

Tax Audit Series v. 3.0

Ch. 15 – Clauses 31(a) to 31(e)



CA. PRAMOD JAIN

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Namaste

In Chapter 15 of this series, we would discuss the Particulars of Form 3CD – Part B – Clauses 31(a) to 31(e).

Clause 31(a) - Details of each loan or deposit taken or accepted in an amount exceeding limit specified in section 269SS (i.e, Rs. 20000/-).

Details to be reported under this sub-clause include:

- 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

The auditor needs to take care of the following for this sub-clause:

- For the purposes of section 269SS "loan or deposit" means loan or deposit of money. Following would not be covered u/s 269SS:
 - As held in certain judicial pronouncements journal / transfer entries are not covered u/s 269SS. - *CIT v. Noida Toll Bridge Co. Ltd. 262 ITR 260 (Del); CIT Vs Worldwide Township Projects Ltd. (Delhi High Court) ITA No. 232/2014.*
 - Sale proceeds collected by the selling agent
 - Advance received against agreement of sale of goods
 - Security deposits against contracts, etc. will be covered by the definition of 'deposit'. However, the amount retained by the contractee against performance of contract will not be covered as loans/deposits for reporting as amount is not received
- Details of each loan or deposit taken or accepted exceeding the limit specified in section 269SS (i.e., details of each loan or deposit taken or accepted for Rs. Rs.20000/- or more in the previous year) is to be given
- He should scrutinise all the loans and deposits which the assessee had taken or accepted during the year.
- Even loans / deposits squared up during the year have to be reported.
- Maximum amount of loan outstanding in the account at any time during the year is also to be reported.
- If the total of all loans/deposits from a person exceed Rs.20,000/- but each individual item is less than Rs.20,000/-, the information will still be required to be given in respect of all such entries.
- If the loan or deposit is accepted by cheque or bank draft whether these are Account payee or not is to be reported. There could be practical difficulties in verifying that the loan or deposit taken or accepted by account payee cheque or an account payee bank

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draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:

- It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee.

Clause 31(b) - Details of any specified sum taken or accepted in an amount exceeding limit specified in section 269SS (i.e., Rs. 20000/-).

Specified sum means any sum of money receivable, whether as advance or otherwise in relation to transfer of an immovable property, whether or not the transfer takes place.

Details to be reported under this sub-clause include:

- iii. whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account
- iv. in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft

The auditor needs to take care of the following for this sub-clause:

- Not only advance but any sum received in relation to transfer of immovable property (including payment received at time of sale) is covered under this clause.
- He should scrutinise all the accounts in which the assessee had taken or accepted any specified sum mentioned above during the year. He should also scrutinise the agreements through which transfer is affected or is proposed to be affected.
- This detail is required to be given by real estate builders and dealers too. They should take appropriate care in providing the particulars under this clause. In case of detail being too voluminous and the assessee does not provide the details thereof, adequate disclaimer should be given in Form 3CA/3CB too.
- If the specified sum is accepted by cheque or bank draft whether these are Account payee or not is to be reported. There could be practical difficulties in verifying that the specified sum taken or accepted by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:
 - It is not possible for me/us to verify whether the specified sums have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee.

Clause 31(ba) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST (i.e., 200000/-, 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,

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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

This sub-clause has been inserted to Form 3CD w.e.f. 20th August 2018 and requires reporting for transactions u/s 269ST. The reporting is required to be made if the amount received is Rs. 2 Lakhs or more for any of the following:

- 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.

The auditor needs to verify the following:

- Verify the cash book whether cash is received of Rs. 2 lakhs or more in a single day from a person.
- Verify the ledgers and other documents to determine any transaction which is of Rs. 2 Lakhs or more. Against those transactions, verify whether the assessee received any amount other-wise than by cheque, draft or ECS of Rs. 2 Lakhs or more. In this case both the transaction as well as receipts is to be verified (which could be not in a single day but in multiple days too)
- Verify the events or occasions done/entered/participated/organised by the assessee. For that event/occasion did the assessee receive Rs. 2 Lakhs or more from a person other-wise than by cheque, draft or ECS? The event/occasion could last for more than a day, the limits per person are to be analysed for the whole event and all invoices in aggregate for the event has to be seen collectively.
- Only the exceptions as notified by CBDT are not to be reported.
- Obtain a management representation from the assessee that:
 - He/ it did not receive any amount of Rs. 2 Lakhs or more other-wise than by cheque, draft or ECS for any of the following:
 - 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

Clause 31(bb) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/-), 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 occasions 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

This clause is an extension of S. No. 31(ba) and requires reporting only in case when the above-mentioned receipt is received by cheque or bank draft and the cheque or bank draft is not an account payee cheque or accounting payee bank draft.

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There could be practical difficulties in verifying that the amount in question has been accepted by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:

- It is not possible for me/us to verify whether the assessee received 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 occasions from a person, by an account payee cheque or an account payee bank draft, during the previous year as the necessary evidence is not in the possession of the assessee.

Clause 31(bc) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (i.e., Rs. 200000/-, 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, during the previous year, where such payment is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account

S. No. 31(ba) was for receipt of money in contravention of s. 269ST. This clause is for reporting of PAYMENT of money in contravention of s. 269ST. There is no penalty on the assessee u/s 271DA for payment, as the same is only on the receiver, yet this information is sought by the department to take appropriate action on the receiver.

The auditor needs to verify the following:

- Verify the cash book whether cash is paid of Rs. 2 lakhs or more in a single day to a person.
- Verify the ledgers and other documents to determine any transaction which is of Rs. 2 Lakhs or more. Against those transactions, verify whether the assessee paid any amount other-wise than by cheque, draft or ECS of Rs. 2 Lakhs or more. In this case both the transaction as well as payments are to be verified (which could be not in a single day but in multiple days too)
- Verify the events or occasions done/entered/participated/organised by the assessee. For that event/occasion did the assessee pay Rs. 2 Lakhs or more to a person other-wise than by cheque, draft or ECS? The event/occasion could last for more than a day, the limits per person are to be analysed for the whole event and all invoices in aggregate for the event has to be seen collectively
- Only the exceptions as notified by CBDT are not to be reported.
- Obtain a management representation from the assessee that:
 - He/ it did not pay any amount of Rs. 2 Lakhs or more other-wise than by cheque, draft or ECS for any of the following:
 - in aggregate to a person in a day; or
 - in respect of a single transaction; or

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- in respect of transactions relating to one event or occasion to a person

Clause 31(bd) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/-), 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 occasions to a person, paid by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year

This sub-clause is an extension of S. No. 31(bc) and requires to report only in case when the above-mentioned payment is made by cheque or bank draft and the cheque or bank draft was not an account payee cheque or account payee bank draft.

There could be practical difficulties in verifying that the amount in question has been paid by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:

- It is not possible for me/us to verify whether the assessee paid 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 occasions to a person, by an account payee cheque or an account payee bank draft, during the previous year as the necessary evidence is not in the possession of the assessee.

Clause 31(c) - Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year.

This sub-clause requires reporting of repayment of loan or deposit or any specified advance (for immovable property) of Rs. 20000/- or more.

Details to be reported under this sub-clause include:

- 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 repaid by an account payee cheque or an account payee bank draft

The auditor needs to take care of the following for this sub-clause:

- For the purposes of section 269T "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.
- In the case of company assessee loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit.

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- In the case of non-company assessee loan or deposit is defined to mean loan or deposit of any nature. This distinction will have to be kept in mind while giving information under this sub-clause.
- Loan or deposits discharged by means of transfer entries in the books of account constitute repayment of loan or deposits otherwise than by account payee cheques or account payee bank drafts. Hence, such entries have to be reported under this clause.
- Details of each loan or deposit or any specified advance repaid exceeding the limit specified in section 269T is to be given.
- He should scrutinise all the loans, deposits and advance against immovable property which the assessee had paid during the year.
- Maximum amount outstanding in the account at any time during the year is also to be reported.
- If the loan or deposit or specified advance is paid by cheque or bank draft whether these are Account payee or not is to be reported. There could be practical difficulties in verifying that the loan or deposit or specified advance is paid by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:
 - It is not possible for me/us to verify whether loans or deposits or specified advance have been paid otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee

Clause 31(d) - Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

S. No. 31(c) was for repayment of loan or deposit or any specified advance in contravention of s. 269T. This clause is for reporting of PAYMENT RECEIVED of LOAN / DEPOSIT / SPECIFIED ADVANCE in contravention of s. 269T. There is no penalty on the assessee u/s 271F for payment received, as the same is only on the payer, yet this information is sought by the department to take appropriate action on the payer.

If the loan / deposit / specified advance given is received back otherwise than by cheque or bank draft or ECS, the same is to be reported under this clause.

Clause 31(e) - Particulars of repayment of loan/deposit or any specified advance in an amt. exceeding the limit specified in section 269T received by cheque / bank draft which is not an account payee cheque / account payee cheque / bank draft during the PY.

This sub-clause is an extension of S. No. 31(d) and requires reporting only in case when the above mentioned payment is received by cheque or bank draft and the cheque or bank draft was not an account payee cheque or accounting payee bank draft.

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There could be practical difficulties in verifying that the amount in question has been received by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available and report in Form 3CA/3CB that:

- It is not possible for me/us to verify whether the assessee received the repayment of loan or deposit or specified advance of an amount exceeding the limit specified in section 269T by an account payee cheque or an account payee bank draft, during the previous year as the necessary evidence is not in the possession of the assessee

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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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”.