 1984, w.e.f. 1-4-1985. The said section 271B [having been amended from time to time (w.e.f.10-09-1986, 01-04-1988, 01-04-1989, 01-04,2011)] reads as under:-

***“Failure to get accounts audited***

**271B.** *If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less.”*

Therefore, the failure of a person to get his accounts audited in respect of any previous year or to furnish a copy of such report as required under section 44AB may attract a penalty equal to 0.5% of the total sales, turnover or gross receipts, or Rs.1.5 lakh, whichever is less. However, in view of the specific provisions contained in section 273B, no penalty is imposable under section 271B on the assessee for the above failure if he proves that there was reasonable cause for the said failure.

‘Reasonable cause’ held by Hon’ble ITAT for not levying penalty u/s 271B

- a. Audit could not be completed in time due to voluminous work and non receipt of bank statements in time would be a ‘reasonable cause’ for the purpose of Section 44AB of the Income Tax Act, 1961. [DCIT v. Machino Techno Sales (P) Ltd., 62 ITD 225 (Cal)<sup>TM</sup>]
- b. Delay on the part of the accountant in completing the audit work before the specified date on account of his prior professional commitments constituted a reasonable cause for the failure of the assessee to obtain the audit report as required u/s 44AB within the specified date. [ACIT v Gayatri Traders, 58 ITD 121 (Hyd) (SB)]

- c. Justification accepted during immediately previous year that audit report delayed due to seizure and retention of books, the same reason also justifies for delay in completion of audit for A.Y. 1986-87, even though books of account of the said A.Y. were not seized. [ACIT v Roopali Dyeing & Printing Works, 86 Taxmann 124 (Ahd.) (Mag)]
- d. Existence of dispute between partners of assessee firm would constitute a reasonable cause for delay in getting audit report u/s 44AB. [Allied Distributors vs. ITO, 89 Taxmann 205 (Cal) (Mag)]
- e. Delay in getting audit report u/s 44AB due to reappointment of another auditor on resignation of previous auditor was held as a reasonable cause for not levying penalty u/s 271B. [Progressive Construction (P) Ltdv. ITO 20 ITD 182 (Hyd).]

#### 1.9 Whether Tax Audit applicable where Income is Exempt u/s 10?

Issue involves here is whether the below mentioned institutions will have to comply with the requirements of Section 44AB, if their turnover exceeds one crore rupees, or where applicable five crore rupees :

(i) Trusts / associations / institutions enjoying exemptions u/s 10(21), 10(23A), 10(23B), 10(23BB), 10(23C) or 11.

(ii) Cooperative Societies carrying on business enjoying deduction u/s 80P. As per the ruling of Hon'ble ITAT in the case of ACIT v. India Magnum Fund [2002] 81 ITD 295 (Mum), if entire income of the assessee is exempt u/s 10, he will not be liable to tax audit u/s 44AB despite his turnover or gross receipts exceed the prescribed or threshold limit, since the heading of chapter III dealt with 'Incomes which do not form part of total income' and as such provisions of Section 44AB cannot and do not have any application in relation to incomes which are enumerated under chapter III and are expressly excluded from total income.....".

**However, vide Instruction No. 1988 of dated dated 19-10-2000., CBDT clarified that provisions of Section 44AB shall not apply to political parties.**

- “1. The Board have received a representation regarding the applicability of sections 44AB and 271B of the Income-tax Act, in the case of political parties.
2. The Board consulted the Ministry of Law and Justice and have been advised that:
  - (i) The idea of profession arises from a profit motive. In a political party, as in any charitable institution, there is no private profit motive nor a possibility of distribution of income among the members.
  - (ii) Having kept such income of political parties, out of the total income, under section 13A of the Act, the same income cannot be brought to tax or penalty under some different provisions, nor a political party can be put to restrictions other than those mentioned in the exemption clause, *i.e.*, section 13A of the Act.
3. Thus, the Board are of the view that the *income of the political parties are governed by the special provisions i.e. section 13A of the Income-tax 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 section 44AB or 271B of the Income-tax Act.*
4. However, the political parties will have to fulfill the requirement of maintaining the accounts and getting them audited by an accountant, as provided in section 13A of the Act to claim the benefit of exemption”.

*\* Agriculturist with no income under the head “Profits and Gains from Business or Profession” is not required to get his accounts audited, even though his sale of agricultural products exceeds prescribed or threshold limit.*

1.10 Issues addressed via circulars, notifications & instructions in respect of Section 44AB of the Income Tax Act, 1961.

**Q.1 Whether the provision of Section 44AB are applicable to commission agents, arahitias, etc.?**

Ans. **Circular:** No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986.-  
The contents of the said Circular are reproduced below : [for Circular Please refer Annexure III]

- “1. Section 44AB, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakh in any previous year relevant to the assessment year commencing on 1-4-1985 or any subsequent assessment year.
2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB.
3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachha arahitias and pacca arahitias dealing in different commodities in different parts of the country. *The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contracts under consideration.* Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.
4. The Board are advised that *so far as kachha arahitias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahitias.* A pacca arahitia is not,

in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principals of distinction can be laid down between a kachha arahtia and a pacca arahtia:

- (1) A kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.
- (2) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
- (3) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.
- (4) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.
- (5) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.
- (6) The kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's

charges and certain out of pocket expenses whereas a *pacca arahitia* has a personal interest of his own when he enters into a transaction.

(7) In the event of any loss, the *kachha arahitia* is entitled to be indemnified

by his principal as is not the case with *pacca arahitia*.

5. The above distinction between a *kachha arahitia* and *pacca arahitia* may also be relevant for determining the applicability of section 44AB in cases of other types of agents. *In the case of agents whose position is similar to that of kachha arahitia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahitia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.*

#### Judicial Analysis

*EXPLAINED IN* - In *Jeyar Consultant & Investment (P.) Ltd. v. Assistant Commissioner* [1993] 46 ITD 71 (Mad.-Trib.), it was observed that it is *ex facie* clear from the CBDT Circular No. 452 of 17-3-1986 which came to be issued in relation to *kacha* and *pacca arhatias*, who are an integral part of the trading sector, that instructions issued by the Board as respects *kacha* and *pacca arhatias* could not be applied to the case of the assessee who has arranged finances for other for a fee. The assessee may choose to label the fee as brokerage or even as commission. But the fee—or to use a generic expression ‘receipt’—could not be regarded as turnover proper.

*RELIED ON IN* - The above circular was relied on in *ITO v. Shantilal Chunilal & Co.*[1993] 45 ITD 581 (Pune - Trib.), with the following observations :

“ . . . Further, reference was made by assessee to pages 52 to 54 which contains Board’s Circular No. 452, dated 17-3-1986 which has been issued in connection with section 44AB of the Income-tax Act, 1961. Reliance was placed on para 4 of the said circular according to which the Board were advised that

so far as *kachha arahatias* were concerned, the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The submission of the learned counsel for the assessee was that the case of the assessee is one of *kachha arahatia* and not a *pucca arahatia* and, therefore, only gross commission has to be considered for the purpose of section 44AB of the Income-tax Act, 1961. . . . The CIT (Appeals) has excluded the adat receipt as well as interest receipt from the purview of turnover for the purpose of section 44AB. Relying on the clarifications given by the Board in its Circular No. 452, dated 17-3-1986, he has categorised the assessee as *kachha arahatia* and he has charged expenses incurred on such business which resulted in gross profit rate of 1.09 per cent. Therefore, it is very much relevant to clinch the issue whether the assessee is a *kachha arahatia* or not. Going by the clarification issued by the Board in the aforesaid Circular No. 452, dated 17-3-1986 the case of the assessee fits in with the *kachha arahatia vis-a-vis* case of *pucca arahatia*. . . ." (pp. 585-586).

*REFERRED TO* - In *Manish Textiles v. ACIT* [1991] 38 ITD 365 (Bom.).

*EXPLAINED IN* - The above circular was explained in *ACIT v. Hasmukh M. Shah* [2003] 85 ITD 99 (Ahd. - Trib.) with the observation that, ". . . by applying the principles laid down in the said circular, it is evidently clear that a stockbroker, like a *kachha arahatia* in foodgrains is merely entitled to brokerage and does not have any domain over the goods. The remuneration of a sharebroker, like a *kachha arahatia* consists solely of brokerage and he is not interested in the profits and losses made by his constituent. Similarly, like a *kachha arahatia*, a stockbroker acts only as an agent of his constituent and never acts as a principal. So whatever be the modalities of the transactions for the purchase and sale of shares made by the sharebroker for and on behalf of his constituents, the position is undisputed that a sharebroker does not have any interest whatsoever in the transactions except brokerage for the services rendered by him in bringing the purchaser and seller together." (p. 103)

*EXPLAINED IN - In Dy. CIT v. Mangal Dayak Chit Fund (P.) Ltd. [2005] 92 ITD 258 (Hyd. - Trib.) with the following observations:*

“This circular supports the view that the method of accounting regularly followed by the assessee and the trade or commercial practice plays a vital role in determining as to what constitutes turnover in a particular business. (pp. 280-281)”

**Q. 2 Which period to be followed for Tax Audit in case of companies having accounting year other than financial year?**

**Ans Related Circular:** No. 561, dated 22-5-1990 is reproduced below [for Circular Please refer Annexure - IV]

- “1. The Board have received representations regarding difficulties faced in complying with the provisions of section 44AB of the Income-tax Act in case of companies which follow an accounting period other than financial year.
2. Section 3 of the Income-tax Act, *inter alia*, provides that with effect from 1st April, 1989, “previous year” for the purposes of that Act means financial year immediately preceding the assessment year. In spite of the introduction of a uniform previous year for purposes of income-tax, some companies may adopt an accounting period other than the financial year, say the calendar year, under the Companies Act for other purposes.
3. In such cases, a question has arisen as to whether, under section 44AB of the Income-tax Act, the tax auditor can audit and certify the accounts for the period for which accounts have been maintained under the Companies Act (*i.e.*, in this case the calendar year) or whether the tax auditor will have to certify the accounts for the relevant financial year which is the uniform accounting year for tax purposes.

4. The Board have considered the matter and are of opinion that *as the income of the previous year is chargeable to tax and, for the purpose of Income-tax Act, the previous year is the financial year, the tax auditor would have to carry out the audit under section 44AB in respect of the period covered by the previous year, i.e., the relevant financial year. The proviso to the aforesaid section 44AB, therefore covers only the cases where the accounts are audited under any other law in respect of the financial year. Where the accounting year is different from the financial year, the proviso to section 44AB will not apply. Consequently, the tax auditors would have to carry out the tax audit in respect of the period covered by the relevant financial year and submit his report in Form 3CB as required in rule 6G(1)(b) of the Income-tax Rules”.*

**Q.3 Mode of payment of taxes by assessee to whom provisions of Section 44AB apply?**

**Ans. In terms of sub-rule (1) of of Rule 125 of the Income-tax Rules, 1962, a person to whom provisions of section 44AB are applicable shall pay tax electronically.**

**Rule 125 was inserted vide S.O. 493(E) dated 13<sup>th</sup> March, 2008- Notification No.34/2008/ F.No.134/37/2007-TPL] (For Notifilcation please see Annexure - V)**

## CHAPTER 2

# Comparative Analysis of Revised Form 3CA/ 3CB/ 3CD

### 2.1 Form No. 3CA

Vide Notification No. 33/2014[F.No.133/1/2014-TPL] dated 25.07.2014, the Central Board of Direct Taxes had made the Income-tax (7<sup>th</sup> Amendment) Rules, 2014 whereby Form Nos. 3CA, 3CB and 3CD stood substituted w.e.f. 25-07-2014. The so substituted/ revised forms 3CA, 3CB and 3CD came into force w.e.f. 25.07.2014, meaning thereby, in respect of all tax audit reports issued on or after 25.07.2014.

Subsequent to the the above substitution, an amendment was made in clause 1 of, among others, Form No.3CA, whereby 'Permanent Account Number' was substituted with "Permanent Account Number or Aadhaar Number" w.r.e.f. 01-09-2019 vide Notification No.95/2019 dated 06-11-2019.

The table below presents a comparative statement of Form No.3CA, as it existed –

- prior to 25-07-2014,
- upon its substitution with effect from 25-07-2014, and
- as amended with effect from 01-09-2019.

#### Comparative Statement of Old and New Form 3CA

*[applicable in case **where the accounts of the business or profession of a person** have been audited under any other law]*

FORM NO. 3CA				
[See rule 6G(1)(a)]				
As it [Form No.3CA] existed <b><u>prior to its substitution w.e.f. 25<sup>th</sup> July, 2014</u></b>	<b>As Substituted</b> w.e.f. 25-07-2014 [by Income-tax (7 <sup>th</sup> ) Amendment) Rules, 2014, i.e., <b><u>from 25<sup>th</sup> July, 2014</u></b>	Changes/ Revisions made <b>w.e.f. 01-11-2019</b> [as shown in <b>bold and underlined</b> ]	Remarks {with reference to changes in column	Remarks {with reference to changes in column

			(2) vis-à-vis column (1)]	(3) vis-à-vis column (2)]
<b>Audit report under section 44AB of the Income - tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law</b>				
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1. *I/ We report that the statutory audit of .... [mention name and address of the assessee with permanent account number] was conducted by *me/us/M/s.... in pursuance of the provisions of the....Act, and *I/we annex hereto a copy of *my/our/their audit report dated ....along with a copy each of -	1. *I/ we report that the statutory audit of M/s..... (Name and address of the assessee with Permanent Account Number) was conducted by *me/us/ M/s..... in pursuance of the provisions of the.... Act, and *I/we annex hereto a copy of *my/ our/ their audit report dated ....along with a copy of each of :-	1. *I/ we report that the statutory audit of M/s..... (Name and address of the assessee with Permanent Account Number <b>or Aadhaar Number</b> ) was conducted by *me/ us/ M/s..... in pursuance of the provisions of the.... Act, and *I/we annex hereto a copy of *my/ our/ their audit report dated ....along with a copy of each of :-	—	'Permanent Account Number of Aadhaar Number' substituted for 'Permanent Account Number' with the deemed effect from 01-09-2019, vide G.S.R. 825I 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.  It has been the endeavor of the Income-tax Department for some years now to link assessee's PAN with their Aadhaar Number with the underlined objective to weed out any undetected duplicate PANs as Aadhaar Number is based on biometric attributes of finger prints and iris image. However, more than one thirds of PAN holders are yet to link despite various deadlines, including putting in place a provision whereby non-linking with result in a PAN becoming inoperative.

				<p>Hence, insertion of Aadhaar Number apparently is a step in the above direction.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p>
<p>(a) the audited *profit and loss account/ income and expenditure account for the year ended on 31st March,....;</p>	<p>a) the audited *profit and loss account/ income and expenditure account for the <u>period beginning from ....to ending on ....</u></p>	<p><i>[No change/Revision subsequent to 25-07-2014]</i></p>	<p><b>Sub clause(a) to clause 1 amended to provide period in respect of profit and loss account / income and expenditure account <u>beginning from ....to ending on ....</u> instead of year ended on 31.03.....</b></p> <p>Logic: To address broken period accounts such as in the case of dissolution, death, liquidation, insolvency or any on account of any other factor.</p>	—

(b) the audited balance sheet as at 31st March,....; and	(b) the audited balance sheet as at, ....; and			
(c) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/ income and expenditure account and balance sheet	c) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/ income and expenditure account and balance sheet	[No change/Revision subsequent to 25-07-2014]	—	—
2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD	2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD	[No change/Revision subsequent to 25-07-2014]	—	—
3. In * my/our opinion and to the best of *my/ our information and according to explanations given to *me/ us, the particulars given in the said Form No. 3CD and the Annexure thereto are true and correct.	. In *my / our opinion and to the best of *my/ our information and <u>according to examination of books of account including other relevant documents</u> and explanations given to *me / us, the particulars given in the said Form No.3CD are true and correct subject to the following observations/ qualifications, if any: a. b. c.	[No change/Revision subsequent to 25-07-2014]	[ <u>according to examination of books of account including other relevant documents</u> ']  <u>and</u>  [ <u>subject to the following observations/ qualifications, if any,</u>  <u>a.</u>  <u>b.</u>  <u>c.]</u>	—

				were found inserted at the time of substitution of Form No.3CA in 2014  List provided in e-utility (Please refer Note 1 to form 3CB here in below)	
** Signed		** <u>(Signature and stamp/ Seal of the signatory)</u>	[No change/Revision subsequent to 25-07-2014]	<b>Stamp/ Seal of Signatory to Tax Audit Report required</b>	—
	Place :....	Name <u>of the Signatory</u> :....	[No change/Revision subsequent to 25-07-2014]	E-Utility also requires filling Membership No. & FRN No	—
	Date :....	Full address....			

Notes :	Notes :			
1. *Delete whichever is not applicable	1. *Delete whichever is not applicable	[No change/Revision subsequent to 25-07-2014]	—	—
2. ** This report has to be signed by -  (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or	2. **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.	[No change/Revision subsequent to 25-07-2014]	Discussed in detail in Chapter - I.  However, briefly it is stated that the clauses under Note 2 in the Form 3CA [prior to its substitution in July 2014] were in	—

<p>(ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State; or</p> <p>(iii) any person who is, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant period year.</p> <p><i>[this (iii) was inserted when this Form was substituted with the</i></p> <p><i>S.O.602(E)</i>  <i>Notification No. 6370</i>  <i>[F.No.142/35/85-TPL]</i>  <i>dated 12-08-1985]</i></p>			<p>consonance with the provisions of section 226(2) of the Companies Act, 1956. The corresponding section 141 in the Companies Act, 2013, which came into force w.e.f. 01-04-2014, provided that a person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.</p> <p>Accordingly, the Form 3CA substituted in July, 2014 referred to the provisions of section 44AB of the Income-tax Act, 1961. In the Explanation 1 to the said section 44AB made reference to section 288. The Explanation [which was substituted with the earlier one w.e.f. 01-06-2015] to section 288(2) explains accountant to mean a chartered accountant who holds valid certificate of practice. [the earlier Explanation referred to section 226 of the Companies Act,</p>	
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			1956]	
3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.	3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.	[No change/Revision subsequent to 25-07-2014]	—	—
4. The person who signs this audit report shall indicate reference of his membership number/ certificate of practice/ authority under which he is entitled to sign this report.	4. The person who signs this audit report shall indicate reference of his membership number/ certificate of practice/ authority under which he is entitled to sign this report.	[No change/Revision subsequent to 25-07-2014]	—	—

## 2.2 Form No. 3CB

As stated above, Vide Notification No. 33/2014[F.No.133/1/2014-TPL] dated 25.07.2014, the Central Board of Direct Taxes had made the Income-tax (7<sup>th</sup> Amendment) Rules, 2014 whereby Form Nos. 3CA, 3CB and 3CD stood substituted w.e.f. 25-07-2014. The so substituted/ revised forms 3CA, 3CB and 3CD came into force w.e.f. 25.07.2014, meaning thereby, in respect of all tax audit reports issued on or after 25.07.2014.

Subsequent to the the above substitution, an amendment was made in clause 1 of, among others, Form No.3CB, whereby 'Permanent Account Number' was substituted with "Permanent Account Number or Aadhaar Number" w.r.e.f. 01-09-2019 vide Notification No.95/2019 dated 06-11-2019.

The table below presents a comparative statement of Form No.3CB, as it existed –

- prior to 25-07-2014,
- upon its substitution with effect from 25-07-2014, and
- as amended with effect from 01-09-2019.

### Comparative Statement of Old and New Form 3CB

*[applicable in the case of a person referred to in clause (b) of sub-rule (1) of rule 6G]  
In other words, applicable in the case of a person who carries on business or profession,  
but who is not required by or under any other law to get his accounts audited]*

FORM NO. 3CB				
[See rule 6G(1)(b)]				
As it [Form No.3CB] stood <b>prior to</b> its substitution w.e.f. <b><u>25<sup>th</sup> July, 2014</u></b>	<b>As Substituted</b> w.e.f. 25-07-2014 [by the Income-tax (7 <sup>th</sup> ) Amendment) Rules, 2014, i.e., <b>effective from 25<sup>th</sup> July, 2014</b>	Changes/ Revisions made w.e.f. <b>06-11-2019</b> by Notification No.95/2019 dated 06-11-2019 [as shown in <b><u>bold</u></b> and <b><u>underlined</u></b> ]	Remarks  {with reference to changes	Remarks  {with reference to changes

Audit report under section 44AB of the Income-tax Act, 1961, in the case of a person referred to in clause (b) of sub-rule (1) of rule 6G			in column (2) vis-à-vis column (1)]	in column (3) vis-à-vis column (2)]
(1)	(2)	(3)	(4)	(5)
1. *I/ We have examined the Balance Sheet as at 31 <sup>st</sup> March...., and the *Profit and Loss Account / Income and Expenditure Account for the year ended on that date, attached herewith, of .... [mention name and address of the assessee with permanent account number]	1. *I/ we have examined the balance sheet as <u>on, ....</u> and the *profit and loss account/ income and expenditure account <u>for the period beginning from ... to ending on....</u> , attached herewith, of .... (Name), .... (Address), ....  (Permanent Account)	1. *I/ we have examined the balance sheet as <u>on, ....</u> and the *profit and loss account/ income and expenditure account for the period beginning from ... to ending on...., attached herewith, of.... (Name), .... (Address), ...(Permanent Account Number <b>or Aadhaar Number</b> )	<b>Clause 1 amended to provide Balance sheet as on ..... instead of as at 31.03.....&amp; further to provide period in respect of profit and loss account / income and expenditure account,beginning from ...to ending on ...</b> instead of year ended on 31.03.....  Logic : To address broken period accounts such as in the case of dissolution, death, liquidation, insolvency or any on account of any other factor.  *Balance Sheet date not amended in efilling utility.	'Permanent Account Number of Aadhaar Number' substituted for 'Permanent Account Number' with the deemed effect from 01-09-2019, vide G.S.R. 825I 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.  It has been the endeavor of the Income-tax Department for some years now to link assessee's PAN with their Aadhaar Number with the underlined objective to weed out any undetected duplicate PANs as Aadhaar Number is based on biometric attributes of finger prints and iris image. However, more than one thirds of PAN holders are yet to link despite various deadlines, including putting in place a provision whereby non-linking with result in a

				<p>PAN becoming inoperative.</p> <p>Hence, insertion of Aadhaar Number apparently is a step in the above direction.</p> <p><i>[However, as on 27-10-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p>
2. *I/ we certify that the balance sheet and the *profit and loss/ income and expenditure account are in agreement with the books of account maintained at the head office at .... and **.... branches.	2. *I/ we certify that the balance sheet and the *profit and loss / income and expenditure account are in agreement with the books of account maintained at the head office at .... and **.... branches.	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—
3.(a) *I/ we report the following observations/ comments/ discrepancies/ inconsistencies; if any:	3.(a) *I / we report the following observations/ comments/ discrepancies/ inconsistencies; if any:	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—
(b) Subject to above, -	(b) Subject to above, -			
(A) *I/ we have obtained all the information and explanations which, to the best of *my/ our knowledge and belief, were necessary for the	(A) *I/ we have obtained all the information and explanations which, to the best of *my/ our knowledge and belief, were necessary for the <u>purpose</u> of the audit.	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—

purposes of the audit.				
(B) In *my / our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from *my/ our examination of the books.	(B) In *my/ our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from *my/ our examination of the books.	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—
(C) In *my/ our opinion and to the best of *my/ our information and according to the explanations given to *me/ us, the said accounts, read with notes thereon, if any, give a true and fair view:-	(C) In *my/ our opinion and to the best of *my/ our information and according to the explanations given to *me/ us, the said accounts, read with notes thereon, if any, give a true and fair view:-	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—
(i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31 <sup>st</sup> March,... , and	(i) in the case of the balance sheet, of the state of the affairs of the assessee <b>as at 31<sup>st</sup> March,... ; and</b>	<i>[No change/Revision subsequent to 25-07-2014]</i>	Period in conflict with clause 1 herein above, not amended either in revised form or utility	—
(ii) in the case of the *profit and loss account / income and expenditure account, of the *profit/ loss or *surplus/ deficit of the assessee for the year ended on that date.	(ii) in the case of the *profit and loss account/ income and expenditure account of the *profit/ loss or *surplus / deficit of the assessee for the year ended on that date.	<i>[No change/Revision subsequent to 25-07-2014]</i>	—	—
4. The statement of particulars required to be	4. The statement of particulars required to be furnished under	<i>[No change/Revision</i>	—	—

furnished under section 44AB is annexed herewith in Form No.3CD.		section 44AB is annexed herewith in Form No.3CD.		<i>subsequent to 25-07-2014]</i>				
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 <u>and the Annexures thereto</u> are true and correct.		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 <u>subject to following observations/qualifications, if any:</u>  a.  b.  c.		<i>[No change/Revision subsequent to 25-07-2014]</i>		Closing portion of the note -'subject to following observations/ qualifications, if any  a.  b.  c.'  inserted in 2014  List provided in e-utility (Please refer Note 1 here in below)		—
	*** Signed		*** <u>(Signature and stamp/ Seal of the signatory)</u>		<b>Stamp/ Seal of Signatory to Tax Audit Report required</b>			
	Name:							
	Address:							
Place :....		Place :....		Name <u>of the Signatory</u> :....		E-Utility also requires filling Membership No. & FRN No		
Date :....		Date :....		Full address....				

Notes :	Notes :			
5. *Delete whichever is not applicable	5. *Delete whichever is not applicable	—	—	—
6. *** Mention the total number of branches	2. **Mention the total number of branches	—	—	—
<p>3. *** This report has to be signed by -</p> <p>(i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or</p> <p>(ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.</p>	<p>7. ***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.</p>	<p><i>[No change/Revision subsequent to 25-07-2014]</i></p>	<p>Discussed in detail in Chapter-I.</p> <p>However, briefly it is stated that the clauses under Note 2 in the Form 3CA [prior to its substitution in July 2014] were in consonance with the provisions of section 226(2) of the Companies Act, 1956. The corresponding section 141 in the Companies Act, 2013, which came into force w.e.f. 01-04-2014, provided that a person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.</p> <p>Accordingly, the Form 3CA substituted in July, 2014 referred to the provisions of section 44AB of the Income-tax Act, 1961. In the</p>	

			Explanation 1 to the said section 44AB made reference to section 288. The Explanation [which was substituted with the earlier one w.e.f. 01-06-2015] to section 288(2) explains accountant to mean a chartered accountant who holds valid certificate of practice. [the earlier <i>Explanation referred to section 226 of the Companies Act, 1956</i> ]	
8. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.	—	[No change/Revision subsequent to 25-07-2014]	The earlier note 4 was omitted in the Form substituted w.e.f. 20-07-2014, for the apparent reason that <u>“subject to following observations/ qualifications, if any:...” inserted in paragraph 5 of the Form itself</u>	—
5. The person who signs this audit report shall indicate reference of his membership number/ certificate of practice/ authority under which he is entitled to sign this report.	4. The person who signs this audit report shall indicate reference of his membership number/ certificate of practice/ authority under which he is entitled to sign this report.	[No change/Revision]	—	—

Note 1: List of qualification / observation as provided in e-filing utility

- a) Proper book of account, to enable reporting in form 3CD, have not been maintained by the assessee.
- b) 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 been provided by the assessee.
- c) Documents necessary to verify the reportable transaction were not made available.
- d) Proper stock records are not maintained by the assessee.
- e) Valuation of closing stock is not possible.
- f) Yield/percentage of wastage is not ascertainable.
- g) Records necessary to verify personal nature of expenses not maintained by the assessee.
- h) TDS return could not be verified with the books of account.
- i) Records produced for verification of payment through account payee cheque were not sufficient.
- j) Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.
- k) Prior period expenses are not ascertainable from books of account.
- l) Fair market value of shares u/s 56(2) (viiia)/(viiib) is not ascertainable.
  
- m) Reports of audit carried by Excise/Service tax Department were not made available.
- n) GP ratio is not ascertainable from the financial statement prepared by the assessee.
- o) 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.
- p) Others

\*Observations to be reported in the category “Other” may include:

1. That in respect of information to be reported vide clause 4, it is hereby stated that assessee is liable for registration under ..... Act, but has not applied for the same.
2. That in respect of information to be reported vide clause 4, it is hereby stated that assessee has applied for the registration no. under .....Act, but was not allotted till the date of Tax Audit Report.
3. That in respect of information to be reported vide clause 4, it is hereby stated that Assessee has obtained registration no. under ..... Act without having any liability thereof.
4. That in respect of information to be reported vide clause 17, it is hereby stated that Documents substantiating the stamp duty valuation of property sold “ ..... Address.....”, in order to verify compliance with S. 43CA/50C were not made available.
5. That in respect of information to be reported vide clause 22, it is hereby stated that the amount of interest inadmissible under section 23 of the MSMED Act, 2006 is Rs.....
6. That in respect of information to be reported vide clause 22, it is hereby stated that the assessee is maintaining books of accounts on mercantile system of accounting, and as such amount of interest inadmissible under section 23 of the MSMED Act, 2006 is Rs....., which has neither been debited to profit and loss account, nor the provisioning for the same is made.
7. That in respect of information to be reported vide clause 22, it is hereby stated that the assessee has not disclosed the status of suppliers in its financial statements if they fall within the preview of the definition of “Supplier” under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006, moreover it has been stated that assessee has been informed that none of his supplier is

registered under MSMED Act, 2006.

8. That in respect of information to be reported vide clause 26, it is hereby stated that assessee has paid employees contribution towards PF & EPF before the due date of filing of return & in view of decision of hon'ble SC in the case of Commissioner of Income-tax v. Alom Extrusions Ltd [2009] 319 ITR 306 (SC) the same is treated as allowable expenditure.
9. That in respect of information to be reported vide clause 32, it is hereby stated that during the period under consideration assessee carrying on the business of purchase and sale of shares i.e. deemed speculation business in view of explanation to S. 73 however relying upon the ration of .....court in the matter of ....., assessee represented that it is not covered by explanation to S. 73 and as such loss to the extent of Rs.....incurred on account of sale and purchase of shares has been set off against income from other sources
10. That in respect of information to be reported vide clause 34(a), it is hereby stated that on amount of Rs....., TDS is deducted under the provisions of S. 194C, however the payment is of the nature of commission on which TDS in our view should be deducted under provisions of S. 194H, and as such there is a short deduction of Rs.....
11. That in respect of information to be reported vide clause 34(a), it is hereby stated that in respect of amount of Rs. ...., TDS was required to be deducted @ .....%, however the same is deducted at lower rate of @.....
12. That in respect of information to be reported under sub clause (b) to clause 34, it is stated that due to voluminous entries, it is not possible for the tax auditor to verify and state as if the statement of tax deducted or collected contains information about all transactions which are required to be reported under this clause.
13. That in respect of information to be reported under sub clause (b) to clause 34, it is stated that below mentioned are the transaction which are not stated in tax deducted / collected statement:
  - a.....

b.....

14. That in respect of information to be reported vide clause 35(a)/(b), it is hereby stated that, That assessee is not maintaining stock register, and due to voluminous entries it is not possible to collect quantitative details in respect of opening stock / purchase & sale.
15. That in respect of information to be reported vide clause 35(a)/(b), it is hereby stated that assessee is maintaining stock of voluminous differential items of smaller value, and hence the quantity has been reported lot wise taking value as base for lot size using lot band of value Rs. 0 - 1000, 1000 - 2500, 2500 -5000, .....
16. That in respect of information to be reported vide clause 35(b), it is hereby stated that the unit of input material i.e. Kgs is different with that of output material i.e Pcs.

*\*\*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]**

\*\*\* For Revised form 3CB please refer Notification no. 33 dated 25.07.2014

## 2.3 Comparative Statement of Form No. 3CD

Form 3CD - <u>Substituted w.e.f. 25.07.2014</u> [Substituted by the Income Tax (7 <sup>th</sup> Amendment) Rules, 2014, vide S.O. 1902(E) dated 25 <sup>th</sup> July, 2014, Notification No.33/2014/ F.No.133/2014/2014-TPL]		Form 3CD - <u>Changes/Revisions made subsequent to 25<sup>th</sup> July, 2014</u> , including by Notification -		
Note : <u>Checked all changes thr 25-07-14 incorporated</u>		<p>[1] 29-06-2016 [S.O. 3080(E ), Notification No.88/2016, F. No.133/23/2015-TPL] <i>[Relevant to Clause 13]</i></p> <p>[2] 03-07-2017 [G.S.R. 821(E ) F.No.58/2017/ F.No.370142/10/ 2017-TPL] <i>[Relevant to substitution of Clause 31]</i></p> <p>[3] 20-07-2018 [G.S.R. 666(E ) , Notification No.33/2018/ F.No.370142/9/2018-TPL] <i>[Relevant to substitution of Clauses 4, 19, 26, insertion of 29A, 29B, 30A, 30B, 30C, insertion of sub-clauses (ba), (bb), (bc), (bd) in clause 31, 34, insertion of clause 36A, 42, 43 and 44]</i></p> <p>[4] 06-11-2019 [G.S.R. 825(E ), Notification No.95/ 2019/ F.No.370142/15/2019-TPL] <i>["Permanent Account Number or Aadhaar Number" wherever appearing, inter alia, in Form 3CA, 3CB and 3CD, substituted 'Permanent Account Number 31]</i> <i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>[5] 01-10-2020[G.S.R.610(E), <span style="float: right;">Notification No.82/2020/F.No.370142/30/2020-TPL]</span> <i>[Relevant to insertion of clause 8a, (ca) and (cb) after © of clause 18, and substitution of clause (a) of clause 33 are as discussed below</i></p>		
Clause no.	Content	Clause no.	Content	Remarks
<b>(3)</b>	<b>(4)</b>	<b>(6)</b>	<b>(7)</b>	<b>(8)</b>

1	Name of the assessee	1	<b>No Change in or after 25-07-2014</b>	No Change w.e.f. 20-08-2018
2	Address	2	<b>No Change in or after 25-07-2014</b>	No Change w.e.f. 20-08-2018

3	Permanent Account Number (PAN)	3	<p><b>Change w.e.f. 2019</b></p> <p>Permanent Account Number (PAN) or Adhaar Number</p>	<p><b>Change w.e.f. 01-09-2019</b></p> <p>“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 1 2-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p>
4	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	4	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. if yes, please furnish the registration number, GST Number or any other identification number allotted for the same	<p><b>W.e.f 20-08-2018</b></p> <p>‘goods and services tax’ <u>after</u> sales tax; and ‘GST Number’ after registration number inserted Consequent to enactment of Goods and Services Tax Act</p>
5	Status	5	<b>No Change in or after 25-07-2014</b>	No Change w.e.f. 20-08-2018

6	Previous Year from _____ to _____	6	<b>No Change in or after 25-07-2014</b>	No Change w.e.f. 20-08-2018
7	Assessment year	7	<b>No Change in or after 25-07-2014</b>	No Change w.e.f. 20-08-2018
8	Indicate the relevant clause of section 44AB under which the audit has been conducted	8	<b>No Change after 25-07-2014</b>	No Change w.e.f. 20-08-2018
		8a	<b>Clause 8a inserted, after clause 8, w.e.f. 01-10-2020</b>	"Whether the assessee has opted for taxation under section 115BA/ 115BAA/115BAB?"
9	a) If firm or association of persons, indicate names of partners/members and their profit sharing ratios.  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	9	<b>No Change after 25-07-2014</b>	No Change w.e.f. 20-08-2018
10	a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession)	10	<b>No Change after 25-07-2014</b>	No Change w.e.f. 20-08-2018

	b) If there is any change in the nature of business or profession, the particulars of such change.			
11	<p>a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.</p> <p>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 ke</p> <p>c) List of books of account and nature of relevant documents examined.</p>	11	<b>No Change after 25-07-2014</b>	No Change w.e.f. 20-08-2018
12	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.)	12	<b>No Change after 25-07-2014</b>	
13	<p>(a) Method of accounting employed in the previous year</p> <p>(b) Whether there had been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year</p>	13	<p><b>Change with effect from 01-04-2017 as indicated in the previous column</b></p> <p>No Change w.e.f. 20-08-2018</p>	<p>No Change w.e.f. 20-08-2018</p> <p><b>Please see substitution of the Form vide notification dated 25-07-2014 Column for increase/decrease in loss??</b></p>

(c) If answer to (b) above is in the 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.)

(d) Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss

Effect		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			

ICDS VI	Changes in Foreign Exchange Rates							
ICDS VII	Governments Grants							
ICDS VIII	Securities							
ICDS IX	Borrowing Costs							
ICDS X	Provisions, Contingent Liabilities and Contingent Assets							
	Total							
(f) Disclosure as per ICDS:								
(i)	ICDS I - Accounting Policies							
(ii)	ICDS II - Valuation of Inventories							
(iii)	ICDS III - Construction Contracts							
(iv)	ICDS IV - Revenue Recognition							

	<table border="1"> <tr> <td>(v)</td> <td>ICDSI V - Tangible Fixed Assets</td> </tr> <tr> <td>(vi)</td> <td>ICDS VII - Governments Grants</td> </tr> <tr> <td>(vii)</td> <td>ICDSI IX - Borrowing Costs</td> </tr> <tr> <td>(viii)</td> <td>ICDS X - Provisions, Contingent Liabilities and Contingent Assets</td> </tr> </table>	(v)	ICDSI V - Tangible Fixed Assets	(vi)	ICDS VII - Governments Grants	(vii)	ICDSI IX - Borrowing Costs	(viii)	ICDS X - Provisions, Contingent Liabilities and Contingent Assets			
(v)	ICDSI V - Tangible Fixed Assets											
(vi)	ICDS VII - Governments Grants											
(vii)	ICDSI IX - Borrowing Costs											
(viii)	ICDS X - Provisions, Contingent Liabilities and Contingent Assets											
14	<p>(a) Method of valuation of closing stock employed in the previous year</p> <p>(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::</p> <table border="1"> <thead> <tr> <th>Serial number</th> <th>Particulars</th> <th>Increase in profit (Rs.)</th> <th>Decrease in profit (Rs.)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)					14	<b>No Change after 25-07-2014</b>	<p>No Change w.e.f. 20-08-2018</p> <p><b>Please see substitution of the Form vide notification dated 25-07-2014</b></p>
Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)									

15	<p>Give the following particulars of the capital asset converted into stock-in-trade: -</p> <p>(a) Description of capital asset;</p> <p>(b) Date of acquisition;</p> <p>(c) Cost of acquisition;</p> <p>(d) Amount at which the asset is converted into stock-in-trade.</p>	<p>a) No Change b)</p> <p>No Change</p> <p>c) No Change d)</p> <p>No Change</p>	15	<b>No change in or after 25-07-2014</b>	
16	<p>Amounts not credited to the profit and loss account, being, -</p> <p>(a) the items falling within the scope of section 28;</p> <p>(b) the proforma 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;</p> <p>(c) escalation claims accepted during the previous</p> <p>year; (d) any other item of income;</p> <p>(e) Capital receipt, if any.</p>	<p>a) No Change</p> <p>b) No Change</p> <p>c) No Change d)</p> <p>No Change</p> <p>e) No Change</p>	16	<b>No change in or after 25-07-2014</b>	

17	<p>Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:</p> <table border="1" data-bbox="105 266 737 406"> <thead> <tr> <th data-bbox="105 266 245 406">Details of property</th> <th data-bbox="245 266 491 406">Consideration received or accrued</th> <th data-bbox="491 266 737 406">Value adopted or assessed or assessable</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Details of property	Consideration received or accrued	Value adopted or assessed or assessable				<p>Requirement to furnish the details of land or property (<i>being Capital assets or Stock in trade</i>) sold at price less than value adopted by any state authority.</p>	17		
Details of property	Consideration received or accrued	Value adopted or assessed or assessable									

18	<p>Particulars of depreciation allowable as per Income-Tax Act, 1961 in respect of each asset or block of asset, as the case may be, in the following form :-</p> <p>a. Deprecation of asset/block of asset</p> <p>b. Rate of depreciation.</p> <p>c. Actual cost of written down value, as the case may be.</p> <p>d. Addition/Deduction during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –</p> <p>(i) Central Value added Tax credit claimed and allowed under the Central Excise Rule, 1944, in respect of assets acquired on or after 1<sup>st</sup> March, 1994,</p> <p>(ii) Change in rate of exchange of currency, and</p> <p>(iii) Subsidy or grant or reimbursement, by whatever name called.</p> <p>e) Deprecation allowable.</p> <p>f) Written down value at the end of year.</p>	<p>a) No Change</p> <p>b) No Change</p> <p>c) No Change</p> <p>d) No Change, except in item (i) of sub-clause (d) “Central Value added tax” substitute for the earlier ‘Modified Value added tax’</p> <p>e) No Change</p> <p>f) No Change</p>	18	<p><b>No change in or after 25-07-2014 till 01-10-2020, when sub-clauses (ca) and (cb) inserted after clause 18, as under :</b></p> <p>“(ca) Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only) -----</p> <p>(cb) Adjusted written down value .....?’</p>	<p>Notification No.82/2020 dated 01-10-2020. As the plain reading suggests, sub-clause (ca), is applicable/relevant to the ongoing AY, i.e. 2020-21 the same is relevant for</p>
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	35(1)(ia)			
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		provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf.
32AC		
<b>32AB</b>		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(ia)		
35(1)(III)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		

inserted after row 32AC

To keep track if any asset, in respect of which deduction under section 32AD has been availed is sold, except as provided, within a period of five years from its installation

	<b>35(1)(III)</b>				
	<b>35(1)(iv)</b>				
	<b>35(2AA)</b>				
	<b>35(2AB)</b>				
	<b>35ABB</b>				
	<b>35AC</b>				
	<b>35AD</b>				
	<b>35CCA</b>				
	<b>35CCB</b>				
	<b>35CCC</b>				
	<b>35CCD</b>				
	<b>35D</b>				
	<b>35DD</b>				
	<b>35DDA</b>				
	<b>35E</b>				



	<b>Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party</b>				
	<b>Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party;</b>				

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

i. As payment to non residence referred to in sub-clause (i)

A. Details of payment on which tax is not deducted:

I. Date of payment

II. Amount of payment

III. Nature of payment

IV. Name and address of the payee

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

I. Date of payment

II. Amount of payment

III. Nature of payment

IV. Name and address of payee

V. Amount of tax deducted

b) New Form 3CD reporting even if not debited to P&L

<p>ii. As payment referred to in sub-clause(ia)</p> <p>A. Details of payment on which tax is not deducted: I. Date of payment  II. Amount of payment  III. Nature of payment  IV. Name and address of the payee</p> <p>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.  I. Date of payment  II. Amount of payment  III. Nature of payment  IV. Name and address of the payee  V. Amount of tax deducted  VI. Amount out of (V) deposited, if any  iii. Under sub-clause(ic) [Wherever applicable]  iv. Under sub-clause(ia)  v. Under sub-clause(iib)  vi. Under sub-clause(iii)  A. Date of payment  B. Amount of payment  C. Name and address of the payee  vii. Under sub-clause(iv)  viii. Under sub-clause(v)</p> <p>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;</p>				

c) Expenses covered u/s 40A(3) to be reported on the bases of examination of books of account. Certificate from assessee as earlier required, would not be sufficient.

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

A. On the basis of the examination of books of account and other relevant document/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 furnish the details:

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

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 under section 40A(3A);

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

e) provision for payment of gratuity not allowable under section 40A(7);

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

g) particulars of any liability of a contingent nature;

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;

d) No change

e) No change.

f) No change.

g) No change.

21

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

A. On the basis of the examination of books of account and other relevant document/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 furnish the details:

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

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

**Change w.e.f. 01-09-2019**

“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.

*[However, till 1 2-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*

No Change  
w.e.f. 20-08-2018

<p>i) Amount inadmissible under the proviso to section 36(1)(iii).</p>	<p>h) No change.</p>	<p>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 under section 40A(3A);</p>											
		<table border="1"> <thead> <tr> <th data-bbox="1155 343 1228 595">Serial number</th> <th data-bbox="1228 343 1301 595">Date of payment</th> <th data-bbox="1301 343 1374 595">Nature of payment</th> <th data-bbox="1374 343 1428 595">Amount</th> <th data-bbox="1428 343 1483 595">Nature of Account Number Available</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Serial number	Date of payment	Nature of payment	Amount	Nature of Account Number Available						
Serial number	Date of payment	Nature of payment	Amount	Nature of Account Number Available									
		<p>e) provision for payment of gratuity not allowable under section 40A(7);</p> <p>f) any sum paid by the assessee as an employer not allowable under section 40A(9);</p> <p>g) particulars of any liability of a contingent nature;</p> <p>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;</p> <p>i) Amount inadmissible under the proviso to section 36(1)(iii).</p>											

22	Amount of interest inadmissible under section 23 of the Micro Small and Medium Enterprises Development Act, 2006.	No Change		<b>No change in or after 25-07-2014</b>	
23	Particulars of payments made to persons specified under section 40A(2)(b).	No Change		<b>No change in or after 25-07-2014</b>	
24	Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.	Expenditure on prospecting certain minerals u/s 32AC also to be reported.		<b>No change after 25-07-2014</b>	
25	Any amount of profit chargeable to tax under section 41 and computation thereof.	No Change		<b>No change in or after 25-07-2014</b>	
26	<p>In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which :—</p> <p>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</p> <p style="padding-left: 20px;">a. paid during the previous year;</p> <p style="padding-left: 20px;">b. not paid during the previous year</p> <p>B. was incurred in the previous year and was</p> <p style="padding-left: 20px;">a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1);</p> <p style="padding-left: 20px;">b. not paid on or before the aforesaid date.</p> <p>(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)</p>	No Change	26	<p>In respect of any sum referred to in clause (a), (b), (c), (d), (e), (f), or (g) of section 43B, the liability for which :—</p> <p>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</p> <p style="padding-left: 20px;">a. paid during the previous year;</p> <p style="padding-left: 20px;">b. not paid during the previous year</p> <p>B. was incurred in the previous year and was</p> <p style="padding-left: 20px;">a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1);</p> <p style="padding-left: 20px;">b. not paid on or before the aforesaid date.</p>	<p><b>W.e.f 20-08-2018</b></p> <p>“(f) or (g) substituted for “or f”</p> <p>Consequential to insertion of a new clause (g) in Section 43B w.e.f. 01-04-2017, i.e.</p> <p><i>“(g) any sum payable by the assessee to the Indian Railways for the use of railway assets,”</i></p>

				(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)	
27	<p>a) Amount of Central Value Added Tax credits availed of or utilised 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</p> <p>b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.</p>	<p>a) Central Value Added Tax is substituted with Modified Value Added Tax</p> <p>b) No Change</p>	27	<b>No change after 25-07-2014</b>	

28	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)(viii), if yes, please furnish the details of the same.	Newly inserted. In case of firms and companies in which public is not substantially interested, the detail of receipt of shares of Pvt. Ltd. Company without consideration or for inadequate consideration is required to be provided.	28	<b>No change after 25-07-2014</b>	
29	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 .	Newly inserted. Detail in respect of shares issued by a Pvt. Ltd. Company at value more than FMV is required to be provided.	29	<b>No change after 25-07-2014</b>	
			29A	<b>Change w.e.f. 20-08-2018</b> (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes / No)  (b) If yes, please furnish the following details:  (i) Nature of income (ii) Amount thereof	<b>W.e.f 20-08-2018</b> Insertion of this new clause is consequential to insertion of clause (ix) in sub-section (2) of section 56 by the Finance (No.2) Act, 2014 w.e.f. 01-04-2015, as under :  (ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if, – (a) such sum is forfeited; and  b) the negotiations do not result in transfer of such capital asset.

			29B	<p><b>Change w.e.f. 20-08-2018</b></p> <p>(a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes / No)</p> <p>(b) If yes, please furnish the following details:</p> <p>(i) Nature of income: (ii) Amount (in Rs.) thereof</p>	<p><b>W.e.f 20-08-2018</b></p> <p>Insertion of this new clause is similarly consequential to insertion of clause (x) to sub-section (2) of section 56 by the Finance Act, w.e.f. 01-04-2017.</p> <p>It is pertinent to mention that Item No,(B) of sub-clause (b) of the said clause (x) was later substituted by the Finance Act, 2019, w.e.f. 01-04-2019</p> <p>Interestingly, Besides, under part (ii) of sub-clause (b) of newly inserted Clauses 29A and 29B, while in the latter, (in Rs) is included, while the former does not have that reference. Simple oversight.</p>
30	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]	No Change	30	No change <b>in or after 25-07-2014</b>	
			30A	<p><b>Change w.e.f. 20-08-2018</b></p> <p>(a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes / No)</p> <p>(b) If, yes please furnish the following details:-</p> <p>i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?</p> <p>ii. Amount (in Rs.) of primary</p>	<p><b>W.e.f 20-08-2018</b></p> <p>Newly Inserted – Consequent to insertion of section 92CE, by the Finance Act, 2017, w.e.f. 1<sup>st</sup> April, 2018</p> <p>Section 92CE – Secondary Adjustment in Certain Cases</p>

				<p>adjustment:</p> <p>iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes / No)</p> <p>iv. If yes, whether the excess money has been repatriated with the prescribed time (Yes / No)</p> <p>v. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:</p>	
			30B	<p><b>Change w.e.f. 20-08-2018</b></p> <p>(a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes / No)</p> <p>(b) If, yes please furnish the following details:-</p> <p>(i) Amount (in Rs.) of expenditure by way of similar nature incurred:?</p> <p>(ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)</p>	<p><b>W.e.f 20-08-2018</b></p> <p>Newly Inserted</p> <p>Consequent to insertion of section 94B, by the Finance Act, 2017, w.e.f. 1<sup>st</sup> April, 2018</p> <p>Section 94B - Limitation on Interest Deduction in certain cases</p>

(iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:

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

A.Y.	Amount (in Rs.)

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

A.Y.	Amount (in Rs.)

30C

- Change w.e.f. 20-08-2018**
- (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes / No)
- (b) If yes, please specify:-
- (i) Nature of the

**W.e.f 20-08-2018**

Newly Inserted to co-relate with or take care of section 96 forming part of Chapter X-A-General Anti-Avoidance Rule inserted by the Finance Act, 2012, w.e.f. 1<sup>st</sup> April, 2014. The Chapter carried Section 95 to Section 101.

impermissible avoidance arrangement:  
(ii) Amount (in Rs) of tax benefit in the previous year arising in aggregate, to all the parties to the arrangement:

Subsequently, sub-section (2) was inserted by the Finance Act, 2015 to Section 95 to the effect that *"This Chapter shall apply in respect of any assessment year beginning on or after 1<sup>st</sup> day of April, 2018.*

In terms of the Circular No.10/2020 dated 24<sup>th</sup> April, 2020, reporting under clause 30C and clause 44 (below) has been kept in abeyance till 21<sup>st</sup> March,202" in view of prevailing situation due to COVID-19 pandemic across the country

31	<p>a) * Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :—</p> <ol style="list-style-type: none"> <li>i. name, address and permanent account number (if available with the assessee) of the lender or depositor;</li> <li>ii. amount of loan or deposit taken or accepted;</li> <li>iii. whether the loan or deposit was squared up during the previous year;</li> <li>iv. maximum amount outstanding in the account at any time during the previous year;</li> <li>v. whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.</li> </ol> <p>*(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.)</p> <p>b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :-</p> <ol style="list-style-type: none"> <li>v. name, address and Permanent Account Number (if available with the assessee) of the payee;</li> <li>vi. amount of the repayment</li> <li>vii. maximum amount outstanding in the account at any time during the previous year;</li> <li>viii. whether the repayment was made otherwise than by account payee cheque or account payee bank draft.</li> </ol>	<p>a) No Change</p> <p>b) No Change</p>	<p>31</p> <p><b>This clause (31) was earlier substituted by G.S.R. 821(E ) dated 3<sup>rd</sup> July, 2017, Notification No.58/2017/ F.No.370142/10/2017-TPL, the related changes appear in this track change mode</b></p> <p>a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :—</p> <ol style="list-style-type: none"> <li>(i) name, address and permanent account number or Aadhaar Number (if available with the assessee) of the lender or depositor;</li> <li>(ii) amount of loan or deposit taken or accepted;</li> <li>(ii). whether the loan or deposit was squared up during the previous year;</li> <li>(iv) maximum amount outstanding in the account at any time during the previous year;</li> <li>(v) whether the loan or deposit was taken or accepted by cheque or an bank draft or use of electronic clearing system through a bank account;</li> </ol> <p>(vi) in case the loan or deposit was taken or accept by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.</p> <p>(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or</p>	<p><b>Change w.e.f. 01-09-2019</b></p> <p>“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p>
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accepted during the previous year :-

- (i). name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the person from whom specified sum is received;
- (ii). amount of the specified sum taken or accepted;
- (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;;
- (iv). in case the specified sum was taken or accepted by cheque or bank draft , whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

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

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

- (i) Name, address and Permanent Account Number or Aadhaar

**Change w.e.f.  
01-09-2019**

“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.

*[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*

No Change  
w.e.f. 20-08-2018

**Change w.e.f.  
01-09-2019**

“Permanent Account Number

			<p>Number (if available with the assessee) of the payer;</p> <p>(ii) Nature of transaction;</p> <p>(iii) Amount of Payment (in Rs.);</p> <p>(iv) Date of payment;;</p> <p>(bb) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:-</p> <p>(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;</p> <p>(ii) Amount of receipt (in Rs.)</p> <p>(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-</p>	<p>or Aadhaar Number" substituted for 'Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p> <p><b>Change w.e.f. 01-09-2019</b></p> <p>"Permanent Account Number or Aadhaar Number" substituted for 'Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p>
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			<p>(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;</p> <p>(ii) Nature of transaction;</p> <p>(iii) Amount of Payment (in Rs.);</p> <p>(iv) Date of payment;;</p> <p>(bd) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft,, not being an account payee cheque or an account payee bank draft, during the previous year:-</p> <p>(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;</p> <p>(ii) Amount of receipt (in Rs.)</p> <p>Particulars at (ba), (bb), (bc) and, (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E ) dated 3<sup>rd</sup> July, 2017)</p>	<p>Sub-clauses (ba), (bb), (bc), (bd) inserted after existing sub-clause (b). <b>W.e.f 20-08-2018</b></p> <p>, <b>Change w.e.f. 01-09-2019</b></p> <p>“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p>
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c) 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

(The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act)

c) Transactions covered u/s 269SS/T to be reported on the bases of examination of books of account. Certificate from assessee as earlier required, would not be sufficient.

As aforesaid, clause 31 was substituted in 2017. Sub-clause (c) of the said clause so substituted read as under :

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

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of the repayment;

(iii) Maximum amount outstanding the account at any time during the previous year;

(iv) Whether the repayment was made by cheque or abank draft or use of electronic clearing system through a bank account;

(v) In case the repayment was made by cheque or bank draft whether the same was ~~taken or accepted~~ **repaid** by an account payee cheque or an account payee bank

**Change w.e.f. 01-09-2019**

“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.

*[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*

No Change w.e.f. 20-08-2018

draft.

[the following part of the aforesaid substitution. In other words, these sub-clauses were added through the said substitution in 2017]

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

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;

(ii) Amount of Repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing

**repaid** substitute for 'taken or accepted' **W.e.f 20-08-2018**

**Repayment** inserted after 'amount of' **W.e.f 20-08-2018**

Change w.e.f.  
01-09-2019

<p style="text-align: center;"><b>system through a bank account during the previous year.</b></p> <p><b>(e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:-</b></p> <p><b>(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;</b></p> <p><b>(iii) Amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.</b></p> <p><b>(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit</b></p>	<p>“Permanent Account Number or Aadhaar Number” substituted for ‘Permanent Account Number, with the deemed effect from 01-09-2019, vide G.S.R. 825(E ) 3029, Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019.</p> <p><i>[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i></p> <p>No Change w.e.f. 20-08-2018</p> <p><b>repayment</b> inserted after ‘amount of’ <b>W.e.f 20-08-2018</b></p>
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			<p>or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act).</p>	
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32	<p>a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available :</p>					
Serial Number	Assessment year	Nature of loss/allowance (in rupees)	Amount as returned (in rupees)	Amount as assessed (give reference to relevant order)	Remarks	
<p>b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.</p> <p>c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the detail of the same.</p> <p>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.</p> <p>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.</p>						

a) No Change

b) No Change

c) Newly inserted.  
Any speculation loss incurred during P.Y. as referred in section 73 is to be reported.

d) Newly inserted.  
Loss incurred during P.Y. as referred in section 73A, in respect of any specified business is to be reported.

32	<p><b>o change in or after 25-07-2014 till 01-10-2020, when sub-clauses (a) was substituted, w.e.f. 01-10-2020, with the following :</b></p> <p>(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:</p>						
Sr No.	Assessment Year	Nature of loss/allowance (in rupees)	Amount as returned* (in rupees)	All losses/allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA <sup>^</sup>	Amount as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
<p>* If the assessed depreciation is less and no appeal pending than take assessed.</p> <p><sup>^</sup> To be filled in for assessment year 2020-21 only</p>							

Notification No.82/2020 dated 01-10-2020. As would be seen from the substitution with the earlier clause, while the text of the clause remains the same, however, in the table thereunder, two more column have been inserted consequent to insertion of sub-clauses (ca) and (cb) under clause 18, discussed supra.

33	Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).	Deduction u/s 10A <i>(Special provision in respect of newly established undertakings in free trade zone, etc.)</i> and Section 10AA <i>(Special provisions in respect of newly established Units in Special Economic Zones)</i> also included and specified format provided	33	<b>No Change after 25-07-2014</b>					
<table border="1"> <tr> <td data-bbox="112 165 245 375">Section under which deduction is claimed</td> <td data-bbox="254 165 742 343">Amount admissible as per the provisions of Income-tax Act, 1961 and fulfills the conditions, if any, specified under the related provisions of Income-tax Act, 1961 or Income-Tax Rules, 1962 or any other guidelines, circular, etc. issued in this behalf</td> </tr> <tr> <td data-bbox="112 375 245 445"></td> <td data-bbox="254 375 742 445"></td> </tr> </table>		Section under which deduction is claimed	Amount admissible as per the provisions of Income-tax Act, 1961 and fulfills the conditions, if any, specified under the related provisions of Income-tax Act, 1961 or Income-Tax Rules, 1962 or any other guidelines, circular, etc. issued in this behalf						
Section under which deduction is claimed	Amount admissible as per the provisions of Income-tax Act, 1961 and fulfills the conditions, if any, specified under the related provisions of Income-tax Act, 1961 or Income-Tax Rules, 1962 or any other guidelines, circular, etc. issued in this behalf								

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:									a) Section wise reporting of transactions of TDS/ TCS subject to the provisions of Chapter XVII-BB.	34 (a)	No Change after 25-07-2014	No Change - <b>w.e.f.20-08-2018</b>
	Tax deducti on and collecti on Account number (TAN)	Sec t- ion	Natu re of pay men t	Total amoun t of paymen t or receipt of the nature specifi ed in colum n (3)	Total amount on which tax was require d to be deducte d or collecte d out of (4)	Total amou nt on whic h tax was dedu cted or collec ted at specif ied rate out of (5)	Am ount of tax ded ucte d or coll ecte d out of (6)	Total amount on which tax was deducte d or collecte d at less than specifi ed rate out of (7)	Amoun t of tax deduct ed or collecte d on (8)				
1	2	3	4	5	6	7	8	9	10				

b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnished, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported

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 under section 201(1A)/206C(7) Payable	Amount paid out of column 2 along with date of payment
Type of Form Due date for furnishing		

b) Newly inserted.  
In case the assessee has failed to furnish the statement of TDS or TCS within the prescribed time. If not, please furnish the details:

c) Newly inserted  
Detail in respect of interest u/s 201(1A) & 206C(7), if any is required to be reported.

(b) Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

No Change in sub-clause (c) -  
**W.e.f 20-08-2018**

**w.e.f.20-08-2018,**

**Apparent reason for the above change is insertion of [but on or before the 31st day of March, 2020] by the Finance Act, 2020 w.e.f. 01-04-2021 under sub-section (1) of section 115-O - Tax on distributed profits of domestic companies. In other words, in place of earlier open-ended, now the requirement is in respect of instances on or before 31-03-2020**

No Change in sub-clause (c)  
- **W.e.f 20-08-2018**



36	<p>In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form :-</p> <ol style="list-style-type: none"> <li>a) total amount of distributed profits;</li> <li>b) amount of reduction as referred to in section 115-O(1A)(i);</li> <li>c) amount of reduction as referred to in section 115-O(1A)(ii);</li> <li>d) total tax paid thereon</li> <li>e) dates of payment with amounts.</li> </ol>	<p>The provisions of Section 115 O -(1A) incorporated in the format.</p> <p>Further, reporting is required in respect of amount of reductions referred to in sections 115 -O (1A)(i) and 115 - O(1A)(ii).</p>	36	<b>No Change after 25-07-2014</b>	
36A			36 A.	<p>36A. (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? ( Yes / No)</p> <p>(b) If yes, please furnish the following details:-</p> <ol style="list-style-type: none"> <li>(i) Amount received in (Rs.):</li> <li>(ii) Date of receipt</li> </ol>	<p>With effect from 20-08-2018</p> <p>This seems to be in conjunction with and consequent to change in sub-clause (b) of clause (34) supra</p> <p>In other words, answer to an interrogative statement</p>

37	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.	Now Cost Audit reports need not be enclosed, only detail of disqualification and disagreement is to be reported. Earlier the reference was provided to section 139(9) (which refers to statutory cost audit u/s 233A of the Companies Act, 1956). However, in new Form 3CD the reference to section 139(9) has been deleted. Thus, the clause is applicable to all cost audit carried out whether voluntary or statutory.	37	<b>No Change after 25-07-2014</b>	
38	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.	Now Excise Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.	38	<b>No Change after 25-07-2014</b>	

39	<p>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.</p>	<p>Newly inserted Detail of disqualification or disagreement in the report of audit u/s 72A of the Finance Act, 19 94 <b>(Special Audit)</b> also to be reported.</p>	39	<b>No Change after 25-07-2014</b>																					
40	<p>Details regarding turnover, gross profit, etc. , for the previous year and preceding previous year:</p> <table border="1" data-bbox="127 503 728 809"> <thead> <tr> <th data-bbox="127 503 245 609">Serial Number</th> <th data-bbox="245 503 409 609">Particulars</th> <th data-bbox="409 503 536 609">Previous Year</th> <th data-bbox="536 503 728 609">Preceding previous year</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Serial Number	Particulars	Previous Year	Preceding previous year																	<p>Under this clause, the details to be furnished for principal items of goods traded or manufactured or services rendered. Further, the ratios &amp; total turnover of preceding financial year are to be reported.</p>	40	<b>No Change after 25-07-2014</b>	
Serial Number	Particulars	Previous Year	Preceding previous year																						
41	<p>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 alongwith details of relevant proceedings.</p>	<p>Newly inserted Demand/ refund under laws other than the Income Tax Act, 1961 and Wealth Tax Act, 1957 is to be reported along with assessment particulars.</p>	41	<b>No Change after 25-07-2014</b>																					

			42	<p>42.(a) Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form No.61B? (Yes / No)</p> <p>(b) If yes, please furnish:</p> <table border="1" data-bbox="1082 294 1537 662"> <tr> <td data-bbox="1082 294 1192 662">Income-tax Department Reporting Entity Identification Number</td> <td data-bbox="1192 294 1283 662">Type of Form</td> <td data-bbox="1283 294 1374 662">Due date for furnishing</td> <td data-bbox="1374 294 1474 662">Date of furnishing</td> <td data-bbox="1474 294 1537 662">Whether contains information regarding all transactions reported of transactions</td> </tr> </table>	Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing	Whether contains information regarding all transactions reported of transactions	<p><b>New Clause inserted w.e.f.20-08-2018,</b></p>
Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing	Whether contains information regarding all transactions reported of transactions						

(i)			43	<p>43. (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286? (Yes / No)</p> <p>(b) If yes, please furnish the following details:</p> <ul style="list-style-type: none"> <li>(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity</li> <li>(ii) Name of parent entity</li> <li>(iii) Name of alternate reporting entity (if applicable)</li> </ul>	<p><b>New Clause inserted w.e.f.20-08-2018,</b></p>
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(iv) Date of furnishing of report

44

44. Break-up of total expenditure of entities registered or not registered under the GST

Sl	Total amount of	Expenditure in respect of entities registered under GST
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**New Clause inserted w.e.f.20-08-2018,**  
In terms of the Circular No.10/2020 dated 24<sup>th</sup> April, 2020, reporting under clause 30C and clause 44 (below) has been kept in abeyance till 31<sup>st</sup> March, 2021" in view of prevailing situation due to COVID-19 pandemic across the country



## CHAPTER 3

# Clause wise Analysis of Form No. 3CD

*[as revised subsequent to its substitution in / w.e.f. 25-07-2014, and the last such revision having been effected w.e.f 01-10-2020 by G.S.R. 610(E), Notification No.82/2020/F.No.370142/30/2020-TPL dated 01-10-2020]*

Form No.3CD - e statement of particulars forms part as an annexure to the audit report in Form No.3CA or Form No.3CB, as the case may be. While Form No.3CA applies in cases where the accounts of the business or profession of the assessee required to be and have been audited under any other law, Form No.3CB is applicable where the assessee is not required under any law to get the accounts of his business or profession audited

The statement of particulars in Form No.3CD, required to be furnished under section 44AB of the Income-tax Act, 1961 read with Rule 6G of the Income-tax Rules, 1962, contains forty- four clauses as against forty-one in the earlier form. In terms of Form No.3CA, the tax auditor is required to give particulars in respect of the said clauses in Form No.3CD and also, to the best of his knowledge and accordingly to examination of books of accounts including other relevant documents and explanations given to him, to opine as to the truthfulness and correctness of the particulars so given in the Form No.3CD. . However, in cases where the accounts of the assessee are not required under any law to be audited, the tax auditor, in his audit report in Form No.3CB, is required to opine - (a) as to the proper books of accounts having been kept by head office and branches of the assessee; (b) as to the said accounts give a true and fair view (i) in the case of balance sheet of the state of the affairs of the assessee as at the relevant date, and (ii) in the case of the assessee's profit/ loss or surplus/ deficit. Besides, the tax auditor is also required to give statement of particulars in Form No.3CD and also opine as to their truthfulness and correctness.

The key highlights of the substituted Form No.3CD include -

- Increased reporting requirements both for the assessee and the auditor
- Examination of books of account and relevant documents along with declaration by the assessee
- Visiting the locations at which books of accounts are maintained by the assessee

- Tax auditor to determine assessed or assessable values of properties (land or building or both), value of shares of private company
- Consolidation of details of requirements of and compliances with the provisions under various laws in relation to the assessee

While preparing/furnishing the particulars in Form No.3CD, it would be advisable to keep the following, *inter alia*, in view -

- Assessee can rely upon the judicial pronouncements while taking any particular view about inclusion or otherwise of any items in the particulars to be furnished under any of the clauses of Form No.3CD
- 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.

Similarly, it is imperative for the tax auditor to consider, among others and besides keeping in view the letter and spirit of the Accounting Standards (AS), Guidance Notes (GN), Standards on Auditing (SA) issued from time to time by the Institute, the following:

- (a) If and where a particular item of income/expenditure is covered in more than one of the specified clauses, suitable cross reference to such items should be made.
- (b) If there is any difference in the point of view 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 at the appropriate place in form 3CA/3CB (as may be applicable) by way of observation/qualification'.
- (c) In computing the allowance or disallowance, the law applicable in the relevant year should be taken care of, to bridge any gap between the form of audit report and any amendment in related law.
- (e) if the information in order to complete tax audit is given in part or is incomplete or is not given by assessee against all or any of the clauses, the auditor in such a case, should qualify his report on matters in respect of which information is not furnished to him.
- (g) In case the auditor relies on any judicial pronouncement, he may so mention by way of his observations in Form No.3CA / Form No.3CB, as the case may be
- (h) The information/particulars in Form No.3CD should, needless to mention, be based on the books of account, records, documents, information/ clarification/ explanation made available by the assessee to the tax auditor.
- (i) If any clause is not applicable, it should be so stated against the related clause(s).

In the backdrop of the foregoing, let us know discussed clause-by-clause as under:

**Audit report in Form No. 3CD comprises of two parts - PART - A and PART - B.**

**Clauses 1 to 8 and 8a of Part-A require routine particulars with regard to the assessee's -**

- 1. Name,**
- 2. Address,**
- 3. Permanent Account Number or Aadhaar Number** *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*
- 4. Liability to pay indirect tax like excise duty, service tax, sales, goods and services tax, customs duty, etc. and if yes, the registration number or GST number or any other identification number allotted,**
- 5. Status,**
- 6. Previous year,**
- 7. Assessment year,**
- 8. The relevant clause of section 44AB under which the audit has been conducted, and,**
- 8a. Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB?**

In short, there has been no revision in respect of Part-A of Form 3CD, *except* the reference to/insertion of 'goods and services tax' and 'GST number' under clause 4 supra. However, later by the Income-tax (12<sup>th</sup> Amendment) Rules, 2019, G.S.R. 825(E), Notification No.95/2019/F.No.370142/15/2019-TPL, dated 6<sup>th</sup> November, 2019, 'Permanent Account Number' appearing, amongst others, in Form Nos.3CA, 3CB, and 'Permanent Account Number (PAN)' appearing, amongst others, in Form No.3CD, have being substituted with Permanent Account Number or Aadhaar Number. *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]* (Enclosed as Annexure XI)

**E-Utility Format**

FORM NO. 3CD

[See rule 6 G(2)]

Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961

**PART A**

1	Name of the Assessee *	<input type="text"/>	<input type="text"/>
2	Address of the Assessee *	<input type="text"/>	<input type="text"/>
3	Permanent Account Number (PAN) *	<input type="text"/>	
4(a)	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. if yes, please furnish the registration number or GST number or any other identification number allotted for the same *		<input type="text" value="Select"/>

(b) S.No.	Type	Registration / Identification Number
1	<input type="text" value="Select"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

5	Status *	<input type="text" value="Select"/>
6	Previous year from *	<input type="text"/> to <input type="text"/>
7	Assessment year *	<input type="text" value="Select"/>
8	Indicate the relevant clause of section 44AB under which the audit has been conducted *	

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

8(a)	Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB	<input type="text" value="Select"/>
Section under which option exercised		<input type="text" value="Select"/>

### 3.1 Clause 1. - “Name of the assessee”

Under clause (1), the name of the assessee whose accounts are being audited under section 44AB should be given. However, if the tax audit is in respect of a branch, name of such branch should be mentioned along with the name of the assessee.

**Below mentioned include the considerations in respect of clause (1) of Form No.3CD, i.e., Statement of Particulars annexed to tax audit report in Form No.3CA or 3CB, as the case may be.**

- a. Verification of name with which the auditee is assessed, cross checking of the same with income tax record or that of any other appropriate authority
- b. In case of proprietorship concern, details of proprietor should be verified. It would be appropriate to mention the name of the proprietorship firm with the proprietor’s name while filling up Form No. 3CD in case of individuals since many a time TDS certificates are issued in the name of proprietorship firm
- c. In case of audit of a branch, name of the assessee along with the reference of concerned branch should be stated.
- d. In case of Individual – please check for any change in name on account of marriage or otherwise.

### 3.2 Clause 2. “Address”

The address in form 3CD should be the same as per income tax records or that of any other appropriate authority. In case there is any change in address, new address should be furnished in Form 3CD. If the tax audit is in respect of a branch or a unit, the address of the concerned branch or such unit should be stated in form 3CD. In the case of a company, the address of the registered office should also be stated. In the case of a new assessee, the address should be as that of the principal place of business. In short and generally, the address should be same as communicated by the assessee to the Income-tax Department for the purposes of assessment.

ICAI’s Comment: At times, the address furnished in Form No.3CA/3CB is found different than the one in the Annual report or as registered under/with the Ministry of Corporate Affairs.

### 3.3 Clause 3. “Permanent Account Number or Aadhaar Number”

*[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]\_*

Against this clause, the permanent account number (PAN) allotted to the assessee or the Aadhaar Number should be indicated. In the e-filing format, PAN or Aadhaar Number is a mandatory field. PAN - it is a number allotted by the Department having ten alphanumeric characters - the first five alphabets (capital letters), the next four (numeric numbers) and the last one again being alphabet in capital

letter. As for the Aadhaar Number – it is a randomly generated 12-digit Aadhaar Card number issued by the Unique Identification Authority of India (UIDAI) to a resident of India after satisfying the verification process laid down by the said Authority. A photocopy of the PAN or Aadhaar Number duly certified by the assessee be kept in Audit file.

*[as stated hereinbefore, in terms of Notification G.S.R. 825(E ), Notification No.95/2019/ F.No.370142/15/2019-TPL dated 06-11-2019, in Form No.3CA,, 3CB, 3CD, among others, the words “Permanent Account Number or Aadhaar Number” have been substituted for the words ‘Permanent Account Number’ wherever they appear in the said Forms and have deemed to come into force with effect from 01-09-2019] [However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*

### 3.4 Clause 4

**“Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc.**

**If yes, please furnish the registration number or GST number or any other identification number allotted for the same”**

#### *E-utility format*

4	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*		Yes <input type="text"/>
S:NO	Type	Registration /Identification Number	
1	Select	<input type="text"/>	
<input type="button" value="Add"/> <input type="button" value="Delete"/>		<div style="border: 1px solid gray; padding: 5px;">           Select            Central Excise Duty            Central Custom Duty            Service Tax            Sales Tax/VAT            State Excise Duty            Other Indirect Tax/duty         </div>	

***Points for consideration***

- Under this clause of statement of particulars, the auditor is required to mention as to whether the assessee is liable to pay indirect taxes like excise duty, service tax, sales tax, goods and services tax, customs duty, etc.
- In case the answer is yes, the registration number or GST number or any other identification number allotted by the concerned authorities is to be furnished by the tax auditor.
- \* What if the assessee has not obtained Registration number even though he is liable to pay indirect taxes?
- Here, in this clause on e-utility, the exhaustive list of indirect taxes as intended to be reported is not given. Moreover, 'indirect taxes' is not defined anywhere under any statute. However, in common parlance the same is understood to mean the taxes which are levied indirectly and recovered, meaning thereby the taxes levied on one person but borne by another person such as Service tax /erstwhile VAT and goods and services tax.
- In order to meet the requirement under this clause, the tax auditor should obtain the list of indirect taxes applicable in respect of all units covered by audit from assessee along with the registration/GST/identification number allotted. Thereupon, the copies of relevant numbers/registration certificates etc. should also be obtained for the purpose of cross verification.
- \* Where applicable, the assessee's GST Registration Number (GSTIN) needs to be furnished. At the same time, if the liability to GST is under the reverse charge mechanism, such a position should clearly be stated. Besides, if the assessee has registered under GST with more than one State and/or in addition to Central GST, all related numbers allotted to the assessee should be furnished.
- In case assessee has obtained multiple registration numbers under any given law, all such numbers should be furnished under this clause. Similarly, where there is no requirement for registration under a given law, appropriate identification number, if available, may be reported. For example, in Customs Act, 1962, a copy of Importer Exporter Code (IEC) may be obtained and reported/furnished.
- Whether the Tax auditor needs to have expertise of indirect tax laws?
- The Article 246 of the Constitution of India provides power to the Union or the State Legislature to levy indirect taxes such as Customs duty, Excise Duty, Central Sales Tax and Service Tax, sales tax (Value Added Tax), GST and other indirect taxes, such as Entry Tax, Octroi, Luxury Tax, Entertainment Tax etc (Article 265). *Since, the term "indirect taxes" is not defined, the list should be an inclusive list and may include any other indirect tax levy introduced in India from time to time.*
- While reporting under this clause, the tax auditor should take into consideration the requirement of Standard on Auditing SA 580 "Written

Representation” and also exercise due diligence, intellect and professional acumen in determining the applicability of any indirect taxes/ law on the business or profession of the assessee.

Issues:

- In case assessee is liable for registration under any particular indirect tax, but has either not applied for registration or if applied, registration is pending, then report to be suitably qualified considering the materiality aspect in Form 3CA or Form 3CB, as the case may be. Similarly, where the assessee has applied for registration but the same, for any reason, was not granted and no materiality is involved, then the fact could be stated via observation.
- In case the registration number under any Act is obtained without having any liability therefor, in that case, such registration number should also be reported under this clause.
- In the E-utility format only five specific type of indirect taxes are listed. Any other indirect taxes applicable to the assessee are to be reported under the head “Other Indirect Tax / Duty”

### 3.5 Clause 5 – “Status”

5	Status <span style="color: red;">*</span>	<div style="border: 1px solid gray; padding: 2px;"> <div style="text-align: right; border-bottom: 1px solid gray;">Select <span style="float: right;">▼</span></div> <div style="padding: 2px;"> <p>Select</p> <p>Individual</p> <p>HUF</p> <p>Firm</p> <p>LLP</p> <p>Company</p> <p>Trust</p> <p>AOP/BOI</p> <p>Local Authority</p> <p>Artificial Juridical Person</p> <p>Co-Operative Society</p> <p>Co-Operative Bank</p> </div> </div>
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Points for Consideration

- ‘Status’ here does not refer to ‘residential status’ - Resident/Non-Resident.
- In this clause, the status of the assessee is to be mentioned, as per section 2 (31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person (AJP). Furthermore, the residential status may also be furnished separately.
- For a Limited Liability Partnership (LLP) formed and registered under the LLP Act, 2008, status is firm as section 2(23) defines ‘firm’ to include LLP as defined in the LLP Act, 2008. In the case of LLP incorporated outside India (foreign LLP), the status would be ‘Company’ and not ‘firm’.
- In the e-utility, additional specific type of Status has been given in addition to type of Persons as provided in Sec. 2(31) of the Act i.e. Trust, Co-operative society and Co-operative bank.

3.6 Clause 6 – “Previous Year”

Points for Consideration

- The period of the previous year has to be stated. Section 3 defines the previous year as under:  
 “For the purposes of this Act, “previous year” means the financial year immediately preceding the assessment year:  
*Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year”*
- Previous year under the Act normally begins on 1st April of a year and ends on 31st March of the following year. The relevant previous year should be mentioned accordingly.
- In cases where amalgamations, demergers, reconstitution, new business, closure of existing business etc. took place during the period under audit, the date of beginning/ ending of the previous year may be different or shorter than a period of twelve months, and as such the relevant date of beginning and ending of the previous year in these cases be reported accordingly under this clause.

3.7 Clause 7 – Assessment Year

Under this clause, the assessment year corresponding to or following the previous year relevant to the year for which the accounts are audited should be mentioned, e.g. for the previous year 2019-20, the assessment year would be 2020-21.

3.8 Clause 8 - Indicate the relevant clause of section 44AB under which the audit has been conducted

E-utility format

S.No.	Relevant clause of section 44AB under which the audit has been conducted
1	Select
<div style="display: flex; justify-content: space-between; align-items: center;"> <span>+ Add</span> <span>✖ Delete</span> </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

### Points for consideration

Under this clause, the tax auditor has to indicate/identify the relevant clause of section 44AB in terms of which the provisions of section 44AB apply to the assessee.

Section 44AB - Audit of accounts of certain persons carrying on business or profession provides that

“44AB Every person, -

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

**Provided** that in the case of a person whose -

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

- (b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words “one crore rupees”, the words “five crore rupees” had been substituted; or

- (b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year.
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

- (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income tax in any previous year; or
- (e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

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

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

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

The above clauses of section 44AB are summarised as under for easy understanding:

S. No.	Particulars	Clause No. of Section 44AB
1.	<p>In case of business if total sales, turnover or gross receipts, as the case may be, exceeds one crore rupees; or in case of business if total sales, turnover or gross receipts, as the case may be, exceeds one crore but less than five crores in specified circumstances given in proviso to clause (a) of section 44AB.</p> <p>The specified circumstances = if and where</p> <p>(a) the aggregate of all amounts(a) received including those for sales, turnover or gross receipts, and</p> <p>(b) the aggregate of all payments made including amount incurred for expenditure</p> <p>during the previous year in cash does not exceed five percent of each of such aggregate.</p>	Clause (a)
2.	In case of profession if gross receipts exceed fifty lakh rupees [enhanced from earlier twenty five lakh rupees w.e.f. 01-04-2017]	Clause (b)
3.	In case of business if income claimed is lower than the deemed profits or gains u/s 44AE, 44BB or 44BBB, i.e. lower than the presumptive profits and gains	Clause (c)
4.	In the case of profession if income claimed is lower than the deemed profits or gains u/s 44ADA, i.e. lower than the presumptive profits and gains	Clause (d)
5.	In the case of business if the provisions of sub-section (4) of section 44AD are applicable and his income exceeds the maximum amount which is not chargeable to income-tax	Clause (e) [This clause has been inserted by the Finance Act, 2016 w.e.f. 01-04-2017]
6.	Where such person is required by or under any other law to get his accounts audited	Third proviso to section 44AB

For ready reference –

Section 44AE – Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages

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

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

Table below explains, in short, as to which all classes of assesses are required to compulsorily get their accounts audited under section 44AB :

Sr. No.	Class of taxpayers/ assesses	Covered by the provisions of compulsory audit under/s 44AB, -	Remarks
1.	A person carrying on <b>business</b> [Clause (a) of section 44AB]	<b>If</b> the total sales, turnover or gross receipt in business exceed or exceeds <b><u>Rs.1 crore</u></b> in any <u>previous year</u>	Limit raised to Rs.1 crore from Rs.60 Lakhs w.e.f. 01-04-2013 by the Finance Act, 2012

2.	A person carrying on <b>business</b> [Proviso to Clause (a) of section 444AB]	<b>If</b> total sales, turn over or gross receipt in business exceed or <b>exceeds Rs. 1 crores</b> but does not exceed <b><u>Rs.5 crore in any previous year, subject to the condition that</u></b> (a) the aggregate of all amounts received including those for sales, turnover or gross receipts, and (b) the aggregate of all payments made including amount incurred for expenditure during the previous year <b><u>in cash</u></b> does not exceed five percent of each of such aggregate.	The proviso has been inserted w.e.f. 1 <sup>st</sup> April, 2020 by the Finance Act, 2020
3	A person carrying on <b>profession</b> [Clause (b) of section 44AB]	<b>If</b> gross receipts in profession exceed <b>Rs.50 lakhs</b> in any previous year	Limit raised to Rs.50 Lakhs w.e.f. 01-04-2017 by the Finance Act, 2016
4.	A person <b>covered</b> u/s 44AE, 44BB or 44BBB [Clause (c) of section 44AB]	<b>if</b> income claimed is lower than the deemed profits or gains u/s 44AE, 44BB or 44BBB, i.e. lower than the presumptive profits and gains	This clause takes force irrespective of the amount of turnover or gross receipt
5	A person <b>covered</b> u/s 44ADA [Clause (d) of section 44AB]	<b>If</b> income claimed - (a) is lower than the deemed profits or gains u/s 44AD; <b>and</b> (b) the income <b>so claimed</b> exceeds the maximum amount not chargeable to income-tax in any previous year	This clause was inserted w.e.f. 01-04-2011 by the Finance (No.2) Act, 2009.

6.	A person <u>covered</u> u/s <u>44AD</u> [Clause (e) of section 44AB]	If - (a) the provisions of section 44AD (4) are attracted, <b>and</b> (b) his income exceeds the maximum amount which is not chargeable to income-tax in any previous year	Inserted w.e.f. 01-04-2017 by the Finance Act, 2016
<p><b>Note:</b> The provisions of section 44AB shall not apply to the person -</p> <p>(a) <u>who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD [computation on presumptive basis]; and</u></p> <p>(b) <u>whose total sales, turnover or gross receipts, as the case may be, do not exceed Rs.2 crore in such previous year.</u></p>			

The following will help in better appreciation of the provisions of section 44AB:

**“Gross Receipts” is not defined in the Act**

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

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

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

**“Sales Turnover” means-** “The aggregate amount for which sales are effected. The ‘gross turnover’ & ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts.”

For the purpose of Section 44AB, turnover shall be construed taking into consideration the following:

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

- Commission allowed to third parties shall be included in the turnover.
- Amount of sales returns shall be excluded from the turnover.

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

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

In case of shares, securities & derivatives:

- a) **Speculative Transaction:** The aggregate of both positive and negative differences arising on individual settlement of such contracts is to be considered as Turnover.
- b) **Derivative, future and options:**
  - Difference Of Total Favorable & Unfavorable differences:
  - Premium received on sale of option
  - Difference of any reverse trade entered
- c) **Delivery based Transactions:** Total value of sales.
  - For an **Agent**, turnover is the commission earned by him and not the aggregate amount for which sales are effected or services are rendered.  
**[ICAI's Guidance Note on Tax Audit ]**
  - In case of **Chit Fund Companies**, subscriptions are not to be treated as 'income' or 'turnover' for tax audit purposes. **Dy. CIT v. Mangal Dayal Chit Fund (P.) Ltd.[2005] 92 ITD 258 (Hyd.)**
  - In the case of **Construction Business**, advance received for booking of flats is to be included in words 'gross receipts' as the same is to be adjusted towards cost of construction and has element of profit. **Dy. CIT vs Gopal Krishan Builders [2004] 91 ITD 124 (Lucknow-ITAT)(SMC)**
  - Service tax is to be excluded from gross receipts for purpose of determining income u/s 44BB. **Western Geco International Ltd. Vs Assistant Commissioner of Income-tax [2016] 71 taxmann.com 166 (Delhi - Trib.)**
  - Payment for providing various services, where the dominant purpose of the agreement is for prospecting, extraction or production of mineral oils, would be assessable u/s 44BB and not Section 44D. **Oil & Natural Gas Corporation Ltd. Vs CIT [2015] 376 ITR 306 (SC)**

- Section 44BB applies in a case where consideration is for services relating to exploration activity which are not in nature of technical services; if consideration is in nature of fee for technical services, provisions of either section 44DA or section 115A will be applicable. **ONGC as Representative Assessee of University of Calgary, Alberta, Canada vs. ADIT, International Taxation [2017] 81 taxmann.com 419 (Delhi - Trib.)**
- Where the assessee is proprietor of more than one concern, **aggregate of all the businesses** to be taken into consideration for the purpose of compliance with the provisions of Sec. 44AB. **Asst. CIT & Anr. V. Dr. K. Satish Shetty [2009] 310 ITR 366 (Kar.)**
- However, where assessee opts for presumptive taxation u/s 44AD or 44AE etc. for any of the eligible business, then the turnover of such business shall not be included in computing total turnover for the purpose of section 44AB. (An individual view)
- **Ghai Construction v. State of Maharashtra - [2009] 184 Taxman 52 (Bom.)**  
Individual carrying on business as a sole proprietor has to mandatorily comply with the provisions of Section 44AB only in respect of his/her business income and not in respect of his/her other income.
- **CIT v. Market Committee, Sirsa [2012] 25 taxmann.com 384 (Punj. & Har.)**  
In this case the assessee had no income under the head 'PGBP' and the property income earned by him was exempt u/s 10(20), thus, Section 44AB was not applicable and hence, penalty u/s 271B was not imposable.
- **Peroorkkada Service Co-operative Bank Ltd v. ITO [2020] 114 taxmann.com 18 (Kerala)**  
Audit conducted under Cooperative Societies Act would not be sufficient for compliance u/s 44AB unless report of audit is furnished in prescribed form accompanied with a further report by an accountant in prescribed form.
- **Haldar Foods (P.) Ltd v. ITO [2019] 105 taxmann.com 99 (Amritsar - Trib.)**  
In this case one director was arrested and the other was ill is not a sufficient and reasonable cause for delay in getting accounts audited u/s 44AB because other executives of the company and one director were freely available to handle the business. Thus, penalty u/s 271B is leviable.

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

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

profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

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

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

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

(4) Where an **eligible assessee declares profit** for any previous year **in accordance with the provisions of this section** and he **declares profit** for any of the **five assessment years** relevant to the previous year **succeeding such previous year not in accordance with the provisions of sub-section (1)**, he shall not be eligible to **claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year** relevant to the previous year **in which the profit has not been declared in accordance with the provisions of sub-section (1)**.

(5) Notwithstanding anything contained in the foregoing provisions of this section, an **eligible assessee to whom the provisions of sub-section (4) are applicable** and whose **total income exceeds the maximum amount which is not chargeable to income-tax**, shall be **required to keep and maintain such books of account** and other documents as required **under sub-section (2) of section 44AA** and **get them audited** and furnish a report of such audit as required **under section 44AB**.

(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.

*Explanation.* – For the purposes of this section, –

(a) "eligible assessee" means, –

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

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

(b) "eligible business" means, –

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

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

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

Section 44AD	Provisions of Section 44AD		Remarks
	Before 01-04-2017	After 01-04-2017	
Sub-section (1) - Charging Section	Notwithstanding anything contrary contained in section 28 to 43C, in the case of an eligible assessee in an eligible business a sum equal to 8% of the total turnover/gross receipts of the assessee in the PY on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "PGBP".	Notwithstanding anything contrary contained in section 28 to 43C, in the case of an eligible assessee in an eligible business a sum equal to 8% of the total turnover/gross receipts of the assessee in the PY on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "PGBP".	Same, No changes

Proviso to sub-section (1)	N.A.  [it was not in existence having been inserted w.e.f. 01-04-2017]]	<b>Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.</b>	This proviso was inserted w.e.f. 01-04-2017 by the Finance Act, 2017
Sub-section (2)	Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.  <b>Provided</b> that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40	Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.	Proviso was omitted w.e.f. 01-04-2017 by the Finance Act, 2016
Sub-section (3) - WDV of Asset	The WDV of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect	The WDV of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect	Same, No changes

	of the depreciation for each of the relevant AY.	of the depreciation for each of the relevant AY.	
Sub-section (4)	The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.	<b>Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).</b>	Sub-section (4) was substituted w.e.f. 01-04-2017 by the Finance Act, 2016
Sub-section (5) - Requirement of Audit	Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee <b><u>who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1)</u></b> and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other	<b>Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee <u>to whom the provisions of sub-section (4) are applicable</u> and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish</b>	Sub-section (5) was substituted w.e.f. 01-04-2017 by the Finance Act, 2016.  <i>The difference between the two is as highlighted</i>

	documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.	<b>a report of such audit as required under section 44AB.</b>	
Sub-section (6) - Applicability	The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to— (i) a person carrying on profession as referred to in section 44AA(1); (ii) a person earning income in the nature of commission or brokerage; or (iii) a person carrying on any agency business.	The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to— (i) a person carrying on profession as referred to in section 44AA(1); (ii) a person earning income in the nature of commission or brokerage; or (iii) a person carrying on any agency business.	Same, No changes
Explanation to sub-section (6)	Explanation.—For the purposes of this section,— (a) "eligible assessee" means,— (i) an individual, HUF or a partnership firm, who is a resident, but not a limited liability partnership firm as defined u/s 2(1)(n) of the Limited Liability Partnership Act, 2008; and (ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain incomes" in the relevant assessment year; (b) "eligible business" means,— (i) any business except the business of plying,	Explanation.—For the purposes of this section,— (a) "eligible assessee" means,— (i) an individual, HUF or a partnership firm, who is a resident, but not a limited liability partnership firm as defined u/s 2(1)(n) of the Limited Liability Partnership Act, 2008; and (ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain incomes" in the relevant assessment year; (b) "eligible business" means,— (i) any business except the business of plying,	No Change, <b>except</b> the ceiling on Turnover for eligible business enhanced from Rs.1 crore to <b>Rs.2 crore</b> w.e.f. 01-04-2017 by the Finance Act, 2016.

	hiring or leasing goods carriages referred to in section 44AE; and (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of one crore rupee	hiring or leasing goods carriages referred to in section 44AE; and (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of <b><u>two crore rupee</u></b>	
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- Under the scheme of presumptive taxation, profit earned by an eligible person engaged in eligible business having **total turnover or gross receipts lower than or equal to Rs. 2 Crore**, shall be deemed to be **8 percent of the total turnover or gross receipts or any sum higher than 8 percent claimed to have been earned during the year.**
- **Proviso to Sub-section (1)** - Profit shall be deemed at **6 percent** instead of 8 per cent where the amount of total turnover or gross receipts is received by an **account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account** during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. **[Amended by Finance Act, 2017 w.e.f AY 2017-18]**
- **Eligible Assessee** includes Resident Individual, Resident HUF and Resident Partnership Firm excluding LLPs who have not claimed deductions u/s 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain in-comes" in the relevant assessment year
- **Eligible Business** include every business with turnover or gross receipts during the year not exceeding Rs. 2 Crore and is not engaged in the business of plying, hiring or leasing goods carriages as referred to u/s 44AE of the act.
- Also, vide sub - section (6), following business activities have been kept out of the scope of provisions of section 44AD:
  - i. A person carrying on profession as referred to in Sec. 44AA(1);
  - ii. A person earning income in the nature of commission or brokerage;
  - or
  - iii. A person carrying on any agency business
- For the purpose of computation of deemed profit of 6 percent or 8 percent as the case may be, under sub-section (1), deduction in respect of expenses allowable u/s 30 to 38 of the income tax act shall be deemed to have been allowed already.
- Also, the written down value of fixed assets shall be deemed to have been calculated as if the depreciation allowable u/s 32 of the act under normal provisions have been allowed.

- It may be noted that as the provision of section 44AD starts with non-obstante clause i.e. *“Notwithstanding anything to the contrary contained in sections 28 to 43C”*, section 28 to 43C of Income Tax Act, 1961 is not applicable on eligible assessee carrying on eligible business. Hence, no disallowance / no deemed income u/s 40(a), 40A, 40A(3), 40A(3A), 41 can be made. It has been specifically provided that if the taxable income is to be calculated at eight percent of turnover or gross receipts, then in that case provisions of section 28 to 43C are not to be taken into consideration for the purpose of computing taxable income.

### **Issue in relation to Section 43CA**

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

### **Issues**

- **G. Raja Gopala Rao v. DCIT [2017] 78 taxmann.com 61 (Visakhapatnam - Trib.)**  
Since AO had adopted reasonable rate of 8% on gross contract receipts for specified business referred to in provisions of Section 44AD, further deductions towards depreciation could not be allowed as it would result into determination of total income below income returned by assessee.
- As per Clause (e) to section 44AB, eligible assessee carrying on the business are required to get the accounts audited u/s 44AB if the provisions of section 44AD(4) are applicable and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.
- **Section 44AD(4)** - Where an assessee declares profit on presumptive basis u/s 44AD for any previous year but does not declare profit on presumptive basis for subsequent 5 assessment years, the assessee shall not be eligible u/s 44AD for next 5 assessment years subsequent to the year in which the profit was not declared u/s 44AD.
- If a person opts for presumptive taxation scheme then he is also required to follow the same scheme for next 5 assessment years. If he fails to do so, then presumptive taxation scheme will not be available for him for next 5 assessment years calculating from the assessment year in which presumptive taxation scheme is not availed. For those 5 assessment years, he shall be required to maintain books of account and also liable for tax audit as per section 44AB provided his total income exceeds basic slab exemption.

- If an eligible person opts for presumptive taxation scheme u/s 44AD(1), he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher threshold for non-audit of accounts has been given only to assessee opting for presumptive taxation scheme under section 44AD. **[Press Release dated 20-06-2016]**
- It is noteworthy that an assessee except resident individual/HUF/ Partnership Firm eligible u/s 44AD, such as company or a LLP **shall not be required to get its accounts audited u/s 44AB of the act**, even if :
  - his gross receipts during the year does not exceed Rs. 1 Crore,
  - he reports income lower than the deemed profit under the presumptive rate of tax at 6 per cent or 8 per cent as the case may be, and
  - his taxable turnover exceeds maximum amount of taxable income not chargeable to tax
- As per the provisions of sub-section 6 of section 44AD, if an assessee has earned any income from specified activities such as commission, then provisions of section 44AD shall have no bearing on such assessee.
- **It can be implied that where an assessee have turnover less than threshold specified u/s 44AB(1) and have earned any income as commission or brokerage, then he can file income with lower profits without getting his books of account audited.**

The following illustration further explain the issues related to compulsory audit under section 44AB *vis-à-vis* section 44AD

### **Illustration 1:**

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

### **Solution:**

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

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

### **Illustration 2:**

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

### **Solution:**

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

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

### **Illustration 3:**

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

### **Solution:**

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

Also, **Mr. A is required to maintain such books of account** and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act, as his total turnover is more than

limit of Rs. 25 Lakh prescribed under second proviso to section 44AA(2).

**Illustration 4:**

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

**Solution:**

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

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

**Illustration 5:**

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

**Solution:**

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

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

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

#### **Illustration 6:**

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

#### **Solution:**

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

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

#### **Illustration 7:**

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

#### **Solution:**

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

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

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

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

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

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

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

### Analysis of Section 44ADA

- The threshold limit in case of profession increased from Rs.25 lakh to Rs.50 lakh from AY 2017-18 onwards.
- The assessee carrying on profession referred to in sub-section (1) of section 44AA and having gross receipts of less than Rs. 50 lakh in a previous year is required to get its books of account audited u/s 144AB if –
- the profits and gains from such profession are deemed to be the profits and gains of such person u/s 44ADA (i.e. 50% of the total gross receipts),

- Such person has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and
- his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

**Section 44AA(1) - Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as notified. [Authorized representative, film artist, Company Secretary, Profession of information technology.] shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.**

Here, reference is inevitable to Question No.3 and the answer thereto contained in the Clarifications on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961, issued by the Central Board of Direct Taxes, vide Circular No.10/2017, F.No.133/23/2016-TPL, dated 23<sup>rd</sup> March, 2017. (Enclosed as Annexure X) The said question and answer are reproduced hereunder for ready reference

**“Question 3: Does ICDS apply to non-corporate taxpayers who are not required to main books of accounts and/or those who are covered by presumptive scheme of taxation like section 44AD, 44AE, 44ADA, 44B44BB, 44BBA, etc. of the Act?”**

Answer: ICDS is applicable to specified persons having income chargeable under the head ‘Profits and gains of business or profession’ or ‘Income from other sources’. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be”.

**3.8a Clause 8a - Whether the assessee has opted for taxation under section 115BA/115BBA/**

This clause has been inserted in Form No.3CD w.e.f. 01-10-2020 vide G.S.R.No.610(E), Notification No.82/2020/F.No.370142/30/2020-TPL, dated 01-10-2020. The background of this notification broadly appears to be the Taxation Laws (Amendment) Ordinance, 2019 – since enacted as Taxation Laws (Amendment) Act, 2019 published on 12-12-2019, whereby, among others, section 115BAA [Taxation on income of certain domestic companies], and 115BAB [Tax on income of new manufacturing domestic companies], stood inserted w.e.f. 01-04-2020. Consequent thereto came by the above notification dated 01-10-2020, the substitution of proviso to sub-rule (1) of Rule 5, and the insertion of Rule 21AG and Rule 21AH. With the said substitution, conditionalities have been put in place with regard to depreciation of any block of assets. Insertion, by the above-said notification, of sub-clauses (ca) and (cb) as also the substitution of sub-clause (a) of clause 32, in Form No.3CD is in the same context.

The tax auditor, for the purpose of reporting under clause 8a, will need, where the assessee is a manufacturing domestic company, as to whether the assessee had exercised the option for computation of income-tax payable by him at the rates specified in related sections.

3.9 Clause 9 (a) & (b)

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

A. Sub-clause (a) of clause (9)

*E- utility format*

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

In case of AOP, whether shares of members are indeterminate or unknown ?

Select

S.No.	Name	Profit Sharing Ratio (%)
1	<input type="text"/>	<input type="text"/>

*\*Note: The e-utility, however, seeks to know "In case of AoP, whether shares of members are indeterminate". The same did not form part of the Notification dated 25-07-2014,*

**"In case of AOP, whether the shares of members are indeterminate or unknown"**

- In respect of sub-clause (a) of clause (9), below mentioned information is to be furnished in respect of assessee being partnership firm, LLP or AOP or BOI –
  - i. The name of partners of the firm or members of the association of persons (AOP) or body of individuals (BOI).
  - ii. 'Minor', if any, admitted to the benefits of partnership is also a "partner" of the firm within the meaning of section 2(23) of the Act. Therefore, name and PSR of such 'minor partner' also should be given.
  - iii. Profit sharing ratios (%) of all the partners / members of firm / AOP / BOI is to be given.
  - iv. In case where a partner of a firm or a member of AOP/ BOI acts in a representative capacity, the name of the beneficial partner/member be stated.
  - v. The term "profit sharing ratios" would include loss-sharing ratio also since loss is nothing but negative

profit.

- vi. In certain cases of association of persons or body of individuals, it may be possible that the shares of the members are indeterminate or unknown. In such circumstances, the relevant fact be stated.

The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents. The tax auditor should obtain certified copy of partnership deed and any other instrument evidencing constitution of AOP/ BOI, as also supplementary document or any other document, as applicable for previous year under audit, along with copy of acknowledgment evidencing filing of documents with the concerned authorities.

*Note: E-utility does not provide internal check, it accepts the PSR as may be fed/entered, e.g., in case of fraction such as 1/3 PSR for each partner, to make it 100%, 33.34% to be filled in respect of one partner i.e. 33.33% + 33.33% + 33.34% = 100%.*

#### B. Sub clause (b) of clause 9

##### *E- utility format*

(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.

YES ▾

S.No.	Date of change	Name of Partner/Member	Type of change	Old profit sharing ratio	New profit Sharing Ratio	Remarks	
1	<input type="text"/>	<input type="text"/>	Select ▾	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<div style="display: flex; align-items: center; gap: 10px;"> <span> Add</span> <span> Delete</span> </div>							
			<div style="border: 1px solid #ccc; padding: 5px; width: fit-content;">           Select            Addition            Deletion            Change in profit sharing ratio         </div>				

#### Points for Consideration

- Under this clause, any change in the partners of the firm or member of the association of persons/ body of individuals and / or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change are to be stated. For example, if the previous year under audit is 2019-20, “31-03-2020” would be the corresponding “last date of the preceding year” and accordingly any changes that took place during the financial year 2019-20 should be reported.

- The changes should be cross verified with the partnership deed, instrument or agreement or any other document evidencing partnership or association of persons including any supplementary deed/instrument or other related documents effecting such changes. The tax auditor may also verify:
  - In case of registered partnership firms (including Indian LLPs), whether the relevant documents have been filed with the concerned authorities.
  - whether notice of changes, if required, has been given to the registrar of firms, or any other related authority
  - Duly signed minutes of any meeting or any understanding arrived at between/among the partners/members incorporating record of any changes in the partners/members and/or their profit-sharing ratios.

#### Issues

- Clause 9(b) requires particulars of change in partners/members and/or in their PSRs. The word “particulars” includes the date/s of change/s as well as change in the PSR – old and new, as is evident from the utility.
- All changes occurring during the entire previous year should be stated against clause 9(b).
- When a partner in a representative capacity, say, karta of HUF, retires from a firm and is admitted to that firm in his individual capacity - this is a change in the constitution of the firm and should be reported against clause 9(b). On the same analogy, if a partner in his individual capacity retires and is admitted as a partner in a representative capacity, the same should be reported. Such a change could be indicated under the column “Remarks”.
- If a minor opts to be a full-fledged partner on attaining majority, it appears that there is no need to report under this clause (unless there is a change in PSR) so long as the redistribution of shares in losses is ascertainable from the original instrument of partnership. [**Badri Narain Kashiprasad v. Addl. CIT [1978] 115 ITR 858 (All.); Ganesh Rice Mills v. CIT [1981] 132 ITR257 (MP)**]
- Change in shares of loss on the minor attaining majority is not a change in the constitution of the firm. [**Jagjivandas Govindji & Co. v. CBDT [1981] 132 ITR 769**]. This is so even if there was no mention in the original partnership deed regarding how losses will be shared when the minor elects to be a

partner. [ITO v. Sureshchand Rameshchand [1983] 17 TTJ. (Jp.) 228]

- Whether there is a change in the constitution of the firm or not - this has to be decided in the light of section 187 of the Act read with sections 31 to 44 of the Indian Partnership Act, 1932. When dissolution of firm takes place as provided in sections 40 to 43 of the Indian Partnership Act, 1932 and a new firm is constituted by one or more partners of the erstwhile firm - this is not a mere change in the constitution of the firm. [Gokuldas & Bros. v. CIT [1989] 34 TTJ (Indore) 582]
- 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, as these are not share in profit or loss. Furthermore, the e-filing utility does not provide any feature for such information.

### 3.10. Clause 10(a) & (b)

- (a) **Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).**
- (b) **If there is any change in the nature of business or profession, the particulars of such change.**

A. Sub-clause (a) of clause (10)

#### *E-utility format*

10 (a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).

S.No.	Sector	Sub Sector	Code
1	Select		
	<div style="display: flex; align-items: center;"> <span style="margin-right: 5px;">+ Add</span> <span style="margin-right: 5px;">X Delete</span> </div> <ul style="list-style-type: none"> <li>Select</li> <li>Manufacturing Industry</li> <li>Trading</li> <li>Commission Agents</li> <li>Builders</li> <li>Contractors</li> <li>Professionals</li> <li>Service Sector</li> <li>Financial Service Sector</li> <li>Entertainment Industry</li> <li>others</li> </ul>		

- Under this clause, the principal line of each business or profession is to be determined and selected in the e-utility format, i.e. the sector under the ambit of which the assessee's business or profession falls. The list of sectors, in terms of Instructions to Form ITR-3 (A.Y. 2020-21, pages 73-83, comprises of the following sectors :
  - Agriculture, Animal Husbandry & Forestry
  - Fish Farming
  - Mining and Quarrying
  - Manufacturing
  - Electricity, Gas and Water
  - Constructon
  - Real Estate and Renting Services
  - Rentinmg of Machinery
  - Wholesale and Retail Trade
  - Hotels, Restaurants and Hospitality Services
  - Transport & Logistics Services
  - Post and Telecommunication Services
  - Financial Intermediation Service
  - Computer and Related Services
  - Research and Development
  - Professions
  - Education Services
  - Health Care Services
  - Social and Community Work
  - Culture and Sport
  - Other Services
  - Extra Territorial Organisations and Bodies

Each of the above sectors has a number of sub-sectors.

For complete list, please refer Annexure XIII.

## B. Sub-clause (b) of clause (10)

*E-utility format*

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

S.No.	Business*	Sector	Sub Sector	Code
1	Select ▾	Select ▾	▾	
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> <input type="button" value="Add"/> <input type="button" value="Delete"/> </div> <div style="border: 1px solid gray; padding: 2px;">           Select            Added            Discontinued         </div> </div>				

\*Options Sector & sub sector are same as referred in clause 10(a).

## Points for consideration

- Under this sub-clause, any material change in the nature of business is to be reported. Below mentioned include the changes to be reported under this clause:
  - a. Change in the principal line of business, e.g. Wholesale to retail or Manufacturing by own to Manufacturing on job work basis, Manufacturing to trader, and the like.
  - b. Any addition to or permanent discontinuance of a particular line of business.
  - c. In case of business reconstruction or business reorganization

3.11. Clause No. 11 (a) to (c).

**(a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.**

**(b) List of books of account maintained and the address at which the books of account 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.)**

**(c) List of books of account and nature of relevant documents examined.**

## A. Sub clause (a) of Clause 11

*E- Utility Format*

11 (a) Whether books of accounts are prescribed under section 44AA, if yes, list of books so prescribed.

S.No.	Books prescribed
1	

## Points for Consideration

- Sub-clause (a) of clause 11 seeks information as to whether any books of account have been prescribed to be maintained under section 44AA, and if yes, seeks the list of books so prescribed.

In terms of section 44AA(1), every person carrying on specified profession “shall keep and maintain such books of accounts and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Act”.

Similarly, section 44AA(2) provides that every person carrying on business or profession, not being a profession referred to in section 44AA(1), if their income exceeds the specified limits, or where the income claimed is lower than the deemed income under presumptive provisions, etc., are also required to keep and maintain books of accounts and other documents.

Section 44AA(3) empowers the the CBDT to prescribe, by rule, the books of accounts and other documents to be kept and maintained under section 44AA(1) or 44AA(2).

In the backdrop of the above, notified the related rules, vide Notification No.S.O.824(E) dated 21-11-1981 whereby Rule 6F were inserted w.e.f. 21-11-1981. Sub-rule (2) of the said Rule 6F specify the books of account and other documents required to be maintained

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

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

- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued (except in relation to sums not exceeding twenty-five rupees)
- 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). [Rule 6f(3)]**

**Issue:**

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

- Prescribed books of account are to be kept at the place of profession or principal place of profession, if carried at more than one place **[sub-rule (4)]**
- To be maintained for a period of **6 years** from the end of the relevant assessment year. **[Sub-rule (5)]**  
Assessee shall also keep and maintain such books of account & other documents as may enable the AO to compute his total income in accordance with the provisions of this Act **where:**
  1. Profits and gains from business are deemed to be profits and gains of assessee u/s 44AE, 44BB, 44BBB **and** the assessee has claimed his income to be lower than the profits or gains so deemed, **or**
  2. Profits and gains from the business are deemed to be the profits and gains of assessee u/s 44AD **and** he has claimed such income to be lower than the profits and gains so deemed **and** his income exceeds the maximum amount

which is not chargeable to income-tax.

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

Issues/Case Laws

- ❑ **CIT v S.C. Naregal [2011] 16 taxmann.com 420 (Karnataka)**  
 Pacca book of cash sales and purchase register are to be considered as account books defined u/s 2(12A). Thus, the contention cant be taken that books were not maintained. Thus, the assessee is required to get its accounts audited u/s 44AB whenever turnover exceeds the prescribed limit. Hence, the assessee would be liable to penalty u/s 271B in this case.
- ❑ **Blue Heaven Construction v. ITO [2010] 39 SOT 39 (ITAT - KOLKATA)**  
 Maintenance of books of account and documents as required u/s 44AA means books which are true and correct and are accepted under commercial parlance and which would enable AO to compute total income of the assessee. Since AO did not doubt the correctness of the books and he didn't record any grievance that he was unable to compute income of assessee from such books. It was held that requirements of Section 44AA were duly satisfied. Therefore, penalty u/s 271A was unjust.
- ❑ **CIT v. Rajni Kant Dave [2006] 281 ITR 6 (Allahabad)**  
 Where CBDT, in respect of medical profession, by rule 6F prescribed maintenance of certain books of account, it was not open to assessing authority to desire some books of account to be maintained over and above books of account required by rule 6F and on that ground reject books of account of assessee under proviso to section 145.
- ❑ **CIT v S.C. Naregal [2011] 16 taxmann.com 420 (Karnataka)**  
 Pacca book of cash sales and purchase register are to be considered as account books defined u/s 2(12A). Thus, the contention cant be taken that books were not maintained. Thus, the assessee is required to get its accounts audited u/s 44AB whenever turnover exceeds the prescribed limit.

Hence, the assessee would be liable to penalty u/s 271B in this case.

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

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

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

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

**Maintenance of accounts by certain persons carrying on profession or business - Section 44AA provisions is as under:-**

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

- iii. where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or
- iv. where the **provisions of sub-section (4) of section 44AD are applicable** in his case and his **income exceeds the maximum amount which is not chargeable to income-tax** in any previous year, keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act:

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

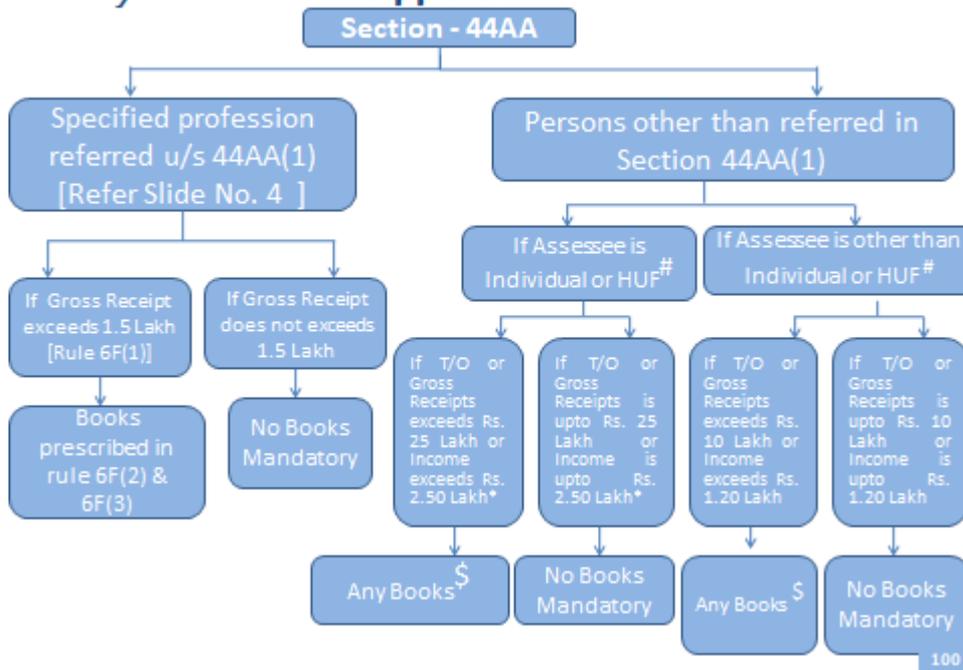
Provided further that in the case of a **person being an individual or a Hindu undivided family**, the provisions of clause (i) and clause (ii) shall have effect, as if for **the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted**. [Inserted by the Finance Act, 2017, w.e.f.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

3. The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

4. Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or subsection (2) shall be retained.

Requirement of section 44AA about maintenance of books of accounts for specified profession and non-specified profession can be understood with the help of below mentioned chart.

## Analysis of Section 44AA .....



### Note:

- Limit (total income or Receipts) - In any 1 of the 3 years immediately preceding the previous year or the previous year in which business is set up, if first year.**
- Any books:** means the books so as to enable the AO to compute his total income in accordance with the provisions. In all fairness, books defined under section 2(12A) should suffice.
- Specified Profession - legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession**
- Rs.2,50,000 and Rs.25,00,000 in the case of a person being an individual or HUF in terms of the proviso to sub-section (2) of section 44AA inserted by the Finance Act, 2017 w.e.f. 01-04-2018. In other words, persons carrying on business, or profession other than those specified under sub-section (1).**

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

5. **For limits in relation to Gross Receipts or Turnover -**

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

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

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

- Specified Professions prescribed in sub-section (1) of section 44AA read with rule 6F

- Legal
- Medical
- Engineering
- Architectural profession
- Profession of accountancy.
- Technical consultancy
- Interior decoration
- Authorised representative - vide notification : No. SO 17(E), dated 12-1-1977.
- 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. SO385(E), dated 4-5-2001

In all the above cases, the total gross receipts, in terms of clause (b) of section 44AB, should exceed one lakh fifty thousand rupees in any of the three years immediately preceding the previous year, or where the profession has been newly set up in the previous year, the total gross receipts in the profession for that year are likely to exceed the said amount.

- Books of account prescribed u/s 44AA read with rule 6F, in respect of specified

professions are as under:

- a. Cash book
  - b. Journal
  - c. Ledger
  - d. Carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him [not applicable for sums not exceeding Rs. 25].
  - e. Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person:
  - f. In addition to above, a person carrying on medical profession is required to keep the following, in terms of sub-rule (3) :
- Daily case register in Form No.3C showing data, patient's name, nature of professional services rendered, fees received and date of receipt; and an inventory under broad heads, as on the first and the last days of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.
  - That daily case register and inventory under broad heads do not constitute books of account and as such does not hold reporting requirement under this clause.

**B. Sub clause (b) of Clause 11 (Reporting requirement about books of account**

maintained in respect of non specified professions – please refer chart above)

***E-utility format***

(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 onelocation, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

Same as 11(a) above

S.No.	Books maintained	Address Line 1	Address Line 2	City or Town or District	State	PinCode
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▼	<input type="text"/>

**Points for Consideration**

- Under this clause, list of books of account maintained and the address at which the books of account are kept, are to be reported.
- The tax auditor should obtain from the assessee a complete list of books of account and other documents maintained by him (both financial and non- financial records).
- The tax auditor exercising his due diligence and professional acumen has to verify that the assessee has maintained such books of accounts and documents as may enable the Assessing Officer to compute the total income of the assessee in accordance with the provisions of the Act.
- Assessee whose accounts of the business or profession have been audited under any other law, the requirement for maintenance of books of account is contained in the relevant statutes.
- In the case of other assessees, normal books of account to be maintained will be cash book/bank book, sales/purchase, journal or register and ledger.
- Assessee engaged in trading/manufacturing activities should also maintain quantitative details of principal items of stores, raw materials and finished goods.
- In case of any discrepancy in the maintenance of required books of account is observed, the tax auditor considering the materiality effect and practicality should give particulars in Form No. 3CD.

- In case books of account are maintained over computer system, the list of books of account so maintained on computer system is to be given. As per section 2(12A) of the Income-tax Act, 1961, “books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.

Similarly, where the books of accounts are maintained in electronic or digital form and stored in cloud based storage system for the ease of access to them anytime and anywhere, the tax auditor should make a related observation in his report.

- From AY 2014-15, the address at which the books so maintained are kept is also required to be mentioned under clause (b), ‘*address at which the books of account are kept*’ having been inserted under the said sub-clause vide Notification No.33 dated 25<sup>th</sup> July, 2014. In case the books of accounts are kept at more than one location, then the auditor is required to furnish the details of address of each such location along with the detail of books of account maintained at such locations.
- Section 4 of the Information Technology Act, 2000 states that “where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then notwithstanding, anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –
  - i. rendered or made available in an electronic form; and
  - ii. accessible so as to be usable for a subsequent reference.

#### Issues

- 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?
- Information in respect of location at which books of account are kept during the year has to be mentioned, however management representation may be taken if at the time of tax audit the books are made available for verification at place other than the one they are normally kept at.
- Whether the tax auditor is required to visit all the locations wherever books of account are kept by the

assessee including where the books of account are maintained in computerized system?

- Whether the tax auditor should maintain documentary evidence to support/substantiate his visit to location(s) where books of account are kept.
- Ordinarily, there would be no need to personally visit the premises where books of account are kept, however verification of place/location in existence must be obtained by the Auditor.

Further, if and where there arises any caution, the tax auditor may visit such place(s) as well.

\* In terms of the provisions of Section 128 of the Companies Act, 2013, the books of account are mandatorily required to be kept at the registered office of the company. In case the books of accounts are sought to be maintained at a place other than the registered office, the related resolution of the Board of Director is necessitated and upon passing of such resolution, the full address of such person is required to be intimated to the RoC within 7 days. However, books relating to transactions effected at the level of a branch office, the related books are kept at the branch office itself, subject to summarized returns etc. need to be sent to the registered office or the other place intimated to the RoC, as stated above, at regular interval.

C. Sub clause (c) of Clause 11

*E-utility format*

(c) List of books of account and nature of relevant documents examined.

Same as 11(b) above

S.No.	Books examined
1	<input type="text"/>

- Under this clause, the list of books of account and nature of relevant documents examined are to be given. Books of account examined would constitute the books of original entry and the other books of account referred to above. The auditor should mention the nature of relevant documents examined also. Ordinarily, relevant documents may include bills, vouchers, receipts, debit note, credit note, inventory register, various agreements, orders etc., examination of these documents during the course of audit is imperative. Reference to such supporting evidence/ relevant documents is also required to be made under this clause such as property paper examined, valuation report of property & shares, TDS & GST Returns, etc. It is to be noted that the list of relevant document would vary from assessee to assessee depending, among others, on the business sector he is engaged in or the profession he is pursuing. Therefore, an exhaustive list that may fit one and all cannot possibly be drawn.
- In **S.J Agarwal and Co. v. ITO [2008] 114 ITD 27(Pune) (SMC), the Hon'ble ITAT bench held that** 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.

3.12. Clause - 12

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

*E-Utility Format*

12 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, 44ADA, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.)

YES

S.No.	Section	Amount
1	Select	
	<input type="button" value="Add"/> <input type="button" value="Delete"/>	
	Select 44AD 44ADA 44AE 44AF 44B 44BB 44BBA 44BBB Chapter XII-G First Schedule Any other relevant section	

- Under this clause, profits and gains assessable under specified provisions are to be reported separately. From the A.Y. 2014-2015, profits from shipping business and insurance business have also been included consequent to the addition of 'Chapter XII-G' and 'First Schedule' in the clause under discussion, vide Notification No.33 dated 25<sup>th</sup> July, 2014. The amount of profits and gains credited/debited to the profit and loss account should be indicated under this clause.

S. No.	Section / Chapter / Schedule	Provision in relation to - Business covered
1	44AD	Special provision for computing profits/gains of business on presumptive basis – Eligible business
2	44ADA	Special provision for computing profits/gains of Profession on presumptive basis
2	44AE	Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages - Transport business
3	44AF	Special provisions for computing profits and gains of retail business [in terms of sub-section (6) of section 44AF, 'Nothing contained in this section shall apply to any assessment year beginning on or after the 1 <sup>st</sup> day of April, 2011']
4	44B	Special provision for computing profits and gains of shipping business in the case of non-residents - Shipping business of a non-resident

5	44BB	Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils - Providing service or 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	Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents - Operation of aircraft by non-resident
7	44BBB	Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc. in certain turnkey power projects - Civil construction etc. in certain turnkey power project by foreign companies
8	<b>Chapter XII-G</b>	Special provisions relating to Shipping Companies (Section
9	<b>First Schedule</b>	Read with section 44 - Insurance Business - Rules for computation of profits of life insurance business; computation of profits and gains of other insurance business; profits and gains of non-resident person
10	Any other relevant section	This refers to the sections not listed above under which income may be assessable on presumptive basis like section 44D and section 115A(1)(b) and will include any other section in place for presumptive taxation

2. In case profit and loss account does not include profits / gains as specified under this clause, then no reporting requirement under this clause.
3. While reporting under this clause, tax auditor may encounter with the following circumstances:
  - Where Assessee A is running two businesses – Business A & Business B (Presumptive basis)

**A maintains common set of regular books of accounts and such books of account, include the income of the business B.** - In this situation, the problem may arise about the apportionment of common expenditure, in order to arrive at the amount of profit / income, i.e., assessable on a presumptive basis. In such a situation, the tax auditor may make a fair and reasonable estimate of common expenditure on the basis of evidence in possession of the assessee or may ask the assessee to prepare such estimate which should be verified by tax auditor. It is also necessary to mention the basis of apportionment of common expenditure. However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should so indicate under this clause by a suitable note.

**A maintains separate sets of accounts for each such business A & B and opts for getting the accounts of both the businesses audited under section 44AB** - As the separate set of accounts are maintained for respective businesses, there will be no problem for the tax auditor in ascertaining the amount of profit to be reported.

**Where the assessee, having regular books of account for his business A, and only credits income from business B to the main profit & loss account.**

In this situation, the tax auditor will not be able to satisfy himself about the correctness of the net income from the presumptive income credited to the profit and loss account. And as such, the tax auditor should qualify his report expressing his inability to verify the said figure.

The tax auditor should indicate in his report that audit report in Form 3CB and statement of particulars in Form 3CD only relate to business taxable on presumptive basis.

It may be noted that -

- 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 generally accepted by the Income-tax Department

### 3.13. Clause 13 (a) to (d)

- (a) **Method of accounting employed in the previous year.**
- (b) **Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.**
- (c) **If answer to (b) above is in the 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.)

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

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

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and Contingent Assets			
	Total			

(f) Disclosure as per ICDS :

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

## Analysis

Before getting the sub-clauses, it may be useful to note that the Clause 13 seeking to know the method of accounting formed part of the then Form No. 3CD and Form No.3CE when rule 6G, as well as these and other Form Nos. 3CA, 3CB and 3CC were inserted way back in 1985. While Form No.3CC and 3CE were omitted, Form Nos.3CA, 3CB and 3CD were substituted vide S.O.420(E), Notification No. 10950/F. No. 153/74/98/TPL dated 04-06-1999. The so substituted Form No.3CD's clause bearing number 11 comprised of four - (a), (b), (c) and (d) - sub-clauses. In other words, no changes in the said clause 11 took place, except that the number of the said clause became 13 with the insertion of certain new clauses in Form No. 3CD in the year 2014. Subsequently, in September, 2016, sub-clause (d) was substituted. With the said substitution, two new sub-clauses, i.e., sub-clauses (e) and (f) were inserted. In other words and as at present, since September, 2016, clause 13 comprises of six sub-clauses - as enumerated hereinabove

It may be relevant to state that section 145A – Method of accounting in certain cases – substituted (by the Finance Act, 2018 w.r.e.f. 01-04-2017) to provide, inter alia, that for the purpose of determining the income chargeable under the head “profits and gains of business or profession”, -

(i) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS notified under section 145(2). [Valuation of Inventory as per ICDS -II]

(ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation. [same as old proviso of section 145A].

(iii) inventory being securities not listed on a recognized stock exchange, or listed but not quoted, shall be valued at actual cost initially recognized in the manner provided in ICDS notified under section 145(2). [Para 12 of ICDS-VIII, Securities]

(iv) inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in ICDS notified under section 145(2) and for this purpose the comparison of actual cost and net realizable value shall be done category-wise. [Para 9, 10, 11 of ICDS-VIII, Securities].

#### Effect of Tax on Valuation of inventories

As mentioned above, in terms of Section 145A, the valuation of purchase and sale of goods and inventory for the purpose of determining the income shall be adjusted to include the amount of any tax, duty cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. However, Accounting Standard 2 (Revised) on Valuation of Inventories issues by the ICAI does not permit the recording of inventory valuation inclusive of taxes and duties (other than those subsequently recoverable by the enterprise from the taxing authorities) for the purpose of accounting. Hence, adjustment in this regard is required to be made for the purpose of taxation.

The statutory adjustments required under section 145A can be better understood with the use of the following illustration :

Particulars	Qty	Rate excluding GST	Rate of GST
Opening Stock	10	100	Rs. 5 (i.e., 5%)
Raw material purchased	90	100	Rs. 5 (i.e., 5%)
Other manufacturing cost	80	100	-
Finished goods manufactured	80	-	-
Sales of finished goods	60	250	Rs.30 (i.e., 12%)
Closing stock of raw material	20	100	Rs.5 (i.e., 5%)
Closing stock of finished goods	20	200	Rs.30 (i.e., 12%)
<ul style="list-style-type: none"> <li>Input output ratio of raw material to finished goods is 1:1</li> </ul>			

(Reference: Guidance Note on Tax Audit u/s 44AB of the Income-tax Act, 1961 issued by the ICAI (2014 Edition), Relevant Para 23 on Page 83-99)

**Inclusive Method** : The profit and Loss Account taking valuations inclusive of tax will be as under :

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

From the above illustrations, it is clear that the profit remained unchanged on account of valuation of inventory taken inclusive or exclusive of tax. Besides, the following may be observed :

- The profit and loss account showing valuations inclusive tax consists of a debit for the amount of tax that has to be ultimately paid to the government, since it showed the sales and closing stock valuations inclusive of tax on the credit side. This debit was necessary to give a clear picture of the income of the assessee.

- The GST credit availed on the raw materials have been recorded by deducting the same from the valuation of raw material consumed giving the correct picture of the expense.

The adjustments to be made in accordance with section 145A in the above illustrations are as under :

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

A. Sub-clause (a) of clause 13 – Method Accounting employed in the previous year

*E-utility format*

13 (a) Method of accounting employed in the previous year.	<div style="border: 1px solid gray; padding: 2px;"> <div style="text-align: right; border-bottom: 1px solid gray;">Select ▼</div> <div style="padding: 5px;"> <div style="border-bottom: 1px solid gray; padding: 2px;">Select</div> <div style="padding: 2px;">Cash system</div> <div style="padding: 2px;">Mercantile system</div> </div> </div>
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- Sub-clauses (a) to (c) of Clause 13 apply to all assessees.
- Under sub-clause (a) of clause 13, an assessee is required to mention the method of accounting regularly followed by him. Section 145 of the Income Tax Act, (as amended last by the Finance (No.2) Act, 2014 w.e.f. 01-04-2014) which is reproduced as under, provides that income chargeable shall be computed in accordance with either cash or mercantile system of accounting:

*“145. (1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*

*(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.*

*(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) , has not been regularly followed by the assessee, or the income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.”*

Points for consideration while reporting under this sub - clause:

- In view of above, it is explained that 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 permissible. However, where any change from one system to another is resorted to in any year, the same and the effect of such change on the profit or loss are required to be disclosed respectively in sub-clause (b) and sub-clause (c) of clause 13, as follows.

- Section 34(1) of the LLP Act, 2008 requires LLPs to maintain their books of account on accrual basis or cash basis of accounting.
- Section 128(1) of the Companies Act, 2013 provides that every company shall prepare and keep its books of account on accrual basis and according to the double entry system of accounting. And, therefore, a company governed by the Companies Act, 2013 is not permitted to follow cash system of accounting.

It may, however, be pertinent to state here that in terms of Notification No. G.S.R. 770(E) dated 10-09-1990 [File No.1/5/88-CL.V] issued by the then Ministry of Industry, Department of Company Affairs, in relation to clause (b) of sub-section (3) of section 209 of the erstwhile Companies Act, 1956 [Books of account to be kept by company] (corresponding section 128 of the Companies Act, 2013 [Books of account, etc., to be kept by company]), the provisions of the said clause “shall **not apply to any Government company** engaged in the promotion and development of industries to the extent it relates to income from – (a) interest on seed money loans or bridge loans; (b) interest on instalments due on the cost of industrial plots or sheds allotted to entrepreneurs; (c) claims from the Central Government or State Governments in relation to special rebate on the sale of Handloom clothes as declared by the Ministry of Textiles (Office of the Development Commissioner for Handlooms) from time to time as a special measure for boosting the sale of Handloom clothes produced in different parts of the country: Provided that such accrued income, which is not accounted for in the books of accounts, is disclosed by way of a note in the Company’s annual accounts.” *[emphasis supplied]*

The above stated sub-section (3) reads as under :

- “(3) For the purpose of sub-sections (1) and (2),, proper books of account shall not be deemed to be kept with respect of the matters specified therein,-
- (a) if these are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and
- (b) if such books are not kept on accrual basis and according to the double entry system of accounting”

**B. Sub-clause (b) of clause 13** – Whether there had been any change in the method of accounting employed *vis-à-vis* the method employed in the immediately preceding previous year

*E-utility format*

<p>(b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.</p>	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between; align-items: center;"> <span>Select</span> <span>▼</span> </div> <div style="border: 1px solid gray; padding: 2px; margin-top: 2px;"> <div style="display: flex; justify-content: space-between; align-items: center;"> <span>Select</span> <span>▼</span> </div> <div style="padding: 2px;"> <p>YES</p> <p>NO</p> </div> </div> </div>
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The relevance of otherwise of this clause will depend upon whether or not there had been any change in the method of accounting employed during the previous year as compared to the immediately preceding previous year. If the answer is in the negative, no further action is required with regard to not only this sub-clause (b) of clause 13, but also to subsequent sub-clauses (c), (d), (e) and (f).

On the contrary, if the answer to sub-clause (b) is in the affirmative, i.e., 'YES', sub-clause (c), (d), (e) and (f) become applicable and assume much significance.

Proceeding further with these clauses, if the answer to sub-clause (b) is in the affirmative, i.e. 'Yes' there had been a change in the method of accounting employed in the previous year *vis-à-vis* immediately preceding previous year, such change in the method of accounting is required to be reported. Change from the Cash basis of accounting to mercantile basis, or vice-versa, would amount to change in method accounting, and thus required to be reported. However, a change in an accounting policy will not amount to a change in the method of accounting and hence such change in the accounting policy need not be mentioned/reported under sub-clause (b). As an illustration, change in method of valuation is a change in accounting policy (and not method of accounting) and as such the same is not required to be reported. Although not directly related in the present context, it is, however, worth noting that in terms of ICDS-I, 'An accounting policy shall not be changed without reasonable cause'. In order to be able to report under this clause, the tax auditor should ascertain whether there is any change in the method of accounting employed in the previous year as compared to that of immediately preceding previous year. Further, a written confirmation should be obtained from the assessee as to the method of accounting followed by the assessee during the previous year as also during the immediately preceding previous year.

Reference to Circular No.491 [F.No.201/60/867-IT(A-II)] dated 30-06-1987, issued by the Income-tax Department is also invited. For the benefit of the readers, the contents of the said circular are reproduced as under :

**“892. Method of accounting in the case of interest on sticky advances – Change from mercantile to cash – Change by some State financial corporations – Whether to be allowed**

1. The Supreme Court has in its judgment in the case of *State Bank of Travancore v. CIT* [1986] 158 ITR 102 held that the interest accruing on sticky loans is taxable to income-tax on accrual basis where the assessee follows the mercantile system of accounting.
2. Some State Financial Corporations have changed the method of accounting interest from mercantile to cash basis.
3. State Financial Corporations are governed by the directives of the Reserve Bank of India and IDBI. If these authorities are satisfied that the change in the system of accounting of interest from mercantile to cash basis by the concerned State Financial Corporation is legal, valid and *bona fide*, the Income-tax Department may accept the cash system of accounting of interest.”

C. Sub-clause (c) of clause 13 –

If answer to (b) above is in the 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.)
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**E-utility format**

(c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.

S.No.	Particulars	Increase in profit	Decrease in profit
1	<input type="text"/>	<input type="text"/>	<input type="text"/>

As afore-stated, sub-clause (c) would come into play only if the answer to sub-clause (b) had been in the affirmative, i.e. ‘Yes’. In such an event, the tax auditor is required to report/give the details of such change as well as the quantitative effect consequent to such change whether incremental or decremental on the profit or loss in the format given under the said sub-clause (c). The reporting under this clause is to be done in the manner or format specified by the e-filing utility in this context, which is given above. Under

the column 'Particulars' – the detail of change in the method of accounting, say from 'cash basis' to 'mercantile basis' or vice-versa, is to be furnished. The quantitative effect consequent to such change is required to be given under the column 'Increase in profit' or 'Decrease in profit', as may be the case.

**D. Sub-clause (d) of clause 13 –**

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

[The above sub-clause (d), as briefly discussed supra, was substituted by notification dated 29-09-2016 w.e.f. 01-04-2017. This sub-clause, before its substitution, read as – “Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss”.

It is pertinent to note that the ICDS and the substitution of sub-clause (d) were notified in the same year and the date of the respective notification was 29-09-2016].

*E-utility format*

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



Apparently, the substitution of sub-clause (d), as also insertion of new sub-clauses (e) and (f) came about in the backdrop of notification of Income Computation and Disclosure Standards [ten in number] vide Notification No.32/2015 dated 31-03-2015 [which notification also superseded the earlier notification dated 25-01-1996 carrying two accounting standards.

## E. Sub Clause (e) of Clause 13-

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

***E-utility format***

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

S.No.	ICDS	Increase in profit (Rs.)	Decrease in profit (Rs.)	Net effect (Rs.)
1	Select			0
Total		0	0	0

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Liabilities and Assets			
	Contingent and Contingent Assets			
	Total			

Here, the tax auditor will need to determine, in the backdrop of the ICDS notified by the Central Government vide Notification dated 29<sup>th</sup> September, 2016, the quantitative effect of the adjustments required to be made on the profit or loss of the assessee and to furnish the such quantitative effect in terms of / in accordance with each, out of the ten, related ICDS, to the extent of their relevance to the assessee.

**ICAI's Comment**

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

F. Sub Clause (f) of Clause 13-  
Disclosure as per ICDS :

*E-utility format*

(f) Disclosure as per ICDS:

S.No.	ICDS	Disclosure
1	Select	
<div style="display: flex; justify-content: space-between;"> <span>+ Add</span> <span>X Delete</span> </div>		

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

Consequent to the 'adjustments' having been worked out/determined as above, the tax auditor would also need to enumerate the requirements specified in the respective ICDS, e.g. 'the amount of contract revenue recognized as revenue in the period' [para 23(a) of ICDS-III]

As briefly mentioned hereinbefore, this sub-clause, as also sub-clauses (e) and (f) of clause 13, came into existence by way of substitution of the then sub-clause (d) in the year 2016, w.e.f. 01-04-2017, as a result of Income Computation and Disclosure Standards (ICDS) notified on 29-09-2016.

This sub-clause (d) will take force if -

- (i) the method of accounting followed is mercantile;
- (ii) the answer to sub-clause (b) of clause 13 supra, is in the affirmative, i.e. 'Yes', and as result, i.e. change in method of accounting has affected increase or decrease in profit, as the case may be.

The related particulars of consequent adjustment will then be required to be reported in the e-utility format. Such an adjustment may arise when the profit and gains of business or profession or income from other sources is computed in accordance with the Income Computation and Disclosure Standards (ICDS) as put in place with effect from the assessment year 2017-18 vide S.O.3079(E) Notification No.87/2016/ F.No. 133/ 23/2015-TPL dated 29-09-2016, Through the said Notification, ten ICDS were put in place.

It may be worthwhile to recall the related background briefly stated as under :

I. Vide Notification S.O. 69(E) No.9949/F.No.132/95-TPL dated 25<sup>th</sup> January, 1996, two Accounting Standards were notified. Accounting Standard I related to disclosure of accounting policies, and Accounting Standard II related to disclosure of Prior Period and Extraordinary items and changes in accounting policies. The notification came into force with effect from 1<sup>st</sup> April, 1996, and correspondingly from the assessment year 1997-98 and subsequently assessment years. These Standards were meant for all assesses following mercantile system of accounting.

II. By Notification S.O. 892(E) [Notification No.32/20015/F.No.134/48/2010-TPL] dated 31<sup>st</sup> March, 2015, which superseded the earlier notification dated 25<sup>th</sup> January, 1996, Income Computation and Disclosure Standards, to be followed by all assesses, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources", were notified. These Standards came into force w.e.f. 1<sup>st</sup> April, 2015 and accordingly applied to the assessment year 2016-17 and subsequent assessment years, and numbered ten in all, i.e. ICDS I to ICDS X.

III. Subsequent to notification of ICDS, upon the stakeholders bringing to the notice of the CBDT that certain provisions of the ICDS may require amendment/clarification for proper, the matter was referred to an expert committee. After duly consulting the stakeholders, the committee recommended a two-fold approach for the smooth implementation of the ICDS - (1) amendment to the provisions of ICDS in respect of certain issues, and (2) issuance of clarifications by way of FAQs for the rest of issues.

IV. In the backdrop of the above, -

(1) Vide S.O.3078(E), Notification No.86/2016/F.No.133/23/2015-TPL, dated 29-09-2016, the S.O.892(E), Notification No.32/2015/F.No.134/48/2010-TPL, dated 31-03-2015 - through which the ICDS were notified - was rescinded;

(2) Vide S.O.3079(E), Notification No.88/2016/F.No.133/223/2015-TPL, dated 29-09-2016, the Central Government notified the revised Income Computation and Disclosure Standards.

V. The Income Computation and Disclosure Standards notified as above by Notification NNo.88/2016 dated 29-09-2016 applied to all assesses (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AAB following the mercantile system of accounting for the purpose

of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “income from other sources”. These Standards came into force w.e.f. the assessment year 20017-18 and subsequent assessment years, and numbered ten in all, i.e. ICDS I to ICDS X.

VI. Vide the Finance (No. 2) Act, 2014, section 145(2) was amended whereby ‘Accounting Standards’ was substituted with ‘Income Computation and Disclosure Standards’ and section 145(3) amended to reject the books of accounts for not regularly following the income computation and disclosure standards. Consequent to the above substitution, and as stated supra, the ICDS were notified vide Notification S.O. 892(E) [Notification No.32/20015/F.No.134/48/ 2010-TPL] dated 31<sup>st</sup> March, 2015, which superseded the earlier notification dated 25<sup>th</sup> January, 1996. The ICDS so notified were replaced with the revised ICDS as notified vide Notification No.88/2016/F.No.133/223/2015-TPL, dated 29-09-2016.

## ISSUES / JUDICIAL PRONOUNCEMENTS

### 1. Method of Accounting / Book-keeping

#### 1.1. Distinction between mercantile system and cash system of Accounting

Among Indian businessmen, as elsewhere, there are current two principal systems of book-keeping. There is, firstly, the cash system in which a record is maintained of actual receipt and actual disbursements, entries being posted when money or money’s worth is actually received, collected or disbursed. There is, secondly, the mercantile system, in which entries are posted in the books of account on the date of the transaction, *i.e.*, on the date on which rights accrue or liabilities are incurred, irrespective of the date of payment. For example, when goods are sold on credit, a receipt entry is posted as of the date of sale, although no cash is received immediately in payment of such goods; and a debit entry is similarly posted when a liability is incurred although payment on account of such liability is not made at the time. . . Whereas under the cash system no account of what are called the outstandings of the business either at the commencement or at the close of the year is taken, according to the mercantile method actual cash receipts during the year and the actual cash outlays during the year are treated in the same way as under the cash system, but to the balance thus arising, there is added the amount of the outstandings not collected at the end of the year and from this is deducted the liabilities incurred or accrued but not discharged at the end of the year. . . Again where the cash system is adopted, there is no question of bad debts or outstanding at all, in the case of mercantile system against the book profits, some of the bad debts may have to be set off when they are found to be irrecoverable. **CIT v. A. Krishnaswami Mudaliar [1964] 53 ITR 122 (SC)**

## 1.2 Method of Accounting is relevant and not the entries

The Income-tax Act permits an assessee to adopt either mercantile system or cash system and the system adopted would be the basis on which he should be assessed and not the actual entries. **CIT v. Chunilal V. Mehta & Sons (P) Ltd., [1971] 82 ITR 54 (SC)**

## 1.3 Taxability of an item depends on provisions of law and not on entry passed

The matter of taxability cannot be decided on the basis of the entries, which the assessee may choose to make in his accounts, but has to be decided in accordance with law. **CIT v. Mogul Line Ltd., [1962] 46 ITR 590 (Bom.)**

**Also see,** (expenditure are debited in accounts by an assessee maintaining mercantile system of accounting) **Kedarnath Jute Mfg. Co. Ltd. v. CIT, [1971] 82 ITR 363 (SC) 367;** (receipt credited to profit and loss account but which cannot be regarded as income in law) **CIT v. India Discount Co. Ltd., [1970] 75 ITR 191 (SC) 195**

## 1.4 Change in method of accounting

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

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

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

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

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

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

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

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

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

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

sale consideration might have been received earlier from buyer.

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

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

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

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

- 1.4.1 A change in the method of accounting need not have the approval of the Income-tax authorities when it is *bona-fide* or not restricted to a particular year. **CIT v. Carborandum Universal Ltd., [1984] 149 ITR 759 (Mad.)**
- 1.4.2 A *bona fide* change in the method of accounting employed by the assessee should be allowed by the Income-tax Officer. It is open to him to see that there is no loss to revenue. **CIT v. Bikaner Trading Company, [1989] 180 ITR 286 (Cal.)**
- 1.4.3 There is no provision either under the Act or the Rules, which debars an assessee from switching over to one system of accounting from another. But frequent changes resorted to by unscrupulous assesseees may be prejudicial to the revenue. Therefore, the courts have insisted on *bone fides* of assessee as a prerequisite for change from one system to another. In a case where the assessee makes an application for a change of system and the ITO allows the same, it is because he is satisfied with the *bona fides* of the assessee. But, mere non-making of an application or its non-acceptance could not result in drawing an inference that the switch over was not *bona fide*. It will have to be decided on the facts and circumstances of each case. **Dr. Ishwari Prasad v. CIT, [1983] 143 ITR 789 (All.)**
- 1.4.4 The assessee had changed its method of valuing its closing stock from market price to cost price or market value, whichever was lower, on *bona fide* business considerations and to ward off a notional income in profit and loss on account. The change had been effected before the relevant previous year and the new method had been regularly followed. So change could be considered *bona fide* and for the purpose of business. **Triveni Engineering Works Ltd. v. CIT, [1987] 167 ITR 742 (All.)**

- 1.4.5 The assessee carried on business of concrete piling for buildings. Upto the assessment year 1965-66, it was crediting 100 per cent of the job value but from A.Y. 1966-67 it credited only 90 per cent deducting the retention money. The Assessing Officer rejected the change in the method of accounting and made an addition of Rs.20.77 lakhs.
- The Tribunal held that under the contract agreement only 90 per cent of the contract value were to be paid immediately. The balance was to be paid only after certification by the architect/engineer that the work had been satisfactorily completed. In view of this, the right to receive the retention money did not accrue till verification of satisfactory execution of the contract and hence deleted the addition. The High Court confirmed the Tribunal's finding. **CIT v. Simplex Concrete Piles (India) Pvt. Ltd., [1989] 179 ITR 8 (Cal.)**
- 1.5 Not maintained means Cash system is followed  
In absence of proper books of account, it can safely be assumed that the assessee is following cash system of accounting. Income-tax is normally paid on money actually received as income after deducting the allowable deductions. **N.R. Sirker v. CIT, [1978] 111 ITR 281 (Gauh.)**
- 1.6 Where method of accounting cannot be ascertained, either to be Cash or Mercantile system, receipts shall be taxed on mercantile basis  
The basic principle is that the interest received in land acquisition compensation award cases, is the compensation for the deprivation of the right of the use of the land. Therefore, where the assessee's method of accounting is found neither to be the cash system or the mercantile system, the receipt can be taxed on accrued basis and not on the cash basis. **CIT v. Sachindramohan Nandy & Others, [1984] 146 ITR 597 (Cal.)**
- 1.7 Mercantile System adopted by Non-Resident  
Though in the case of residents, mercantile system regularly adopted by the assessee was obligatory on the income-tax authorities, there are certain doubts whether the position would be available to a non-resident, who maintains his books of account outside India according to the mercantile system. Section 13 of the 1922 Act (corresponding to section 145 of the 1961 Act) would be relevant where the total profits of the assessee have to be computed, but the section would hardly be relevant where stray items of income are caught in taxable territories as received in taxable territories by a non-resident. **Keshav Mills Ltd. v. CIT, [1953] 23 ITR 230 (SC)**
- 1.8 Once the assessee adopts the mercantile system of accounting, there is no alternative for the ITO but to compute the assessee's income on that system. **CIT v. Vijay Laxmi Trading Co. Ltd., [1984] 147 ITR 372 (Raj.)**

## 1.9 Method of Accounting – Year in which liability / expenditure deductible

1.9.1 The liability to pay in foreign currency had accrued when the books were imported. It did not come about as a result of devaluation; which took place after end of the previous year. However, the assessee was justified in determining its liability on the basis of the actual figure available particularly when the accounts for that year had not been finalised. Therefore, loss on account of devaluation was allowable as deduction, since it is well settled that subsequent events could be taken into account. **CIT v. U.B.S. Publishers & Distributors, [1984] 147 ITR 114 (All.)**

1.9.2 Section 145 of the Act provides that the income chargeable under the head “Profit and gains of business or profession” or “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee, and it nowhere, provides that if an assessee followed a particular system of accounting during any year, he cannot change the same for any subsequent year unilaterally. There may be a situation when some peculiar business transaction may not admit one or the other form of accounting and in such a situation, the assessing authority should look at the substance of the situation and decide the matter in such a manner that neither the revenue is put to some unreasonable loss nor the assessee is subjected to any unreasonable hardship. **CIT v. Guranditta Mal Shanti Prakash Zira, [1987] 164 ITR 774 (Punj. & Har.)**

## 1.10 Rejection of Defective method of accounting

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

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

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

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

No evidence that the method of accounting employed by the assessee was defective and therefore rejection of method of accounting employed by the assessee was not justified. **CIT v. Sankarapandia Asari and Sons, 165 ITR**

**616 (Mad.)**

1.11 Money for expenses received by advocates/solicitors, to be credited only at the end of litigation

The assessee, a firm of solicitors and advocates, was maintaining separate bank account as required by the High Court rules in respect of money received from the clients towards the expenses. The assessee was adjusting final accounts with clients and was crediting fees as being realised only at the end of the litigation. **Held** that as this method of accounting has been accepted by the department for last 35 years, it is not open to the department now to say that the method does not disclose correct income. **Manilal Kher Ambalal & Co. v. A.G. Lulla ITO, [1989] 176 ITR 253 (Bom.)**

1.12 If mercantile system is followed, deduction of liability shall be allowed only when it accrues

When the assessee follows the mercantile system of accounting, he has to claim deduction on the basis of accrual of liability. The fact that the liability is under dispute or that it was quantified at a later date does not change the position. **CIT v. Aggrawal Rice and General Mills, [1989] 180 ITR 29 (P. & H.)**

1.13 Assessee to follow a single method of accounting

The same basis has to be adopted for accounting of receipts and payment of interest. The assessee cannot adopt the mercantile system for payment of interest by it and claim the benefit of the cash system in respect of interest receivable by it. **G. Padmanabha Chettiar and Sons v. CIT, [1990] 182 ITR 1 (Mad.)**

1.14 An assessee cannot be subject to assessment on two different methods  
The assessee, a non-resident company entered into a contract for delivery, supervision, assembling and putting into operation its blast furnace at the Rourkela Steel Plant. For the first two years, the assessee made up its accounts under the 'complete contract' basis and computed its total income on that basis. This computation was accepted by the Income-tax Appellate Tribunal. For the subsequent two years, the Income-tax Officer adopted a net profit rate of 10 per cent. It was held that the Assessing Officer had not pointed out any defects in the accounts maintained by the assessee. It was also held that though the principles of *res judicata* were not applicable to assessment proceedings, the assessee could not be subjected to assessment on two different methods when the contract was one and part of the contractual receipts were received in different years. **CIT v. Guttoffnungashutto Strekrado, [1992] 197 ITR 66 (Ori.)**

### 1.15 Assessee has discretion to follow any method of accounting

'A' advancing loans, followed cash system and appropriated loan repayment towards capital - A.O. however appropriated the amount towards interest and balance towards capital - Tribunal struck down the addition as it was 'A's option to allocate repayment. **CIT v. Modest Enterprises, [1994] 207 ITR 618 (Cal.)**

### 1.16 Treatment in mercantile basis of Excise duty refunded

Excise duty collected from customers and paid to Govt., which as a result of HC decision, was refunded. Since assessee maintained accounts on mercantile system, on getting excise duty refund and crediting same in accounts of respective customers, it had acknowledged a liability and, consequently, it was entitled to deduction of that amount. **Navjivan Udyog Mandir (P.) Ltd. v. CIT, [1994] 207 ITR 40 (Guj.)**

### 1.17 Hybrid System of Accounting

1.17.1 An assessee can employ one method of accounting for one class of business / customers / transactions and a different method for another such class

1.17.1.1 Bank was following hybrid system of accounting and crediting interest on sticky loans on actual receipt. Interest on sticky loans was not debited to such account but only a memorandum record of such due interest was kept. Hence interest on such loans was not includible on accrual basis. Proviso to Section 145 (1) was held not applicable. **CIT v. Citibank N.A., [1994] 208 ITR 930 (Bom.)**

1.17.1.2 The option regarding method of accounting to be followed lies with the assessee. The assessee is free to follow different methods for different sources. **CIT v. Smt. Vimla D Sonwane and others, [1995] 212 ITR 489 (Bom.)**

1.18. Interest accrued on doubtful debts carried in Suspense Account cannot be taxed Overruling the earlier decision in the case of Kerala Financial Corporation v. CIT, [1994] 210 ITR 129 (SC), it was held that interest accrued on doubtful debts carried to suspense account is in accordance with the accounting practice and as per the board's circular which is binding. The said interest cannot be brought to tax. **UCO Bank v. CIT, [1997] 237 ITR 889 (SC)**

1.19 Advocates can receive cash in advance and issue a bill after client's work is done Advocate's firm following cash system and keeping client's money separately and adjusting towards expenses and fees. Since the Tribunal found that the practice was followed for a number of years and the system employed was proper and not used as design to reduce income, no question of law arose. **CIT v. D.C. Gandhi Associates, [1994] 210 ITR 929 (Guj.)**

- 1.20 Day-to-day production records shall be maintained  
Rejection of accounts upheld as no records of day-to-day manufacture of *bidis* kept. **Bastiram Narayandas Maheshri v. CIT, [1994] 210 ITR 438 (Bom.)**
- 1.21 Under law, unless an award is made a rule of the court, it cannot be enforced. Interest addition on the basis of arbitration award granting interest is not justifiable unless the award is made a rule of Court and decree is passed. *CIT v. Associated Soap Stone Distributing Co. Pvt. Ltd., [1994] 210 ITR 661 (Raj.)*
- 1.22 Deduction of contingent liability under mercantile method of accounting  
Assessee following mercantile system can claim deduction in respect of the liability even before its actual quantification or even if it is disputed and can also claim deduction even if provision is not made in accounts. Since the decision in *CIT v. J.K. Synthetics Ltd. [1983] 143 ITR 771 (All.)* covered the points sought to be raised by the CIT in the case, no question for reference arose. Accordingly, the application for reference was rejected. ***CIT v. Swarup Vegetable Productions, [1994] 210 ITR 716 (All.)***
- 1.23 Amount awarded as interest by the arbitrator is an *ex gratia* payment by way of compensation  
Pre-award interest granted by arbitrators to contractor is taxable as incidental to business. ***CIT v. Builders Union, [1995] 211 ITR 993 (Orissa)***
- 1.24 “Could not determine the correct statement of profit and losses, because stock register was not maintained” is an incorrect statement  
The fact that there is no stock register only cautions the Income-tax Officer against the falsity of the returns made by the assessee. He cannot say that merely because there is no stock register the account book must be false. ***Pandit Bros. v. CIT, [1954] 26 ITR 159 (Punj.)***

#### TRIBUNAL DECISIONS

1. Revised Return filed for change in method of accounting from mercantile to cash method. Held such change was not permissible. ***Pradeshiya Industrial & Investment Corpn. Ltd. v. ITO, [1987] 22 ITD 306***
2. The assessee, a transport operator, was accounting his freight receipt on hybrid system *i.e.* accounting the income on cash basis for majority of customers and on mercantile basis for few customers. The method of accounting for freight receipt was changed to cash basis for all customers. Since the change was *bona fide* and regularly followed thereafter, the same was allowed. ***ITO v. Gemlines (P.) Ltd., [1986] 17 ITD 357 (Bang.)***
3. The assessee can make provision of a liability of an individual item in the year in which demand notice is received instead of year to which it relates. ***ITO v. Poyilakkada Fisheries (P.) Ltd., [1985] 14 ITD 224 (Coch.)(SB)***
4. Mere low gross profit was not sufficient ground to reject the assessee's books of account under (the then) proviso to section 145. ***Toco Engineering v. ITO, [1986] 18 ITD 267 (Hyd.)***

5. Assessee can change method of accounting only after adducing proper reasons and showing it to be *bona fide*. When reasons were not adduced regarding change in method of sales-tax set-off from accrual basis to cash basis, ITO was justified in assessing the amount on accrual basis. **Finolex Plastics (P.) Ltd. v. IAC, [1993] 47 ITD 333 (Pune)**
6. 10% retention money is not includible in income unless the warranty period was over as bank guarantee furnished with regard thereto was enforceable without reference to assessee. **Associated Cables (P.) Ltd. v. Dy. CIT, [1994] 48 ITD 141 (Bom.) (TM)**
7. Assessee, a civil contractor followed project completion method for accounting profits – held that the method cannot be rejected as it was being regularly followed and was a recognized method. **Shapoorji Pallonji & Co. (Rajkot) (P.) Ltd. v. ITO, [1994] 49 ITD 479 (Bom.)**
8. In the case of construction companies, recognizing of profits on completion of project is a well-recognized method. **Malad Shopping Centre (P.) Ltd. v. ITO, [1983] 17 TTJ 125 (Bom.)** Also see, *D.K. Enterprises v. ITO, [1960] 39 ITD 394 (Bom.)*. However, contrary view has been taken in *Bhagya Nagar Construction (P.) Ltd. v. ITO, [1993] 46 ITD 236 (Hyd.)*.
9. Where assessee, a construction contractor, had followed percentage completion method of accounting, a recognised method in this type of business, percentage of receipt deducted for unforeseeable factors could not be disallowed as provision for contingencies. **A Construction Co. Pvt. Ltd. v. ITO, [1987] 28 TTJ 1 (Ahd.)**
10. As per the scheme of Section 44AB of the Income Tax Act, 1961, the assessee is not required to maintain the regular books of account and therefore Section 145 is not applicable to the same. As *per* Section 44BB a sum equal to 10 percent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be profits and gains of such business and sub-section (2) deals with the amounts paid or payable, whether in or out of India and also the amounts received or deemed to be received in India. This in a way refers to amount received on accrual basis. **Dy. CIT v. Geoservices Eastern Inc., [1995] 55 ITD 227 (Bom.)**
11. In case of a limited company, the change in the method of accounting was brought about without proper resolution from the Board and such resolution has to be passed within the accounting year. **Growth Leasing & Finance Ltd. v. ITO, [1997] 59 TTJ 772 (Ahd.)**

**3.14. Clause 14**

- (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:

<i>Serial number</i>	<i>Particulars</i>	<i>Increase in profit (Rs.)</i>	<i>Decrease in profit (Rs.)</i>

**A. Sub clause (a) of clause 14**

(a) Method of valuation of closing stock employed in the previous year	<input type="text"/>
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- Under this sub-clause, the method of valuation of closing stock is to be furnished. AS-2 “Valuation of Inventories” issued by the ICAI requires disclosure of significant accounting policies, likewise the method of valuation may be again described in Form No.3CD.
- \* Besides, ‘valuation of inventories’ formed part of the Income Computation and Disclosure Standards, viz. ICDS II relating to valuation of inventories, notified by the Central Government, under sub-section (2) of section 145 of the Income-tax Act, 1961, vide S.O. 3079(E), Notification No.87/2016/F.No.133/23/2015-TPL, dated 29<sup>th</sup> September, 2016. These Standards are applicable since the assessment year 2017-18,
- The tax auditor should determine the procedure of identifying the inventory of closing stock at the end of the year and the basis of valuation thereof. The method of stock valuation must be consistently followed from year to year and the method followed must be brought out clearly.

**ICAI’s Comment**

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

## B. Sub clause (b) of clause 14

(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:

S.No.	Particulars	Increase in profit	Decrease in profit
1			

Select  
 Select  
 YES  
 NO

- Under this sub-clause and in the case where there is a deviation in the method of valuation vis-à-vis the one prescribed under section 145A, the effect arising out of such deviation and resulting in increase in profit or decrease in profit are to be stated.
- Section 145A, as substituted w.e.f. 01-04-2017 by the Finance Act, 2017, apparently consequent to notification of ICDS and reproduced below, clearly outlines the method of valuation to be employed by assessee :

"145A. For the purpose of determining the income chargeable under the head "Profits and gains of business or profession",—

- (i) the valuation of inventory shall be made at lower of actual cost or net realisable value computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;
- (ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;
- (iii) the inventory being securities not listed on a recognised stock exchange, or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;
- (iv) the inventory being securities other than those referred to in clause (iii), shall be valued at lower of actual cost or net realisable value

in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:

**Provided** that the inventory being securities held by a scheduled bank or public financial institution shall be valued in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 after taking into account the extant guidelines issued by the Reserve Bank of India in this regard:

**Provided further** that the comparison of actual cost and net realisable value of securities shall be made categorywise.

*Explanation 1.*—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

*Explanation 2.*—For the purposes of this section,—

- (a) "public financial institution" shall have the meaning assigned to it in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);
- (b) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of *Explanation 1* to clause (5) of section 43;
- (c) "scheduled bank" shall have the meaning assigned to it in clause (ii) of the *Explanation* to clause (vii) of sub-section (1) of section 36."

- As per this section, the valuation of inventory shall be at lower of actual cost or net realizable value, the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of tax etc. . The adjustments provided in this section can be made while computing the income for the purpose of preparing the return of income. Accordingly, any tax, duty, cess or fee actually paid or incurred by the assessee should be added to the cost of goods or services.

Where the inventory is securities not listed, or listed but not quoted, on a recognised stock exchange would be required to be valued at actual cost initially recognized in accordance with ICDS. Securities, other than those in the previous sentence, need to be valued at lower of actual cost or net realizable value.

Issues which may arise in view of the above include:

- Adjustment of excise duty: The liability for excise duty arises when the manufacture of goods is complete, a provision for unpaid liability of Excise duty on stock lying in the factory or bonded warehouse, need to be created. [Guidance Notes on Accounting treatment for Excise duty (Revised 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 be 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 the 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 section 43B on closing stock up to the date of Audit.
- The input State-Level Value Added Tax (VAT) paid on purchases cannot be included in the cost of purchases where the tax paid on inputs is available for set-off against the tax payable on sales or is refundable.
- The input State-Level VAT, to the extent it is refundable, will not form part of the cost of the inventory.
- A dealer may purchase certain common inputs which can be used for manufacturing goods which are both declared tax free as well as taxable goods. In such a case, the dealer should estimate inputs expected to be used for making tax free goods and for making taxable goods. The dealer should recognize VAT credit only in respect of those inputs which are used for making taxable goods and no VAT credit should be recognized in respect of inputs used for making tax free goods.

- VAT is collected from the customers on behalf of the VAT authorities, therefore it is neither income nor its payment involves expense. Therefore, it should be credited to an appropriate account, say, 'VAT Payable Account'. The amount of VAT payable adjusted against the VAT Credit Receivable (Capital Goods) Account and amounts paid in cash will be debited to this account. The credit balance in VAT Payable Account at the year-end should be shown on the 'Liabilities' side of the balance sheet under the head 'Current Liabilities'.

The similar situation will prevail in GST regime as section 145A is tax neutral as long as assessee makes payment of the duty in accordance with the provisions of section 43B.

**3.15. Clause 15 (a) to (d)**

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

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

*E-utility format*

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

S.No.	(a) Description of capital asset	(b) Date of acquisition	(c) Cost of acquisition	(d) Amount at which the asset is converted into stock-in trade
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="Add"/> <input type="button" value="Delete"/>				

**Under this clause, information about capital asset converted into stock-in-trade has to be furnished. Below mentioned considerations are required to be kept in view while furnishing information sought:**

- That the conversion by the owner of an capital asset into or treatment of such asset as stock-in-trade of a business carried on by him is treated as a 'transfer' within the meaning of section 2(47).
- By virtue of section 45(2), such a conversion or treatment of capital asset into stock-in-trade will be deemed to be a transfer of the previous year in which the asset is so converted or treated as stock-in-trade. As such in the case of long-term capital asset, indexation of cost of acquisition and cost of improvement, if any, will be with respect to the previous year in which such conversion took place.

- However, the same shall be taxable in the year in which the stock shall be sold / transferred.
- The fair market value (FMV) of the asset, as on the date of such conversion or treatment as stock-in trade, shall be deemed to be the full value of the consideration of the asset. The excess of the sale price over the fair market value as on the date of conversion would be treated as business income and taxed under the head 'profits and gains of business or profession'.
- The particulars to be stated under new clause 15 should be furnished with respect to the previous year in which the asset has been converted into stock-in-trade.
  - Under clause (a) description of the capital asset is required to be mentioned for example shares, security, land, building, plant, machinery etc.
  - Under Clause (b) the date of acquisition is to be reported.
  - Under clause (c) the cost of acquisition is required to be reported. Here, the cost of acquisition as per the books of account is to be mentioned. In the case of depreciable assets, the carrying cost appearing in the books will be the written down value. But the value to be reported will be the original cost of acquisition. In case of assets acquired before 01.04.1981, option of adopting FMV is available to assessee.
  - Under clause (d) the amount recorded in the books of account at which the asset is converted into stock-in-trade should be stated. It is not necessary that such an amount should be the fair market value as on the date of conversion or treatment as stock-in-trade.
- Accounting Standards to be followed:
  - **AS-2 for valuation of stock-in-trade** - The valuation of stock-in-trade is to be examined with reference to AS-2 - Valuation of Inventories. Any non-compliance with AS-2 is to be suitably qualified in the main audit report.
  - **AS-10 for valuation of fixed assets** - While verifying the cost of acquisition of the fixed asset, the auditor should bear in mind the principles enunciated in Accounting Standard (AS) 10, Accounting for Fixed Assets. The cost of a fixed asset comprises of its purchase price and any attributable cost of bringing the asset to its working condition for its intended use.
 

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

- **AS-12 for provision of income tax as temporary timing difference -**

Besides, the provisions of section 47 [Transactions not regarded as transfer] and 47A-[Withdrawal in exemption in certain cases] also need to be kept in view.

The following are some of the related case law that may be helpful in better appreciation of the matter under discussion -

❑ **Professor P.N. Shetty v. Office of ITO (2019) taxmann.com 2018 (Karnataka)**

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

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

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

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

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

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

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

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

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

**3.16. Clause No. 16 (a) to (e)**

**Amounts not credited to the profit and loss account, being, -**

- (a) the items falling within the scope of section 28;**
- (b) the proforma 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.**

A. Sub-clause (a) of Clause No. 16-

The items falling within in the scope of section 28;

*E-utility format*

16 Amounts not credited to the profit and loss account, being, -

(a) The items falling within in the scope of section 28;

S.No.	Description	Amount
1	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
<input type="button" value="Add"/> <input type="button" value="Delete"/>		

- Under this clause, various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated. The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause.
- Under sub-clause (a) of this clause, **the items falling within the scope of section 28 but not credited to the profit and loss account, are to be reported, are as under:**
  - (i) the profits and gains of any business or profession
  - (ii) any compensation received on termination of employment, agency etc.

- (iii) income derived by a trade, professional or similar association from specific services performed for its members
  - (a) profits on sale of a licence granted under the Imports Control Order, 1955
  - (b) cash assistance against exports
  - (c) customs duty or excise repaid or repayable as drawback against exports
  - (d) profit on the transfer of DEPB Scheme being the Duty Remission Scheme,
  - (e) profit on the transfer of DFRC being the Duty Remission Scheme
- (iv) the value of any benefit or perquisite arising from business or the exercise of a profession
- (v) any interest, salary, bonus, commission or remuneration, by whatever name called, received by a partner of the firm from such firm
- (va) any sum, whether received for (a) not carrying out any activity in relation to any business (b) not sharing any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services
- (vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy
- (via) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner;
- (vii) any sum received on account of any capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred if the whole of the expenditure on such capital assets has been allowed under Section 35AD.

*\*Note - As per Explanation 2 to clause (vii) of the above Section 28, where speculative transactions constitute a business, such speculation business is deemed to be distinct and separate business from any other business.*

**B. Sub-clause (b) of Clause No. 16-**

The proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax or Goods & Services Tax, where such credits, drawbacks or refund are admitted as due by the authorities concerned;

***E-utility format***

(b) The proforma 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 refund are admitted as due by the authorities concerned;

S.No.	Description	Amount
1	Select	
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> <input type="button" value="Add"/> <input type="button" value="Delete"/> </div> <div style="border: 1px solid gray; padding: 5px;">           Select            Proforma Credits            Drawbacks            Refund of Duty of Customs            Refund of Duty of Excise            Refund of Service Tax            Refund of Sales Tax            Refund of Value Added Tax            Others         </div> </div>		

**Points for consideration.**

- Under sub-clause (b) of this clause, the information regarding below mentioned credits if admitted as due by the concerned authorities but not credited to the profit and loss account are to be reported.
  - (i) Proforma credits
  - (ii) Drawback
  - (iii) Refund of duty of customs
  - (iv) Refund of excise duty
  - (v) Refund of service tax
  - (vi) Refund of sales tax or value added tax
  - (vii) Refund of goods & services tax
  - (viii) Others
- In order to report under this clause, the tax auditor may obtain management representation and may verify all correspondence between assessee & designated authority to ascertain claims admitted.
- Information regarding claim admitted during the relevant period is to be furnished. Credits/claims which have been admitted as due after the relevant previous year need not be reported here.
- In case of cash system of accounting, the claim should also be received during

the year, since the admittance of claims during the relevant previous year without actual receipt has no significance in cases where cash method of accounting is followed.

- Where an amount required to be reported have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such a fact should be clearly stated in the tax audit report.
- Information in this clause is corresponding to information sought under clause 41 (partially) and as such the information reported under clause 16 and 41 should be in consensus.

C. Sub-clause (c) of Clause No. 16-  
Escalation claims accepted during the previous year;

*E-utility format*

(c) Escalation claims accepted during the previous year;

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

Under sub-clause (c), the escalation claims accepted during the previous year but not credited to the profit and loss account are to be stated. The escalation claims accepted during the year would normally mean “accepted during the relevant previous year”. In case of cash basis of accounting, escalation claim accepted should also be received. If otherwise, the fact should be clearly brought out since acceptance of claims without actual receipt will have no significance. Mere claims under negotiations cannot constitute accepted claims. **CIT v. Hindustan Housing and Land Development Trust Ltd. [1986] 161 ITR 524 (SC)**

D. Sub-clause (d) of Clause No. 16-  
Any other Item of Income;

*E-utility format*

(d) any other item of income;

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

- Under sub-clause (d), the tax auditor is to report any other items which he considers as an income of the assessee based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account. While giving information under this clause, AS-9 - Revenue Recognition should be considered. 'Income' is defined under section 2(24).

**E. Sub-clause (e) of Clause No. 16-**  
Capital receipt, if any;

***E- utility Format***

(e) Capital receipt, if any.

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

- Under sub-clause (e), capital receipt, if any, which has not been credited to the profit and loss account, has to be stated. The tax auditor may record judicial pronouncements, if any, on which he has relied in his working papers.

Any capital receipt adjusted in actual cost for calculation of depreciation allowable is required to be reported here. However, capital receipts, for the purpose of this clause, do not include share capital or items of gift etc.

**3.17. Clause No. 17**

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

<i>Details of property</i>	<i>Consideration received or accrued</i>	<i>Value adopted or assessed or assessable</i>

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

**“43CA. (1)** Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer”

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

**“50C. (1)** Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer “

**E-utility format**

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

S.No.	Details of property	Address of Property					Consideration received or accrued	Value adopted or assessed or assessable
		Address Line 1	Address Line 2	City or Town or District	State	Pincode		
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>

+ Add    X Delete

**Points for Consideration**

- Obtain a list of all properties transferred during the previous year 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 previous year in respect of land/building transferred during the year as disclosed in the books of account.

- For 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 to satisfy the compliance of section 43CA/ section 50C of the Act. Where the tax auditor is unable to obtain relevant documents, he may state the same suitably through an observation in the report under form 3CA/CB.
- Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the full value of consideration as per S. 43CA(1) may be taken as the stamp duty value on the date of the agreement, provided the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.
- The auditor would need to ascertain/evaluate applying professional acumen as to what constitutes land or building, e.g., whether leasehold right/development rights/TDR/FSI etc. and whether or not the same fall under the ambit of this clause , based on facts and circumstances of transactions.

**Rationalisation of the provisions of Section 43CA and 50C, w.e.f. 01-04-2019 by the Finance Act, 2018**

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

Proviso to sub-section (1) of Section 43CA inserted w.e.f 01/04/2019 [at the time of insertion of the above provision, it was 'one hundred and ten per cent'. However, 'ten' stands substituted for 'five', w.e.f. 01-04-2021 by the Finance Act, 2020. Accordingly, now '105' per cent].

Further, the mode of payment has been further amended to include through such other electronic mode as may be prescribed w.e.f. 01-04-2020 by the Finance Act, 2019, to read as "*by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account*[or through such other electronic mode as may be prescribed. Besides, the 'other electronic mode' has also since been prescribed by way of insertion of Rule 6ABBA by the Income-tax (Third Amendment) Rules, 2020, w.r.e.f. 01-09—2019. The said Rule reads as under:

### Other electronic modes

[ 6ABBA . *The following shall be the other electronic modes for the purposes of clause (d) of first proviso to section 13A, clause (f) of sub-section (8) of section 35AD, sub-section (3), sub-section (3A), proviso to sub-section (3A) and sub-section (4) of section 40A, second proviso to clause (1) of Section 43, sub-section (4) of section 43CA, proviso to sub-section (1) of section 44AD, second proviso to sub-section (1) of section 50C, second proviso to sub-clause (b) of clause (x) of sub-section (2) of section 56, clause (b) of first proviso of clause (i) of Explanation to section 80JJAA, section 269SS, section 269ST and section 269T, namely:-*

- (a) *Credit Card;*
- (b) *Debit Card;*
- (c) *Net Banking;*
- (d) *IMPS (Immediate Payment Service);*
- (e) *UPI (Unified Payment Interface);*
- (f) *RTGS (Real Time Gross Settlement);*
- (g) *NEFT (National Electronic Funds Transfer); and*
- (h) *BHIM (Bharat Interface for Money) Aadhar Pay;*

The following are some of the related case law that may be helpful in better appreciation of the matter under discussion -

- ❑ **PCIT v. Swananda Properties (P.) Ltd. [2019] 111 taxmann.com 94 (Bombay)**  
Provisions of section 43CA introduced with effect from 1-4-2014 would be applicable prospectively from assessment year 2014-15
- ❑ **Ritz Suppliers (P.) Ltd. V. ITO [2020] 113 taxmann.com 349 (Kolkata - Trib.)**  
Section 50C applies only to capital asset being land or building or both, it cannot be made applicable to transfer of leasehold rights in a property.
- ❑ **Eveready Industries India Ltd. v. PCIT [2020] 114 taxmann.com 610 (Kolkata - Trib.)**

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

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

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

**3.18. Clause No. 18 (a) to (f)**

**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 form:-**

- (a) Description of asset/block of assets.**
- (b) Rate of depreciation.**
- (c) Actual cost or written down value, as the case may be.**
  - (ca) Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)
  - (cb) Adjusted written down value
- (d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of -**
  - (i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,**
  - (ii) change in 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.**

[Note: sub-clauses (ca) and (cd), as above, inserted w.e.f. 01-1-2020 by Notification No.82/2020 dated 01-10-2020]

### E-utility format

- Revised e-utility also provides facility to import CSV template to fill the details of additions and deductions.

18 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 form:-

Sl.No.	Description of the Block of Assets/Class of Assets*	Rate of Depreciation*	Opening WDV / Actual	Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)	Adjusted written down value(A)	Additions					Details	Deductions (C)	Depreciation Allowable (D)	Written Down Value at the end of the year (A+B-C-D)
						Purchase Value (1)	Adjustments on Account of			Total Value of Purchases (B) (1+2+3+4)				
							CENVAT (2)	Change in Rate of Exchange (3)	Subsidy/Grant (4)					
1	Select					Import CSV Fill Data View Data					Import CSV Fill Data View Data			

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

#### A. Sub-clauses (a) to (cb) of Clause No. 18

- Under sub-clauses (a) and (b), information in respect of description of existing assets, block of assets under which the concerned asset is classifiable and the rate of depreciation are to be stated.
  - The tax auditor should mention the fact that he has relied upon the income tax records of the assessee in respect of the information regarding the classification of assets and written down value of the existing assets. (in case the tax auditor is appointed for the first time, than this fact become most important)
  - In case of dispute between Assessee and/or Department and the Tax Auditor regarding classification of assets, rate of depreciation etc. in current year or any earlier year, a suitable disclosure is required.

- For the purpose of sub-clause (c), the opening written down value of the block of assets could be taken from the relevant income-tax records. Depreciation is allowed on “Actual Cost”- term defined u/s 43(1) of Income Tax Act.
- In case of large number of small value capital assets, it would be convenient to capitalize the same on one date in books of accounts.
- **(ca) Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)**  
and
- **(cb) Adjusted written down value**

*E-Utility Format*

Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)	Adjusted written down value(A)
[ ]	[ ]
<a href="#">V Template</a>	<a href="#">Deductions CSV Template</a>

- This sub-clause is in corollary to clause 8a - both having been inserted w.e.f. 01-10-2020 by Notification No.82/2020 dated 01-10-2020. Therefore, sub-clause (ca) is relevant if the answer to the sub-clause 8a. is in the affirmative. If the answer had been in the negative, this sub-clause is not applicable.
- As briefly discussed under clause 8a. supra, the insertion of sub-clause 8a. as also sub-clause (ca) as well as sub-clause (cb) of clause 18 is consequent to the Taxation Laws (Amendment) Act, 2019 whereby, among others, sections 115BAA [Taxation on income of certain domestic companies] and section 115BAB [Tax on income of new manufacturing domestic companies] have been inserted w.e.f. 01-04-2020, besides the substitution of proviso to sub-rule (1) of Rule 5, and the insertion of Rule 31AG and Rule 21AH.

- Before proceeding further it may be stated that since the insertions of sub-clauses under discussion have been notified on and w.e.f. 01-10-2020, the said clauses would not be relevant in cases of assessee who have submitted their tax audit report before 01-10-2020. Putting it differently, assessee filing their tax audit report subsequent to the said date would need to comply with the requirement of these sub-clauses.

Accordingly, while reporting under aforesaid sub-clause 8a., it would need to be ascertained by the tax auditor as to whether or not the assessee being-

- a manufacturing domestic company [section 115BA] or
- a domestic company [section 115BAA] or
- a new manufacturing domestic company [section 115BAB]

has exercised the option for computation of his income at the given rate of income tax. If yes, it would be necessary to ascertain and determine the adjustment made to the written down value and report the related particulars under sub-clause (ca). Similarly, giving effect of such adjustments, the quantum of adjusted down value will be required to be reported.

- The brief of provisions as laid in Section 115BA, Section 115BAA and Section 115BAB in regard to the depreciation allowable (if opted for the aforementioned sections) is as under:

### **Sec 115BA**

***“115BA. (1) Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter <sup>25</sup>, other than those mentioned under section 115BAA and section 115BAB], the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.***

***(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—***

***(c) the total income of the company has been computed,—***

***(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.”***

**Sec 115BAA**

***“115BAA. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied:***

***(2) For the purposes of sub-section (1), the total income of the company shall be computed,—***

***(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.”***

**Sec 115BAB**

***“115BAB. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent, if the conditions contained in sub-section (2) are satisfied:***

***(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—***

***(c) the total income of the company has been computed,—***

***(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.”***

- The provision as laid in Section 32(1)(iia) i.e. the depreciation not allowable while computing total income of the assessee (if he has opted for the new rates as mentioned in the aforesaid sections) is as under:

***“32. (1) In respect of depreciation of—***

***(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):”***

- Thereby, if we simplify the provisions laid in Section 115BA, 115BAA & 115BAB r.w.s Section 32(1)(ia) it can be inferred that the sum of additional depreciation that is available for the manufacturing entities for the purchase of new plant & machinery subject to certain conditions shall now not be available if the assessee opt for the lower rate of taxes as mentioned in the aforesaid sections.

#### **B. Sub-Clause (d) of Clause No. 18**

Under sub-clause (d) of clause 18, the additions/deductions during the year have to be reported, with dates.

- The details of each asset or block of asset added during the year or disposed of during the year along with the dates of acquisition/disposal.
- Where any addition was made, the date on which the asset was put to use is to be reported. The tax auditor may verify production records/ installation details/excise records/service tax records/records relating to power connection for operating the machine in order to know the effective date from which the asset is put to use; or otherwise he could get a representation letter from the management.
- In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.
- Under clause 18(d)(i), the amount of CENVAT credit claimed and allowed on capital goods and deducted from the cost of the asset has to be mentioned. The tax auditor should also verify that the amount of CENVAT credit deducted from cost of capital goods tallies with the credit availed on this account.
- Under clause 18(d)(ii), the second adjustment relates to the change in the rate of exchange of currency. Section 43A deals with the adjustment on account of change in the rate of exchange of currency.
- Under clause 18(d)(iii), adjustment relates to the subsidy or grant or reimbursement, by whatever name called. Explanation 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Subsidy coming within the scope of Explanation 10 to section 43(1) in respect of asset acquired in any earlier year(s) and received during the year has to be deducted from the written down value of such assets in the year of receipt.

- Issues while feeding information in e-utility:
  - Depreciation to be calculated and fed manually.
  - In case any data skipped from consideration while feeding data under Addition/ Deductions fields, entire data has to be filled again every time.
  - Automatic WDV balance generation.

### ICAI's Comment

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

### C. **Sub-clause (e) and (f)** of Clause No. 18

- Under sub-clause (e), details of depreciation allowable is to be shown, the Finance Act, 2001 had inserted Explanation 5 to sub-section (1) of section 32, by virtue of which the claim for depreciation is now mandatory and the written down value of each asset every year has to be reduced by the amount of depreciation allowable under the Income-tax Rules. Clause (iia) of sub-section (1) of section 32 was inserted w.e.f. 01-04-2003 by the Finance Act, 2002 provided for additional depreciation to a concern engaged in the business of manufacturing or production of an article or thing or installation of a new machinery. The said clause was later amended w.e.f. 01-04-2005 by the Finance Act, 2004, and substituted w.e.f. 01-04-2006 by the Finance Act, 2005. The same (substantial provision), after certain more amendments therein and as at present reads as under :

“(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31<sup>st</sup> day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power, **a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii)**”. *[emphasis supplied]*

Consequent to certain insertions in section 115AB as also the insertion of sections 115BAA and 115BAB, w.e.f. 01-04-2020 by the Taxation Laws (Amendment) Act, 2019, the proviso to sub-rule (1) of Rule 5 [Depreciation] was substituted w.e.f. the same date, i.e., 01-04-2020, opening portion of which proviso reads as under :

“Provided that the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent shall be restricted to forty per cent on the written down value of such block of assets in case of - .....”

Prior to the insertion of sections 115BAA and 115BAB, Section 115BA dealt with alone on tax on income of certain domestic companies. Subsequent to the said insertions, scheme of sections has undergone a change as under :

Section	Subject matter assigned	computation of tax at the rate [substantial provision]
115BA	Tax on income of certain <b><u>manufacturing</u></b> companies	Twenty-five per cent
115BAA	Tax on income of certain domestic companies	Twenty-two per cent
115BAB	Tax on income of <b><u>new manufacturing</u></b> domestic companies	Fifteen per cent

As is evident from the above table, different sections now deal with different classes of domestic companies, manufacturing, others, and new manufacturing. The underlined idea being to encourage growth as also to incentivise and promote investment with the aim to accelerating economy and generating more employment.

Accordingly, in terms of this section 115BA, the income-tax payable by an assessee, being a manufacturing domestic company, (other than those mentioned under Section 115BAA and section 115BAB), in respect of his total income, at the option of such assessee, be computed at the rate of twenty-five per cent, subject to the specified conditions being satisfied. Sub-section (2) of the said section specifies the conditions, which, among others, include -

- the company has been set up on or after 01-03-2016
- the company is not engaged other than in the business of manufacture or production of article or thing.....
- the company's total income has been computed without any deduction, except under section 80JJAA-Deduction in respect of employment of new employees

Section 115BAA [Tax on income of certain domestic companies] and Section 115BAB [Tax on income of new manufacturing domestic companies] similarly provide for an option whereby tax payable is computed respectively at the rate of twenty-two per cent and fifteen per cent, subject to specified conditions being satisfied.

- In case the full deduction of the cost of capital goods is allowed (e.g. expenditure on Scientific Research u/s. 35), the auditor should verify that the cost of such an asset is not included in the block of assets for the purpose of depreciation.
- It is compulsory for all assessee to claim depreciation or additional depreciation (in terms of S. 32(1)(ii)) in calculating taxable income otherwise no deduction will be allowed & WDV will be treated as reduced - **Explanation 5 to Sec 32 (w.e.f A.Y. 2002-03).**
- ‘**Allowable**’ implies permissible deduction under provision of Act and Rules.
- “**Used**” means actual use and is not kept ready for use.
- Assets used partly for Business purpose, deduction u/s 32(1) restricted to proportionate part.
- Under ‘Change in the rate of exchange of currency’ - adjustment is contemplated u/s 43A & AS-11. **(u/s 43A deduction on cash basis but AS-11 (revised) deduction on accrual basis)**

Depreciation debited to P&L A/c as per requirement of Schedule VI not reported under this Clause

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

Section 43A *vis-à-vis* AS-11

- ❑ As per **Section 43A**, [Special provisions consequential to changes in the rate of exchange of currency] where assessee has acquired any asset in any previous year from country outside India for the purposes of business or profession & due to change in rate of exchange during any previous year after such acquisition, there is increase or reduction in assessee’s liability **at the time of making payment** towards such asset or towards the money borrowed in foreign currency, **the amount of such increase or decrease in the liability** during such previous year shall be added to, or, as the case may be, deducted from the actual cost of the asset. Thus, **the extent of addition or reduction will be limited to the exchange difference actually paid during the previous year.**

- ❑ As per Para 46A of **AS-11 (Revised)**, [The Effects of Changes in Foreign Exchange Rates] the exchange differences arising on reporting of long term foreign currency monetary items (in case of acquisition of a depreciable capital asset) at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset.
- ❑ **Under ICDS**, exchange difference on all monetary items should be recognized as **income or expense**. However, initial recognition, conversion & recognition of exchange difference under ICDS is subject to the provisions of Section 43A of the Act or Rule 115 of the Rules.
  - Depreciation is not allowed on an amount equivalent to CENVAT/ ITC credit claimed and allowed.
  - Depreciation is allowed on “actual Cost”- term defined u/s 43(1) of I.T. Act.
  - An assessee can claim depreciation on actual cost even if he follows Cash method of accounting.
  - Interest relating to any period after such asset is first put to use is not a part of actual cost (other than Section 43A).

In case of dispute between Assessee, Department & Auditor regarding classification of assets, rate of depreciation etc. in earlier year, a suitable disclosure is required.

### 3.19. **Clause 19**

Amounts admissible under sections:

<i>Section</i>	<i>Amount debited to profit and loss account</i>	<i>Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfills 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.</i>

**E-Utility Format**

19 Amounts admissible under sections:

S.No.	Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions, if any specified under the relevant 14 provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
1	Select		
	Select 32AC 33AB 33ABA 35(1)(i) 35(1)(ii) 35(1)(iia) 35(1)(iii) 35(1)(iv) 35(2AA) 35(2AB)	35ABB 35AC 35AD 35CCA 35CCB 35CCC 35CCD 35D 35DD 35DDA 35E	

32AC		
32AD		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(iia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

[Row 32AD has been inserted w.e.f. 20-08-2018 by G.S.R. 666(E), Notification No.33/2018 {F.No.370142/9/2018-TPL} dated 20-07-2018]

### Explanation

- Above mentioned are the sections under which assessee can claim deduction subject to terms and conditions, if any. Herein, the tax auditor needs to report both amount debited to profit and loss account and amount admissible under the relevant section.
- In case assessee has obtained audit report to avail deduction under above mentioned section(s), reference to that should be made while furnishing information under this clause.
- In case amount is not debited but admissible under the relevant section, detail of amount admissible should be furnished.
- In case assessee is eligible for deduction under more than one section or sub-section, information under this clause should be furnished separately in respect of each such section or sub-section.
- The eligibility of the expenditure/payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority, notification issued by the Central Government, any other guideline, circular etc. issued in this behalf should also be verified (Please refer Rule 6 of the Income-tax Rules, 1962).
- If the tax auditor relies on any judicial pronouncements, the related citation should be stated in Form No. 3CA/ 3CB, as the case may be.

### List of Sections

Section	Amount debited to P&L Account/Payment	Amount admissible/ Quantum of deduction
32AC	Investment in New plant & machinery	15% of actual cost of new asset (No deduction allowed from A.Y. 2018-19 onwards)
32AD	Investment in new plant & machinery in Backward areas as prescribed	15% of actual cost of new asset (this row entry is introduced by Notification No. 33/2018 dated 20/07/2018)
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% of 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	100% of amount contributed (from A.Y. 2021-22) 150% of amount contributed (from A.Y. 2018-19 till A.Y. 2020-21) <b>175% of amount contributed (from A.Y. 2011-12 till A.Y. 2017-18)</b> 125% of amount contributed (till A.Y. 2010-11)
35(1)(ia)	Amount paid to an approved company registered in India to be used for scientific research & development	100% of amount paid (from A.Y. 2018-19) <b>125% of amount paid (from A.Y. 2009-10 till A.Y. 2017-18)</b>
35(1)(iii)	Amount paid to research association which has as its object the undertaking of research in social science or statistical research OR to a university, college or other institution notified & approved by CG to be used for research in social science or statistical research	100% of amount paid (from AY 2018-19) <b>125% of amount paid (upto A.Y. 2017-18)</b>
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
35(2AA)	Amount paid to National Laboratory or a University	100% of amount paid (from A.Y. 2021-22 onwards)

	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	150% of amount paid (from A.Y. 2018-19 till A.Y. 2020-21) <b>200% of amount paid (from A.Y. 12-13 till A.Y. 2017-18)</b>
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.	100% of expenditure incurred (from A.Y. 2021-22 onwards) 150% of expenditure incurred (from A.Y. 2018-19 till A.Y. 2020-21) <b>200% of expenditure incurred (from A.Y. 2011-12 till A.Y. 2017-18)</b>
35ABA	Expenditure for obtaining right to use spectrum for telecommunication services	<u>Spectrum fees paid before commencement of business:</u> Spectrum fee paid / No. of years from the previous year of commencement of business to the previous year in which spectrum fees expires. <u>Spectrum fees paid after commencement of business:</u> Spectrum fee paid / No. of years from the previous year in which spectrum fee actually paid to the previous year in which spectrum fees

		expires.
35ABB	Capital Expenditure on license to operate telecommunication services	<p><u>License fees paid before commencement of business:</u> License fee paid / No. of years from the previous year of commencement of business to the previous year in which license expires.</p> <p><u>License fees paid after commencement of business:</u> License fee paid / No. of years from the previous year in which license fee actually paid to the previous year in which license expires.</p>
35AC	Payment to public sector Co. or local authority or an association or institution approved by national committee for carrying eligible Projects/Schemes	100% of expenditure (No deduction allowed from A.Y. 2018-19 onwards)
35AD	Deduction in respect of capital expenditure on specified business	<p><b>100%</b> - 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 &amp; production of honey &amp; bee-wax/ warehouse facility for sugar/ slurry pipeline for transportation of iron ore (w.e.f. A.Y. 2015-16)/ wafer fabrication manufacturing unit (w.e.f. A.Y. 2015-16)</p> <p><b>150%</b> - 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</p>

		housing scheme/ production of fertilizer in India <b>From A.Y. 2018-19 onwards,</b> 100% of expenditure.
35CCA	Rural development programme carried on by association & institutions	100% of expenditure
35CCB	Conservation of Natural resources by associations & institutions*** Deleted from A.Y. 2003-04	100% of expenditure
35CCC	Expenditure on agricultural extension project	100% of expenditure (from A.Y. 2021-22 onwards) <b>150% of expenditure (till A.Y. 2020-21)</b>
35CCD	Expenditure on skill development project by a Company	100% of expenditure (from A.Y. 2021-22 onwards) <b>150% of expenditure (till A.Y. 2020-21)</b>
35D	Amortization of Preliminary Expenses by Indian resident or Company	1/5)* expenditure For each of the 5 successive P.Y. beginning with P.Y. in which business commences or extension is completed or new unit commences production/ operation
	With amendment by Finance Act, 2008, an assessee who is not industrial undertaking is also eligible for <b>deduction u/s 35D</b> for extension of unit for AY 2009-10 onwards. <b>Deep Industries Ltd. Vs. CIT [2015] 16 taxmann.com 348 (Ahmedabad-ITAT)</b>	
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	(1/10)* expenditure

	or extraction or production of certain minerals	For each of 10 successive P.Y.
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**Section 32AD** – Inserted w.e.f. 01-04-2010 by the Finance (No.2) Act, 2009

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

(a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh, State of Bihar, State of West Bengal and the State of Telangana; and

(b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

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

**Section 35AD** – Inserted w.e.f. 01-04-2010 by the Finance (No.2) Act, 2009

- 35AD(3) - Where a deduction under this Section is claimed and allowed in respect of the specified business as in Section 35AD (8)(c) for any assessment year, no deduction shall be allowed under the provisions of [*Section 10AA and*] Chapter VI-A under the heading "*C. – Deductions in respect of certain incomes*" in relation to such specified business for the same or any other assessment year.
- Two new businesses are added in the list of specified business u/s 35AD(8)(c) namely:
  - laying & operating a slurry pipeline for the transportation of iron ore;
  - setting up and operating a semi-conductor wafer fabrication manufacturing unit notified by the Board in accordance with such guidelines as may be prescribed.
- Specified Assets should be used at least for 8 years for specified purpose. **(Sub-Sec 7A)**
- Amount of deduction allowable u/s 35AD *reduced by the amount of*

depreciation allowable as per Sec.32, is chargeable under PGBP if specified assets are not used for specified purpose during specified period of 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**)
- Earlier, Amount debited to the P&L Account as well as amount not debited to the P&L Account was required to be specified by the tax auditor.

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

- The tax auditor needs to specify the capital expense incurred and allowed as deduction for Computation of Profit & Gain as per the provisions of Income Tax Act/Rules/other guidelines/circular, etc. under this Clause.

**The tax auditor is also required to report whether the conditions specified in these Sections have been fulfilled by the assessee or not.**

### ICAI's Comment

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

### **3.20 Clause No. 20 (a) & (b)**

- 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)].**
- b) **Details of contributions received from employees for various funds as referred to in section 36(1)(va):**

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

**A. Sub-clause (a) to clause 20**

***E-utility format***

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)]

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

Under this clause, information about 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, is to be furnished. Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered provided the same should not have been payable to him as profit or dividend. In other words, if bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction. [Shahzada Nand & Sons v. CIT [1977] 108 ITR 358 (SC)].

**B. Sub-clause (b) to clause 20**

***E-utility format***

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

S.No.	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
1	Select	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

- Select
- Provident Fund
- Superannuation Fund
- Gratuity Fund
- Any Fund set up under the provisions of ESI Act, 1948
- Any other welfare fund

\*Gratuity Fund is not specifically mentioned in Section 2(24)(x)

**Points for Consideration**

- Under this sub-clause, the tax auditor is to furnish information in respect of **contributions received from employees for various funds and remittance thereof** to the concerned authorities.
- Section 36(i)(va) of the Act permits deduction of any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) are applicable, if it is credited by the assessee to the account of the employees

in the relevant statutory fund on or before the due date.

- Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or ESI Fund or any other Fund for employees' welfare (hereafter referred to as "Welfare Fund").
- Vide explanation provided in section 36(1)(va), "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, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise, i.e., the date by which it is required to be credited as per the provisions of the applicable law etc.
- In order to furnish information under this clause, the tax auditor should obtain a list of various contributions recovered from the employees. The due dates of payments and the actual dates of onward payment to the concerned authorities should be verified with the records available.
- Under this clause, details regarding the nature of fund, details of the amount deducted, due date for payment, actual amount paid and actual date of payment to the concerned authorities in respect of provident fund, ESI fund or other staff welfare fund are to be stated.
- In Commissioner of Income-tax v. Alom Extrusions Ltd [2009] 319 ITR 306 (SC), the apex Court has held that if the employees contribution towards PF, EPF, etc. are paid by due date of filing of return by the assessee employer, then the same will be an allowable expenditure and section 43B will not be applicable in such circumstances. In case the auditor relies on any judicial pronouncement, he may so mention with related citation as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be.

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

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

➤ **Funds covered:**

Select

- Provident Fund
- Superannuation Fund
- Gratuity Fund
- Any Fund set up under the provisions of ESI Act, 1948
- Any other welfare fund

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

- Now, the amount not deposited to the relevant fund but received from the employees are also required to be reported under this Clause.
- Amount received from employees as contributions as referred in Sec. 2(24)(x) is taxable u/s 56(2)(ic) if such income is not chargeable under PGBP.
- **“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*].
- Grace period of 5 days available in respect of **Provident Fund** withdrawn w.e.f. February, 2016 i.e. contribution for month of January, 2016 and payable in the month of February, 2016. Thus, the employers shall pay the amount within 15 days of close of every month. [**EPF Circular No.: WSU/9(1)2013/settlement/ 35631 dated 08-01-2016**]
- The contribution of **Employees State Insurance** shall be paid within 15 days of the last day of the month w.e.f. June, 2017 i.e. for June, 2017, the due date shall be 15<sup>th</sup> July, 2017 [**ESI (General) Amendment Regulation, 2017 dt 03-07-2017**]
- Only amounts which are not in nature of reward for services will be covered by this item.
- Only disclosure of amount is required but the Auditor’s opinion about its allowability or otherwise is not required.

The ESI corporation, if and where circumstances so warrant, extends the related dates and issues the related notifications. For example, due to COVID \19 pandemic, the Corporation had vide notice dated 16.03.2020 extended the due date for payment of ESI contribution for the month February & March, 2020 from 15<sup>th</sup> March & 15<sup>th</sup> April to 15<sup>th</sup> April & 15<sup>th</sup> May respectively.

3.21. **Clause No. 21 (a) to (i)**

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

<i>Nature</i>	<i>Serial number</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
Capital Expenditure			
Personal Expenditure			
Advertisement Expenditure in any souvenir broacher, tract, pamphlet or the like published by a political party			
Expenditure incurred at clubs being entrance fees and subscriptions			
Expenditure incurred at clubs being cost for club services and facilities used.			
Expenditure by way of penalty or fine for violation of any law for the time being in force.			
Expenditure by way of any other penalty or fine <u>not covered above</u>			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

A. Sub-clause (a) of clause 21

*E-utility format*

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

Personal expenditure

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

Expenditure incurred at clubs being entrance fees and subscriptions

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

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

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

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

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

### Points for Consideration

- This sub-clause requires the tax auditor to state the amount of expenditure incurred by the assessee in respect of various items listed therein.
- Whether the tax auditor should specify each and every transaction? *The format as specified in the notification includes Serial number, particulars, amount.*

#### I. Issues about Expenditure - Capital in nature

- n Cost of repairs & current repairs to building – not capital expenditure.
- n Current repairs to machinery – Plant & Furniture – not capital expenditure. [Explanation to Section 30 and 31]
- n Separately indicate capital expenses allowed as deduction in computation of total income under the Act.
- n Tests which, however, are generally applied to determine whether a particular item of expenditure is of capital nature are enumerated as under:
  - (i) Whether the expenses incurred is of nature that brings into existence an asset or advantage of enduring benefit.
  - (ii) Whether the expense is referable to fixed capital or fixed assets in contrast to circulating capital or current assets.
  - (iii) Whether expense relates to the basic framework of the assessee's business.
  - (iv) Whether it is an expenditure to acquire an intangible asset.

#### II. Issues about Expenditure - personal in nature

- n **“Personal”** is confined to and related with assessee only.
- n *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.)]*

#### III. Issues about Advertisement Expenditure

- n Earlier the expenses u/s 37(2B) were only required to be reported; whereas now the tax auditor needs to report all the expenses incurred on advertisement irrespective of the status of assessee.
 

*“Sec. 37(2B)- Notwithstanding anything contained in sub-sec. (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.”*
- n Donation paid directly to political party, expense on advertisement in newspaper not to be reported

#### IV. Issues about Expenditure by way of penalty or fine for violation of any law

- n Expenditure by way of penalty or fine for violation of any law is not admissible as expenditure.
- n Infraction of law even if not deliberate may discredit the claim for deduction.
- n **Allowance of legal expenses** depends on nature and purpose of legal proceeding in relation to business whose profits are under computation. The same are 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)
- n In case of illegal business, fine or penalty imposed thereon is not deductible [Explanation to Sec. 37(1)].
- n It was held that where the assessee is required to pay amount comprising both the element of compensation and penalty. Only the amount of compensation is deductible as business expense. [Malura Vanaspati & Chemical Co Vs CIT (1997) 225 ITR 383 (SC)]

#### B. Sub-clause (b) of clause 21

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

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

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

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name, address & PAN (if available) of the payee

##### (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)

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name, address & PAN (if available) of the payee
- (V) amount of tax deducted

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

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

- (I) Date of payment
    - (II) Amount of payment
    - (III) Nature of payment
    - (IV) name, address & PAN (if available) 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 sub-section (1) of section 139.
    - (I) Date of payment
    - (II) Amount of payment
    - (III) Nature of payment
    - (IV) name, address & PAN (if available) of the payee
    - (V) Amount of tax deducted
    - (VI) Amount out of (V) deposited, if any
- (iii) as payment referred to in sub-clause (ib)
- (A) Details of payment on which tax is not deducted:
    - (I) Date of payment
    - (II) Amount of payment
    - (III) Nature of payment
    - (IV) name, address & PAN (if available) 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 sub-section (1) of section 139.
    - (I) Date of payment
    - (II) Amount of payment
    - (III) Nature of payment
    - (IV) name, address & PAN (if available) of the payee
    - (V) Amount of levy deducted
    - (VI) Amount out of (V) deposited, if any
- (iv) Under sub-clause (ic) [wherever applicable]
- (v) Under sub-clause (iia)
- (vi) Under sub-clause (iib)

**(vii) Under sub-clause (iii)****(A) Date of payment****(B) Amount of payment****(C) Name and address of the payee****(viii) Under sub-clause (iv)****(ix) Under sub-clause (v)**

Under this sub-clause, details of amounts inadmissible in view of Sections 40(a)(i) to (v) need to be furnished. Sub-clauses (i) to (v) of clause (a) to Section 40 are as under:

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

**E- utility format**

(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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\* in e-filing utility PAN or Aadhaar Number of the payee is also to be furnished, if available.

\*\* 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.

**ICAI's Comment**

- The reporting has been done in respect of provision for various expenses of sundry parties. Since the amount has not been paid, the exact date has not been mentioned. Instead a random date as 11/11/1111 is mentioned to ensure uploading in the e-filing website. However, the date of crediting the amount of provision in the books of account could have been mentioned.

- In respect of sub-clauses where no information is to be given, instead of leaving the same blank, "Nil" '0" or "NA" could be mentioned for better reporting.

Provisions of Section 40(a)(i)

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 on or before the due date specified in sub-section (1) of section 139 .

**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year 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.

[as amended w.e.f. 01-04-2015 by the Finance (No.2) Act, 2014].

Change in the above proviso is applicable since the A.Y. 2016-2017, however, the corresponding change in Tax Audit Form has not been made but reference to section 200(1) in the said Form may be construed as Section 139(1). Tax auditor may give a related note in the observations.

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 sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso. [as amended w.e.f. 01-04-2020 by the Finance Act, 2019]

## (ii) Section 40(a)(ia)

***E-utility format***

(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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*\*in e-filing utility PAN or Aadhaar Number of the payee is also to be furnished, if available.*

*\*\* 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.*

**Provisions of Section 40(a)(ia)**

**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 Section 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 Section 139(1), thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

**Provided further** that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under 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.

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

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

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

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

#### Amendment by the 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.

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

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**]

iii) Section 40(a)(ib)

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

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

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

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

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

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- The provisions laid in Section 40(a)(ib) of the Income Tax Act, 1961 is as under:-

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

(a) in the case of any assessee—

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

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

- Further, as per Section 164 of Chapter VIII of Finance Act 2016, the Equalisation Levy is defined as under:

**“164.** In this Chapter, unless the context otherwise requires,—

(d) *"equalisation levy" means the tax leviable on consideration received or receivable for any specified service [ore-commerce supply or services] under the provisions of this Chapter;*

- This clause requires the tax aditor to use his professional acumen and report whether the assessee has incurred any such expenditure on which he was required to deduct the equalisation levy at the rate specified in the provisions of the act and if not, then he has to ensure that such expenditure is not allowed for the concerned year.
- Further, if such equalisation levy was deducted then if the deducted sum has been deposited within the due date of filling the return u/s 139(1) of the act.

(iv) **Section 40(a)(ic) [wherever applicable]-** any sum paid on account of **fringe benefit tax** under ChapterXIIH.

(v) **Section 40(a)(ia)-** any sum paid on account of **wealth-tax**.

(vi) **Section 40(a)(iib)- [inserted w.e.f. 01-04-2014 by the Finance Act, 2013]**

**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.**

(vii) **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

(viii) **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"

(ix) **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.

**In brief:** Detail of each payment is to be provided on which provisions of Section 40(a) are applicable in the specified format.

**The reporting under sub-clauses (iv) to (ix) is to be done in the manner or format specified by the e-filing utility in this context, which are as under:**

### *E-Utility Format*

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

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

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

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

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

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

### C. Sub-clause (c) to 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.**

### *E-utility format*

(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;

S.No.	Particulars	Section	Amount debited to P/L A/C	Amount admissible	Amount inadmissible	Remarks
1	Select	Select	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

+ Add X Del

Select

Interest

Salary

Bonus

Commission

Remuneration

Select

40(b)

40(ba)

### Points for Consideration

- Reporting under this sub-clause to be made with reference to Partnership firms, LLP, AOP, BOI.
- The tax auditor is required to state the inadmissible amount u/s 40(b)/40(ba).
- By the Finance Act (No.2) 2009, w.e.f. 1.4.2010, the term 'firm' includes LLP (as registered under the provisions of LLP Act, 2008).
- Salary, bonus, commission or remuneration or interest are not admissible, unless the following conditions are satisfied:
  - a. Remuneration is paid to working partner(s).
  - b. Remuneration or interest is authorised by the partnership deed and is in accordance with the partnership deed.
  - c. Remuneration or interest does not pertain to a period prior to the date of partnership deed.
  - d. The inadmissible remuneration, salary, bonus or commission under section 40(b) is to be determined on the basis of the provisions of sub-clause (v) thereof read with the limits laid down therein.
- The tax auditor should verify the computation of inadmissible amounts for the purpose of reporting under this section from the instrument or agreement or any other document evidencing partnership including any supplementary documents.
- Any payment of interest to any partner which relates to any period falling after the date of partnership deed, with which it is authorized, if

such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time is not admissible as a deduction.

- Any interest or remuneration paid by an AOP to its member is not allowed as a deduction
- Only net amount of interest, if any, shall be disallowed, where interest is paid by AOP / BOI to a member who has also paid interest to AOP/ BOI. (rule will also apply in case of member in representative capacity)
- While reporting under this clause, the Circular No.739 dated 25.3.1996 may be kept in view as to whether the deduction under section 40(b)(v) is admissible or not unless partnership deed either specifies amount of remuneration payable to each individual working partner or lays down manner of quantifying such remuneration.

**D. Sub-clause (d) to clause 21****(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:*

<i>Serial number</i>	<i>Date of payment</i>	<i>Nature of payment</i>	<i>Amount</i>	<i>Name and Permanent Account Number or Aadhaar Number of the payee, if available [However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i>

*(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 under section 40A(3A);*

<i>Serial number</i>	<i>Date of payment</i>	<i>Nature of payment</i>	<i>Amount</i>	<i>Name and Permanent Account Number or Aadhaar Number of the payee, if available [However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]</i>

**E-utility format**

(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:

YES  
 NO

S.No.	Date Of Payment	Nature Of Payment	Amount	Name of the payee	Permanent Account Number of the payee, if available
1	<input type="text"/>				
<input type="button" value="Add"/> <input type="button" value="Delete"/>					

(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 under section 40A(3A);

YES  
 NO

S.No.	Date Of Payment	Nature Of Payment	Amount	Name of the payee	Permanent Account Number of the payee, if available
1	<input type="text"/>				
<input type="button" value="Add"/> <input type="button" value="Delete"/>					

**Points for Consideration.**

- Section 40A(3) - Where the assessee incurs any expenditure in respect of 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, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, exceeds ten thousand rupees, no deduction would be allowed in respect of such expenditure.

[as amended last w.e.f. 01-04-2020 by the Finance (No.2) Act, 2019. The 'other electronic mode' has also since been prescribed by way of insertion of Rule 6ABBA by the Income-tax (Third Amendment) Rules, 2020, w.r.e.f. 01-09-2019, and discussed supra, include credit card, debit card, net banking, IMPS, UPI, RTGS]
- Section 40A(3A), where any 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 the previous year the assessee makes payment in respect thereof, otherwise than an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income tax as income of the

subsequent year if the payment or aggregate of payments made to a person in a day, exceeds ten thousand rupees. [as amended last w.e.f. 01-04-2020 by the Finance (No.2) Act, 2019, and discussed supra]. In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- instead of Rs.10,000/- [as amended w.e.f. 01-04-2018 by the Finance Act, 2017].

- Further, in terms of first proviso to section 40A(3A), 'no disallowance shall be made and no payment shall be deemed to be the profits and gains' where a payment or aggregate of payments made to a person in a day, otherwise than by an account pay cheque etc. in such cases and under such circumstances as may be prescribed having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant facts.. The cases and circumstances prescribed are contained under Rule 6DD.
- For reporting under this sub-clause, the tax auditor should obtain a list of all cash payments. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specified exemption granted under clauses (a) to (l) of Rule 6DD are satisfied or the payments are made under prescribed threshold limit.
- Where on account of voluminous entries, it is not possible to verify each payment, the tax auditor should obtain suitable management representation from the assessee to the effect that the payments for expenditure referred to in section 40A(3) and section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft, as the case may be.
- In case the reporting has been done solely on the basis of the management representation from the assessee, the fact shall be reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB.

E. **Sub-clause (e)** of clause 21.

**(e) provision for payment of gratuity not allowable under section 40A(7);**

Points for Consideration

- In case the provision made for payment of gratuity is not allowable under section 40A(7), the same should be reported under this clause.

**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

- Deduction u/s 40A(7) is available in respect of
  - Contribution towards an approved gratuity fund
  - Or for the purpose of payment of any gratuity that has become payable during the previous year.
- The tax auditor should call for the order of the Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.

**F. Sub-clause (f) to clause 21.**

**(f) any sum paid by the assessee as an employer not allowable under section 40A (9)**

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.

**Points for Consideration.**

- Reporting about contribution made in violation to section 40A(9)
- No deduction available u/s 40A(9) in respect of any payment made by an employer towards
  - the setting up or formation of or as contribution to any
  - fund, trust, company, association of persons, body of individuals, society or other institutions
- Section 40A(9), however, allows deduction of any contributions made as an employer towards
  - recognized provident fund
  - or approved superannuation fund
  - or notified pension scheme
  - or approved gratuity fund
  - or as required by or under any other law for the time being in force.
- Any contribution made to Employees' Welfare Co-op Society will not be allowed unless such contribution is required by or under any other law for the time being in force. *Instruction: No. 1799, dated 3-10-1988*

### G. **Sub-clause (g) to clause 21**

#### **(g) particulars of any liability of a contingent nature;**

##### Points for Consideration

- The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account.
- The tax auditor may take reference of contingent liabilities of the earlier year in order to determine the contingent liabilities booked during the current year.
- AS-29, 'Provisions, Contingent Liabilities and Contingent Assets' should be referred to determine what should normally be treated as a contingent liability.

### H. Sub clause (h) to clause 21

#### **(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**

##### Points for Consideration

- Section 14A was inserted in Chapter IV – Computation of total income by the Finance Act, 2001 with retrospective effect from 1.4.1962 i.e. A.Y. 1962-63.
- As per section 14A, the expenditure which is relatable to the income which does not form part of the total income is not allowed as a deduction in terms of section 14A of the Act.
- And, therefore, this section operates where assessee has income of below mentioned nature:
  - Section 10 deals with incomes not included in total income. Sections 10A to 10C deal with the special provisions in respect of the specified undertakings.
  - Agriculture income.
  - Share of profit in a partnership firm.
  - Income from dividends.
  - Long term capital gains on the transfer of equity shares which are exempt under sub-section (38).
- The Central Board of Direct Taxes, had through the Income-tax (Fifth Amendment) Rules, 2008 inserted a new Rule 8D which lays down the method for determining the amount of expenditure in relation to income not includible in total income.
- The method prescribed under Rule 8D is applicable, when during assessment the Assessing Officer is not satisfied with the correctness of the claim of expenditure made by the assessee or with the claim made by the assessee

that no expenditure has been incurred. Therefore, at the time of tax audit, the tax auditor is entrusted with the responsibility of verifying the amount of inadmissible expenditure as determined by the assessee.

- While reporting under this sub-clause, the tax auditor may obtain management representation about expenses admitted by assessee to be related to exempt income.
- It is the duty of the assessee to provide details of amount inadmissible u/s 14A for examination to the auditor. The auditor may place reliance on the management representation (refer Standard on Auditing 580, *Written representation*)
- The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee on the basis of allocation of expenditure based on parameters like proportion of exempt and taxable income recorded, turnover, man hours etc.
- For allocation of interest between taxable and non-taxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered.
- In case assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act, the tax auditor in that case should verify the fact.
- After verifying the amount of inadmissible expenditure, if the tax auditor agrees with the assessee, reporting should be made with suitable disclosures of material assumptions, if any.
- In case of difference of opinion, the tax auditor may give a qualified report, an adverse report, or the disclaimer of Opinion.

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

- If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure.
- If expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure.
- **PCIT vs Moonstar Securities Trading and Finance Co. (P.) Ltd. [2019] 263 Taxman 458 (SC)**

AO can not straightaway reject expenditure offered for disallowance u/s 14A and apply rule 8D without assigning any reasons.

Also held in the case of **PCIT vs Hero Corporate Service Ltd. [2019] 262 Taxman 29 (SC)**

➤ **PCIT vs State Bank of Patiala [2018] 259 Taxman 314 (SC)**

Amount of disallowance u/s 14A can only be up to the amount of exempt income.

➤ **PCIT vs. GVK Project and Technical Services Ltd. [2019] 264 Taxman 76 (SC)**

In absence of any exempt income, disallowance can not be made u/s 14A of the Act.

Also held in the case of **PCIT vs. Oil Industry Development Board [2019] 262 Taxman 102 (SC)**.

I. **Sub-clause (i) to clause 21**

**(i) amount inadmissible under the proviso to section 36(1)(iii)**

Points for Consideration

- **Details of amount inadmissible under the proviso to section 36(1)(iii) to be given.**

**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 (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.

- The provisions of section 36(1)(iii) provide that 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.
- Further, the proviso to section 36(1)(iii) provides 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 or 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 put to use, is not allowed as a deduction.

- The Tax Auditor while determining the admissible/inadmissible amount for the purpose of this sub-clause should also keep in mind the requirements of Accounting Standards 16 – “Borrowing Cost”.
- The Explanation to section 36(1)(iii) further provides that recurring subscription paid periodically by shareholders or subscribers in Mutual Benefit Society which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of section 36(1)(iii).

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

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

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

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

□ **Surya Merchants Ltd. v. DCIT**

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

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

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

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

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

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

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

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

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

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

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

**The reporting under sub-clauses (e) to (i) of clause 21 is to be done in the manner or format specified by the e-filing utility in this context, which is as under:**

(e) Provision for payment of gratuity not allowable under section 40A(7); (f) Any sum paid by the assessee as an employer not allowable under section 40A(9); 

(g) Particulars of any liability of a contingent nature;

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

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

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

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

### 3.22. Clause 22

#### **Amount inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.**

##### *E-utility format*

22 Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

#### Points for Consideration

- This clause was inserted by the Central Board of Direct Taxes through its Notification No. 36/2009 dated 13-4-2009.
- The inadmissible interest is to be determined on the basis of the provisions of the MSMED Act, 2006.
- Provisions of Micro Small and Medium Enterprises Development Act, 2006, in respect of inadmissible interest is to be reported under this clause are as under:
  - **Section 23:** 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.
  - **Section 16:** Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, 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.



- While reporting under this clause the tax auditor should –
  - Seek information regarding status of the enterprise i.e. whether the same is covered under the Micro, Small and Medium Enterprises Development Act, 2006 and make necessary reporting in Form No. 3CD.
  - Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006.
  - Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account, and verify the same on test check basis.
- If no disclosure is made by the auditee in the financial statements, the tax auditor should give an appropriate observation in Form No. 3CB, in addition to the reporting requirement in clause 22 of Form No. 3CD.

### 3.23. Clause No. 23

#### **Particulars of any payments made to persons specified under section 40A(2)(b).**

##### *E-utility format*

23 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"/>

#### Points for Consideration

- Section 40A(2)(a) provides that where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person specified u/s 40A(2)(b) and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the :
  - fair market value of the goods,
  - services or facilities for which the payment is made or the legitimate needs of the business or profession, or
  - the benefit derived by or accruing to him therefrom,

So much of the expenditure as is so considered by the assessing officer to be excessive or unreasonable shall not be allowed as a deduction

- Proviso to section 40A(2)(a) provides that no disallowance on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to

in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.

- Anomaly between provision and format is that the provisions of Section 40A(2) requires disallowance of amount incurred, however the format / e-utility states about the reporting of payment made.
- For reporting under this clause, the tax auditor may take below mentioned points in consideration
  - 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 section 40A(2).
  - If information is not available about specified persons with the client, suitable disclaimer may be given.
  - Section 40A(2) - Payment to Specific Persons – Where the 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 clause 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.
  - **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 may be relied upon.
  - **Circular No. 143, dated 20-8-1974**, issued by the CBDT, clarifies that an auditor can rely upon the list of persons covered u/s 13(3) as given by the managing trustee of a Public Trust. A similar analogy may be drawn for the purpose of this clause under discussion. **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.**
  - **In 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.

- n **Khan Carpets v CIT (2003) 262 ITR 325 (All)** - Only where there was disproportionate increase in salary without showing exceptional circumstances for it, that the increase in salary could be disallowed.
- **Pr. CIT v. Patel Alloy Steel Co. (P.) Ltd [2019] 103 taxmann.com 432 (SC)**

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

### 3.24. Clause No. 24

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

*E-utility format*

24 Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.

S.No.	Section	Description	Amount
1	Select		
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> <span style="color: green;">+</span> Add           <span style="color: red; margin-left: 20px;">X Delete</span> </div> <div style="border: 1px solid gray; padding: 2px;">             Select              32AC              33AB              33ABA              33AC           </div> </div>			

Under this clause, detail of amounts deemed to be profits and gains under section 32AC, 33AB or 33ABA or 33AC are to be furnished.

S. No.	Section	Particulars Centre

<p>1</p>	<p>32AC</p>	<ul style="list-style-type: none"> <li>• Section 32AC – Investment in new plant or machinery - allows deduction @ 15% in respect of Investment in new Plant &amp; Machinery</li> <li>• to a company</li> <li>• engaged in the business of manufacture or production of any article or thing</li> <li>• who acquires and installs new asset after the 31<sup>st</sup> day of March, 2013</li> <li>• but before the 1<sup>st</sup> day of April, 2015</li> <li>• the aggregate actual cost of such new assets exceeds one hundred crore rupees.</li> <li>• <b>The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (2) of section 32AC.</b></li> <li><input type="checkbox"/> In respect of AY 2016-17, no deduction shall be allowed under Sub-Section (1)</li> <li><input type="checkbox"/> In respect of AY 2016-17, deduction shall be allowed under Sub-Section (1A) Where a company <b>engaged in the business of manufacturing or production of any article or thing</b>, acquires &amp; install new asset and the amount of actual cost of such new assets acquired during any P.Y. exceeds Rs. 25 Crore <b>and such assets are installed on or before 31-03-2017</b>, then there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new assets.             <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Where the year of installation is different from the year of acquisition, the deduction under sub-section (1A) shall be allowed in the year of installation.</b></li> </ul> </li> </ul> <p>No deduction under Sub-Sec.(1A) shall be allowed from AY 2018-19 onwards.</p>
		<p><b><u>Sub-Sec. (2)</u></b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If any new asset acquired &amp; installed by the assessee is <b>sold or otherwise transferred,</b></li> <li><input type="checkbox"/> <b>except in connection with the amalgamation or demerger,</b></li> <li><input type="checkbox"/> <b>within a period of 5 years</b> from the date of its installation,</li> <li><input type="checkbox"/> 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.</li> </ul> <p><b><u>Sub-Sec. (3)</u></b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Where the new asset is <b>sold or otherwise transferred in connection with the amalgamation or demerger</b></li> <li><input type="checkbox"/> <b>within a period of 5 years</b> from the date of its installation,</li> <li><input type="checkbox"/> 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.</li> </ul>

		<p><b>Sub-Sec. (4)</b></p> <p>For the purposes of this Section, "<b>new asset</b>" means any new plant or machinery (other than ship or aircraft) but does not include –</p> <ol style="list-style-type: none"> <li>i. any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;</li> <li>ii. any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;</li> <li>iii. any office appliances including computers or computer software;</li> <li>iv. any vehicle; or</li> <li>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.</li> </ol>
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2	33AB	<ul style="list-style-type: none"> <li>• Section 33AB allows deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account.</li> <li>• Reporting of deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (4), (5), (7) and (8) of section 33AB.</li> </ul>
3	33AB A	<ul style="list-style-type: none"> <li>• Section 33ABA allows deduction in respect of Site Restoration Fund</li> <li>• Reporting of the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections</li> </ul>

4	33AC	<ul style="list-style-type: none"> <li>• Section 33AC - reserve for shipping business - allows deduction the profit of the assessee engaged in shipping business.</li> <li>• Reporting of the deemed income chargeable as profits and gains business under the circumstances specified in sub-sections (3) (4) of section 33AC for the amount of reserves created on or before</li> <li>• No deduction shall be allowed under section 33AC for any</li> </ul>
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**3.25. Clause No. 25**

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

***E-utility format***

25 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
1	<input type="text"/>	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>
<div style="display: flex; align-items: center;"> <span style="margin-right: 10px;"> Add</span> <span> Delete</span> </div>					
<div style="border: 1px solid gray; padding: 5px; margin-left: 200px;">                     Select                      Sec 41(1)(a)                      Sec 41(1)(b)                      Sec 41(2)                      Sec 41(B)                      Sec 41(4)                      Sec 41(4A)                      Sec 41(5)                 </div>					

**Points for Consideration.**

- In order to report under this sub-clause, the tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying/ underlying evidence, correspondence, etc.
- Under Section 41 below mentioned are the receipts which are chargeable to tax as business income:

<i>Section</i>	<i>Particulars</i>
41(1)	<ul style="list-style-type: none"> <li>• In any of the earlier years a deduction was allowed to the taxpayer in respect of loss, expenditure (revenue or capital expenditure) or trading liability incurred by assessee.</li> <li>• During the current year, the taxpayer                             <ol style="list-style-type: none"> <li>1. Has obtained a refund of such trading liability (it may be in cash or any other manner); or</li> <li>2. Has obtained some benefit in respect of such trading liability by way of remission or cessation thereof (“remission or cessation” for this purpose includes unilateral act of the assessee by way of writing off such liability in his books of account.</li> </ol> </li> </ul>

41(2)	<ul style="list-style-type: none"> <li>• Applicable for undertaking engaged in generation or generation and distribution of power.</li> <li>• To charge income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture is sold, discarded, demolished or destroyed.</li> <li>• Depreciation allowed on such percentage on the actual cost as are prescribed.</li> <li>• The depreciation rate are prescribed vide Rule 5(IA).</li> <li>• Depreciation is to be calculated on Straight Line Method (SLM) on individual asset and not on block of assets</li> <li>• Where the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture become due.</li> <li>• Where the moneys payable in respect of the building, machinery, plant or furniture become due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, the above provision shall apply as if the business is in existence in that previous year. To ascertain capital gain, if any, provisions of section 50A are relevant.</li> </ul>
41(3)	<ul style="list-style-type: none"> <li>• Where any capital asset used in scientific research is sold without having been used for other purposes</li> <li>• The sale proceeds together with the amount of deduction allowed under section 35 exceeds the amount of capital expenditure.</li> <li>• Such surplus or the amount of deduction allowed, whichever is less, is chargeable to tax as business income in the year in which the sale took place.</li> <li>• This is irrespective of whether the business of the assessee is in existence or not during the previous year in which the capital asset is sold.</li> </ul>
41(4)	<ul style="list-style-type: none"> <li>• Where any bad debt has been allowed as deduction u/s 36(1)(vii) and the amount subsequently recovered on such debt is greater than the difference between the debt and the deduction so allowed, the excess realization is chargeable to tax as business income of the assessee is in existence (or not) during the previous year in which recovery is made.</li> <li>• If there is a succession in business by way of amalgamation, demerger or on death of a person by his son, or where a firm is succeeded by another firm then recovery of bad debt is taxable as business income if the bad debt was earlier allowed as deduction to the predecessor.</li> </ul>

41(4A)	<ul style="list-style-type: none"> <li>Where a deduction has been allowed in respect of any special reserve created and maintained under clause (viii) of sub-section (1) of section 36, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to income-tax as the income of the previous year in which such amount is withdrawn.</li> </ul>
41(5)	<ul style="list-style-type: none"> <li>Where the business or profession referred to in section 41 is no longer in existence and there is income chargeable to tax under sub-section (1), sub-section (3), sub-section (4) or sub-section (4A) in respect of that business or profession, any loss, not being a loss sustained in speculation business which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid.</li> </ul>

- The tax auditor should examine the past records to satisfy himself about the correctness of the information provided by the assessee.
- Information under this clause is to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not.
- The computation of the profit chargeable under this clause is also to be stated.

### 3.26. **Clause 26**

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

- (A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was
  - (a) paid during the previous year;
  - (b) not paid during the previous year;
- (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);
  - (b) not paid on or before the aforesaid date.

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

**E-utility format**

26 (i) 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
1	Select		
<div style="border: 1px solid gray; padding: 5px;"> <span style="float: left; margin-right: 10px;">+ Add</span> <span style="float: right; margin-left: 10px;">X Delete</span> </div>			
<div style="border: 1px solid gray; padding: 5px;">                     Select                      Sec 43B(a) -tax , duty,cess,fee etc                      Sec 43B(b) -provident /superannuation/gratuity/other fund                      Sec 43B(c) -sum referred to u/s 36(1)(ii)                      Sec 43B(d) -interest from public financial institution etc                      Sec 43B (e) - interest on loan from scheduled bank                      Sec 43B(f) - leave encashment                 </div>			

(b) not paid during the previous year;

S.No.	Section	Nature of liability	Amount
1	Select		
<div style="border: 1px solid gray; padding: 5px;"> <span style="float: left; margin-right: 10px;">+ Add</span> <span style="float: right; margin-left: 10px;">X Delete</span> </div>			

(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
1	Select		
<div style="border: 1px solid gray; padding: 5px;"> <span style="float: left; margin-right: 10px;">+ Add</span> <span style="float: right; margin-left: 10px;">X Delete</span> </div>			

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

S.No.	Section	Nature of liability	Amount
1	Select		
<div style="border: 1px solid gray; padding: 5px;"> <span style="float: left; margin-right: 10px;">+ Add</span> <span style="float: right; margin-left: 10px;">X Delete</span> </div>			

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

Select

### Points for Consideration

- Information, under sub-clause (A) to clause 26 of tax audit report, is to be given about sums covered under clauses (a) to (g) to section 43B that pre-existed on the first day of assessment year but was not allowed in the assessment of any preceding previous year and was actually paid during the year / not paid during the year.
- Information, under sub-clause (B) to clause 26 of tax audit report, is to be given about sums covered under clauses (a) to (g) to section 43B incurred during the assessment year was actually paid either before the date of furnishing ROI u/s 139(1) / not paid on or before the said date.

[reference to clause (g) to section 43B has been inserted, w.e.f. 20-08-2018 in the opening portion of clause 26 consequent to insertion of a new clause (g) in section 43B w.e.f. 01-04-2017, i.e. “(g) any sum payable by the assessee to the Indian Railways for the use of railway assets”]

- Section 43B applies only where Books of Account are maintained on mercantile basis. If the assessee is following cash system of accounting, then the tax auditor should mention “Not applicable since cash system followed by the assessee against this sub-clause.
- *Explanation* 3C and 3D to section 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 17-07-2006]. The assessee may have to furnish a certificate from the lender bank etc. on orders of the assessing officer as an evidence that the ‘actual payment’ of interest has already been made.
- No deduction in case of waiver of interest as it is not representing actual payment.
- Conversion of interest due to bank into equity shares of the assessee company does not amount to actual payment under section 43B. ITO vs. Glittek Granites Limited [2012] 25 taxmann.com 267 (Kol.-ITAT)
- Below mentioned expenses are allowable on actual payment basis under this section :
  - ₪ Any sum payable by way of tax, duty, cess or fee.
  - ₪ Any sum payable by employer by way of contribution to provident fund, or superannuation fund or any other fund for the welfare of employees.
  - ₪ Any sum payable as bonus or commission to employees, for services rendered.

- n Any sum payable as interest on any loan or borrowings from public financial institution or a state financial corporation or a state industrial corporation or a state industrial investment corporation.
    - n Interest on any loan or advance taken from a scheduled bank including a cooperative bank,
    - n Any sum payable by an employer in lieu of leave at the credit of his employee.
    - n any sum payable by the assessee to the Indian Railways for the use of railway assets,
- The above expenses are deductible in the year in which the payment is actually made.
- The tax auditor should verify the aforesaid particulars of section 43B from the books of account, vouchers and documents of year under consideration and immediately preceding previous year. ROI of previous year should also be referred.
- In respect of the liability which pre-existed on the first day of the previous year is allowable as deduction if paid during the previous year, reporting to be made in clause 26(A)(a).
- In respect of the liability which is incurred in the previous year is allowable to the extent it is paid on or before the due date for furnishing the return of the income under section 139(1). Such items are to be disclosed in clause 26(B)(a).
- Where due date for filing of return of income is extended, payments made upto the extended due date also qualify for deduction.

#### Issues for Consideration

- The provision made in the accounts for excise duty payable on finished goods in the bonded warehouse is eligible for deduction when the said goods have been cleared and that excise duty thereon has been paid or adjusted against CENVAT credits before the due date as applicable for furnishing the return of income under section 139 (1). [ICAI's Guidance Note on Tax Audit].
- Sales-tax when paid is allowed as a deduction.
- In **Commissioner of Income-tax v. Alom Extrusions Ltd [2009] 319 ITR 306 (SC)**, the apex Court has held that if the employees contribution towards PF, EPF, etc. are paid by due date of filing of return by the assessee employer, then the same will be an allowable expenditure and section 43B will not be applicable in such circumstances.
- If under the sales tax registration, sales tax so deferred is stated as actually paid then section 43B shall be deemed to be complied – **Circular No.496 dated 25/09/1987**. See also **CIT Vs. Gujrat Polycrrete Pvt. Ltd. [2000] 246 ITR 463 (SC)**.

- Amount of sales tax liability converted into loans may be allowed as deduction in the assessment for the previous year in which such conversion has been permitted by or under Govt. orders - **Circular No.674 dated 29.12.1993**. See also **CIT V. Goodluck Silicate Industries (P) Ltd. [2002] 178 CTR (Guj) 92**.
- **Circular No.7/2006 dated 17<sup>th</sup> July, 2006** clarifies that conversion of interest into a loan or borrowing or advance does not amount to “actual payment”. The circular clarifies that the unpaid interest whenever actually paid to the bank or financial institution will be in the nature of revenue expenditure deserving deduction in the computation of income.
- Royalty payable to the Govt. in respect of mineral rights is a tax within the meaning of section 43B - **Gorelal Dubey V. CIT [2001] 248 ITR 3 (SC)**.
- Rent / Kist is neither tax nor cess - **CIT V. Sree Balaji & Co. [2001] 114 Taxman 682 (Kar.)**
- Interest on delayed payment of taxes is not to be reported u/s 43B - **CIT V. Padmawati Raje Cotton Mills Ltd. [1999] 239 ITR 355 (Cal.)**. See also **Mewar Motors v. CIT [2004] 135 Taxman 155 (Raj.)**.
- Mandi tax is not a tax - **CIT V. Mohan Singh & Sons [1995] 216 ITR 432 (MP)**.
- Electricity charges are neither taxes nor duty nor cess, however duty paid on sale of electricity is covered by section 43B - **CIT V. Gujrat Urja Vikas Nigam Ltd. [2010] 322 ITR 539 (Guj.)**.
- Interest on Electricity Duty is compensatory in nature - 43B not applicable. **National Aluminium Co. Ltd. V. CIT [2006] 153 Taxman 18 (Mag.)**
- Govt. Audit Fee is not duty cess or tax payable- **CIT V. Werma Sehkari Sakhar Karkhana Ltd. [2002] 253 ITR 226 (Bom.)**
- Vend Fee is not in nature of tax, duty, cess or fee - **Dy CIT V. Travencore Sugars & Chemicals Ltd. [1999] 65 TTJ 598 (Coch.)**
- Interest on delayed payment of statutory liability to be allowed only when actually paid - **Grasim Industries Ltd. V. CIT [1999] 64 TTJ 357 (Mum.)**
- SEBI turnover charges are cess or duty to be payable under law - 43B applies - **ITO V. Suresh Chand Jain [2006] 100 ITsD 435 (Mum.)**
- Service Tax is not covered within the preview of section 43B - **CIT V. Real Image Media Technologies Pvt. Ltd. [2008] 114 ITD 573 (Chennai)**.
- Payment to Gratuity Fund operated by LIC covered by section 43B - **CIT V. Popular Vehicles and Services Ltd. [2010] 189 Taxman 14 (Ker.)**
- Provision made for an approved gratuity fund is not covered by section 43B - **CIT V. Common Wealth Trust (I) Ltd. [2004] 269 ITR 290 (Ker.)**
- No deduction in case of waiver of interest as it is not representing actual payment.
- If an assessee made Advance Payment of Excise duty without liability, no deduction shall be given on account of Sec. 43B - **Gopikrishna Gramites Vs**

**DCIT 251 ITR 337 (A.P), Hindustan Liver Ltd Vs K.K Pandey JCIT, 251 ITR 209(Bomb)**

- The provision made in the accounts for excise duty payable on the closing stock of finished goods should also be disclosed against sub-clause (i). 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. **[ICAI's Guidance Note on Tax Audit]**
  - 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 - **Peerless General Finance & Investment Co. Ltd. v. CIT-[2010] 228 CTR 72 (CAL.)**
  - 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- The particulars should be reported whether have been debited to P&L A/c or not - **CIT Vs S.P. Foundry 185 ITR 555 (All)**
  - 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, **CIT vs. Maruti Udyog Ltd [2010] 186 TAXMAN 407 (SC) (ruling of Hon'ble High Court of Delhi in 92 ITD 119 reversed).**
  - 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 **Vinir Engineering (P.) Ltd v. DCIT [2010] 186 TAXMAN 72 (KAR.)**
  - 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. - **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),**
- **CIT v. Jagdish Prasad Gupta [2019] 104 taxmann.com 232 (Delhi)**  
Assessee would be justified in claiming enhanced license fee payable to railways as deduction in year in which such enhancement has accrued even though it has not paid such enhanced license fee in that year.
- **Manish Films (P.) Ltd. v. ITO[2019] 102 taxmann.com 184 (Indore - Trib.)**  
AO disallowed interest paid by assessee to State Finance Corporation assessee u/s 43B on basis of evidence being not produced but assessee had categorically stated that it had paid interest to M.P. Finance Corporation. AO should have verified from M.P. Finance Corporation regarding payment of interest. Since there was no such enquiry, disallowance was deleted.

3.27. **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.**
- b) **Particulars of income or expenditure of prior period credited or debited to the profit and loss account.**

*E-utility format*

27 (a) Amount of Central Value Added Tax credits availed of or utilised 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.

Select Select  
YES  
NO

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"/>

(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	<span>Select</span>	<input type="text"/>	<input type="text"/>	<span>Select</span>
	<span>Select</span> <span>Income Credited</span> <span>Expenditure Debited</span>			<span>Select</span> 1980-81 1981-82 1982-83 1983-84 ▼ 2017-18 2018-19 2019-20 2020-21

A. Sub-clause (a) and (b) to Clause 27

- Sub-clause (a) requires the factual reporting about the amount of CENVAT credits availed of or utilised during the year as well as its treatment in profit and loss account and treatment of outstanding CENVAT credits in the accounts.
- CENVAT credit is available on eligible inputs, input services and capital goods.
- CENVAT credits are utilized for the payment of the excise duty and service tax liability.
- The tax auditor has to verify statutory records and ascertain therefrom the amount of credit on eligible inputs, input services and the capital goods and the amount utilised during the previous year. Records maintained in RG-23, wherever available should also be verified.

- The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant excise and service tax records.
- The tax auditor should report the amount of CENVAT availed and utilised under this sub-clause.
- Further the sub-clause requires reporting of the credits availed of or utilized during the previous year, it is desirable to report both the credits availed and the credits utilized.
- As far as the reporting of accounting treatment of CENVAT credit is concerned, the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT credit in the account have to be reported upon.
- Where the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material, capital goods and service tax paid on input services is debited to the CENVAT/ Service Tax Credit Receivable Account and not as part of the 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 and credited to CENVAT/ Service Tax Credit Receivable Account. Thus, the credit availed and utilized will not have any impact on the profit and loss account.
- The reporting requirement under clause 14(b) of Form No.3CD is a requirement distinct and separate from the reporting requirement under this clause. The tax auditor should verify that information furnished under this sub-clause is compatible with the information furnished under clause 14(b).
- The tax auditor should consider the above while reporting in the format provided in the e-filing utility with respect of this clause.
- With regard to reporting of the amount of CENVAT credits availed or utilized during the previous year and its treatment in the profit and loss account wherever possible, it is advisable to give the details of the credit availed and utilized as separate line items.
- With regard to reporting of the treatment of outstanding CENVAT Credits in the account, it is desirable to mention the opening and the closing outstanding balances in the CENVAT Credits accounts as separate line items. The account in which the outstanding amount is appearing should also be mentioned appropriately.

In the strict meaning, CENVAT is not relevant in most of the case at present. Also as of now, the utility does not provide for GST reporting. Accordingly, where applicable, the tax auditor may give reference to GST despite the clause asking CENVAT because in case of information sharing between/among the authorities the conflict will come. The above is to avoid such a situation.

**In reference to Clause no. 27 (b):**

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

### 3.28. Clause No. 28

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)(vii-a), if yes, please furnish the details of the same.

#### *E-utility format*

28 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)(vii-a), if yes, please furnish the details of the same

Select ▼

Select  
YES  
NO  
NA

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 the shares
1							

+ Add X Delete

*\*Notification dated 25-07-2014 does not suggest any format for reporting under this clause however format has been given in e-utility and as such information for reporting under this clause has to be collected in view of this specified format.*

- Under this clause, detail of receipt of shares of Pvt. Ltd. Company without consideration or for inadequate consideration is to be provided.

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

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

**Format in e-utility**

S. No.	Name of the person from which shares	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
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**Note:** No reporting requirement in respect of the assessee other than firms and companies in which public is not substantially interested. (Section 56(2)(viii), operates only in case of firms and Pvt. Ltd. Companies/ closely held public Ltd company)

- **Situations that may arise**

- Shares are received without consideration and aggregate Fair Market Value (FMV) does not exceed Rs.50000/- - Nothing Taxable, No reporting under this clause.
  - Shares are received without consideration and aggregate FMV of these shares exceeds Rs.50000/- - Aggregate FMV taxable, Reportable.
  - Shares are received for a consideration which is less than FMV and the aggregate value of difference does not exceed Rs.50000/- Nothing Taxable, No reporting under this clause.
  - Shares are received for a consideration which is less than FMV and the aggregate value of difference exceed Rs.50000/- - Aggregate FMV minus aggregate consideration will be taxable in the hands recipient. Reportable
- As per proviso to section 56(2)(viii), the provisions of the said clause (viii) do not apply to the property received by way of a transaction not regarded as transfer under section 47(via), 47(vic), 47(vicb), 47(vid) and 47(vii).
  - The fair market value of shares has to be determined in accordance with the method prescribed in rule 11UA of the Income-tax Rules, 1962 in respect of quoted and unquoted shares.
  - In order to report under this sub-clause, the auditor may ask the assessee to provide, a list containing the details of shares received, details of shares received may emerge / appear while perusing the books of account or other relevant documents.
  - Such Shares received will be reflecting either as investments or as stock-in-trade.
  - In case shares are received without consideration, the same may not be reflected in the books of account.
  - Such shares may be verified from the relevant documents such as share certificates issued, if any, demat account statement etc. In either case, the same

are to be reported under this clause.

- For determining the fair market value of unquoted shares which are not listed in any recognized stock exchange, a valuation report should be obtained from assessee.

This clause may not be application since the same has been replaced with the clause 29B with effect from 01-04-2017, i.e., Assessment Year 2018-19.

### 3.29. **Clause No. 29**

**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.**

*E-utility format*

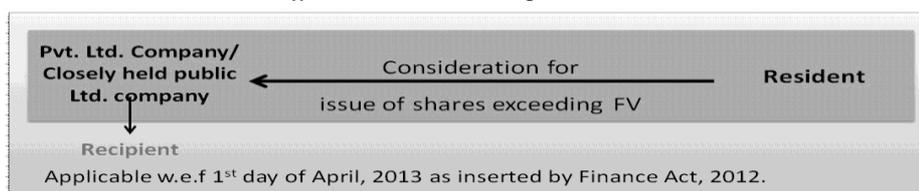
29 Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib) if yes, please furnish the details of the same Select

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					

+ Add X Delete

*\*Notification dated 25-07-2014 does not suggest any format for reporting under this clause however format has been given in e-utility and as such information for reporting under this clause has to be collected in view of this specified format.*

- Under this clause, detail in respect of shares issued by a Pvt. Ltd. Company at value more than FMV is to be provided. [since shares are issued at price which is more than FMV, then the difference shall be chargeable to income tax u/s 56(2)(viib).]



- Reporting under this clause is applicable to Pvt. Ltd. Co. and closely held public limited company.
- The provisions of this clause are not applicable where the consideration is received
  - a) by a venture capital undertaking from a venture capital company or a venture capital fund or specified fund
  - b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.
- [Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.]
- (aa) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);  
 (b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of *Explanation* to clause (23FB) of section 10;
- As per the explanation to section 56(2)(viib), the fair market value shall be the value as may be determined in accordance with such method as prescribed under Rule 11UA or as may be substantiated by the company to the satisfaction of the AO, based on the value of its Assets, including intangible assets, being goodwill know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, as may be higher.

- For determining the fair market value of unquoted shares which are not listed in any recognized stock exchange, a valuation report should be obtained from assessee. 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'.
- 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'

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.')
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Brief: Details in respect of shares issued by a Pvt. Ltd. Company at value more than FMV are to be provided

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

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

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

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

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

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

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

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

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

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

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

3.29A **Clause 29A** (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes / No)

(b) If yes, please furnish the following details:

- (i) Nature of income
- (ii) Amount thereof

29 A(a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56?

NO 

(b) If yes, please furnish the following details:

S.No.	Nature of income	Amount
1		

[This new clause has been inserted w.e.f. 20-08-2018 apparently consequent to insertion of clause (ix) in sub-section (2) of section 56 w.e.f. 01-04-2015 by the Finance (N o.2) Act, which read as “(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if, - (a) such sum is forfeited; and (b) the negotiations do not result in transfer of such capital asset] [Further, the said clauses would not be relevant in cases of assesses who have submitted their tax audit report before 20-08-2018].

In reference to sub-clause (a) of Clause 29

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

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

*(a) such sum is forfeited; and*

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

Accordingly, where an assessee has received advance etc. during the course of, carrying on his business or profession and negotiations for, transfer of any capital asset has received any sum by way of an advance, and the negotiations failed, thus not resulting in transfer of intended capital asset. The issue is how will the amount of advance so received will be treated? It would depend upon the terms, if any, such

an amount was advanced. If the same was to be returned in the event of failure of negotiations, and returned accordingly, there would arise no occasion for any reporting under the tax audit. On the contrary, if the amount so advanced to and forfeited by the assessee, the related amount/detail would need to be reported in the required format by the tax auditor.

For the purpose of reporting, it would be imperative for the tax auditor to satisfy himself as to whether -

- amount advanced/received was against transfer of any capital asset  
[capital asset as defined under section 2(14)]
- > terms, if any, of the above advance  
[whether will be returnable or forfeited, etc.]
- > related enty(ies) in the books of account  
[in relation to receipt as also forfeiture]
- > management representation  
[amount of advance having been forfeited]
- > third party confirmation with respect of such advance  
[if and where considered necessary, depending upon the materiality aspect as also the overall set of circumstances]

It would be desirable that the tax auditor takes specific information/clarity in the management representation with regard to the opening balance whether they have been covered within the meaning of section 26(2)(ix) or not. Similarly, in the case of amount received during the year and payable as on the last day of the previous year may also be taken clarity of. These would be in addition to other audit evidence.

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

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

29 B(a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No) Select ▼

(b) If yes, please furnish the following details:

S.No.		Nature of income	Amount (in Rs.)
1	<input type="checkbox"/>		

**Clause (x) in sub-section (2) of section 56 is inserted by Finance Act 2017 w.e.f. 1st April, 2017 [and as amended subsequently]**

- (x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, –
- (a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

**(b) any immovable property,—**

- (A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
- (B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

**Item (B) was substituted, as follows, by the Finance Act, 2018, w.e.f. 1-4-2019 :**

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

- (i) the amount of fifty thousand rupees; and*
- (ii) the amount equal to five per cent of the consideration:*

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

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

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

**(c) any property, other than immovable property, –**

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

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

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

**Brief Impact:**

- The receipt of any sum of money or property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources".
- Clause (x) is proposed to be applicable to all assessee whereas clause (vii) & (viii) are applicable to specific assessees (i.e. Individuals/ HUF and firm or a company not being a company in which the public are substantially interested).
- The section will lead to double taxation of the same income on deeming basis as explained in the example below:
- Example:
  - 'X' transfers his unquoted shares purchased at a cost of Rs.8 lakhs to 'Y' at Rs. 10 lakhs whereas the FMV of the shares as determined in the prescribed manner is Rs. 1 crore. Then in this situation, the provisions of proposed Section 50CA would be attracted in the hands of the seller, whose full value of consideration for computation of capital gains would be Rs.1 crore. Further, 'Y' who is purchaser would be liable to tax under section 56(2)(x)(c) on Rs. 90 lakhs (i.e. Rs. 1 crore less Rs. 10 lakhs) as income from other sources.
  - Hence, the difference of Rs.90 lakhs between FMV & actual consideration will be taxable:
    - Under section 50CA, in the hands of seller; and
    - Under section 56(2)(x), in the hands of recipient.
    - A similar consequence of double taxation resulting on account of the provisions of section 50C/43CA & 56(2)(x)(b).

**3.30. Clause No. 30**

**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].**

*E-utility format*

30 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]

Select ▼

Select  
YES  
NO

S.No.	Name of the person from whom amount borrowed or repaid on hundi	PAN of the person, if available	Address Line 1	Address Line 2	City or Town or District	State	Pincode	Amount borrowed	Date of Borrowing	Amount due including interest	Amount repaid	Date of Repayment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="Add"/> <input type="button" value="Delete"/>												

*\*Notification dated 25-07-2014 does not suggest any format for reporting under this clause however e-utility carries a format and as such information for reporting under this clause has to be collected in view of the specified format.*

*Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause. In this context, a reference may also be made to Circular No.208 dated 15th November, 1976 and Circular No. 221 dated 6<sup>th</sup> June,1977 issued by the CBDT explaining the provisions of section 69D– (Please see Annexure – VII & VIII). In order to ascertain the information to be reported under this clause the auditor may obtain suitable certificate/ management representation in this regard.*

**3.30A. Clause 30A.**

(a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes / No)

(b) If, yes please furnish the following details:-

- i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
- ii. Amount (in Rs.) of primary adjustment:
- iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes / No)
- iv. If yes, whether the excess money has been repatriated with the prescribed time (Yes / No)
- v. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:
- vi. Expected date of Repatriation of Money

[Clause 31A inserted w.e.f. 20-08-2018 by Notification No.33/2018 dated 20-07-2018] [apparently consequent to insertion of section 92CE – Secondary Adjustment in Certain Cases, w.e.f. 01-04-2018 by the Finance Act, 2017]

Section 92CE: Secondary adjustment in certain cases

(1) Where a primary adjustment to transfer price,—

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

the assessee shall make a secondary adjustment:

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

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

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

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

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

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

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

**.30B. Clause 30B.**

(a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? **(Yes/No)**

(b) If yes, please furnish the following details:-

- i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
- ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)
- iii. Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above
- iv. Details of expenditure brought forward as per sub-section (4) of section 94B :

A.Y.	Amount (in Rs.)

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

A.Y.	Amount (in Rs.)

[Clause 31B inserted w.e.f. 20-08-2018 by Notification No.33/2018 dated 20-07-2018] [apparently consequent to insertion of section 94B – Limitation on Interest Deduction in certain cases, w.e.f. 01-04-2018 by the Finance Act, 2017]

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

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

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

**3.30C. Clause 30C.**

(a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes / No)

(b) If yes, please specify: -

(i) Nature of the impermissible avoidance arrangement:

(ii) Amount (in Rs) of tax benefit in the previous year arising in aggregate, to all the parties to the arrangement:

30 C(a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year. (This Clause is kept in abeyance till 31st March, 2021)

(b) If yes, please furnish the following details

S.No.	Nature of the impermissible avoidance arrangement	Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement
1	Select	

[Clause 30C inserted w.e.f. 20-08-2018 by Notification No.33/2018 dated 20-07-2018] [apparently in reference to section 96 forming part of Chapter X-A – General Anti-Avoidance Rule inserted w.e.f. 01-04-2014 by the Finance Act, 2012. The Chapter comprises of 8 sections, i.e, Section 95 to Section 102]

### **Deferred further till 31st March 2021**

#### **Soon after issuance of above Notification dated 20-07-2018, the CBDT issued**

##### **[1] Circular No.06/2018 dated 17-08-2018, which read, inter alia, as under :**

“Representations have been received by the Board that the implementation of reporting requirements under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR)) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred.

The matter has been examined and it has been decided by the Board that **reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31<sup>st</sup> March, 2019**. Therefore, for Tax Audit Reports to be furnished on or after 20<sup>th</sup> August, 2018 but before 1<sup>st</sup> April, 2019, the tax auditors will not be required to furnish details called for under the said clause”; *[emphasis supplied]*

##### **[2] Circular No.09/2019 dated 14-05-2019, which read, inter alia, as under**

∴

“Representations were received by the Board that the implementation of Reporting requirements under clause 30C (pertaining to General Anti-Avoidance Rules (GAAR)) and clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred further.

The matter has been examined and it has been decided by the Board that the **reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2020**”; *[emphasis supplied]* and

##### **[3] Circular No.10/2020 dated 24-04-2020, which read, inter alia, as under :**

“Several representations were received by the Board with regards to difficulty in implementation of reporting requirements under clause 30C and clause 44 of the Form No.3CD of the Income-tax Rules, 1962 in view of the Global Pandemic due to COVID-19 virus and requested for deferring the applicability of the above provisions.

The matter has been examined and in view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the **reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2021.**” [emphasis supplied]

### **3.31. Clause No.31**

[Subsequent to substitution of this clause by Notification No.33/2014 dated 25-07-2014 [comprising of two sub-clauses, viz. (a) and (b)], the clause was again substituted by Notification No.58/2017 dated 03-07-2017 [when it comprises of five sub-clauses, viz., (a) to (e)], was again amended by Notification No.33/2018 dated 20-07-2018 whereby four more sub-clauses, viz., (ba), (bb), (bc) and (bd), were inserted to the said clause 31, and lastly ‘Permanant Account Number or Aadhaar Number’ was substituted for ‘Permanent Account Number’ appearing in Form No.3CD and other specified forms in and by Nootification No.95/2019 dated 06-11-2019, with deemed to have come into effect from 01-09-2019. The following Clause 31 and its sub-clauses is as substituted/amended in terms of the above notifications and discussed accordingly]

**(a)\* Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-**

**(i) name, address and permanent account number or Aadhaar Number (if available with the assessee) of the lender or depositor;**

*[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*

**(ii) amount of loan or deposit taken or accepted;**

**(iii) whether the loan or deposit was squared up during the previous year; (iv) maximum amount outstanding in the account at any time during the previous year;**

**(v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account.**

**(vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft**

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

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

- (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-**
- (i) Name, address and Permanent Account Number or Adhaar Number (if available with the assessee) of the payer;**
  - (ii) Nature of transaction;**
  - (iii) Amount of Receipt (in Rs.);**
  - (iv) Date of Receipt;**
- (bb) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:-**

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

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

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

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

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

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

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

- (i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;
  - (ii) Amount of the repayment;
  - (iii) Maximum amount outstanding the account at any time during the previous year;
  - (iv) Whether the repayment was made by cheque or abank draft or use of electronic clearing system through a bank account;
  - (v) In case the repayment was made by cheque or bank draft whether the same was repaid by an account payee cheque or an account payee bank draft.
- (d) Particulars of repayment of laon or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year-
- (i) Name, address and Permanent Account Number or Adhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;
  - (ii) Repayment of or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.
- (e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specifried in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:-
- (i)) name, address and Permanent Account Number or Adhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received; *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*
  - (iii) repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

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

*E-utility format*

**Reporting under clause 31(a)**

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 :-

S.No.	Name of the lender or depositor	Address of the lender or depositor	Permanent Account Number (if available with the assessee) of the lender or depositor	Amount of loan or deposit taken or accepted	Whether the loan/deposit was squared up during the Pervious Year	Maximum amount outstanding in the account at any time during the Previous Year	Whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▾	<input type="text"/>	Select ▾

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

**(a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :-**

Under sub-clause (a), particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year to be furnished in the given format, i.e., name and address, permanent account number or aadhaar number of the lender or depositor, related amount, maximum amount outstanding at any time, whether the transaction was by cheque or bank draft etc., and if through cheque or bank draft, whether the same was an account payee.

Section 269SS - **Mode of taking or accepting certain loans, deposits and specified sum** - was amended w.e.f.. 01-06-2015, applicable for AY 2016-17, to include:

- taking or accepting of 'specified sum' (being any sum of money receivable, whether as advance or otherwise, in relation to the transfer of an immovable property, whether or not the transfer takes place),
- other than by an a/c payee cheque or a/c payee bank draft or by electronic clearing system through a bank account,
- if the amount of such specified sum is Rs. 20,000/- or more.
- Section 271D [Penalty for failure to comply with the provisions of section 269SS] has been amended accordingly.

**Section 269T - Mode of repayment of certain loans or deposits**

Section 269T was amended w.e.f. 01-06-2015, applicable for AY 2016-17, to include:

- Repayment of any specified advance received** by the person.
- If the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances
- Is Rs. 20,000/- or more
- Specified advance** means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.
- Section 271E [**Penalty for failure to comply with the provisions of section 269T**] has been amended accordingly.
- ECS, RTGS and NEFT etc. are now allowed as permissible mode to accept or repay the deposit or loan specified, among others, u/s 269SS . (Amendment by Finance Act, 2014)
- Transaction of Current A/c also covered in 'Deposits'.
- In case of mixed A/c, transactions only related to Loans/Deposits are to be reported.
- Opening balance of Loan A/c is to be considered for calculation of 'maximum amount outstanding'.
- Security Deposit against contract etc are covered under Deposits'.

**Reporting under clause 31(b)**

31 (b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-

S.No.	Name of the person from whom specified sum is received	Address of the person from whom specified sum is received	Permanent Account Number (if available with the assessee) of the person from whom specified sum is received	Amount of specified sum taken or accepted
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(Particulars at (a) and (b) 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.)

(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—

Here particulars of each specified sum in an amount exceeding the limit specified in section 269SS, if any, taken or accepted during the previous year are required to be furnished.

Section 269SS, as briefly discussed under sub-clause (a) supra, prohibits taking or accepting any loan, deposit or specified sum otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed (since prescribed and contained in rule 6ABBA elsewhere supra), if the amount of such loan etc. is twenty thousand or more. It is important to note that the said limit of twenty thousand rupees includes (1) amount of loan etc. being accepted and/or (2) amount from out of earlier loan etc. taken remaining ununpaid, on the date of such acceptance (in (1) and/or (3) amount of (1) and (2) put together.

“Specified sum”, in terms of *Explanation* (iv) to second proviso to section 269SS, means

‘any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place’.

Illustration: ‘A’ had accepted from ‘B’ on 01-01-2020 a loan of fifteen thousand rupees in cash. ‘A’ again took a further loan in cash of ten thousand rupees on 28-03--2020, when an amount of twelve thousand rupees, from out of the loan taken

on 28-03-2020 was outstanding. Effectively, the amount of loan, inclusive of previous outstanding, as on 28-03-2020, aggregated to twenty-two thousand rupees, which exceeded the specified limit, i.e. twenty thousand rupees, thus in contravention of the provision of section 269SS.

It is pertinent to mention here that particulars sought in sub-clauses (a) and (b) above need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.

**Reporting under clause 31(ba)**

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

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

+ Add    - Delete

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

*[inserted w.e.f. 20-08-2018 vide Notification No.33/2018 dated 20-07-2018]*

Here particulars of each specified sum in an amount exceeding the limit specified in section 269ST, if any, taken or accepted during the previous year are required to be furnished.

Section 269ST prohibits taking or accepting an amount of two lakh rupees or more, in aggregate from a person in a day; or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed (since prescribed and contained in rule 6ABBA elsewhere supra), if the amount of such loan etc. is twenty thousand or more.

While section 269SS, as briefly discussed under sub-clause (b) above, prohibited taking or accepting a loan or deposit exceeding the specified sum (twenty thousand rupees), section 269ST deals with an amount of two lakh rupees or more in aggregate, otherwise than by an account pay cheque, etc. and prohibits taking or accepting the same, if such an amount is

- from a person in a day, or
- in respect of single transaction or
- in respect of transactions relating to one event or occasion.

**As stated earlier, this sub-clause (ba) to clause 31 was inserted w.e.f. 20-08-2018 to synchronise with the provisions of section 269ST - Mode of undertaking transactions, which section was inserted w.e.f. 01-04-2017 by the Finance Act, 2017 with the underlined twin objective to promote digital economy on the one hand, and on the other, to put in place a disincentive against cash economy. Putting it differently, the inserted provision is a move towards cash less economy and to reduce circulation of any black money.**

**With effect from the said date and by the said Finance Act, 2017, another section, viz. section 271DA - Penalty for failure to comply with the provisions of section 269ST was inserted providing, inter alia, that 'if a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt'. In other words, the contravention of the provisions of section 269ST, i.e., cash receipts beyond two lakh rupees from a person in a day or in relation to a single transaction or transactions relating to one event or occasion, attracts penalty @ 100 per cent leviable under section 271DA.**

**Vide S.O. 2065(E), Notification No.57/2017, dated 03-07-2017 and deemed to have come into force w.e.f. 01-04-2017, the Central Government specified that the provisions of section 269ST shall not apply to the following :-**

- (a) receipt by a business correspondent on behalf of a banking company or cooperative bank in accordance with the guidelines issued by the Reserve Bank of India;**
- (b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or cooperative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2017;**

- (c) *from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2017;*
- (d) *receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;*
- (e) *receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.*

Vide another S.O.1057(E), Notification No.28/2017, dated 05-04-2017 and deemed to have come into force w.e.f. 01-04-2017, it was notified that the provisions of section 269ST shall not apply to receipt by any person from an entity referred to in sub-clause (b) of clause (i) of proviso to section 269ST, i.e., 'any banking company, post office savings bank or co-operative bank'.

Subsequently, however, on receipt of representations from the related stakeholders, the CBDT issued clarifications, vide its -

- (1) Circular No.22/2017 dated 03-07-2017 to the effect that "*in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purpose of determining applicability of the provisions of section 269ST*".
- (2) Circular No.27/2017 dated 03-11-2017 to the effect that '*cash sale of agricultural produce by its cultivator to the trader for an amount less than Rs.2 Lakh will not:-*
  - (a) **result in any disallowance of expenditure under section 40A(3) of the Act in the case of trader,**
  - (b) **attract prohibition under section 269ST of the Act in the case of the cultivator; and**
  - (c) **require the cultivator to quote his PAN or furnish Form No.60.'**

Accordingly, with the insertion of the said new sub-clause, the tax auditor is required to report cases, if any and excepting the exceptions provided, where an amount of two lakh rupees or more has been taken or accepted by the auditee in contravention of the provisions of section 269ST, giving particulars in the specified format.

**Reporting under clause 31(bb)**

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

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

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

*[inserted w.e.f. 20-08-2018 vide Notification No.33/2018 dated 20-07-2018]*

In a manner of speaking, requirements of sub-clause (ba) and sub-clause (bb) are identical in nature, excepting the mode of receipt. To elaborate, sub-clause (bb) seeks particulars of each receipt in an amount exceeding the limit specified in section 269ST [i.e., two lakh rupees) by a cheque or bank draft, however, such cheque or bank draft not being an account payee one, whereas sub-clause (ba) sought particulars of each receipt in an amount exceeding the specified limit where such a receipt is otherwise than by a cheque or bank draft, etc.. Accordingly, sub-clause (bb) is not being discussed here in details, sub-clause (ba) having been discussed supra in some detail.

As for reporting format, under sub-clause (bb), i.e., where receipt, in an amount exceeding the specified limit, is by a cheque or bank draft – which is not an account payee one, the particulars in relation to the following are required to be furnished :

- (i) Name, address and Permanent Account or Aadhaar Number (if available with the assessee) of the payer; *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there];* and
- (ii) Amount of receipt (in Rs.)

However, more particulars are sought, under sub-clause (ba), i.e., where receipt, in an amount exceeding the specified limit, is otherwise than by a cheque, etc., to be furnished as under :

- (a) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;
- (b) Nature of transaction;
- (c) Amount of Payment (in Rs.);
- (d) Date of payment;;

**Reporting under clause 31(bc)**

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

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

Add
 Delete

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

AND

**Reporting under clause 31(bd)**

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

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

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

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

As for reporting requirements, the specified format under sub-clause (bc) particulars as required under clause (ba), as under :

- (a) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;
- (b) Nature of transaction;
- (c) Amount of Payment (in Rs.);

(d) Date of payment;

and, sub-clause (bd) seeks [as in the case of sub-clause (bb)] following particulars to be furnished :

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

It is pertinent to mention here that particulars sought in sub-clauses (ba), (bb), (bc) and (bd) supra need not be given in the case of receipt by or payment to a Government company, a banking Company, or a post office saving bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in S.O. 2065(E), Notification No.57/2017 dated 03-07-2017 [the said Notification has been discussed supra].

**Reporting under clause 31(c)**

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

S.No.	Name of the payee	Address of the payee	Permanent Account Number (if available with the assessee) of the payee	Amount of the repayment	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account.	In case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft.
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select <input type="text"/>	Select <input type="text"/>

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

*[this sub-clause was last amended w.e.f. 20-08-2018 vide Notification No.33/2018 dated 20-07-2018]*

Under this clause, the particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year are required to be furnished.

Section 269T - Mode of repayment of certain loans or deposits - prohibits repayment of any loan or deposit or of any specified advance, otherwise than by an account payee cheque or account payee bank draft, drawn in the name of the person who made the loan or deposit, or by use of electronic clearing system through a bank account or through specified electronic mode, if the amount of such repayment, inclusive of interest, if any, is twenty thousand rupees or more.

Explanation (iv) to the above section defines 'specified advance' to mean "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".

In terms of Second proviso to the said section 269T, "nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from (i) Government; (ii) any banking company, post office savings bank or co-operative bank; (iii) any corporation established by a Central, State or Provincial Act; (iv) any government company as defined in section 617 of the Companies Act, 1956 [Note: corresponding - clause (45) of section 2 of Companies Act, 2013]; (v) such other institution, association or body or class of institutions, or bodies which the Central Government may for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

The above sub-clauses (c) of clause 31 is, in a manner of speaking, contra to sub-clauses (a) supra. While sub-clause (c) now under discussion seek particulars in relation to each re-payment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T [i.e. twenty thousand rupees], sub-clause (a) supra sought particulars in relation to each loan or deposit in an amount exceeding the limit specified in section 269SS [again, twenty thousand rupees]. As such, the requirements of sub-clauses (c) and (a) are identical in nature, and accordingly the particulars sought under these sub-clauses are also on similar lines.

- The option of "N.A." will be applicable when there is no transaction attracting provisions of Section 269SS and 269T i.e.

- n There is no loan or deposit during the year, or
- n The balance of each party is below the specified limit i.e. Rs. 20,000/-
- Below mentioned include the issues for consideration while reporting under this clause:
  - n Transaction of current a/c also covered in 'Deposits'.
  - n In case of mixed a/c, transactions only related to Loans/Deposits are to be reported.
    - n Opening balance of Loan a/c is to be considered for calculation of maximum amount outstanding.
    - n Security Deposit against contract etc. covered under Deposits.
    - n Provision of section 269SS/269T are not applicable in respect of share application money. [*CIT v. Numero Uno Financial Services (P.) Ltd.* 345 ITR 84 (Delhi) [Favourable], *Bhalotia Engineering Works (P) Ltd.* 275 ITR 399(Jhar) [Contrary]]
    - n 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 it was 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 if the transactions are bona fide & genuine even where accepting/ repaying loans/ advances via journal entries contravenes section 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)*

**Reporting under clause 31(d)**

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

S.No.	Name of the payer	Address of the payer	Permanent Account Number (if available with the assessee) of the payer	Amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

- (i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received; *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*
- (ii) amount of repayment of or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

AND

**Reporting under clause 31(e)**

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

S.No.	Name of the payer	Address of the payer	Permanent Account Number (if available with the assessee) of the payer	Amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>				

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

- (e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:-
- (i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received; *[However, till 12-11-2020, the e-utility has not been updated and as such the reference to Aadhaar Number is not appearing there]*
  - (ii) amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

*[these sub-clause were earlier substituted with effect from 19-07-2017 vide Notification No.58/2017 dated 03-07-2017 and last amended w.e.f. 20-08-2018 vide Notification No.33/2018 dated 20-07-2018, and subsequently with the deemed*

*effect from 01-09-2019 vide Notification No.95/2019 dated 06-11-2019 whereby 'Permanent Account Number or Aadhaar Number' was substituted bfor 'Permanent Account Number]*

The above sub-clauses (d) and sub-clause (e) of clause 31 are identical. While sub-clause (d) seeks particulars in relation to repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T [i.e. twenty thousand rupees] was received otherwise than by a cheque or bank draft, etc., sub-clause (e) requires particulars of such repayment in relation to loan or deposit or any specified advance was received by a cheque or bank draft, which is not an account payee one. As such, the requirements of sub-clauses (d) and (e) are identical in nature, and accordingly the particulars sought under these sub-clauses are also on similar lines.

In other words, sub-clause (d) requires name, address and permanent account number of Aadhaar number (if available with the assessee) of the lender or depositor or person from whom loan or deposit or specified amount was received, if the amount of such loan or deposit or specified amount was -

- (i) in excess of the specified limit in section 269T [twenty thousand rupees], and
- (ii) received otherwise than by a cheque or bank draft or use of ECS through a bank account.

and, if so, the amount of repayment.

Sub-clause (e) similarly requires requires name, address and permanent account number of Aadhaar number (if available with the assessee) of the lender or depositor or person from whom specified advance was received, if the amount of such specified amount was -

- (i) in excess of the specified limit in section 269T [twenty thousand rupees], and
- (ii) received by a cheque or bank draft which was not an account payee one

and, if so, the amount of repayment.

**As mentioned supra, the objective behind these sub-clauses is to promote digital economy on the one hand, and on the other, to put in place a disincentive against cash economy. Putting it differently, these provisions are a move towards cash less economy and to curtail or reduce circulation of any black money.**

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

**3.32. Clause No. 32 (a) to (e)**

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

Sl No	Assessment Year	Nature of loss/ allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA <sup>^</sup>	Amounts as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

<sup>\*</sup>If the assessed depreciation is less and no appeal pending than take assessed.

<sup>^</sup>To be filled in for assessment year 2020-21 only.”;

[Column No.(5) and (6) in the above table are newly inserted]

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

**A. Sub-clause (a) of clause 32**

32 (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 (if the assessed depreciation is less and no appeal pending then take assessed)	All losses/allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA (To be filled in for assessment year 2020-21 only)	Amount as assessed (give reference to relevant order)		Remarks
						Amount	Order U/S & Date	
1	<input type="text"/>	Select <input type="button" value="v"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

[the above sub-clause was brought w.e.f. 04-06-1999, when the then Form No. 3CD was substituted. The same was substituted w.e.f. 01-10-2020 by Notification No.82/2020 dated 01-10-2020 the effect of which is insertion of two more columns, viz. (5) and (6) consequent to insertion, w.e.f. 01-10-2020, of sub-clause (ca) and (cb) after sub-clause (c) of clause 18 supra]

**Points for consideration**

- Under sub-clause (a) of clause 32, the details of brought forward loss or depreciation allowance are to be reported which should be quantified as per return and assessment orders.
- Details of brought forward losses under the below mentioned heads to be considered:
  - Income under the head house property.
  - Profits and gains of business or profession.
  - Speculation business.
  - Capital gains.
  - Owning & Maintaining Race Horses
  - Unabsorbed Depreciation
  - Unabsorbed allowance under section 35(4)
- To report information under this clause, the auditor should study the assessment records.
- While furnishing information under this clause due attention should be given

to section 80 read with section 139(3).

- Section 71B [Carry Forward and Set Off of Loss From House Property], 73A [Carry Forward and Set Off of Losses by Specified Business] and 78 [Carry Forward and Set Off of Losses in case of Change in Constitution of Firm or on Succession] should also be paid due attention while reporting under this clause.
- Information about any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be given in the remarks column.
- The e filing utility requires additional information regarding the order no./DCR No. In case of intimation u/s 143(1) of the Act, give Communication Reference No.

As stated above, the format of details has been substituted w.e.f. 01-10-2020 as a result of which two more columns, viz. (5) and (6), have been inserted thereby enlarging the scope.

Column (5) seeks details of 'All losses/allowances not allowed under section 115BAA', and

Column (6) seeks details of 'Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BA'

The insertion of these two columns is consequent to insertion after sub-clause (c) to Clause 18 supra, w.e.f. 01-10-2020, of -

sub-clause (ca) - Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only), and

sub-clause (cb) - Adjusted written down value

As discussed under clause 18 supra, the insertion of sub-clause (ca) as well as sub-clause (cb) to clause 18 is consequent to the Taxation Laws (Amendment) Act, 2019 whereby, among others, sections 115BAA [Taxation on income of certain domestic companies] and section 115BAB [Tax on income of new manufacturing domestic companies] have been inserted w.e.f. 01-04-2020, besides the substitution of proviso to sub-rule (1) of Rule 5, and the insertion of Rule 31AG and Rule 21AH.

It may be stated that since the insertions of sub-clauses under discussion have been notified on and w.e.f. 01-10-2020, the said clauses would not be relevant

in cases of assesseees who have submitted their tax audit report before 01-10-2020. Putting it differently, assessee filing their tax audit report subsequent to the said date would need to comply with the requirement of these sub-clauses.

Accordingly, while reporting under sub-clause (a) of clause 32 is in direct reference to clause 8a. supra. In case of the applicability of the said clause 8a., it would need to be ascertained by the tax auditor as to whether or not the assessee being-

- a domestic company [section 115BAA]

has exercised the option for computation of his income at the given rate of income tax. If yes, it would be necessary to ascertain and determine the adjustment made to the written down value and report the related particulars in the related column of sub-clause (a) above. Similarly, giving effect of such adjustments, the quantum of adjusted down value will be required to be reported.

Besides, the cross-referencing of clause 32 vis-a-vis clause 18 supra would be necessary to ensure clarity and correctness.

## B. Sub clause (b) of clause 32

### *E-utility format*

(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.	<div style="border: 1px solid #ccc; padding: 5px;"> <span>Select ▼</span> <ul style="list-style-type: none"> <li>Select</li> <li>YES</li> <li>NO</li> <li>NA</li> </ul> </div>
---	--

### Points for consideration

- Under this clause, the fact has to be reported by stating Yes / No / NA, with respect to corporate assessee, as to whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79. .
- For the purpose of determining change in shareholding pattern, the comparison is to be done with reference to the last day of the previous year under tax audit and the last day of every previous year in which the loss was incurred eligible for carry forward and set off thereof. (For determination of

composition under this clause in respect of different previous years is to be determined with respect to the individual previous years - for making this comparison the Register of Members may be referred).

**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

Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent. of the voting power, on the last day of the year or years in which the loss was incurred •

The said section, inter alia, provides that nothing contained in the said section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016,

- 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 any judicial pronouncement, he may so mention his observations in clause (3) of Form No.3CA or clause (5) of Form No.3CB, as the case may be, together with related citation.

**C. Sub-clause (c) of clause 32**

*E-utility format*

(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.

Select  
 YES  
 NO

**Points for consideration**

- Under this sub-clause, information about details of any speculation loss, as referred to u/s 73, incurred during the previous year has to be furnished. In view of definition of “speculative business” read with the definition of “speculative transactions”, the tax auditor is to verify with the help of books of account and other relevant documents and underlying evidences as to whether the assessee is carrying on any speculation business.
  
- Applicability of provisions of section 73 in case of loss in trading of derivatives being shares and stocks
  
- Whether the term ‘speculative business’ should be read with the term ‘speculative transactons’.
  
- It is possible that the assessee on account of any judicial pronouncement or any other document having judicial importance has opined and relied that he is not carrying on speculation business. In such cases, if the tax auditor has different point of view or if the tax auditor has reasons not to believe the statement of assessee considering the evidences and circumstances, the tax auditor may report the same under his observations.

### Section 73 – Losses in speculation business

- 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.

#### Explanation to section 73

- 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 for Consideration

- Loss incurred on account of cancellation of forward contract could not be regarded as speculative loss under section 43(5) [*Jaimin Jewellery Exports (P.) Ltd. vs. ACIT*, 43 *taxmann.com* 380 (Mumbai - Trib.)]. Also see [*DCIT vs. Kotak Mahindra Investment Ltd.*, 35 *taxmann.com* 225 (Mumbai - Trib.)] [*CIT vs. Panchmahal Steel Ltd.*, 33*taxmann.com* 10 (High Court of Gujrat)]
- Loss incurred on account of purchase and sale of units of UTI could not be said to be speculative loss under section 73. [*Porrrits & Spencer (Asia) Ltd. v. CIT* [2010] 190 *taxman* 174 (Punj. & Har.)] Also see [*CIT v. Special Prints Ltd.* [2013] 33 *taxmann.com* 463 (Gujrat)]
- [*Parkar Securitirs Ltd. v. CIT* [2006] 8 SOT 257 (Ahd.)] - Test which can determine nature of business whether it is speculative or not are
  - (i) Nature of assessee's business in general
  - (ii) The purpose behind the particular transaction
  - (iii) The effect of the transaction

Also see [*ITO v. Rajvi Securities (P.) Ltd.* [2012] 19 *taxmann.com* 274 (Ahd.)]
- It is not a requirement of section 73 that both purchase and sale of shares should take place in same year; what is required to attract section 73 is that business of assessee should consist of purchase and sale of share [*CIT v. Aakrosh Investment & Leasing (P.) Ltd.* [2004] 90 ITD 287 (Mum.)]

**D. Sub-clause (d) of clause 32*****E-utility format***

(d) Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year	Select ▼	Select YES NO
If yes, please furnish details of the same. <input type="text"/>		

**Section 73A - Carry forward and set off of losses by specified business**

- (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.

**Points for consideration**

- Under this sub-clause, information required to be reported if the assessee has suffered any loss as referred to in section 73A in respect of any specified business during the previous year.
- As per section 73A, 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.
- \* applicability of provisions of section 73 in case of loss in trading of derivatives being shares and stocks
- \* Whether the term 'speculative business' should be read with the term

‘speculative transactions’

- Where any loss computed in respect of the specified business referred to in sub-section (1) of section 73A has not been wholly set off, 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, and shall be carried forward to the following assessment year, will be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year, and so on.
- The tax auditor is to verify from the books of account and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD.
- In case the assessee carries on more than one specified businesses, then the details of the loss, if incurred in one or more of such business is to be specified separately.

**E. Sub-clause (e) of clause 32**

*E-utility format*

(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.

Select ▼

Select  
YES  
NO  
NA

**Points for consideration**

- Reporting under this clause is applicable to corporate assessee. Here details of speculation loss, if any, incurred from deemed speculation business as referred to in Explanation to section 73, is to be furnished.
- \* applicability of provisions of section 73 in case of loss in trading of derivatives being shares and stocks
- \* whether the term ‘speculative business’ should be read with the term ‘speculative transactions’
- The Explanation to section 73 provides that where any part of the business of a company or a company the principal business of which
  - n is the business of trading in shares, or

- n banking, or
- n the granting of loans and advances or
- n consists in the purchase and sale of shares of other companies,

such company shall, for the purposes of the said section 73, 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.

[Other than a company whose gross total income consists mainly of income which is chargeable under the heads

- n Interest on securities
- n Income from house property
- n Capital gains
- n Income from other sources]

- For reporting under this clause, the tax auditor may cull out information from income tax returns of earlier years, or income-tax assessment orders,, books of account & other relevant document.
- It is possible that the assessee on account of any judicial pronouncement or any other document having judicial importance has opined and relied that he is not covered by explanation to section 73 and not carrying on deemed speculation business. In such cases, if the tax auditor has different point of view or if the tax auditor has reasons not to believe the statement of assessee considering the evidences and circumstances, the tax auditor may report the same appropriately under his observations in form 3CA/3CB, as may apply.

#### Issues for consideration

- Principal business of assessee-company was earning interest on advances and loans. It also carried on business of purchase and sale of shares from income derived from interest - Whether under Explanation to section 73, business of purchase and sale of shares by assessee was speculation business and it was entitled to set off of losses from sale and purchase of shares against profits of business of company from loans and advances – held that Assessee is entitled to set off losses from sale and purchase of shares against profits of business of company from loans and advances [*Usha Politax Ltd. Vs. ITO, 33 taxmann.com 432 (High Court of Allahabad)*]. Also see [*Saurabh Industrial Financing Ltd. vs. ITO, 38 taxmann.com 400 (High Court of Allahabad)*]
- Explanation to Section 73 is not applicable if shares are purchased as investment or if the assessee company is not engaged in the business of purchase and sale of shares. - [*harrisons Malayalam Ltd. v. CIT [2009] 32 SOT 497 (Cochin)*]
- Where merely because income/loss in dealing in shares in one particular year was more than income/loss from principal business of assessee of granting loans and advances, it could not be said that principal business of assessee

was not that of granting loans and advances and as such assessee was not covered by deeming provisions of Explanation to section 73, and therefore loss on purchase and sale of shares was allowed to be set off against income from other sources. **Income-tax Officer, Ward-3(1), New Delhi vs. Bijay Paper Traders & Investments Lt [2010] 38 SOT 578 (Delhi) [13-11-2009]**

- Badla transaction is nothing but interest income earned from granting loans and advances . where Assessee derived income from Badla transactions and after said income was added to assessee's income from interest, interest income of assessee was greater than its other income, loss on purchase and sale of shares is outside purview of provisions of Explanation to section 73. **Assistant Commissioner of Income-tax, Circle 5(8) vs. Tanna Electro Mechanics (P.) Ltd.[2006] 7 SOT 121 (Mumbai)**

\* **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.

□ **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.

**3.33. Clause no. 33**

**Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).**

<b>Section Under Which Deduction is Claimed</b>	<b>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.</b>
---	---

***E-utility format***

33 Section-wise details of deductions, if any admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

Select 

S.No.	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.
1	Select 	
 Add  Delete		

**Points for consideration**

Under this clause, details of any deductions admissible under chapter VIA or chapter III (section 10A, section 10AA), are to be reported. However, clause 33 as per revised (or substituted in 2014) form 3CD corresponds to clause 26 of earlier (brought in 1999 in the then substituted, when it sought 'section-wise details of deductions, if any, admissible under Chapter VIA,) form no. 3CD.

Chapter VIA - deals with deductions in respect of certain payments, deduction in respect of certain incomes and other deductions which have to be given effect to by way of allowance from gross total income of the assessee

Chapter III - relates to income which do not form part of total income, the reporting under this clause is required only with respect to

exemptions claimed under section 10A and under section 10AA

Deduction u/s 10A (*Special provision in respect of newly established undertakings in free trade zone, etc.*) and

Deduction u/s 10AA (*Special provisions in respect of newly established Units in Special Economic Zones*) also included and specified format provided

The following include the points that may be kept in view while reporting under this clause :

- a. Details of admissible deductions u/s 10A and 10AA are to be furnished.
- b. Tabular format for reporting section-wise admissible deduction has been prescribed.
- c. Tax auditor to verify whether the assessee fulfills the conditions, if any, specified under:
  - The relevant provisions of Income Tax Act, 1961.
  - Income Tax Rules, 1962
  - Any other guidelines, circulars, etc issued in this behalf.
- d. Deductions available under chapter VI A of the Income Tax Act, 1961, may be grouped as under:
  - Deduction in respect of payments – Section 80C – 80GGC
  - Deduction in respect of Incomes – Section 80IA, 80, IAB, 80IB, 80IC, 80ID, 80, IE, 80JJA, 80LA, 80QQB, 80RRB, 80TTA.
  - Deductions in respect of additional wages paid to new workmen – Section 80JJAA.
  - Deduction for disabled persons – Section 80U.
  - Deduction available to newly established undertakings in free trade zone, etc. – Section 10A
  - Deduction available to newly established Units in Special Economic Zones – Section 10AA

The tax auditor should see the allowability of the above deductions in case the assessee is opting any tax under the new regime and in clause 8a of tax audit report. If the option is taken, most of the above deductions will not be eligible for deduction.

**3.34. Clause No. 34 (a) to (c)**

- (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:

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)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

- (b) Whether the assessee is required to furnish the statement of tax deducted or tax collected.. If yes, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported

[this sub-clause was substituted w.e.f. 20-08-2018 *vide Notification No.33/2018 dated 20-07-2018*]

- (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 under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

**Sub-clause (a) of clause 34**

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:

YES

S.No.	Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
1										

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**Points for Consideration**

- Reporting under this clause is to be done in the case of assessee to whom provisions of Chapter XVII-B or XVII-BB apply.
- The tax auditor should determine with his professional acumen as to whether provisions of Chapter XVII-B and/or XVII-BB are applicable to assessee or not.
- Since the reference to Chapter XVII-B has been made, it is clear that TDS under Income-tax Act is only covered. TDS under other laws (e.g. TDS on works contracts under erstwhile State VAT laws are not covered. The tax auditor is also not responsible for reporting timely deposit with the State Government of Professional Tax deducted from salaries of employees
- In case of difference of opinion about the applicability or otherwise of Chapter XVII-B and/or XVII-BB, the answer to the question may have to be qualified depending upon the facts and circumstances of each case.
- 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 Bank Audits.

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 book of account and the transactions have been verified on test-check basis and explanation provided by the assessee.

- In case the tax auditor answers the question as “Yes”, thereafter he should proceed to provide for further details.
- Where the tax auditor is of the opinion that provisions of Chapter XVII-B and Chapter XVII-BB are not applicable he should answer the question as “No”.
- The Tax auditor should obtain a copy of the TDS/TCS returns filed by the assessee for reporting under this clause, to the extent possible.
- Column wise considerations while reporting under this clause are as under:

Column	Particulars	Remarks
(1)	<b>Tax deduction and collection Account Number (TAN)</b>	Reporting of each Tax deduction and collection Account number to be made
(2)	<b>Section</b>	Details of the applicable section
(3)	<b>Nature of payment</b>	Details of Nature of Payments.
(4)	<b>Total amount of payment or receipt of the nature specified in column (3)</b>	Details of the total amount of payment under particular head. For reporting under this column, required details may be drawn from TDS/ TCS statements, books of account and other documents.
(5)	<b>Total amount on which tax was required to be deducted or collected out of (4)</b>	Reporting under this clause involves responsibility upon tax auditor, since he has to state the total amount on which tax was deductible or to be collected (under provisions of chapter XVII-B and XVII-BB). Difference in column (4) & (5) may be on account of: Certificates issued u/s 195 / 197A. Threshold limits provided in specific sections. Difference of opinion about chargeability under particular section. In case of Difference in opinion about applicability of particular section - appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.

(6)	<b>Total amount on which tax was deducted or collected at specified rate out of (5)</b>	<p>Considerations to be kept in view while furnishing information under this column include the following :</p> <p>The auditor has to consider the rates of deduction as per the law relevant to the previous year.</p> <p>As per the provisions of sections 195/ 197/ 197A certificate can be issued for no deduction or lower deduction of tax at source.</p> <p>Reference to relevant provisions, rules, circulars, notifications etc. should be made in case of deduction/collection was at a rate other than the specified rate.</p> <p>Where payments to Non-residents - the applicable rate should be checked with respect to the Double Taxation Avoidance Agreement.</p>
(7)	<b>Amount of tax deducted or collected out of (6)</b>	<p>Information about total amount of tax deducted or collected at specified rate. Here, the total amount is as actually deducted/ collected vis-à-vis specified rate.</p>
(8)	<b>Total amount on which tax was deducted or collected at less than specified rate out of (7) - (Logically column (5) should be referred here.)</b>	<p>Here, the information about total amount on which tax deducted or collected at less than specified rate has to be furnished - For example, section 194C requires deduction @ 2% in case payment is made to a person other than individual or HUF, but the deductor deducts only 1%, the same has to be reported under this clause.</p> <p>In case of difference of opinion, in respect of information to be filled into this column, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.</p>
(9)	<b>Amount of tax deducted or collected on (8)</b>	<p>Information about total amount of tax deducted or collected at less than specified rate is to be furnished</p>
(10)	<b>Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)</b>	<p>Details of the amount of tax deducted or collected but not deposited to the credit of the Central Government till the date of tax audit are to be furnished under this column.</p> <p>If TDS deposited late - No need of reporting.</p>

Issues / Considerations

- In-built checks not provided.
  - n **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 furnish the details irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-B or XVII-BB.

### ICAI's Comment

It has been observed that the total of expenses as mentioned under the clause under Tax Audit Report under specific heads like salary, rent etc were not matching with the relevant figures in financial statements.

### As per Guidance note issued by the ICAI

- Rates of deduction is to be consider as per the law relevant to the P. Y.
- Refer relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source.
- In case the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued u/s 195 or 197, the lower rate or nil rate, as the case may be will be considered as the specified rate for the purpose of reporting under this Clause.**
- As per the provisions of Sections 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source.
- In case of payment to non-residents, the applicable rate of TDS is to be read along with the Double Taxation Avoidance Agreement.

There is no specific column to mention non- deduction of tax at source in the specified format. However, the amount may be calculated as follows

Non- deduction = 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)

**B. Sub-clause (b) to clause 34 [this was amended w.e.f. 20-08-2018]**

**E-utility format**

(b) Whether the assessee is required to furnish the statement of tax deducted or tax collected.    
 If yes ,please furnish the details:

S.No.	Tax deduction and collection	Type of	Due date for	Date of furnishing,	Whether the statement of tax deducted or collected contains information about all details/	If not, please furnish list of details/transaction
-------	------------------------------	---------	--------------	---------------------	--	--

(b) Whether the assessee is required to furnish the statement of tax deducted or tax collected.    
 If yes ,please furnish the details:

S.No.	Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all details/ transactions which are required to be reported	If not, please furnish list of details/transactions which are not reported.
1						

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[this sub-clause (b) was substituted w.e.f.20-08-2018 vide Notification No.33/2018 dated 20-07-2018]

**Points for Consideration.**

- Applicable to all assesses having TAN. In case, the assessee has not obtained TAN despite the provisions of Chapter XVII-B or XVII-BB being applicable, in that case appropriate reporting to be made in Form No. 3CA/3CB as the case may be. However, under this clause, option “N.A.” should be selected in order to move forward and validate the e-utility.
- Under clause 34(b), the tax auditor is to ascertain and report as to whether the assessee is required to furnish the statement of tax deducted or tax collected at source . Where the auditee is required to furnish the said statement, the tax auditor has to mention “yes”, and proceed to furnish the specified details in the given format. If the auditee is not required to furnish the above statement, the answer would be “No” and no further action in relation to this sub-clause is warranted. .
- Information to be submitted for TAN wise separately.
- Under each TAN, auditor is required to mention the “Type of form” that was applicable like Form 24, 24G, 24Q, 26, 26A, 26B, 26Q etc., due date of furnishing such statement and the actual date of furnishing.

- Under this sub-clause, the tax auditor is also required to certify as to whether the statement of tax deducted or collected that is furnished contains information about all the details/transactions which are required to be reported. In case it is not possible for the tax auditor to verify each transaction due to their volume, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
- As regards the applicability of the provisions, the tax auditor should take into consideration the relevant sections, rules, notifications, circulars etc. and relevant judicial pronouncements. In case of difference of opinion in respect of any information to be furnished into this column, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
- The information given in clause 34 should tally with the disallowances reported u/s 40(a) in clause 21(b) to the extent applicable.

### C. Sub-clause (c) to clause 34

#### E-utility format

- (c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).  
If yes, please furnish:

Select ▼

Select  
YES  
NO  
NA

S.No.	Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.	
			Amount	Dates of payment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

#### Points for Consideration

- As per this clause, the auditor is required to furnish detailed information in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act.
- Section 201(1A) - Levy of simple interest on failure to deduct tax or payment thereof to the credit of Central Government
- Section 206C(7) - Levy of simple interest on failure to collect tax or payment thereof to the credit of Central Government

- The reporting as to whether the assessee is liable to pay such interest should be in consonance with the reporting under clause 34(a).
- Reference to PART G of the statement generated by the Department in Form No.26AS should also be made.

Issues/Case laws

- 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 and 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 and also mention the fact by way of his observations suitably in form no. 3CA or form no. 3CB, as applicable.

**ICAI's Comment**

It has been observed that in certain cases the date of payment with respective amount has not mentioned under the relevant columns of this sub-clause.

**3.35. Clause 35 (a) to (b)**

- (a) In the case of a trading concern, give quantitative details of the principal items of goods traded:**
  - (i) Item Name**
  - (ii) Unit Name**
  - (iii) Opening stock;**
  - (iv) Purchases during the previous year;**
  - (v) Sales during the previous year;**
  - (vi) Closing stock;**
  - (vii) Shortage / excess, if any.**
- (b) In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products:**
  - A. Raw materials:**
    - (i) Item Name**
    - (ii) Unit Name**
    - (iii) opening stock;**
    - (iv) purchases during the previous year;**

- (v) consumption during the previous year;
- (vi) sales during the previous year;
- (vii) closing stock;
- (viii) yield of finished products;
- (ix) percentage of yield;
- (x) shortage/excess, if any.

**B. Finished products/By-products:**

- (i) Item Name
- (ii) Unit Name
- (iii) opening stock;
- (iv) purchases during the previous year;
- (v) quantity manufactured during the previous year;
- (vi) sales during the previous year;
- (vii) closing stock;
- (viii) shortage/excess, if any.

**C. By-products:**

- (i) Item Name
- (ii) Unit Name
- (iii) opening stock;
- (iv) purchases during the previous year;
- (v) Consumption during the previous year;
- (vi) sales during the previous year;
- (vii) closing stock;
- (viii) shortage/excess, if any.

### E-utility format

35 (a) In the case of a trading concern, give quantitative details of principal items of goods traded;

S.No.	Item Name	Unit Name	Opening stock	Purchases during the pervious year	Sales during the pervious year	Closing stock	Shortage/excess, if any
1		Select					
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		Select gms kilograms litre kilolitre metre kilometre numbers quintal ton pound milligrams	carat numbers (1000s) kwatt mwatt inch feet sqft acre cubicft sqmetre cubicmetre residual				

(b) In the case of manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products.

(A) Raw materials:

S.No.	Item Name	Unit	Opening stock	Purchases during the pervious year	Consumption during the pervious year	Sales during the pervious year	Closing stock	Yield of finished products	Percentage of yield	Shortage/excess, if any
1		Select								
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		Select gms kilograms litre kilolitre metre kilometre numbers quintal ton pound	milligrams carat numbers (1000s) kwatt mwatt inch feet sqft acre cubicft sqmetre cubicmetre residual							

(B) Finished products :

S.No.	Item Name	Unit Name	Opening stock	Purchases during the pervious year	Quantity manufactured during the pervious year	Sales during the pervious year	Closing stock	Shortage/excess, if any
1		Select						
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>								

(C) By-products

S.No.	Item Name	Unit Name	Opening stock	Purchases during the pervious year	Consumption during the pervious year	Sales during the pervious year	Closing stock	Shortage/excess, if any
1		Select						
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>								

- **Under this clause, quantitative details in respect of principal items of goods traded in the case of a trading concern and such details of raw material, finished products and by-products in the case of a manufacturing concern are required to be given.**
- **“Principal Items”:-** Ordinarily, items constituting more than **10% of the aggregate value** of purchase, consumption or turnover are principal items.
- The tax auditor should obtain management representation 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.
- 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.
- In case of voluminous items of smaller value, for better reporting, lots can be made taking the value as base for lot size such as items of value Rs. 0 - 100, 100 -500, 500 -1000 or more etc, however in that case appropriate disclosure should be given in form 3CA/3CB, as may be applicable.
- In case assessee is not maintaining stock register, and due to voluminous entries it is not possible to gather quantitative details in respect of purchase / sale and/or opening stock , appropriate disclosure should be given in form 3CA/3CB, as may be applicable.
- In case unit of input (in respect of Raw material) & unit of output (in respect of finished goods is different in that case appropriate observation about units of input & units of output should be given in form 3CA/3CB, as may be applicable.
- As for by-products, normally by-products are such products that result from out of the process of manufacture or production of main or

intended product. In other words, the products that come into being or put into shape from out of the remnants or waste from the manufacture or production of main products are by-products. These by-products, though lesser in their economic value, are to be dealt with like any other product for sale or disposal and therefore, maintenance of their records is equally important.

It is, however, to be noted that it is neither necessary nor feasible that every product or goods produced shall have by-product(s).

In view of the specific prevailing condition of COVID-19, in the event of the tax auditor not being able to verify the various quantitative details and the related valuation with the physical verification, the Institute of Chartered Accountants of India has issued the guidelines through its Auditing Assurance Standards Board and a suitable observation may please be given in the audit report by the tax auditor.

### ICAI's Comments

It has been observed that in certain cases neither percentage of yield has been reported nor any qualification has been given in the Tax Auditor report.

### 3.36. Clause NO. 36 (a) to (e)

**In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form:-**

- a) total amount of distributed profits;
- b) amount of reduction as referred to in section 115-O(1A)(i);
- c) amount of reduction as referred to in section 115-O(1A)(ii); d) total tax paid thereon;
- e) dates of payment with amounts.

### *E-utility format*

36 In the case of Domestic Company, details of tax on distributed profits under section 115-O in the following forms :-

S.No.	(a) Total amount of distributed profits	(b) Amount of reduction as referred to in section 115-O(1A) (i)	(c) Amount of reduction as referred to in section 115-O(1A) (ii)	(d) Total tax paid thereon	(e) Date of Payment with Amounts	
					Amount	Dates of payment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>						

Under this clause, the tax auditor has to report on profit distributed during the financial year and therefore, the amount of tax on such distributed profit

plus surcharge along with the education cess thereon has to be reported under this clause. The amount of the dividend referred to in sub-section (1) is to be reduced by the amount referred to in sub-section (1A). As per section 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.
- Section 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 otherwise) out of current Profits or accumulated Profits.
  - This tax will be payable even if no income tax is payable by such Company on its total Income.
  - For the purpose of this clause, “Dividend” means dividend under clause (22) of section 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 Challan and Books of Account, etc.
  - Tax u/s 115-O should be deposited within 15 days of date of declaration/ distribution or payment, whichever is earlier.
  - DDT under section 115Q is made applicable in respect of dividend u/s 2(22)(e) at 30% without grossing up. Thus, tax on deemed dividend is to be paid by the Company itself.
  - in terms of the amendment to section 115Q -When company is deemed to be in default, it provided that the company and the principal officer of the company shall be deemed to be an assessee in default if tax on distributed profits is not paid in accordance with the provisions of section 115Q in respect of deemed dividend under section 2(22)(e).

3.36A. **Clause No.36A****E-Utility Format**

A(a)

Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2. 

(b) If yes, please furnish the following details:-

S.No.	Amount received (in Rs.)	Date of receipt
1	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

[inserted w.e.f. 20-08-2018 by G.S.R. 666(E),  
Notification No.33/2018 {F.No.370142/9/2018-TPL} dated 20-07-2018]

- (a) **Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? ( Yes / No)**
- (b) **If yes, please furnish the following details:-**
- (i) **Amount received in (Rs.):**
- (ii) **Date of receipt**

Clause (e) of sub-section (2) of section 22 – Definitions – reads as under :

‘(22) “dividend” includes –

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ;

but “dividend” does not include –

- (i) .....
- (ia) .....
- (ii) .....
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e) to the extent to which it is so set off”.
- (iv) .....

(v) .....

The previous clause, i.e., clause 36, dealt with dividend under sub-section (22) of section 2 exclusive of clause (e) advance or loan out of accumulated profit or shareholders etc., which clause has been discussed supra in some detail.

Clause 36A - newly inserted w.e.f. 20-08-2018 and under discussion, is in relation to the above-mentioned clause (e). Accordingly, the tax auditor would need to ascertain, and for the purpose may also obtain a management representation from the assessee, and determined if any amount in the nature of dividend as referred to in clause (e) of sub-section (22) of section 2 was received. In case the outcome is in the negative, no further action in the matter is required. However, if and where, the answer is 'Yes', the amount(s) and date(s) of receipt of such dividend are required to be furnished by the tax auditor.

Points for consideration :

The auditor should ask the management to provide the details of all loans or advances as contemplated under section 2(22)(e) so as to ascertain whether the assessee has received any amount which will fall within the ambit of above section. This requires lot of verification regarding the shareholding, substantial interest of various entities and in case the management is not providing the same, the tax auditor should give a suitable qualification in this regard.

### 3.37. Clause No. 37

**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**

#### *E-utility format*

37 Whether any cost audit was carried out ?

Select	Select
	YES
	NO
	NA

If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

Prior to its substitution in 2014, this clause [then numbered 30] read as "*Whether any cost audit was carried out, if yes, enclosed a copy of the report of such audit [see section 139(9)]*" The said section 139(9) for the purpose of cost audit, made reference to section 233B of the Companies Act, 1956. The said section 233B made reference to section 209(1)(d). Section 209(1)(d) provided, inter alia, "*in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the*

*books of accounts*". Section 148 and section 2(13)(iv) of the Companies Act, 2013 correspond respectively to section 233B and 209(1)(d) of the said Companies Act, 1956.

Subsequent to the substitution, clause 37 requires, if and in cases where cost audit had been carried out, details of any disqualification or disagreement on any matter/item/quantity, as identified/reported by the cost auditor.

Accordingly, this clause would be relevant in the case of assesseees who had cost audit carried out whether voluntarily or in terms of Section 148 read with section 2(13)(iv) of the Companies Act, 2013.

While in cases where cost audit had not been carried out, no further action is required, however, in cases of assesseees who have had their cost audit carried out, the tax auditor is required to peruse the report of such audit by the cost auditor, and furnish details, in the required format, of disqualification or disagreement on any matter/item/quantity, if any, identified/reported by the cost auditor. It is important to note that details of only those disqualification etc. that are relevant to previous year [i.e. under audit by the tax auditor] need to be furnished and in case such disqualification are having any impact on the previous year financials if it is related to other than previous years. The tax auditor may also make note of any material observation made in the above report which may serve in tax audit by him.

Under this clause, only details of disqualification and disagreement are to be given and the tax auditor need not express any opinion either on such disqualification or disagreement or in a case where such audit has been ordered but the same has not been carried out / or the report of such audit is not received by the time the tax auditor issues the tax audit report. In the latter case, i.e. where the report of cost audit has not been received, the tax auditor should so state the fact under the clause that the cost audit is not completed and the cost audit report is not available with the assessee.

**Note :** *In this clause, it is referred to give details of disqualification or disagreement in respect of cost audit carried out during the previous year, anomaly here is, it is not possible to obtain the cost audit report in respect of the cost audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of cost audit report received during the previous year irrespective of the fact to which period it belongs.*

**3.38. Clause No. 38**

**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.**

*E-utility format*

38 Whether any audit was conducted under the Central Excise Act, 1944 ?

Select ▼

Select  
YES  
NO  
NA

If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

This clause is similar to the previous clause, i.e., clause 37, except that while the previous clause dealt with cost audit, the class under discussion is in relation to audit under the Central Excise Act, 1944.

This clause does not require the tax auditor to verify or examine any records. All that is required of him is to specify (“Yes” or “No”) whether any audit under the above Act was conducted .

Under this clause (38), only details of any disqualification or disagreement are to be given and there is no need [as was the case prior to 2014] to enclose copy of audit report **conducted under the Central Excise Act, 1944**. The tax auditor need not express any opinion either on such disqualification or disagreement or in a case where such audit has been ordered but the same has not been carried out

/ or where the report of such audit is not received by the time the tax auditor issues the tax audit report. In the latter case, i.e., where the report of cost audit has not been received, the tax auditor should so state the fact under the clause that the audit under the Central Excise Act, 1944 is not completed and accordingly the report of that audit is not available with the assessee. It is important to note that details of only those disqualification etc. that are relevant to previous year [i.e. under audit by the tax auditor] need to be furnished. The tax auditor may also make note of any material observation made in the above report which may have relevance to the tax audit by him.

**Note :** In this clause it is referred to give details of disqualification or disagreement in respect of audit under central excise carried out during the previous year, anomaly here is it is not possible to obtain the audit report in respect of the audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of such audit report received during

*the previous year irrespective of the fact to which period it belongs.*

**3.39. Clause no. 39**

**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.**

*E-utility format*

39 Whether any audit was conducted under section 72A of the Finance Act,1994 in relation to valuation of taxable services as may be reported/identified by the auditor. ?

Select ▼

Select  
 YES  
 NO  
 NA

If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Before discussing the above clause, it may be mentioned that the charge of service tax was introduced by section 66 of Chapter V of the Finance Bill, 1994.

Section 14A – Special audit in certain cases and Section 14AA – Special audit in cases where credit of duty availed or utilised is not within the normal limits – as the nomenclature of these sections suggest, provide for audit in given cases by a cost accountant or chartered accountant nominated by the Chief Principal Commissioner of Central Excise or Chief Commissioner of Central Excise.

‘Chartered Accountant’ was added to the cost accountant in the abovesaid section 14A and 14AA by the Finance Act, 2009.

The Finance Act, 2012, w.e.f. 28-05-2012, inter alia, –

- amended section 83 of the Finance Act, 1994 whereby section 14AA of the Central Excise Act, 1944, which section dealt with special audit in cases where the credit of duty availed or utilized is not within the normal limits etc.
- inserted a new section 72 in Chapter V of the Finance Act, 1994, which provided for ‘special audit’

In terms of 72A of Finance Act, 1994 [as stated above, inserted by the Finance Act, 2012], –

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
- ii. 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.

Coming to the requirement of clause 39, it may be stated that the same is similar to the previous clause 38 and clause 37.

While in cases where audit in relation to valuation of taxable services under section 72A of the Finance Act, 1994 had not been carried out, no further action is required, however, in cases of assesseees where such audit had been carried out, the tax auditor is required to peruse the report of such audit conducted by a chartered accountant or a cost auditor, and furnish details, in the required format, of disqualification or disagreement on any matter/item/value/quantity, if any, identified/reported by that auditor. It is important to note that details of only those disqualification or disagreement that are relevant to previous year [i.e. under audit by the tax auditor] need to be furnished and in case such disqualification are having any impact on the previous year financials if it is related to other than previous years.. The tax auditor may also make note of any material observation made in the above report which may serve in tax audit by him.

Under this clause, only detail of disqualification or disagreement are to be given and there is no need to enclose copy of Service tax audit report. The tax auditor need not express any opinion either on such disqualification or disagreement or in a case where such audit has been ordered but the same has not been carried out / or the report of such audit is not received by the time the tax auditor issues the tax audit report. In the latter case, i.e., where the

report of audit in relation to valuation of taxable services has not been received, the tax auditor should so state the fact under the clause that the audit is not completed and accordingly the report of that audit is not available with the assessee.

*Note : In this clause, it is referred to give details of disqualification or disagreement in respect of audit under service tax carried out during the previous year, anomaly here is it is not possible to obtain the audit report in respect of the audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of such audit report received during the previous year irrespective of the fact to which period it belongs.*

**3.40. Clause 40**

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

S. No.	Particulars	Previous year	Preceding previous year
1.	Total turnover of the assessee		
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)**

## E-utility format

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

Serial Number	Particulars	Previous Year			Preceding previous Year		
(a)	Total turnover of the assessee	<input type="text"/>			<input type="text"/>		
(b)	Gross profit / Turnover	Gross Profit	Turnover	<input type="text"/> (%)	Gross Profit	Turnover	<input type="text"/> (%)
(c)	Net profit / Turnover	Net Profit	Turnover	<input type="text"/> (%)	Net Profit	Turnover	<input type="text"/> (%)
(d)	Stock-in-Trade / Turnover	Stock-in-Trade	Turnover	<input type="text"/> (%)	Stock-in-Trade	Turnover	<input type="text"/> (%)
(e)	Material consumed / Finished goods produced	Materials cons	Finished Goods Pr	<input type="text"/> (%)	Materials cons	Finished Goods Pr	<input type="text"/> (%)

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

***\*The note given “the details required to be furnished for principal items of goods traded or manufactured or services rendered” is only in respect of sub clause “e” in the above screen shot, i.e., material consumed/finished goods produced.***

### Points for consideration

Under this clause, details in respect of principal items are to be provided along with corresponding detail of proceeding previous year taken from last previous year audit report. Below mentioned include the points for consideration while reporting under this clause:

- Calculate ratios for manufacturing or trading concern in terms of value only.
- Return hasd separate disclosure for Manufacturing & Trading Account now. So carefully reconcile Gross Profit or give observatons accordingly.
- Ratios to be calculated for the business as a whole and not product wise.
- Provide overall Gross Profit ratio if gross profit from each product is different.
- Stock-in-trade include only closing stock of finished goods & not stock of raw material, work-in-progress, stores and spare parts or loose tools. And in case closing stock is Nil, then this sub-clause (d) is not applicable.
- For the valuation of finished goods, consider depreciation on Plant & Machinery [AS-2 (revised)].
- Depreciation on Plant & Machinery should be deducted to arrive at gross profit
- Exclude extraordinary items for calculation of ratios unless they are of material

effect [AS 5, AS(IT) II].

- Take the value of Sales, Purchase & Inventories before the Statutory Adjustment (of section 145A).
- Material consumed / finished goods produced [clause (e) is not applicable to trading concerns].
- **In case of Share broker**
  - ₪ Dealing for Commission – Calculate Net Profit Ratio
  - ₪ Business – Calculate Gross Profit Ratio

Case law:

In this Case of **N.C. Budhiraja & Co, (1993) 204 ITR 412(SC)**, the Hon'ble Supreme Court decided that construction of tunnels, bridges, dams etc. is only a Service activity and it cannot amount to manufacturing activity.

### ICAI's Comment

According to Para 67.1 of Guidance note on tax audit "These ratios have to be calculated only for assesseees who are engaged in manufacturing or trading activities". The ratios are generally not mentioned in cases where the clause is not applicable. In such circumstances "not applicable" should be reported under this clause instead of leaving the same blank.

### 3.41. Clause no. 41

**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.**

41 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 alongwith details of relevant proceedings.

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	Select	Select	Select			
	Select 1980-81 1981-82 1982-83 1983-84 ▼ 2017-18 2018-19 2019-20 2020-21	Select Central Excise Duty Central Custom Duty Service Tax Sales Tax/VAT State Excise Duty Other Indirect Tax/duty	Select Demand raised Refund received			

### Points for Consideration

- n Reporting under this clause would be required only in cases where either any demand had been raised or any refund had been issued. In other words, where neither any demand was raised nor any refund was issued, this clause is inapplicable and the details sought need not be given. Accordingly, 'N.A.' should be mentioned against the clause.
  - n **However, where any demand had been raised**, the details of demand so raised or refund so issued under any laws, other than the Income Tax Act, 1961 and Wealth Tax Act, 1957, are required to be furnished along with assessment particulars.
  - n Legislative intention behind insertion of this clause in the Tax Audit report under Income Tax Act: Probably to determine and cross-check whether any such demand had been claimed as expenditure by the assessee or whether the refund had been included in income.
- Generally, 'other tax laws' would include the Indirect tax laws, such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax, Goods and service Tax, etc [*However, Octroi Duty, Entry Tax, cess or duty such as Marketing Cess, Cess on Royalty, etc. should not be covered as other tax laws*].
  - 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.
    - If assessee is following accrual system of accounting and have passed the book entries recognizing demand / refund, or in case of cash system of accounting recognized the same in the books of account on actual receipt or payment basis, the tax auditor should make necessary verification for ascertaining whether any such demand has been raised on or refund order has been issued to/received by the assessee.
    - If there is any adjustment of refund against any demand, same be reported.
    - The tax auditor should cross verify the details of demand, if any pending, from clause (vii) of Companies Auditor Report Order (CARO) Rules, 2016

- The reporting by the tax auditor is subject to availability of information from the assessee.
- In case of refunds, the tax auditor should also verify whether the interest on such refund has been shown as income or not.
- No need to report those proceedings in which neither demand is raised nor refund is issued.
- In the Notification dated 25-07-2014, detail of refund issued to assessee is desired however, in e-utility format, amount of refund received is sought.
- The tax auditor should also report the consequential penalty if any debited to Profit & Loss account Clause No. 21 supra, whereunder details, among others, of expenditure by way of penalty or fine for violation of any law for the time being in force are sought.

**Clause 42 – Inserted w.e.f. 20-08-2018 by G.S.R. 666(E), Notification No.33/2018 [F.No.370142/9/2018-TPL] dated 20-07-2018]**

### E-Utility Format

42 (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B?  

(b) If yes, please furnish

S.No.		Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ furnished transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.
1	<input type="checkbox"/>	<input type="text"/>	<input type="text" value="Select"/> 	<input type="text" value="DD/MM/YYYY"/>	<input type="text" value="DD/MM/YYYY"/>	<input type="text" value="Select"/> 	<input type="text"/>

(a) **Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form No.61B? (Yes / No)**

(b) **If yes, please furnish:**

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/ transactions which are not reported

The following table explains in detail the requirements etc. of sub-clauses (a) and (b) of clause 42 above, which – as aforementioned – has been inserted w.e.f. 20-08-2017, vide Notification No.33/2018 dated 20-07-2018.

Form No.	Who has to file?	Due Date for furnishing	Authority
Form No. 61	Every person who has received any declaration in Form No. 60 (No PAN), on or after the 01.01.2016, in relation to a transaction specified in rule 114B, shall furnish a statement in Form No. 61 containing particulars of such declaration.	* where the declarations are received by the 30 <sup>th</sup> Sep., be furnished by the 31 <sup>st</sup> October of that year; and  * where the declarations are received by the 31 <sup>st</sup> March, be furnished by the 30 <sup>th</sup> April of the financial year immediately following the financial year in which the form is received.	The form 61 shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.
Form No. 61A	Statement of Financial Transactions (SFT) is a record of the statement of specified financial transactions which are required to be furnished u/s 285BA of the Act shall be furnished in Form No. 61A. The nature and value of transaction to be	The form 61A shall be furnished on or before the 31 <sup>st</sup> May, immediately following the FY in which the transaction is registered or recorded. Assessee is not able to do so, the authorities would issue a notice to such an assessee,	It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a

	furnished by the reporting person as specified under Rule 114E.	demanding the assessee to submit the form within 30 days from issuance of such notice.	server designated for this purpose.
Form No.61B	This is a statement of reportable account required to be furnished under section 285BA(1)(k) shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account: <i>Provided that where pursuant to such due diligence procedures no account is identified as a reportable account, a nil statement shall be furnished by the reporting financial institution</i>	The Form No. 61B shall be furnished for every calendar year by the 31st day of May following that year. <i>Provided that the statement pertaining to calendar year 2014 shall be furnished by the 31st day of August, 2015.</i>	It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data.

**For what and by whom Form No.61A is filed ?**

**[Rule 114E – Furnishing of statement of financial transaction]**

S. No.	Nature and value of transaction	Class of person (reporting person)
1	<p>a) <b>Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to <u>ten lakh rupees</u> or more in a financial year.</b></p> <p>b) <b>Payments made in cash aggregating to ten lakh rupees</b></p>	<b>A banking company or a co-operative bank</b> to which the Banking Regulation Act applies (including any bank or banking institution referred to in section 51 of that Act).

	<p>or more during the financial year for purchase of pre-paid instruments issued by RBI.</p> <p>c) <b>Cash deposits or cash withdrawals</b> (including through bearer's cheque) <b>aggregating to fifty lakh rupees or more in a financial year</b>, in or from one or more current account of a person.</p>	
2	<p><b>Cash deposits aggregating to ten lakh rupees or more in a financial year</b>, in one or more accounts (other than a current account and time deposit) of a person.</p>	<p>* Same as above and, * <b>Post Master General</b> as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898</p>
3	<p><b>One or more time deposits</b> (other than a time deposit made through renewal of another time deposit) of a person <b>aggregating to ten lakh rupees or more in a financial year</b> of a person.</p>	<ul style="list-style-type: none"> <li>• <b>Banking company and Post Master General</b> as earlier,</li> <li>• <b>Nidhi Companies</b></li> <li>• <b>Non-banking financial company</b> which holds a certificate of registration under section 45-IA of the RBI Act, to hold or accept deposit from public.</li> </ul>
4	<p><b>Payments made by any person</b> of an amount aggregating to –</p> <p>(i) <b>one lakh rupees or more in cash</b>; or</p> <p>(ii) <b>ten lakh rupees or more by any other mode</b>,</p> <p>against bills raised in respect of one or more credit cards issued to that person, in a financial year</p>	<p><b>A banking company</b> as specified earlier and <b>any other company or institution issuing credit card</b>.</p>
5	<p><b>Receipt from any person</b> of an amount aggregating to <b>ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution</b> (other than the amount received on account of renewal of the bond or debenture issued by that company).</p>	<p><b>A company or institution issuing bonds or debentures</b></p>
6	<p><b>Receipt from any person</b> of an</p>	<p><b>A company issuing shares.</b></p>

	<b>amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.</b>	
7	<b>Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year.</b>	<b>A company listed on a recognised stock exchange purchasing its own securities</b> under section 68 of the Companies Act, 2013
8	<b>Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).</b>	<b>A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.</b>
9	<b>Receipt from any person for sale of foreign currency</b> including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an <b>amount aggregating to ten lakh rupees or more during a financial year.</b>	<b>Authorised person as referred to section 2(c) of the Foreign Exchange Management Act, 1999.</b>
10	<b>Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more</b> or valued by the stamp valuation authority referred to in section 50C of the Act at thirty lakh rupees or more.	<b>Inspector-General</b> appointed u/s 3 of the Registration Act or <b>Registrar or Sub-Registrar</b> appointed under that Act.
11	<b>Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any.)</b>	<b>Any person who is liable for audit under section 44AB of the Act.</b>
12	Cash Deposits during the period 9th November 2016 to 30th December 2016 aggregating to -	<b>A banking company and Postmaster General as mentioned above.</b>

	<ul style="list-style-type: none"> <li>• <b>12,50,000 or more</b> in one or more current a/c of a person, or</li> <li>• <b>2,50,000 or more</b> in one or more a/c (other than a current a/c) of a person</li> </ul>	
13	Cash Deposits during the period of 1st April 2016 to 9th November 2016 in respect of accounts that are reportable under Serial No. 12	<b>A banking company and Postmaster General as mentioned above.</b>

### **Reportable Account [Rule - 114F(6)]**

**A Reportable Account** means a financial account, which has been identified pursuant to the due diligence procedure, as held by:

- 1) A reportable person; or
- 2) An entity, not based in United States of America, with one or more controlling persons that is a specified U.S. person; or
- 3) A passive non-financial entity with one or more controlling persons that is a person described in sub-clause (b) of clause (8) of the rule 114F.

### **Reporting Financial Institution (i.e. RFI) [Rule - 114F(6)]**

**"Reporting financial institution"** means,-

- a) a financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution, that is located outside India; and
- b) any branch, of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India;

### **Reportable person [Rule - 114F(8)]**

**"Reportable person"** means,-

- a) one or more specified U.S. persons; or
- b) one or more persons other than,-
  - i. a corporation, the stock of which is regularly traded on one or more established securities markets;
  - ii. any corporation that is a related entity of a corporation mentioned in item (i);
  - iii. a Governmental entity;

- iv. an International organisation;
- v. a Central bank; or
- vi. a financial institution,

that is a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory or an estate of a decedent who was a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory;

#### **U.S. person [Rule - 114F(10)]**

“U.S. person” means,-

- a) an individual, being a citizen or resident of the United States of America ;
- b) a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;
- c) a trust if,-
  - (i) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
  - (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
- d) an estate of a decedent who was a citizen or resident of the United States of America;

#### **Information to be maintained and reported [Rule - 114G]**

**After the RFI has identified the reportable accounts, RFI needs to report specific information in respect of each reportable account. As per Rule 114G(1), RFI needs to maintain and report the following information in case of each Reportable Account:**

- a) **The name, address, taxpayer identification** number (assigned to the account holder by the country or territory of his residence for tax purposes) and **date and place of birth** (in the case of an individual) **of each reportable person**, that is an account holder of the account;
- b) **In the case of any entity which is an account holder** and which, after application of due diligence procedures prescribed in rule 114H, is identified as having one or more controlling persons that is a reportable person,-
  - The name and address of the entity, taxpayer identification number** assigned to the entity by the country or territory of its residence; and

- The name, address, date and place of birth of each such controlling person and taxpayer identification number** assigned to such controlling person by the country or territory of his residence;
- c) **The account number** (or functional equivalent in the absence of an account number);
- d) **The account balance or value** (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of relevant calendar year or, if the account was closed during such year, immediately before closure;
- e) **in the case of any custodial account,-**
- the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year; and
  - the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
  - in the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year;*
  - in the case of any account other than that referred to in clause (e) or (f), the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the relevant calendar year; and*
  - in the case of any account held by a non-participating financial institution, for calendar year 2015 and 2016, the name of each non-participating financial institution to which payments have been made and the aggregate amount of such payments:*

**Clause 43 – Inserted w.e.f. 20-08-2018 by G.S.R. 666(E), Notification No.33/2018 {F.No.370142/9/2018-TPL} dated 20-07-2018]**

**3.43. E-Utility Format**

(a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286

(b) if yes, please furnish the following details:

Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity	Name of parent entity	Name of alternate reporting entity (if applicable)	Date of furnishing of report
<input type="text" value="Select"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="DD/MM/YYYY"/>

c) If Not due , please enter expected date of furnishing the report

**(a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286? (Yes / No)**

**(b) If yes, please furnish the following details:**

- (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
- (ii) Name of parent entity
- (iii) Name of alternate reporting entity (if applicable)
- (iv) Date of furnishing of report

**(c) If Not Due, please enter expected date of furnishing the report.**

In terms of sub-clause (a) above, if applicable, i.e., if the answer to the said sub-clause is 'Yes', details with regard to Country by Country (CbC) reporting as referred in section 286 is required to be reported.

Section 286 – **Furnishing of report in respect of international group**, contains provisions relating to specific reporting regime in the form of –

- Country-by-Country Report (CbCR) in respect of an international group based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co-operation and Development (OECD) and others.

- The country-by-country report requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business; the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.
- The Country-by-Country (CbC) report has to be submitted by parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.
- The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed five thousand five hundred crore rupees (Rs. 5,500 Crore) [**For threshold, Refer Rule 10DB(6)**]
- Non furnishing of this information will entail penalty u/s 271AA and also u/s 271GB.

	Category	Form	Due Date
1	Parent entity or alternate reporting entity, resident in India <i>[Section 286(2)]</i>	<b>File CbCR in Form 3CEAD</b> (for every Accounting Year) to the Director General of Income-tax (Risk Assessment)	12 months from the end of reporting accounting year <b>[Amended by FA, 2018 w.r.e.f. 01/04/2017]</b>
2	Constituent entity (CE) resident in India, of Parent entity not resident in India <i>[Section 286(1)]</i>	<b>File CbCR in Form 3CEAC</b> to the Director General of Income-tax (Risk Assessment) Vide this form the CE intimates: <ul style="list-style-type: none"> <li>• Whether it is alternate reporting entity of the group; or</li> <li>• The details of Parent entity or the alternate reporting entity and the country/territory of which said entity is a resident</li> </ul>	At least 2 months prior to the date of furnishing of CbCR in Form 3CEAD. <b>[Refer Rule 10DB(2)]</b> <i>Since the deadline for filing of Form 3CEAD is amended, <u>then the deadline for filing the Form 3CEAC should be 10 Months from the end of reporting accounting year</u></i>

3	Constituent entity (CE) resident in India, of Parent entity not resident in India - Specified Cases [Section 286(4) i.e. where parent entity is not obligated to file CbCR, no agreement for exchange of CbCR or Systematic Failure]	<b>File CbCR in Form 3CEAD</b> (for every Accounting Year). In case there are more than one CEs resident in India, The international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. [Proviso to Section 286(4)]. In that case, the intimation of the same needs to be filed by the designated CE in the Form 3CEAE with the Director General of Income Tax (Risk Assessment)	<b><u>For Filing of CbCR in Form 3CEAD - 12</u></b> months from the end of reporting accounting year [Amended by FA, 2018 w.r.e.f. 01/04/2017] <b><u>For Filing of intimation of designated CE in Form 3CEAE - the</u></b> due date of filing this form has not been prescribed. [Refer Rule 10DB(5)]
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#### Issues for consideration u/s 286

- The due date of filing the form 3CEAE has been mentioned in the rules for Form 3CEAD to be filed two months prior to the date of furnishing of CbCR in Form 3CEAD.
- Lastly, clarity is required with respect to the term 'accounting year' [defined in Section 286]. For CEs of foreign parent companies, the 'accounting year' is defined that the annual accounting period generally followed by such foreign parent in its country of residence. For an India constituent entity, following April to March fiscal year. The aggregation of international transactions on any other basis (calendar year or any other different fiscal year followed by its parent entity) would be a significant challenge.

**Clause 44 – Inserted w.e.f. 20-08-2018 by G.S.R. 666(E), Notification No.33/2018 [F.No.370142/9/2018-TPL] dated 20-07-2018]**

**3.44. Break-up of total expenditure of entities registered or not registered under the GST**

44 Break-up of total expenditure of entities registered or not registered under the GST:(This Clause is kept in abeyance till 31st March, 2021)

S.No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>						

Name	<input type="text"/>	<input type="text"/>
	<input type="text"/>	
Membership Number	<input type="text"/>	
FRN (Firm Registration Number)	<input type="text"/>	
Address	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text" value="Select"/> <input type="text"/>
Place	<input type="text"/>	
Date	<input type="text"/>	

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

### **Deferred further till 31st March 2021**

**[1] Soon after issuance of above Notification dated 20-07-2018, the CBDT issued Circular No.06/2018 dated 17-08-2018, which read, inter alia, as under :**

“Representations have been received by the Board that the implementation of reporting requirements under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred.

The matter has been examined and it has been decided by the Board that **reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31<sup>st</sup> March, 2019.** Therefore, for Tax Audit Reports to be furnished on or after 20<sup>th</sup> August, 2018 but before 1<sup>st</sup> April, 2019, the tax auditors will not be required to furnish details called for under the said clause”; *[emphasis supplied]*

**[2] Circular No.09/2019 dated 14-05-2019, which read, inter alia, as under :**

“Representations were received by the Board that the implementation of Reporting requirements under clause 30C (pertaining to General Anti-Avoidance Rules (GAAR)) and clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred further.

The matter has been examined and it has been decided by the Board that the **reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2020**”; *[emphasis supplied]* and

**[3] Circular No.10/2020 dated 24-04-2020, which read, inter alia, as under:**

“Several representations were received by the Board with regards to difficulty in implementation of reporting requirements under clause 30C and clause 44 of the Form No.3CD of the Income-tax Rules, 1962 in view of the Global Pandemic due to COVID-19 virus and requested for deferring the applicability of the above provisions.

The matter has been examined and in view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the **reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2021.**” *[emphasis supplied]*

## CHAPTER 4

# Important Formats

A. DRAFT MANAGEMENT REPRESENTATION [on the letter head of the assessee-entity]

Document No. Date:

To

(Name of Auditor)

(Name of Firm) Chartered Accountants

(Address)

Sub: Management Representation in respect of Tax Audit under section 44AB of the Income Tax Act, 1961 for Assessment Year 2020-21

Dear Madam/ Sir,

This representation letter is provided in connection with audit of the Balance Sheet as on \_\_\_\_\_ and Profit and Loss Account/ Income and Expenditure Account of \_\_\_\_\_ (Name of Assessee) for the period beginning from \_\_\_\_\_ to \_\_\_\_\_ for the purpose of expressing an opinion as to whether the financial statement as above gives a true and fair view of the state of the affairs of the assessee as on \_\_\_\_\_ and profit/ loss or surplus/ deficit of the assessee for the period beginning from \_\_\_\_\_ to \_\_\_\_\_.

In connection with the same, I/ We state as follows and, confirm that the same is true and correct to the best of my/ our knowledge and belief, and confirm accordingly :

1. \_\_\_\_\_ My/ our business/ profession was started as a \_\_\_\_\_ [proprietary, partnership, LLP firm/company etc.], in the year \_\_\_\_\_.
2. The address from where our business/ profession is carried on is same as we have informed to the income tax department, there has been no change in the same. The details are \_\_\_\_\_. We have \_\_\_\_\_ no. of branch(es) and the address(es) is/ are \_\_\_\_\_.
3. My/ our Permanent Account Number/ Aadhaar Number is \_\_\_\_\_.
4. With regard to our liability to pay any Indirect Taxes, — \_\_\_\_\_ we state that we are not liable to pay any indirect taxes.

or, as the case may be,

we are liable to pay indirect tax under the following enactment(s) and our related registration number is/are as stated against the said enactment(s) :

<i>Name of the Act</i>	<i>Nature of the Taxes</i>	<i>Registration No</i>

5. Our Income Tax Status is that of a ..... (*state proprietorship/ partnership/LLP/ HUF/ Company in which public is not substantially interested*), and that there has been no change in the said status.
6. Our previous year is from 01-04-2019 to 31-03-2020.
7. There has been no change in the constitution of our firm/company or in the profit sharing ratio (PSR) of partners/directors [in the case of partnership/LLP firm/company] in the aforesaid previous year *vis-à-vis* preceding previous year [i.e., ending on 31-03-2019].

or, as the case may be,

There has been change(s) in the constitution of our firm/company and the related details are given as under:

Sr. No.	Nature of Change		Date(s) of Change	
	Retirement of	Admission of	Retirement Of	Admission of

or, as the case may be,

There has also been change in the PSR of the partners/directors as under :

Sr. No.	Name(s) of the partner(s)/Director(s)	Change in PSR	
		Prior to the change in the constitution as above	Post change in the constitution as above


8. Our nature of business/profession is that of .....  
 [in the backdrop of and reference to the business code(s) as listed in the Instruction to filing of ITR-3] During the above year, there has been no change in the nature of business and/or profession and vis-à-vis preceding previous year.

We have /We have not exercised option for taxation under section 115BA/ 115BAA/ 115BAB [as the case may be]

9. No books of accounts have been prescribed for our business under Income Tax Act, 1961. However, following books of accounts are maintained by us in a computer system on accounting software i.e. ....

- Cash book
- Ledger
- Bill Book
- Salary Register
- Journal
- Vouchers, etc.

The books of accounts so maintained are kept at our head office at point no. 3 supra. In respect of branches books are maintained as per list enclosed.

10. Profit and loss account does not include any profit & gains as per section 44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB or any other relevant section.

11. We are regularly following Mercantile system of Accounting and there is no change in method of accounting compared to previous year. There is no change /deviation in the method of accounting employed in the previous year from the Accounting Standard or Income computation as per standards prescribed under section 145 of the Income Tax Act, 1961.

12. All expenditures debited in the financial statements are for the purpose of business except proportionate expenses disallowed u/s 37.

13. We hereby certify that we have timely valued our closing stock of finished goods at lower of cost or market price or net realisable value. We further certify that the valuation of the above stock as on 31.03.2020 as arrived by us is.....(quantity)/ as per list enclosed, amounting to

Rs...../- . There is no change in the method of stock valuation during the previous year. The stock was physically verified and valued by us on  
31.03.2020.

14. No capital asset has been converted into stock in trade during the period under consideration.
15. All incomes during the year have been credited to Profit and Loss Account/ Income and Expenditure Account except
16. There has been no capital receipt which is credited to Profit & Loss Account.
17. There is no land and/or building which has been transferred during the previous year for a consideration less than value adopted/ assessed/ assessable by any authority of state government.
18. The detail of land and/or building sold during the period under consideration is enclosed herewith and the same is disclosed in the books of account. The copy of related registered sale deed is enclosed herewith.
19. Depreciation is provided on W.D.V. method from the date of inception of business at the rate prescribed under Income-tax Rules.
20. Detail of fixed assets purchased during the period under consideration is enclosed herewith along with the detail of CENVAT claimed and exchange fluctuations.
21. There is no expenditure which is eligible for deduction under Section 32AC, 32AD, 33AB, 33ABA, 35(1), 35(2AA), 35(2AB) and 35AB to 35E, of the Income Tax Act, 1961.
22. No business as specified under section 35AD has been carried out during the period under consideration.
23. All bonus, commission payable for the year has been accounted for in the books of account. There is no sum which has been paid to any employee as bonus or commission for services rendered which was otherwise payable to such employee as profit/dividend.
24. No expenses of personal or capital nature have been debited in the Profit and Loss Account/ Income and Expenditure Account.
25. There is no expenditure on advertisement in any souvenir, brochure, tact, pamphlet etc. published by a political party. Further, no expenditure has been incurred at clubs except  
Besides, no expenditure has been incurred by way of any penalty for violation of any law or fine, or for any purpose which is prohibited by law.
26. All payments in respect of expenditure covered u/s 40A(3) have been made through account payee cheques or account payee drafts as the case may be except
27. No liability of contingent nature has been debited to Profit & Loss account/ Income and Expenditure Account except those, which has been disclosed in

the financial statements, including notes on account.

28. The detail of provision made for payment of gratuity is enclosed herewith, if any.
29. No expenses have been debited to Profit and Loss account, the corresponding income in respect whereof is exempt and thus no amount is inadmissible u/s 14A.
30. Based on our books of account, we certify that there is no deemed income accruing or arising to us u/s 56(2)(vii), 56(2)(viia), 56(2)(viib), 56(2)(ix), and 56(2)(x) of the Income Tax Act,1961.
31. No interest is inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.
32. The details of transactions with the related party u/s 40A(2)(b) of the Income Tax Act,1961 are as under: -

<i>S.No.</i>	<i>Name of Related Person</i>	<i>Nature of Payment</i>	<i>Relationship</i>	<i>Amount</i>
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In Our opinion, the amount of payments to the related parties is reasonable.

33. There is no profit chargeable under Section 41.
34. No prior period income or expense has been debited or credited to the Profit and Loss Account/ Income or Expenditure Account.
35. The details of shares purchased/ received during the period under consideration and the same are disclosed in the books of account. The Demat account statement is enclosed herewith.
36. During the period under consideration, I/ we have not taken or repaid any amount on hundi otherwise than by account payee cheque.
37. There have been no adjustments to transfer price as referred to in Section 92CE(1)
38. There have been no expenditure of the nature/to the tune referred to in Section 94B(1)
39. No impermissible avoidance arrangement, as referred to in Section 96, has been entered into.
40. With regard to taking/accepting &/or repayment of loan/deposits, the acceptance/repayment thereof has been made through account payee cheque/bank draft / use of electronic clearing system through a bank account/other electronic modes except in case of interest provided on loans by way of general entry.
41. There is no brought forward loss/unabsorbed depreciation.
42. Section-wise details of deductions admissible under Chapter VIA or Chapter III are attached.
43. The provisions of Chapter XVII-B & XVII-BB, regarding deduction/collection

of tax at source & regarding the payment thereof to the credit of Central Government have been duly complied with. For the purpose of details of payments and Tax deducted thereon we are hereby producing the details of quarterly TDS returns for the Financial Year 2019-20..... for your perusal.

- 44. There is no liability to pay interest u/s 201(1A) and 206C(7) of the Income Tax Act, 1961.
- 45. The statements of tax deducted / tax collected have been furnished within the prescribed time.
- 46. The quantitative detail of principal item of raw material, finished goods and by-products are enclosed herewith.
- 47. Detail of tax on distributed profits u/s 115-O is enclosed herewith.
  
- 48. There has been no receipt of any amount in the nature of dividend as referred in Section 2(22)(e)
- 49. There is no requirement of Cost or Excise Audit. However, in respect of Service Tax, the related audit report is enclosed herewith.
- 50. No demand or refund has been raised or issued during the previous year under any tax laws, except the Income Tax Act,1961 and Wealth Tax Act,1957.
- 51. We are no required to furnish statement in Form 61 or Form No.61A or Form No.61B.
- 52. We are not liable to furnish the reported as referred to in section 286(2).
- 53. Break-up of total expenditure under GST is attached,
- 54. We certify that on 31<sup>st</sup> March 2020, we had a cash balance of Rs ...../-

For and on behalf of

\_\_\_\_\_

AUTHORISED SIGNATORY

*Note: wherever the detailed information is there (i.e. the clause is "applicable") in respect of any clause, the same be taken as per "List" enclosed to make this "management representation" more meaningful & comprehensive.*

B.(i) Specimen Letter of Appointment in case of a company

Ref: No.-----

Date -----:

M/s ABC [Firm Registration Number-----]

Chartered Accountants,

.....Place.....

Re: Appointment as Tax Auditors under section 44AB of the Income-tax Act, 1961 for the Previous Year ending ..... relevant to the Assessment Year.....

Sirs,

We have to inform you that you have been appointed (\*Jointly with M/s.....) as "Tax Auditors" of our company under section 44AB of the Income-tax Act, 1961 for the above mentioned Assessment Year.....as per the Resolution (produced hereunder) passed in the meeting of the Board of Directors held on.....

"Resolved that ABC, Chartered Accountants, Firm Registration Number---- (\*Jointly with M/s..... Chartered Accountants, Firm Registration Number) be and are hereby appointed as Tax Auditors of the Company for The Previous Year ending.....relevant to the Assessment Year.....under section 44AB of Income-tax, Act, 1961.

\*The remunerations for the above Tax Audit assignment will be Rs.....plus travelling and out of pocket expenses.

Or

\*Resolved further that the Managing Director be and is hereby authorized to fix the remuneration for the above Tax Audit in consultation with Tax Auditors."

\*For your information, our Statutory Auditors under the Companies Act, 2013 are M/s ....., Chartered Accountants and our Tax Auditors for the (preceding) Previous Year ended on .....were M/s .....Chartered Accountants. Their addresses are enclosed.

Kindly let us have your acceptance of the said appointment.

Yours faithfully,  
For and on behalf of  
XYZ & Co. Pvt. Ltd.

Secretary/Managing Director/Director

\*as may be applicable

B.(ii) Specimen Letter of Appointment in case of Branch Auditors

Ref:

Date:

M/s ABC [Firm Registration Number-----]

Chartered Accountants,

.....Place.....

Re : Appointment as Branch Tax Auditors under section 44AB of the Income-tax Act, 1961 for the Previous Year ending ..... relevant to the Assessment Year.....

Sirs,

We have to inform you that you have been appointed as "Tax Auditors" (\*Jointly with M/s.....Chartered Accountants) for .....Branch of our company under section 44AB of the Income-tax Act, 1961 for the above mentioned Assessment Year.....as per the Resolution (produced hereinunder) passed in the meeting of the Board of Directors held on.....

"Resolved that ABC, Chartered Accountants, Firm Registraton Number---- (\*Jointly with M/s..... Chartered Accountants) Firm Registraton Number----, be and a re hereby appointed as Tax Auditors of ..... Branch for the Previous Year ending.....relevant to the Assessment Year.....under section 44AB of Income-tax, Act, 1961.

\*The remunerations for the above Tax Audit assignment will be Rs.....plus travelling and out of pocket expenses.

Or

\*Resolved further that the Managing Director be and is hereby authorized to fix the remuneration for the above Tax Audit in consultation with Tax Auditors."

\*For your information, our Statutory Auditors under the Companies Act, 2013 and Tax Auditors are M/s ....., Chartered Accountants and our Tax Auditors for the said branch for the (preceding) Previous Year ended on .....were M/s .....Chartered Accountants. Their addresses are enclosed.

Kindly let us have your acceptance of the said appointment.

Yours faithfully,  
For and on behalf of  
XYZ & Co. Pvt. Ltd.

Secretary/Managing Director/Director

\*as may be applicable

B.(iii) Specimen Letter of Appointment in case of Partnership firm/ Proprietary concern

Ref: No.:

Date: .....

M/s ABC [Firm Registration Number-----]

Chartered Accountants,

.....Place.....

Re : Appointment as Tax Auditors under section 44AB of the Income-tax Act, 1961  
for the Previous Year ending .....relevant to the Assessment  
Year.....

Sirs,

We have to inform you that you have been appointed "Tax Auditors" of our firm/  
concern for the above mentioned Assessment Year..... The remuneration  
for Tax Audit will be Rs.....plus travelling and out of pocket expenses.

\*Our Tax Auditors for the (preceding) Previous Year ended on.....relevant  
to Assessment Year .....were M/s .....Chartered Accountants.  
Their address is given as under.

Kindly let us have your acceptance of the said appointment.

Yours faithfully

Partner/Proprietor  
Authorised Signatory

\*as may be applicable

C. Specimen Letter of Communication with the Previous Tax Auditors/Present Statutory Auditors

Ref: No.:-----/UDIN -----

Date: .....

M/s. RST & Co.  
Chartered Accountants  
....Place.....

Re : Our Appointment as "Tax Auditors" of XYZ & Co. Pvt. Ltd. (*\* jointly with M/s. ...., Chartered Accountants*) for the Previous Year ..... relevant to Assessment Year.....

Sir,

We are appointed as the "Tax Auditors" of the captioned company for the assessment Year .....(*\*jointly with M/s. ...., Chartered Accountants*).

\*This communication to you is in your capacity as the Statutory Auditors of the aforesaid Company and as a matter of professional courtesy. . Kindly let us know whether you have any objection in our acceptance of the captioned Tax Audit assignment.

\*This communication to you is in your capacity as the previous Tax Auditors of the aforesaid company. Kindly let us know whether you have any objection to our accepting the said appointment.

Yours faithfully

ABC & Co.  
Chartered Accountants

\*as may be applicable

## D. Consent letter accepting appointment

Ref: No.:-----/UDIN -----

Date.....

M/s XYZ &amp; Co. Pvt. Ltd.

-----Place-----

-----

Re: Acceptance for Appointment of Tax Auditor for the financial year .....

Sirs,

This is in reference to your letter bearing number ..... dated .....  
appointing us as the tax auditor of your Company for the financial year .....  
(Assessment Year .....).

In this regard, we are hereby giving our consent for our captioned appointment.

Thanking You,

Yours faithfully

ABC & Co.  
Chartered Accountants

E. Specimen Letter from assessee-entity to the joint auditors regarding uploading of report

Ref. No.

Date

M/s. A.B.C. & Co. [Firm Registration Number-----]  
Chartered Accountants  
Place.....

Sirs,

Reg: Tax Audit under Section 44AB of the Income-tax Act, 1961 for the Previous Year, i.e., from to relevant to the Assessment Year

This is with reference to your letter number ..... dated ----- communicating your acceptance to be our Tax Auditors jointly with M/s.\_\_\_\_\_ for the captioned Assessment Year. We thank you and your joint auditors for the same.

We request that the report of audit, upon completion, be uploaded by you, i.e., M/s. . While we are endorsing a copy of this to your joint auditors, you may kindly inform the above arrangement to him/them as well.

A line in confirmation will be appreciated.

Yours faithfully,

( ) M/s

Copy to : M/s. (joint auditors)

We have no objection to M/s. , our as stated above.( )

Date

M/s. A.B.C. & Co.

Joint Auditors

Joint auditors, uploading the report of audit

We undertake to upload the report of audit as stated above. ( )

Date

M/s.

Joint Auditors

F. Format for maintaining a record of the tax audit assignments Ceiling on Tax Audit Assignments

In pursuance to paragraph 6.1.6 of Chapter VI of the Council Guidelines No.1-CA(7)/02/2008 dated 08-08-2008 (*which Guidelines superseded the Notifications issued by the Council under erstwhile Clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949*) issued by the Council of the Institute of Chartered Accountants of India under the provisions of the Chartered Accountants Act, 1949, as amended by the Chartered Accountants (Amendment) Act, 2006, "A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him in each assessment year in the format as maybe prescribed by the Council".

The related Format approved by the Council, as contained in the Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 [Revised 2014 Edition] bearing Annexure VI, is as under :

1. Name of the Member accepting the assignment
2. Membership No.
3. Financial year of audit acceptance
4. Name and Registration No. of the firm/firms of which the member is a proprietor or partner

S. No	Name of the auditee	Assessment year of the auditee	Date of appointment	Date of acceptance	Name of the firm on whose behalf the member has accepted the assignment	Date of communication with the previous auditor (applicable)
1	2	3	4		6	7

# CHAPTER – V

## Annexure -I

GOVERNMENT OF INDIA  
 MINISTRY OF FINANCE  
 DEPARTMENT OF REVENUE  
 [CENTRAL BOARD OF DIRECT TAXES]

NOTIFICATION

New Delhi, the 1st day of May, 2013

INCOME-TAX

S.O. 1111 (E).— In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (3rd Amendment) Rules, 2013.
- (2) They shall be deemed to have come into force with effect from the 1st day of April, 2013.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in rule 12,—
  - (a) in sub-rule (1),-
    - (A) for the figures “2012”, the figures “2013” shall be substituted;
    - (B) in item (a),—
      - (i) in sub-item (iii), after the words “income from race horses”, the words “and does not have any loss under the head” shall be inserted;
      - (ii) for the proviso, the following proviso shall be substituted, namely:-  
 “Provided that the provisions of this clause shall not apply to a person who,-

- (I) is a resident, other than not ordinarily resident in India within the meaning of sub-section (6) of section 6 and has,—
  - (i) assets (including financial interest in any entity) located outside India; or
  - (ii) signing authority in any account located outside India;
- (II) has claimed any relief of tax under sections 90 or 90A or deduction of tax under section 91; or
- (III) has income not chargeable to tax, exceeding five thousand rupees.”;

(C) in clause (ca), for the proviso, the following proviso shall be substituted, namely:-

“Provided that the provisions of this clause shall not apply to a person who,-

- (I) is a resident, other than not ordinarily resident in India within the meaning of sub-section (6) of section 6 and has,—
  - (i) assets (including financial interest in any entity) located outside India; or
  - (ii) signing authority in any account located outside India;
- (II) has claimed any relief of tax under sections 90 or 90A or deduction of tax under section 91; or
- (III) has income not chargeable to tax, exceeding five thousand rupees.”;

(b) in sub-rule(2), the following proviso shall be inserted, namely:-

“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.”;

(c) in sub-rule (3), in the proviso,-

(A) in clause (a),—

- (i) for the words “an individual or a hindu undivided family”, the words “a person, other than a company and a person required to furnish the return in Form ITR-7” shall be substituted;
- (ii) for the words “ten lakh rupees” the words “five lakh rupees” shall be substituted;
- (iii) for the figures “2012-13”, the figures “2013-14” shall be substituted;

(B) after clause (aaa), the following clause shall be inserted, namely:-

“(aab) a person claiming any relief of tax under section 90 or 90A or

deduction of tax under section 91 of the Act, shall furnish the return for assessment year 2013-14 and subsequent assessment years in the manner specified in clause (ii) or clause (iii);”

- (C) in clause (b), after the words, brackets and figure “in clause (i)”, the words, brackets and figures “or clause (ii) or clause (iii)” shall be inserted.
  - (D) in sub-rule 4, after the words, brackets and figures “of sub-rule(3)”, the words and figures “and the report of audit in the manner specified in proviso to sub-rule (2)” shall be inserted.
  - (E) in sub-rule (5), for the figures “2011”, the figures “2012” shall be substituted.
3. In the said rules, in Appendix-II, for “Forms SAHAJ (ITR-1), ITR-2, ITR-3, SUGAM (ITR-4S), ITR-4 and ITR-V”, the “Forms SAHAJ (ITR-1), ITR-2, ITR-3, SUGAM (ITR-4S), ITR-4 and ITR-V” shall be substituted.

[Notification No. 34 /2013/ F.No.142/5/2013-TPL]

(Gaurav Kanaujia)

Deputy Secretary to the Government of India

*Note.- The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification number S.O.969(E), dated the 26th March, 1962 and last amended by Income-tax (2nd Amendment) Rules, 2013 vide notification S.O. No.410 (E) dated 19th February, 2013.*

## Annexure II

**F.No.133/24/2014-TPL  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
(CENTRAL BOARD OF DIRECT TAXES)**

\*\*\*\*

**Room No. 147 B-II, North Block  
New Delhi, the 20th August, 2014**

### **Order Under Section 119 of the Income-tax Act, 1961**

1. In exercise of power conferred by section 119 of the Income-tax Act ('the Act'), the Central Board of Direct Taxes (CBDT) hereby extends the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assesseees who are not required to furnish report under section 92E of the Act from 30th day of September, 2014 to 30th November, 2014.
2. It is further clarified that the tax audit report under section 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in the pre-revised Forms shall be treated as valid tax audit report furnished under section 44AB of the Act.

(J.Saravanan)

Under Secretary (TPL-III)

Copy to:-

- (i) The Chairman (CBDT), All Members, Central Board of Direct Taxes for information.
- (ii) All Cadre Controlling Pr. Chief Commissioners of Income-tax with a request to circulate amongst all officers in their regions/charges.
- (iii) The Pr. Director General of Income Tax (Admn.) Mayur Bhawan, New Delhi.
  
- (iv) The Director General of Income Tax (Systems) with a request for uploading it on the Departmental website.
- (v) Commissioner of Income Tax (M&TP), CBDT.

(J.Saravanan)

Under Secretary (TPL-III)

## Annexure III

CIRCULAR NO. 452, DATED 17.3.1986 - Compulsory Audit - Whether the provision is applicable to commission agents, arahtias, etc.

1. Section 44AB, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakhs in any previous year relevant to the assessment year commencing on 1-4-1985 or any subsequent assessment year.
2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB.
3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachha arahtias and pacca arahtias dealing in different commodities in different parts of the country. *The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contracts under consideration.* Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.
4. The Board are advised that *so far as kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtias.* A pacca arahtia is not, in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principals of distinction can be laid down between a kachha arahtia and a pacca arahtia:
  - a) A kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own

- goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.
- b) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
  - c) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.
  - d) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.
  - e) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.
  - f) The kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a pacca arahtia has a personal interest of his own when he enters into a transaction.
  - g) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.
5. The above distinction between a kachha arahtia and pacca arahtia may also be relevant for determining the applicability of section 44AB in cases of other types of agents. *In the case of agents whose position is similar to that of kachha arahtia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahtia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.*

**Circular :** No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986.

## JUDICIAL ANALYSIS

*EXPLAINED IN* - In *Jeyar Consultant & Investment (P.) Ltd. v. Assistant Commissioner* [1993] 46 ITD 71 (Mad.-Trib.), it was observed that it is *ex facie* clear from the CBDT Circular No. 452 of 17-3-1986 which came to be issued in relation to *kacha* and *pacca arhatias*, who are an integral part of the trading sector, that instructions issued by the Board as respects *kacha* and *pacca arhatias* could not be applied to the case of the assessee who has arranged finances for other for a fee. The assessee may choose to label the fee as brokerage or even as commission. But the fee—or to use a generic expression ‘receipt’—could not be regarded as turnover proper.

*RELIED ON IN* - The above circular was relied on in *ITO v. Shantilal Chuni Lal & Co.* [1993] 45 ITD 581 (Pune - Trib.), with the following observations :

“. . . Further, reference was made by assessee to pages 52 to 54 which contains Board’s Circular No. 452, dated 17-3-1986 which has been issued in connection with section 44AB of the Income-tax Act, 1961. Reliance was placed on para 4 of the said circular according to which the Board were advised that so far as *kachha arahatias* were concerned, the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The submission of the learned counsel for the assessee was that the case of the assessee is one of *kachha arahatia* and not a *pucca arahatia* and, therefore, only gross commission has to be considered for the purpose of section 44AB of the Income-tax Act, 1961. . . . The CIT (Appeals) has excluded the admat receipt as well as interest receipt from the purview of turnover for the purpose of section 44AB. Relying on the clarifications given by the Board in its Circular No. 452, dated 17-3-1986, he has categorised the assessee as *kachha arahatia* and he has charged expenses incurred on such business which resulted in gross profit rate of 1.09 per cent. Therefore, it is very much relevant to clinch the issue whether the assessee is a *kachha arahatia* or not. Going by the clarification issued by the Board in the aforesaid Circular No. 452, dated 17-3-1986 the case of the assessee fits in with the *kachha arahatia vis-a-vis* case of *pucca arahatia*. . . .” (pp. 585-586).

*REFERRED TO IN* - *Manish Textiles v. ACIT* [1991] 38 ITD 365 (Bom.)

## Annexure IV

Circular No.561, dated 22nd May, 1990 - Compulsory audit - Tax audit in case of companies have accounting year other than financial year.

1. The Board have received representations regarding difficulties faced in complying with the provisions of section 44AB of the Income-tax Act in case of companies which follow an accounting period other than financial year.
2. Section 3 of the Income-tax Act, *inter alia*, provides that with effect from 1st April, 1989, "previous year" for the purposes of that Act means financial year immediately preceding the assessment year. In spite of the introduction of a uniform previous year for purposes of income-tax, some companies may adopt an accounting period other than the financial year, say the calendar year, under the Companies Act for other purposes.
3. In such cases, a question has arisen as to whether, under section 44AB of the Income-tax Act, the tax auditor can audit and certify the accounts for the period for which accounts have been maintained under the Companies Act (*i.e.*, in this case the calendar year) or whether the tax auditor will have to certify the accounts for the relevant financial year which is the uniform accounting year for tax purposes.
4. The Board have considered the matter and are of opinion that *as the income of the previous year is chargeable to tax and, for the purpose of Income-tax Act, the previous year is the financial year, the tax auditor would have to carry out the audit under section 44AB in respect of the period covered by the previous year, i.e., the relevant financial year. The proviso to the aforesaid section 44AB, therefore covers only the cases where the accounts are audited under any other law in respect of the financial year. Where the accounting year is different from the financial year, the proviso to section 44AB will not apply. Consequently, the tax auditors would have to carry out the tax audit in respect of the period covered by the relevant financial year and submit his report in Form 3CB as required in rule 6G(1)(b) of the Income-tax Rules.*

## Annexure V

NOTIFICATION NO. 34/2008, DATED 13-3-2008 – E- payment of taxes made mandatory.

In exercise of the powers conferred by sub-section (1) of section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Fourth Amendment) Rules, 2008.  
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, after rule 124, the following rule shall be inserted, namely:-  
**“Electronic-payment of tax.**

**125.** (1) The following persons shall pay tax electronically on or after the 1st day of April, 2008:-

- (a) a company; and
- (b) a person (other than a company), to whom provisions of section 44AB are applicable.

(2) For the purposes of this rule :-

- (a) “pay tax electronically” shall mean, payment of tax by way of- (i) internet banking facility of the authority bank; or  
(ii) credit or debit cards;
- (b) the word “tax” shall have the meaning as assigned to it in clause (43) of section 2 of the Act and shall include interest and penalty”.

[F.No. 134/37/2007-TPL]

# Annexure VI

## ACCOUNTING STANDARDS NOTIFIED UNDER SECTION 145(2)

[No. 9949 [F. No. 132/7/95-TPL], dated 25-1-1996]

*In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following accounting standards to be followed by all assesseees following mercantile system of accounting, namely : –*

### A. Accounting Standard I relating to disclosure of accounting policies :

1. All significant accounting policies adopted in the preparation and presentation of financial statements shall be disclosed.
2. The disclosure of the significant accounting policies shall form part of the financial statements and the significant accounting policies shall normally be disclosed in one place.
3. Any change in an accounting policy which has a material effect in the previous year or in the years subsequent to the previous years shall be disclosed. The impact of, and the adjustments resulting from, such change, if material, shall be shown in the financial statements of the period in which such change is made to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the previous year but which is reasonably expected to have a material effect in any year subsequent to previous year, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted.
4. Accounting policies adopted by an assessee should be such so as to represent a true and fair view of the state of affairs of the business, profession or vocation in the financial statements prepared and presented on the basis of such accounting policies. For this purpose, the major considerations governing the selection and application of accounting policies are following, namely : –
  - (i) Prudence - Provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information;
  - (ii) Substance over form - The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form;
  - (iii) Materiality - Financial statements should disclose all material items, the knowledge of which might influence the decisions of the user of the financial statements.

5. If the fundamental accounting assumptions relating to going concern, consistency and accrual are followed in financial statements, specific disclosure in respect of such assumptions is not required. If a fundamental accounting assumption is not followed, such fact shall be disclosed.
  6. For the purposes of paragraphs (1) to (5), the expressions, -
    - (a) "Accounting policies" means the specific accounting principles and the methods of applying those principles adopted by the assessee in the preparation and presentation of financial statements;
    - (b) "Accrual" refers to the assumption that revenues and costs are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the period to which they relate;
    - (c) "Consistency" refers to the assumption that accounting policies are consistent from one period to another;
    - (d) "Financial Statements" means any statement to provide information about the financial position, performance and changes in the financial position of an assessee and includes balance sheet, profit and loss account and other statements and explanatory notes forming part thereof;
    - (e) "Going concern" refers to the assumption that the assessee has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future.
- B. Accounting Standard II relating to disclosure of prior period and extraordinary items and changes in accounting policies :
7. Prior period items shall be separately disclosed in the profit and loss account in the previous year together with their nature and amount in a manner so that their impact on profit or loss in the previous year can be perceived.
  8. Extraordinary items of the enterprise during the previous year shall be disclosed in the profit and loss account as part of taxable income. The nature and amount of each such item shall be separately disclosed in a manner so that their relative significance and effect on the operating results of the previous year can be perceived.
  9. A change in an accounting policy shall be made only if the adoption of a

different accounting policy is required by statute or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements by an assessee.

10. Any change in an accounting policy which has a material effect shall be disclosed. The impact of, and the adjustments resulting from such change, if material, shall be shown in the financial statements of the period in which such change is made to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the previous year but which is reasonably expected to have a material effect in years subsequent to the previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted.
11. A change in an accounting estimate that has a material effect in previous year shall be disclosed and quantified. Any change in an accounting estimate which is reasonably expected to have a material effect in year subsequent to previous year shall also be disclosed.
12. If a question arises as to whether a change is a change in accounting policy or a change in an accounting estimate, such a question shall be referred to the Board for decision.
13. For the purposes of paragraphs (7) to (12), the expressions, —
  - (a) “Accounting estimate” means an estimate made for the purpose of preparation of financial statements which is based on the circumstances existing at the time when the financial statements are prepared;
  - (b) “Accounting policies” means the specific accounting principles and the method of applying those principles adopted by the assessee in the preparation and presentation of financial statements;
  - (c) “Extraordinary items” means gains or losses which arise from events or transactions which are distinct from the ordinary activities of the business and which are both material and expected not to recur frequently or regularly. Extraordinary items include material adjustments necessitated by circumstances which, though related to years preceding to the previous years, are determined in the previous year :

**Provided** that income or expenses arising from the ordinary activities of the business or profession or vocation of an assessee, though abnormal in amount or infrequent in occurrence, shall not qualify as extraordinary item;
  - (d) “Financial Statements” means any statement to provide information about the financial position, performance and changes in the financial position of an assessee and includes balance sheet, profit and loss account and other statements and explanatory notes forming part thereof;

- (e) "Prior period items" means material charges or credits which arise in the previous year as a result of errors or omissions in the preparation of the financial statements of one or more previous years :

**Provided** that the charge or credit arising on the outcome of a contingency, which at the time of occurrence could not be estimated accurately shall not constitute the correction of an error but a change in estimate and such an item shall not be treated as a prior period item.

This notification shall come into force with effect from 1st day of April, 1996 and shall, accordingly, apply to assessment year 1997-98 and subsequent assessment years.

## Annexure VII

Circular : No. 221 [F. No. 208/25/76-IT(A-II)], dated 6-6-1977 - Whether provisions of the section are applicable to darshani hundi transactions

1. Reference is invited to Board's Circular No. 208 [F. No. 208/7/76-IT(A-II)], dated 15-11-1976 [printed at Sl. No. 475, p. 1550 post] in which the provisions of section 69D were explained.
2. A "hundi" in common commercial parlance denotes an indigenous form of bill of exchange, by and large in vernacular language, which is being used by the mercantile community in India. The hundis can be broadly classified as (i) darshani hundis (sight or demand hundis), and (ii) muddati hundis (usance hundis payable after a stipulated period of time mentioned therein). Darshani hundis are of different varieties, viz., (i) shahjog hundis, (ii) dhanijog hundis, (iii) namjog hundis, (iv) dekharanarjog hundis, (v) farmanijog hundis, and (vi) jokhmi hundis.
3. It has been represented to the Board that a darshani hundi created solely for the purpose of remittances of funds or financing inland trade or for operating accounts through indigenous banking channels does not involve borrowal of amounts and as such does not fall within the scope of section 69D. There are more than two parties in a darshani hundi. Normally four parties are involved in the case of a darshani hundi, viz, (i) the rakhya (the holder or purchaser), (ii) the drawer (an indigenous banker or a vyapari), (iii) the drawee (normally an indigenous banker but can also be a vyapari), and (iv) the payee. If the payee is also the rakhya, the parties will be three. Darshani hundi is payable at sight, i.e, immediately on presentation. A muddati (usance) hundi generally involving two parties, is payable after a stipulated period of time mentioned in the hundi.
4. The matter has been considered by the Board. We have been advised that *the provisions of section 69D are not applicable to darshani hundi transactions mentioned hereinafter :*
  - i. (a) A, who is the rakhya obtains on payment from B, the drawer, a hundi drawn on C, the drawee, in favour of D, the payee.

- (b) A, the rakhya having a running account or an overdraft account with B, obtains from him a hundi drawn on C, the drawee, in favour of D, the payee.
  - ii.
    - (a) A, a purchaser of goods from B, draws a hundi on C, the drawee, in favour of B or a third party D for the purpose of payment of the price of goods purchased or for settling the account.
    - (b) For such purposes B can also draw a hundi on A either in his own favour or in favour of a third party D.
  - iii. A has an account with an indigenous banker C, who has granted a credit facility to A and handed over a hundi book to him. A draws amounts through such hundis payable either to self, or bearer or third party. Such an arrangement arises out of the credit facility already granted and, therefore, no debtor creditor relationship has arisen between the parties because of the drawal of a hundi.
5. Normally, borrowal on hundi arises when a person gets money by execution of a hundi but in the instances cited above the hundi is given in the nature of a security and there is no borrowal on such hundis. Thus in cases of transactions referred to at (1), (2) and (3) of para 4, section 69D is not applicable. The settlement of account between any of the parties to such a darshani hundi can, thus, be otherwise than through an account payee cheque within the meaning of section 69D.
  6. This circular covers darshani hundi transactions of the types referred to at (1), (2) and (3) of para 4 above. However, it could not be said that there could be no borrowal on darshani hundi. The transactions not of the type referred to above, on darshani hundis have to be examined with reference to the facts and circumstances of such cases so as to determine whether or not there is a borrowal on such hundis.

## Annexure VIII

Circular No.208 dated 15th November, 1976 - Whether payment on or after April 1, 1977 of amount borrowed on hundi is to comply with the section regardless of whether hundi was executed prior to the said date or on or after that date

1. The Taxation Laws (Amendment) Act, 1975 has added a new section 69D with effect from April 1, 1977, which provides that if any amount is borrowed from any person on a hundi or any amount due on it is repaid to any person, otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be assessed as the income of the taxpayer borrowing or repaying the said amount, for the previous year in which the amount is borrowed or repaid. This will also apply to the amount of interest paid on the amount borrowed on hundis. This provision is applicable only in respect of hundis and does not cover other types of loans, such as repayment of loan by employees to employers, repayment of loan to banks, co-operative societies, etc.
2. The term "hundi" has not been defined in the 1961 Act. In common commercial parlance, it denotes an indigenous instrument in vernacular language which can be used by the holder thereof to collect money due thereon without using the medium of currency. It may also be regarded as an indigenous form of bill of exchange expressed in vernacular language which has been in use in the mercantile community in India for the purpose of collecting dues. There are numerous varieties of hundis, for example, darshani hundi, muddati hundi, shahjog hundi, jokhmi hundi, namjog hundi, dhanijog hundi, jwabi hundi and zickri chit. The characteristics of hundis differ according to the varieties of the same. The following characteristics are found in most of the hundis :
  - a. A hundi is payable to a specified person or order or negotiable without endorsement by the payee.
  - b. A holder is entitled to sue on a hundi without an endorsement in his favour.
  - c. A hundi accepted by the drawee could be negotiated without endorsement.
  - d. If a hundi is lost, the owner could claim a duplicate or a triplicate from the drawer and present it to the drawee for payment. Interest can be charged where usage is established.

3. This provision will come into force with effect from April 1, 1977. Accordingly, *any payment on or after April 1, 1977 in respect of an amount borrowed on a hundi will have to comply with the requirements of this provision* regardless of whether the hundi was executed prior to the said date or on or after that date.

## Annexure IX

Circular No. 4/2007, dated 15<sup>th</sup> June, 2007 - Distinction between shares held as stock-in-trade and shares held as investment - tests for such a distinction

1. The Income Tax Act, 1961 makes a distinction between a "capital asset" and a "trading asset".
2. Capital asset is defined in Section 2(14) of the Act. Long-term capital assets and gains are dealt with under Section 2(29A) and Section 2(29B). Short-term capital assets and gains are dealt with under Section 2(42A) and Section 2(42B).
3. Trading asset is dealt with under Section 28 of the Act.
4. The Central Board of Direct Taxes (CBDT) through Instruction No.1827 dated August 31, 1989 had brought to the notice of the assessing officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, it is proposed to update the above instructions for the information of assessees as well as for guidance of the assessing officers.
5. In the case of Commissioner of Income Tax (Central), Calcutta Vs Associated Industrial Development Company (P) Ltd (82 ITR 586), the Supreme Court observed that:
 

"Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment."
6. In the case of Commissioner of Income Tax, Bombay Vs H. Holck Larsen (160 ITR 67), the Supreme Court observed :

“The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact.”

7. The principles laid down by the Supreme Court in the above two cases afford adequate guidance to the assessing officers.
8. The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-
  - “(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;
  - (ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;
  - (iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt”.
9. Dealing with the above three principles, the AAR has observed in the case of Fidelity group as under:-

“We shall revert to the aforementioned principles. The first principle requires us to ascertain whether the purchase of shares by a FII in exercise of the power in the memorandum of association/trust deed was as stock-in-trade as the mere existence of the power to purchase and sell shares will not by itself be decisive of the nature of transaction. We have to verify as to how the shares were valued/held in the books of account i.e. whether they were valued as stock-in-trade at the end of the financial year for the purpose of arriving at business income or held as investment in capital assets. The second principle furnishes a guide for determining the nature of transaction by verifying whether there are substantial transactions, their magnitude, etc., maintenance of books of account and finding the ratio between purchases and sales. It will not be out of place to mention that regulation 18 of the SEBI Regulations enjoins upon every FII to keep and maintain books of account containing true and fair accounts relating to remittance of initial corpus of buying and selling and realizing capital gains on investments and accounts of remittance to India for investment in India and realizing capital gains on investment from such remittances. The third principle suggests that ordinarily purchases and sales of shares with the motive of realizing profit would lead to inference of trade/

adventure in the nature of trade; where the object of the investment in shares of companies is to derive income by way of dividends etc., the transactions of purchases and sales of shares would yield capital gains and not business profits.”

10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.
11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

**These instructions shall supplement the earlier Instruction no. 1827 dated August 31, 1989.**

**(F.No.149/287/2005-TPL)**

# Annexure X

Circular No| 0/2017

**F.No 133/23/2016-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)**

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**Date 23<sup>rd</sup> March, 2017**

**Subject: Clarifications on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961.**

Sub-section (1) of section 145 of the Income-tax Act, 1961('the Act') provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of section 145 provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessees or for any class of income. Accordingly, the Central Government notified 10 ICDS vide Notification No.S.O.892(E) dated 31st March, 2015 with effect from assessment year 2016-17.

After notification of ICDS, it has been brought to the notice of the Central Board of Direct Taxes ('the Board') by the stakeholders that certain provisions of ICDS may require amendment/clarification for proper implementation. The matter was referred to an expert committee. The Committee after duly consulting the stakeholders in this regard has recommended a two-fold approach for the smooth implementation of ICDS i.e amendment to the provisions of ICDS in respect of certain issues and issuance of clarifications by way of FAQs for the rest of issues. Accordingly, vide Notification no 87. dated 29th September,2016 Central Government notified amended ICDS with effect from the assessment year 2017-18.

Further, the issues which require further clarification has been considered by Board and following clarifications are issued:

**Question 1: Preamble of ICDS-I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of accounts. However, Para 1 of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS-I and maintenance of books of accounts?**

Answer: As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example,

companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads “Profits and gains of business or profession” or “Income from other sources”.

**Question 2: Certain ICDS provisions are inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?**

The ICDS have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head “Profits and gains of business or profession” or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

**Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?**

Answer: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

**Question 4: If there is conflict between ICDS and other specific provisions of the Income-tax rules, 1962 ('the Rules') governing taxation of income like rules 9A, 9B etc. of the Rules, which provisions shall prevail?**

Answer: ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

**Question 5: ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7 December 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February 2015 a new set of standards called 'Indian Accounting Standards' (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?**

Answer: ICDS shall apply for computation of taxable income under the head “ Profit and gains of business or profession” or “Income from other sources” under the Income Tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

**Question 6: Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?**

Answer: MAT under section 115JB of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

**Question 7: Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector, etc.?**

Answer: The general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule I of the Act contains specific provisions for Insurance business.

**Question 8: Para 4(ii) of ICDS-I provides that Market to Market ( MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?**

Answer: Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply *mutatis mutandis* to MTM gains or an expected profit.

**Question 9: ICDS-I provides that an accounting policy shall not be changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute 'reasonable cause'?**

Answer: Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

**Question 10: Which ICDS would govern derivative instruments?**

Answer: ICDS –VI (subject to para 3 of ICDS-VIII) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-I would apply.

**Question 11: Whether the recognition of retention money, receipt of which is contingent on the satisfaction of certain performance criterion is to be recognized as revenue on billing?**

Answer: Retention money, being part of overall contract revenue, shall be recognised as revenue subject to reasonable certainty of its ultimate collection condition contained in para 9 of ICDS-III on Construction contracts.

**Question 12: Since there is no specific scope exclusion for real estate developers and Build -Operate- Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.**

Answer: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

**Question 13: The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?**

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non recovery in either cases can be claimed as deduction in view of amendment to S.36 (1) (vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

**Question 14: Whether ICDS is applicable to revenues which are liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.**

Answer: Yes, the provisions of ICDS shall also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

**Question 15: Para 8 of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?**

Answer: As clarified in Para 8 of ICDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

**Question 16: What is the taxability of opening balance as on 1<sup>st</sup> day of April 2016 of Foreign Currency Translation Reserve (FCTR) relating to non-integral foreign operation, if any, recognised as per Accounting Standards (AS) 11?**

Answer: FCTR balance as on 1 April 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the previous year relevant for assessment year 2017-18 to the extent not recognised in the income computation in the past.

**Question 17: For subsidy received prior to 1<sup>st</sup> day of April 2016 but not recognised in the books pending satisfaction of related conditions and achieving reasonable certainty of receipt, how shall the same be recognised under ICDS on or after 1<sup>st</sup> day of April 2016?**

Answer: Para 4 of ICDS-VII read with Para 5 to Para 9 of ICDS-VII provides for timing of recognition of government grant. The transitional provision in Para 13 of ICDS-VII provides that a government grant which meets the recognition criteria on or after 1st day of April 2016 shall be recognised in accordance with ICDS-VII. All government grants actually received prior to 1st day of April 2016 shall be deemed to have been recognised on its receipt in accordance with Para 4(2) of ICDS-VII and accordingly will be outside the transitional provision and therefore the government grants received on or after 1st day of April 2016 and for which recognition criteria provided in Para 5 to Para 9 of ICDS-VII is also satisfied thereafter, the same shall be recognised as per the provisions of ICDS-VII. The grants received prior to 1st day of April 2016 shall continue to be recognised as per the law prevailing prior to that date.

For example, if out of total subsidy entitlement of 10 Crore an amount of 6 Crore is recognised in the books of accounts till 31<sup>st</sup> day of March 2016 and recognition of balance 4 Crore is deferred pending satisfaction of related conditions and/or achieving reasonable certainty of receipt. The balance amount of 4 Crore will be taxed in the year in which related conditions are met and reasonable certainty is achieved. If these conditions are met over two years, the amount of 4 Crore shall be taxed over the period of two years. The amount of 6 Crore for which recognition criteria were met prior to 1st day of April 2016 shall not be taxable post 1st day of April 2016.

But if the subsidy is already received prior to 1st day of April 2016, Para 13 of ICDS-VII shall not apply even if some of the related conditions are met on or after 1 April 2016. This is in view of Para 4(2) of ICDS-VII which provides that Government grant shall not be postponed beyond the date of actual receipt. Such grants shall continue to be governed by the provisions of law applicable prior to 1st day of April 2016.

**Question 18: If the taxpayer sells a security on the 30<sup>th</sup> day of April 2017. The interest payment dates are December and June. The actual date of receipt of interest is on the 30<sup>th</sup> day of June 2017 but the interest on accrual basis has been accounted as income on the 31<sup>st</sup> day of March .2017. Whether the taxpayer shall be permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?**

Answer: Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

**Question 19: Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?**

Answer: For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below –

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	<b>Total</b>	<b>560</b>	<b>535</b>	<b>505</b>	<b>535</b>
E	Debt Security	150	160	150	
F	Debt Security	105	90	90	
G	Debt Security	125	135	125	
H	Debt Security	220	230	220	
	<b>Total</b>	<b>600</b>	<b>615</b>	<b>585</b>	<b>600</b>
<b>Securities Total</b>		<b>1160</b>	<b>1150</b>	<b>1090</b>	<b>1135</b>

**Question 20: There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 43B, 40(a)(i), 40(a)(ia), 40A(2)(b), etc of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?**

Answer: Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

**Question 21: Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?**

Answer: The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

**Question 22: How to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?**

Answer: The capitalization of general borrowing cost under ICDS-IX shall be done on asset-by-asset basis.

**Question 23: What is the impact of Para 20 of ICDS X containing transitional provisions?**

Answer: Para 20 of ICDS X provides that all the provisions or assets and related income shall be recognised for the previous year commencing on or after 1<sup>st</sup> day of April 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31<sup>st</sup> day of March, 2016.

The intent of transitional provision is that there is neither 'double taxation' of income due to application of ICDS nor there should be escape of any income due to application of ICDS from a particular date. This is explained as under -

Provision required as per ICDS on 31 March 2017 for items brought forward from 31 <sup>st</sup> day of March 2016 ... (A)	INR 3 Crores
Provisions as per ICDS for FY 2016-17 ... (B)	INR 5 Crores
Total gross provision ... (C) = (A) + (B)	INR 8 Crores
Less: Provision already recognised for computation of taxable income in FY 2016-17 or earlier ... (D)	INR 2 Crores
Net provisions as per ICDS in FY 2016-17 to be recognised as per transition provision ... (E) = (C) - (D)	INR 6 Crores

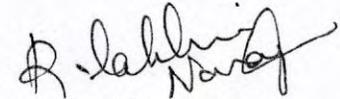
**Question 24: Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?**

Answer: It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to be governed by specific provisions of the Act and are not dealt with by ICDS-X.

**Question 25: ICDS-I requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?**

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form

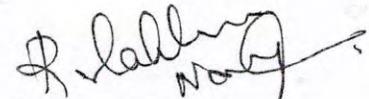
3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.



Lakshmi Narayanan  
Under Secretary TPL  
CBDT

**Copy To:**

1. The Chairman, Members and officers of the CBDT of the rank of Under Secretary and above.
2. All principal commissioners of Income-tax & all Director General of Income-tax with the request to bring to notice of all officers.
3. The Pr. Director General of NADT, Nagpur
4. The Pr. Director General of Systems, ARA, Jhandelwan Extension, ew Delhi
5. The ADG (PR ,PP&OL). Mayur Shawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per mailing list.
6. ADG (Systems) for uploading on ITO website.
7. The Guard File.



Lakshmi Narayanan  
Under Secretary TPL  
CBDT



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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नई दिल्ली, बुधवार, नवम्बर 06, 2019/कार्तिक 15, 1941

No. 648]

NEW DELHI, WEDNESDAY, NOVEMBER 06, 2019/KARTIKA 15, 1941

वित्त मंत्रालयमंत्रालय

(राजस्व विभाग)जस्व विभाग

(केंद्रीय प्रत्यक्ष कर बोर्ड)केंद्रीय प्रत्यक्ष कर बोर्ड

अधिसूचनाअधिसूचना

नई दिल्ली, 6 नवम्बर, 2019

**सा.का.नि. 825/2019**—केंद्रीय प्रत्यक्ष कर बोर्ड, आयकर अधिनियम, 1961 (1961 का 43) की धारा 295 के साथ पठित धारा 139क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आयकर नियम, 1962 का और संशोधन करने के लिए निम्नलिखित नियम बनाता है, अर्थात् :-

**संक्षिप्त नाम और प्रारंभिक तिथि**—संक्षिप्त नाम आयकर (वारहवाँ संशोधन) नियम, 2019 है।

(2) ये 1 सितंबर, 2019 को प्रवृत्त हुए समझे जाएंगे।

2. आयकर नियम, 1962 के परिशिष्ट II में, --

- (1) प्ररुप सं. 3कग, 3कघ, 8, 10गगख, 10गगखक, 10 गगखख, 10गगखखक, 10गगखग, 27क, 27ख और 34च में शब्दों और अक्षरों "स्थायी खाता संख्यांक" जहां कहीं भी वे आते हैं, के स्थान पर "स्थायी खाता संख्यांक या आधार संख्यांक" शब्द रखे जाएंगे;
- (2) प्ररुप सं. 3गक, 3गख, 3गड.क, 3गड.घक, 3गड.च, 3गड.चक, 3गड.चख, 3गचक, 12खख, 15गग, 26कध, 26थकक, 31, 33, 34ग, 34घक, 34ड. और में शब्दों "स्थायी खाता संख्यांक" जहां कहीं भी वे आते हैं, के स्थान पर "स्थायी खाता संख्यांक या आधार संख्यांक" शब्द रखे जाएंगे;
- (3) प्ररुप सं. 3गघ, 3गछ, 26थख, 26थग, 30क, 45घ और 49ख में शब्दों, कोष्ठकों और अक्षरों "स्थायी खाता संख्यांक (पैन)" जहां कहीं भी वे आते हैं, के स्थान पर "स्थायी खाता संख्यांक या आधार संख्यांक" शब्द रखे जाएंगे;
- (4) प्ररुप सं. 3गड.छ, 3गड.ज, 3गड.झ, 3गज, 10गगख, 10गगखक, 10गगखख, 10गगखघ, 10चक, 12खक, 15गक 15गग, 15छ, 15ज, 16, 16क, 1





- (क) मद 8 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (ख) मद 9 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (29) प्ररूप सं. 49ग में, -
- (क) मद 4 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (ख) मद 18 और मद 21 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (30) प्ररूप सं. 49घ में, --
- (क) शब्द “स्थायी खाता संख्यांक” के स्थान पर दोनों स्थानों पर जहां वे आते हैं “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (ख) मद 7 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (31) प्ररूप सं. 64ड. के मद 6 और मद 9 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (32) प्ररूप 67 में,
- (क) मद 2 में, शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;
- (ख) ‘सत्यापन’ शीर्ष के अधीन शब्द “स्थायी खाता संख्यांक” के स्थान पर “स्थायी खाता संख्यांक या आधार संख्यांक” शब्द रखे जाएंगे;

[अधिसूचना सं. 95/2019/फा.सं.370142/15/2019-टीपीएल]

अंकुर गोयल, अवर सचिव

**स्पष्टीकारक ज्ञापक** – यह प्रमाणित किया जाता है कि इन संशोधन नियमों को भूतलक्षी प्रभाव देने से किसी भी व्यक्ति पर प्रतिकूल प्रभाव नहीं पड़ रहा है।

**टिप्पण** : मूल नियम भारत के राजपत्र, असाधारण, भाग 2, खंड 3 उपखंड (i) में अधिसूचना सं. का.आ. 969(अ) तारीख 26 मार्च, 1962 द्वारा प्रकाशित किए गए थे और अधिसूचना सं. सा.का.नि. 701(अ), तारीख 30<sup>th</sup> सितम्बर, 2019 द्वारा अंतिम संशोधन किए गए थे।

## MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

### NOTIFICATION

New Delhi, the 6th November, 2019

**G.S.R .825(E).**— In exercise of the powers conferred by section 139A, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

**1. Short title and commencement.** – (1) These rules may be called the Income-tax (12<sup>th</sup> Amendment) Rules, 2019.

(2) They shall be deemed to have come into force from the 1<sup>st</sup> day of September, 2019.

**2.** In the Income-tax Rules, 1962, in Appendix-II,-

(1) in Form Nos. 3AC, 3AD, 8, 10CCB, 10CCBA, 10CCBB, 10CCBBA, 10CCBC, 10CCBD, 12B, 13, 27A, 27B and 34F, for the words and letters “Permanent Account No.”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(2) in Form Nos. 3CA, 3CB, 3CED, 3CEDA, 3CEF, 3CEFA, 3CEFB, 3CFA, 3CI, 5B, 10FB, 10FC, 12BB, 15CC, 26AS, 26QAA, 31, 33, 34C, 34DA, 34E and 52A, for the words “Permanent Account Number”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(3) in Form Nos. 3CD, 3CG, 26QB, 26QC, 30A, 45D and 49B, for the words, brackets and letters “Permanent Account Number (PAN)”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(4) in Form Nos. 3CEG, 3CEH, 3CEI, 3CH, 10CCB, 10CCBA, 10CCBB, 10CCBBA, 10CCBC, 10CCBD, 10FA, 12BA, 15CA, 15CC, 15G, 15H, 16,16A,16B,16C, 26A, 26AS, 27BA, 27C, 27D, 29C, 34B, 34BA, 35, 36, 36A, 64, 64A, 64D and 68, for the letters “PAN”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(5) in Form Nos. 10CCD, 10CCE and 56FF, for the letters “PAN No.”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(6) in Form Nos. 26Q, 27 EQ and 27Q,—

(a) for the words, brackets and letters “Permanent Account Number (PAN)”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) for the letters “PAN”, wherever they occur, the words “Permanent Account Number or Aadhaar Number”, shall be substituted;

(7) in Form Nos. 10BA, 56F, 56G and 56H, for the words “permanent account number”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(8) in Form No. 58B, for the words “permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(9) in Form Nos. 64B and 64C, in item 3, for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(10) in Form No. 3CE,—

(a) for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the Annexure, in PART A, in item 3, for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(11) in Form Nos. 3CEA and 3CEAA, for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(12) in Form No. 3CEB,—

(a) for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the Annexure, in PART A, in item 3, for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(13) in Form No. 3CEC, in item 1, in sub-item (b), for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(14) in Form No. 3CEJ,—

(a) for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the ‘Annexure to Form No. 3CEJ’, in item 3, for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(15) in Form No. 3CF-I, in item 12, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(16) in Form Nos. 3CF-II and 3CF-III, in item 11, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(17) in Form No. 3CJ, in item 5, for the words, brackets and letters “Permanent Account Number (PAN)”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(18) in Form No. 10CCF,—

(a) for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the Annexure A, in item 3, for the words “Permanent Account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(19) in Form No. 10DA,—

(a) for the words “permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the Annexure, in item 3, for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(20) in Form No. 10E, for the words “Permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(21) in Form No. 10F,—

(a) for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) for the words, brackets and letters “Permanent Account Number (PAN)”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(22) in Form No. 13,—

(a) in item 2, in sub-item (iii), for the words and letters “Permanent Account No.”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in the Annexure I and Annexure III, for the words, brackets and letters “Permanent account number ( PAN)”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(23) in Form No. 24Q,—

(a) for the words, brackets and letters “ Permanent Account Number (PAN)”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) for the letters “PAN”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(24) in Form No. 26QA,—

(a) in item 1, for the words, brackets and letters “Permanent Account No. (PAN)”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in item 3, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(25) in Form No. 29C,—

(a) in item 1, for the letters “PAN”, the words “ Permanent Account Number or Aadhaar Number” shall be substituted;

(b) in Annexure A, in item 3, for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(26) in Form No. 30C, in item 6, —

(a) for the letters “PAN”, the words “ Permanent Account Number or Aadhaar Number” shall be substituted;

(b) after figures and letter “139A”, the words “ or Aadhaar Number” shall be inserted;

(27) in Form No. 34D, in item 4, for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

(28) in Form No. 34EA,—

- (a) in item 8, for the words “Permanent Account Number” , the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (b) in item 9, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (29) in Form No. 49C,—
- (a) in item 4, for the words “Permanent Account Number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (b) in item 18 and item 21, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (30) in Form No. 49D,—
- (a) for the words “Permanent Account Number”, occurring at both the places, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (b) in item 7, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (31) in Form No. 64E, in item 6 and item 9, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (32) in Form No. 67,—
- (a) in item 2, for the letters “PAN”, the words “Permanent Account Number or Aadhaar Number” shall be substituted;
- (b) under the heading ‘Verification’, for the words “permanent account number”, the words “Permanent Account Number or Aadhaar Number” shall be substituted.

[Notification No. 95/2019/F.No. 370142/15/2019-TPL]

ANKUR GOYAL, Under Secy.

**Explanatory Memorandum:** It is hereby certified that no person is being adversely affected by giving retrospective effect to these amendment rules.

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* notification number S.O. 969(E), dated the 26<sup>th</sup> March, 1962 and last amended *vide* notification number G.S.R. No. 701(E), dated the 30<sup>th</sup> September, 2019.

Government of India  
Department of Revenue  
Ministry of Finance  
Central Board of Direct Taxes

New Delhi, 26th November, 2020

PRESS RELEASE

**CBDT to validate Unique Document Identification Number (UDIN) generated from ICAI portal at the time of upload of Tax Audit Reports**

The Institute of Chartered Accountants of India, in its gazette notification dated 2<sup>nd</sup> August, 2019, had made generation of UDIN from ICAI website [www.icai.org](http://www.icai.org) mandatory for every kind of certificate/tax audit report and other attests made by their members as required by various regulators. This was introduced to curb fake certifications by non-CAs misrepresenting themselves as Chartered Accountants.

In line with the ongoing initiatives of the Income Tax Department for integrating with other Government agencies and bodies, Income-tax e-filing portal has completed its integration with the Institute of Chartered Accountants of India (ICAI) portal for validation of Unique Document Identification Number (UDIN) generated from ICAI portal by the Chartered Accountants for documents certified/attested by them.

It may be noted that, in consonance with the above requirement, Income-tax e-filing portal had already factored mandatory quoting of UDIN with effect from 27<sup>th</sup> April, 2020 for documents certified/attested in compliance with the Income-tax Act, 1961 by a Chartered Accountant. With this system level integration, UDIN provided for the audit reports/certificates submitted by the Chartered Accountants in the e-filing portal shall be validated online with the ICAI. This will help in weeding out fake or incorrect Tax Audit Reports not duly authenticated with the ICAI.

If for any reason, a Chartered Accountant was not able to generate UDIN before submission of audit report/certificate, the Income-tax e-filing portal permits such submission, subject to the Chartered Accountant updating the UDIN generated for the form within 15 calendar days from the date of form submission in the Income-tax e-filing portal. If the UDIN for the audit report/certificate is not updated within the 15 days provided for the same, such audit report/certificate uploaded shall be treated as invalid submission.

(Surabhi Ahluwalia)  
Commissioner of Income Tax  
(Media & Technical Policy)  
Official Spokesperson, CBDT

CBDT has changed of **business codes for income tax return forms** from A.Y. 2019-20. Before filing of Income tax return we must (ITR) ensure correct business sector along with correct business code has been selected. **List of Business codes for ITR forms** for A.Y. 2019-20 mentioned below:-

Sector	Sub-Sector	Code
AGRICULTURE, ANIMAL HUSBANDRY & FORESTRY	Growing and manufacturing of tea	1001
	Growing and manufacturing of coffee	1002
	Growing and manufacturing of rubber	1003
	Market gardening and horticulture specialties	1004
	Raising of silk worms and production of silk	1005
	Raising of bees and production of honey	1006
	Raising of poultry and production of eggs	1007
	Rearing of sheep and production of wool	1008
	Rearing of animals and production of animal products	1009
	Agricultural and animal husbandry services	1010
	Soil conservation, soil testing and soil desalination services	1011
	Hunting, trapping and game propagation services	1012
	Growing of timber, plantation, operation of tree nurseries and conserving of forest	1013
	Gathering of tendu leaves	1014
	Gathering of other wild growing materials	1015
	Forestry service activities, timber cruising, afforestation and reforestation	1016
Logging service activities, transport of logs within the forest	1017	
Other agriculture, animal husbandry or forestry activity n.e.c	1018	

FISH FARMING	Fishing on commercial basis in inland waters	2001
	Fishing on commercial basis in ocean and coastal areas	2002
	Fish farming	2003
	Gathering of marine materials such as natural pearls, sponges, coral etc.	2004
	Services related to marine and fresh water fisheries, fish hatcheries and fish farms	2005
	Other Fish farming activity n.e.c	2006
MINING AND QUARRYING	Mining and agglomeration of hard coal	3001
	Mining and agglomeration of lignite	3002
	Extraction and agglomeration of peat	3003
	Extraction of crude petroleum and natural gas	3004
	Service activities incidental to oil and gas extraction excluding surveying	3005
	Mining of uranium and thorium ores	3006
	Mining of iron ores	3007
	Mining of non-ferrous metal ores, except uranium and thorium ores	3008
	Mining of gemstones	3009
	Mining of chemical and fertilizer minerals	3010
	Mining of quarrying of abrasive materials	3011
	Mining of mica, graphite and asbestos	3012
	Quarrying of stones (marble/granite/dolomite), sand and clay	3013
	Other mining and quarrying	3014
	Mining and production of salt	3015
Other mining and quarrying n.e.c	3016	

MANUFACTURING	Production, processing and preservation of meat and meat products	4001
	Production, processing and preservation of fish and fish products	4002
	Manufacture of vegetable oil, animal oil and fats	4003
	Processing of fruits, vegetables and edible nuts	4004
	Manufacture of dairy products	4005
	Manufacture of sugar	4006
	Manufacture of cocoa, chocolates and sugar confectionery	4007
	Flour milling	4008
	Rice milling	4009
	Dal milling	4010
	Manufacture of other grain mill products	4011
	Manufacture of bakery products	4012
	Manufacture of starch products	4013
	Manufacture of animal feeds	4014
	Manufacture of other food products	4015
	Manufacturing of wines	4016
	Manufacture of beer	4017
	Manufacture of malt liquors	4018
	Distilling and blending of spirits, production of ethyl alcohol	4019
	Manufacture of mineral water	4020
	Manufacture of soft drinks	4021
	Manufacture of other non-alcoholic beverages	4022
	Manufacture of tobacco products	4023
	Manufacture of textiles (other than by handloom)	4024

Manufacture of textiles using handlooms (khadi)	4025
Manufacture of carpet, rugs, blankets, shawls etc. (other than by hand)	4026
Manufacture of carpet, rugs, blankets, shawls etc. by hand	4027
Manufacture of wearing apparel	4028
Tanning and dressing of leather	4029
Manufacture of luggage, handbags and the like saddler and harness	4030
Manufacture of footwear	4031
Manufacture of wood and wood products, cork, straw and plaiting material	4032
Manufacture of paper and paper products	4033
Publishing, printing and reproduction of recorded media	4034
Manufacture of coke oven products	4035
Manufacture of refined petroleum products	4036
Processing of nuclear fuel	4037
Manufacture of fertilizers and nitrogen compounds	4038
Manufacture of plastics in primary forms and of synthetic rubber	4039
Manufacture of paints, varnishes and similar coatings	4040
Manufacture of pharmaceuticals, medicinal chemicals and botanical products	4041
Manufacture of soap and detergents	4042
Manufacture of other chemical products	4043
Manufacture of man-made fibers	4044
Manufacture of rubber products	4045
Manufacture of plastic products	4046

Manufacture of glass and glass products	4047
Manufacture of cement, lime and plaster	4048
Manufacture of articles of concrete, cement and plaster	4049
Manufacture of Bricks	4050
Manufacture of other clay and ceramic products	4051
Manufacture of other non-metallic mineral products	4052
Manufacture of pig iron, sponge iron, Direct Reduced Iron etc.	4053
Manufacture of Ferro alloys	4054
Manufacture of Ingots, billets, blooms and slabs etc.	4055
Manufacture of steel products	4056
Manufacture of basic precious and non-ferrous metals	4057
Manufacture of non-metallic mineral products	4058
Casting of metals	4059
Manufacture of fabricated metal products	4060
Manufacture of engines and turbines	4061
Manufacture of pumps and compressors	4062
Manufacture of bearings and gears	4063
Manufacture of ovens and furnaces	4064
Manufacture of lifting and handling equipment	4065
Manufacture of other general purpose machinery	4066
Manufacture of agricultural and forestry machinery	4067
Manufacture of Machine Tools	4068
Manufacture of machinery for metallurgy	4069

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Manufacture of machinery for mining, quarrying and constructions	4070
Manufacture of machinery for processing of food and beverages	4071
Manufacture of machinery for leather and textile	4072
Manufacture of weapons and ammunition	4073
Manufacture of other special purpose machinery	4074
Manufacture of domestic appliances	4075
Manufacture of office, accounting and computing machinery	4076
Manufacture of electrical machinery and apparatus	4077
Manufacture of Radio, Television, communication equipment and apparatus	4078
Manufacture of medical and surgical equipment	4079
Manufacture of industrial process control equipment	4080
Manufacture of instruments and appliances for measurements and navigation	4081
Manufacture of optical instruments	4082
Manufacture of watches and clocks	4083
Manufacture of motor vehicles	4084
Manufacture of body of motor vehicles	4085
Manufacture of parts & accessories of motor vehicles & engines	4086
Building & repair of ships and boats	4087
Manufacture of railway locomotive and rolling stocks	4088
Manufacture of aircraft and spacecraft	4089
Manufacture of bicycles	4090

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	Manufacture of other transport equipment	4091
	Manufacture of furniture	4092
	Manufacture of jewellery	4093
	Manufacture of sports goods	4094
	Manufacture of musical instruments	4095
	Manufacture of games and toys	4096
	Other manufacturing n.e.c.	4097
	Recycling of metal waste and scrap	4098
	Recycling of non- metal waste and scrap	4099
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ELECTRICITY, GAS AND WATER	Production, collection and distribution of electricity	5001
	Manufacture and distribution of gas	5002
	Collection, purification and distribution of water	5003
	Other essential commodity service n.e.c	5004
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CONSTRUCTION	Site preparation works	6001
	Building of complete constructions or parts- civil contractors	6002
	Building installation	6003
	Building completion	6004
	Construction and maintenance of roads, rails, bridges, tunnels, ports, harbour, runways etc.	6005
	Construction and maintenance of power plants	6006
	Construction and maintenance of industrial plants	6007
	Construction and maintenance of power transmission and telecommunication lines	6008
	Construction of water ways and water reservoirs	6009

	Other construction activity n.e.c.	6010
REAL ESTATE AND RENTING SERVICES	Purchase, sale and letting of leased buildings (residential and non-residential)	7001
	Operating of real estate of self-owned buildings (residential and non-residential)	7002
	Developing and sub-dividing real estate into lots	7003
	Real estate activities on a fee or contract basis	7004
	Other real estate/renting services n.e.c	7005
RENTING OF MACHINERY	Renting of land transport equipment	8001
	Renting of water transport equipment	8002
	Renting of air transport equipment	8003
	Renting of agricultural machinery and equipment	8004
	Renting of construction and civil engineering machinery	8005
	Renting of office machinery and equipment	8006
	Renting of other machinery and equipment n.e.c.	8007
	Renting of personal and household goods n.e.c.	8008
	Renting of other machinery n.e.c.	8009
WHOLESALE AND RETAIL TRADE	Wholesale and retail sale of motor vehicles	9001
	Repair and maintenance of motor vehicles	9002
	Sale of motor parts and accessories- wholesale and retail	9003
	Retail sale of automotive fuel	9004
	General commission agents, commodity brokers and auctioneers	9005
	Wholesale of agricultural raw material	9006

	Wholesale of food & beverages and tobacco	9007
	Wholesale of household goods	9008
	Wholesale of metals and metal ores	9009
	Wholesale of household goods	9010
	Wholesale of construction material	9011
	Wholesale of hardware and sanitary fittings	9012
	Wholesale of cotton and jute	9013
	Wholesale of raw wool and raw silk	9014
	Wholesale of other textile fibres	9015
	Wholesale of industrial chemicals	9016
	Wholesale of fertilizers and pesticides	9017
	Wholesale of electronic parts & equipment	9018
	Wholesale of other machinery, equipment and supplies	9019
	Wholesale of waste, scrap & materials for re-cycling	9020
	Retail sale of food, beverages and tobacco in specialized stores	9021
	Retail sale of other goods in specialized stores	9022
	Retail sale in non-specialized stores	9023
	Retail sale of textiles, apparel, footwear, leather goods	9024
	Retail sale of other household appliances	9025
	Retail sale of hardware, paint and glass	9026
	Wholesale of other products n.e.c	9027
	Retail sale of other products n.e.c	9028
HOTELS, RESTAURANTS AND HOSPITALITY SERVICES	Hotels – Star rated	10001
	Hotels – Non-star rated	10002
	Motels, Inns and Dharmshalas	10003
	Guest houses and circuit houses	10004

	Dormitories and hostels at educational institutions	10005
	Short stay accommodations n.e.c.	10006
	Restaurants – with bars	10007
	Restaurants – without bars	10008
	Canteens	10009
	Independent caterers	10010
	Casinos and other games of chance	10011
	Other hospitality services n.e.c.	10012
TRANSPORT & LOGISTICS SERVICES	Travel agencies and tour operators	11001
	Packers and movers	11002
	Passenger land transport	11003
	Air transport	11004
	Transport by urban/sub-urban railways	11005
	Inland water transport	11006
	Sea and coastal water transport	11007
	Freight transport by road	11008
	Freight transport by railways	11009
	Forwarding of freight	11010
	Receiving and acceptance of freight	11011
	Cargo handling	11012
	Storage and warehousing	11013
	Transport via pipelines (transport of gases, liquids, slurry and other commodities)	11014
	Other Transport & Logistics services n.e.c	11015
POST AND TELECOMMUNICATION SERVICES	Post and courier activities	12001
	Basic telecom services	12002
	Value added telecom services	12003

	Maintenance of telecom network	12004
	Activities of the cable operators	12005
	Other Post & Telecommunication services n.e.c	12006
FINANCIAL INTERMEDIATION SERVICES	Commercial banks, saving banks and discount houses	13001
	Specialised institutions granting credit	13002
	Financial leasing	13003
	Hire-purchase financing	13004
	Housing finance activities	13005
	Commercial loan activities	13006
	Credit cards	13007
	Mutual funds	13008
	Chit fund	13009
	Investment activities	13010
	Life insurance	13011
	Pension funding	13012
	Non-life insurance	13013
	Administration of financial markets	13014
	Stock brokers, sub-brokers and related activities	13015
	Financial advisers, mortgage advisers and brokers	13016
	Foreign exchange services	13017
	Other financial intermediation services n.e.c.	13018
COMPUTER AND RELATED SERVICES	Software development	14001
	Other software consultancy	14002
	Data processing	14003
	Database activities and distribution of electronic content	14004

	Other IT enabled services	14005
	BPO services	14006
	Cyber café	14007
	Maintenance and repair of office, accounting and computing machinery	14008
	Computer training and educational institutes	14009
	Other computation related services n.e.c.	14010
RESEARCH AND DEVELOPMENT	Natural sciences and engineering	15001
	Social sciences and humanities	15002
	Other Research & Development activities n.e.c.	15003
PROFESSIONS	Legal profession	16001
	Accounting, book-keeping and auditing profession	16002
	Tax consultancy	16003
	Architectural profession	16004
	Engineering and technical consultancy	16005
	Advertising	16006
	Fashion designing	16007
	Interior decoration	16008
	Photography	16009
	Auctioneers	16010
	Business brokerage	16011
	Market research and public opinion polling	16012
	Business and management consultancy activities	16013
	Labour recruitment and provision of personnel	16014
	Investigation and security services	16015

	Building-cleaning and industrial cleaning activities	16016
	Packaging activities	16017
	Secretarial activities	16018
	Other professional services n.e.c.	16019
<b>EDUCATION SERVICES</b>	Primary education	17001
	Secondary/ senior secondary education	17002
	Technical and vocational secondary/ senior secondary education	17003
	Higher education	17004
	Education by correspondence	17005
	Coaching centres and tuitions	17006
	Other education services n.e.c.	17007
<b>HEALTH CARE SERVICES</b>	General hospitals	18001
	Speciality and super speciality hospitals	18002
	Nursing homes	18003
	Diagnostic centres	18004
	Pathological laboratories	18005
	Independent blood banks	18006
	Medical transcription	18007
	Independent ambulance services	18008
	Medical suppliers, agencies and stores	18009
	Medical clinics	18010
	Dental practice	18011
	Ayurveda practice	18012
	Unani practice	18013
	Homeopathy practice	18014

	Nurses, physiotherapists or other para-medical practitioners	18015
	Veterinary hospitals and practice	18016
	Medical education	18017
	Medical research	18018
	Practice of other alternative medicine	18019
	Other healthcare services	18020
SOCIAL AND COMMUNITY WORK	Social work activities with accommodation (orphanages and old age homes)	19001
	Social work activities without accommodation (Creches)	19002
	Industry associations, chambers of commerce	19003
	Professional organisations	19004
	Trade unions	19005
	Religious organizations	19006
	Political organisations	19007
	Other membership organisations n.e.c. (rotary clubs, book clubs and philatelic clubs)	19008
	Other Social or community service n.e.c	19009
CULTURE AND SPORT	Motion picture production	20001
	Film distribution	20002
	Film laboratories	20003
	Television channel productions	20004
	Television channels broadcast	20005
	Video production and distribution	20006
	Sound recording studios	20007
	Radio – recording and distribution	20008

	Stage production and related activities	20009
	Individual artists excluding authors	20010
	Literary activities	20011
	Other cultural activities n.e.c.	20012
	Circuses and race tracks	20013
	Video Parlours	20014
	News agency activities	20015
	Library and archives activities	20016
	Museum activities	20017
	Preservation of historical sites and buildings	20018
	Botanical and zoological gardens	20019
	Operation and maintenance of sports facilities	20020
	Activities of sports and game schools	20021
	Organisation and operation of indoor/outdoor sports and promotion and production of sporting events	20022
	Other sporting activities n.e.c.	20023
	Other recreational activities n.e.c.	20024
OTHER SERVICES	Hair dressing and other beauty treatment	21001
	Funeral and related activities	21002
	Marriage bureaus	21003
	Pet care services	21004
	Sauna and steam baths, massage salons etc.	21005
	Astrological and spiritualists' activities	21006
	Private households as employers of domestic staff	21007
	Other services n.e.c.	21008

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EXTRA TERRITORIAL ORGANISATIONS AND BODIES	Extra territorial organisations and bodies (IMF, World Bank, European Commission etc.)	22001
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\*n.e.c. – not elsewhere classified

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**FORM NO. 10DB**

[See rule 20AB]

[Now redundant]

**Form for evidence of payment of securities transaction tax on transactions entered in a recognised stock exchange**

1. Name of the assessee :
2. Address of the assessee :
3. Permanent Account Number (PAN) of the assessee :
4. MAPIN of the assessee :
5. Name of the Stock Exchange in which transaction entered into :
6. Financial year :
7. Name of the stock broker :
8. Address of the stock broker :
9. Stock broker code :

**10. Details of value of securities transactions and securities transaction tax collected from the assessee:**

<i>Client code number</i>	<i>Code* of transaction</i>	<i>Value of transactions entered into during the financial year</i>	<i>Total securities transaction tax collected from the assessee during the financial year</i>	<i>Value of transactions (included in value given in column 3) entered into in the course of business by the assessee</i>	<i>Securities transaction tax collected on value of transactions given in column 5</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
01					
02					
03					
04					
05					
Total					

**Verification**

I,  (full name in block letters), son/daughter of  solemnly declare that to the best of my knowledge and belief the information given in this Form is correct and complete and that the total amount of securities transaction tax shown therein is truly stated and is in accordance with the provisions of Chapter VII of the Finance (No. 2) Act, 2004 and Securities Transaction Tax Rules, 2004.

Date

Place  *(Name and Signature of the assessee)*

\*CODES IN RESPECT OF TAXABLE SECURITIES TRANSACTION

<i>S.No.</i>	<i>Nature of Transaction</i>	<i>Code</i>
1.	Purchase of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such purchase is entered into in a recognised stock exchange; and (b) the contract for the purchase of such share or unit is settled by the actual delivery or transfer of such share or unit.	01
2.	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled by the actual delivery or transfer of such share or unit.	02
3.	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled otherwise than by the actual delivery or transfer of such share or unit.	03
4.	Sale of a derivative being “option in securities”, where the transaction of such sale is entered into in a recognised stock exchange.	04
5.	Sale of a derivative being “futures”, where the transaction of such sale is entered into in a recognised stock exchange.	05

*Instructions :*

(i) Where an assessee has entered into transactions in a stock exchange under different client code through the same stock broker, details in this Form be filled separately for each such client code.

(ii) Separate Form be furnished in respect of transactions entered into in different stock exchanges and also for the transactions entered in same stock exchange through different stock brokers.

(iii) In column 4 of Table of item 10, fill the details of securities transaction tax collected by the stock broker from the assessee.

(iv) Where the assessee entering into a transaction is a stock broker on which securities transaction tax has to be paid by him, item 1 and item 7 shall be same and such assessee shall, in column 4 of the Table of item 10, fill the details of securities transaction tax collected from him by the stock exchange.