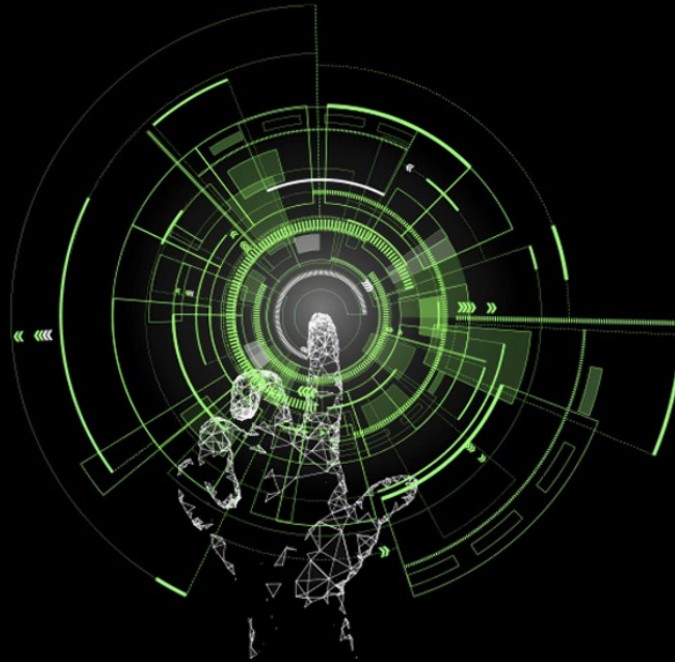


# Tax Audit

A.Y. 2024-25



## U/S 44AB of Income Tax Act, 1961

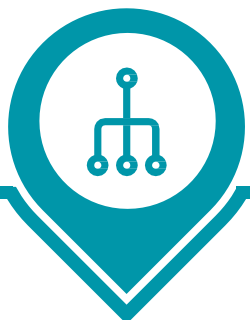
[ Based on Guidance Note on Tax Audit (Revised 2023) issued by the ICAI]

CA N.C. Hegde

# Overview

# Tax audit – Applicable to

## Section 44AB



Person having total sales, turnover or gross receipts from business > Rs. 1 crore in a previous year

Higher threshold of Rs. 10 crore (increased from Rs.5 crore by the Finance Act, 2021) for a person whose total sales, turnover or gross receipts, in cash, do not exceed 5% of the said amount and

All payments including expenditure, in cash, does not exceed 5% of the said payment



Person having gross receipts in profession > Rs. 50 lakh in a previous year



Person claiming business income to be lower than the profits deemed as business profits u/s 44AE (plying, hiring or leasing goods carriages) or section 44BB (exploration of mineral oils) or section 44BBB (civil construction in certain turnkey power projects)



Person claiming professional income to be lower than the profits deemed as business profits u/s 44ADA (professional income on presumptive basis)



Person to whom section 44AD(4) applies and income exceeds the maximum amount which is not chargeable to income-tax

# Tax audit

## Section 44AB



01

- Prescribed report to be furnished by “specified date”

02

Specified date:

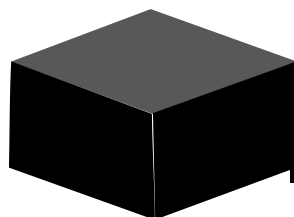
- Date one month prior to the due date for furnishing ROI u/s 139(1)

03

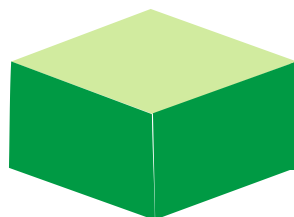
- Where a person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with section 44AB if such person furnishes by the specified date, the report of audit as required under such other law and a further report in the form prescribed u/s 44AB of the IT Act

# Tax audit – Inapplicable to

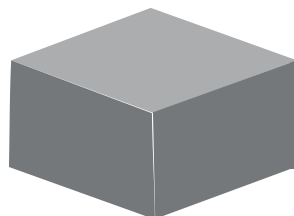
## Section 44AB



Person declaring business profits in accordance with section 44AD(1) and 44 ADA (1)



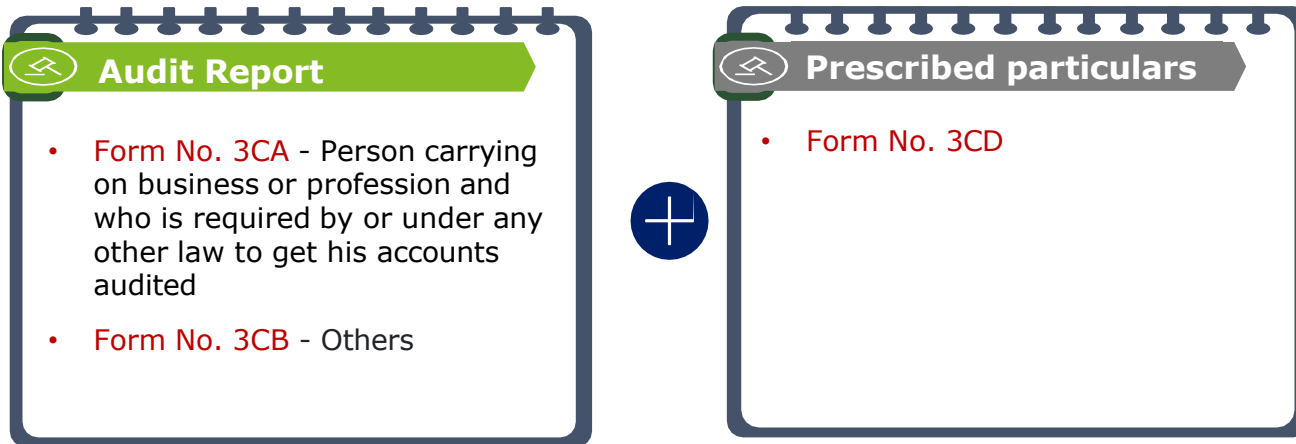
Person declaring business profits in accordance with section 44AD or section 44ADA (business profits/ professional income on presumptive basis)



Person deriving business income referred to in section 44B (shipping business of NR) or section 44BBA (business of operation of aircraft of NR)

# Prescribed reporting

## Rule 6G



The report of audit may be revised before the end of the relevant AY to which it pertains, if there is any payment by the assessee which necessitates recalculation of disallowance under section 40 or section 43B of the Act - **Income-tax (Eighth Amendment) Rules, 2021, w.e.f. 1 April 2021**

# FORM NO. 3CA

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- Total 3 Paras
  - Examination of books by auditor included before giving opinion
  - Opinion to be given subject to observations/ qualifications, no annexures- Para 3
-

# FORM NO. 3CB

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- Total 5 Paras
  - Same as Form No. 3CA except examination of books
  - Opinion subject to observations/ qualifications to be given:
    - Financial statements – 3(a)
    - Form No. 3CD- 5
  - Auditor gives his opinion related to books in Para 3(b)
    - Have obtained Information
    - Proper books have been kept
    - True & Fair view
-



# SA 700 – Clause (3) of Form No.3CA or Clause (5) of Form No.3CB

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## **As per Para 11.9 of the Guidance Note-**

The ICAI had pursuant to the issuance of the Revised SA 700, Forming an Opinion and Reporting on Financial Statements, prescribed a revised format of the auditor's report on financial statement. Since Form No. 3CA and Form No. 3CB are required to be filed online in a preset form and the same are not in line with the requirements of SA 700, there is no specifically allocated field for providing information relating to the respective responsibilities of the assessee and the tax auditor as required in terms of the principles laid out in SA 700.

However, having regard to the importance of these respective responsibility paragraphs from the perspective of the readers of the tax audit report, it is suggested that these respective responsibility paragraphs relating can be provided in the space provided for giving observations, etc., under clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be ( Page 11 of study).

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# Clause under which Tax Audit conducted

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- The assessee is responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications , circulars etc. that are to be included in the Statement.
  - We are also responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G (1) (b) of Income-tax Rules, 1962. We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.
-

# Qualification Type.....

## Select

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

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

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

Proper Stock records are not maintained by the assessee.

Valuation of closing stock is not possible.

Yield/percentage of wastage is not ascertainable.

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

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

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

# Qualification Type.....Contd

## Select

Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.

Creditors under Micro, Small and Medium Enterprises Development Act, 2006 are not ascertainable.

Prior period expenses are not ascertainable from books of account.

Fair market value of shares u/s 56 (2) (viia)/(viib) is not ascertainable.

Reports of audit carried by Excise/Service tax Department were not made available.

GP Ratio is not ascertainable from the financial statements prepared by the assessee.

Information regarding demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and Wealth tax Act, 1957 was not made available.

Others

# Key Highlights.....

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

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

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

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

- ❑ The information in Form No.3CD should be based on the books of account, records, documents, information and explanations made available to the tax auditor for his examination.
- ❑ If a particular item of income/ expenditure is covered in more than one of the specified clauses in the statement of particulars, a suitable cross reference to such items at the appropriate places.
- ❑ If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the view points and also the relevant information in order to enable the tax authority to take a decision in the matter.
- ❑ If any particular clause in Form No.3CD is not applicable, he should state that the same is not applicable.
- ❑ In computing the allowance/ disallowance, the law applicable in the relevant year should keep in view, even though the form of audit report may not have been amended to bring it in conformity with the amended law.
- ❑ In case the auditor relies on a judicial pronouncement, mention the fact as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be
- ❑ The tax auditor may qualify his report on matters in respect of which information is not furnished to him and state in his report that the relevant information has not been furnished by the assessee.
- ❑ The Auditor should mention paragraphs relating to Assessee's responsibility and Tax Auditor's responsibility as required by the Guidance Note in respect of SA 700.

# Qualification Para - Commonly found irregularities

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- ❑ In certain tax audit reports that were examined, it has been observed that the qualification paragraph i.e., Para 3 of Form No.3CA or Para 5 of Form No.3CB, as the case may be, contained a reference to Notes to Form No. 3CD. These notes did not mainly contain the qualifications but also contain general additional information.
  - ❑ As per the Guidance Note (paragraphs mentioned above) only qualifications/ observations should be reported in the space provided in the Form No. 3CA/3CB itself while the additional information which are not in the nature of qualification could be attached as notes.
-



# PART A - Clause no. 1, 2, 3

## Clause No. 1

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

## Clause no. 2

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

## Clause no. 3

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

## Issues on Clause no. 1, 2

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

# Clause no. 4

*[Amended] vide Notification No. 33/2018 dated 20/07/2018.*

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

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

# Issues / points to be considered - Clause no. 4

## – Contd...

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

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

# Clause no. 5

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

## Issues on Clause no. 5

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

# Clause no. 6 & 7

## Clause no. 6

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

## Clause no. 7

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

Clauses 5, 6, 7 as shown in utility

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

# Clause no. 8

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

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

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

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

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

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

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

Third Proviso- Audited under any other law

## Issues on Clause no. 8

- Whether the Clause is indicated in view of the limit of audits prescribed by the ICAI?
- Where the assessee is covered under more than one Clause, the same may be specified.
- For Example, In case of company assessee clause (a) and third proviso should be selected to enhance the quality of reporting.

## Clause 8a - Whether the assessee has opted for taxation under section 115BA / 115BAA 115BAB / 115BAC / 115BAD?

---

*the tax auditor should verify whether the relevant form being 10-IB, 10-IC, 10-ID, 10-IE and 10-IF furnished under section 115BA, 115BAA, 115BAB, 115BAC and 115BAD respectively for availing new tax regime is already filed by the assessee.*

*the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the new regime or otherwise and based on written representation, the reporting under this clause should be made.*

*Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.*

# **PART B**

## **Clause no. 9**

### **Clause 9(a)**

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

#### **Format in e-utility**

Name	Profit sharing ratio (%)

### **Clause 9(b)**

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

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

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



# Issues on Clause no. 9 – Contd....

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

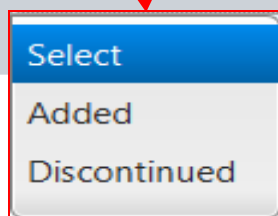
# Clause no. 10

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

Sector	Subsector	code

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

Business	Sector	Subsector	code



Select  
Added  
Discontinued

# Issues on Clause no. 10.... Contd.

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

# Clause no. 11

## Clause 11 (a)

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

## Clause 11 (b)

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

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

## Clause 11 (c)

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

### Brief:

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

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

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

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

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

For the purpose of this clause the auditor may obtain from the assessee a list in the following format and accordingly report the same in clause 11(b). In case of a company assessee, auditor should also verify as to whether any forms are filed under the Companies Act for maintenance of books of accounts at a place other than the registered office:

Sr No.	Principal place of maintenance of books of account	Details of books maintained
1	2	3

## Clause no. 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.)

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

# List of Sections.....

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



# List of Sections.....Contd.

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

# Clause no. 13

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

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

***Specific Format provided***

# Amendment in Clause no. 13 - Contd

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

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

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

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

# Amendment in Clause no. 13 - Contd

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

# Amendment in Clause no. 13 - Contd

*(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”*

# Issues on Clause no. 13

- Change in accounting policy does not amount to change in method of accounting and thus need not be reported.
- Change in method of valuation of stock is not a matter of change in method of accounting but only a change in accounting policy.
- If there has been any change in the method of accounting employed, the method employed in the immediately preceding P.Y. is to be stated & the effect i.e. Increase or decrease in profits has to be stated.
- **Books maintained in respect of** all items of income on accrual basis and interest income on seed money **loan is accounted** on cash basis- **permitted vide N. No. GSR 770(E) dated 10-9-1990.**
- It may be noted that in view of Section 128 of the Companies Act, 2013, every company is required to keep books of account on accrual basis.

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

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

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

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

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

**(iii)** inventory being securities not listed on a recognized stock exchange, or listed but not quoted, shall be valued at actual cost initially recognized in the manner provided in ICDS notified under section 145(2). [Para 12 of ICDS-8, Securities]

**(iv)** inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in ICDS notified under section 145(2) and for this purpose the comparison of actual cost and net realizable value shall be done category-wise. [Para 9, 10, 11 of ICDS-8, Securities]

# Effects of Tax on Valuation of Inventories

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



## **Section 145B – Taxability of certain income**

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

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

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

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

# Clause no. 14

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:

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

***Specific Format provided***

# Clause no. 15

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

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

# Issues on Clause no. 15 – Contd.

- Such conversion is treated as transfer u/s 2(47)
- U/s 45(2) notional capital gain arises from such transfer and chargeable to tax in the year in which such stock-in-trade is sold.
- No requirement of details of taxability of 'capital gain' or 'business income' from such deemed transfer.
- **Accounting standards to be followed:**
  - AS-2/Ind AS -2 for valuation of stock-in-trade
  - AS-10/Ind AS 16 for valuation of fixed assets.
  - AS-22 for provision of Income Tax as temporary timing difference.
- Sec 47(iv), 47(v) & 47A are also to be considered.

# Issues on Clause no. 15 – Contd.

## ❑ Cost of capital asset in case of:

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

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

# Clause no. 16

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

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

Description	Other Desc.	Amount

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

Description	Amount

# Issues on Clause no. 16 – Contd.

- Section 28 refer to the value of any benefit or perquisite arising from business or the exercise of a profession, whether—
  - (a) convertible into money or not; or
  - (b) in cash or in kind or partly in cash and partly in kind;

(clause (a))/(b) inserted w.e.f. AY 2024-25)
- Only claims accepted during the previous year are required to be reported under **Clause 16(c)**.
- Mere claims under negotiations cannot constitute accepted claims. **CIT v. Hindustan Housing and Land Development Trust Ltd. [1986] 161 ITR 524 (SC)**

# Issues on Clause no. 16 – Contd.

- Income is defined u/s 2(24):
- Report all the items of income ascertained from the books of A/cs available to the tax auditor but state such income excludable u/s 10 (if any).
- The Tax auditor shall be governed by AS-9 relating to revenue recognition.
- Any capital receipt adjusted in actual cost for calculation of depreciation allowable is reported here & under Clause 18 d (ii) also. [**Under Sub-Clause (e)**]
- “Capital receipts” for this Clause do not cover share capital, Loans and borrowings or item of gift etc. [**Under Sub-Clause (e)**]
- Further, The tax auditor may use his professional expertise and judgement in determining whether the receipt is taxable or not for the purpose of reporting under sub-clauses (a) to (d) of clause 16 of TAR and may report in the observation para of audit report, disclosing the basis of the same.



# Clause no. 17

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

Details of property	Address of property	Consideration received or accrued	Value adopted or assessed or assessable	Whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 applicable? [Yes/No]

**Brief:** Stamp Duty value is to be specified for land or building or both sold whether held in nature of Capital assets or Stock in trade.

# Issues on Clause no. 17 – Contd.

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

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

## **Issues/ Points to be considered.....**

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

# Issues on Clause no. 17 - Contd.

## **Issues/ Points to be considered.....**

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

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

- ☐ 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 **110% 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**

**3<sup>rd</sup> proviso to Sub Section 1 of section 50C inserted w.e.f 01/04/2019**

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

[2018] 97 taxmann.com 430 (Madras)

- ❑ It is provided that in section 43CA where date of agreement fixing the value of consideration for transfer of asset & date of registration are not the same, the value referred to in sub-section (1) may be taken as the stamp duty value in respect of such transfer on the date of the agreement **where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of ECS through a bank account or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of the asset.**
- ❑ Auditor is also required to answer whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 is applicable. Since the second proviso is not applicable for the audit of AY 2023-24, so ideally in all cases, the reporting shall be 'No' in this column.

# Clause no. 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 forms:-

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

# Clause no. 18 – Contd.

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

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

Adjustments on account of

- i. **Central Value Added Tax** credit claimed and allowed under the central Excise Rule, 1994 in respect of assets acquired on or after 1st march, 1994
  - ii. Change in the rate of exchange of currency, and
  - iii. Subsidy or grant or reimbursement, by whatever name called.
- e) Depreciation allowable
- f) Written down value at the end of the year.

# Amendment in rates of Depreciation – Contd.

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

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

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

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

*Notification No.103/ 2016 dated 7<sup>th</sup> November, 2016*

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



# Amendment in rates of Depreciation – Contd.

- ❑ *Intangible assets being goodwill of a business or profession does not qualify for depreciation from 01.04.2021 i.e. AY 2021-22 (The Finance Act 2021). Goodwill was eligible for depreciation till AY 2020-21.*
- ❑ *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.*

# Amendment in rates of Depreciation – Contd.

- ❑ *Where assessee is opting for payment of income-tax under section 115BA, 115BAA, 115BAB, 115BAC, or 115BAD or 115BAE (applicable to specified co-operative society assessee w.e.f. AY 2024-25 onwards), claim for depreciation under section 32(1)(ia) cannot be made. The tax auditor will need to verify the claim of additional depreciation under this clause as well. Tax auditor has to examine whether the assessee has opted for payment of income tax under section 115BA, 115BAA, 115BAB, 115BAC or 115BAD and he may refer to clause 8a in this regard*

# Issues on Clause no. 18....

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

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

# Section 43A vis-à-vis AS-11 (Revised)

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

# Section 43A vis-à-vis AS-11 – Contd.

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

# Issues on Clause no. 18

- Depreciation is not allowed on an amount equivalent to CENVAT/ ITC credit claimed and allowed.
- Depreciation is allowed on “actual Cost”- term defined u/s 43(1) of I.T. Act.
- An assessee can claim depreciation on actual cost even if he follows Cash method of accounting.
- Interest relatable to any period after such asset is first put to use is not a part of actual cost (other than Section 43A).
- In case of dispute between Assessee, Department & Auditor regarding classification of assets, rate of depreciation etc. in earlier year, a suitable disclosure is required.
- In respect of ‘additions’ to the block of assets, the ‘date of purchase’ and ‘date of put to use’ may not be same for each item in block of asset and also there is a facility to import CSV file in the e-filing utility.

# Clause no. 19

Amounts admissible under Sections:

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

# List of Sections.....

Section	Amount debited to P&L Account/Payment	Amounts admissible/Quantum of deduction
33AB	Tea Development	sum= amount or aggregate of amounts so deposited; OR Sum= 40% of profits of business; whichever is least
33ABA	Site Restoration Fund: Deposit in ministry of petroleum & natural gas for extraction etc	Sum=amount or aggregate of amounts so deposited; OR Sum= 20% profits of business; whichever is least
35(1)(i)	Revenue expenditure in respect of scientific research related to the business	100% of the expenditure



# List of Sections.....Contd.

Section	Amount debited to P&L Account/Payment	Amounts admissible/ Quantum of deduction
35(1)(ii)	Amount paid to research association which has as its object the undertaking of scientific research or to a university, college or other institution notified & approved by CG to be used for scientific research	100% of amount contributed (from A.Y. 2021-22) and onward
35(1)(iia)	Amount paid to an approved company registered in India to be used for scientific research & development	100% of amount paid (from A.Y. 2018-19)
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)
35(1)(iv)	Capital expenditure on scientific research other than on acquisition of land, related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-Section (2)	100% of capital expenditure incurred

# List of Sections.....Contd.

Section	Eligible expenditure/payment	Amount/quantum of deduction
35(2AA)	Amount paid to National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction to use such amount for scientific research undertaken under a programme approved by the prescribed authority	100% of amount paid (from A.Y. 2021-22 onwards)
35(2AB)	<p>Expenditure on scientific research on in-house research and development facility as approved by the prescribed authority</p> <p><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.</p> <p><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.</p>	100% of expenditure incurred (from A.Y. 2021-22 onwards)

# List of Sections.....Contd.

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

# List of Sections.....Contd.

Section	Amount debited to P&L Account/ Payment	Amounts admissible/ Quantum of deduction
35AC	Payment to public sector Co. or local authority or an association or institution approved by national committee for carrying eligible Projects/Schemes	100% of expenditure (No deduction allowed from A.Y. 2018-19 onwards)
35AD	Deduction in respect of capital expenditure on specified business	<p><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 housing scheme/ production of fertilizer in India</p> <p><b>From A.Y. 2018-19 onwards, 100% of expenditure.</b></p>
35CCA	Rural development programme carried on by association & institutions	100% of expenditure

# List of Sections.....Contd.

Section	Eligible expenditure/payment	Amount/quantum of deduction
35CCB	Conservation of Natural resources by associations & institutions*** Deleted from A.Y 2003-04	100% of expenditure
35CCC	Expenditure on agricultural extension project	100% of expenditure (from A.Y. 2021-22 onwards) <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>	


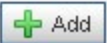

# List of Sections.....Contd.

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

# Issues on Clause no. 19

## Format in e-utility

19 Amounts admissible under sections:

S.No.		Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions, if any specified under the relevant 14 provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
1	<input type="checkbox"/>	Select 	<input type="text"/>	<input type="text"/>
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# Issues on Clause no. 19 – Contd.

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

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

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



# Clause no. 20

## Clause 20(a)

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

Description	Amount

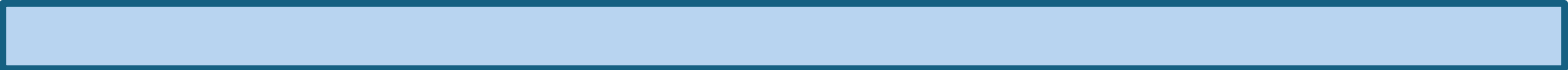
**“Sec. 36(1)(ii)-** any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission”

# Clause no. 20

## Clause 20(b)

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

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

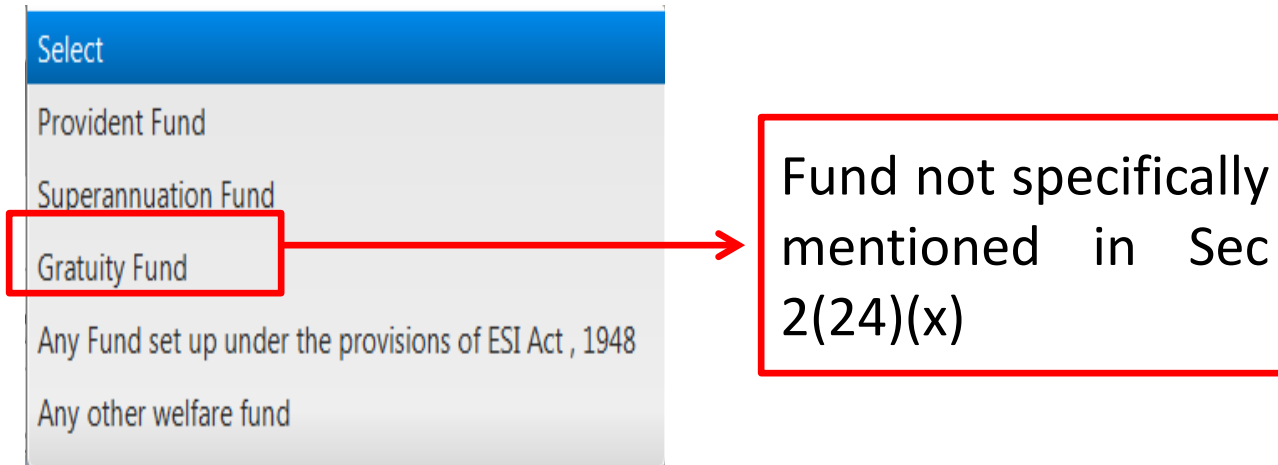


# Clause no. 20

- ❑ For the purposes of this clause, "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.
- ❑ Explanation 2. inserted by FA 2021 - For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;

# Issues on Clause no. 20 – Contd.

## ➤ Funds covered:



- 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.

# Issues on Clause no. 20 – Contd.

- 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.

# Clause no. 21

## Clause 21(a)

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

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

# Clause no. 21..... Contd.

New Clause 21(a).....

Contd....

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

# Issues on Clause no. 21 – Contd.

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



# Issues on Clause no. 21 – Contd.

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

# Issues on Clause no. 21 – Contd.

- Expenditure by way of penalty or fine for violation of any law is not admissible as expenditure.
- 'Penalty or fine for violation of any law for the time being force' and 'any other penalty or fine' should be separately reported under different sub-headings as per the requirement of the prescribed format of tax audit report as well as the Guidance Note.
- Infraction of law even if not deliberate may discredit the claim for deduction.
- **Allowance of legal expenses** depends on nature & purpose of legal proceeding in relation to business whose profits are under computation & is not affected by final outcome of the proceeding. **Vivek P. Talwar vs Asst. CIT [2010] 8 Taxmann.com 268 (Mum.).** Also see **CIT v. Hirjee [1953] 23 ITR 427 (SC)**
- In case of illegal business, fine or penalty imposed thereon is not deductible (**Expln. to Sec. 37(1)**).
- It was held that where the assessee is required to pay amount comprising both the element of compensation & penalty, then only the element of compensation is deductible as Business expense. **Malura Vanaspati & Chemical Co Vs CIT (1997) 225 ITR 383 (SC)**
- Supreme Court in **Mahalakshmi Sugar Mills Co. Ltd. vs CIT (123 ITR 429)** and **CIT vs Hyderabad Allwyn Metal Works Ltd (172 ITR 113 SC)** wherein it was held that there is a distinction between amount paid by the assessee as compensatory in nature or penal in nature and only amounts paid in penal nature were not allowable

# Clause no. 21.....Contd.

## Clause 21(b)

Amounts inadmissible under Section 40(a):-

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

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

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



e-utility also requires PAN, if available

## Clause no. 21.....Contd.

- 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 sub section of section 139

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



e-utility also requires PAN, if available

# Section 40(a)(i).....Contd.

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

**(A) outside India; or**

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

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed u/s 139(1) {seems inadvertently shown as “section 200(1)” in notified form 3CD}.

**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed u/s 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

# Section 40(a)(i).....Contd.

- ❑ Section 40(a)(i) provides that if the tax deducted is paid during the previous year or in the subsequent year before the expiry of time prescribed for filing the tax return u/s. 139(1), the same shall be allowed as deduction in the previous year in which the tax is deducted. Further, the second proviso to section 40(a)(i) read with Section 201 provides 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 clause (i) of section 40(a), 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.

# Section 40(a)(i).....Contd.

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

# Section 40(a)(i).....Contd.

- ❑ A certificate is to be obtained in Form 26A by the person who has not deducted tax and obtained the form that the deductee is not responsible for deduction of tax and hence the lack of tax deduction does not attract the provisions of Section 201. Auditor is advised to check the certificate vide Form 26A and how it has been reflected in the statement of TDS filed vide Form 24Q / Form 26Q / Form 27Q.



# Clause no. 21.....Contd.

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

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

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

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

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

e-utility also requires PAN, if available

# Format in E-utility

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

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

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

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

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

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# Section 40(a)(ia).....Contd.

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

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

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

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

# Issue on Clause no. 21 – Contd.

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

# Clause no. 21.....Contd.

## Clause 21 (b)

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

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

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

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

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

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

## Section 40(a)(ib).....Contd.

**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;

# Format in E-utility

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

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

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

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

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

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# Clause no. 21.....Contd.

## Clause 21 (b)

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

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

### **(v) Under Sub-Clause (iia)**

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

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



# Clause no. 21.....Contd.

## Clause 21 (b)

### **(vi) Under Sub-Clause (iib)**

#### **Section 40(a)(iib)-**

#### **Any amount—**

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

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

**a State Government undertaking by the State Government.**

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

# Clause no. 21.....Contd.

## Clause 21 (b)

### (vii) Under Sub-Clause (iii)

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



e-utility also requires PAN, if available

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

# Clause no. 21.....Contd.

## **Clause 21 (b)**

### **(viii) Under Sub-Clause (iv)**

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

# Clause no. 21.....Contd.

## Clause 21 (b)

### **(ix) Under Sub-Clause (v)**

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

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

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

# Format in e-utility

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

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

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

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

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

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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)

# Clause no. 21.....Contd.

## Clause 21(c)

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

## Format in e-utility.....

S.No.		Particulars	Section	Amount debited to P/L A/C	Amount admissible	Amount inadmissible	Remarks
1		Select	Select				
	 Add	 Delete	Select				
		Interest	40(b)				
		Salary	40(ba)				
		Bonus					
		Commission					
		Remuneration					

# Clause no. 21.....Contd.

## Clause 21(d)

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

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

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

## Clause no. 21.....Contd.

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

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

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



## Section 40A....Contd.

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

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

# Rule 6DD.....Contd.

## Notification No 208/2007, dt 27.06.2007

Rule 6DD- No disallowance of sum exceeding Rs 10000 made to a person in a day otherwise than by a/c payee cheque or draft for payment for following:

- Payment made to – RBI, SBI, Cooperative/land mortgage Bank, Primary Agricultural Credit Society, LIC
- Payment to Govt. for legal tender
- **Payment made by-** LC, Mail or Telegraphic t/f-(Sub-clauses (v), (vi) and (vii) omitted by the Income-tax (Third Amendment) Rules, 2020, w.e.f. 29-1-2020).
- Payment made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.
- In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- in place of Rs. 10,000/-.

# Rule 6DD.....Contd.

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

# Rule 6DD.....Contd.

- Auditors are advised to consider Rule 6DD and relative Circulars for complete details of above. Auditors will also need to verify that the conditions laid down for the mitigating circumstances are strictly complied with.
- Other electronic modes of payment referred to in section 40A(3) and section 40A(3A) have been prescribed in Rule 6ABBA. For the purpose of sub-sections (3) and (3A), the Electronic modes are prescribed by Rule 6ABBA and such modes include:
  - 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) Aadhaar Pay;

# Clause no. 21.....Contd.

## Clause 21(e)

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

### Section 40A(7)-

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

# Clause no. 21.....Contd.

## **Clause 21(f)**

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

## **Section 40A(9)-**

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

# Clause no. 21.....Contd.

## Clause 21(f)

- ❑ Tax Auditor shall maintain detailed working papers documenting the factual nature of such expenses incurred and debited to the Profit and Loss for the previous year under consideration which are considered disallowable u/s 40A(9) of the Income-tax Act, 1961. Tax Auditor should get the relevant content in working papers prepared for such disallowance duly confirmed by the Assessee as a necessary safeguard.
- ❑ If any such contribution is made by the assessee in a capacity other than that of an employer, then such contribution is not to be considered as disallowable u/s 40A(9) of the Income-tax Act, 1961. Thus, Tax Auditor should carefully examine the capacity of Assessee while making such contribution before reaching any conclusions for allowing or disallowing such contribution

# Clause no. 21.....Contd.

## Clause 21(g-h)

g) Particulars of any liability of a contingent nature.

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

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

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



# Clause no. 21.....Contd.

## Clause 21(g-h)

- ☐ Under this clause, the tax auditor should report only contingent liabilities which are debited to the Profit and Loss account of the previous year under consideration and not value of contingent liabilities reported in the notes to the accounts forming part of the audited financial statements of the corporates.
- ☐ Reference may be made to AS-29, 'Provisions, Contingent Liabilities and Contingent Assets'/ Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets, to determine what should normally be treated as a contingent liability

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

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

# Clause no. 21.....Contd.

## Clause 21(i)

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

### Section 36(1)(iii) –

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

**Provided** that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (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.

**\*No Change**

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

# Issues on Clause no. 21 – Contd.

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

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

# Clause no. 22

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

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

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

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

**Section 23 of MSME Act**, provides that:

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

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

# Provisions of MSME Act.....

## Section 16 of MSME Act,

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

## Section 15 of the MSME Act

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

# Issues on Clause no. 22

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





# Issues on Clause no. 22 – Contd.

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

# Clause no. 23

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

Name of Related Party	PAN of Related Party	Aadhaar number of person(if available)	Relation	Nature of Transaction	Payment Made (Amount)

 Add  Delete

# Issues on Clause no. 23

- ❑ 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.

# Issues on Clause no. 23 – Contd.

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

# Issues on Clause no. 23 – Contd.

- ❑ **In case of a large Assessee**, it may not be possible to verify the list of all persons covered by this Section. Therefore, the information supplied by the assessee can be relied upon.
- ❑ Further the auditor may refer to the details given in the annual accounts for related party transactions as per AS-18, if available, for examining and reporting under this clause. The auditor while using the information as referred above should consider the difference in the definitions of 'related party' as per AS-18 and 'persons specified' in section 40A(2)(b) of the Act.

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

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

# Clause no. 24

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

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

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

# Clause no. 24 – Contd.

## Relevant Sections:

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

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

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



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

## Sub-Sec. (2)

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

## Sub-Sec. (3)

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

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

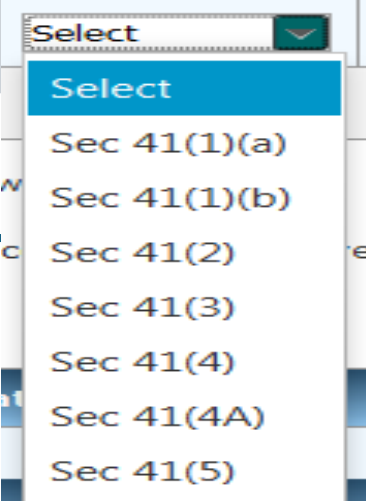
## Sub-Sec. (4)

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

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

# Clause no. 25

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

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

# Issues on Clause no. 25

- ❑ Loss of the Previous Year in which business ceased to exist can be set off from the above deemed profit u/s 41.
- ❑ State Profit chargeable to Tax under this Clause, irrespective of the relevant amount credited to P&L A/c or not.
- ❑ Any amount already credited in P&L A/c is to be reported in this Clause.
- ❑ Computation of chargeable profit to be reported in this Clause.
- ❑ CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 236 ITR 518/102 Taxman 713 (SC), Hon'ble Supreme court came to the conclusion that after expiry of limitation period, a debt does not stand extinguished, but it only bars the creditors from taking recourse to a legal remedy for enforcement of the debt.
- ❑ In case the amount given in this clause regarding section 41 of the Act is not routed through profit and loss account or income and expenditure account, the auditor may include the said fact in the observation para of the audit report.

# Clause no. 26

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

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

(a) Paid during the Previous Year;

S.No.	Section	Nature of Liability	Amount

(b) Not paid during the Previous Year

S.No.	Section	Nature of Liability	Amount

# Clause no. 26 – Contd.

A. Was incurred in the previous year and was

- a) paid on or before the due date for furnishing the return of income of the previous year under Section 139(1);

S.No.	Section	Nature of Liability	Amount

- b) not paid on or before the aforesaid date

S.No.	Section	Nature of liability	Amount

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

e-Utility provides space for remarks

# Addition of new clause in Section 43B – Contd.

- The recent amendment in section 43B of Income Tax Act effective from 1<sup>st</sup> April 2024 and applicable for F.Y 2023-24 introduces a new clause i.e., clause (h) with a specific focus on payment to ***Micro and Small enterprises***.
- Clause (h) of section 43B of the act specifies that expenses in relation to micro and small enterprises must adhere to the time limit prescribed in section 15 of MSME Act, 2006. Deductions will be allowed only if payments are made as per stipulations of MSME Act, 2006 or in the year of payment if payment is not as per Section 15 of MSME Act.
- In every clause of section 43B deduction of expense is allowed if it is paid on or before due date of filing income tax return **but in clause (h), deduction is allowed only if it is paid as per limits provided in MSME Act, 2006. It shall be further allowed in the F.Y in which it is actually paid.**

# Definition of term 'Micro' and 'small' as per MSME Act, 2006 – Contd.

## Micro Enterprises

- Investment in Plant & Machinery does not exceeds 1 crores and,
- Turnover does not exceed 5 crores.

## Small Enterprises

- Investment, and Plant & Machinery does not exceeds 10 crores and,
- Turnover does not exceeds 50 crores.

**Turnover above does not include export. For calculating investment in plant and machinery, WDV as per Income tax is considered.**

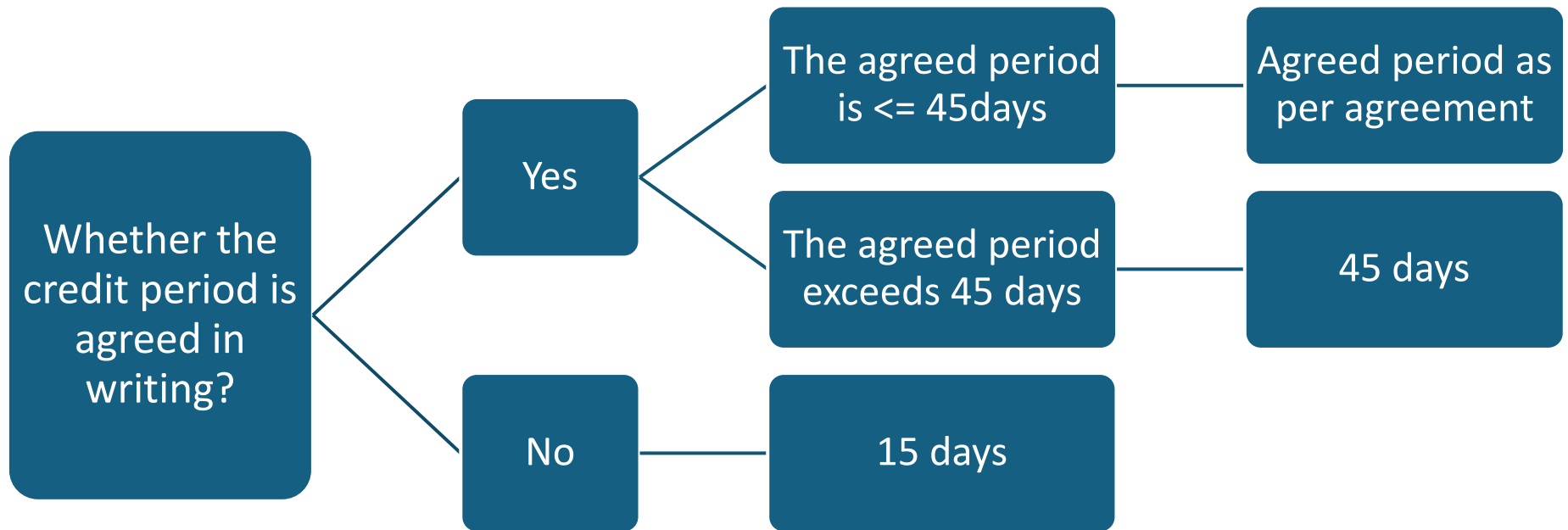


# Section 15 of MSME Act, 2006 – Contd.

Section 15 of MSME Act, 2006, provides the time frame up to when the payment shall be made by the Buyer to Micro or Small Enterprise supplier-

- a) On or before the date agreed upon, **(agreement of payment in writing is available)**, Provided that in any case, period agreed upon between the supplier and the buyer in writing shall not exceed 45 days from the day of acceptance or deemed acceptance.
- b) Before the appointed day, **(where such agreement of payment is not available)**

# Due date calculating as per section 15 of MSMED Act – Contd.



# Some Examples – Contd.

Case	Supply/ Date of bill received	Payment to be made as per MSMED Act 2006	Actual date of payment	Consequence
1	25.03.2024	<ul style="list-style-type: none"> <li>▪ If written agreement, payment to be made within 45 days i.e. by 09.05.2024.</li> <li>▪ If no written agreement, payment to be made within 15 days i.e. by 09.04.2024.</li> </ul>	28.03.2024	No impact as there would be no outstanding as on 31 <sup>st</sup> March 2024.
2	25.03.2024	<ul style="list-style-type: none"> <li>▪ If written agreement, payment to be made within 45 days i.e., by 09.05.2024.</li> <li>▪ If no written agreement, payment to be made within 15 days i.e., by 09.04.2024.</li> </ul>	30.04.2024	<ul style="list-style-type: none"> <li>▪ No Impact as payment is made by specified time.</li> <li>▪ Would be disallowed as payment made after specified date.</li> </ul>
3	25.03.2024	Written agreement specifies payment within 60 days i.e., 24.05.2024, payment to be made within 45 days i.e., 09.05.2024.	15.05.2024	Would be disallowed as payment made before agreed date but after 45 days.

# Summary – Contd.

- 1) Provisions of section 43B is applicable for every entity engaged in business or profession except the entities who opts for presumptive taxation scheme and files their return of income on presumptive basis u/s 44AD, 44ADA and 44AE.
- 2) Expenses incurred during the course of business covered under the ambit of section 43B of the act shall be allowed on actual payment basis only, and hence accrual concept shall not hold good in the section of the act.
- 3) Provision on interest shall be mandatory to be made. Interest on delayed payment to MSME is disallowed as per Section 23 of MSMED Act. Hence, it cannot be claimed by the assessee while preparing financial statements.
- 4) Clause (h) of section 43B of income tax act is applicable only on micro and small enterprises, and not on medium enterprises.

# Issues on Clause no. 26 – Contd.

- ***Explanation 3CA amended w.e.f 01.04.2023.***—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (da), shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing [***or debenture or any other instrument by which the liability to pay is deferred to a future date***] shall not be deemed to have been actually paid.
- Provisions of section 43B are also applicable to interest on any loan or borrowing from such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf (applicable w.e.f. AY 2024-25) or a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company under clause (da) or any sum payable by the assessee to a micro or small enterprise beyond the time-limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 under clause (h) (applicable w.e.f. AY 2024-25). However, clause 26 does not require reporting in respect of clause (da) or (h) of section 43B.

# Clause no. 27

## Clause no. 27(a)

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

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

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

# Issues on Clause no. 27 – Contd.

## In reference to Clause no. 27 (a):

- ❑ The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts & relevant excise & service tax records.
- ❑ If the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material, capital goods & service tax paid on input services is debited to the CENVAT/ service tax credit receivable account & not as a part of purchase cost of raw material, capital goods or cost of input services. The credit utilized is debited to the excise duty/service tax payable a/c & credited to CENVAT/ service tax credit receivable A/c. thus, the credit availed & utilized will not have any impact on the P/L A/c.
- ❑ Reporting requirement under Clause 14(b) of form no. 3CD is a requirement distinct & separate from reporting requirement under this Clause.
- ❑ Since implementation of GST from July 1, 2017, central excise duty has been subsumed in GST and is leviable only on six products viz. petroleum crude, diesel, petrol, aviation turbine fuel, natural gas and tobacco. Hence, reporting under this clause is restricted for only those assessees who deal in these products.
- ❑ **Similar procedure is to be followed for Input Tax credit on GST with necessary changes.**

## Clause no. 27 - Contd.

## Clause 27(b)

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

S.No.	Type	Particulars	Amount	Prior period to which it relates (Year in yyyy-yy format)
1	<div> <div>Select</div> <div> <div>+ Add</div> <div>- Debit</div> </div> </div>			<div>Select</div>



# Issues on Clause no. 27 – Contd

## 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.]**
- ❑ **In the circumstances, auditor is of the view that it is not a prior period item, the same may be disclosed in the observation para of the audit report.**

# 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)(viiia)**, if yes, please furnish the details of the same.

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

**Note:** Section 56(2)(viiia) is not applicable for AY 2022-23 and onwards

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

# Clause no. 28 – Contd.

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

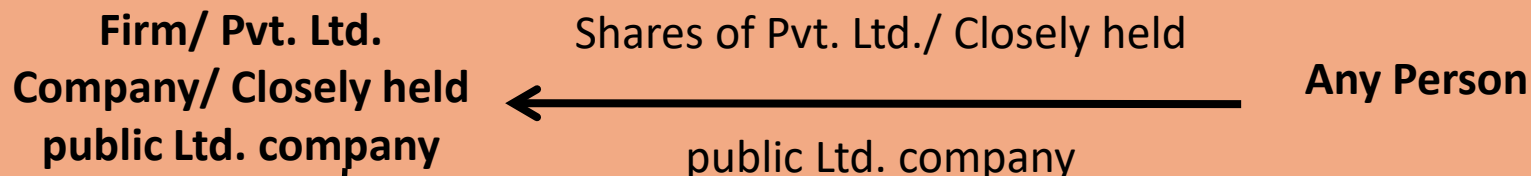
Sr. No.	Name of the person from whom shares have been received	PAN of the person, if available	Nature of shares (Quoted in RSE/Quoted in URSE/unquoted shares etc)	Name of the Company whose shares received	CIN of the company	No. of Shares Received	Fair Market value as per Rule 11UA(1)(c)	Consideration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

## Format in e-utility

Name of the person from which shares received	PAN of the person, if available	Aadhaar number of 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

 Add  Delete

# Issues on Clause no. 28 – Contd.



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

## Issues/ points to be considered .....

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

# Clause no. 29

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

**Auditor shall maintain the following information:**

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

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

# Issues on Clause no. 29 – Contd.

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



**Recipient**

Consideration for  
issue of shares exceeding FV

**Resident**

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

## Format in e-utility

Name of the person from whom consideration received	PAN of the person, if available	Aadhaar number of person (if available)	No. of shares issued	Amount of consideration received	Fair market value of shares



Add



Delete

# Issues on Clause no. 29

## Issues/ points to be considered.....

- ❑ Obtain a list of shares issued to any person ~~being a resident~~ and verify the same from the books of account and other relevant documents.
- ❑ Note : 'being a resident' omitted vide the Finance Act, 2023 w.e.f. AY 2024-25)
- ❑ Provisions of Rule 11UA(1) & 11UA(2) should be considered to determine FMV.
- ❑ Where the consideration of the share is greater than Face value of the share, the difference of aggregate consideration received for such shares & FMV of shares, shall be chargeable to income tax u/h 'income from other sources'
- ❑ Where for determining the fair market value of unquoted equity shares, a valuation report has been obtained by the assessee from a merchant banker or an accountant, the auditor should obtain a copy of the same. Here, attention is invited to the Standard on Auditing-620 "Using the work of an Auditor's expert".

# Issues on Clause no. 29

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 a specified fund.
- b. by a company from a class or classes of persons as may be notified by the Central Government in this behalf. Please refer Notification No. 13/2019 dated 05.03.2019 issued under this provision.
- c. from a non-resident. (till AY 2023-24)



# Clause no. 29A

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

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

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

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

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

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

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

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

***(a) such sum is forfeited; and***

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

# Clause no. 29B

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

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

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

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

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

# Section 56(2)(x).... Contd.

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

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

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

(b) any immovable property,—

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

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

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

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

*(i) the amount of fifty thousand rupees; and*

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

# Section 56(2)(x).... Contd.

**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;

Proviso Inserted w.e.f 01.04.2021 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:

## Section 56(2)(x).... Contd.

- 1.** Provided that this clause shall not apply to any sum of money or any property received—
2. from any relative; or
3. on the occasion of the marriage of the individual; or
4. under a will or by way of inheritance; or
5. in contemplation of death of the payer or donor, as the case may be; or
6. from any local authority as defined in the Explanation to clause (20) of section 10; or
7. 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
8. from or by any trust or institution registered under section 12A or section 12AA or section 12AB;
9. 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
10. by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) or {or clause (viiac) or clause (viiad) or clause (vii ae) or clause (vii af)] of section 47.
- 11.** from an individual by a trust created or established solely for the benefit of relative of the individual.
- 12.** from such class of persons and subject to such conditions, as may be prescribed

Provided further that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of section 13.

# Section 56(2)(x).... Contd.

## 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) & (viia) are applicable to specific assesseees (i.e. Individuals/ HUF and firm or a company not being a company in which the public are substantially interested).

# Issues for Consideration u/s 56(2)(x) – Contd.

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

## Example:

- ❑ 'X' transfers his unquoted shares purchased at a cost of Rs.8 lakhs to 'Y' at Rs. 10 lakhs whereas the FMV of the shares as determined in the prescribed manner is Rs. 1 crore. Then in this situation, the provisions of proposed Section 50CA would be attracted in the hands of the seller, whose full value of consideration for computation of capital gains would be Rs.1 crore. Further, 'Y' who is purchaser would be liable to tax under section 56(2)(x)(c) on Rs. 90 lakhs (i.e. Rs. 1 crore less Rs. 10 lakhs) as income from other sources.
- ❑ Hence, the difference of Rs.90 lakhs between FMV & actual consideration will be taxable:
  - a. Under section 50CA, in the hands of seller; and
  - b. Under section 56(2)(x), in the hands of recipient.
- ❑ A similar consequence of double taxation resulting on account of the provisions of section 50C/43CA & 56(2)(x)(b).



# Clause no. 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]**.

## Format in e-utility

S No.	Name of the person from whom amount borrowed or repaid on Hundi	PAN of the person, if available	Aadhaar No. of the person, if available	Address of the person	Amount Borrowed	Date of Borrowing	Amount due including Interest	Amount Repaid	Date of Repayment

 Add

 Delete

# Clause no. 30A

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

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

- a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? **(Yes/No)**
- b) If yes, please furnish the following details:-
  - i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
  - ii. Amount (in Rs.) of primary adjustment:
  - iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
  - iv. If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)

Note - as per Rule 10CB, as a secondary adjustment. Vide Finance Act 2019, an explanation was inserted in the said sub-section to provide that excess money or part thereof may be repatriated from any of the non-resident AE.

- i. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

# Clause no. 30A

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

- ❑ Rule 10CB(1) provides for a time limit of 90 days for repatriation of the excess money or part thereof.
- ❑ Rule 10CB(2) further provides the manner of computation of for the rate of interest on excess money or part thereof which is not repatriated in India within the prescribed time limit
- ❑ Sub-section (2A) however, provides that where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof, as the case may be.
- ❑ Sub-section (2B) further provides that the tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid. The provisions also state that where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax. Sub-section (2C) further provides that no deduction shall be allowed under the Act for the taxes paid under sub-section (2A).

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

- 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 on or after 1st day of April 2017;
  - iv. is made as per the safe harbour rules framed under section 92CB; or
  - v. is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation, the assessee shall make a secondary adjustment:

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

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

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

(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.*

It may, however, be noted here that effective December 31, 2021, LIBOR was no longer to be used in the case of all Pound sterling, Euro, Swiss franc, and Japanese yen settings, and the 1-week and 2-month US dollar settings, and effective June 30, 2023, in the case of the remaining US dollar settings, and was to be replaced by new risk-free interest rates by adopting Alternative Reference Rates (ARR).

Amendments were made by the Finance Act, 2019 wherein it was provided that excess money or part thereof may be repatriated from any other non-resident AE avoiding additional tax. Further, if the excess money or part thereof was not repatriated within the prescribed time, option is granted to the assessee to pay additional tax on such excess money at the rates as prescribed. The applicable additional tax was prescribed at 18% plus applicable surcharge & cess.

# 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="checkbox"/>	<div>Select</div>	<div></div>	<div>Select</div>	<div>Select</div>	<div></div>	<div>DD/MM/YYYY</div>

# Clause no. 30B

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

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

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

# Clause no. 30B

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

A.Y.	Amount (in Rs.)

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

A.Y.	Amount (in Rs.)

Contd....





## Clause no. 30B

- ❑ The term “debt” is widely defined to mean any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in computation of income chargeable under the head “Profits and Gains of Business or Profession”. Section 94B(3) excludes an Indian company or a PE of a foreign company engaged in the business of banking or insurance from applicability of the Section.

Contd....

# Clause 30B      Format in e-utility....

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"/>	<input type="text"/>	Select 	<input type="text"/>	Select 	<input type="text"/>

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

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. And with effect from and FY 2023-24 (i.e., from AY 2024-25) onwards, class of non-banking financial companies (NBFC), being a NBFC as per section 45-I (f) of Reserve Bank of India Act, 1934 (2 of 1934) as notified, are also excluded from the purview of section 94(1).

# Clause no. 30C

## **Clause 30C – Reporting related to General Anti-Avoidance Rules (GAAR)**

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

# Clause no. 30C

## Section 96. Impermissible avoidance arrangement.

- (1) An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it—
- a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
  - b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
  - c) lacks commercial substance or is deemed to lack commercial substance under [section 97](#), in whole or in part; or
  - d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for *bona fide* purposes.
- (2) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

# Clause no. 30C

- ❑ The General Anti-Avoidance Rule (GAAR) is an anti-tax avoidance law in India to curb tax evasion and avoid tax leaks. It came into effect on 1st April 2017 i.e. AY 2018-19.
- ❑ GAAR is a tool for checking aggressive tax planning especially that transaction or business arrangement which is/are entered into with the objective of avoiding tax. It is specifically aimed at cutting revenue losses that happen to the government due to aggressive tax avoidance measures practiced by companies.
- ❑ As per the provision of the Income Tax Act, GAAR would apply to an arrangement entered into by the tax payer which may be declared to be an Impermissible Avoidance Agreement (IAA).
- ❑ Under GAAR the onus is on the revenue to declare an arrangement as IAA. If the revenue considers that the arrangement is an IAA, the assessee will be given an opportunity to be heard. Based on the response of the assessee further action will be taken.

# Clause no. 30C

- ❑ It is clear from the provisions contained in the Act that twin conditions will have to be satisfied to treat any arrangement as an IAA. Firstly, there has to be an arrangement entered into by the assessee in respect to which “Main Purpose” test should be satisfied and secondly, any one of the aforesaid “Additional Tests” has to be satisfied.
- ❑ Detailed provisions have also been made to deem an arrangement to lack commercial substance whereby the scope of the “Lack of Commercial Substance Test” has been amplified under Section 97. As a result, to avoid the application of “lack of Commercial Substance Test”, it would also be necessary to pass through certain further tests, such as: the test of substance/effect of the arrangement over the form of its individual steps, whether there is a significant effect upon the business risks or net cash flows of any party to the arrangement or whether the arrangement involves 'round trip financing' (which is also very widely defined): any 'accommodating party' (which is also very widely defined); any element having the effect of off-setting each other and so on. It is also clarified that the factors like the period or time of arrangement, the fact of payment of taxes directly or indirectly under the arrangement, the fact that an exit route is provided by the arrangement may be relevant but not sufficient for determining whether an arrangement lacks commercial substance or not.
- ❑ The taxpayer would be required to prove that tax benefit is not the main purpose of its arrangement which is in question by the Revenue.

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

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



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

## Clause 31(a)

S. No.	Name of the lender or deposit or	Address of the lender or deposit or	PAN ( if available with the assessee of the lender or depositor)	Aadhaar No. of person, if available	Amount of loan or deposit taken or accepted	Whether the loan/deposit was squared up during the previous year	Maximum amount outstanding in the account at any time during the previous year	Whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account	In the 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



Add



Delete

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

(b) Particulars of **each specified sum** in an amount exceeding the limit specified in **section 269SS** taken or accepted during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;
- ii. amount of specified sum taken or accepted;
- iii. whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed ;
- 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.


Note : An exception is provided for Primary Agricultural Credit Societies (“PACS”) and Primary Co-Operative Agricultural and Rural Development Bank (“PCARD”) by raising the amount to Rs 2,00,000 applicable w.e.f. AY 2023-24.

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

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

## Clause 31(b)

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

 Add  Delete

# Clause no. 31(ba)

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

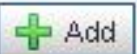

**(ba)** Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise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

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

# Format in e-utility of Clause no. 31(ba) – Contd.

## Clause 31(ba)

Name of the payer	Address of the payer	PAN of the payer (if available)	Aadhaar number of person(if available)	Nature of transaction	Date of receipt	Amount of receipt
					01/09/2023	

 Add  Delete

# Clause no. 31(bb)

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

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

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

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

## Clause 31(bb)

Name of the payer	Address of the payer	PAN of the payer (if available)	Aadhaar number of person (if available)	Amount of receipt

 Add  Delete

# Clause no. 31(bc)

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

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

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



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

## Clause 31(bc)

Name of the payee	Address of the payee	PAN of the payee (if available)	Aadhaar number of person(if available)	Nature of transaction	Date of Payment	Amount of Payment
					01/09/2023	

 Add  Delete

# Clause no. 31(bd)

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

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

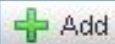
- i. Name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. Amount of payment (in Rs.);

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

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

## Clause 31(bd)

Name of the payee	Address of the payee	PAN of the payee (if available)	Aadhaar number of person(if available)	Amount of Payment



Add



Delete

# Section 269ST: Mode of undertaking transactions *(Inserted by the Finance Act, 2017 w.e.f. 01.04.2017)*

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

# Circulars & Notification by CBDT in respect of Section 269ST – Contd.

- ❑ CBDT vide **Notification No. 28/2017 dated 05-04-2017** clarified that the Sec. 269ST will not apply to withdrawal of cash from banks, co-operative banks or post office savings banks.
- ❑ the CBDT vide **Circular No. 22/2017 dated 03-07-2017** seeks to clarify issues relating to receipt by Non-Banking Financial Companies ('NBFCs') or Housing Finance Companies ('HFCs') in the nature of repayment of loans.
  - *“it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a ‘single transaction’ as specified in clause (b) of section 269ST of the Act and **all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST**”*
  - This Notification shall be deemed to have come in to the force with effect from the 01/04/2017

# Circulars & Notification by CBDT in respect of Section 269ST – Contd.

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

# Circulars & Notification by CBDT in respect of Section 269ST – Contd.

- ❑ Sec. 10 (17A) states that, any payment made, whether in cash or in kind —
  - (i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or
  - (ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;shall not included in the total income of the assessee.
- ❑ This Notification shall be deemed to have come in to the force with effect from the 01/04/2017

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

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

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

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

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



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

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

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

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

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

## Clause 31(c)

Name of the payee	Address of the payee	PAN (if available with the assessee) of the payee	Aadhaar No. of the person, if available	Amount of the repayment	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account	In case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft

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

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

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

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

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

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

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

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

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

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

## Clause 31(d)

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

## Clause 31(e)

S. No.	Name of the payer	Address of the payer	PAN ( if available with the assessee) of the payer	Aadhaar No. of the person, if available	Amount of repayment of loan or deposit or any specified advance received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year

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

## Contd.

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

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

- ❑ **Section 269SS** has been amended w.e.f. 01.06.2015 to include:
  - taking or accepting of **‘specified sum’** (being any sum of money receivable, whether as advance or otherwise, in relation to the transfer of an immovable property, whether or not the transfer takes place),
  - other than by an a/c payee cheque or a/c payee bank draft or by electronic clearing system through a bank account,
  - if the amount of such specified sum is Rs. 20,000/- or more.
- ❑ **Section 271D [Penalty for failure to comply with the provisions of section 269SS]** has been amended accordingly.

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

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



# Issues on Clause no. 31 – Contd.

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

# Clause no. 32(a)

## Clause 32 (a)

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

S. No	Assessment Year	Nature of loss/allowance	Amount as returned	All losses/allowances not allowed u/s 115BAA/ 115BAC/ 115BAD	Amount as adjusted by withdrawal of additional depreciation on account of opting taxation u/s 115BAA/ 115BAC/ 115BAD	Amount as assessed		Remarks
						Amount	Order u/s & date (according to E-utility)	

# Clause no. 32(b)

## Clause 32(b)

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

### Note:

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

# Issues on Clause no. 32(b) – Contd.

## Amendment by FA 2018:

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

## Issues on Clause no. 32(b) – Contd.

- ❑ In case of any undisclosed income determined in case of an assessee during any proceedings of search, requisition or survey, then no adjustment or set off shall be allowed against such undisclosed income. The set off shall not be available in case of both brought forward losses as well as the unabsorbed depreciation. From Assessment Year beginning from 2022-23 onwards, the Tax Auditor, has to confirm and verify whether any search or survey has taken place or undergoing based on the records of assessment proceedings of the assessee and accordingly shall check if any undisclosed income has been determined in case of the assessee. The eligibility of brought forward losses and unabsorbed depreciation against such undisclosed income as computed by the assessee should be checked and based on that the necessary adjustments should be made to losses to be carried forward by the assessee.

# Issues on Clause no. 32(b) – Contd.

## Issues/ Points to be considered:

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

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

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

## **Issues/ Points to be considered:**

- Scrutinize the books of account and other relevant documents as to whether the assessee is carrying on any speculation business.
- Applicability of provisions of Sec. 73 in case of loss in trading of derivatives being shares and stocks
- Whether the term “Speculative Business” should be r.w. the term “Speculative Transactions”
- The tax auditor should make appropriate disclosure in the “Remarks” column of the annexure provided for clause 32(a) of Form 3CD. In case, if the website utility of Form 3CD does not have specific column for such reporting, the tax auditor if deem fit can provide a note/qualification in Form 3CA / Form 3CB, in this regard.

# Details to be maintained by auditor

## For Clause no. 32(c), (d),(e) – Contd.

### ❑ For Clause 32 (c)

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

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



# Details to be maintained by auditor

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

### ☐ For Clause 32 (e)

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

# Clause no. 32(c), (d),(e) – Contd.

## Format in E-utility

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

Select



If yes, please furnish the details of the same.

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

Select



If yes, please furnish details of the same.

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

Select



If yes, please furnish the details of speculation loss if any incurred during the previous year.

# Clause no. 33

Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.

**Brief:** Deduction u/s 10A (*Special provision in respect of newly established undertakings in free trade zone, etc.*) and Section 10AA (*Special provisions in respect of newly established Units in Special Economic Zones*) also included and specified format provided .

# Issues on Clause no. 33

- Chapter VIA of the Act deals with deductions in respect of certain payments, deduction in respect of certain incomes, & other deductions which have to be given effect to by the way of allowance from gross total income of the assessee.
- Chapter III relates to income which don't form part of total income, the reporting under this Clause is required only with respect to exemptions claimed u/s 10A & Section 10AA

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

(a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

<b>Tax deduction and collection Account Number (TAN)</b>	<b>(1)</b>
Section	(2)
Nature of payment	(3)
Total amount of payment or receipt of the nature specified in column (3)	(4)
Total amount on which tax was required to be deducted or collected out of (4)	(5)
Total amount on which tax was deducted or collected at specified rate out of (5)	(6)
Amount of tax deducted or collected out of (6)	(7)
Total amount on which tax was deducted or collected at less than specified rate out of (7)	(8)
Amount of tax deducted or collected on (8)	(9)
Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)	(10)

# Issues on Clause no. 34(a) – Contd.

- ❑ In-built checks not provided.

**For example,** Column (5)- *‘Total amount on which tax was required to be deducted or collected out of (4)’*, should not exceed the amount specified in column (4).

- ❑ The detail is to be provided in accordance with the nature of payment.
- ❑ The tax auditor is required to provide the detail irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-b or XVII-BB.
- ❑ With regard to applicability of section 194BA, (w.e.f 01.04.2023), the auditor should examine rule 133 and circular issued in this regard.
- ❑ The auditor may take the status of the demand payable as per the TDS CPC (popularly known as TRACES) for the purpose of reporting in clause 34.

# Issues on Clause no. 34(a) – Contd.

## 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.

# Issues on Clause no. 34(a) – Contd.

- ❑ There is no specific column to mention non- deduction of tax at source in the specified format. However, the amount may be calculated as follows

$$\text{Non- deduction} = \text{Column (5) less [(6) plus (8)]}$$

- ❑ Since the reference to Chapter XVII-B is made, it is clear that TDS under Income-tax Act is only covered. TDS under other laws (e.g. TDS on works contracts under State VAT laws) are not covered. The tax auditor is also not responsible for reporting timely deposit with the State Government of Profession Tax deducted from salaries of employees - **ICAI's Issues on Tax Audit.**
- ❑ If tax auditor does not agree with the auditee's views on deductibility/non-deductibility of tax in particular cases, it would be advisable to state both views (his views as well as the auditee's views)



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

## Format in E-utility

34 (a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

S.No.	Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
1										

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

## Clause no.34 (b) (As amended by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

**Clause 34(b) has been substituted i.e. Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be mentioned.**

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

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. <b>If not, please furnish list of details/transactions which are not reported.;</b>

# Clause no. 34(b) – Contd.

## Format in e-utility.....

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

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for Furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported	If not, please furnish list of details/trans actions which are not reported

Select

Yes

No

Select

Form 24

Form 24G

Form 24Q

Form 26

Form 26A

Form 26B

Form 26Q

Form 26QAA

Form 26QB

Form 27

Form 27A

Form 27B

Form 27BA

Form 27C

Form 27D

Form 27E

Form 27Q

Form 27EQ

# Issues on Clause no. 34(b) – Contd.

- Whether such detail is required to be provided only in case of default on the part of assessee in filing statement of tax deducted or collected?
- The Tax Auditor cannot merely rely on information provided by the client but have to examine books of account to determine the transaction on which provisions of Chapter-XVII B and Chapter XII BB apply.
- Whether it is practically possible for the tax auditor to verify all the transactions to report compliance with provisions of Chapter XVII-B or XVII-BB, where the tax audit is time bound like in Banks.

Option provided in Form 3CA and Form 3CB under Qualification Type -  
**“TDS returns could not be verified with the books of account”**

- A disclaimer may be provided by the tax auditor

**Disclaimer:** During the year, it is not possible for us to verify whether all the transactions of the assessee due to voluminous entries in the books of account and the transactions have been verified on test-check basis and explanation provided by the assessee.

# Clause no. 34(c)

c) whether the assessee is liable to pay interest under Section 201(1A) or Section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest u/s 201(1A)/ 206C(7) is payable	Amount paid out of column (2) along with date of payment.				
		<table><tr><th>Amount</th><th>Dates of payment</th></tr><tr><td></td><td></td></tr></table>	Amount	Dates of payment		
Amount	Dates of payment					

**Brief:** Detail in respect of interest u/s 201(1A) & 206C(7), if any to be provided.

Sec. 201(1A)- Levy of simple interest on **failure to deduct** tax or payment thereof to the credit of Central Government

Sec. 206C(7)- Levy of simple interest on **failure to collect** tax or payment thereof to the credit of Central Government

# Issues/Case laws....

- ❑ If the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account & also from part G of the statement generated by the department in form no. 26AS.
- ❑ In case the assessee had disputed the levy or calculation of interest under TRACES, in form no. 26AS, the auditor may re-calculate the amount of interest u/s 201(1A) or Section 206C(7) up to the date of audit report for reporting under this Clause & also mention the fact in his observations provided in form no. 3CA & form no. 3CB.

# Clause no. 35

(a) In the case of a trading concern, give quantitative details of **principal items** of goods traded:

Item name	Unit	opening stock	purchases during the previous year	sales during the previous year	Closing Stock	Shortage/ excess, if any

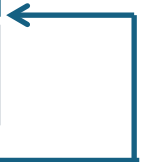
# Clause no. 35 – Contd.

## Clause 35(b)

In the case of a manufacturing concern, give quantitative details of the **principal items** of raw material, finished products and by- products:

### (A) Raw materials:

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



Sales during the previous year	Closing Stock	Yield of finished products	Percentage of yield	Shortage/ excess, if any



# Clause no. 35 – Contd.

## (B) Finished Products:

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

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

## (C) By- Products:

Item name	Unit name	Opening stock	Purchases during the previous year	Quantity manufactured during previous year	

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

# Clause no. 35 – Contd.

- ❑ **“Principal Items”** :- Items which constitute more than **10% of the aggregate value** of purchase, consumption or turnover.
- ❑ The tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons thereof.
- ❑ As required by SA-501 “Audit Evidence - Additional considerations for specific items”, the tax auditor (if he is issuing Form No. 3CB also) should attend the physical stock-taking conducted by the management if the inventories are material unless such attendance is impracticable due to matters such as nature and location of the inventory.

# Issues on Clause no. 35 – Contd.

- ❑ If the assessee is engaged in the manufacture of goods where the input of raw materials and the output of finished goods are recorded in different units of measurement, unless an alternative method is available to convert the end product into the same unit of measure as the inputs, the yield and shortage cannot be ascertained.

If the end product is a standard item and can be converted back and related to the input of the raw material in the same unit of measurement, it should be done to ascertain the shortage, yield etc. If it is not possible, the tax auditor should state the fact under this Clause.

- ❑ In case of companies, verify that these details tally with details given in annual accounts in the notes to accounts.

## Clause no. 36 – Contd.

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Clause 36 has been omitted w.e.f. 01.04.2021 after eradication of concept of Dividend Distribution Tax in the hands of the companies.

*Omitted by the Income-tax (Eighth Amendment) Rules, 2021.*

# Clause no. 36A

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

**Clause 36A - Dividend received u/s 2(22)(e) is required to be reported under this clause, as under:**

- a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)
- b) If yes, please furnish the following details:-
  - i. Amount received (in Rs.)
  - ii. Date of receipt

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

S.No.		Amount received (in Rs.)	Date of receipt
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

## 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.

**Brief:** Now Cost Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.

# Issues on Clause no. 37 – Contd.

- ❑ The Auditor need not express any opinion if such Audit is ordered and not conducted.
- ❑ The Auditor should state the fact in his report if such Audit which has been ordered is not completed by the time he issues his Audit Report.
- ❑ Make note of any material observation made in such Report.
- ❑ Give information only for that Cost Audit Report which falls within the relevant Previous Year.

## Clause no. 38

Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported /identified by the auditor.

**Brief:** Now Excise Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.



## Issues on Clause no. 38 – Contd.

- ❑ This Clause does not require the tax auditor to verify or examine anything. All that it requires of the tax auditor is to specify (“Yes” or “No”/“N.A.”) whether any audit was conducted under the Central Excise Act, 1944.
- ❑ Tax auditor is not required to study the Central Excise audit report in detail. However, **he should take note of any material observation made in such Central Excise audit report** which may have relevance to the tax audit conducted by him.
- ❑ If excise audit ordered is not completed by the time tax auditor gives his report, then he shall state the same in his report
- ❑ Auditor is supposed to furnish information in respect of excise audit report the time period of which falls within the relevant P.Y.

# Clause no. 39

Whether any **audit was conducted under Section 72A of the Finance Act, 1994 in relation to valuation of taxable services**, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/ identified by the auditor.

**Brief:** Detail of disqualification or disagreement in the report of audit u/s 72A of the Finance Act, 1994 (**Special Audit**) also to be specified

**Note:** At present, no service tax is applicable and as such no reporting is to be done under this clause unless where any service tax demand is due for the period of April 1 to 30 June 2017 in the AY or a demand has been raised or confirmed in the AY, the impact of the said demand or provisions or refund involved has to be reported in the Audit Report.

# Section 72A of Finance Act, 1994

## Special Audit

1. If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person",—
  - i. has failed to declare or determine the value of a taxable service correctly; or
  - ii. has availed and utilised credit of duty or tax paid—
    - a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
    - b) by means of fraud, collusion, or any wilful mis-statement or suppression of facts; or
  - iii. has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner,he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

# Clauses 37, 38, 39 as shown in utility

37

Whether any cost audit was carried out ? ☐ Yes ☒ No ☐ NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

Nil

38

Whether any audit was conducted under the Central Excise Act, 1944 ? ☐ Yes ☒ No ☐ NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Nil

39

Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, Finance Act, 1994 in relation to valuation of taxable services as may be reported / identified by the auditor. ☐ Yes ☐ No ☒ NA

if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Nil

# Clause 40.....Contd.

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

Serial number	Particulars	Previous year	Preceding previous year
1	<b><u>Total turnover of the assessee</u></b>		
2	Gross profit/turnover		
3	Net profit/turnover		
4	Stock-in-trade/turnover		
5	Material consumed/ finished goods produced		

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

**Brief:** Detail in respect of principal items to be provided. Detail for preceding year also to be provided

# Clause no. 40... Contd.

## Format in e-Utility

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

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

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

- ❑ Calculate ratios for manufacturing or trading concern in terms of value only.
- ❑ **Return has separate disclosure for Manufacturing & Trading A/c now. So, carefully reconcile Gross Profit or give observations accordingly.**
- ❑ Calculate Ratios for the business as a whole and not product wise.
- ❑ If Closing stock is Nil, this sub Clause (d) is not applicable.
- ❑ Stock in trade include only closing stock of finished goods not stock of raw material & work in progress.
- ❑ Overall G.P Ratio is enough if gross profit from each product is different.
- ❑ Depreciation on Plant & Machinery considered for valuation of Finished goods [AS-2 (revised)]
- ❑ Depreciation on P&M should be deducted to arrive at gross profit.
- ❑ Exclude extraordinary items for calculation of ratios unless it gives material effect [AS 5].

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

- ❑ It may be noted that the net profit to be shown here in this clause is net profit before tax.
- ❑ Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools.
- ❑ There should be consistency between the numerator and the denominator while calculating the above ratios. Any significant deviation thereof should be pointed out in para 3 of Form 3CA or para 5 of Form 3CB.
- ❑ The relevant previous year figures are to be taken from last previous year audit report or the reinstated figures to make the ratios comparable with current year. In case, the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column.



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

- ❑ Take the value of Sales, Purchase & Inventories before the Statutory Adjustment (of Sec 145A).
- ❑ **In case of Share broker**
  - i. Dealing for Commission – Calculate Net Profit Ratio
  - ii. Business – Calculate Gross Profit Ratio

## Case Law

### **N.C. Budharaja & Co, (1993) 204 ITR 412(SC)**

In this Case Hon'ble Supreme Court decided that construction of tunnels, bridges, dams etc is only a Service Activity and it cannot amount to manufacturing activity.

# Clause no. 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

**Brief:** Demand/ refund under laws other than the Income Tax Act, 1961 and Wealth Tax Act, 1957 to be furnished along with assessment particulars.

# Clause no. 41 – Contd.

## Format in e-utility

Financial Year	Name of other tax law	State	Other Desc.	Type	Date of demand raised/refund received	Amount	Remarks
	NA					NA	NA

Select  
Central Excise Duty  
Central Custom Duty  
Service Tax  
Sales Tax/VAT  
State Excise Duty  
Goods & Services Tax  
Other Indirect Tax/duty

Select  
Demand raised  
Refund received

# Issues / points to be considered on

## Clause no. 41 – Contd.

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- ❑ Legislative intention of insertion of this Clause in the Tax Audit report under Income Tax Act: Probably is to determine whether such demand has been claimed as expenditure by the assessee or not or whether the refund has been included in income or not.
- ❑ Generally, under other tax laws the Indirect tax laws such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax, Goods and service Tax, etc should be covered
- ❑ The tax auditor doesn't need to furnish details in respect of those proceedings in which neither demand is raised nor refund is issued.
- ❑ Obtain a copy of all the demand/ refund orders issued by the governmental authorities during the P.Y. under any tax laws other than Income Tax Act and Wealth Tax Act.
- ❑ Where the demand/refund order pertains to a period other than the relevant P.Y. but issued during the P.Y., the same should also be reported.
- ❑ If there is any adjustment of refund against any demand, the auditor shall also report the same.

# Issues on Clause no. 41 – Contd.

- ❑ The tax auditor should cross verify the details of demand, if any pending, from clause (vii) of COMPANIES AUDITOR REPORT ORDER (CARO) RULES, 2016
- ❑ The reporting by the tax auditor is subject to availability of information from the assessee.
- ❑ In case of refunds, the tax auditor should also verify whether the interest on such refund has been shown as income or not?
- ❑ The tax auditor should also report the consequential penalty if debited to P&L A/c in Clause No. 21

## Clause No. 21(a)

- Expenditure by way of penalty or fine for violation of any law for the time being force.
- Expenditure by way of any other penalty or fine not covered above

# Clause no. 42

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

**Clause 42**- Details w.r.t. Form 61 (details of No PAN/ Form 60 received), Form 61A (statement of Specified Financial Transactions), Form 61B (Statement of Reportable Account), is to be reported here, as under:

- a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)
- b) If yes, please furnish:

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.

# Clause no. 42 – Contd.

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61	Every person who has received any declaration in Form No. 60 (No PAN), on or after the 01.01.2016, in relation to a transaction specified in rule 114B, shall furnish a statement in Form No. 61 containing particulars of such declaration.	<ul style="list-style-type: none"><li>• 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</li><li>• 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.</li></ul>	The form 61 shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.

# Clause no. 42 – Contd.

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61A	Statement of Financial Transactions (SFT) is a record of the statement of specified financial transactions which are required to be furnished u/s 285BA of the Act shall be furnished in Form No. 61A. The nature and value of transaction to be furnished by the reporting person as specified under Rule 114E.	The form 61A shall be furnished on or before the 31 <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, demanding the assessee to submit the form within 30 days from issuance of such notice.	It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.



# Clause no. 42 – Contd.

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61B	<p>This is a statement of reportable account required to be furnished under section 285BA(1)(k) shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account:</p> <p><b><i>Provided</i></b> 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.</p>	<p>The Form No. 61B shall be furnished for every calendar year by the 31st day of May following that year.</p> <p><b><i>Provided</i></b> that the statement pertaining to calendar year 2014 shall be furnished by the 31st day of August, 2015.</p>	<p>It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data.</p>

# For what and by whom Form 61A is filed?

## [Rule - 114 E ]

S. No	Nature and value of transaction	Class of person (reporting person)
1	<p>a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to <u>ten lakh rupees</u> or more in a financial year.</p> <p>b) Payments made in cash aggregating to ten lakh rupees or more during the financial year for purchase of pre-paid instruments issued by RBI.</p> <p>c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to fifty lakh rupees or more in a financial year, in or from one or more current account of a person.</p>	A banking company or a co-operative bank to which the Banking Regulation Act applies (including any bank or banking institution referred to in section 51 of that Act).
2	Cash deposits aggregating to ten lakh rupees or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	<ul style="list-style-type: none"> <li>• Same as above and,</li> <li>• Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898.</li> </ul>

# For what and by whom Form 61A is filed?

## [Rule - 114 E ] – Contd.

S. No	Nature and value of transaction	Class of person (reporting person)
4	<b>Payments made by any person</b> of an amount aggregating to— (i) <b>one lakh rupees or more <u>in cash</u></b> ; or (ii) <b>ten lakh rupees or more by <u>any other mode</u></b> , against bills raised in respect of one or more credit cards issued to that person, in a financial year	<b>A banking company</b> as specified earlier and <b>any other company or institution issuing credit card.</b>
5	<b>Receipt from any person</b> of an amount aggregating to <b>ten lakh rupees or more</b> in a financial year for <b>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).	<b>A company or institution issuing bonds or debentures</b>

# For what and by whom Form 61A is filed?

## [Rule - 114 E ] – Contd.

S. No	Nature and value of transaction	Class of person (reporting person)
6	<b>Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares</b> (including share application money) issued by the company.	A company issuing shares.
7	<b>Buy back of shares from any person</b> (other than the shares bought in the open market) <b>for an amount or value aggregating to ten lakh rupees or more in a financial year.</b>	A company listed on a recognised stock exchange purchasing its own securities 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</b> (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

# For what and by whom Form 61A is filed?

## [Rule - 114 E ] – Contd.

S. No	Nature and value of transaction	Class of person (reporting person)
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</b> (other than those specified at Sl. Nos. 1 to 10 of this rule, if any.)	<b>Any person who is liable for audit under section 44AB of the Act.</b>

# For what and by whom Form 61A is filed?

## [Rule - 114 E ] – Contd.

S. No	Nature and value of transaction	Class of person (reporting person)
12	<p>Cash Deposits during the period 9th November 2016 to 30th December 2016 aggregating to –</p> <ul style="list-style-type: none"><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>	<p><b>A banking company and Postmaster General as mentioned above.</b></p>
13	<p>Cash Deposits during the period of 1st April 2016 to 9th November 2016 in respect of accounts that are reportable under Serial No. 12</p>	<p><b>A banking company and Postmaster General as mentioned above.</b></p>

# Reportable Account [Rule – 114F(6)]

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A **Reportable Account** means a financial account, which has been identified pursuant to the due diligence procedure, as held by:

- 1) A reportable person; or
- 2) An entity, not based in United States of America, with one or more controlling persons that is a specified U.S. person; or
- 3) A passive non-financial entity with one or more controlling persons that is a person described in sub-clause (b) of clause (8) of the rule 114F.

# Reporting Financial Institution (i.e. RFI) [Rule – 114F(7)]

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**“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)]

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"U.S. person" means,-

- a) an individual, being a citizen or resident of the United States of America ;
- b) a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;
- c) a trust if,-
  - i. 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]

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After the RFI has identified the reportable accounts, RFI needs to report specific information in respect of each reportable account. As per Rule 114G(1), RFI needs to maintain and report the following information in case of each Reportable Account:

- a) **The name, address, taxpayer identification number** (assigned to the account holder by the country or territory of his residence for tax purposes) and **date and place of birth** (in the case of an individual) **of each reportable person**, that is an account holder of the account;
- b) **In the case of any entity which is an account holder** and which, after application of due diligence procedures prescribed in rule 114H, is identified as having one or more controlling persons that is a reportable person,-
  - ❑ **The name and address of the entity, taxpayer identification number** assigned to the entity by the country or territory of its residence; and
  - ❑ **The name, address, date and place of birth of each such controlling person and taxpayer identification number** assigned to such controlling person by the country or territory of his residence;

# Information to be maintained and reported [Rule – 114G] – Contd.

- c) **The account number** (or functional equivalent in the absence of an account number);
- d) **The account balance or value** (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of relevant calendar year or, if the account was closed during such year, immediately before closure;
- e) **in the case of any custodial account,-**
  - ❑ the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year; and
  - ❑ the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;

# Information to be maintained and reported [Rule – 114G] – Contd.

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- f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year;*
- g) in the case of any account other than that referred to in clause (e) or (f), the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the relevant calendar year; and*
- h) in the case of any account held by a non-participating financial institution, for calendar year 2015 and 2016, the name of each non-participating financial institution to which payments have been made and the aggregate amount of such payments:*

# Clause no. 42 – Contd.

## Format in e-utility

S.No.		Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.
1	<input type="checkbox"/>	<input type="text"/>	<div>Select ▼<div><div>Select</div><div>Form No.61</div><div>Form No.61A</div><div>Form No.61B</div></div></div>	<input type="text" value="DD/MM/YYYY"/>	<input type="text" value="DD/MM/YYYY"/>	<div>Select ▼<div><div>Select</div><div>Yes</div><div>No</div></div></div>	<input type="text"/>

# Clause no. 43

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

**Clause 43 – Details w.r.t. Country by Country (CbC) reporting as referred in section 286 is required to be reported in this clause, as under:**

- a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)
- b) If yes, please furnish the following details:
  - i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
  - ii. Name of parent entity
  - iii. Name of alternate reporting entity (if applicable)
  - iv. Date of furnishing of report

# Clause no. 44

*(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

**Clause 44:** Break-up of total expenditure of entities registered or not registered under the GST:

<i>Sl. No.</i>	<i>Total amount of Expenditure incurred during the year</i>	<i>Expenditure in respect of entities registered under GST</i>				<i>Expenditure relating to entities not registered under GST</i>
		<i>Relating to goods or services exempt from GST</i>	<i>Relating to entities falling under composition scheme</i>	<i>Relating to other registered entities</i>	<i>Total payment to registered entities</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)]</i>



# Clause no. 44

*(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

- ☐ As evident from the heading of the table i.e. Breakup of Total Expenditure', tax auditor is required to report total expenditure including purchases as per the above format.
- ☐ In the above table, the language used is "expenditure in respect of". Since, the word used is 'expenditure', it is advised that the capital expenditure may also be reported separately as serial no. 2 in the format prescribed.

# Clause no. 44

*(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

The Tax auditor should verify the details keyed in with the underlying document on a test check basis and retain the same as part of his working papers:

Expenditure head	Name of the entity to whom payment is made	GSTIN of the entity	Value debited to expenditure account	Value for which input tax credit is taken	Total amount paid to the vendor	Reason for NIL GST	General Remarks, if any

# Clause no. 44

*(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

- ❑ Headings of columns 3-6 and column 7 require reporting of “Expenditure in respect of entities registered under GST” and “Expenditure relating to entities not registered under GST” respectively. Thus, the expenses which are within the scope of GST i.e., which tantamount to ‘supply’ in terms of section 7 of the CGST Act, 2017 are only required to be reported under this clause in any of the columns from 3 to 7.
- ❑ It is important to differentiate the ‘current status’ of supplier’s registration from their status as it was at the time of supply. There are several instances where registration may be cancelled with effect from an earlier date which may be prior to the date of supply to assessee. Events occurring after balance sheet date that alter the data relating to year under audit does not alter the nature of the expenditure, that it is from registered suppliers. Auditors may elect to extend their review up to a certain cut-off date or not at all. In either case, disclosure of notes of the position with regard to (i) known cancellations and (ii) treatment in the disclosure considering possibility of such cancellations would go a long way in making the report meaningful and unambiguous.
- ❑ In case of multiple GST registrations of an entity, there is likelihood of inter-branch supply, which is eliminated at the consolidated financials. Proper reconciliation for such type of transactions may be kept on record.

# Clause no. 44

*(Inserted vide Notification No. 33/2018 dated 20/07/2018)*

Description *	Amount (Rs.)
Total value of expenditure in P&L for the year	XXXX
Add: Total value capital expenditure not included in P&L for the year	XXXX
Less: Total value of non-cash charges considered as expenditure	XXXX
Less: Total value of expenditure excluded for being transactions in securities and transactions in money	XXXX
Less: Total value of expenditure excluded by virtue of Schedule III to the CGST Act, 2017	XXXX
Balance being value of expenditure for clause 44	XXXX

# Computation of 'turnover' - Derivatives, futures and options

- ❑ The turnover in such types of transactions is to be determined as follows (This is only and only for the purpose of computing 'turnover' for tax audit):
- ❑ The total of favourable and unfavourable differences in case of squared off transactions shall be taken as turnover.
- ❑ Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, then such net profit should not be separately included.
- ❑ In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.
- ❑ In case of an open position as at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been actually squared off.
- ❑ In case of delivery based settlement in a derivatives transaction, the difference between the trade price and the settlement price shall be considered as turnover. Further, in the hands of the transferor of underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade.

# Notes to Form No. 3CD

- ☐ This Form has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB, as the case may be.

**Brief:** Annexure 1 (Part A & Part B) to Form 3CD  
removed

# Signing of form

- ❑ While signing the form, following should be kept in view:
  - judicial pronouncements may be relied upon in the matter of inclusion or exclusion of any items in the particulars to be furnished under any of the Clauses of the statement.
  - In case of conflict of judicial opinion on any particular issue, view which has been followed may be referred to while giving the particulars under any specified Clause.
  - General accounting principles/guidelines by ICAI/ICWAI should be followed.
  - Relevant changes in law relating to items to be reported on.
- ❑ Since auditor is to report the particulars as true and correct, he should obtain from the assessee the statement of particulars duly authenticated by him.



**THANK YOU**