

# **Tax Audit Basics Practical Issues**



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**Shared at**

**Webinar, Agra Branch of CIRC of ICAI**

**27<sup>th</sup> July 2020**

# LEGISLATION FOR AY 2020-21

## S. 44AB

- Business – exceeds Rs. 1 Crore / 5 Crores
- Profession – exceeds Rs. 50 L
- Business u/s 44AE /44BB /44BBB; income < deemed profits;
- Profession u/s 44ADA; deemed profit < 50% & TI > ANCT
- Business u/s 44AD (4)

## Rule 6G

- Prescribing the Forms for Report u/s 44AB

## Form 3CA

- Report in case of a person who is required to get his A/cs audited under any law

## Form 3CB

- Report in any other case

## Form 3CD

- Particulars as required in Form 3CA or Form 3CB

## S. 271B

- Penalty  $\frac{1}{2}\%$  maximum Rs. 1.50 L

# APPLICABILITY OF 44AD(44ADA) / 44AB

Mr. A started Mfg – 1<sup>st</sup> Yr - Turnover – 150L;  
NP – 8 L; TI - 8.50 L

- AD - No
- AB - Yes

Mr. B - Trading - Turnover – 90L; NP - 10L;  
Doctor– Fee – 45 L; NP- 25 L; TI -32L

- AD – No
- ADA - Yes
- AB - No

Mr. X – Trading Turnover – 80L - NP – 4 L; TI-  
3 L

- AD – No
- AB - No

Mr. D - Trading; Turnover -95L; Commission –  
6 L; NP- 15L; TI - 14L

- AD - No
- AB - Yes

# 44AB

- × **Limit 1 Cr to 5 Cr !!**
- × **Limit of 5 Cr Only if:**
  - + **Aggregate of all amounts received in cash do not exceed 5% of said amt.**
  - + **AND**
  - + **Aggregate of all Payments made in cash do not exceed 5% of said payment**

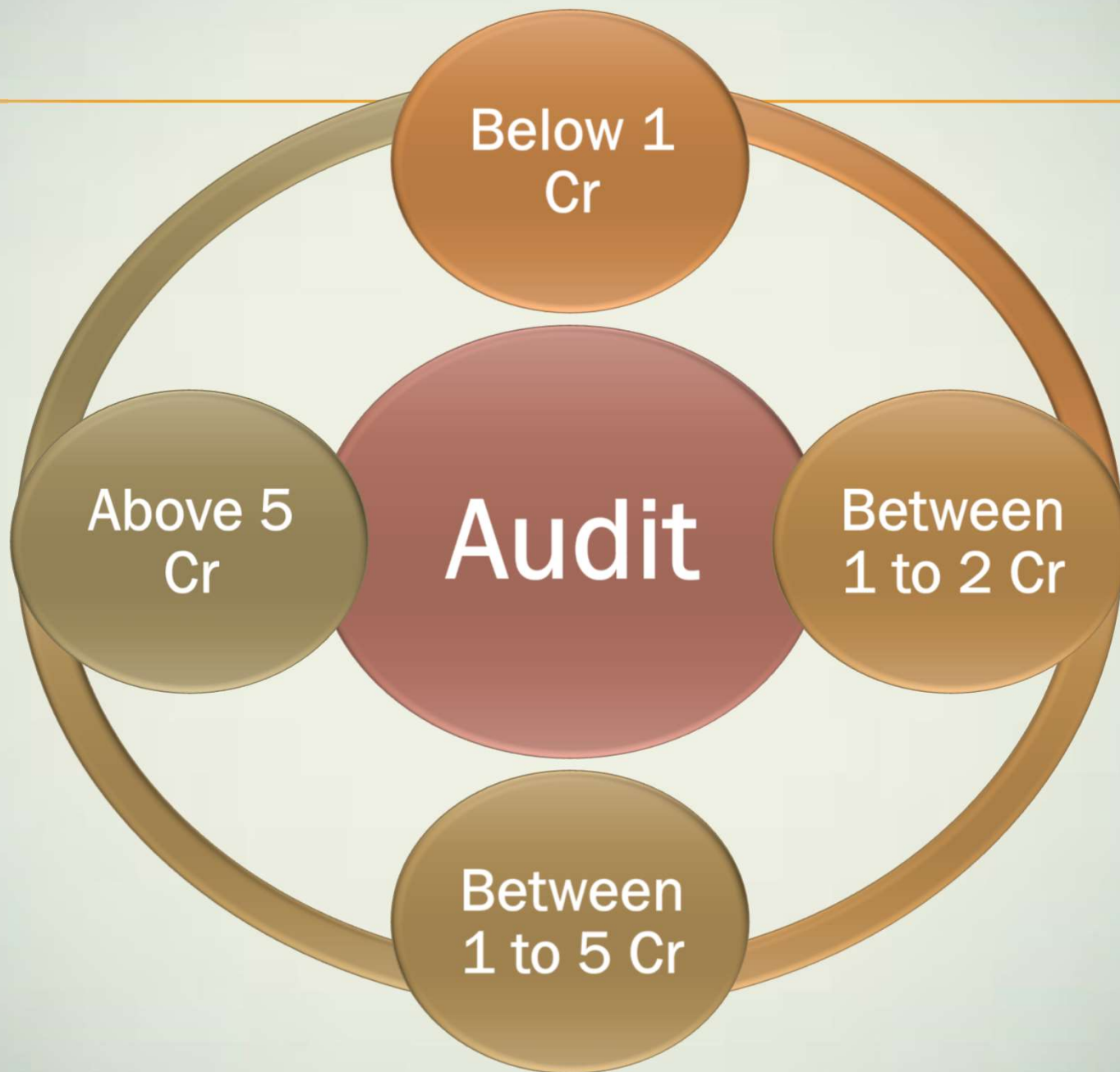
# 44AB

## × Receipts:

- + 4 Crs sales out of which 15 Lacs in Cash
- + Partner introduces – 10 Lacs in cash
- + Loans – 15 Lacs by NEFT
- + Is tax audit u/s 44AB required?
  - + Yes as total receipts - 425 L ; cash – 25L
- + Is it mandatory or optional??
  - + Mandatory

# 44AB / 44AD

- ✖ **ABC & Co. formed in AY 2019-20**
  - + **Turnover Rs. 1.25 Crs**
  - + **Audit u/s 44AB(a)**
- ✖ **AY 2020-21**
  - + **Turnover Rs. 1.95 Crs**
  - + **If cash receipt / payment less than 5%  
would there be audit u/s 44AB?**
  - + **Can it avail of 44AD?**



**TAX**  
  
**AUDIT**

Qualified  
or  
Disqualified



# WHO CAN CONDUCT AUDIT

- **W.e.f. 1<sup>st</sup> June 2015**
- **Accountant as defined in Explanation below S. 288 (2)**
- **A Chartered Accountant as defined in section 2 (1) (b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice u/s 6 (1) of that Act**
- **CA in practice (can represent)**

# **DISQUALIFICATION - COMPANIES**



# DISQUALIFICATION – OTHERS

- Assessee himself
- In case of a firm - any partner of the firm
- In case of AOP - member of the association
- In case of HUF - member of the family
- Person referred to in section 13(3)(a),(b),(c), (cc);
- Relative of any of above persons
- Other than above, person who is competent to verify return u/s 139/140;
- Officer or employee of assessee;

# **RELATIVE – INCOME TAX AUDITOR**

- **Spouse of the individual;**
- **Brother or sister of the individual;**
- **Brother or sister of the spouse of the individual;**
- **Any lineal ascendant or descendant of the individual;**
- **Any lineal ascendant or descendant of the spouse of the individual;**
- **Spouse of a person referred above**
- **Any lineal descendant of a brother or sister of either the individual or of spouse of individual**

# DISQUALIFICATIONS - OTHERS

- Who is a partner, or who is in employment, of an officer or employee of assessee;
- Who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction
- An individual who, or his relative or partner
  - Is holding any security of or interest in assessee – Relative face value - Rs. 1 L
  - Is indebted to the assessee. Relative – Rs. 1 L
  - Has given a guarantee /provided security . Relative – 1 L

# DISQUALIFICATIONS – TAX AUDITOR

- A person or a firm who, whether directly or indirectly, has business relationship with assessee i.e., any transaction entered into for commercial purpose except:
  - In nature of professional services permitted
  - In the **ordinary course of business of co.** at ALP like
    - sale of products or
    - services
  - To **auditor, as customer, in the ordinary course of business**, by companies engaged in business of telecommunications, airlines, hospitals, hotels & such other similar businesses



- **Can a CA in practice who is giving accounting services to a subsidiary, conduct tax audit of its holding company?**
- **Can an internal auditor of a company issue Form 15CB certificate for that company?**
- **Can a CA in practice who is giving accounting services to holding company issue certificate for MAT in Form 29B to its subsidiary company?**



# FORM 3CB

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- ✖ Total 5 Paras
- ✖ Same as Form 3CA except examination of books
- ✖ Opinion subject to observations / qualifications to be given:
  - + Financial Statements – 3(a)
  - + Form 3CD – 5
- ✖ SA 700?



# SA 700 – PARA 3

- ✖ **Assessee's Responsibility for the Financial Statements and the Statement of Particulars in Form 3CD**
  1. 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.
  2. 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.
  3. Those charged with governance are responsible for overseeing the entity's financial reporting process.

# SA 700 PARA 3

- ✖ 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

# **SA 700 PARA 3**

- ✖ **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.**

# SA 700 PARA 3

- + 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.**

# SA 700 PARA 3

- + 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.**



# SA 700 – PARA 5

2. **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.**

# SA 700 – PARA 5

- ✖ 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.

# AMENDMENTS IN FORM 3CD

## W.E.F 20.8.2018

- ✖ 7 items amended
- ✖ 1 item replaced
- ✖ 10 new items
- ✖ Out of 10 new – **2 DEFERRED – 30C & 44**
  - +31.3.2019**
  - +later till 31.3.2020 and**
  - +now till 31.3.2021**



**S. NO. 31 (C)- S. 269 SS/T – AMENDED W.E.F. 19.7.17**

- ✖ (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
  - + New (iv) - whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
  - + New (v) - in case the repayment was made by cheque or bank draft, whether the same was **taken or accepted repaid** by an account payee cheque or an account payee bank draft.

**S. NO. 31(D) - S. 269 SS/T - AMENDED W.E.F. 19.7.17**

- ✖ **New (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**
  - + name, address and PAN (if available with the assessee) of the payer;
  - + amount of **repayment of** loan or deposit or any specified advance 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(E) - S. 269 SS/T - AMENDED W.E.F. 19.7.17**

- ✖ **New (e) -Particulars of repayment of loan/deposit or any specified advance in an amt. exceeding limit specified in s. 269T received by cheque / bank draft which is not an account payee cheque / bank draft during PY**
  - + **name, address & PAN (if available with assessee) of payer;**
  - + **amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an a/c payee cheque / bank draft during the previous year**

## 34 (B) - SUSBTITUTED

- ✗ 34 (b) – If TDS / TCS Statement **not furnished within prescribed time**, furnish:
- ✗ **New 34(b)** - Whether the assessee is required to furnish the statement of TDS/TCS. If yes, please furnish the details:
  - + TAN
  - + Type of Form
  - + Due date of furnishing
  - + Date of furnishing, if furnished
  - + Whether the TDS / TCS Statement contains information about all transactions which are required to be reported. **If not, please furnish list of details/transactions which are not reported.** – Transporters??? – yes / no?? – Could be genuine difference of opinion

## 29B - INSERTED

- ✖ **29B (a) - Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in S. 56(2)(x)? (Yes/No)**
- ✖ **29B (b) - If yes, please furnish the following details:**
  - + **(i) Nature of income**
  - + **(ii) Amount thereof**

*CA. Pramod Jain*

# **S. 56(2) (X) DEEMED GIFTS**



# DEEMED GIFTS

- ✗ **S. 56(2)(x) w.e.f. 1<sup>st</sup> April 2017**
- ✗ **Earlier**
  - + Individual & HUF covered for all assets; and
  - + Firms and Companies for shares
- ✗ **Now ANY PERSON covered for:**
  - + Money
  - + Immovable Property
  - + Property other than Immovable Property



# MONEY

- ✗ **Receives any sum of money**
- ✗ **Without consideration**
- ✗ **Aggregate value of which exceeds Rs. 50000/-**
- ✗ **Income - whole of the aggregate value of such sum**
- ✗ **Exceptions – relatives, etc.. discussed later**



# IMMOVABLE PROPERTY S. 56(2)(X)

- ✗ Covers land, building or both
- ✗ Receives without consideration - stamp duty value exceeds Rs. 50000/-
- ✗ Receives through inadequate consideration less than stamp duty value being higher of :
  - + Rs. 50000/-
  - + 5% of consideration
- ✗ Where date of agreement & date of registration are not same, value on date of agreement if some payment made by a/c payee cheque /bank draft / ECS on or before date of agreement

# IMMOVABLE PROPERTY

- ✗ If value disputed by assessee u/s 50C(2) , AO may refer to Valuation Officer
- ✗ Is leasehold land covered?
  - + Leasehold rights in a building do not attract provisions of S. 50C - *DCIT v Tejinder Singh (2012) (50 SOT 391) (Kol)*
  - + Leasehold rights in plot is not 'land or building or both' - *Atul G. Puranik v. ITO (132 ITD 499)(Mum)*.
  - + S. 50C applies to Transfer of Development Rights - *Chiranjeev Lal Khanna v. ITO (132 ITD 474)(Mum)*
  - + Not applicable to TDR – *ACIT vs. Munsons Textiles [TS-6710-2012(Mum)-0]* ; *ACIT vs. Shrikishan Dass [TS-6757-2013(Del)-0]*

## OTHER THAN IMMOVABLE PROPERTY

- ✖ Property – Expl. to 56(2)(vii) Capital Asset namely:
  - + Imm. Property being land or building or both
  - + Shares and securities
  - + Jewellery
  - + Archaeological collections
  - + Drawings
  - + Paintings
  - + Sculptures
  - + Any work of art
  - + Bullion

# EXCEPTIONS

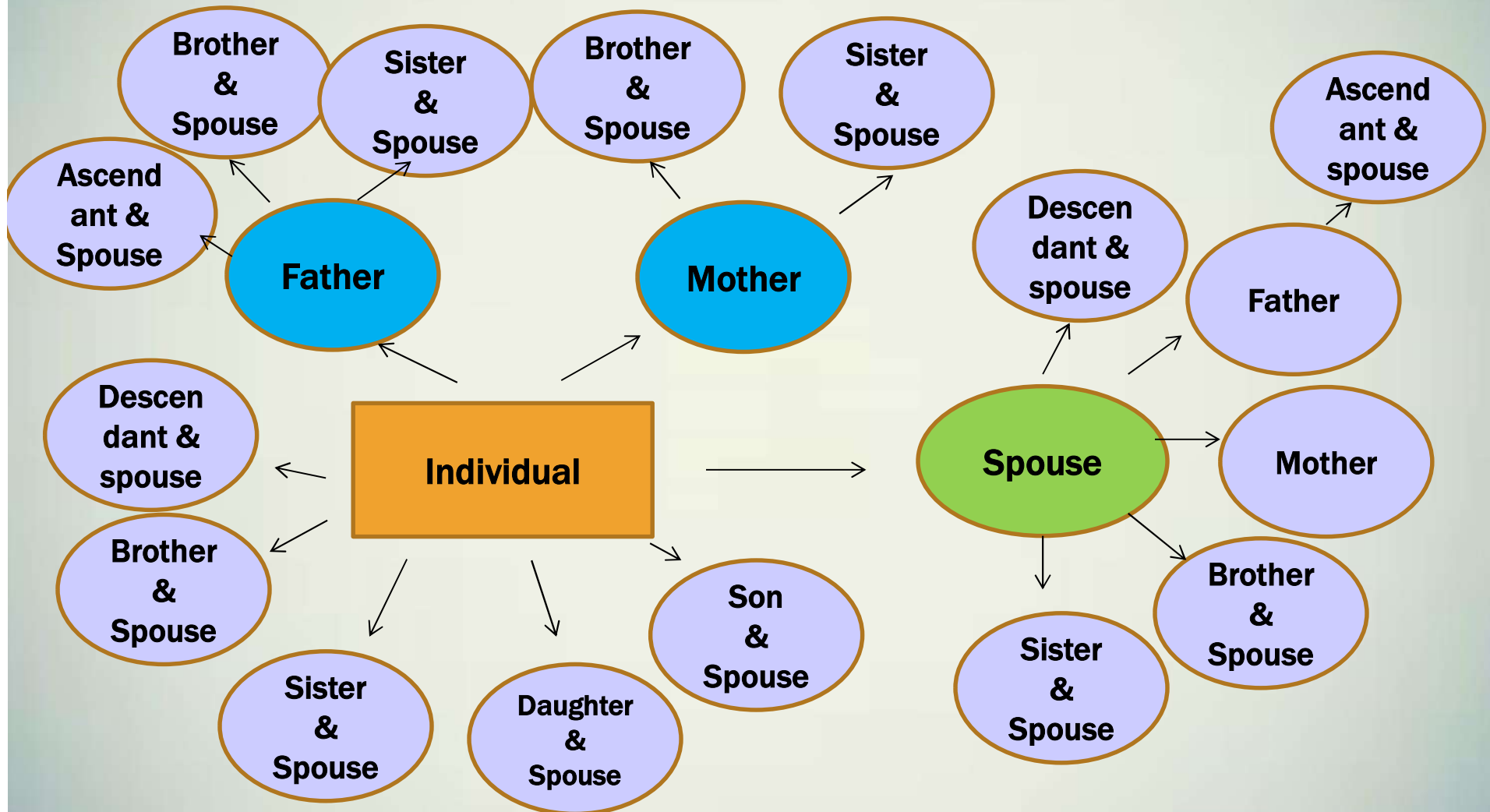
## × Relative

### + In case of an individual:

- a) Spouse;
- b) Brother or sister;
- c) Brother or sister of the spouse;
- d) Brother or sister of either of the parents;
- e) Any lineal ascendant or descendant;
- f) Any lineal ascendant or descendant of the spouse;
- g) Spouse of person referred to in (b) to (f)

### + In case of a HUF, any member thereof

# RELATIVES



# EXCEPTIONS

- ✗ On the occasion of the marriage of the individual
- ✗ Under a will or by way of inheritance
- ✗ In contemplation of death of the payer or donor, as the case may be
- ✗ From any Local Authority as defined in the Explanation to section 10(20)
- ✗ From any Fund or Foundation or University or other Educational Institution or Hospital or other Medical Institution or any Trust or Institution referred to in section 10(23C)

# EXCEPTIONS

- ✗ From or by any Trust or Institution registered u/s 12A /12AA
- ✗ By any Fund or Trust or Institution or any university or other educational institution or any hospital or other medical institution referred in
  - + S. 10(23C) (iv) – Importance in India / states
  - + S. 10(23C) (v) – Approved religious or charitable trust
  - + S. 10(23C) (vi) – Approved university or educational institute
  - + S. 10(23C) (via) – Approved hospitals



# EXCEPTIONS

- ✗ **By way of transaction not regarded as transfer:**
  - + **S. 47 (i) – Total / partial partition of HUF**
  - + **S. 47 (vi) – Amalgamation if amalgamated co. Indian**
  - + **S. 47 (via) – Amalgamation of two foreign companies asset being shares subject to certain conditions**
  - + **S. 47 (viaa) – Amalgamation of banks sanctioned by CG**
  - + **S. 47 (vib) – Demerger if resulting co. in Indian Co**
  - + **S. 47 (vic) – Demerger of foreign company asset being shares subject to certain conditions**

# EXCEPTIONS

- ✗ **By way of transaction not regarded as transfer:**
  - + **S. 47 (vica) - business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank**
  - + **S. 47 (vicb) - business reorganisation, of a capital asset being shares by predecessor co-operative bank to successor co-operative bank**
  - + **S. 47 (vid) - transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company**
  - + **S. 47 (vii) - trf by a shareholder, in scheme of amalgamation, of capital asset being share or in amalgamating co. subject to certain conditions**

# EXCEPTIONS

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- ✗ **From an individual by a trust created or established solely for the benefit of relative of the individual**



- ✗ Partner at time of dissolution withdraws immovable property whose book value is 25 Lakhs but stamp duty value is 50 Lakhs. Taxation in hands of firm as well as partner?
  - ✗ Yes, in both hands Rs. 25 L each
- ✗ Few people come together to build a community centre for general public benefit and collect Rs. 5 Lakhs to build it?
  - ✗ Yes
- ✗ Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?
  - ✗ No

## **S. NO. 31 (BA) - SECTION 269 ST**

- **No person to receive an amount  $\geq$  Rs. 2 Lakhs otherwise than by A/c payee cheque/draft or use of electronic clearing using bank a/c (i.e. primarily in cash):**
  - **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**

# AUDIT

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# AUDITING STANDARDS

- Auditor to comply with auditing standards
- NFRA to notify auditing standards. Till NFRA does – as by ICAI
- Total 38 SAs

SA. No.	Sub-division	No.
100-199	Introductory Matters	0
200-299	General Principles & Responsibilities	9
300-499	Risk Assessment and Response to Assessed Risks	6
500-599	Audit Evidence	11
600-699	Using Work of Others	3
700-799	Audit Conclusions and Reporting	6
800-899	Specialized Areas	3

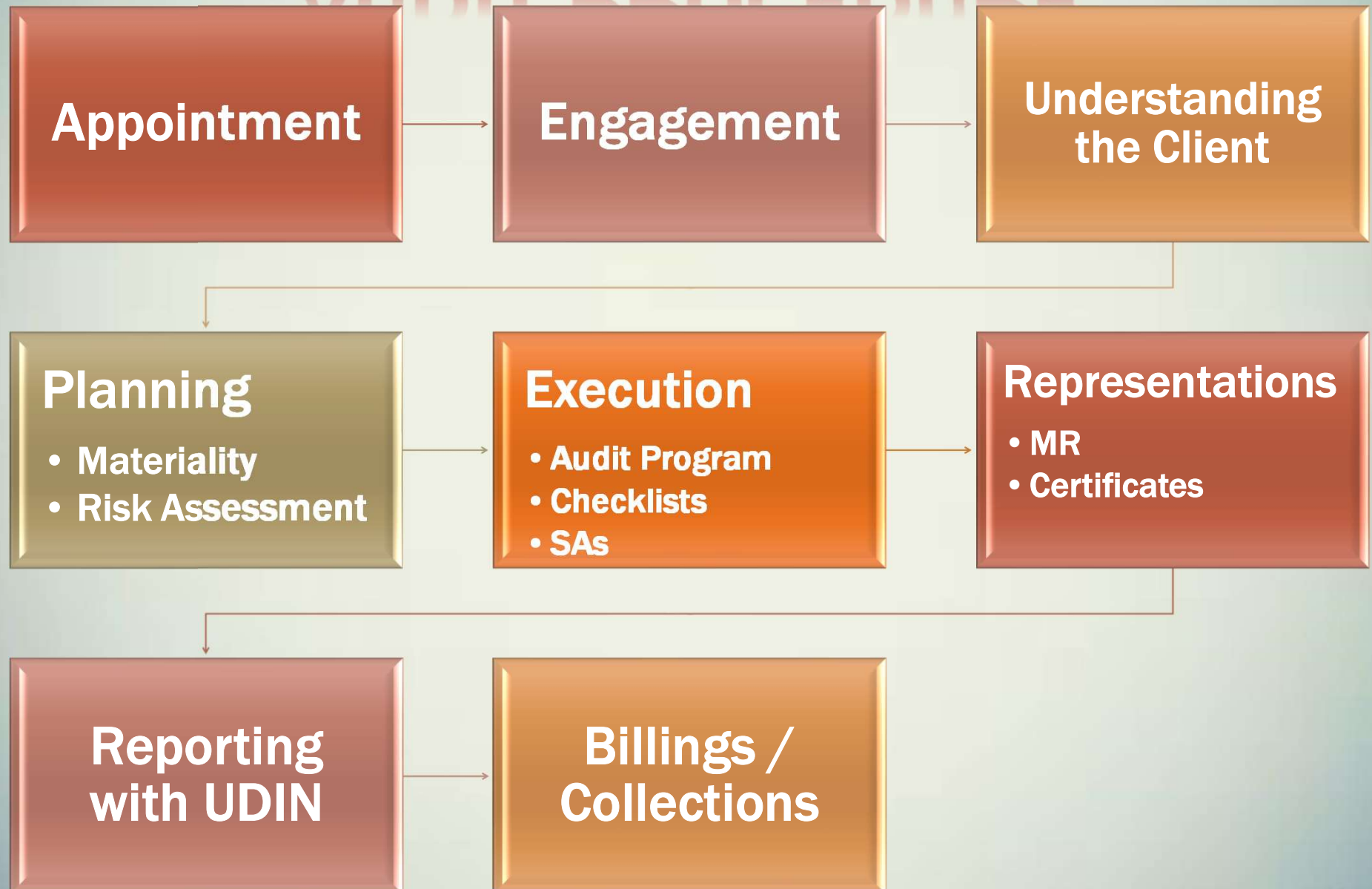


# OTHER IMPORTANT POINTS

No.	Standard
SAE 3400	The Examination of Prospective Financial Information
SRS 4410	Compilation Engagements

- ✗ **SREs, SAEs and SRSs**
- ✗ **Guidance Note on Reports or Certificates for Special Purposes**
- ✗ **UDIN**

# AUDIT PROCEDURE



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answer

**Q. Rate of TDS on Car lease charges**

Answered By **CA PRAMOD JAIN**

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answers

**Q. How I file income tax return**

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# Thank You!

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