

Tax Audit Series - Version 4.0

Chapter 16 – Clauses 32 to 33



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Namaste

In Chapter 16 of this series, we would discuss the Particulars of Clauses 32 to 33 of Form 3CD.

Clause 32

Clause 32(a) - Details of brought forward loss or depreciation allowance, in following manner

| S. No | Asses- ment Year | Nature of loss / Allowance (in rupees) | Amount as Returned* (in rupees) | All losses/ allowances not allowed u/s 115BAA/ 115BAC /115BAD/ 115BAE | Amount as adjusted by withdrawal of add. Dep on account of opting taxation u/s 11BAC/115BAD/ 115BAE^ | Amounts as assessed (give reference to relevant order) | Remarks |
|-------|------------------------|--|--|--|---|---|---------|
| | | | | | | | |

*If the assessed depreciation is less and no appeal pending than take assessed.

^To be filled in AY 2021-22 and 2024-25, as applicable.

- Clause 32(a) has been modified to include if the assessee is exercising the of option u/s 115BAE for manufacturing co-operative society (new concessional rate introduced in Finance Act 2023 w.e.f. AY 2024-25) with already existing 115BAA (for companies), 115BAC for individuals, HUFs, etc., 115BAD for co-operative societies. The auditor should consider the following:
 - Taxpayer being an individual, HUF, AOP or BOI can go for new option u/s 115BAC (being default regime from AY 2024-25) when he opts to pay income tax under the new tax regime; wherein there are lower tax rates but does not allow certain deductions and exemptions; or
 - Taxpayer being a Resident Co-operative Society can go for new option u/s 115BAD / 115BAE (manufacturing) providing a benefit of a lower tax rate regime but subject to non-availing for certain deductions and exemptions and other conditions.
 - Auditor should ensure to obtain a copy of Form 10-IC / 10-IE / 10-IF for opting to apply section 115BAA / 115BAC / 115BAD respectively.
 - In such cases set off of carried forward loss (due to specified sections) or unabsorbed additional depreciation from any earlier assessment year is not allowed. Hence, such details need to be mentioned accordingly in this clause.
- Brought forward losses may pertain to different heads of income such as house property income, profits and gains in business or profession, speculation business or

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capital gains, the provisions of which are contained in sections 32 (depreciation) and 70 to 79.

- In the remarks column information about the pending assessment or appellate proceedings or about delay in filing loss returns should be given.
- The auditor should study the assessment records i.e. income-tax returns filed, assessment orders, appellate orders and rectification/ revision orders for the earlier years and ascertain if the figures / details given in the above clause are correct
- The auditor should take care of s. 80 read with s. 139(3) while verifying the required details. Section 80 provides that no loss which has not been determined in pursuance of a return filed in accordance with section 139(3) (i.e. return filed beyond time prescribed u/s 139(1) – belated return) shall be carried forward and set off u/s section 72(1)[Business Losses] or section 73(2)[Speculation Business] or Section 73A(2)[Specified Business] or section 74(1)[Capital Gains] or section 74(3)[CG beyond 8 years] or section 74A(3)[Horse Races].
- Also he should keep in mind the provisions of section 71B regarding Carry Forward and Set-off of Loss from House Property
- He should be also aware of section 78 regarding Carry Forward and Set Off of Losses in case of Change in Constitution of Firm or on Succession
- Any assessment, rectification, revision or appeal proceedings pending at the time of tax audit should be disclosed in the remarks column by way of information. If consequential orders for any revision/appellate order is yet to be passed, the same can be disclosed along with the impact thereof if Material
- Verify the case / demand status from e-portal of IT Department, if available.
- Obtain suitable management representation regarding the carry forward losses and depreciation details.
- Carry forward of losses are restricted in case of firms / LLP u/s 78 and closely held companies u/s 79. Details should be given under this clause, with remarks regarding restriction of carry forward further. In next year the same would not be brought forward loss.
- Auditor should take note that section 78/79 restrictions do not affect the set off of unabsorbed depreciation as it is governed by section 32(2).

Clause 32 (b) - Where change in shareholding of company has taken place in Previous Year due to which losses incurred in preceding Previous Years cannot be carried forward as per Section 79

Section 79 provides that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less 51% of the voting power on the last day of the year or years in which the loss was incurred.

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The auditor should take care that:

- This provision applies to a closely held company i.e. a company, not being a company in which the public are substantially interested. It includes an unlisted public company too.
- The comparison of the shareholding is to be done with reference to the last day of the current previous year and the last day of every previous year in which the loss was incurred. The carry forward of the loss incurred in respect of different previous years is to be determined with respect to the individual previous years.
- The change would not affect carry forward of unabsorbed depreciation u/s 32(2)
- This provision shall not apply to a change in the voting power consequent upon:
 - the death of a shareholder, or
 - on account of transfer of shares by way of gifts to any relative of the shareholder making such gift.
 - 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.
 - a resolution plan approved under the IBC 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
 - the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, u/s 242 and a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal u/s 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
 - to a company to the extent that a change in shareholding has taken place during previous year on account of relocation referred to in Explanation to clauses (viiac) & (viiad) of section 47.
 - to an erstwhile PSU subject to the condition that the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold 51% voting power in aggregate, directly or indirectly through its subsidiary or subsidiaries

Clause 32 (c) - Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year?

- Section 73(1) provides that any loss in respect of speculation business shall not be set off except against profits or gains of another speculation business

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- Section 73(4) provides that no loss shall be carried forward under this section for more than 4 AYs immediately succeeding the assessment year for which the loss was first computed
- Speculative transaction has been defined u/s 43(5). It does not include derivatives (futures & options) and commodity derivatives.
- Loss from deemed speculation business as per Explanation to S. 73A is not to be reported under this sub-clause but is to be reported in clause 32(e).

Clause 32 (d) - Whether the assessee has incurred any loss referred to in section 73 A in respect of any specified business during the previous year.

Section 73A provides that any loss, computed in respect of any specified business referred to in section 35AD and shall not be set off except against profits and gains, if any, of any other specified business.

Clause 32 (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.

- Auditor should understand the provisions of Explanation to S. 73A while verifying this clause.
- It states that where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.
- The auditor should obtain information from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents

Clause 33: Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10 AA)

- The admissibility of the aforesaid deductions/exemptions is dependent upon various conditions. It is, therefore, advised that while working out the amount of admissible deduction the tax auditor has to ascertain that those condition stand fulfilled or not.
- For ascertaining this, the auditor should obtain all necessary evidence which would enable him to express the opinion regarding the admissibility of deductions.

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- In the case of a sole proprietor being an individual or HUF the auditor would be auditing the accounts of the business / profession and he may have other activities and other sources of income in respect of which tax audit is not mandatory. In such cases the particulars of deductions admissible under Chapter VIA has to be given with reference to the items appearing in the books of accounts of the business/profession which is subject to audit u/s 44AB
- An assessee may be opting for reduced rates as per sections 115BA / 115BAA / 115BAB / 115BAC / 115BAD / 115BAE where majority deductions under Chapter VIA are not allowed and deduction under Chapter III are not allowed. Auditor should cross check from clause 8A too for admissibility of deductions.
- There may be cases where there is difference between the amount claimed by the assessee and the amount computed by the auditor-
 - a) In such cases it is quite possible that the client's claim is based on some judicial pronouncement on the subject. In such case the tax auditor should report the amount admissible with his comments in Form 3CA/ 3CB.
 - b) If the claim of the assessee is well-founded and settled by judicial pronouncement the tax auditor may accept the claim but he has to record in his working papers that admissible amount has been reported on the basis of such judicial pronouncement. He may report the amount admissible with his comments in Form 3CA/ 3CB.

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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(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:

- 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

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- 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 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 Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

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”.

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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.