

# Tax Audit Series - Full Series Compilation Version 2.0



CA. PRAMOD JAIN

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**Namaste**

This document is the **compilation of series on Tax Audit**. Total 21 issues of this series were published which started in July – August 2018. There is no change in Form 3CD since then, however few changes have been made in this compilation due revision in SA 700 and other inputs received from friends. This **Version 2.0** would be applicable for **AY 2019-20**.

I thank everyone for the overwhelming response to this series and am sure that this would help many professionals in their tax audit reporting.

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## TAX AUDIT SERIES 1- TURNOVER

In series 1 we have discussed the meaning of the terms "Sales ", "Turnover" and "Gross Receipts".

The initial test is to see if the 'sales', 'turnover' or 'gross receipts' exceeds the limits specified u/s 44AB (a) or 44AB (b). In this series, we have discussed what these terms means and what are to be included and excluded to determine the limits.

"Sales ", "Turnover" and "Gross Receipts" are commercial terms and they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) of the income Tax Act, 1961 provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

## TURNOVER

The Term 'Turnover' has not been defined under the Income Tax Act, 1961. According to section 2(91) of Companies Act 2013 as amended by the Companies (Amendment) Act, 2017

"Turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year

The GST law also do not define the term turnover. However, the Central Sales Tax Act, 1956 defined the term turnover as

"Turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of the Act and rules made there under

In "Guidance Note on Terms Used in Financial Statements" published by the ICAI, the expression "Sales Turnover" has been defined as under:-

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“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.

### Should Turnover include indirect taxes such as GST / VAT / Excise Duty?

A question has been raised a few times, that whether the term turnover for purposes of section 44AB includes indirect taxes like excise, VAT or GST?

Normally indirect taxes are levied on the sales / turnover; hence turnover should not include such indirect taxes. Few relevant portions from Paras of ICAI Guidance Note on Revised Schedule VI (reproduced below) states that:

*Para 9.1.3* - Indirect taxes such as Sales tax, Service tax, Purchase tax etc. are generally collected from the customer on behalf of the government in majority of the cases. However, this may not hold true in all cases and it is possible that a company may be acting as principal rather than as an agent in collecting these taxes. Whether revenue should be presented gross or net of taxes should depend on whether the company is acting as a principal and hence responsible for paying tax on its own account or, whether it is acting as an agent i.e. simply collecting and paying tax on behalf of government authorities. In the former case, revenue should also be grossed up for the tax billed to the customer and the tax payable should be shown as an expense. However, in cases, where a company collects tax only as an intermediary, revenue should be presented net of taxes

*Para 9.1.4* - However, as per the Guidance Note on Value Added Tax, “Value Added Tax (VAT) is collected from the customers on behalf of the VAT authorities and, therefore, its collection from the customers is not an economic benefit for the enterprise and it does not result in any increase in the equity of the enterprise”. Accordingly, VAT should not be recorded as revenue of the enterprise. At the same time, the payment of VAT should not be treated as an expense in the Financial Statements of the company.

*Para 9.1.5* - Further, as per the definition of Revenue in the Guidance Note on Terms Used in Financial Statement, “It excludes amounts collected on behalf of third parties such as certain taxes”. The Guidance Note on VAT further states, “Where the enterprise has not charged VAT separately but has made a composite charge, it should segregate the portion of sales which is attributable to tax and should credit the same to ‘VAT Payable Account’ at periodic intervals”.

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Also Para 5.9 of ICAI Guidance Note on u/s 44AB (Revised 2014) states that:

- If sales tax and excise duty are included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover.
- If, however, the Excise duty and / or sales tax recovered are credited separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover

Hence, indirect taxes should normally not be included to arrive at the limits of s. 44AB, except in the cases as stated above.

### Inclusions & Exclusions from Turnover

The term 'turnover' for the purposes s. 44AB would mean the aggregate amount for which sales are affected or services rendered by an enterprise. The following should not be deducted from sales to arrive at turnover:

#### **Inclusions (Not to be deducted from Turnover)**

1. Sale of scrap/ By product
2. Sales proceeds of shares, securities, debentures etc. held as stock in trade by the assessee.
3. Cash discount other than allowed in invoice
4. Commission on sales
5. If sales tax/ Excise duty was included in sale price while accounting (Inclusive method), then the same shall form part of Turnover.

#### **Exclusions (To be deducted from Turnover)**

1. If sales tax/ Excise duty was not included in sale price while accounting (Exclusive method), then the same shall not form part of Turnover.
2. Sale proceeds of Fixed Assets.
3. Sale proceeds of Investment property.
4. Sale proceeds of shares, securities, debentures held as an Investment.
5. Discounts allowed in the Invoice.
6. Turnover discount (even if allowed by way of separate credit note)

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7. Ancillary charges such as packing, freight and forwarding etc. provided they are separately mentioned in the Invoice. Otherwise they will form part of Turnover.
8. Sales Returns
9. Price adjustments.
10. Special rebate (Excluding commission on sales)

### **In case of Share Brokers**

Share Brokers buy and sell securities on behalf of their client. Thus Brokerage income received on purchase and sale of such securities shall form part of Turnover.

### **In case of Shares, Securities & Derivatives**

#### **Speculative Transactions**

Aggregate of both positive and negative differences arising from the difference between purchase and sale transactions should be considered as Turnover.

#### **Derivatives/ Futures & Options**

In case of Derivative transactions difference between purchase and sale is settled. Following are considered while determining turnover:

- Total of favourable and unfavourable differences.
- Premium received on sale of options.
- Differences in case of reverse trades.

#### **Delivery based transactions**

Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sales is to be considered as turnover.

#### **In agency business**

Amount of commission earned by the agent and not the aggregate amount for which sales are effected or services are rendered.

If the property in the goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of the

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sales/turnover of the commission agent and/or the consignee as the case may be. If, however, the property in the goods, significant risks and reward of ownership belongs to the commission agent and/or the consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover

### GROSS RECEIPTS

**Gross Receipts** would include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act.

#### **Inclusions (To be included):**

1. Sale proceeds of scrap, wastage etc. if it is included in sale or turnover
2. Advance received and forfeited from customers
3. Cash assistance under the scheme of Government
4. Liquidated damages
5. Duty Drawbacks
6. Export incentives
7. Insurance claim(except relating to fixed assets)
8. Profit on sale of import license
9. Foreign exchange fluctuations on export sales
10. Interest income (if it forms part of business income)
11. Dividend income (in case of dealer of shares and securities)
12. Commission, brokerage, service and other incidental charges received in the business of chit funds
13. Reimbursement of expenses incurred (if credited to separate account then only to the extent of surplus)
14. Hire charges and instalments received
15. Finance income in case of lessor
16. Gross receipts including lease rent in the business of operating lease
17. Hire charges of cold storage

#### **Exclusions (Not to be included):**

1. Sale proceeds of asset held as investment.
2. Interest income (if not included as business income)
3. Dividend income except in case of dealer in shares
4. Reimbursements of custom duty and other charges collected by clearing agent
5. Share of profit of a partner of a firm/LLP excluded from total income u/s10(2A)

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6. Liabilities/ provisions of creditors, expenses or taxes written back
7. Rental income (if not included as business income)
8. Reimbursement of advertising charges by an advertising agent from the client

## **Gross Receipts in case of Profession**

Gross receipts in case of profession would include all receipts arising from carrying on of the profession.

Re-imburement of expenses if collected separately either in advance or otherwise, should not form part of the "gross receipts". If, however, such out of pocket expenses are not specifically collected but are included / collected by way of a consolidated fee, the whole of the amount so collected shall form part of gross receipts.

## **TAX AUDIT SERIES 2- AUDIT REPORT FORMATS**

In series - 2 we have discussed what are the audit reports and which report format is to be used by an auditor

### **FORM 3CA / FORM 3CB**

We all know that tax audit report u/s 44AB has to be either in Form 3CA or Form 3CB. The annexure to both reports is in Form 3CD, which is prepared by the management and auditor certifies it to be true and correct in Form 3CA/3CB.

#### **When is Form 3CA to be used?**

Form 3CA is to be used when the financial statements of the entity are audited under any other law. For example a Company could be audited under Companies Act 2013.

One may have a view that every company financials are audited under the Companies Act 2013. However, there could be few cases that a financial statement of a company is not audited under Companies Act, some cases could be:

- A company having a different financial year under the Companies Act 2013 as approved by NCLT
- A Company converted into LLP during the financial year

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- A company incorporated on or after 1<sup>st</sup> January (in such case the 1<sup>st</sup> financial year would end on next 31<sup>st</sup> March)

A LLP under tax audit would always use Form 3CA as its accounts are audited under LLP Act, 2008 when its turnover exceeds Rs. 40 Lakhs.

Form 3CA is used in such cases as financial statements are audited under their respective law, where the auditor gives his opinion on true and fair view on the financial statements under that law.

### **When is Form 3CB to be used?**

Form 3CB is to be used in all other cases i.e., when financials statements of the entity are not audited under any other law. This is so as in Form 3CB, the auditor gives his true and fair view on financial statements in S. No. 3 of the Form. Form 3CA does not contain auditor opinion on financial statements.

## SA 700

It is pertinent to note that all auditors should invariably comply with Standards on Auditing including SA 700/705/706 while conducting audit as they are mandatory on them.

SA 700 'Forming an Opinion and Reporting on Financial Statements', prescribes a format of the auditor's report on financial statements, which has been made effective in respect of audits of financial statements for periods beginning on or after 1st April 2012. However, having regard to the importance of these respective responsibility, it is suggested that these respective responsibility paragraphs relating may be provided in the space provided for giving observations, etc., **under clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be.** The suggested paras as per ICAI Tax Audit Guidance Note (Revised 2014) [and further revised due to revised SA 700 are as under:

### **Assessee's Responsibility for the Financial Statements and the Statement of Particulars in Form 3CD**

- The assessee is responsible for the preparation and fair presentation of the financial statements in accordance with the Accounting Standards issued by the



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ICAI, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

- In preparing the financial statements, management is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.
- Those charged with governance are responsible for overseeing the entity's financial reporting process.
- The assessee is responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, circulars etc that are to be included in the Statement.

### **Tax Auditor's Responsibility**

- Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these FS
- As part of an audit in accordance with SAs, we exercise professional judgment and maintain professional skepticism throughout the audit.
- We also:

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- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

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- We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.
- We are also responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G (1) (b) of Income-tax Rules, 1962. We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.

### TAX AUDIT SERIES 3 - CLAUSES 1 TO 8

In Series 3 we have discussed the Particulars of Form 3CD – Part A – S. Nos. 1 to 8.

#### PART A

Form 3 CD is divided into two parts:

- Part A containing S. Nos. 1 to 8
- Part B containing S. Nos. 9 to 44 (As amended by CBDT vide notification dated 20<sup>th</sup> July 2018)

#### S. No. 1 - Name of the assessee

- In case of audit of a branch or proprietary concern, the name of the branch/proprietary firm respectively should be stated along with the name of the assessee/proprietor.
- Ensure that name as given under match with the income tax records especially PAN card, wherever feasible.
- If there is any change in the name of the assessee between the last day of the previous year and the date of tax audit report then both the names should be stated in the tax audit report.
- In case of change in name of the company, eg, conversion into public Ltd co or vice versa, state both names and also state the fact of change by way of a note.

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### S. No. 2 - Address

- Mention the address which should be same as the one communicated by the assessee to the Income Tax Department and the same should be verified from registration certificates allotted under various tax laws.
- In case of a branch, the address of the branch should be stated.
- In case of a company, the address of the registered office should also be stated along with the principle place of business, if any.
- In case of a new assessee, the address should be that of the principal place of business.
- In case of change in address after the end of the financial year and before the date of tax audit, the fact may be brought on form 3CD.

### S. No. 3 - Permanent Account Number

- Quoting of PAN is mandatory hence; obtain the copy of PAN card.

### S No. 4 - Registration numbers under applicable indirect taxes

- This S. No. has been amended vide CBDT notification dated 20<sup>th</sup> July 2018 to include GST.
- The auditor is required to mention the registration number or any other identification number or GST Number, if any, allotted, in case the assessee is liable to pay indirect taxes (CUSTOM, GSTIN, ETC)
- The auditor should obtain from the assessee the list of indirect taxes applicable to him.
- The auditor is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law.
- If the registration has not been obtained or the assessee is in process of obtaining the registration, then the said fact should be mentioned.
- In case the auditor prima facie is of the opinion that any indirect taxes laws is applicable on the business or profession of the assessee but the assessee is not registered under the said law, **report** the same appropriately.
- Obtain written representation from the assessee regarding his registration in any of the indirect tax laws.

### S No. 5 - Status

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- The status does not refer to the residential status, It means status of the person who is defined as per section 2(31) [i.e Individual, HUF, Company, Firm, etc.]
- Firm for the purpose of this clause also includes Limited Liability Partnership (LLP).
- Foreign LLP would be covered under the category of “Company” as body corporate.
- If status of the assessee have been changed during the year (eg. Conversion of partnership firm into LLP). In such cases, the status which is on the last date of the previous year should be considered for the purpose of reporting and mention the fact by way of note against the clause.

### **S No. 6 - Previous year**

- Previous year for which the Tax Audit is carried out should be stated here.
- An assessee may follow any financial year; however for the purpose of Income-tax, uniform previous year of 12 months ended 31st March of each year is required to be followed.
- The starting date and ending date of the previous year should be given. In case business commenced during the year, the starting date should be given to the end of financial year.

### **S No. 7 - Assessment Year**

- Assessment year in relation to the Previous Year as stated under S. No. 6 needs to be mentioned. For example if PY is 2017-18, AY would be AY 2018-19.

### **S No. 8 - Applicable tax laws triggering the tax audit**

- Auditor has to report the relevant clause of the section 44AB under which the Audit has been conducted
- Here the relevant clauses of s. 44AB accordingly must be mentioned:
  - Clause (a) – If total sales, turnover or gross receipt in business exceeds Rs. 1 Crore
  - Clause (b) – If gross receipts in profession exceed Rs.50 lakhs
  - Clause (c) – If Profits u/s 44AE, 44BB or 44BBB claimed to be lower than the presumptive profits and gains.

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- Clause (d) – If Profits u/s 44ADA claimed to be lower than the presumptive profits and gains and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.
- Clause (e) – If section 44AD (4) is applicable and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

### TAX AUDIT SERIES 4 - CLAUSES 9 TO 12

#### **S. No. 9(a) - If firm or association of persons, indicate names of partners / members and their profit sharing ratios**

#### **S. No. 9(b) - If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change**

- If the assessee, being a Partnership Firm or Limited Liability Partnership (LLP) or association of persons (AOP) or body of individuals (BOI), the names of partners of the firm or members of the association of persons or body of individuals and their profit sharing ratios (%) needs to be stated and the same should be verified from agreement or any other document evidencing partnership or association of persons
- If there is any change in partners/ members or their profit sharing ratio from the last date of preceding year then :
  - a. Obtain the certified copies partnership deeds / LLP agreement and other relevant documents.
  - b. Ensure that all the changes, taken place in constitution or profit sharing ratio since last date of preceding year has been mentioned.
  - c. Verify acknowledgement of filing of notice of change to Registrar of firms, if any.
  - d. Whether relevant facts have been mentioned in case, share of member of AOP is indeterminate.
  - e. Obtain written representation
- If minor is admitted to the benefits of the firm then ensure whether his/her name and Profit Sharing Ratio has been duly stated.
- In case of dissolution of firm, the clause is not applicable as the firm cease to exists.

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### **S. No. 10(a) - Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession)**

### **S. No. 10(b) - If there is any change in the nature of business or profession, the particulars of such change**

- Nature of business/profession should be verified from the financial statements especially notes /schedules relating to company. Also verify the incorporation document such as MOA, partnership deed, trust deed etc. (if more than one business or profession is carried on during the previous year, nature of every business or profession). The auditor is also required to mention the sub-sector pertaining to the sector selected.
- If there is any change in the nature of business or Profession, the particulars of such change to be verified:
  - a) Whether change in nature of business / business line / permanent discontinuance is mentioned?
  - b) Whether any such change occurring due to reconstruction / reorganization has also been mentioned?
  - c) Review the minutes of the meeting approving the change in business. Obtain the declaration from the assessee w.r.t. such change.
- Temporary suspension of the business may not amount to change and therefore should not be reported.

### **S. No. 11(a) - Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed**

- Books have been prescribed only for professionals; hence only in case of professionals' books prescribed u/s 44AA read with Rule 6F should be mentioned in this clause.
- In case of business, as no books are prescribed so verify that it is mentioned accordingly – No.

### **S. No. 11(b) - List of books of account maintained and the address at which the books of account are kept**

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Obtain list of books maintained by the assessee and the address at which they are maintained

### **S. No. 11(c) - List of books of account and nature of relevant documents examined.**

- a. Obtain from the assessee a complete list of books of accounts maintained by him either computerized or otherwise. (both financial & non - financial records)
- b. Also obtain the address at which the books are maintained. Separate books may be maintained at different place of business.
- c. In case, where books of accounts are maintained and generated through computer system, the auditor should obtain from the assessee the details of address of the place where the server is located or the principal place of business/Head office or registered office by whatever name called.
- d. Have appropriate marks of identification been made, to ensure identification of books of accounts produced before us?
- e. In case of manufacturing/trading, has assessee maintained the quantitative records of stores, raw material & finished goods.
- f. In case of company assessee, verify the form filed with ROC regarding maintenance of books at a place other than registered office.
- g. Examine not only the books of accounts but also other relevant documents directly related to transactions reflected in the books of accounts like original purchase invoice, copy of bank statements, bills, vouchers, various agreements/ contracts or any other document on the basis of which preliminary entries are passed in the books of accounts.

### **S. No. 12 - Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.)**

The auditor needs to verify if the profit and loss account includes any of the income assessable on presumptive basis. There could be few different scenarios such as:

#### **1: Books of Accounts not separately maintained for both the businesses**

- Ascertainment of correct profit in respect of business covered under PRESUMPTIVE SCHEME should be done by tax auditor by arriving at a fair and reasonable estimate of the expenditure based on the evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked (basis of apportionment of common expenditure should be stated).



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- However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate such fact under this clause by a suitable note.

### **2: Books of Accounts separately maintained**

- In case separate set of books of accounts are maintained, it poses no problem for the tax auditor in ascertaining the amount of profit to be disclosed.

### **3: Business under presumptive scheme is additional business and no separate books are maintained for the same**

- Since the books of account are not maintained for the business covered in presumptive scheme, the Tax Auditor will be unable to find out the correctness of the net income credited and he should give a suitable note expressing his inability to verify the said figure.

Since the Tax Auditor is not able to form his opinion as to true and fair view of the accounts of the assessee, it would be necessary for him to qualify his audit report in Form no 3CB.

## TAX AUDIT SERIES 5 – CLAUSE 13

### **S. No. 13(a) - Method of accounting employed in the previous year**

### **S. No. 13(b) - Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year**

### **S. No. 13(c) - If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss**

- Under S. Nos. 13(a), (b) & (c), the Tax auditor is required to give information about the method of accounting followed by the assessee during the previous year. In case of any change he has to furnish the details of such change and its effect on profit or loss:
- All the companies are mandatorily required to follow mercantile basis of accounting. In case of other assesses like LLP's, Sole Proprietorship, Partnership concerns, Societies, Trust, Individuals, HUF etc. have an option to

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follow either cash or mercantile basis of accounting unless the statute governing the enterprise requires a particular method of accounting.

- Tax auditor is required to compare the method of accounting employed in previous year with preceding previous year, to know if there is any deviation in the same. (in case of company method of accounting can't differ in any year)
- In case such change is not quantifiable then appropriate facts needs to be disclosed.

### **S. No. 13(d) (ICDS) - Whether any adjustment is required to be made to the profits or loss for complying with the ICDS notified u/s 145(2)**

#### **S. No. 13(e) - Is, yes, give details**

- Tax Auditor is required to report the details of the deviations in the method of accounting followed by the assessee in the previous year from the ICDS notified u/s 145(2) of the act and its effect on profit/loss. Income Computation and Disclosure Standards (ICDS) have been notified u/s 145(2) of the Income Tax Act, 1961 vide Notification No. S.O. 3079 (E) dated 29<sup>th</sup> September 2016.
- Certain sections of the Income-tax Act, 1961 has been amended / inserted with retrospective effect from AY 2017-18 to nullify the Delhi High Court decision in this matter.
- ICDS is not applicable to person following cash system of accounting. If assessee is following cash system of accounting then S. Nos. 13(d), (e) and (f) would not be applicable to it.
- S. No. 13(e) requires ICDS-wise reporting of the adjustments made in profit or loss for ICDS compliance, showing clearly increase/ decrease in profits as well as the overall net effect of such adjustments.

#### **S. No. 13(f) - Disclosure as per ICDS**

- Clause 13(f) requires reporting of the ICDS-wise disclosures. The disclosures are required in 8 out of 10 Standards. Disclosures are to be given as required by the specific standard.
- Disclosures generally would not be similar for all persons and would vary from person to person. Contained hereafter are certain draft disclosures, which may be chosen and amended by the assessee as per the requirement of the person under tax audit.

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- The disclosure requirements have changed a bit due to amendment in Income Tax Act, 1961 with retrospective effect from AY 2017-18 and changes Income-tax Return Forms for AY 2018-19.

<i>ICD S No.</i>	<i>ICDS Name</i>	<i>Disclosure Requirement as per ICDS</i>	<i>Draft Disclosures for S. No. 13(f) in Form 3CD</i>
I	Accounting Policies	<ul style="list-style-type: none"> <li>All Significant Accounting Policies adopted by a person shall be disclosed.</li> <li>If fundamental accounting assumptions of going concern, consistency and accrual not followed, specific disclosure is required.</li> </ul>	<ul style="list-style-type: none"> <li><b>Refer Significant Accounting Policies mentioned at Note No. _ to Financial Statements</b></li> <li><b>Marked to Market Loss / Expected Loss is to be disallowed u/s 40A, hence not adjusted in ICDS</b></li> </ul>
II	Valuation of Inventories	<ul style="list-style-type: none"> <li>Accounting Policies adopted in measuring inventories including the cost formulae used. Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost; and</li> <li>Total carrying amount of inventories and its classification appropriate to a person.</li> </ul>	<ul style="list-style-type: none"> <li><b>Refer to Note No. _ to Financial Statements (Significant Accounting Policy for Inventories)</b></li> <li><b>Assessee is following Standard Costing as a measurement of cost, and that approximates the actual cost (If Standard Costing is being followed as measurement of cost)</b></li> <li><b>Inventories are not inclusive of duties and taxes, yet there is no effect on profits u/s 145A, refer to S. No. 14(b) of Form 3CD</b></li> <li><b>Difference over cost to NRV in case of dissolution of firm is to be disclosed u/s 145A, hence not disclosed in ICDS</b></li> <li><b>For Carrying Amount &amp; Classification refer Note No. _ to Balance Sheet (Inventories)</b></li> </ul>

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III	Construction Contracts	<ul style="list-style-type: none"> <li>• The amount of contract revenue recognised as revenue in the period; and</li> <li>• The methods used to determine the stage of completion of contracts in progress.</li> <li>• For contracts in progress at the reporting date, namely:—                             <ul style="list-style-type: none"> <li>○ Amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;</li> <li>○ Amount of advances received; and</li> <li>○ Amount of retentions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Refer to Note No. _ to the Financial Statements</b> (Significant Accounting Policy for Revenue Recognition)</li> <li>• <b>For amount of contract revenue recognised as revenue in the period refer Note No. _ of Statement of Profit &amp; Loss</b> (Construction Revenue)</li> <li>• <b>For contracts in progress at year end refer Note No. _ to Financial Statements</b> (Note for contracts in progress at year end)</li> </ul>
IV	Revenue Recognition	<ul style="list-style-type: none"> <li>• In a transaction involving sale of good, total amount not recognised as revenue during PY due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;</li> <li>• Amount of revenue from service transaction recognised as revenue during the PY;</li> <li>• Method used to determine the stage of completion of service transactions in progress; and</li> <li>• For service transactions in progress at end of PY:                             <ul style="list-style-type: none"> <li>○ Amount of costs incurred and recognised profits (less recognised</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Refer Note No. _ to the Financial Statements</b> (Significant Accounting Policy for Revenue Recognition)</li> <li>• <b>For amount of revenue from service transactions recognised as revenue during the PY refer Note No. _ of Statement of Profit &amp; Loss</b> (Revenue from services)</li> <li>• <b>For service transactions in progress at year end refer Note No. _ to Financial Statements</b> (Note for services in progress at year end)</li> </ul>

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		<p>losses) upto end of PY;</p> <ul style="list-style-type: none"> <li>○ Amount of advances received; and</li> <li>○ Amount of retentions.</li> </ul>	
V	Tangible Fixed Assets	<ul style="list-style-type: none"> <li>• Description of asset or block of assets;</li> <li>• Rate of depreciation;</li> <li>• Actual cost or WDV, as the case may be;</li> <li>• Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of— <ul style="list-style-type: none"> <li>○ CENVAT credit claimed and allowed under CENVAT Credit Rules, 2004;</li> <li>○ Change in rate of exchange of currency;</li> <li>○ Subsidy or grant or reimbursement, by whatever name called;</li> </ul> </li> <li>• Depreciation Allowable; and</li> <li>• Written down value at the end of year.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Refer to the S. No. 18 of Form 3CD</b></li> <li>• <b>Depreciation effect due to change in rates as per books and IT Act is to be taken as per S. 32 in computation of income hence not disclosed in ICDS (In case of companies only)</b></li> </ul>
VII	Government Grants	<ul style="list-style-type: none"> <li>• Nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;</li> <li>• Nature and extent of</li> </ul>	<p><b>Nature and extent of Government grants recognised during PY:</b></p> <ul style="list-style-type: none"> <li>• <b>By way of deduction from actual cost of the asset or assets or from the WDV of block of assets during the PY;</b></li> <li>• <b>As income;</b></li> <li>• <b>By way of deduction from</b></li> </ul>

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		<p>Government grants recognised during the previous year as income;</p> <ul style="list-style-type: none"> <li>• Nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and</li> <li>• Nature and extent of Government grants not recognised during the previous year as income and reasons thereof.</li> </ul>	<p><b>actual cost of asset(s) or from WDV of block of assets and reasons thereof;</b></p> <ul style="list-style-type: none"> <li>• <b>Not recognised during the PY as income and reasons thereof.</b></li> </ul>
IX	Borrowing Costs	<ul style="list-style-type: none"> <li>• Accounting policy adopted for borrowing costs</li> <li>• Amount of borrowing costs capitalised during the previous year.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Refer to the Significant Accounting Policies mentioned at Note No. _ to the Financial Statements (Significant Accounting Policy for Borrowing Costs)</b></li> <li>• <b>For borrowing costs capitalised during the previous year refer Note No. _ to Financial Statements (Note for borrowing costs capitalised during the previous year at year end)</b></li> </ul>
X	Provisions, Contingent Liabilities & Contingent Assets	<ul style="list-style-type: none"> <li>• In respect of each class of provisions: <ul style="list-style-type: none"> <li>○ Brief description of the nature of the obligation;</li> <li>○ Carrying amount at the beginning and end of the PY;</li> </ul> </li> </ul>	<p><b>In respect of each class of provisions:</b></p> <ul style="list-style-type: none"> <li>• <b>Brief description of the nature of the obligation;</b></li> <li>• <b>Carrying amount at the beginning and end of the PY;</b></li> <li>• <b>Additional provisions</b></li> </ul>

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		<ul style="list-style-type: none"> <li>○ Additional provisions made during the PY, including increases to existing provisions;</li> <li>○ Amounts used, that is incurred and charged against the provision, during the PY;</li> <li>○ Unused amounts reversed during the PY; and</li> <li>○ Amt. of any expected reimbursement, stating amt of asset that is recognised for that expected reimb.</li> <li>• In respect of Contingent Assets:             <ul style="list-style-type: none"> <li>○ Brief description of the nature of the asset and related income;</li> <li>○ Carrying amount of asset at the beginning and end of the PY;</li> <li>○ Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and</li> <li>○ Amount of asset and related income reversed during the PY.</li> </ul> </li> </ul>	<p><b>made during the PY, including increases to existing provisions;</b></p> <ul style="list-style-type: none"> <li>• <b>Amounts used, that is incurred and charged against the provision, during the PY;</b></li> <li>• <b>Unused amounts reversed during the PY; and</b></li> <li>• <b>Amt. of any expected reimbursement, stating amt. of asset that is recognised for that expected reimbursements</b></li> </ul> <p><b>In respect of Contingent Assets:</b></p> <ul style="list-style-type: none"> <li>• <b>Brief description of the nature of the asset and related income;</b></li> <li>• <b>Carrying amount of asset at the beginning and end of the PY;</b></li> <li>• <b>Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and</b></li> <li>• <b>Amount of asset and related income reversed during the PY.</b></li> </ul>
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## TAX AUDIT SERIES 6 - CLAUSES 14 - 15

### S. No. 14 (a) - Method of valuation of closing stock employed in the previous year

### S. No. 14(b) - In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish

<i>S. No.</i>	<i>Particulars</i>	<i>Increase in Profit (in Rs.)</i>	<i>Decrease in Profit (in Rs.)</i>

This clause requires reporting regarding method of valuation of inventory followed by the assessee and details of deviation, if any, from the method of valuation prescribed u/s 145A and its impact on profit and loss account. It is pertinent to note that section 145A has been amended with retrospective effect from AY 2017-18 to give effect to ICDS.

- The amended section 145A w.e.f. AY 2017-18 covers not only goods but services and securities too.
- Closing stock should be valued at lower of actual cost or net realisable value (NRV), where costs are ascertained on the basis of Specific Identification Method, FIFO or weighted average cost method.
- In case of conversion of capital asset into stock is valued at FMV, the same should also be stated. Accordingly the audit report in Form 3CB should be qualified for not complying with AS 2.
- Inventories include:
  - Finished goods being held for sale in course of ordinary business
  - Stock-in-trade being Goods held for resale
  - Raw material
  - Work in progress
  - Maintenance supplies
  - Consumables
  - Loose tools (not including machine spares forming part of Property Plant & Equipment)
- Cost of inventory includes



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- Cost of purchase includes purchase price including duties and taxes (except those recoverable from taxing authorities as per AS 2), freight inwards etc. trade discounts, rebates etc. are deducted from cost.
- Cost of conversion includes directly attributable costs such as labour cost
- Other costs incurred in bringing the inventory to present location.
- Tax auditor has to ensure that method of valuation of stock is appropriate and complies with principles of AS 2 and the same method is used consistently. If the method is inappropriate then suitable qualification in Tax audit report is required in Form 3CB.
- Section 145A allows change in method of valuation in following conditions
  - Adoption of different policy is required by statute or
  - Change would result in better presentation of financial statements of the enterprise
- As the enterprise follows exclusive method of accounting as per AS 2 (which is different from section 145A, which requires inclusive system to be followed), hence the following adjustments are required:
  - Any tax, duty or fee paid on purchase or inventory should be added to the cost of purchase or cost of inventory respectively.
  - Any tax, duty or fee paid on sale of goods or services should be added to sales.
- It is pertinent to note that as per ICAI Tax Audit Guidance Note (Revised 2014) Para 28, the impact of following exclusive method or inclusive method would not impact profits of the entity.
- Disclosure in S. No. 14(b) may be made as under (as suggested by ICAI Guidance Note of the example taken therein) shown below for VAT (to be replaced by GST)

<u>S. No.</u>	<u>Particulars</u>	<u>Increase in profit (Rs)</u>	<u>Decrease in profit (Rs)</u>
<b>1</b>	<b>Increase in Opening Stock on inclusion of VAT</b>		<b>30000</b>
<b>2</b>	<b>Increase in Purchases on inclusion of VAT</b>		<b>90000</b>

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<b>3</b>	<b>Increase in Sales on inclusion of VAT</b>	<b>90000</b>	
<b>4</b>	<b>Increase in Closing Stock on inclusion of VAT</b>	<b>60000</b>	
<b>5</b>	<b>VAT paid on sales</b>		<b>90000</b>
<b>6</b>	<b>VAT credit availed on cost of goods sold</b>	<b>60000</b>	
		<b>210000</b>	<b>210000</b>

- Depending on the case, a note may be given by the assessee that ‘Inventories are not inclusive of taxes and duties; however there is nil impact on profits due to the same as per the computation made’.

## **S. No. 15**

Details of capital asset converted into stock in trade in prescribed format:

- i. Reporting requirement:
  - a. Arises in the previous year in which such conversion takes place and the same should not be postponed till the year of sale.
- ii. Description of Capital Asset:
  - a. Provide the detail of Capital asset such as shares, securities, land, building, plant, machinery, etc. along with section 32 (if depreciable asset) that deals with depreciation and classifies the different assets based on their nature.
- iii. Date of Acquisition:
  - a. Verify the period of holding of asset to ensure whether it is long term or Short term asset and for this purpose verify the date of purchase of assets from assessee.
- iv. Cost of Acquisition:
  - a. Verify cost of acquisition of capital asset (as per AS 10, if applicable), from purchase invoice and cash/bank account, Fixed asset register, etc.
- v. Amount:
  - a. Verify the amount at which it is converted in to Stock-in Trade (as per AS 2).

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- b. In case the conversion is not done at cost but at FMV, appropriate disclosure is to be made at clause 14 (a) of Form 3CD that inventories on conversion of capital asset into stock is valued at FMV. Accordingly the audit report in Form 3CB should be qualified for not complying with AS 2.

**Note:** Conversion of capital asset in the form of Land & Building into stock in trade attracts provisions of Sec 50C of the Act by virtue of s. 45(2) read with s. 2(47)(iv). Hence, reporting requirement is also required under clause 17 of Form 3CD.

## TAX AUDIT SERIES 7 - CLAUSES 16 - 17

### S. No. 16 - Amount not credited to Profit & Loss Account

#### Requirement

This clause requires auditor to report items listed in sub-clause (a) to (e) as mentioned below regarding the 'items not credited to profit & loss account'. It could imply that reporting should be based on two distinct situations:

- Not credited the said items to profit & loss account and also omitted from books of account:
  - Under this situation auditor is required to obtain written representation w.r.t. all the items under this clause and also the reasons for not crediting the same.
- Crediting the said items in the books of account but not to the profit & loss account.

### S. No. 16 (a) - The items falling within the scope of section 28:

- Auditor should ensure that all the items falling within section 28 which have not been credited to the Profit & Loss Account are reported here.
- He should scrutinize all credit items so as to ensure that such items are either properly accounted in the books of account or else they are reported.

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### **S. No. 16 (b)**

- Under this clause, the details of the following claims, if admitted as due by the concerned authorities but not credited to the profit and loss account, are to be stated.
  - a) Pro-forma credits
  - b) Drawback
  - c) Refund of duty of customs
  - d) Refund of excise duty
  - e) Refund of service tax
  - f) Refund of sales tax or value added tax
- The auditor should scrutinise the relevant files or regulator's website (if the details are available thereon) or subsequent records relating to such refunds while verifying the particulars and also obtain an appropriate management representation.

### **S. No. 16 (c) - Escalation claims accepted during the previous year**

- Under this clause, the escalation claims accepted during the previous year but not credited to the profit and loss account should be stated.
- Escalation claims would normally arise pursuant to a contract (including contracts entered into in earlier years)
  - a) if so permitted by the contract, and
  - b) other party has signified unconditional acceptance could constitute accepted claims.

### **S. No. 16 (d) - Any other item of income**

- This clause covers any other items which the tax auditor considers as an income of the assessee based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account.
- It should disclose any item other than taxable u/s 28, as the same is reportable at S. No. 16(a).
- In giving the details under S. Nos. (c) and (d), due regard should be given to AS 9 - Revenue Recognition.

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### **S. No. 16 (e) - Capital receipt, if any.**

The purpose of this clause is to inform the Tax Authorities about various capital receipts which have not been credited to profit & loss account so that they can determine whether such receipts are taxable or not and whether the assessee has offered such capital receipts for taxation if taxable.

**Note:** Loans and borrowings should not be stated under this sub-clause.

### **S. No. 17 - Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C.**

This clause is applicable to all the assessees. The reporting arises in case there is a transfer of Land or Building or both whether held as capital asset (s 50 C) or business asset (s 43CA) during the previous year for a consideration less than the value adopted or assessed or assessable by any authority of state government (for stamp duty value / circle rate).

**SECTION 50C** is applicable where the assessee has transferred a capital asset (i.e. for capital gain purposes) being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty. In such a case, for purpose of section 48, the value so adopted or assessed or assessable by stamp duty authority shall be deemed to be the full value of consideration.

**SECTION 43CA** - On the same lines which are applicable for immovable property held in the nature of 'capital asset' under section 50C of the Act, Section 43CA is applicable where the assessee has transferred an asset (other than a capital asset i.e. being stock-in-trade) being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty.

The tax auditor should:

- a) Obtain the information from the assessee with regard to sale of Land or Building or both during the previous year.

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- b) Check the same with the books of account and Financial Statements. In case of Individuals / HUF, Land or Building or both not recorded in books of accounts which are being audited may not be reported.
- c) Check whether the Profit/Loss Account refers to an item relating to Profit/Loss on Sale of Land or Building.
- d) Check and decide the applicability of s 43CA of 50C depending upon the nature of asset held by the Assessee
- e) Check the Registered Sale Deed executed in this regard and find out the value adopted for stamp duty purpose.

Details of the stamp duty value and the consideration received/receivable are to be reported under the clause. An assessee may claim that the stamp duty value exceeds the fair market value (i.e. at which the transaction has taken place), yet in this clause the details are required and such claim may be made before the assessing officer as per section 50C (2).

### TAX AUDIT SERIES 8 - CLAUSES 18 TO 20

#### **S. No. 18 - DEPRECIATION**

The auditor should examine the following:

*(a) Description of asset/block of assets.*

- 'BLOCK OF ASSETS', means a group of assets falling within a class of assets comprising –Both Tangible and Intangible assets.
- It is very important to identify the block to which the assets of the assessee pertains and the tax auditor needs to review the nature and usage of the asset to ascertain the correct depreciation rate.
- In case the tax auditor doesn't agree with the classification of block or rate adopted by assessee, then he needs to disclose such fact in his report and draw the attention.

*(b) Rate of depreciation.*

- Once the classification has been ascertained and checked properly, check the rates of depreciation applicable to each block as per the Income-tax Rules, 1962.

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(c) *Actual cost or written down value, as the case may be.*

- Actual cost of assets should be determined as per the provisions of section 43(1) of the Act and also ensure the compliance of AS – 10.
- For determining actual costs any expenditure incurred for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 10000/- should be ignored / adjusted in terms of 2nd Proviso to section 43(1) inserted w.e.f. AY 2018-19.
- Obtain the copy of Income Tax Return for preceding previous year from the management to ensure the opening WDV of Block of Assets is same as closing WDV of previous year. The same should also be verified from previous year tax audit report, if audit was conducted in previous year.

d) *Additions/deductions during the year with dates*

- Obtain list of fixed assets purchased during the previous year along with dates of addition as certified by the management and verify the same. Where any addition was made, the date on which the asset was put to use is to be reported.
- Obtain list of deductions during the year to assets along with their dates as certified by the management. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.
- Borrowing cost of specific borrowing for qualifying asset should also be adjusted to the cost in terms of ICDS IX (Borrowing Costs).

(e) *Depreciation allowable.*

- It means depreciation allowable under the Income Tax Act, 1961 and the rules framed thereunder.
- Depreciation is allowed to the assessee whether or not he has claimed the deduction of the same. The Tax Auditor is required to verify the amount of depreciation claimed by the assessee.
- Section 32(1) of the Act allows depreciation. However, in order to be eligible for depreciation following conditions are necessary:
  - The Asset should be wholly or partly owned by the Assessee.
  - The Asset should be used for the purpose of business or profession.

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(f) Check whether there is any adjustment on account of Exchange Fluctuation / Subsidy / Grant or Other Reimbursements.

### **S. No. 19 - Amounts admissible under sections:**

<b>32AC,</b>	<b>32AD</b>	<b>33AB</b>	<b>33ABA</b>
<b>35(1)(i)</b>	<b>35(1)(ii)</b>	<b>35(1)(iia)</b>	<b>35(1)(iii)</b>
<b>35(1)(iv)</b>	<b>35(2AA)</b>	<b>35(2AB)</b>	<b>35ABB</b>
<b>35AC</b>	<b>35AD</b>	<b>35CCA</b>	<b>35CCB</b>
<b>35CCC</b>	<b>35CCD</b>	<b>35D</b>	<b>35DD</b>
<b>35DDA</b>	<b>35E</b>		

S. No. 19 is applicable on the assessee who claims deduction under the above sections. This clause requires the tax auditor to report the amount of deduction admissible to the assessee under certain sections as mentioned therein. The details of amount debited to the P&L A/c and amount admissible as deduction under each section are required to be given.

The amount covered by these sections are generally debited to P&L A/C. However, deduction under certain sections is based on the capital expenditure on assets/deposits maintained with designated accounts for specified purposes. These are treated as assets & not debited to P&L A/C. In such case, the Tax Auditor will have to state either NIL/NA under the second column of the table in which amount admissible is to be mentioned.

While reporting under S. No. 19 & certifying various deductions, the Tax Auditor should verify the documentary records in support of the various deductions claimed and also conditions of allowability of various deductions.

Following are the requirements that the respective Auditor needs to go through:

- Verify the payments/contributions made under above sections with the supporting
- Verify the admissibility of deduction with reference to compliance of the conditions mentioned in the respective sections.
- Verify the amount claimed as deduction and amount debited/not debited to P&L A/c



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- Check whether the necessary approval from the prescribed Authorities have been obtained, wherever required
- In case of expenditure on fixed Asset, whether the same has been claimed as deduction under any section. If deduction is claimed on such assets, then depreciation on the same cannot be claimed again.
- Check in case the condition under relevant sections are not fulfilled, then they are treated as deemed profits & gains of business and are taxable in certain cases. In such case, report the same under S. No. 24 of Form 3CD.

### **S. No. 20(a) - Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)].**

- Bonus and commission to employees as per their employment terms is deductible expenditure as these are contractual payments but indirect distribution of dividend/profits in the name of bonus/commission is not deductible expense as the assessee claims expenditure to reduce his income and income tax and avoid Dividend distribution tax . Hence disallowed.
- Auditor should carefully examine the bonus and commission paid to employees with their terms of contract of those employees/ directors and need not to check of those who are independent directors.

### **S. No. 20(b) - Details of contributions received from employees for various funds as referred to in section 36(1)(va)**

- Section 36(i)(va) of the Act permits deduction of any sum received by the assessee from any of his employees (like contributions to any provident fund or superannuation fund or ESI Fund or any other Fund for employees' welfare), if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date.
- The ESIC for a month was to be deposited upto 21<sup>st</sup> of the next month. However, the same has changed to 15<sup>th</sup> of next month w.e.f. June 2017.
- The PF must be deposited upto 15<sup>th</sup> of the next month.
- The tax auditor should get a list from the assessee where all the contributions received from employees are deposited.
- He should take challans of deposition of contribution as the date and amount on challan is the actual date and actual amount for deposition of the contribution

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- Generally contribution received from employees are treated as liability and credited to that liability account, so auditor should scrutinize these accounts and compare this with actual contribution deposited.

### TAX AUDIT SERIES 9 – CLAUSE 21

#### S. No. 21: Amount Debited to Profit & Loss Account

#### S. No. 21 (a) - Furnish the details of amounts debited to the profit and loss account, being in the nature of Capital, Personal, Advertisement Expenditure, etc.

- **Expenditure of Capital Nature:-** Expenditure of capital nature which is debited to profit and loss account has to be reported. The disclosure should include loss on sale of fixed assets, loss on sale of Investments, etc. The tax auditor should keep the above principle in mind and if the same are not followed by the assessee, then the auditor should qualify the Tax Audit Report.
- **Expenditure of Personal Nature:-** Personal expenses of the assessee are not allowable while computing Income from Business or Profession. It should be noted that the word 'Personal' is confined to and attached with the "assessee" and not necessarily to and with persons other than the assessee. The Tax Auditor should also collect information from Statutory Audit Report (In case of companies, statutory auditor is required to report if personal expenses are debited to profit & loss account) and also based on his audit procedures and report the same under clause.
- **Expenditure on advertisement being souvenir, brochure, tract, pamphlet, etc published by a Political Party:-** The Tax Auditor should keep in mind that no deduction is allowed in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party as per s. 37(2B). Therefore, the expenditure of this nature should be segregated and reported under this clause. In case a trade union or labour union is promoted or formed by a political party but have a distinct legal entity, then expenditure incurred by way of advertisement given in the souvenir, brochure, tract, pamphlet or journal published by the trade union or the labour union is not required to be indicated in this clause.
- **Expenditure incurred at clubs:-** Details are required for entrance fees and subscription as well as expenditure incurred for club services and facilities

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used. If the expenditure incurred at club is of personal nature, then the same should be reported, as the same are not allowable.

- **Expenditure by way of penalty or fine for violation of law or otherwise or for offence or which is prohibited by law:-**. It must be borne in mind that the tax auditor while reporting under this clause is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law. He is only required to give the details of such items as have been charged in the books of accounts. This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages. The tax auditor should keep in mind the difference between the amount prohibited by law and the amount paid which is compulsory in nature under the relevant statute. While stating the particulars under this clause, the tax auditor should also take into consideration the concept of materiality. Details are to be given under this clause if the penalty, etc. are debited to profit & loss account, even if the assessee is contesting before the higher authorities. Where the assessee is required to pay an amount being purely compensatory in nature, then the same is allowable u/s 37(1) and is not reportable under this clause.

### **S. No. 21(b) - Amounts inadmissible under section 40(a)**

This clause deals with amounts which are inadmissible as deductions under section 40(a). Following are items which being not allowed as deductions is to be reported:-

- U/s 40(a)(i) - Any interest, royalty, fees for technical services or other sum chargeable under the Income-tax Act which is payable outside India or in India to a non-resident or a foreign company on which tax is deductible at source and such tax has not been deducted or after deduction has not been paid during the previous year or in the subsequent year before the expiry of the time prescribed.
- U/s 40(a)(ia) - Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or subcontractor, being resident, for carrying out any work, on which TDS is deductible and such tax has not been deducted or, after deduction, the has not been paid on or before the due date of filing return u/s 139(1).
- U/s 40(a)(ic) - Fringe Benefit Tax.
- U/s 40(a)(iia) – Wealth Tax
- U/s 40(a)(iib) - Any amount paid by way of a Royalty, License Fees, Service Fees, Privilege Fees, Service Charges or any other fees or charge by whatever

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name called, which is levied exclusively on or which is appropriated, directly or indirectly, from a State Government undertaking by the State Government.

- U/s 40(a)(iii) - Any payment towards 'Salaries', if it is payable outside India; or to a non-resident, and if the tax has not been paid thereon nor deducted therefrom.
- U/s 40(a)(iv) - Any payment to a provident or other fund established for the benefit of employees of the assessee.
- U/s 40(a)(v) - Any tax actually paid by an employer referred to in clause (10CC) of section 10.

### **S. No. 21(c) - Amount debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof**

- The tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is required to be given in respect of interest/ remuneration paid to partner of partnership firm / LLP or a member of an Association of persons (AOP)/Body of individuals (BOI). The word "inadmissible" implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prima facie inadmissibility of the deduction and also quantify the same.
- Salary, bonus, commission or remuneration or interest are not admissible, unless the following conditions are satisfied:
  - Remuneration is paid to working partner(s).
  - Remuneration or interest is authorised by the partnership deed / LLP Agreement and is in accordance with the partnership deed / LLP Agreement.
  - Remuneration or interest does not pertain to a period prior to the date of execution of partnership deed / LLP Agreement.
  - Remuneration does not exceed the limits prescribed under section 40(b).
  - Interest does not exceed the simple interest calculated at the rate of 12%.

### **S. No. 21(d) – Disallowance / deemed income u/s 40A(3)/ 40A(3A)**

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- It should be noted that cash expenditure limit per person per day has been decreased from AY 2018-19 from Rs. 20000/- to Rs. 10000/-.
- The Tax Auditor should obtain a list of all the cash payments exceeding Rs.10,000/- per person per day (Rs.35,000 in case of plying, hiring or leasing goods carriages) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause.
- In case expenditure is incurred in earlier previous years, but payment is made in the previous year under tax audit, then also the limits discussed above needs to be verified and payments made in excess of the limits would be deemed to be income of current previous year u/s 40A(3A) and is to be reported in clause 21(d)(B).
- The tax auditor has to take into account the technological advancements in the field of banking and information technology. It may be noted that with the advancement in technology, use of electronic payment system such as RTGS/NEFT, etc, are widely used. In case the payments are made electronically, then it can be contented that such payments are not liable for disallowance as the main intention of provisions of sec. 40(3)/ (3A) is to restrict the use of cash in transactions exceeding Rs.10000/-
- It is also to be verified that the payment was made by account payee cheque or account payee draft. Crossed cheques are not account payee as held in few cases.
- There the assessee did not possess necessary evidence to enable the auditor to verify that the payment made was through account cheque or account payee draft, the same should be accordingly reported, which may be as under:
  - Though we have not noticed any payment in excess of Rs.10000/- or Rs. 35000/- (in case of plying, hiring or leasing goods carriages) have been made in contravention of section 40A(3) / 40(3A) read with rule 6DD, however the assessee did not possess necessary evidence to verify the same.

### **S. No. 21(e) - Provision for gratuity not allowable u/s 40A(7)**

- Details of provision made for gratuity but not paid would be disallowed u/s 40A(7) and is to be disclosed under this clause.
- The tax auditor should verify from the assessee, the order of the Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is

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effective and also verify whether the provision has been made as provided in the trust deed.

- If the assessee has not provided or made contribution to the approved Gratuity fund, then the Tax Auditor needs to verify the reporting in this clause.

### **S. No. 21(f) - Any sum paid by the assessee as an employer not allowable under section 40A (9);**

- Section 40A(9) disallows expenditure incurred on setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860, or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (iva) or clause (v) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.
- Under this clause, the Tax Auditor is required to report details of payments which are not allowable under this section.

### **S. No. 21 (g) - Particulars of any liability of a Contingent nature**

- The Tax Auditor should be mindful of distinction between the Contingent Liability and the Provision. The Tax Auditor should scrutinize the accounts relating to Provisions/ Outstanding Liabilities to ensure that they do not contain any provision for contingent Liabilities.
- The Tax Auditor should also refer the Accounting Policies adopted by the assessee as mentioned in the Financial Statements in this regard.
- Further, the Tax Auditor should check whether Contingent liability disclosed in earlier years have been provided in the books in the relevant previous year; if yes, then the basis for provision of the same.

### **S. No. 21(h) - Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.**

- The Tax Auditor is required to report the amount of expenditure incurred by an assessee in relation to an income which is exempt under the Act.
- The tax auditor should examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination the tax auditor

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is entitled to rely on the management representation. However, Standard on Auditing (SA) 580, Written Representations may be referred to.

- The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man-hours spent to earn the relevant income etc.
- The tax auditor should also verify the amount disallowable as per rule 8D.

### **S. No. 21(i) - Amount inadmissible under the proviso to section 36(1) (iii).**

- The said provision was amended by Finance Act 2015 and is in line with ICDS IX (Borrowing Costs), where interest paid in respect of amount borrowed for purpose of business is not allowed till the date asset was first put to use.
- The Tax Auditor while reporting under this sub clause should refer to the Accounting Policy adopted by the assessee in this regard. He should evaluate whether the Accounting Policy is in line with principles laid down in AS-16.

## TAX AUDIT SERIES 10 - CLAUSES 22 - 23

### **S. No. 22: Interest inadmissible u/s 23 of MSMED Act, 2006**

This clause is applicable to all the assesseees and requires Tax Auditor to report the amount of interest inadmissible u/s 23 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED, Act 2006). As per the said section, any interest for delayed payment to Micro, Small and Medium Enterprises is not allowed as deductible expenditure while computing the income of the assessee under the Income Tax Act, 1961. Few important provisions of MSMED Act, 2006 are as under:-

- **Section 15 of MSMED Act, 2006.**
  - This section requires the buyer to make payment on or before the date agreed upon in writing, or where there is no agreement in this behalf, before the appointed day. It also provides that the period agreed upon in writing shall not exceed 45 days from the day of acceptance or the day of deemed acceptance.
- **Section 16 of MSMED Act, 2006.**
  - Section 16 of the MSME Act provides for the date from which and the rate at which the interest is payable. Accordingly, where a buyer fails to make payment of the amount to the supplier, as required u/s 15, the buyer shall, be liable to pay compound interest with monthly rests to the

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supplier on that amount from the appointed date or, as the case may be, from the date immediately following the date agreed upon, at 3 times of the bank rate notified by the Reserve Bank.

- **Section 22 of MSMED Act, 2006.**

- This section provides that where any buyer is required to get his annual accounts audited u/s 44AB of Income tax Audit, 1961 or under any law, such buyer shall furnish the following additional information in his annual statement of accounts, namely:-

- The principal amount and interest due thereon (to be shown separately) remaining unpaid.
- The amount of interest paid by the buyer in terms of Section 16 along with the amount of payment made to supplier beyond the appointed date during each accounting year.
- The amount of interest due and payable for the delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act
- The amount of interest accrued and remaining unpaid at the end of each accounting year.
- The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure u/s 23.

- **Section 23 of MSMED Act, 2006**

- This section provides that notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction

### Auditors Role

- Obtain list of suppliers from the assessee, which are covered under the MSMED Act, 2006 in confirmation with which obtain Registration



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Certificate along with details of transaction covered into and balance outstanding.

- Review the list so obtained, also cross check the list with the disclosures made in the financial statements as per section 22 mentioned above.
- In case of Companies verify the Form MSME -1 filed with Registrar of Companies.
- Obtain ageing analysis of such suppliers so as to ascertain outstanding beyond agreed period or 45 days as the case may be (follow section 15 as mentioned above).
- Check whether any interest due to them or paid during the year in terms of section 16 of MSMED Act, 2006 as mentioned above which has been debited or provided for in the books of account. Tax auditor can apply test checks in this regard.
- Verify the additional information provided by the auditee relating to interest u/s 16 in his financial statement.
- If on test check basis, the auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22. In case there is no interest inadmissible, then it should be mentioned 'NIL' under this clause.
- In case the assessee does not have the relevant information to be reported in this clause ensure to disclose the same, which could be as under:
  - The entity does not have relevant information regarding any micro or small enterprise which is registered under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. Hence amount due and interest payable is not ascertainable.

### **S. No. 23: Payments made to persons specified u/s 40A(2)(b)**

This clause is applicable to all the assessees and requires the Tax Auditor to report payments made by the assessee during the previous year to the persons specified u/s 40A(2)(b). These persons are generally termed as 'Related Parties'. It may be noted that relationships/parties covered under AS-18 are not identical.

Section 40(A)(2) provides that expenditure for which payment has been or is to be made to certain specified persons may be disallowed if, in the opinion of the Assessing Officer, such expenditure is excessive or unreasonable having regard to:

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- the fair market value of the goods, services or facilities for which the payment is made;
- for the legitimate needs of business or profession of the assessee;
- the benefit derived by or accruing to the assessee from such expenditure.

## Auditor Role

- Obtain full list of specified persons as contemplated in this section.
- Obtain details of expenditure/payments made to the specified persons.
- Scrutinise all items of expenditure/payments to the above persons.
- Review the list of transactions with the Related Party disclosures made in the financial statements under AS-18 (AS-18 disclosures are required for all assesses including partnership firms and sole proprietorships). Also follow the guidance for audit procedures as given under SA-550 on Related Parties.
- Ensure reporting above mentioned payments under this clause.
- Salaries and perquisites etc. paid to directors or persons having substantial interest in the company should be included in the list referred to above.
- The Tax Auditor is not required to comment on the reasonableness or otherwise of such payments.
- In case of voluminous transactions, the Tax Auditor may consider grouping the similar transaction based on their nature and disclose such consolidated information as per their nature individual party wise.

## TAX AUDIT SERIES 11 - CLAUSES 24 to 26

### S. No. 24: Deemed Profits/Gains u/ss 32AD/33AB/33ABA

- Tax Auditor is required to report amounts which are deemed to be Profits and Gains u/s 32AD, 33AB or 33BA. Section 32AC is not applicable w.e.f AY-2018-19. Section 32AD had been inserted w.e.f. 20<sup>th</sup> August 2018.
- 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

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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.

### **S. No. 25 : Deemed Profits / Gains u/s 41**

- S. No. 25 applies to all assesseees and requires the tax auditor to report the amount 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.
  - 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.
- **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 criteria for taxability under this sub section.
- **Section 41(3) : Sale of assets used in scientific research**

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- 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 criteria 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 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 criteria 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 criteria 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.

**S. No. 26 - In respect of any sum referred to in clauses (a), (b), (c),(d), (e) or (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**

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- (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).

S. No. 26 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. 20<sup>th</sup> August 2018.

**Reporting under clause 26 is summarized in the following chart:**

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**If liability under clauses of section 43B**

**Pre-existed on first day of the previous year**

**Incurred During the Previous Year**

**Paid During the Previous Year**

**Not Paid During the Previous Year**

**Paid on or before due date of filing of Return u/s 139(1)**

**Not paid on or before due date of filing of Return u/s 139(1)**

Assesse avail deduction in this Previous Year

Assesse would avail deduction in that succeeding PY(s) in which he will pay the liability amount.

Assesse avail deduction in the Previous Year.

Assesse would avail deduction in that succeeding PY(s) in which he will pay the liability amount.

Reporting under clause 26 is required

Reporting under clause 26 is required

Reporting under clause 26 is required

Reporting under clause 26 is required

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

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## TAX AUDIT SERIES 12 - CLAUSES 27 to 29

### S. No. 27 - CENVAT Credit/Prior Period Items

#### S. No. 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.
- The Tax Auditor needs to ensure that amounts as presented in the returns matches with the underlying records and books of account.
- The Tax Auditor if encounter any mismatch between accounting records and Excise/Service records, check whether Reconciliation in respect of such difference has been prepared.
- For AY 2018-19 the details would be required for the period upto 30<sup>th</sup> June 2017 only. Details of GST is specifically not asked for, hence need not be given.
- In the Schema available on the ITD website it also includes ITC (GST), however as the same has not yet been duly notified by CBDT, hence the same may not be reported.

#### S. No. 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 of the identification 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.

### S. No. 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.

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**S. No. 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 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, provisions of this clause are applicable only when the shares are issued 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 books of accounts and other relevant documents.
- The auditor needs to verify that the valuation of shares in case the unlisted company assessee issues shares beyond face value and verify that is in accordance with Rule 11UA read with Rule 11U of the income Tax Rules, 1962.
- In case shares are valued at discounted free cash flow method (DFCF), it should have been valued by a merchant banker.
- 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 from Venture Capital Company or Venture Capital fund as defined in 10(23FB)
  - 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



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## TAX AUDIT SERIES 13 - CLAUSES 29A – 29B

### **S. No. 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 tax auditor is required to report the nature of such income and the amount involved.
- 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 names advances are shown in the assessee’s balance sheet.
  - Obtain management representation from the assessee that the advance received has been forfeited or not and report accordingly.

### **S. No. 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)?**

S. 56(2)(x) as amended w.e.f. AY 2018-19 provides that where any person receives, from any person or persons:

- any amount exceeding Rs 50,000/- without consideration then he needs to declare such amount as **‘Income from other sources’** 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 an amount exceeding Rs. 50000/-, the stamp duty value of such property as exceeds such consideration:
- any property, other than immovable property,—

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- without consideration, the aggregate fair market value of which exceeds Rs. 50000/-, the whole of the aggregate fair market value of such property; OR
- for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000/-, the aggregate fair market value of such property as exceeds such consideration :

then he needs to declare such amount as '**Income from other sources**' subject to certain exemptions.

- This clause includes various capital assets including immovable property, shares, etc.
- With respect to **quoted shares & securities**, the auditor has to consider the following provisions which provides for manner of determining:
  - Fair market value (FMV) of quoted shares and securities received by way of transaction carried out through any recognized stock exchange.
  - FMV of quoted shares and securities received by way of transaction carried out OTHER THAN through any recognized stock exchange
- 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
  - Verify the FMV of unquoted shares and securities as per rule 11UA / 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 reported 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.
  - Where the difference between transaction value and stamp duty value exceeds Rs. 50000/- the same needs to be reported under this clause.
  - The assessee has right to contest the FMV before AO
  - However, where the assessee has adequate evidence that the FMV do not exceed the consideration for acquisition by Rs. 50000/- and claims the consideration to be fair market value and intends to contest the same as per the provisions of s. 56(2)(x) read with s. 50C(2), 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

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- That the assessee is of the view that FMV does not exceed the consideration and he intends to contest the same before the assessing officer. (Obtain appropriate MRL from the assessee in this regard for audit documentation)

### TAX AUDIT SERIES 14 - CLAUSES 30 to 30C

#### **S. No. 30: Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D]**

This clause is applicable to all assesseees who have borrowings on Hundi or repayment thereof, otherwise than an account payee cheque. Further requires the Tax auditor to report the compliance with the provisions of **section 69D** of the Act dealing with borrowing on Hundi and repayment thereof.

#### **Provisions of Section 69D:**

- The term 'Hundis' has not been defined under the Act. However, the CBDT Circular NO. 208, dated 15 November 1976 explains the scope and characteristics of the said term to be Promissory Note drawn in a vernacular language.
- Amount borrowed on Hundi or Repayment of the same (including interest) has to be made by account payee cheque.
- If not through account payee cheque, the amount borrowed or repaid will be considered as Income in the year of borrowing or repayment.
- If borrowing is taxed then repayment will not be taxed again in the year of repayment
- Account payee draft should also be treated as account payee cheque and the provisions of section 69D are not contravened if the transaction is through account payee draft.

The auditors should:

- Obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account.
- There will be practical difficulties in verifying the loan taken or repaid on hundi by account payee cheque. In such cases, the tax auditor should verify the borrowing/repayments with reference to such evidence which may be available and in the absence of conclusive or satisfactory evidence or the auditor may obtain suitable certificate/ management representation in this regard.

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- It also includes reporting of the name of the parties involved, date, the amount, and other particulars may be given. The e-filing portal gives the format in which the details are to be given.
- Check the bank book and bank statements.

### **S. No. 30A: Details about “Primary Adjustments” in transfer pricing to be reported as per Section 92CE**

This clause has been added to Form 3CD w.e.f. 20<sup>th</sup> August 2018. If any primary adjustment to the transfer price has been made as per section 92CE(1) of the Act, then the following details need to be given in this clause.

- Under which clause of section 92CE(1) primary adjustment is made?
  - Suo motu by the assessee in his ITR;
  - By the Assessing Officer and has been accepted by the assessee;
  - Determined by an advance pricing agreement entered into by the assessee u/s 92CC;
  - As per the safe harbour rules framed u/s 92CB; or
  - Arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into u/s 90 or s. 90A for avoidance of double taxation,
- Amount of primary adjustment.
- Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE(2)?
- If yes, whether the excess money has been repatriated within the prescribed time. The due date is 90 days from due date of filing of ITR. For AY 2018-19 due date would be 31st December 2018, hence for AY 2018-19, this detail would not be feasible.
- If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time.

This new clause will increase the responsibility of the auditor substantially. This clause has been necessitated on account of the new section 92CE which was inserted into the Statute w.e.f. AY 2018-19.

### **S. No. 30B: Limitation of interest deductions for borrowings from an Associated Enterprise up to 30% of EBITDA is to be furnished**

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This clause has been added to Form 3CD w.e.f. 20<sup>th</sup> August 2018. As per Section 94B(1) of the Act, if an Indian Company or a Permanent establishment of a foreign company in India incurs any expenditure by way of interest or of similar nature exceeding Rs. 1 Crore which is deductible in computing income chargeable under the head 'Profits and Gains of Business or Profession' in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it exceeds 30% of EBITDA. The Form gives an additional clause to disclose the following:

- Amount of expenditure by way of interest or of similar nature incurred.
- Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year.
- Amount of expenditure by way of interest or of similar nature which exceeds 30% of EBITDA.
- Details of interest expenditure brought forward as per section 94B (4). Under this clause details would not be feasible for AY 2018-19 as S. 94B has been inserted w.e.f. AY 2018-19
- Details of interest expenditure carried forward as per section 94B (4).

This clause too has been necessitated on account of the new section 94B which was inserted into the Statute w.e.f. AY 2018-19.

### **S. No. 30C: Details of Impermissible Avoidance Arrangement to be furnished as referred to in Section 96**

This clause has been added to Form 3CD w.e.f. 20<sup>th</sup> August 2018. If an assessee has entered into an Impermissible Avoidance Arrangement as defined in section 96 of the Act, then the following details needs to be furnished in clause 30C of the Form:

- Nature of the impermissible avoidance arrangement.
- Amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement.

Reporting under this clause has been deferred till 31<sup>st</sup> March 2020 vide Circular No. 9/2019 dated 14<sup>th</sup> May 2019, hence nothing is to be reported under this clause.

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### TAX AUDIT SERIES 15 - CLAUSES 31(a) to 31(e)

#### **S. No. 31(a) - Details of each loan or deposit taken or accepted in an amount exceeding limit specified in section 269SS (i.e, Rs. 20000/- for AY 2018-19).**

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.

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- 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 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.

### **S. No. 31(b) - Details of any specified sum taken or accepted in an amount exceeding limit specified in section 269SS (i.e, Rs. 20000/- for AY 2018-19).**

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.
- 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:

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- 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.

**S. No. 31(ba) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST(i.e, 200000 for AY 2018-19, 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, 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. 20<sup>th</sup> 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:



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- 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

**S. No. 31(bb) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/- for AY 2018-19), 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.

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.

**S. No. 31(bc) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (i.e, Rs. 200000/- for AY 2018-19, 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.

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

**S. No. 31(bd) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/- for AY 2018-19), 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:

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- 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.

### **S. No. 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 has been amended to rectify an inadvertent error w.e.f. 20<sup>th</sup> August 2018. 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.
- 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.

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- 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

### **S. No. 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.

### **S. No. 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.

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

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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.

## TAX AUDIT SERIES 16 - CLAUSES 32 - 33

### 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

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- 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).

### **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

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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.

### **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.**

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- 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

### **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



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basis of such judicial pronouncement. He may report the amount admissible with his comments in Form 3CA/ 3CB.

### TAX AUDIT SERIES 17 – CLAUSE 34

#### **S. No. 34(a) - Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB**

- The Auditor need to report section-wise details of TDS/TCS deducted/collected and paid.
- The Auditor also has to report on following columns:
  1. TAN of the Assessee
  2. Section under which Assessee is covered.
  3. Nature of Payment.
  4. Total Amount of Payment/Receipt of the nature in Column (3) - Details may be drawn from the TDS/TCS statements furnished by the assessee to the IT Department along with the books of accounts and other relevant documents which include aggregate of payments on which tax is liable to be deducted as well as not liable to be deducted.
  5. Details of total amount on which the tax was required to be deducted or collected out of the amount mentioned in column (4) - There may be a difference in the amounts reported under column (4) and column (5). The reasons for difference could be threshold limits provided in specific sections or applicability of certificates issued u/ss 195/197 or difference of opinion with regard to applicability of a particular section, etc.
  6. TDS/TCS deducted/ collected at less than specified rate - In case the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued u/s 195 or 197, the lower rate or nil rate, as the case may be, should be considered as the specified rate for the purpose of reporting under this clause.
  7. Total amount of tax deducted/collected out of the amount furnished in column (6).
  8. Total amount out of the amount deductible or collectible as mentioned in column (5) at which the tax was deducted or collected at the rate less than the specified rate – For example section 194C requires deduction @ 2% in case payment is made to a person other than individual/HUF, but the deductor deducts only 1%. The same has to be reported under this clause.
  9. Total amount of tax deducted/collected out of the amount furnished in column (8)
  10. Amount of TDS/TCS not deposited to the credit of Central Government by the Assessee - Tax deducted but deposited late is not to be reported in this clause.

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The auditor should obtain a copy of the TDS/TCS statements filed by the assessee which shall form the basis of reporting under this clause, to the extent possible.

In case an assessee has voluminous nature of the transactions, the auditor may apply test checks and compliance tests on the transactions reported in the TDS statements by the assessee for verifying the information required to be provided under this clause.

The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, he should bring the difference of opinion appropriately as an observation in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB as the case may be.

Details under this clause should tally with the disallowances reported u/s 40(a) in clause 21(b) of Form 3CD, to the extent applicable.

### **S. No. 34(b) - Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details**

- This clause has been substituted w.e.f. 20<sup>th</sup> August 2018.
- The auditor has to ascertain and report as to whether the assessee is required to furnish the TDS / TCS Statement. Earlier the requirement was to report under this clause only when the statements were filed late.
- An assessee is required to furnish the TDS / TCS Statement after he has deducted the tax / collected the tax and deposited the same to the Central Government. He can also file a correction / rectification statement.
- Auditors have to report on-
  - a) TAN of the Assessee.
  - b) Type of Form – All Forms have to be reported in this clause i.e., Form 24, 24G, 24Q, 26, 26A, 26B, 26Q etc,
  - c) Due Date for furnishing.
  - d) Actual Date of furnishing the return (if furnished) – Date of original return being furnished should be stated, even if the statement is revised / corrected later.
  - e) Whether the statement of tax deducted or collected contains information about all transactions that are required to be reported. If not, please furnish list of details/transactions which are not reported
    - a. The requirement of list of details/transactions which are not reported has been added w.e.f. 20<sup>th</sup> August 2018.
    - b. Transactions like that of transporters [whose tax is not to be deducted, if he gives a declaration u/s 194(6)], TDS not deducted due to furnishing of Form 15G / 15H, NIL TDS liability due to

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- certificate u/s 197, etc. could be the cases, which were required to be reported, but not reported by the assessee.
- c. In case assessee has deducted/collected and deposited the tax, but has not reported the same in the TDS/TCS statement, the same should also be reported. There could be various reasons for same including, non-availability of PAN. The auditor may after proper audit procedures and verifications also obtain suitable management representation regarding the same which could be as under:
    - i. We have reported all transactions that were required to be reported in the TDS/TCS statement and no transactions which were reportable but were not reported in the said statements.
  - d. In case an assessee revises / corrects his TDS statement, details from the corrected statement should be verified.
  - e. It could be difficult for the auditor to verify each and every transaction in this regard. Therefore, while verifying such transactions, he can apply the concepts of materiality and audit sampling.

### **S. No 34(c) - Whether the assessee is liable to pay interest u/s 201(1A) or section 206C(7)**

- Auditors will have to report the details regarding the interest payable/ paid u/s 201(1A)/ or 206C(7).
- Section 201(1A) provides for payment of interest at a specified rate in case the tax has not been deducted wholly or partly or after deducting has not been paid to the credit of Central Government.
- Similarly, section 206C(7) provides for payment of interest at a specified rate in case the tax is not collected wholly or partly or if collected not paid to the credit of the Central Government.
- Where the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account as on 31<sup>st</sup> March of the relevant previous year and also from the statement generated by the IT Department in Form No. 26AS.
- The reporting as to whether the assessee is liable to pay such interest, should also be in consonance with the reporting under clause 34(a), to the extent applicable where the details of non-deduction are required to be reported by him.

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## TAX AUDIT SERIES 18 - CLAUSES 35 - 36

### **S. No. 35 - Quantitative details of raw material in case of trader and manufacturer**

The details are required only in case of assessee being traders or manufacturers. This clause is not applicable to service providers.

#### **S. No. 35(a): Quantitative details in case of trading concern**

- In this case auditor is required to give quantitative details of principal items of goods traded, which are as follows:
  1. Opening Stock
  2. Purchases during the previous year
  3. Sales during the previous year
  4. Closing stock
  5. Shortage/ Excess, if any.
- Auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons for the same.
- Principal items here would mean the items which constitute more than 10% of the aggregate value of purchases or sales.

#### **S. No. 35(b): Quantitative details in case of manufacturing concern**

- In this case the auditor is required to verify the quantitative details of the principal items of raw materials, finished products and by-products, which are as follows:
  - A. Raw Materials
    - 1) Opening stock
    - 2) Purchases during the previous year
    - 3) Consumption during the previous year
    - 4) Sales during the previous year
    - 5) Closing stock
    - 6) Yield of finished products
    - 7) Percentage of yield

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- 8) Shortage/excess, if any.
- B. Finished products/By-products
- 1) Opening stock
  - 2) Purchases during the previous year
  - 3) Quantity manufactured during the previous year
  - 4) Sales during the previous year
  - 5) Closing Stock
  - 6) Shortage/excess, if any.
- Auditor should check the details of purchase, consumption and production of principal items of raw materials and finished goods including by-products.
  - Information should be given only in respect of those items where it is practicable to do so, having regard to the records maintained by the Assesse.
  - In case adequate records are not maintained / provided by the assessee, the auditor should report the same in Para 3 of Form 3CA or Para 5 of Form 3CB as the case may be. It could be as under:
    - The assessee has not provided / maintained adequate records for our verification regarding the principal items of raw materials, finished products and by-products as required to be reported under clause 35(b) of Form 3CD.
  - Principal items here would mean the items which constitute more than 10% of the aggregate value of purchases, consumption or sales.
  - The auditor should obtain the following certified documents for principal items of raw materials, finished products and by-products:
    - Certificate from the assessee certifying the quantity and value of the opening stock, purchases, sales and closing stock.
    - Certificate to the extent of shortage/excess/damage and the reasons for the same.

### **S. No. 36 - Details of tax on distributed profits u/s 115-O**

Details required under this clause are as under:-

- (a) total amount of distributed profits;
- (b) amount of reduction as referred to in section 115-O (1A)(i);
- (c) amount of reduction as referred to in section 115-O (1A)(ii);
- (d) total tax paid thereon;
- (e) dates of payment with amounts.

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- This clause is applicable on **Domestic Companies** only. This clause requires reporting of Dividend distributed by the company, the amount of tax ('Dividend Distribution Tax') paid on such dividend, along with the dates of payment of Dividend Distribution Tax('DDT').
- DDT is to be calculated as under:

<i>Particulars</i>	<i>Amount ( Rs.)</i>
Dividend declared /Distributed/Paid by the Company	xxxxxx
Less: Dividend if any, received from Domestic Subsidiary Company (if Subsidiary has paid the DDT for the same.)	(xxxxxx)
Less: Dividend if any, received from Foreign Subsidiary ( if tax on the same is payable under sec 115BBD by Domestic Holding Company.)	(xxxxxx)
Less: Amount of dividend, if any paid to any person for, on behalf of, the New Pension System Trust referred in S. 10(44).	(xxxxxx)
<b>Net dividend liable to DDT under section 115-O</b>	<b>XXXXXX</b>

- In case of dividend received from subsidiary, same amount of dividend shall not be taken into account for reduction more than once.
- As per section 115-O(1B) inserted by Finance Act, 2014, rate of DDT i.e 15% remains the same but the manner of applicability has changed from Tax levied on Net amount to tax levied on Gross amount distributed as dividend.
- Dividend Distribution tax u/s 115-O is to be paid on the amount of dividend declared, distributed or paid by such company whether such dividend is out of current profit or accumulated profits.
- Details are to be given on payment basis (paid during the year under audit) and not on accrual basis. Information about the date of declaration/distribution of dividend or payment of dividend is not required to be given. Auditor should check the books of account/ Financial Statements to ascertain the dividend declared/ paid/ distributed during the previous year. Also cross check the Final/Interim Dividend with the minutes of Meetings of Board/General Meeting
- The amount of the dividend referred to in S. 115-O (1) is to be reduced by the amount referred to in S. 115-O (1A).
- The gross amount of dividend payable should be reported in the S. No. 36(a).
- Reduction as referred to in section 115-O (1A)(i) and 115-O(1A)(ii) should be reported in sub-clause (b) and (c) separately.
- S. 115-O(1A)(i) relates to dividend received from subsidiary and tax paid u/s 115-O / 115BBD, as applicable

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- S. 115-O (1A)(ii) relates to dividend paid to any person on behalf of New Pension System Trust referred to S. 10(44).
- The expression “dividends” shall have the same meaning as is given to “dividend” in section 2(22) but does not include S. 2(22)(e) for FY 2017-18. However, dividend u/s 2(22)(e) has been added in S. 115-O w.e.f. 1<sup>st</sup> April 2018.
- The date of payment of tax should be ascertained from the duly received challan and books of account etc. Verify the DDT payment challan with the entries in the bank statement

### TAX AUDIT SERIES 19 - CLAUSES 36A to 39

#### **S. No. 36A - Whether the assessee has received any amount in the nature of dividend u/ (22)(e)? If yes, give details.**

This clause has been added w.e.f. 20<sup>th</sup> August 2018.

Various aspects of section 2(22)(e) needs to be understood to report under this clause, and it includes:-

- Payment should be made by closely held company i.e., a company in which public are not substantially interested (including unlisted public company).
- Payment should be by way of advance or loan or the payment should be on behalf, or for the individual benefit, of the shareholder.
- Shareholder must be a person who is the registered / beneficial owner of shares holding not less than 10% of the voting power or to a concern (Company / Firm / HUF / etc.) in which such shareholder is having substantial interest i.e. 20% or more. For this purposes shareholder as an individual is to be considered and not along with his / her relatives.
- Dividend is deemed to the extent to which the company possesses accumulated profits on the date of giving loan / advance.
- The dividend taxable u/s 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier any amount has been taxed under any of the clauses of section 2(22) including clause (e), the accumulated profits will have to be reduced by the amount so taxed.
- Where the loan or advance is made by the closely held company to a concern, it is chargeable to tax in the hands of the shareholder and not in the hands of the concern till AY 2018-19.
- S. 2(22)(e) does not include any advance or loan made to a shareholder or the concern by a company in the ordinary course of its business, where the lending of

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money is a substantial part of the business of the company. Some of the decisions have held that 'substantial part' would indicate 20% i.e. where 20% or more funds have been deployed in the business of lending money the test of substantial part will be satisfied.

- Various courts have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e). The CBDT has issued Circular No. 19/2017 (F.No.279IMisc.1140/2015IITJ) dated 12 June 2017 accepting this position. The circular gives various illustrations and citation of judicial decisions. Such cases need not be reported as dividend under this clause.
- Few cases have also held that inter-corporate deposits are not loans.
- There are various cases in favour of assessee taking loan due to commercial expediency, etc. which the auditor should be aware of.

The auditor should:

- Obtain list of all loans / advances received during the year by the assessee to test it for applicability of s. 2(22)(e). In case the assessee has not received any such amount during the year, no reporting may be required under this clause.
- Where the assessee has received any loan or advance from any company, the auditor should obtain its list of shareholders to test 10% / 20% test as discussed above..
- He should also obtain the financial statements of that company to ascertain its accumulated profits.
- The auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. He may not have access to the records of such closely held company, etc. In such a case the auditor should include appropriate remarks in clause (3) of Form No. 3CA or clause (5) of Form 3CB, as the case may be, about the methodology adopted by him, which could be as under:
  - The assessee could not provide appropriate information / details to determine accumulated profits to enable us to report that the loan / advance received by the assessee is deemed dividend or not u/s 2(22)(e).
- He should also obtain from the assessee a certificate containing list of closely held companies in which he is beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has substantial interest.
- He should also obtain a certificate from the assessee giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% voting power.



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- If reliance has been placed on any judicial decision, a reference of the same may be given by the auditor as observations in clause (3) of Form No. 3CA or clause (5) of Form 3CB, as the case may be.

It may be noted that any payment made after 1 April 2018 which satisfies the conditions of section 2(22)(e), would be subject to DDT u/s 115-O in the hands of the company making the payment. However for AY 2018-19 it is taxable only in the hands of the shareholder.

**S. No. 37 - Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.**

- The auditor should ascertain from the management whether cost audit was carried out and if yes, a copy of the same should be obtained from the assessee.
- He has to take notes of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported / identified by the cost auditor.
- The auditor need not express any opinion in a case where such audit is applicable but has not been carried out.
- In cases where cost audit which might be applicable but is not completed by the time the auditor issues his report stating that since cost audit is not completed and the cost audit report is not available with the assessee.
- The auditor should examine the time period for which the cost audit if any has been required to be carried out. Information is required to be given only in respect of such cost audit report the time period of which falls within the relevant previous year.

**S. No. 38 - Whether any audit was conducted under Central Excise Act, 1944, if yes, then give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be identified/reported by the auditor.**

- The auditor should ascertain from the management whether any audit was conducted under the Central Excise Act, 1944 and obtain the copy of report for the same. He is not required to make any detailed study of such report, he only has to mention if any disqualification or disagreement on any matter/value/quantity was identified or reported by the auditor.

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- The auditor needs to express an opinion if any excise audit was required to be conducted but not carried out yet.
- In case if excise audit was ordered but was not completed by the time the auditor had to give his report, then the same fact needs to be disclosed properly by the auditor that report was not yet available with the assessee.
- The auditor should examine the time period for which the excise audit was carried out. Information regarding the time period which falls within the relevant previous year needs to be disclosed.

**S. No. 39 - Whether any audit was conducted u/s 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, then give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/ identified by the auditor.**

- The auditor should ascertain from the management whether any audit was conducted u/s 72A of the Finance Act, 1994 and obtain the copy of report for the same. He is not required to make any detailed study of such report, he only has to mention if any disqualification or disagreement on any matter/value/quantity was identified or reported by the auditor.
- The auditor needs to express an opinion if any service tax audit was required to be conducted but not carried out yet.
- In case service tax audit was ordered but was not completed by the time tax auditor had to give his report, then the same fact needs to be disclosed properly by the auditor that report was not yet available with the assessee.
- The auditor should examine the time period for which the service tax audit was carried out. Information regarding the time period which falls within the relevant previous year needs to be disclosed.

### TAX AUDIT SERIES 20 - CLAUSES 40 to 44

**S. No. 40 - Details regarding turnover, gross profit, etc., for the previous year and preceding previous year**

Following details are to be disclosed under this clause:

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S No.	Particulars	Previous year	Preceding Previous year
<b>1</b>	Total Turnover of the assessee		
<b>2</b>	Gross Profit/turnover		
<b>3</b>	Net Profit/turnover		
<b>4</b>	Stock-in-trade/turnover		
<b>5</b>	Material consumed / Finished goods produced		

Following points should be noted by the auditor:

- As per Para 67.1 of ICAI Guidance Note on Tax Audit (Revised 2014), this clause is applicable only for assessees who are engaged in manufacturing or trading activities. Even though, the clause states under the column ‘The details required to be furnished for principal items of goods traded or manufactured or *services rendered*’.
- The ratios have to be given for the business as a whole and not product wise
- The ratio mentioned in (5) need not be given for trading concern or service provider.
- All the ratios mentioned in this clause are to be calculated and disclosed in terms of value only.
- Net profit to be shown here in this clause is net profit before tax.
- The term “stock-in-trade” would include only finished goods and would not include the raw material and work-in-progress since the objective here is to compute the stock turnover ratio. It would also not include stores and spare parts or loose tools.
- Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools
- The value of finished goods produced may be arrived at by using the following formula:

Raw material consumption	<u>XXXXXX</u>
Stores and spare parts consumption	<u>XXXXXX</u>
Wages	<u>XXXXXX</u>
Other manufacturing expenses excluding depreciation	<u>XXXXXX</u>
<b>SUB TOTAL</b>	<u>XXXXXX</u>
<b>Add : Opening stock in process –</b>	<b>XXXX</b>
<b>Deduct : Closing stocks in process –</b>	<b>XXXX</b>
<b>Value of Finished goods produced</b>	<u>XXXXXX</u>

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- Calculations of the ratios are also to be stated. If any of the above components is stated in the financial statements themselves, a reference to the same may be made, to the extent possible.
- Previous year figures should be taken from last year's tax audit report, and in case there is no tax audit in previous year, then nothing should be mentioned in that column.

### **S. No. 41 - Details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.**

- The auditor should obtain a copy of all the demand / refund orders issued by the governmental authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act.
- The cess or duty like Marketing Cess, Cess on Royalty, Octroi Duty, Entry Tax etc. would not be covered as other tax laws. However, the auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.
- It may be noted that even though the demand / refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause.
- The auditor should verify the books of account and the orders passed by the respective department for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same.
- The auditor should verify the details from online portals of the departments too, if the details are available thereon.
- If there is any adjustment of refund against any demand, the auditor should also report the same under this clause.

### **S. No. 42 - Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? If yes, furnish details.**

- This clause requires reporting of details of submission and due date of the Form No.61 or Form No. 61A or Form No. 61B with the income-tax.
- It also requires the auditor to ensure if all the required details have been submitted and if not, then the unreported details/ transactions are required to be reported in in this clause.

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- **Form 61** – This Form requires details of all Form 60 obtained to be submitted.
  - Where transactions specified under Rule 114B of the Income-tax Rules, 1962 have been undertaken by the assessee without obtaining PAN of the person giving the document, then the assessee is required to collect declaration in Form 60 from that person.
  - When Form 60 is obtained then Form 61 is to be filed half yearly.
  - Transactions for which PAN is required to be quoted under Rule 114 B w.e.f. 1<sup>st</sup> January 2016 is summarised as under:

S. No.	<i>Nature of Transaction</i>	<i>Value of Transaction (in Rs.)</i>
1	Sale / Purchase of Motor Vehicle or Vehicle other than two Wheeler	All
2	Opening an Bank A/c other than time - deposit referred to at Sl. No.12 and Basic Savings Bank Deposit A/c	All
3	Application for Debit / Credit Card	All
4	Opening of Demat A/c	All
5	Payment to Hotel / Restaurant at any one time ( <i>Form 61 to be filed only by assessee who is required to get his accounts audited u/s 44AB</i> )	Cash > 50000/-
6	Payment for Foreign Travel or foreign currency at one time ( <i>Form 61 to be filed only by assessee who is required to get his accounts audited u/s 44AB</i> )	Cash > 50000/-
7	Payment to MF for purchase of Units	> 50000/-
8	Payment to Co. or Institution for Debentures / Bonds issued by it	> 50000/-
9	Payment to RBI for Bonds issued by it	> 50000/-
10	Cash Deposit with Bank in any one day	> 50000/-
11	Bank Draft / Pay Order / Banker Cheque during one day	Cash > 50000/-
12	Time Deposit with 1. Bank, 2. Post Office, 3. Nidhi Co. 4. NBFC	50000/- each transaction or 5 Lacs in aggregate during FY
13	Payment for one or more Prepaid Payment	Cash / draft /

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	Instruments like smart card; magnetic stripe cards; internet a/c; online wallets; mobile a/c; mobile wallets; paper voucher; mass transit system; other	PO / banker cheque aggregating > 50000/- in FY
14	Life Insurance Premium	Aggregating > 50000/- in FY
15	Sale / Purchase of Securities other than Shares per transaction	> 1 Lac
16	Sale / Purchase of unlisted shares per transaction (verification by Co)	> 1 Lac
17	Sale / Purchase of Immovable Property	> 10 Lacs Tran. value or 50C value
18	Sale / purchase of goods / services. <i>(Form 61 to be filed only by assessee who is required to get his accounts audited u/s 44AB)</i>	> 2 Lacs per transaction

- Auditor should be aware that Rule 114 B is not applicable to:
  - Central Government
  - State Government
  - Consular Offices
  - Non-Residents for :
    - Application for Debit and Credit Card
    - Payment to a hotel or restaurant against a bill
    - Payment for foreign travel or foreign currency
    - Payment to RBI for acquiring bonds
    - Purchase of DD / PO / Bankers cheque
    - Payment for prepaid instruments
    - Sale/purchase of goods/services exceeding Rs. 2L
  
- **Form 61A** – Statement of specified financial transactions (SFT) as given in Rule 114E of the Rules mandates reporting of certain financial transactions undertaken during a particular financial year, annually before 31<sup>st</sup> May. Transactions for Form 61A required to be furnished under Rule 114 E w.e.f. 1<sup>st</sup> April 2016 (for AY 2018-19) is summarised as under:

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<i>S. No.</i>	<i>Nature &amp; Value of Transaction</i>	<i>Reporting Person</i>
1(a)	Cash for purchase of bank drafts / pay orders / banker's cheque of aggregate > Rs. 10 Lacs in a FY	Banks
1(b)	Cash for purchase of pre-paid instruments by RBI aggregate > Rs. 10 Lacs in a FY	Banks
1(c)	Cash deposits / withdrawals (including bearer's cheque) aggregating > Rs. 50 Lacs in a FY from one or more current account of a person.	Banks
2	Cash deposits aggregating > Rs. 10 Lacs in a FY, in one or more a/cs (other than current a/c & time deposit)	Banks & Post Office
3	One or more time deposits (other than renewals) of a person aggregating > Rs. 10 Lacs in a FY of a person.	Banks P.O.; Nidhi NBFC
4	Payments aggregating to- (i) > Rs. 1 Lac in cash; or (ii) > Rs. 10 Lacs by any other mode, one or more credit cards in a FY	Banks issuing Credit Cards
5	Receipt from a person aggregating > Rs. 10 Lacs in a FY for acquiring bonds or debentures issued by Co. or institution (other than renewals)	Company Institution
6	Receipt from a person aggregating > Rs. 10 Lacs in a FY for acquiring shares (including share application money) issued by co.	Company
7	Buy back of shares from a person (other than bought in open market) for aggregating > Rs. 10 Lacs in a FY .	Listed Co.
8	> Rs. 10 Lacs in a FY for acquiring units of one or more schemes of a MF (except switching)	Mutual Funds
9	Sale of foreign currency including through debit /credit card or traveller cheque or draft etc aggregating > Rs. 10 L in a FY	Authorised Dealer
10	Purchase or sale of immovable property value > Rs. 30 L or valued u/s 50C	Registrar
11	Receipt of cash payment Rs. 2 Lacs for sale,	If liable to

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	by any person, of goods or services of any nature (other than above mentioned items).	Tax Audit u/s 44AB
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- **Form 61B** –Statement of reportable accounts in accordance with FATCA and CRS for a calendar year in Form 61B. The auditor should be aware of provisions of Rule 114F to 114H for the same.

## **S. No. 43 - Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in section 286(2)? If yes, then details to be given.**

In reference to above section 286 (2) states:

*Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed*

Following details is to be given under this clause:

- Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
- Name of parent entity
- Name of alternate reporting entity (if applicable)
- Date of furnishing of report

The auditor should be aware of section 286 read with Rule 10DB and related notifications and circulars. Reports are to be furnished in Forms 3CEAC to Form 3CEAE.

## **S. No. 44: Break-up of total expenditure of entities registered or not registered under the GST**

This clause was added w.e.f. 20<sup>th</sup> August 2018. Reporting was required by all entities irrespective of whether they are registered under GST or not. The following information needs to be given:



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1. Total amount of Expenditure incurred during the year.
2. Expenditure in respect of entities registered under GST-
  - a) Relating to goods or services exempt from GST.
  - b) Relating to entities falling under composition scheme.
  - c) Relating to other registered entities.
  - d) Total payment to registered entities.
3. Expenditure relating to entities not registered under GST.

Reporting under this clause has been deferred till 31<sup>st</sup> March 2020 vide Circular No. 9/2019 dated 14<sup>th</sup> May 2019, hence nothing is to be reported under this clause.

## TAX AUDIT SERIES 21 – DISCLAIMERS IN FORM 3CA / FORM 3CB

In Series - 21 we have discussed various Comments / Observations / Disclaimers that an auditor should / could make in Form 3CA or Form 3CB as the case may be.

**The Comments / Observation / Disclaimers should NOT BE copied and pasted IN ALL CASES, but should be used from case to case as per audit process adopted by him/them.**

The comments, etc. discussed below should be amended as per the situation of the assessee's records and explanations in writing. There could be various other comments, etc. depending on case to case, which the auditor should make as per specific requirement of the audit of assessee.

### In Form 3CB - Para 3(a)

#### Assessee's Responsibility for the Financial Statements

- The assessee is responsible for the preparation and fair presentation of the financial statements in accordance with the Accounting Standards issued by the ICAI, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
- In preparing the financial statements, management is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable,

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matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

- Those charged with governance are responsible for overseeing the entity's financial reporting process.

### **Tax Auditor's Responsibility**

- Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these FS
- As part of an audit in accordance with SAs, we exercise professional judgment and maintain professional skepticism throughout the audit.
- We also:
  - Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
  - Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances.
  - Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
  - Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However,

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future events or conditions may cause the Company to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.
- We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

### Others

- *In case, financial statements of previous year were not under audit* - The opening balances have been taken and relied upon by us from the unaudited financial statements of previous year provided to us by the assessee.
- *In case financial statements do not comply with Accounting Standards* – The financial statements do not comply with AS (specify the standard) issued by the Institute of Chartered Accountants of India, which would have resulted in reducing / increasing the profits by Rs. \_\_\_ OR the impact of which is not ascertainable.
- *In case financial statements do not contain figures of comparative previous year* – The Financial Statements do not contain figures of immediate previous year as required by the Framework for Presentation of Financial Statements issued by the Institute of Chartered Accountants of India.

### **In Para 3 of Form 3CA OR Para 5 of Form 3CB**

### **Assessee's Responsibility for Statement of Particulars in Form 3CD**

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- The assessee is responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, circulars etc that are to be included in the Statement.

### Tax Auditor's Responsibility

- We are responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G (1) (b) of Income-tax Rules, 1962. I/ We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.

### For various clauses of Form 3CD in Para 3 of Form 3CA OR Para 5 of Form 3CB

- **Clause 21(a)**
  1. As observed by us and as explained to us, there was no personal expenditure incurred by the assessee apart from any contractual obligation. OR
  2. Expenses incurred for employees as per the terms of employment or the company's business policies have not been regarded as 'personal expenses'. OR
  3. It is not possible to us to support the conclusion that the expenditure like vehicle running, telephone, conveyance expenses was wholly and exclusively laid out for the business purpose.
- **Clause 21(d)** - Though we have not noticed any payment in excess of Rs.10000/- or Rs. 35000/- (in case of plying, hiring or leasing goods carriages) have been made in contravention of section 40A (3) / 40A (3A) read with rule 6DD, however the assessee did not possess necessary evidence to verify the same.
- **Clause 22** – As informed by the assessee, he / it does not have relevant information regarding any micro or small enterprise which is registered under

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the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, hence amount due and interest payable is not ascertainable.

- **Clause 23** - For ascertaining the persons covered under section 40A (2)(b), we have relied on the list provided and certified by the assessee.
- **Clause 29B** – Where Stamp duty value is different than the consideration paid for acquisition of immovable property:
  - Stamp duty Value of immovable property was Rs. \_\_\_\_\_
  - Consideration (transaction value) for acquisition of property was Rs. \_\_\_\_\_
  - The assessee is of the view that FMV does not exceed the consideration and he intends to contest the same before the assessing officer, hence as per assessee there would be no income chargeable to tax u/s 56(2)(x) on this account.
- **Clause 31(a)(v)** - 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)(iv)** - It is not possible for me/us to verify whether specified sum 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(bb)** - 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(bd)** - 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)(v)**
  - 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

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- Rs. \_\_\_\_\_ being unsecured loans have been converted into equity vide members resolution in EGM dated \_\_\_\_ and have not been reported as repayment otherwise than by an account payee bank cheque or account payee bank draft or use of electronic clearing system.
- **Clause 31(d)(ii)** - The repayment of the loan instalment by employees received during the year includes Rs. \_\_\_\_\_ adjusted with their salary dues by way of regular adjustment entries and has not been reported as repayment received otherwise than by an account payee bank cheque or account payee bank draft or use of electronic clearing system.
- **Clause 31(e)(ii)** - 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
- **Clause 34** - We have verified the compliance with the provisions of Chapter XVII-B / XVII-BB regarding deduction of tax at source and regarding the payment thereof to the credit of the Central Government in accordance with the Auditing Standards generally accepted in India which includes test checks and the concept of materiality. Such audit procedures did not reveal any significant non-compliance with the provisions of Chapter XVII-B / XVII-BB.
- **Clause 35(b)**
  - The assessee has not provided / maintained adequate records for our verification regarding the principal items of raw materials, finished products and by-products as required to be reported in this clause. OR
  - As explained by the assessee, keeping in view the nature, volume of the business and due to numerous items, it is not practically possible for the assessee to maintain any stock book to record quantities of each and every inward and outward of such goods on day to day basis, hence information under this clause is not feasible.
- **Clause 36A** - The assessee could not provide appropriate information / details to determine accumulated profits to enable us to report that the loan / advance received by the assessee is deemed dividend or not u/s 2(22)(e).

I hope this document is of use to you. Your suggestions and comments would be highly appreciated.

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Best Regards

**CA. Pramod Jain**

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