

Issues in clauses of Tax Audit

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- **Part A:** Clause 1 to clause 8a
- **Part B:** Clause 9 to 44

- Name of the assessee whose accounts are being audited under section 44AB.

- As mentioned in the PAN.
- Proprietary concern: Name of the Firm and proprietor.
- **Change in the name of the assessee between the last day of the previous year and the date of tax audit report:** Name as on the last date of the previous year and also on the tax audit report date be stated. 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 the change by way of a note.

- Address should correspond to the address which the assessee is using while making communication with the Income Tax Department for assessment purposes.
- Audit of a branch-Address of the branch should be stated.
- **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.**
- In case of a company-Address of the registered office be stated along with the principle place of business, if any.

Clause 3: Permanent Account Number

- State here the PAN of the assessee. _____
- In case of a new Tax Audit, it is advisable to procure copy of the pan card of the assessee.

Clause 4: Details of registration No. under Indirect tax Law

Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. If yes, please furnish the registration number or any other identification number allotted for the same.

To Disclose:

- i. List of all indirect tax registrations to be obtained
- ii. If the assessee is liable for registration but is not registered- The auditor will report the same

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- The status does not refer to the residential status.
 - Status of the person - Defined as per section 2(31)
 - If there is any dispute with respect to status - Full facts relating to the same should be mentioned.

Clause 6: Previous year

- Presently the previous year u/s 3 of The Income Tax Act are uniform and ends on 31st march, the relevant previous year should be mentioned.

Clause 7: Assessment year

- The assessment year relevant to the previous year whose accounts are being audited should be stated.

The relevant clause of section 44AB under which the audit has been conducted.

- Auditor has to report the clause of the section under which the Audit is been conducted
- **What if the assessee falls into more than one clause?**

Whether the assessee has opted for Alternative Tax Regime u/s.

115BA

115BAA

115BAB

115BAC

115BAD

The option of tax regime to be decided during the audit only even if the due date for filling the TAR is 30/09/2022 & filling of ITR is 31/10/2022.

Clause 9: Names of members/partners in case of AOP/ Firm

(a) **Firm/AOP:** Name of partners/members and their profit sharing ratios.

(b) **Particulars of any change in the partners/ members or their profit sharing ratio:**

- Applicable to partnership firm & associations of persons.
- If a partner of a firm/AOP acts in a representative capacity, the name of beneficial partner/member should be stated along with such fact.
- If the loss sharing ratio is different of PSR, it should also be stated.
- Detail of all changes in partners/members & also their profit sharing ratio during the previous year should be stated.
- There is no need to state the change in remuneration (partner's salary) and interest to partners or members.

Clause 9: Names of members/partners in case of AOP/ Firm

Issue :

If the Profit Sharing Ratio is very complicated and can not be reduced to numbers, what reporting should be done by the TA ?

Clause 10: Nature of business/profession & changes if any

- (a) Nature of business or profession.
 - (b) Particulars of any change in the nature of business/ profession.
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- The principal to find out whether or not the transaction in question is in the nature of same business or profession is a question to be judged with the facts of the case by the auditor.

Clause 10: Nature of business/profession & changes if any

Issue : Mr. K has two Business : Trading & Manufacturing. Whether two 3 CD Forms are to be prepared separately. If the Answer is 'NO' , how to mention the ratios from both in the same 3 CD. Is it Aggregate or Individual Unit wise ?

Issue : Assessee is into the business of Security Services and now Object Clause of M/A is changed to include the readymade garments chain of stores also. There is no revenue during the FY from the Readymade garment chain. Whether reporting is required for the same ?

Clause 11: Details of Books of accounts

a. Whether books of accounts are prescribed u/s 44AA?

if yes list of books so prescribed.

b. List of BOA maintained and the address at which they are maintained.

(i) In case of computerized system of accounting, mention BOA generated by such system.

(ii) If the BOA are not kept at one location, furnish the addresses of locations along with the details of BOA maintained at each location

c. List of BOA and nature of relevant documents examined.

- Disclose only those books that are verified for the purpose of expressing true and fair view on financial statements.
- **MIS and other reports generated by the computer system should not be included.**

Clause 11: Details of Books of accounts

Issue : If the Books are maintained on Cloud based software in which the data entry is made from various places, which address is to be mentioned ?

Is it required to give the name of the service provider ?

Issue : In SME the books are written and maintained by the accountant at his own place, whether the address of the accountant is given or the assessee assuming assessee doesn't have any data in his computer or at his place.

Clause 12: Presumptive income and relevant section

“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 or any other relevant section).” (Sec 44ADA not there) but included in the Tax Audit Utility)

- The amount of any presumptive profit which is credited to/included in the P&L A/c. need be stated along with the relevant section.
- Special care to be taken in case of composite accounts for presumptive business and other business.
- Tax Auditor is not expected to verify calculations under presumptive Method, if any, included in the profit.

Clause 13: Method of Accounting

a) Method of accounting employed in the previous year

Mercantile or Cash System

b) Whether there has been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.

Clause 13: Method of Accounting

Issue : XYZ Classes is following Cash System of Accounting since years, From the Current year it wants to switch over to the mercantile system. What reporting is required.

Issue : ABC Builders is following Completed Contract Method. Now he wants to switch over to Percentage Completion Method. What reporting is required.

Clause 13: Method of Accounting

- c) If answer to (b) above is in the affirmative, give details of such changes, and the effect thereof on the profit or loss.**

Sr.No.	Particulars	Increase in Profit	Decrease in Profit

- (d) Whether any adjustment is required to whether any adjustment is required to be made to the profits or loss for complying with the ICDS notified u/s 145(2)**

- (e) If, yes, give details of such adjustments**

Clause 13: Method of Accounting (contd..)

Particulars	Increase in Profit (Rs.)	Decrease in Profit (Rs.)	Net Effect (Rs.)
ICDS-I Accounting Policies			
ICDS-II valuation of Inventories			
ICDS-III Construction Contracts			
ICDS-IV Revenue Recognition			
ICDS-V Tangible Fixed Assets			
ICDS-VI Changes in Foreign Exchange Rates			
ICDS-VII Government Grants			
ICDS-VIII Securities (Script wise v security type wise)			
ICDS-IX Borrowing Costs			
ICDS-X Provisions, Contingent Liabilities & Contingent Assets			
Total	-	-	-

(a) Method of valuation of closing stock employed in the previous year.

(b) Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss.

- Here the method employed for valuation of closing stock having regard to the articles or goods dealt in or manufactured by the assessee is to be stated.
- For ascertainment of the same, reference may be made to the annual financial statements (significant accounting policies) or a management representation may be obtained after duly satisfying himself regarding the method of valuation of closing stock.
- To report effect of changes in profit & loss due to tax & duty paid.

Clause 15 : Particulars of capital asset converted into stock intrade

Clause 15

Give the following particulars of Capital Asset converted into Stock intrade --

- Description of Capital Asset [Sub clause (a)]
- Date of Acquisition [Sub clause (b)]
- Cost of Acquisition [Sub clause (c)]
- Amount at which asset is converted into stock in trade. [Sub clause (d)]

Clause 15: Particulars of capital asset converted into stock in trade

Matters to be considered:

- 1) Under sub-clause (c) the cost of acquisition is required to be reported. The cost of acquisition as per books of account is to be mentioned. While verifying the cost of acquisition, principles enunciated in AS 10 should be borne in mind.
- 2) Under sub-clause (d) the amount recorded in the books of account at which asset is converted into stock-in-trade should be stated. The valuation is stock-in-trade is to be examined with reference to AS 2.
- 3) Non-compliance with AS 10 or AS 2 is to be suitably reported in main audit report.

Amounts not credited to profit and loss account being;

- Items falling within the scope of Section 28. [Sub clause (a)]
- Pro forma credits, drawbacks, refund of customs or excise duties or service tax, sales tax or VAT, where the same are admitted as due by concerned authorities. [Sub clause(b)]
- Escalation claimed during the previous year [Sub clause (c)]
- **Any other items of income. [Sub clause (d)]**
- **Capital Receipt [Sub clause (e)]**

Clause 16: Amounts not credited to Profit & Loss Account

Issue : Mrs. R is maintaining two sets of books of accounts :

Set 1 : Business Set which gives details of All Sales/Revenue & Expenses of the Business having Turnover Exceeding 1 Crore.

Set 2 : Personal Set which gives details related to Personal Assets, Gain on Sale of Residential House/Shares, Interest on FD, Personal Loans from Relatives etc.

You are appointed as an auditor of Mrs. R from the FY 2019-20. Previous Auditor has audited only business set & prepared the 3 CD Report Accordingly. You are of the opinion that audit is done for the assessee & not the particular set of Books. But if you audit both the sets then combined profit & loss account is giving very higher ratio than earlier PY. It also results into large increase in Loan Amt. You are afraid of having the case in scrutiny if you audit both the sets combining into one. As an auditor what best you can do to favour the assessee with safeguarding yourself.

Clause 16: Amounts not credited to Profit & Loss Account

Issue : Mr. H is having business of trading in fruits & vegetables. He has credited all Income other than sales to Capital Account. Such income includes : Interest, Gain on sale of Asset etc. As an auditor what's your duty?

Clause 17 : Transfer of Land & Building at a value lesser than Stamp duty value

“Where any land and building or both is transferred during the previous year for a consideration less than the value adopted or assessed or assessable by any authority of a State government referred to in Section 43CA or 50C.”

Details of Property	Consideration received or accrued	Value adopted or assessed/ assessable	Whether provisions of 2 nd Proviso to Sec 43CA(1) or 4 th Proviso to Sec 56(2)(x) is applicable Y/N

What if the Stamp Duty reported in above clause is having typographical error ?

Clause 17 : Transfer of Land & Building at a value lesser than Stamp duty value

Matters to be considered:

- What should be the manner in which provisions of Section 43CA is to be applied in case of builder adopting Percentage completion method for recognition of revenue?
- Whether the comparison of Stamp duty Value with Actual consideration for revenue recognition based on percentage completion method should be at each stage and for each year as on date of transfer or any other date ?

Whether the reporting of the transfer of the leasehold rights to be mentioned in this clause ?

Clause 18 : Depreciation Schedule

- (f) Description of asset/block of assets.
- (g) Rate of depreciation.
- (h) Actual cost of written down value, as the case may be.
- 2[(ca) Adjustment made to the written down value under section 115BAC/115BAD (for assessment year 2021-2022 only)
- (cb) Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession.....
- (cc) Adjusted written down value.....]
- (i) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –
 - (i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,
 - (ii) Change in rate of exchange of currency, and
 - (iii) Subsidy or grant or reimbursement, by whatever name called.
- (j) Depreciation allowable.
- (k) Written down value at the end of the year.....

Clause 18 : Depreciation Schedule

Issue :

If payment for the Capital Asset is made in Cash exceeding Rs. 10,000, is it to be capitalized to block even if not eligible for the depreciation. (Impact on Capital Gain on sale of the same)

Issue :

ITC on GST for the Motor Car or Computer, the treatment of the same in the block of Asset to be checked.

Issue :

If the Capital Asset is used for BP & Personal both, then How to capitalize the cost to the block of asset for the purpose of depreciation.

Clause 19 : Amounts admissible as deductions from 32AC to 35E

Amounts admissible under sections:

Section	Amount debited to profit and loss Account	Amounts admissible as per the provisions of the income-tax Act, 1961 and also fulfils the conditions, if any specified under the relevant 14 provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
32AC		
33AB		
33ABA		
35		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

Clause 19 : Amounts admissible as deductions from 32AC to 35E

Audit Considerations:

- ~~The Tax Auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the said sections.~~
- The Tax Auditor should ensure eligibility of the expenditure/payment for deduction and compliance of conditions prescribed in the said sections.
- The Amounts not debited to Profit & Loss Account but admissible under any sections mentioned in the clause have to be stated. [Example : Section 33AB and Section 33ABA – Depositing amounts in designated accounts]

Clause 19 : Amounts admissible as deductions from 32AC to 35E

Relevant Issues:

- In case where audit is required under certain sections to claim deduction and separate auditor is appointed for this purpose, is it enough to rely on such auditor's report ?
- How will the auditor rely on the work done by such other auditors / experts for the work done by them? What should be the extent of reliance to be placed?
- What would be the stand of a Tax Auditor in case such report is unavailable?
- Where auditors have changed, can the auditor rely on previous year's computation and audit report with respect to sec 35D, 35DD, 35DDA etc or should scrutinize expenses incurred in earlier years?

Clause 20 : Employee benefits

- a. Sum paid to employee as bonus or commission, where the same was payable as profits or dividend u/s. 36(1)(ii)
- b. Sums received from employees as contributions to any provident fund or superannuation or any fund u/s. 2(24)(x) ; due date for payment & actual date of payment to concerned authorities u/s. 36(1)(va)

Nature of Fund	Sum received from employees	Actual amount paid	Due date for payment	Actual date of payment to concerned authorities

For reporting under Clause 20, the following provisions need to be considered:

- 1) Section 36(1)(ii) – provides for deduction of any sum paid to an employee as **bonus / commission** for services rendered where such sum would not have been otherwise payable to him as profit / dividend.
- 2) If bonus / commission is in the nature of profit / dividend, the same would not be allowable as a deduction and therefore, requires reporting under this clause.

For reporting under Clause 20, the following provisions need to be considered:

- 3) Section 36(1)(va) – permits deduction of any sum received by the assessee from his employees to which provisions of sec 2(24)(x) are applicable, if it is credited to the account of employees **on or before the due date.**
- 4) Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the ESI Act, or any other fund for the welfare of such employees.

Case Laws:

In the case of **CIT vs Gujarat State Road Transport Corp.** , it was held by the Gujarat HC that the delayed remittance of employee's contribution beyond due date prescribed in section 36(1)(va), is **not deductible** while computing business income, even though such remittance is made before due date of filing of return.

In case of **IIO 4(3)(3) vs. LKP Securities** (ITA No. 638/Mum/2012) it was held that due date of payment of employees contribution to welfare funds was due date specified in respective Act governing the same and not due date of filing return.

Contrary View was taken in the following case laws :

Ghatge Patil Transports Ltd [(2014) 368 ITR0749 (Bom)]

M/s Hindustan Organics Chemicals Ltd. [(2014) 107 DTR0105 (Bom)]

Now
Amendment
in the ACT

Clause 21 : Admissibility of certain deductions

- Expenditure in nature of capital, personal, advertisement expenditure etc. [Sub clause (a)]
- Amounts admissible under 40(a). [Sub clause (b)]
- Amounts debited to Profit & Loss Account being interest, salary, bonus, commission or remuneration inadmissible under 40(b)/40(ba) [Sub clause (c)]
- Disallowance under 40A(3). [Sub clause (d)]
- Provision for gratuity not allowed under 40A(7) . [Sub clause (e)]
- Sums paid by an assessee as an employer not allowed under 40A(9) . [Sub clause (f)]
- Particulars of contingent liability. [Sub clause (g)]
- Amounts of deductions inadmissible in terms of Section 14A [Sub clause (h)].
- Amounts inadmissible under proviso to 36(1)(iii) [Sub clause(i)]

a) Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.

Nature	Sr.No.	Particulars	Amount in Rs.
Capital Expenditure			
Personal Expenditure			
Advertisement expenditure in any souvenir, brochure or the like published by a political party			
Expenditure incurred at clubs being cost for club services and facilities used.			
Expenditure by way of penalty or fine for violation of any law for the time being force			
Expenditure by way of any other penalty or fine not covered above			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

b) Amounts admissible under 40(a):

(i) As payment to non-resident referred to in sub clause (i)

(A) Details of payment on which tax is not deducted -

(date of payment, amount of payment, nature of payment, name & address of payee)

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1) - (date of payment, amount of payment, nature of payment, name & address of payee, amount of tax deducted)

Deductions

b) Amounts admissible under 40(a):

(ii) As payment to resident referred to in sub clause (ia)

(A) Details of payment on which tax is not deducted -

(date of payment, amount of payment, nature of payment, name & address of payee)

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 139(1)-

(date of payment, amount of payment, nature of payment, name & address of payee, amount of tax deducted, amount out of tax deducted, deposited, if any)

What about Proviso to 40(a)(ia) ?

Deductions

b) Amounts admissible under 40(a):

(iii) under sub-clause (ic): sum paid on account of FBT

(iv) under sub-clause (ia): sum paid on account of Wealth tax

(v) under sub-clause (ib): amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on or which is appropriated, directly or; indirectly, from a SG undertaking by the SG.

(vi) under sub-clause (ii): amount chargeable under the head "Salaries" payable outside india or to a non-resident

(date of payment, amount of payment, name & address of the payee)

Deductions

b) Amounts admissible under 40(a):

(vii)under sub-clause (iv): payment to a provident or any other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries"

(viii)under sub-clause (v): any tax actually paid by an employer referred to in clause (10CC) of Section 10.

Clause 21 : Admissibility of certain deductions

c) Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;

d) Disallowance/deemed income under section 40A(3):

(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A (3A);

Clause 21 : Admissibility of certain deductions

- e) provision for payment of gratuity not allowable under section 40A(7);
- f) any sum paid by the assessee as an employer not allowable under section 40A(9);
- g) particulars of any liability of a contingent nature;
- 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;
- i) amount inadmissible under the proviso to section 36(1)(iii)

Clause 22 : Amounts inadmissible under Section 23

- As per **Section 23 of MSME Act** the interest payable or paid by the buyer, under or in accordance with provisions of Section 16 of the Act , shall not for the purpose of computation of income under Income Tax Act, 1961 be allowed as deduction.

Clause 22 : Amounts inadmissible under Section 23

Audit Considerations

- Where the auditor is issuing report in Form 3CB, if no disclosure is made by the auditee in financial statements about the information as prescribed u/s 22 of MSME Act, an appropriate qualification in Form 3CB should be given.
- The auditor should obtain full list of suppliers which fall within the definition of 'supplier'. It is the **responsibility of the auditee to classify and identify the suppliers who are covered by this Act.** The list so obtained shall be reviewed by the auditor.
- Verify the interest paid or payable under section 16 of MSME Act from books of account on test check basis and obtain reasonable assurance of compliance.

Clause 22 : Amounts inadmissible under Section 23

Matters to be considered

- What would be the disallowance in case the auditor is liable to pay any interest under MSME Act but he has not provided the interest in his accounts?
- In such a case, what would be the situation when he actually pays and claims such interest?
- Where the auditor has relied on the auditee for classifying and identifying the suppliers covered under the MSME Act, 2006 whether a note explaining the reliance placed on auditee is enough to discharge the onus?

Related Parties

Particulars of payments made to persons specified u/s. 40A(2)(b)

40A(2)(b)	Where the assessee is	Persons referred to in clause (b)
(i)	Individual	any relative of the assessee;
(ii)	Company, firm, AOP, HUF	any director, partner, or member or any relative of such director, partner or member;
(iii)	Carrying on business or profession	any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;
(iv)	Carrying on business or profession	a company, firm, AOP or HUF having a substantial interest* in the business or profession of the assessee or any director, partner or member of such company, firm, AOP or HUF or any relative of such director, partner or member or any other company carrying on business or profession in which the first mentioned company has substantial interest*;
(v)	Carrying on business or profession	a company, firm, AOP or HUF of which a director/ partner / member, has a substantial interest* in the business or profession of the assessee; or any director/ partner / member of such company, firm, AOP or HUF or any relative of such director, partner or member;
(vi)	Any person who carries on a business or profession	All of the above

**Substantial Interest : 20% or more voting power or share of profit of such business or profession.*

Related Parties

Matters to be considered

Whether payments made to related parties of capital nature are covered in reporting ?

How can a tax auditor ascertain details regarding persons covered in the said section and how can such transactions be verified ?

Transfer Pricing

Domestic Transfer Pricing

Related Parties

Issue : Clause 23 covers Payment to Relatives u/s. 40A(2). If the assessee has purchased a Capital Asset from the relative, is it required to be reported in the same clause or not?

Issue : Clause 23 relates to the payments made to relatives u/s. 40A(2). You are auditor of a Proprietorship of Mr. J. You want to report the payment made to the father in law of Mr. J but the accountant is objecting on the ground that previous auditor has not reported the same. What would be your stand. Whether your answer will be different if its Mr. J (HUF) in place of Mr. J (Individual).

Amounts deemed to be profits and gains u/s ~~32AC/32AD or 33AB or 33ABA or 33AC~~

- 32AC/AD : Investment in new plant or machinery
- 33AB : Tea development account, coffee development account and rubber development account.
- 33ABA : Site Restoration fund
- 33AC : Reserves for shipping business

(only eligible assessee can claim the benefit under this section)

Any amount of profits chargeable to tax u/s 41 and computation thereof.

To Disclose:

- Name of the party
- Amount involved
- Section under which it is covered
- Details of transactions
- Computation of the same if any

Clause 26 : Disallowance under section 43B

In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) or (g) of Section 43B, the liability of which :

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

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

Section 43B

Section 43B- Certain deductions to be only on actual payment

The following amounts shall be allowed as deduction only in the previous year in which such amounts are actually paid:

- (a) any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or
- (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, or
- (c) any sum referred to in section 36(1)(ii), or
- (d) & (e) any sum payable as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, or a scheduled bank
- (f) any sum payable as an employer in lieu of any leave at the credit of his employee, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him

Section 43B

Matters to be considered

- ~~Is Profession tax liability required to be reported under section 43B?~~
- Where taxes, duties etc. referred to in Section 43B are paid after tax audit is completed but before due date of filing returns, how should the same be dealt with by a Tax Auditor?

Clause 27:

Clause 27a : Amount of Central Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.

Clause 27b : Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

Clause 28 : Purchase of shares of company for inadequate consideration

"Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viiia), if yes, please furnish the details of the same."

Section 56(2)(viiia) – provides that *"where a firm or a company in which the public is not substantially interested, receives from any person or persons, any property, being shares of a company not being a company in which the public are substantially interested,—*

*(i) without consideration, the aggregate **FMV of which exceeds Rs.50,000**, the whole of the aggregate FMV of such property;*

*(ii) for a consideration which is less than the aggregate FMV of the property by an amount exceeding Rs.50,000, the **aggregate FMV of such property as exceeds such consideration** shall be chargeable to tax under the head Income from Other Sources.*

Rule 11UA provides the methodology for computation of FMV. **The FMV of the shares has to be computed as per Rule 11UA , irrespective of the market value of the shares transferred.**

Clause 28 : Purchase of shares of company for inadequate consideration

Audit Considerations:

- The Auditor should obtain a list containing the details of shares issued to any person being a resident and verify the same with the relevant documents and books of accounts.
- The following information should be maintained in the working papers:
 - i. Name and status of person to whom shares have been issued
 - ii. PAN of the person, if available
 - iii. Nature of shares (Quoted in RSE/ URSE/ unquoted)
 - iv. No. of shares issued
 - v. Consideration received
 - vi. Fair Market Value as per Rule 11UA(1)(c) / 11UA(2)
 - vii. Face value of shares
 - viii. Amount taxable u/s 56(2)(viib)

Clause 29 : Issue of shares at a price higher than the FMV

“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.”

- **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 tax under the head Income from Other Sources.
- Rule 11UA provides the methodology for computation of FMV.

Clause 29 : Issue of shares at a price higher than the FMV

Matters to be considered:

- What would be the consequences if the company has issued shares to residents and non-residents under private placement at a price which is higher than the FMV of the shares ?

Clause 29A & B: Income chargeable u/s. 56(2)(ix) & (x)

Clause 29A :

Advance Money forfeited on the cancellation of agreement to sale the capital asset after 31-03-2014 is covered here. Nature & Amount to be reported

Clause 29B :

Amount of Gift received is covered here. Nature & Amount to be reported

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- Amount borrowed or repaid by hundi

Note:

- It should be noted that hundi does not include bills of exchange but bills of exchange include hundi
- Where any amount is borrowed on hundi or repayment thereof (including Interest) is otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying for the previous year in which the amount was borrowed or repaid

Not Covered 30A/B/C

- Particulars of each loan or deposit in an amount exceeding the limits specified in section ~~269SS~~ taken or accepted during the previous year:-

What is to be disclosed:

- (i) name, address and PAN (if available with the assessee) of the lender/depositor;
 - (ii) amount of loan/ deposit taken
 - (iii) whether the loan or deposit was quared up during the previous year;
 - (iv) maximum amount outstanding in the account at any time during the previous year;
 - (v) whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.
- (These particulars needs not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)

- Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year
- i. Name, address and PAN (if available with the assessee) of the person from whom specified sum is received;
- ii. amount of specified sum taken or accepted;
- 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

Note:

Ensure a standard note in respect of disclaimer on inability to verify whether the monies was taken by an account payee cheque/draft/ECS.

- (ba) Particulars of each receipt in an amount exceeding the limit specified in sec 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transaction relating to one event or occasion from a person during the PY, where such receipt is otherwise than by a cheque or bank draft or use of ECS through a bank account.
- (bb) Not A/c payee cheque or drart in above case

- (bc) Particulars of payment made in an amount exceeding the limit specified in sec 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transaction relating to one event or occasion from a person during the PY, where such receipt is otherwise than by a cheque or bank draft or use of ECS through a bank account.
- (bd) Not A/c payee cheque or draft in above case

- Particulars of each payment of loan or specified advance in an amount exceeding the limits specified in section 269T made during the previous year.

i, ii, iii – same as above

iv. whether the repayment was made by cheque or whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account

Note: Particulars to be disclosed will be only if amount exceeds Rs.20,000/-

In case of company deposit repayable on demand will not be considered.

However, in case of others deposit of any nature are to be considered.

- Particulars of repayment of loan or deposit or 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
- (i) Name, address and PAN of the Payer
- (iv) amount of loan or deposit or any specified advance amount 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.

Note: Particulars to be disclosed will be only if amount exceeds Rs.20,000/-

In case of company deposit repayable on demand will not be considered.

However, in case of others deposit of any nature are to be considered.

- Particulars of repayment of loan or deposit or 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
- (i) Name, address and PAN of the Payer
- (iv) amount of loan or deposit or any specified advance amount 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.

Note: Particulars to be disclosed will be only if amount exceeds Rs.20,000/-

In case of company deposit repayable on demand will not be considered.

However, in case of others deposit of any nature are to be considered.

Clause 32 : Details of brought forward loss or depreciation

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

Serial No.	Assessment Year	Nature of Loss/ Allowance	Amount as per return	All Losses etc not allowed u/s. 115BA A/BAC /BAD	Amt Adj by withdr awal of add depru u/s. 115BAC /BAD	Amount as assessed	Remarks

Section 79 [Sub-Clause (b)]

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

Clause 32 : Details of brought forward loss or depreciation

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

Clause 32 : Details of brought forward loss or depreciation

For reporting under Clause 32, the following provisions need to be considered:

- Brought forward losses may pertain to different heads of income such as property income, profits and gains in business or profession, speculation business or capital gains, the provisions of which are contained in sections 32 and 70 to 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—
 - (a) 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

Clause 32 : Details of brought forward loss or depreciation

For reporting under Clause 32, the following provisions need to be considered:

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

Issue : As an auditor under Clause 32 which loss is to be reported, whether its returned loss or assessed loss. Would it make any difference if appeal is filled against the assessed loss if lower than return loss.

Matters to be considered:

- Where assessments are in various stages of litigation, is it correct to merely state ' information is not readily available and hence not furnished'?
- Any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be disclosed under remarks column under sub-clause (a). If orders are yet to be passed, the same can be disclosed along with impact thereof, if material.

Relevant Issues

- Can TA rely on certificates issued by professionals other than CAs?
- Where payments qualifying for deduction u/s. 80D etc. might not have been paid out of business income but personal income, should same be disclosed?
- Where in preceding P.Y, admissibility of deductions claimed u/ss. 80-I, 80-IA, etc. are not questioned & allowed from return of income, is TA required to verify allowability of same?

Issue : For Mr. S the Tax Auditor & Income Tax Return Preparer is different. Auditor has not reported few Deductions u/s. 80 in Clause 33 of Form 3CD. Tax Return Preparer has claimed all such Deductions u/s. 80 Correctly. AO in Scrutiny has objected the deduction. Assessee argues that he is eligible to claim such deduction. What would be the legal consequence to Assessee. Will the Auditor be called negligent in performing his duty in preparing form 3CD?

**For Example : 1 Donations
2 Sec 80C**

- Whether assessee has complied with Chapter XVII-B regarding-
Deduction of TDS, &
payment thereof to Govt [**Sub-Clause (a)**]
- Disclose following, if not complied with –

(i)	Tax Deductible & not deducted at all
(ii)	Shortfall on account of lesser deduction
(iii)	Tax deducted late
(iv)	Tax deducted but not paid to Govt before last day of P.Y or due date for TDSdeducted in March month of P.Y

- Clause 34(a) : Compliance with TCS Provisions

Reporting on compliance with TCS provisions along with TDS provisions

- Clause 34(b) : filling of TDS and TCS returns

the tax auditor shall report on the compliance by the assessee with provisions of furnishing of TDS or TCS statements within prescribed time.

- Clause 34(c) : Assessee in default

if assessee is deemed as an assessee in default and he is liable to pay interest u/s 201(1A) or 206C(7), the tax auditor shall furnish the TAN of the assessee, interest payable and interest actually paid.

- Clause 34(a) : Compliance with TCS Provisions

TAN	Sec	Nature of Payment	Total Payment or Receipt of nature in (3)	Total Amt on which TDS/TC S Required out of (4)	Total Amt on which TDS/TC S at Specified Rate out of (5)	Amt of TDS/TC S made out of (6)	Total Amt on which TDS/TC S is made at less than specified rate	Amt of TDS/TC S made on (8)	Amt of TDS/TC S not deposited out of (6) & (8)
1	2	3	4	5	6	7	8	9	10

- Clause 34(b) : Statement of TDS/TCS Details

TAN	Type of Form	Due Date of Furnishing	Date of Furnishing if furnished	Whether all transactions are reported. If not furnish the details of the transactions not reported
1	2	3	4	5

- Clause 34(c) : Details of Interest u/s. 201(1A) or 206C(7)

TAN	Amount of Interest u/s. 201(1A) or 206C(7)	Amount paid out of Column (2)
1	2	3

- In case of trading concern, quantitative details of principal goods traded-
 - Opening Stock
 - Purchases during P.Y
 - Sales during P.Y
 - Closing Stock
 - Short / Excess [**Sub-Clause (a)**]
- In case of manufacturing concern, quantitative details of raw materials, finished goods & / or by-products-
 - Opening Stock
 - Purchases during P.Y
 - Consumption / Production during P.Y
 - Closing Stock
 - Short / Excess

- Yield of finished products*
- Percentage of yield* [Sub-Clause (b)]

*Information may be given to the extent available; applies to raw materials only

Clause 36A : Dividend u/s. 2(22)(e)

If assessee has received the dividend in the nature of sec 2(22)(e), furnish following details :

- (i) Amount Received
- (ii) Date of Receipt

Clause 37

- Whether Cost Audit is Carried out, If yes, Give Details of Disqualification or Disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor

Clause 38

- Whether Audit is Carried out under the Central Excise Act 1944, If yes, Give Details of Disqualification or Disagreement on any matter/item/value/quantity as may be reported/identified by the auditor

Clause 39

- Whether Audit is Carried out u/s 72A of the Finance Act 1994, If yes, Give Details of Disqualification or Disagreement on any matter/item/value/quantity as may be reported/identified by the auditor

Sr. No.	Particulars	Previous Year F.Y. 2022-23	Preceding previous year F.Y. 2021-22
1.	Total turnover of the assessee		
2.	Gross Profit/ Turnover		
3.	Net Profit/ Turnover		
4.	Stock-in-trade/ Turnover		
5.	Material consumed/ finished goods produced		

- Details of demand raised/ refund issued during the previous year
under any tax laws other than Income Tax Act, 1961 and Wealth-tax Act, 1957
- Details of relevant proceedings to be furnished

- (a) Whether the assessee is required to furnish statement in Form 61 or Form 61A or Form 61B : (Yes/No)

- (b) If Yes, Please Furnish

IT Dept Reporting Entity Identification Number	Type of Form	Due Date of Furnishing	Date of Furnishing	All Details Furnished, If not Give details of Transactions not reported.

- (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub section 2 of Sec 286. Yes/No
- (b) If Yes, Please Furnish
 - (i) Whether Report is furnished by Assessee or Parent entity or Alternate Reporting Entity
 - (ii) Name of the Parent Entity
 - (iii) Name of the Alternate Reporting Entity (If Applicable)
 - (iv) Date of Furnishing the Report

- Break-up of total expenditure of entities registered or not registered under GST:

Sr. No	Total Expenditure incurred during the year	<u>Expenditure registered</u>	<u>In Under</u>	<u>Respect of GST</u>	<u>entities</u>	Expenditure in respect of entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

- Important Issues :

- Reporting of the Capital Expenditure.
- Head wise reporting of the Expenditure or in Aggregate.
- Purchase of Goods to be reported or not.

THANK YOU



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