

Tax Audit Series - Version 4.0

Chapter 12 – Clauses 24 to 26



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Namaste

In Chapter 12 of this series, we would discuss the Particulars of clauses 24 to 26 of Form 3CD.

Clause 24: Deemed Profits/Gains u/ss 32AD/33AB/33ABA

- This clause requires reporting of amounts which are deemed to be Profits and Gains u/s 32AD, 33AB, or 33ABA.
- Section 32AD allows deduction in respect of new Plant and Machinery setup for production or manufacture of any article or thing in backward areas. The auditor is required to report the deemed income chargeable as profits and gains of business if the specified circumstances are violated.
- Section 33AB allows deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account. The auditor is required to report the deemed income chargeable as profits and gains of business if the specified circumstances are violated.
- Section 33ABA allows deduction in respect of Site Restoration Fund. The auditor is required to report the deemed income chargeable as profits and gains of business if the specified circumstances are violated.
- If the amount credited in Special account or Site restoration account has been utilized for purpose other than those specified, then the same shall be deemed to be the income from business.
- Appropriate reporting is required for the above changes.

Clause 25: Deemed Profits / Gains u/s 41

Clause 25 applies to all assesses and requires reporting of the amount(s) covered u/s 41 along with computation.

- **Section 41(1): Reversal/writing back of trading liability**
 - Under this section if any allowance or deduction that had been allowed to assessee in respect of any loss, expenditure or trading liability in any assessment year and in later years if assessee obtains such amount, then the same shall be chargeable to tax as business income.

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- If the assessee has written back some liability in the books of accounts and the expenditure represented by such liability had been allowed as deduction in any previous year, then such write back shall be taxable as business income.
- Merely liability being barred by limitation period, would not tantamount to cessation of liability u/s 41(1).
- **Section 41(2): Sale of assets of undertaking**
 - Any building, machinery or plant which is owned by assessee and whose depreciation is claimed u/s 32 and it has been used for business purpose, is sold, discarded, demolished or destroyed and the money receivable along with scrap value exceeds the WDV, then the excess amount (which does not exceed the difference between actual cost and WDV) shall be chargeable to tax as business income.
 - It is also applicable to assesses engaged in generation and distribution of power and who have claimed depreciation on fixed assets u/s 32(1)(i) of the act.
 - Continuation of business during previous year is not a relevant criterion for taxability under this sub section.
- **Section 41(3): Sale of assets used in scientific research**
 - Any capital asset used in scientific research is sold without being used for other purposes and the proceeds of sale along with the total amount of deductions exceeds the amount of capital expenditure, then such excess or amount of deduction allowed, whichever is less, is chargeable as business income in year of sale.
 - Provisions of section 41(3) will not apply if the asset has been used for other business purposes as well.
 - Continuation of business during previous year is not a relevant criterion for taxability under this sub section.
- **Section 41(4): Recovery of Bad Debts allowed earlier**
 - In case of deduction allowed in respect of bad debts in previous years and subsequently any amount recovered on such debt, which is greater than difference between debt and deduction allowed, then such excess

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shall be deemed to be the business income and chargeable to tax in the year of recovery of bad debts.

- Continuation of business during previous year is not a relevant criterion for taxability under this sub section.

- **Section 41(4A): Withdrawal from special reserve**
 - In case of deduction allowed earlier in respect of special reserve created and maintained u/s 36(1)(viii) and any subsequent withdrawal from such reserve shall be deemed to be the profits and gains of business and profession and shall be chargeable to tax.
 - Continuation of business during previous year is not a relevant criterion for taxability under this sub section.

- **Section 41(5): Adjustment/ Set off of loss**
 - If the business and profession referred in this sub section is not in existence and there is income chargeable to tax under sub-section (1), (3) or (4A) and if there is any loss arising from such business or profession (not being speculative loss) which could not be set off against any other income of that previous year can be set off against the income chargeable to tax under the above-mentioned sub sections.

Clause 26 - In respect of any sum referred to in clauses (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which: -

- (A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was
 - (a) paid during the previous year;
 - (b) not paid during the previous year.
- (B) was incurred in the previous year and was
 - (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);
 - (b) not paid on or before the aforesaid date.

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

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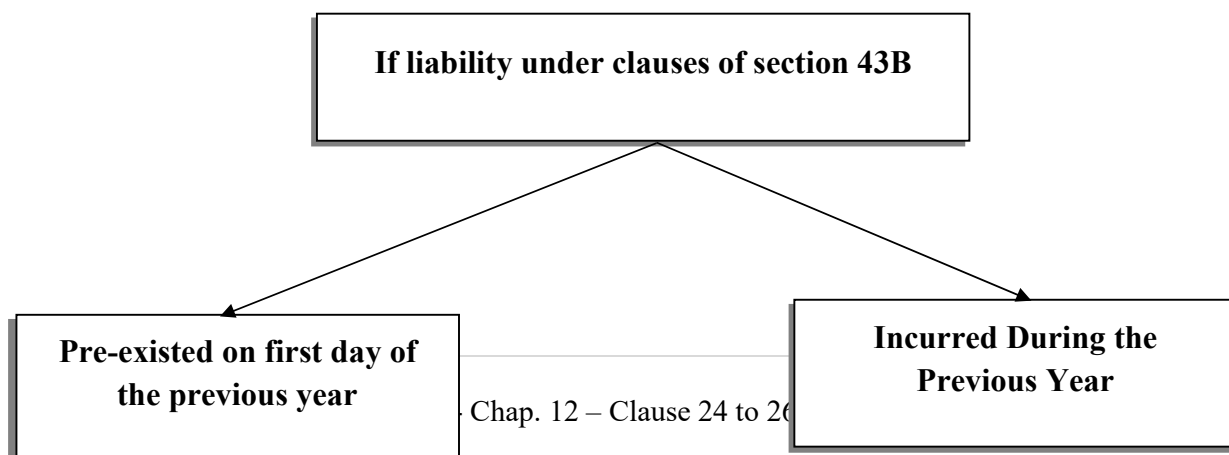


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This clause applies to all assesses who follow mercantile system of accounting. Section 43B deals with 7 categories of items:

- a) Any tax, duty (sales tax, value added tax, service tax, excise duty, GST, municipal/property tax, etc.), cess or fee, by whatever name called, payable by the assessee under any law for the time being in force. It does not include income tax.
- b) Any sum payable as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.
- c) Any bonus or commission payable by the assessee to its employees 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.
- d) Interest on any loan or borrowing from any public financial institution, a state financial corporation or a state industrial investment corporation payable in accordance with the terms and conditions of the agreement governing such loan or borrowing.
- e) Any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances.
- f) Any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee
- g) Any sum payable by the assessee to the Railways for the use of railway assets. Reporting under this clause has been inserted w.e.f. 20th August 2018.
- h) It is pertinent to note that reporting for newly inserted section 43B(h) w.e.f. AY 2024-25 is to be reported in clause 22 of Form 3CD and not this clause.

Reporting under clause 26 is summarized in the following chart:

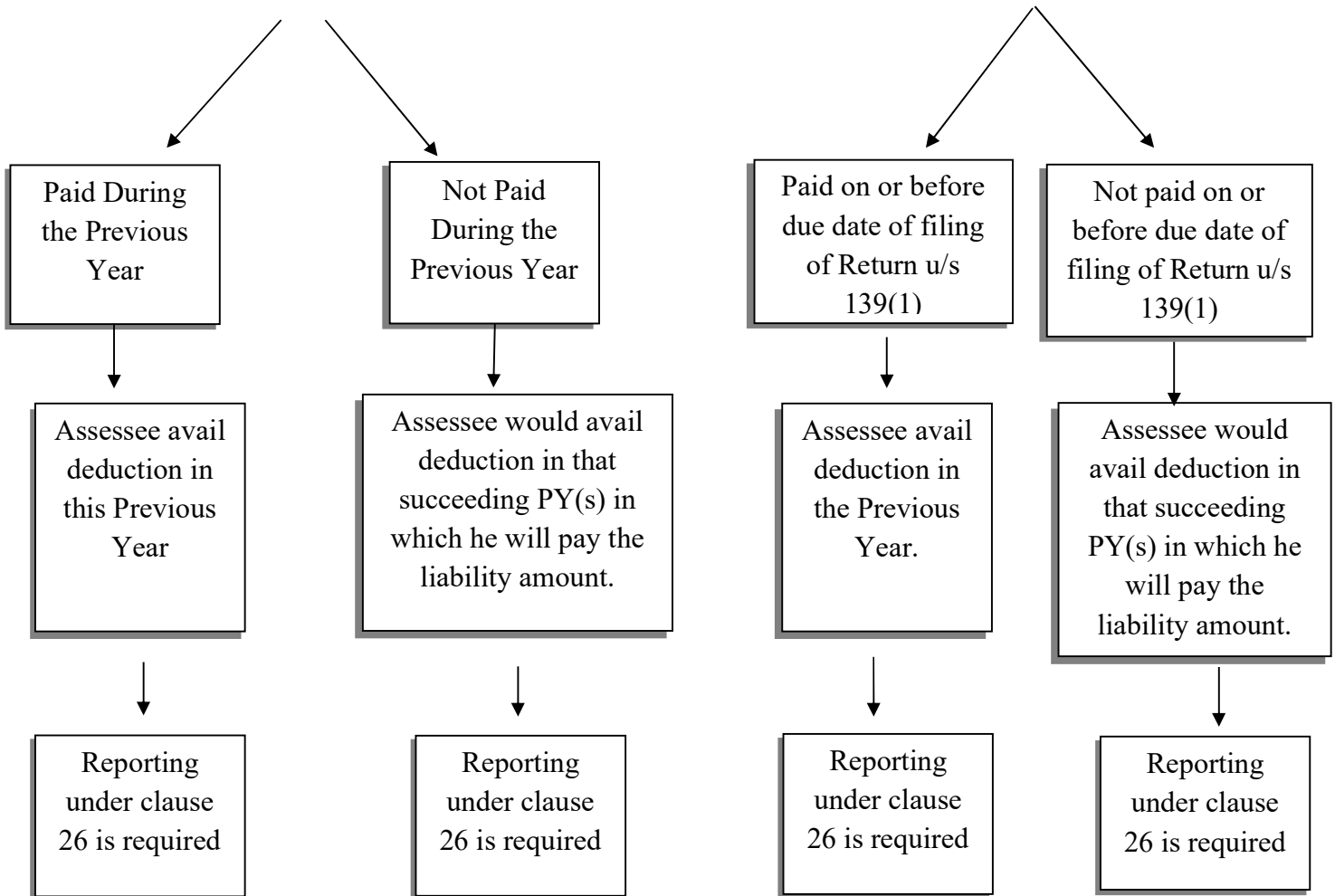


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It is also to be stated that whether the indirect taxes, etc are passed through profit & loss account or not.

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

<i>Chapter No.</i>	<i>Title</i>	<i>Link</i>
1	Applicability	http://lunawat.com/Uploaded_Files/Attachments/F_20303.pdf
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3	Audit Report Format	http://lunawat.com/Uploaded_Files/Attachments/F_20305.pdf
4	Clauses 1 to 8A	http://lunawat.com/Uploaded_Files/Attachments/F_20307.pdf
5	Clauses 9 to 12	http://lunawat.com/Uploaded_Files/Attachments/F_20309.pdf
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11	Clauses 22-23	http://lunawat.com/Uploaded_Files/Attachments/F_21330.pdf

(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)

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 is qualified as an 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 Certificate Course on CSR of ICAI. 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 and post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

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- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

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 36500 answers since its launch in mid of year 2018.

He has delivered more than 1800 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 Senior Partner of **M/s LUNAWAT & CO.**, Chartered Accountants. He is president, founder convenor 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 Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

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He has authored books on “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, *Limited liability Partnership – A Complete Resource Book*”, “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, “Importance of LLP after Companies Act, 2013”, “Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review”, “Limited Liability Partnership – Law, Procedures and Taxation”, “Documentation for Chartered Accountants”, “Limited Liability Partnership – Law and Procedures with Ready Reckoner”, “Fringe Benefit Tax & Banking Cash Transaction Tax”, “Documentation for Audits” and “Accounting Standards and CARO”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.