

Tax Audit Series v. 3.0

Ch. 13 – Clauses 27 to 29B



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Namaste

In Chapter 13 of this series, we would discuss the Particulars of Form 3CD – Part B – Clauses 27 to 29B.

Clause 27: CENVAT Credit/Prior Period Items

Clause 27(a) - Amount of modified value added tax credits availed of or utilized during the previous year and its treatment in the profit and loss account.

- The Tax Auditor should obtain the list of CENVAT Credit Availed and Utilised by the Assessee during the relevant period. If list is not available then scrutinize the CENVAT Ledger.
- It should be ensured that amounts as presented in the returns matches with the underlying records and books of account.
- If there is any mismatch between accounting records and Excise/Service records, check whether Reconciliation in respect of such difference has been prepared.
- The Schema available on the ITD website, also includes ITC (GST), however as the same has not yet been duly notified by CBDT, hence the same may not be reported.

Clause 27(b) - Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

- The concept of Prior Period Items is applicable only in case of Mercantile System of Accounting.
- The Tax Auditor should obtain the list of Prior Period Items identified by the Assessee.
- Disclosure should be made in the Financial Statements as per AS-5.
- The Tax Auditor should scrutinize various Expenditure/Income Accounts to ensure such items are accounted in the Relevant Previous Year.

Clause 28: Acquisition of Shares Covered u/s 56(2)(viiia)

- Provisions of section 56(2)(viiia) are not applicable w.e.f. AY 2018-19.
- In this clause mention – NA.

Clause 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.

- Section 56(2)(viib) provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such

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shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head “**Income from other sources**”. Thus, provision of this clause is to be verified only when the shares are issued by the company at more than the face value i.e. at a premium.

- The auditor should obtain from the auditee, a list containing the details of shares issued, if any, by him to any person being a resident and verify the same from the MCA records, books of accounts and other relevant documents.
- The auditor needs to verify the valuation of shares in case an unlisted company when it issues shares beyond face value and verify that it is in accordance with Rule 11UA read with Rule 11U of the income Tax Rules, 1962.
- In case shares are issued by valuing at Discounted Free Cash Flow method (DFCF), it should have been valued by a merchant banker. It is pertinent to note that if the valuation is required for issue of shares under the Companies Act 2013 (for private placement or preferential issue), then the valuation would also be required from a Registered Valuer under the Companies Act.
- Followings should not be reported under this clause:
 - Shares issued to non-residents.
 - Shares issued by company in which public are substantially interested
 - Shares issued by Venture Capital Undertaking to a Venture Capital Company or a Venture Capital fund as defined in 10(23FB)
 - Shares issued to a fund established or incorporated in India in the form of a trust or a company or an LLP or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012.
 - Shares issued by start-up companies w.e.f. 14.6.2016
 - Shares issued at face value.
 - Shares issued at or below fair market value determined as per Rule 11UA

Clause 29A: Whether any amount is to be included as income chargeable under the head ‘income from other sources’ as referred to in section 56(2)(ix)?

- As per section 56(2) (ix) of the Act, if any sum of money is received as an advance or otherwise in the course of negotiations for transfer of a capital asset and if such sum is forfeited or the negotiations do not result in transfer of such capital asset, then the same would be taxable as income under the head ‘**Income from Other Sources**’.
- The nature of such income and the amount involved should be disclosed.
- The auditor should ensure that:
 - The assessee has received an advance against any capital asset i.e., Immovable Property, Plant, Machinery, etc.
 - Peruse the agreement and forfeiture clauses contained therein through which advance is received for the capital asset.
 - Obtain balance confirmations from third parties against whose name’s advances are shown in the assessee’s balance sheet.

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- Obtain management representation from the assessee that the advance received has been forfeited or not and report accordingly.

Clause 29B: Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x)?

Following incomes are to be reported u/s. 56(2)(x) as amended w.e.f. AY 2018-19, where any person receives, from any person(s):

- any *money* exceeding Rs 50,000/- without consideration subject to certain exemptions.
- any *immovable property*:
 - without consideration, the stamp duty value of which exceeds Rs. 50000/-
OR
 - for a consideration which is less than the stamp duty value of the property by higher amount of:
 - Rs. 50000/-; and
 - 10% of the consideration (in case of property is under second proviso to s. 43CA(1) – 20%)
- any *property, other than immovable property*:
 - without consideration, the aggregate FMV of which exceeds Rs. 50000/-
OR
 - for a consideration which is less than the aggregate FMV of the property by an amount exceeding Rs. 50000/-, the aggregate fair market value of such property as exceeds such consideration
- Transactions which are exempted from the applicability of this clause by virtue of proviso to section 56(2)(x), should not be disclosed here.
- The property, other than immovable property to be disclosed in this clause which is below its FMV by Rs. 50000/- is defined u/s 56(2)(vii).
- With respect to **unquoted shares & securities**, the auditor should consider the following:
 - Ensure that acquisition should be through transfer and not through issue of fresh shares by the issuer company.
 - Verify the FMV of unquoted shares and securities as per rule 11UA read with rule 11U
 - Where FMV exceeds the cost of acquisition of the capital asset being shares and securities by Rs. 50000/- in aggregate, then the same should be disclosed in this clause.
- With respect to **immovable property**, the auditor should consider the following:
 - Immovable property under this clause covers land, or building or both. According to certain cases leasehold land / building is neither land nor building covered u/s 50C.
 - The assessee has right to contest the FMV before AO where there is a difference between transaction value and stamp duty value as discussed above.
 - However, where the assessee has adequate evidence that the FMV do not exceed the consideration for acquisition by Rs. 50000/- / 10% / 20% of the consideration, or and claims the consideration to be fair market value and intends to contest the

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same as per the provisions of s. 56(2)(x) read with s. 50C(2), he should obtain a management representation accordingly. Further the auditor in his report in Form 3CA/ 3B should comment the following regarding this:

- Stamp Duty Value of immovable property
- Consideration (transaction value) for acquisition of property
- That the assessee is of the view that FMV does not exceed the consideration and he intend to contest the same before the assessing officer. (Obtain appropriate MRL from the assessee in this regard for audit documentation)

I hope this document is of use to you. I thank CA. Shreya Jain in assisting me to compile this part of the series. Your suggestions and comments would be highly appreciated

Best Regards

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EARLIER CHAPTERS

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4	Clauses 1 to 8A	http://lunawat.com/Uploaded_Files/Attachments/F_11044.pdf
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(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omission)

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ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL.B). He has qualified Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT of ICAI. He has also done post qualification certificate course on Valuation of ICAI.

He has been elected as Central Council Member of ICAI for the period 2019 – 2022. Apart from being member in more than 25 committees / groups / directorates of ICAI, he is / was:

- Chairman of Committee on International Taxation (CITAX) for Year 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) for the year 2021-22.
- Chairman of Valuation Standards Board (VSB) for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) - 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) for year 2019-20 and 2020-21.
- Vice-Chairman of Committee on International Taxation (CITAX) for Year 2019-20.
- Member of ICAI Disciplinary Committee Bench 1 for year 2020-21.
- Nominated as Member of Quality Review Board (QRB) for 3 years from 2020 to 2022.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 31000 answers since its launch in mid of year 2018.

He is delivered more than 1400 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is president, founder convener and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical Reviewer with FFRB and Quality Review Board and Peer Reviewer with Peer Review Board. He has authored books 13 books including “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, Limited liability Partnership – A Complete Resource Book”, and “Accounting Standards and CARO”.