

Tax Audit Series 16 – S. Nos. 32 - 33

Complied by
CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, DISA, MIMA

Namaste

In series - 16 we would discuss S. Nos. 32 and 33 of Form 3CD.

S. No. 32

S. No. 32(a) - Details of brought forward loss or depreciation allowance, in following manner

| <i>Serial Number</i> | <i>Assessment Year</i> | <i>Nature of loss / Allowance (in rupees)</i> | <i>Amount as returned (in rupees)</i> | <i>Amounts as assessed (give reference to relevant order)</i> | <i>Remarks</i> |
|----------------------|------------------------|---|---------------------------------------|---|----------------|
| | | | | | |

The auditor should consider the following:

- 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 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

Tax Audit Series 16 – S. Nos. 32 - 33

Complied by
CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, DISA, MIMA

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).

S. No. 32 (b) - Where change in shareholding of company has taken place in P.Y due to which losses incurred in preceding P.Ys 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.

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.

Tax Audit Series 16 – S. Nos. 32 - 33

Complied by
CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, DISA, MIMA

- 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.

S. No. 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
- 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 to be reported in S. No. 32(e).

S. No. 32 (d) - Whether the assessee has incurred any loss referred to in section 73A 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.

S. No. 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

Tax Audit Series 16 – S. Nos. 32 - 33

Complied by
CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, DISA, MIMA

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

S. No. 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.
- 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
- 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 *Ms. Ria Agarwal* and *Ms. Bhumika Gakher* in assisting me to compile this part of the series. Your suggestions and comments would be highly appreciated

Best Regards

CA. Pramod Jain
B. COM (H), FCA, FCS, FCMA, LL.B,
DISA (ICAI), MIMA, INSOLVENCY PROFESSIONAL