

UNRAVELLING TAX AUDIT UNDER SECTION 44AB OF THE INCOME TAX ACT, 1961

[updated with the related Notification last issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes bearing No.33/2014, F.No.133/1/2014-TPL dated 25th July, 2014]

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ACKNOWLEDGEMENT

We all know that the provision in relation to Audit of accounts of certain persons carrying on business or profession – Section 44AB - was enacted by the Finance Act, 1984 and came into effect from 1st April, 1985. The then Finance Minister, introducing the above provision had explained inter alia that the rationale was “intended to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the taxpayer.” The Central Board of Direct Taxes [CBDT] in its first Circular in relation to the then newly inserted Section 44AB bearing No.387 dated 6th July, 1984, had mentioned inter alia that ‘A proper audit for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the authorities’.

The enactment of Section 44AB vis-à-vis Report of Audit by a Chartered Accountant also replicated the perpetual faith in the competence and the integrity of the Chartered Accountants. On their part, Chartered Accountants have lived up to the expectations.

Since the above enactment, a number of amendments have been made to the above provision from time to time, last such amendment being amendment to the Income Tax Rules, 1962 by notification dated 25th July, 2014 whereby Form No.3CA, Form No.3CB and Form No.3CD have been substituted, uploading of which is facilitated by revised e-utility (AY1415_PR2) available on website “www.incometaxindiaefiling.gov.in”. Through these new Forms, especially Form 3CD, the scope of work of Chartered Accountant has considerably enlarged as a number of new clauses have been inserted and the scope of some of the earlier clauses has been enlarged. This correspondingly adds to their task.

In order that a chartered accountant discharges his onerous duties to the satisfaction not only of his/her client, but all concerned, on a continuous basis, it is essential that s/he keeps abreast with the developments that are taking place at such a fast pace – be it legislative side or the judicial side. Keeping this in view and to facilitate fellow Chartered Accountants, the publication “Unravelling Tax Audit under Section 44AB of the Income Tax Act, 1961” – which is now in your hand – was thought of. Let me acknowledge that but for the able inputs and unstinted support of my friends and well-wishers, especially members of my core team, viz., CA. Monika Aggarwal, CA. Adhir Samal, CA. Jyoti Kaur, and CA. Apoorva Bhardwaj, my efforts would not have succeeded. My heartiest thanks to

them all ! Without doubt, I will have their continued assistance and support in my future endeavours as well. It is possible that on certain matter there may be differing views in this “Unravelling Tax Audit under Section 44AB of the Income Tax Act, 1961” vis-a-vis the 2014 Edition of the Guidance Note on Tax Audit under Section 44AB brought out by our Institute a few days back. In such an eventuality, we may be guided by the said Guidance Note.

I am sure this “Unravelling Tax Audit under Section 44AB of the Income Tax Act, 1961” will be found helpful by all those interested in tax audit. Any inputs for improving its usefulness of this are welcome.

CA. SANJAY AGARWAL

September 18, 2014
New Delhi

PS : It would be our endeavour to update the Comprehension as and when related amendments/clarifications/circulars are made/issued by the authorities as also similarly with reference to any related judicial orders/pronouncements. Having regard to the experience vis-a-vis frequency of amendments etc., it may not be possible to publish updated paper book. Hence, updation made from time to time will be put in place in user friendly e-book. In order to avail the benefit of such updation, those desirous are required to register with us. Registration presently open will close shortly. For any purpose, please mail us at casanjayagarwal.taxaudit@gmail.com. The updation in the said e-book will be mailed to all registrants.

ABOUT THE AUTHOR

CA. Sanjay Agarwal, a Graduate in Commerce and in Law, became a member of the Institute of Chartered Accountants of India [ICAI] in the year 1986, and is a practicing Chartered Accountant since then. Having been inclined towards academics and a firm believer in sharing of thoughts, CA. Agarwal, with a view to interacting with fellow members at large, successfully contested election to the Northern India Regional Council [NIRC] of the ICAI in 2003 and became its member for the years 2004-2007. In the first year of his membership itself, he was elected as Chairman of the NIRC, and he helmed the same during 2004-2005. Subsequently, he successfully contested election to the Central Council of the ICAI for the three year term 2010-2013. He re-contested successfully for another three year term of the Central Council for the year 2013-2016. During these years, he has been a member of various Committees of the Council. Besides, he held the Chairmanship of Direct Taxes Committee, Public Relations Committee, Indirect Taxes Committee, and Vice-Chairmanship of Audit Committee and the Information Technology Committee. He also Coordinated 'E-Sahaayatta' - Central Grievance Cell of the Institute. For the on-going Council Year 2014-2015, CA. Agarwal Chairs the Committee on Economic, Commercial Laws & WTO and is Vice-Chairman of Expert Advisory Committee.



On social front, CA. Agarwal is a member of All India Vaish Federation. Continuing with his aforementioned inclination and with a view to putting in place a platform, he founded an NGO "Voice of Chartered Accountants" (Regd.) [VoCAs] to facilitate members intermingle. VoCAs provides its members professional updates in the form of latest case laws, news of professional interest, articles, write-ups, presentations etc.

CA. Agarwal's expertise includes direct taxes. He is one among few renowned personalities in the field of Survey, Search and Seizures representing cases before the Settlement Commission. Having been guest speaker in over 200 seminars organised, among others, by various branches of the Institute not only in the Northern Region, but all across the country, CA. Agarwal is a much sought after faculty today.

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CHAPTER 1

Compulsory Audit of Accounts of Certain Persons carrying on Business or Profession u/s 44AB

The tax audit was introduced by section 11 of the Finance Act, 1984, which inserted a new section 44AB with effect from 1st April, 1985 [Assessment Year 1985-86]. This section makes it obligatory for a person carrying on business to get his accounts audited by a chartered accountant, and to furnish by the 'specified date', the report in the prescribed form of such audit, if the total sales, turnover or gross receipts in business in the relevant previous year exceed or exceeds the prescribed limit (Rs. One Crore w.e.f. A.Y. 2013-14). For a professional, the provisions of tax audit become applicable, if his gross receipts in profession exceeds the prescribed limit (Rs. Twenty five Lakhs w.e.f. A.Y. 2013-14) in the relevant previous year. Later on, vide Finance Act, 1997 w.e.f. A.Y. 1998-1999, the scope of section 44AB was enlarged to provide that audit u/s 44AB will be required in case of person attracting provisions of section 44AD, 44AE or 44AF. Thereafter, the scope was further enlarged, vide the Finance Act, 2003 w.e.f. A.Y. 2004-2005 to include person attracting provisions of section 44BB or 44BBB, if such person claims that his income is lower than the amount of income deemed under these sections as presumptive income. The Finance Act, 2009 w.e.f. A.Y. 2011-2012 has enlarged the scope of section 44AD to include the retail trade business to which the provisions of section 44AF were applicable (*The provisions of section 44AF are ceased to apply to any assessment year beginning on or after 1st day of April 2011*). The amended section 44AD covers all assesses carrying eligible business except

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or
- (iii) a person carrying on any agency business.

The compulsory audit is intended to ensure proper maintenance of books of account and other records. The audit for tax purposes would ensure that the books of account and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. This also facilitates the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications.

ANALYSIS OF PROVISIONS OF SECTION 44AB OF THE INCOME TAX ACT, 1961

1.1 Who are the assessee falling under the scope of Section 44AB (analysis of clauses (a) to (d) of Section 44AB)

The following persons are required to get their accounts audited in view of section 44AB of The Income Tax Act, 1961:

- i. Every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts exceed or exceeds the prescribed limit (Rs.1 crore w.e.f. A.Y. 2013-14) [Clause (a)]
- ii. Every person carrying on profession is required to get his accounts audited if the gross receipts exceed the prescribed limit (Rs.25 lakhs w.e.f. A.Y. 2013-14). [Clause (b)]
- iii. Clause (c) of section 44AB [inserted by the Finance Act, 1997 and subsequently amended by the Finance Act, 2003, Finance Act, 2009 and Finance Act, 2012] stipulates that every person covered by section 44AE or 44BB or 44BBB has to get his accounts audited, who claims that the profits and gains from the business are lower than the profits and gains computed under these sections i.e. u/s 44AE or 44BB or 44BBB.
- iv. Clause (d) of section 44AB [inserted by the Finance Act, 2009 w.e.f. 1-4-2011] stipulates that in the case of an assessee carrying on a business of the nature specified in section 44AD, tax audit will be required, if he claims his income to be lower than the presumptive income deemed under the said section and such income exceeds the maximum amount not chargeable to income-tax (i.e. basic exemption limit).

* Provisions of section 44AB shall not apply with respect to assessee who attracts provisions of section 44B or 44BBA. **(As per first proviso to section 44AB)**

** In case of assessee eligible to claim deductions u/s 80-IA or 80-IB or 80-IC etc. the turnover of all the units put together if exceed the prescribed limits, the assessee will have to get the audit report under section 44AB in the prescribed form and separate audit reports in the forms prescribed for different purposes like sections 80-IA or 80-IB or 80-IC etc. will have to be further obtained by the assessee to meet the specific requirements of the relevant sections.

1.2 What is the format of report for furnishing audit report u/s 44AB of the Income Tax Act, 1961

1.2.1 Rule 6G of the Income Tax Rules, 1962 determines the forms in which the report of audit u/s 44AB is to be furnished, the text of rule 6G is as under:

1. *"The report of audit of the accounts of a person required to be furnished under section 44AB shall, –*

- a. *in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;*
 - b. *in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.*
2. *The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD."*

Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB, as may be applicable and the statement of particulars should be given in Form No.3CD.

Particulars of Tax Payers	Audit Report Form No.	Statement Particulars
In the case of person who carries on business or profession and who is required by or under any other law to get his accounts audited.	Form No. 3CA	Form No. 3CD
In the case of person carrying on business or profession, other than as referred above.	Form No. 3CB	Form No. 3CD

The CBDT had amended the audit report Form No. 3CD vide notification no. 208/2006 [F. No. 142/2/2006-TPL], dated 10th August, 2006 and notification no. 36/2009 [F. No. 149/86/2008 -TPL], dated 13th April 2009. **Further amended by Notification No. 33/2014, F.No.133/1/2014- TPL dated 25th July, 2014.**

*Revised Forms notified vide Notification No. 33/2014 F.No.133/1/2014-TPL dated 25th July, 2014 issued by the CBDT.

1.2.2 Features of revised form 3CD

- Increased reporting requirements of the assessee and the auditor.
- Examination of books of account and relevant documents along with declaration by the assessee.
- Required to visit the locations at which books of account maintained.\
- Tax auditor to determine assessed or assessable values of properties (land or building or both), value of shares of private company.
- Consolidation of details under various laws.
- Amendments by Finance Act, 2014 under Central Excise Act, 1944- **Obligation to furnish information return - Amendments by Finance Act, 2014 - Obligation to furnish information return.**
 - Section 15A inserted in the Central Excise Act empowering the Central Government to prescribe an authority or agency to whom the information return shall be filed by the specified persons such as **Income-tax authorities**, State Electricity Boards, VAT or Sales Tax authorities, Registrar of Companies.

- **Information can be collected for the purposes of the Act, such as, to identify tax evaders or recover confirmed dues.** Further, section 15B which provides for imposition of penalty on failure to furnish information return has been inserted.

*Provisions of section 15A & 15B of Central Excise Act, 1944 made applicable in Service Tax and corresponding amendment made in section 83 of Finance Act, 1944.

1.2.3. Quick reference of change in clauses of revised Form 3CD vis-à-vis old Form:

Revised Form 3CD Clause No.	Old Form 3CD Old Clause No.	Remarks
1	1	No Change
2	2	No Change
3	3	No Change
4	-	Newly inserted
5	4	No change
6	5	Amended
7	6	No Change
8	-	Newly inserted
9	7	No change
10	8	No change
11	9	Sub clause 'a'- No Change Sub clause 'b'- Amended Sub clause 'c'- Amended
12	10	Amended
13	11	Sub clause 'a'- No Change Sub clause 'b'- No Change Sub clause 'c'- Format specified Sub clause 'd'- No change
14	12	Sub clause 'a'- No Change Sub clause 'b'- Format specified
15	12(a)	No change
16	13	No Change
17	-	Newly Inserted
18	14	Sub clause 'a-c'- No Change Sub clause 'd'- Amended Sub clause 'e-f'- No Change
19	15	Amended
20	16	Sub clause 'a'- No Change Sub clause 'b'- Amended

21	17	17(a-e) substituted by 21(a)- Amended 17(f) substituted by 21(b)- Amended 17(g) substituted by 21(c)- Amended 17(h) substituted by 21(d)- Amended 17(i-m) substituted by 21(e-i)- No change
22	17A	No Change
23	18	No Change
24	19	Amended
25	20	No Change
26	21	No Change
27	22	Amended
28	-	Newly Inserted
29	-	Newly Inserted
30	23	No Change
31	24	Sub clause 'a' - No Change Sub clause 'b' - No Change Sub clause 'c' - Amended
32	25	Sub clause 'a' - No Change Sub clause 'b' - No Change Sub clause 'c to e' - Newly Inserted
33	26	Amended
34	27	Sub clause (a) - Amended Sub clause (b) - Newly Inserted Sub clause (c) - Newly inserted
35	28	Amended
36	29	Amended
37	30	Amended
38	31	Amended
39	-	Newly Inserted
40	32	Amended
41	-	Newly Inserted

1.2.4. Quick reference of change in clauses of old form vis a vis revised Form 3CD.

<i>Old Form 3CD</i>	<i>Revised Form 3CD</i>	<i>Remarks</i>
<i>Old Clause No.</i>	<i>Clause No.</i>	
1	1	No Change
2	2	No Change
3	3	No Change
-	4	Newly inserted
4	5	No change
5	6	Amended
6	7	No Change
-	8	Newly inserted
7	9	No change
8	10	No change

9	11	Sub clause 'a'- No Change Sub clause 'b'- Amended Sub clause 'c'- Amended
10	12	Amended
11	13	Sub clause 'a'- No Change Sub clause 'b'- No Change Sub clause 'c'- Format specified Sub clause 'd'- No change
12	14	Sub clause 'a'- No Change Sub clause 'b'- Format specified
12(a)	15	No change
13	16	No Change
-	17	Newly Inserted
14	18	Sub clause 'a-c'- No Change Sub clause 'd'- Amended Sub clause 'e-f'- No Change
15	19	Amended
16	20	Sub clause 'a'- No Change Sub clause 'b'- Amended
17	21	17(a-e) substituted by 21(a)- Amended 17(f) substituted by 21(b)- Amended 17(g) substituted by 21(c)- Amended 17(h) substituted by 21(d)- Amended 17(i-m) substituted by 21(e-i)- No change
17A	22	No Change
18	23	No Change
19	24	Amended
20	25	No Change
21	26	No Change
22	27	Amended
-	28	Newly Inserted
-	29	Newly Inserted
23	30	No Change
24	31	Sub clause 'a' - No Change Sub clause 'b' - No Change Sub clause 'c' - Amended
25	32	Sub clause 'a' - No Change Sub clause 'b' - No Change Sub clause 'c to e' - Newly Inserted
26	33	Amended
27	34	Sub clause (a) - Amended Sub clause (b) - Newly Inserted Sub clause (c) - Newly inserted
28	35	Amended
29	36	Amended
30	37	Amended
31	38	Amended

-	39	Newly Inserted
32	40	Amended
-	41	Newly Inserted

1.3. What is the mode of furnishing audit report u/s 44AB of the Income Tax Act, 1961?

Report of audit u/s 44AB is required to be furnished electronically [Notification No. 34 /2013/ F.No.142/5/2013-TPL dated 1st May, 2013] - (Please refer Annexure -I)

E-Utility for preparation and uploading tax audit report is available on www.incometaxindiaefiling.gov.in under the head forms (other than ITR).

1.4. Who can Conduct “Audit” (analysis of Explanation (i) of section 44AB of the Income Tax Act, 1961)

That vide Notification No, 33/2014 dated 25.07.2014, the furnishing of scope audit report has been clearly confined to “accountant” as having the meaning below sub-section (2) of section 288; which means

“accountant” means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of section 226(2) of Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State.

1.4.1 Prior to this Notification No, 33/2014 dated 25.07.2014, below mentioned were allowed to give audit report

- i. a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
- ii. any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State; or
- iii. any person who is, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant previous year.

Therefore earlier, any person who was, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant previous year was also entitled to conduct tax audit u/s 44AB. However, under the revised Forms, reference to section 44AB is given wherein only an Accountant within the meaning of section 288 can conduct tax audit u/s 44AB which does not include such other person. Section 288(2) refers to section 226(2) of Companies Act, 1956 i.e. Section 141 of Companies Act, 2013, Corresponding amendment has not been made in Income Tax Act, 1961. Restricted State Auditors earlier qualified to be auditors of companies u/s 226(2) of the Companies Act, 1956

are no longer qualified u/s 141 of Companies Act, 2013. Under section 141 of Companies Act, 2013, only a Chartered Accountant is qualified to conduct audit of companies.

Section 44AB stipulates that only Chartered Accountants should perform the tax audit. This section does not stipulate that only the statutory auditor appointed under the Companies Act or other similar Statute should perform the tax audit. As such the tax audit can be conducted either by the statutory auditor or by any other chartered accountant in full time practice.

In a case where statutory auditor is not appointed, where it is required by statute for their appointment, in such a circumstance the tax auditor appointed under section 44AB can complete his audit without waiting for statutory audit report on the accounts audited by the statutory auditors. The tax auditor in such cases will have to conduct the financial audit as well in order to enable him to certify whether or not the accounts reported upon by him give a true and fair view of the state of affairs of the assessee whose accounts are audited by him under section 44AB. And the tax auditor provides his report in Form No. 3CB and to certify the relevant particulars in Form No.3CD.

While accepting tax audit assignment of any assessee, "Code of Ethics" Chapter-VII "Appointment of an Auditor in case of non-payment of undisputed fees" and the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008, needs to be kept in view. A chartered accountant should not accept the tax audit of a person to whom he is indebted for more than rupees ten thousand. Further member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking/ Government Company /Listed Company and other Public Company having turnover of Rs. 50 crores or more in a year and accepts any other work or assignment or service in regard to the same undertaking/company on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking/company. The term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include: -

- Audit under any other statute;
- Certification work required to be done by the statutory auditors; and
- Any representation before an authority.

The obligation for tax audit has been specified in section 44AB of the Income-tax Act, 1961, it will be considered as an audit under any other statute for the purpose of this notification and thus the above restriction shall not apply in respect of tax audit.

1.4.2 Other Considerations

1. The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB.
2. The tax auditor is required to upload the tax audit report directly in the e-filing portal. In case of joint auditors, management representation has to be obtained about responsibility of uploading Tax Audit Report & ITR by particular auditor.
3. The appointment of the auditor for tax audit in the case of a company need not be made at the general meeting of the members. It can be made by the Board of Directors or even by any officer, if so authorised by the Board in this behalf.
4. The appointment in the case of a firm or a proprietary concern can be made by a partner or the proprietor or a person authorised by the assessee.
5. It is possible for the assessee to appoint two or more chartered accountants as joint auditors for carrying out the tax audit, in which case, the audit report will have to be signed by all the chartered accountants. In case of disagreement, they can give their reports separately. (*Refer: Para 12 of the SA 299 "Responsibility of Joint Auditors" issued by ICAI*)
6. The Act does not prohibit a relative or an employee of the assessee being appointed as a tax auditor under section 44AB. However, a chartered accountant should not express his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest.
7. A chartered accountant who is responsible for writing or maintenance of the books of account of the assessee should not audit such accounts (including tax audits). This principle will apply to the partners of such a member as well as to the firm in which he is a partner.
8. The audit of accounts of a Firm of chartered accountants, under section 44AB, cannot be conducted by any partner or employee of such a firm.
9. A chartered accountant/ firm of chartered accountants, who is appointed as tax consultant of the assessee, can conduct tax audit under section 44AB. But an internal auditor of the assessee cannot conduct tax audit if he is an employee of the assessee.
10. The tax auditor cannot be removed on the ground that he has given an adverse audit report or the assessee has an apprehension that the tax auditor is likely to give an adverse audit report. If there is any unjustified removal of tax auditors, the Ethical Standards Board constituted by the Council of the Institute if approached, may intervene in such cases.

No other chartered accountant should accept the audit assignment if the removal of his predecessor is not on valid grounds. However, the management can remove the tax auditor on the ground such as late submission of report.

11. Before accepting a tax audit, the chartered accountant should take into consideration the specified limit for accepting tax audit assignments i.e. a chartered accountant already in practice, is deemed to be guilty of professional misconduct if, he accepts more than 60 tax audit assignments relating to an assessment year.
12. Audit of books of account of persons carrying on businesses covered by sections 44AD and 44AE, is not included in the aforesaid maximum limit.
13. Audit prescribed under any statute which requires the audit report in the form as prescribed under section 44AB of the Income-tax Act, shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in section 44AB of the Income-tax Act, 1961. For instance, audit under section 44AD, audit under DVAT, 2004 (for turnover up to Rs. 1crore) etc. will not be considered for inclusion in the present limit of 60 audits.
14. In case, a member is a partner in a firm of chartered accountants in practice, the ceiling of 60 tax audit assignments shall be computed with reference to each of the partner in the said firm.
15. Where any partner of the firm of chartered accountants in practice is also a partner of any other firm or firms of chartered accountants in practice, the ceiling limit of 60 shall apply with reference to all the firms together in relation to such a partner.
16. Similarly, where any partner accepts one or more tax audit assignments in his individual capacity, the total number of such assignments under section 44AB which may be accepted by him whether directly in his individual capacity or as partner in one or more firms of chartered accountants in practice shall not exceed 60 tax audit assignments.
17. If two chartered accountants already in practice or two of such chartered accountants are appointed as joint tax auditors, then the assignment will have to be included in the case of both the members and firms separately.
18. It is, however, clarified that the audit of an assessee's head office and branch office(s) shall be regarded as one tax audit assignment.
19. The audit of one or more branches of the same concern by one chartered accountant in practice shall be construed as only one tax audit assignment.

1.5. What is the specified date up to which the report under Section 44AB of the Income Tax Act, should be furnished. (Analysis of Explanation (ii) of Section 44AB of the Income Tax Act, 1961)

“Specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139 of the Act.

** Note: vide Order U/s 119 of the Income-tax Act, 1961 dated 20.08.2014, the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assesseees who are not required to furnish report under section 92E of the Act from 30th day of September, 2014 to 30th day of November, 2014. (For order please refer Annexure - II)*

Here in the issue involved is that the Income Tax Act provides for furnishing of tax audit report till the specified date u/s 139(1) i.e. the date of filling of return of income, whereas vide the respective Order U/s 119 of the Income-tax Act, 1961 the date of furnishing of report u/s 44AB has been extended, which will not serve any purpose since the Act provides for submission of report till specified date, which is still 30.09.2014 and in view of bare provisions of law the report of tax audit should be furnished by 30.09.2014.

Another issue is whether without putting the date of Tax Audit, return of income will be accepted or not, in this case under the head Audit information in ITR - 4 fill the information as under:

- a. Are you liable to maintain accounts as per section 44AA - Yes / No - As may be applicable
- b. Are you liable for audit under section 44AB - Yes / No - As may be applicable
- c. If liable for audit u/s 44AB, whether the accounts have been audited by an accountant? If yes, furnish the following information below - **NO. (Please fill no in case tax audit report not obtained).**

1.6. Scope of term “Business” and “profession”.

1.6.1. Section 2(13) of the Income Tax Act, 1961 defines “business” as under:

“Business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

Below mentioned are from the judicial pronouncements dealing with the world “business”:

- a. **Business is real, substantial & organized course of activity** - The word ‘business’ connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. The question, whether a particular source of income is business or not must be decided according to ordinary notions as to what a business is - *Narain Swadeshi Wvg. Mills v. CEPT* [1954] 26 ITR 765 (SC) see also *CIT v. Prabhu Dayal* [1971] 82 ITR 804 (SC), *CIT v. Distributors (Baroda) (P.) Ltd.* [1972] 83 ITR 377

(SC), *CIT v. Saurashtra Cement & Chemical Industries Ltd.* [1973] 90 ITR 170 (Guj.).

- b. **Business should be understood broadly**- *Mazagaon Dock Ltd. v. CIT/CEPT* [1958] 34 ITR 368 (SC).
- c. **Business implies continuous activity** - 'business' implies continuous activity in carrying on a particular trade or vocation, it may also include an activity which may be called 'quiescent' - *CIT v. Calcutta National Bank Ltd.* [1959] 37 ITR 171 (SC), *CIT v. A. Dharma Reddy* [1969] 73 ITR 75 (SC).
- d. **Activity with an object to earn profit** - The word 'business' is not defined exhaustively in the Income-tax Act, but it denotes an activity with the object of earning profit. To say that a business is being carried on, means no more than that profit is to be earned by a process of production - *Senairam Doongarmall v. CIT* [1961] 42 ITR 392 (SC). *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC).
- e. **Activity undertaken regularly by the application of labour and skill** - The word 'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour and skill with a view to earning an income - *Barendra Prasad Ray v. ITO* [1981] 129 ITR 295 (SC).
- f. **Dealing in real estate is also business** - The definition of 'business' in section 2(13) is of wide amplitude and it can embrace within itself dealing in real property as also the activity of taking a property on lease, setting up a market thereon and letting out shops and stalls in the market - *S.G. Mercantile Corpn. (P.) Ltd. v. CIT* [1972] 83 ITR 700 (SC).
- g. **Business and profession are two mutually exclusive terms** - Though the word 'business' is a word of wide import, it would not take in its ambit activities which may constitute 'profession'. This is because the two expressions 'business' and 'profession' have been used in the Act in mutually exclusive sense. *CIT v. Lallubhai Nagardas & Sons*[1993] 204 ITR 93 (Bom.).
- h. **Business involves different forms** - Production of goods from raw material, buying and selling of goods to make profits and providing services to others are different forms of "Business". Profits arising therefrom are therefore chargeable to tax under the head "profits and gains of business or profession". *Mazagaon Dock Ltd. v. CIT* [1958] 34 ITR 368 (SC), *W.L. Knopp v CIT* [1948] 16 ITR 398 (Mad).
- i. **'Trade'** in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being

manual or mercantile, as distinguished from the literal arts or learned professions or agriculture - *State of Punjab v. Bajaj Electricals Ltd.* [1968] 70 ITR 730 (SC), Business includes trade - *State of Punjab v. Bajaj Electricals Ltd* [1968] 70 ITR 730 (SC).

- j. **‘The expression ‘in the nature of trade’** appearing in the definition of ‘business’ in section 2(13) postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business - *G. Venkataswami Naidu & Co. v. CIT* [1959] 35 ITR 594 (SC).
- k. **When section 2(13) refers to an adventure in the nature of trade**, it clearly suggests that the transaction cannot properly be regarded as trade or business. and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade - *Estate Investment Co. Ltd. v. CIT* [1980] 121 ITR 580 (Bom.).
- l. The very word **‘venture’** connotes chance *plus* risk - *CIT v. Smt. Minal Rameshchandra* [1987] 30 Taxman 282/167 ITR 507 (Guj.).

1.6.2. Section 2(36) of the Income Tax Act, 1961 defines “profession” to include vocation:

Below mentioned are from judicial pronouncement dealing with the word “profession”

- a. Profession is a word of wide import and includes “vocation” which is only a way of living. - *CIT v. Ram Kripal Tripathi* [1980] 125 ITR 408 (All).
- b. The expression “profession” involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale, of commodities. - *CIT Vs. Manmohan Das (Deceased)* [1966] 59 ITR 699 (SC), *CIT v. Ram Kripal Tripathi* [1980] 125 ITR 408 (All).
- c. Vide Notifications No. SO-18(E) dated 12.1.1977, No. SO 2675 dated 25.9.1992 and No. SO 385(E), dated 4.5.2001, below mentioned are notified as profession for the purpose of Section 44AA:
 - (i) Accountancy
 - (ii) Architectural
 - (iii) Authorised Representative
 - (iv) Company Secretary
 - (v) Engineering
 - (vi) Film Artists/Actors, Cameraman, Director, Singer, Story-writer, editor, singer, lyricist, dress designer etc.

- (vii) Interior Decoration
- (viii) Legal
- (ix) Medical
- (x) Technical Consultancy
- (xi) Information Technology

1.7. Scope of word “Sales” “turnover” & “Gross receipts”?

The term “sales”, “turnover” or “gross receipts” are not defined in the Act, and therefore the meaning of the aforesaid terms has to be considered for the applicability of the section, below mentioned are the consideration for evolving the meaning of words “sales”, “turnover” or “gross receipts”, as under:

- a. The words “Sales”, “turnover” and “gross receipts” are commercial terms and it is now well settled that they have to be construed in a commercial sense and in accordance with generally accepted accounting principles (Chellapalli Sugars Ltd., v. CIT 98 ITR 167 SC).
- b. As per Central Sales Tax Act, 1956 turnover is defined 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”. Further, section 8A(1) of the said Act provides that in determining turnover, deduction of sales tax should be made from the aggregate of sales price.
- c. As per Section. 2(91) of the Companies Act, 2013, the word turnover means - *“turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;*”

1.7.1. Turnover

The term “turnover” has been understood for the purpose of Section. 44AB to mean:

- a. The aggregate amount for which sales are effected or services rendered by an enterprise. In case the sales price are inclusive of sales tax and excise duty, then no adjustment in respect thereof should be made for considering the quantum of turnover.
- b. Trade discounts can be deducted from sales but not the commission allowed to third parties. In case assessee is following the practice of crediting the Excise duty and / or sales tax recovered separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, then the same will not be included in the turnover.

- c. Sales of scrap shown separately under the heading 'miscellaneous income' will form part of turnover.
- d. Further, the words "Sales", "Turnover" and "Gross receipts" are commercial terms. They should be understood in view of provisions of Section 145(1), which 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. And as such the method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

In view of discussion / principles as emerged here in above, a few typical situations are given below:

Whether different types of discounts allowed will form part of turnover?

- (i) **Trade Discount:** Discount allowed in the sales invoice will not form part of turnover for determination of quantum of turnover.
- (ii) **Turnover Discount:** Turnover discount is given to a customer in case of larger sales. This being dependent on the turnover, as per trade practice, this should be deducted from out of turnover even if the same is allowed at periodical intervals by separate credit notes.
- (iii) **Cash Discount:** Cash discount which is not allowed in a cash memo/sales invoice is in the nature of a financing charge and therefore the same should not be deducted from the figure of turnover.
- (iv) **Special rebate:** Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

Other considerations while determining quantum of turnover for the purpose of Section 44AB.

- (i) Value of sales returns should be deducted from turnover even if the returns are from the sales made in the earlier year/s.
- (ii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover.
- (iii) Sale proceeds of fixed assets will not form part of turnover.
- (iv) Sale proceeds of investment property will not form part of turnover.
- (v) **Determination of turnover in case of commission agent / consignee** - In this case, it is to be seen whether the property in goods, risks attached to goods or ownership of the goods belonged to commission agent / consignee immediately before the transfer by him to third person. If yes, the commission agent / consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover. If no the relevant sale price shall

not form part of the sales/turnover of the commission agent and/or the consignee as the case may be. [Please see, CBDT Circular No.452 dated 17th March, 1986].

- (vi) In case of share brokers or sub broker, only brokerage is to be taken into account for determining the quantum of turnover. If, however, the broker's undertaking share transaction on his personal account, the sale value should also be taken into account for the purpose of limit under section 44AB.
- (vii) The turnover or gross receipts in respect of transactions in shares, securities and derivatives:
 - a. **Speculative transaction:** In a speculative transaction, the contract for sale or purchase which is entered into is not completed by delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference amount is 'turnover'. In speculative transactions though the contract notes are issued for full value of the purchased or sold asset, the entries in the books of account are made only for the difference. And therefore, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB.
 - b. **Derivatives, futures and options :** Such transactions are completed without the delivery of shares or securities. In respect of derivatives, futures and options the contract notes are issued for the full value of the asset purchased or sold but entries in the books of account are made only for the differences. The turnover in such types of transactions is to be determined as follows:
 - i. The total of favourable and unfavourable differences to be taken as
 - ii. Premium received on sale of options, to be included in turnover.
 - c. **Delivery based transactions:** The total value of the sales is to be considered as turnover.
- (viii) Determination of transaction of purchase and sale of shares whether stock in trade or investment - Question of fact will depend upon the nature of transactions, frequency, and volume of transactions. In order to understand the concept, below mentioned Judgments may be referred to
 - a. CIT v. PKN and Co. Ltd (1966) 60 ITR 65 (SC)
 - b. CIT vs. Sulej Cotton Mills Supply Agency (1975) 100 ITR 706 (SC)
 - c. G. Venkataswamy Naidu v. CIT (1959) 35 ITR 594 (SC)
 - d. Asst. CIT v. Om Prakash Arora [2011] 16 taxmann.com 396 (ITAT-Delhi) - Following principles, can be applied on the facts of a case to find out

whether transaction(s) in question are in the nature of trade or are merely for investment purposes:

- ***What is the intention of the assessee at the time of purchase of the shares (or any other item)? This can be found out from the treatment it gives to such purchase in its books of account. Whether it is treated as stock-in-trade or investment. Whether shown in opening/closing stock or shown separately as investment or non-trading asset.***
- ***Whether assessee has borrowed money to purchase and paid interest thereon? Normally, money is borrowed to purchase goods for the purposes of trade and not for investing in an asset for retaining.***
- ***What is the frequency of such purchases and disposal in that particular item? If purchase and sale are frequent, or there are substantial transactions in that item, it would indicate trade. Habitual dealing in that particular item is indicative of intention of trade. Similarly, ratio between the purchases and sales and the holdings may show whether the assessee is trading or investing (high transactions and low holdings indicate trade whereas low transactions and high holdings indicate investment).***
- ***Whether purchase and sale is for realizing profit or purchases are made for retention and appreciation in its value? Former will indicate intention of trade and latter, an investment. In the case of shares whether intention was to enjoy dividend and not merely earn profit on sale and purchase of shares. A commercial motive is an essential ingredient of trade.***
- ***How the value of the items has been taken in the balance sheet? If the items in question are valued at cost, it would indicate that they are investments and where they are valued at cost or market value or net realizable value (whichever is less), it will indicate that items in question are treated as stock-in-trade.***
- ***How the company (assessee) is authorized in memorandum of association/articles of association? Whether for trade or for investment? If authorized only for trade, then whether there are separate resolutions of the board of directors to carry out investments in that commodity and vice versa.***
- ***It is for the assessee to adduce evidence to show that his holding is for investment or for trading and what distinction he has kept in the records or otherwise, between two types of holdings. If the assessee is able to discharge the primary onus and could prima facie show that particular item is held as investment (or say, stock-in-trade) then onus would shift to revenue to prove that apparent is not real.***

- *The mere fact of credit of sale proceeds of shares (or for that matter any other item in question) in a particular account or not so much frequency of sale and purchase of shares, will alone be sufficient to say that assessee was holding the shares (or the items in question) for investment.*
- *One has to find out what are the legal requisites for dealing as a trader in the items in question and whether the assessee is complying with them. Whether it is the argument of the assessee that it is violating those legal requirements, if it is claimed that it is dealing as a trader in that item? Whether it had such an intention (to carry on illegal business in that item) since beginning or when purchases were made?*
- *It is permissible as per the CBDT's Circular No. 4 of 2007 dated 15-6-2007 (for circular please refer - Annexure -XI) that an assessee can have both portfolios, one for trading and other for investment provided it is maintaining separate account for each portfolio, there are distinctive features for both and there is no intermingling of holdings in the two portfolios.*
- *Not one or two factors out of above alone will be sufficient to come to a definite conclusion but the cumulative effect of several factors has to be seen.*

1.7.2. Gross Receipts

The term "gross receipts" is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable under the head "profits and gains from business and profession" under the Income Tax Act, 1961. Following items are included in the term "gross receipts":

- a. Profits on sale of a licence granted under the Imports (Control) Order, 1955 made under the Imports and Exports (Control) Act, 1947;
- b. Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;
- c. Any duty of customs or excise re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1995;
- d. The aggregate of gross income by way of interest received by the money lender;
- e. Commission, brokerage, service and other incidental charges received in the business of chit funds;
- f. Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.), in case if credited to separate account then only the net surplus to be considered.

- g. The net exchange rate difference on export sales, in case if credited to separate account then only the net surplus to be considered.
- h. Hire charges of cold storage;
- i. Liquidated damages;
- j. Insurance claims - except for fixed assets;
- k. Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;
- l. Gross receipts including lease rent in the business of operating lease;
- m. Hire charges and instalments received in the course of hire purchase;
- n. Advance received and forfeited from customers.
- o. Fair market value of any benefit or perquisite derived by the assessee in course of business or profession for example; fair market value of material received by the contractor from the contractee during the course of execution of contract.
- p. Any other additional material / benefit received by the assessee free of cost for achieving various targets.

The below mentioned items do not form part of "gross receipts in business" for purposes of section 44AB:

- a. Sale proceeds of fixed assets including advance forfeited, if any;
- b. Sale proceeds of assets held as investments;
- c. Rental income unless the same is assessable as business income;
- d. Dividends on shares except in the case of an assessee dealing in shares;
- e. Income by way of interest unless assessable as business income;
- f. Reimbursement of customs duty and other charges collected by a clearing agent;
- g. In the case of a recruiting agent, the advertisement charges received by him by way of reimbursement of expenses incurred by him;
- h. In the case of a travelling agent, the amount received from the clients towards payment to the airlines, railways etc. If however, the travel agent is undertaking a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the client should form part of gross receipts;
- i. In the case of an advertising agent, the amount of advertising charges recovered on account of reimbursement will not form part of gross receipts. But if the advertising agent books the advertisement space in

bulk and recovers the charges from different clients, in such a case the amount recovered by him will form part of his gross receipts;

- j. Share of profit of a partner of a firm in the total income of the firm excluded from his total income under section 10(2A) of the Income-tax Act;
- k. In the case of professionals, such as solicitors, advocates or chartered accountants - the term "gross receipts" would mean to include all receipts arising from carrying on of the profession. However, out of pocket expenses received if collected separately either in advance or otherwise, should not form part of the "gross receipts" since such out of pocket expenses received in advance are credited in a separate client's account and utilised for making payments for stamp duties, registration fees, counsel's fees, travelling expenses etc. on behalf of the clients. If, 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.

1.7.3. Issues involving consideration of quantum of turnover for the purpose of Section 44AB of the Income Tax Act, 1961.

- a. In case where assessee carries on more than one business activity, the results of all business activities in the form of sales, turnover and/or gross receipts should be clubbed together. Let's understand this with the help of an example. A carries on two businesses, Business A & Business B and also carries profession P.

1. Situation - I

<i>Particulars</i>	<i>Turnover (Rs.)</i>
Buisness A (Eligible u/s 44AD)	50,00,000
Buisness B (Not Eligible u/s 44AD)	40,00,000
Profession P	21,00,000

Total turnover from business A&B - Rs. 90,00,000/-

Total Receipts from Profession - Rs. 21,00,000/-

No Tax Audit u/s 44AB, in case option available u/s 44AD exercised. In case profit is claimed below permissible limit u/s 44AD business A than Tax Audit u/s 44AB will be mandatory.

2. Situation - II

<i>Particulars</i>	<i>Turnover (Rs.)</i>
Buisness A (Eligible u/s 44AD)	50,00,000
Buisness B (Not Eligible u/s 44AD)	60,00,000
Profession P	21,00,000

Total turnover from business A&B – Rs. 1,10,00,000

Total Receipts from Profession – Rs. 21,00,000

Yes, Tax Audit u/s 44AB mandatory. However in respect of business A assessee may exercise option available u/s 44AD.

3. Situation - III

<i>Particulars</i>	<i>Chapter 4: Important Formats</i>
Buisness A (Eligible u/s 44AD)	50,00,000
Buisness B (Not Eligible u/s 44AD)	60,00,000
Profession P	27,00,000

Total turnover from business A&B – Rs. 1,10,00,000

Total Receipts from Profession – Rs. 27,00,000

Yes, Tax Audit u/s 44AB mandatory. However in respect of business A assessee may exercise option available u/s 44AD.

4. Situation - IV

<i>Particulars</i>	<i>Turnover (Rs.)</i>
Buisness A (Eligible u/s 44AD)	50,00,000
Buisness B (Not Eligible u/s 44AD)	40,00,000
Profession P	27,00,000

Total turnover from business A&B – Rs. 90,00,000

Total Receipts from Profession – Rs. 27,00,000

Yes, Tax Audit u/s 44AB mandatory. However in respect of business A assessee may exercise option available u/s 44AD.

- b. In a case where gross receipts from profession are less than Rs. 25,00,000 Section 44AB shall not apply. In such a case if AO, wants for any reasons the audited accounts, he should pass order u/s 142(2A).
- c. Turnover of two or more firm cannot be clubbed in case they have common partners or same partners, since partnership firms are independent assesses.

- d. Section 44AB makes no distinction between resident and non resident. In case non resident carrying on a profession having receipts of more than 25,00,000, Section 44AB will apply, (in respect of income accruing / arising from operations in India).
- e. In case a person is carrying on two or more profession together then receipts from all profession should be clubbed to determine the limit. However Karnataka High Court in Asstt CIT v Dr. K. Satish Shetty [2010] 188 Taxmann 32, held that the limit of Rs. 1 crore must be applied business wise.
- f. In case the business covered by section 44B or 44BBA, turnover of such business is to be excluded.
- g. In case of partnership firm since each firm is an independent assessee, therefore, the figures of sales of each firm will have to be considered separately.
- h. "Every person" for the purpose of Section 44AB shall not include companies or other artificial persons. [ITO v. Ashalok Nursing Home (P) Ltd [2006] 156 Taxmann 86 (Delhi)(Mag)

1.8. Penalty provisions in case of the failure of a person, to get his accounts audited in respect of any previous year or to furnish a copy of such report as required under section 44AB.

In order to ensure proper compliance with section 44AB, section 271B has been enacted which reads as under:-

"Failure to get accounts audited"

271B. *If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."*

Therefore, the failure of a person to get his accounts audited in respect of any previous year or furnish a copy of such report as required under section 44AB may attract a penalty equal to 0.5% of the total sales, turnover or gross receipts, or Rs.1.5 lakh, whichever is less. However, in view of the specific provisions contained in section 273B, no penalty is imposable under section 271B on the assessee for the above failure if he proves that there was reasonable cause for the said failure.

'Reasonable cause' held by Hon'ble ITAT for not levying penalty u/s 271B

- a. Audit could not be completed in time due to voluminous work and non receipt of bank statements in time would be a 'reasonable cause' for the purpose of

Section 44AB of the Income Tax Act, 1961. [DCIT v. Machino Techno Sales (P) Ltd., 62 ITD 225 (Cal)TM]

- b. Delay on the part of the accountant in completing the audit work before the specified date on account of his prior professional commitments constituted a reasonable cause for the failure of the assessee to obtain the audit report as required u/s 44AB within the specified date. [ACIT v Gayatri Traders, 58 ITD 121 (Hyd) (SB)]
- c. Justification accepted during immediately previous year that audit report delayed due to seizure and retention of books, the same reason also justifies for delay in completion of audit for A.Y. 1986-87, even though books of account of the said A.Y. were not seized. [ACIT v Roopali Dyeing & Printing Works, 86 Taxmann 124 (Ahd.) (Mag)]
- d. Existence of dispute between partners of assessee firm would constitute a reasonable cause for delay in getting audit report u/s 44AB. [Allied Distributors vs. ITO, 89 Taxmann 205 (Cal) (Mag)]
- e. Delay in getting audit report u/s 44AB due to reappointment of another auditor on resignation of previous auditor was held as a reasonable cause for not levying penalty u/s 271B. [Progressive Construction (P) Ltdv. ITO 20 ITD 182 (Hyd).]

1.9 Whether Tax Audit applicable where Income is Exempt u/s 10?

Issue involves here is whether the below mentioned institutions will have to comply with the requirements of Section 44AB, if their turnover exceeds Rs. 1crore:

- (i) Trusts / associations / institutions enjoying exemptions u/s 10(21), 10(23A), 10(23B), 10(23BB), 10(23C) or 11.
- (ii) Cooperative Societies carrying on business enjoying deduction u/s 80P.

As per the rulling of Hon'ble ITAT in the case of ACIT v. India Magnum Fund [2002] 81 ITD 295 (Mum), if entire income of the assessee is exempt u/s 10, he will not be liable to tax audit u/s 44AB despite his turnover or gross receipts exceeds Rs. 1 Crore, since the heading of chapter III is 'Incomes which do not form part of total income' and as such provisions of Section 44AB cannot and do not have any application in relation to incomes which are enumerated under chapter III and are expressly excluded from total income.....".

However, vide Instruction No. 1988 of dated dated 19-10-2000., CBDT clarified that provisions of Section 44AB shall not apply to political parties.

"1. The Board have received a representation regarding the applicability of sections 44AB and 271B of the Income-tax Act, in the case of political parties.

2. The Board consulted the Ministry of Law and Justice and have been advised that:
 - (i) The idea of profession arises from a profit motive. In a political party, as in any charitable institution, there is no private profit motive nor a possibility of distribution of income among the members.
 - (ii) Having kept such income of political parties, out of the total income, under section 13A of the Act, the same income cannot be brought to tax or penalty under some different provisions, nor a political party can be put to restrictions other than those mentioned in the exemption clause, *i.e.*, section 13A of the Act.
3. Thus, the Board are of the view that the *income of the political parties are governed by the special provisions i.e. section 13A of the Income-tax Act, 1961, and accordingly the provisions of Chapter IVD which are applicable for profits and gains of business or profession cannot be applied in the cases of political parties.* Income of political parties from voluntary contributions cannot be said to be income from profession so as to attract section 44AB or 271B of the Income-tax Act.
4. However, the political parties will have to fulfil the requirement of maintaining the accounts and getting them audited by an accountant, as provided in section 13A of the Act to claim the benefit of exemption”.

** Agriculturist with no income under the head “Profits and Gains from Business or Profession” is not required to get his accounts audited, even though his sale of agricultural products exceeds Rs. 1 Crore.*

1.10 Issues addressed via circulars, notifications & instructions in respect of Section 44AB of the Income Tax Act, 1961.

Q.1 Whether the provision of Section 44AB are applicable to commission agents, arahitias, etc.?

Ans. Circular: No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986.- [for Circular Please refer Annexure - III]

- “1. Section 44AB, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakh in any previous year relevant to the assessment year commencing on 1-4-1985 or any subsequent assessment year.
2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB.

3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachha arahtias and pacca arahtias dealing in different commodities in different parts of the country. *The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contracts under consideration.* Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.
4. The Board are advised that *so far as kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtias.* A pacca arahtia is not, in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principals of distinction can be laid down between a kachha arahtia and a pacca arahtia:
 - (1) A kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.
 - (2) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
 - (3) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.
 - (4) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.
 - (5) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.
 - (6) The kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's

charges and certain out of pocket expenses whereas a *pacca arahatia* has a personal interest of his own when he enters into a transaction.

- (7) In the event of any loss, the *kachha arahatia* is entitled to be indemnified by his principal as is not the case with *pacca arahatia*.
5. The above distinction between a *kachha arahatia* and *pacca arahatia* may also be relevant for determining the applicability of section 44AB in cases of other types of agents. *In the case of agents whose position is similar to that of kachha arahatia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahatia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.*

Judicial Analysis

EXPLAINED IN - In *Jeyar Consultant & Investment (P.) Ltd. v. Assistant Commissioner* [1993] 46 ITD 71 (Mad.-Trib.), it was observed that it is *ex facie* clear from the CBDT Circular No. 452 of 17-3-1986 which came to be issued in relation to *kacha* and *pacca arahatias*, who are an integral part of the trading sector, that instructions issued by the Board as respects *kacha* and *pacca arahatias* could not be applied to the case of the assessee who has arranged finances for other for a fee. The assessee may choose to label the fee as brokerage or even as commission. But the fee – or to use a generic expression ‘receipt’ – could not be regarded as turnover proper.

RELIED ON IN - The above circular was relied on in *ITO v. Shantilal Chunilal & Co.* [1993] 45 ITD 581 (Pune - Trib.), with the following observations :

“. . . Further, reference was made by assessee to pages 52 to 54 which contains Board’s Circular No. 452, dated 17-3-1986 which has been issued in connection with section 44AB of the Income-tax Act, 1961. Reliance was placed on para 4 of the said circular according to which the Board were advised that so far as *kachha arahatias* were concerned, the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The submission of the learned counsel for the assessee was that the case of the assessee is one of *kachha arahatia* and not a *pucce arahatia* and, therefore, only gross commission has to be considered for the purpose of section 44AB of the Income-tax Act, 1961. . . . The CIT (Appeals) has excluded the admat receipt as well as interest receipt from the purview of turnover for the purpose of section 44AB. Relying on the clarifications given by the Board in its Circular No. 452, dated 17-3-1986, he has categorised the assessee as *kachha arahatia* and he has charged expenses incurred on such business which resulted in gross profit rate of 1.09 per cent. Therefore, it is very much relevant to clinch the issue whether the assessee is a *kachha arahatia* or not. Going by the clarification issued by the Board in the aforesaid Circular No. 452, dated 17-3-1986 the case of the assessee fits in with the *kachha arahatia vis-a-vis* case of *pucce arahatia*. . . .” (pp. 585-586).

REFERRED TO - In *Manish Textiles v. ACIT* [1991] 38 ITD 365 (Bom.).

EXPLAINED IN - The above circular was explained in *ACIT v. Hasmukh M. Shah* [2003] 85 ITD 99 (Ahd. - Trib.) with the observation that, “. . . by applying the principles laid down in the said circular, it is evidently clear that a stockbroker, like a *kachha arahatia* in foodgrains is merely entitled to brokerage and does not have any domain over the goods. The remuneration of a sharebroker, like a *kachha arahatia* consists solely of brokerage and he is not interested in the profits and losses made by his constituent. Similarly, like a *kachha arahatia*, a stockbroker acts only as an agent of his constituent and never acts as a principal. So whatever be the modalities of the transactions for the purchase and sale of shares made by the sharebroker for and on behalf of his constituents, the position is undisputed that a sharebroker does not have any interest whatsoever in the transactions except brokerage for the services rendered by him in bringing the purchaser and seller together.” (p. 103)

EXPLAINED IN - *In Dy. CIT v. Mangal Dayak Chit Fund (P.) Ltd.* [2005] 92 ITD 258 (Hyd. - Trib.) with the following observations:

“This circular supports the view that the method of accounting regularly followed by the assessee and the trade or commercial practice plays a vital role in determining as to what constitutes turnover in a particular business. (pp. 280-281)”

Q. 2 Which period to be followed for Tax Audit in case of companies having accounting year other than financial year?

Ans Related Circular: No. 561, dated 22-5-1990 is reproduced below [for Circular Please refer Annexure - IV]

- “1. The Board have received representations regarding difficulties faced in complying with the provisions of section 44AB of the Income-tax Act in case of companies which follow an accounting period other than financial year.
2. Section 3 of the Income-tax Act, *inter alia*, provides that with effect from 1st April, 1989, “previous year” for the purposes of that Act means financial year immediately preceding the assessment year. In spite of the introduction of a uniform previous year for purposes of income-tax, some companies may adopt an accounting period other than the financial year, say the calendar year, under the Companies Act for other purposes.
3. In such cases, a question has arisen as to whether, under section 44AB of the Income-tax Act, the tax auditor can audit and certify the accounts for the period for which accounts have been maintained under the Companies Act (*i.e.*, in this case the calendar year) or whether the tax auditor will have to certify the accounts for the relevant financial year which is the uniform accounting year for tax purposes.
4. The Board have considered the matter and are of opinion that *as the income of the previous year is chargeable to tax and, for the purpose of Income-tax Act,*

the previous year is the financial year, the tax auditor would have to carry out the audit under section 44AB in respect of the period covered by the previous year, i.e., the relevant financial year. The proviso to the aforesaid section 44AB, therefore covers only the cases where the accounts are audited under any other law in respect of the financial year. Where the accounting year is different from the financial year, the proviso to section 44AB will not apply. Consequently, the tax auditors would have to carry out the tax audit in respect of the period covered by the relevant financial year and submit his report in Form 3CB as required in rule 6G(1)(b) of the Income-tax Rules”.

Q.3 Mode of payment of taxes by assessee to whom provisions of Section 44AB applies

Ans. e-payment of taxes made mandatory Vide NOTIFICATION NO. 34/2008, DATED 13-3-2008, e payment of taxes made mandatory in the case of corporate assesses & persons to whom provisions of Section 44AB applies. (For Notification please see Annexure - V)S

CHAPTER 2

Comparative Analysis of Revised Form 3CA/ 3CB/ 3CD

2.1 Form No. 3CA

Notification No. 33/2014[F.No.133/1/2014-TPL] dated 25.07.2014 has amended Income Tax Rules 1962 to substitute form no. 3CA, 3CB and 3CD. The revised form 3CA, 3CB and 3CD shall apply w.e.f. 25.07.2014, meaning thereby in respect of all tax audit reports issued on or after 25.07.2014. Issue involved here is that, in case Balance sheet & Tax audit is finalized in old format and signed prior to 25.07.2014 but the tax audit not uploaded till 24.07.2014, in that case revised form 3CA/3CB and 3CD has to be uploaded in suppression to earlier finalized Tax Audit.

Comparative Statement of Old and New Form 3CA

Old Form 3CA	New Form 3CA, w.e.f. 25.07.2014	Remarks
FORM NO. 3CA [See rule 6G(1)(a)]	FORM NO. 3CA [See rule 6G(1)(a)]	
Audit report under section 44AB of the Income - tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law	Audit report under section 44AB of the Income - tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law	
1. * I/We report that the statutory audit of [mention name and address of the assessee with permanent account number] was conducted by * me/us/M/s. in pursuance of the provisions of the....Act, and *I/we annex hereto a copy of * my/our/their audit report datedalong with a copy each of -	1. *I / we report that the statutory audit of M/s..... (Name and address of the assessee with Permanent Account Number) was conducted by *me / us / M/s.....in pursuance of the provisions of the.... Act, and *I/we annex hereto a copy of * my / our / their audit report datedalong with a copy of each of :-	

Old Form 3CA	New Form 3CA, w.e.f. 25.07.2014	Remarks
(a) the audited * profit and loss account/income and expenditure account for the year ended on 31st March,....;	(a) the audited *profit and loss account / income and expenditure account for the <u>period beginning fromto ending on</u>	Sub clause(a) to clause 1 amended to provide period in respect of profit and loss account / income and expenditure account <u>beginning fromto ending on</u> instead of year ended on 31.03..... Logic : To address broken period accounts such as in the case of dissolution, death, liquidation, insolvency or any on account of any other factor.
(b) the audited balance sheet as at 31st March,....; and	(b) the audited balance sheet as at,;and	
(c) documents declared by the said Act to be part of, or annexed to, the * profit and loss account/income and expenditure account and balance sheet.	(c) documents declared by the said Act to be part of, or annexed to, the * profit and loss account / income and expenditure account and balance sheet.	
2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.	2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.	
3. In * my/our opinion and to the best of * my/our information and according to explanations given to * me/ us, the particulars given in the said Form No. 3CD and the Annexure thereto are true and correct.	3. In *my / our opinion and to the best of * my / our information and <u>according to examination of books of account including other relevant documents</u> and explanations given to *me / us, the particulars given in the said Form No.3 CD are true and correct subject to the following observations/ qualifications, if any:	List provided in e-utility (Please refer Note 1 to form 3CB here in below)
** <i>Signed</i>	** <u>(Signature and stamp/Seal of the signatory)</u>	Stamp/ Seal of Signatory to Tax Audit Report required
Place.... Name :.... Date....Address....	Place.... Name <u>of the Signatory</u> :.... Date.... <u>Full</u> Address....	E-Utility also requires filling Membership No. & FRN No.

Old Form 3CA	New Form 3CA, w.e.f. 25.07.2014	Remarks
Notes:	Notes:	
1. *Delete whichever is not applicable.	1. * Delete whichever is not applicable	
2. **This report has to be signed by- (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or (ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State; or (iii) any person who is, by virtue of any other law, entitled to audit the accounts of the assessee for the relevant previous year.	**This report has to be signed <u>by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.</u>	Discussed in detail in Chapter - I
3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.	3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.	
4. The person, who signs this audit report, shall indicate reference of his membership number/certificate of practice number/ authority under which he is entitled to sign this report.	4. The person, who signs this audit report, shall indicate reference of his membership number/certificate of practice number/ authority under which he is entitled to sign this report.	

* Form 3CA applicable In case of a person carrying business or profession whose accounts are required to be audited under any other law

** For Revised form 3CA please refer Notification no. 33 dated 25.07.2014

2.2 Form No. 3CB

Notification No. 33/2014[F.No.133/1/2014-TPL] dated 25.07.2014 has amended Income Tax Rules 1962 to substitute form no. 3CA, 3CB and 3CD. The revised form 3CA, 3CB and 3CD shall apply w.e.f. 25.07.2014, meaning thereby in respect of all tax audit reports issued on or after 25.07.2014. Issue involved here is that, in case Balance sheet & Tax audit is finalized in old format and signed prior to 25.07.2014 but the tax audit not uploaded till 24.07.2014, in that case revised form 3CA/3CB and 3CD has to be uploaded in suppression to earlier finalized Tax Audit.

Comparative Statement of Old and New Form 3CB

<i>Old Form 3CB</i>	<i>New Form 3CB w.e.f 25.07.2014</i>	<i>Remarks</i>
FORM NO. 3CB	FORM NO. 3CB	
[See rule 6G(1)(b)]	[See rule 6G(1)(b)]	
Audit report under section 44AB of the Income - tax Act 1961, in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G	Audit report under section 44AB of the Income - tax Act 1961, in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G	
1. *I / We have examined the Balance Sheet as at 31 st March...., and the *Profit and Loss Account / Income and Expenditure Account for the year ended on that date, attached herewith, of [Mention Name and Address of the Assessee with permanent Account Number]	1. *I / we have examined the balance sheet as <u>on,</u> , and the *profit and loss account / income and expenditure account <u>for the period beginning from to ending on....</u> , attached herewith, of (Name), (Address), (Permanent Account Number).	<p>Clause 1 amended to provide Balance sheet as on instead of as at 31.03..... & further to provide period in respect of profit and loss account / income and expenditure account, <u>beginning from ...to ending on....</u> instead of year ended on 31.03.....</p> <p>Logic : To address broken period accounts such as in the case of dissolution, death, liquidation, insolvency or any account of any other factor. *Balance Sheet date not amended in efilling utility.</p>
2. *I / we certify that the balance sheet and the *profit and loss / income and expenditure account are in agreement with the books of account maintained at the head office at and ** branches.	2. *I / we certify that the balance sheet and the *profit and loss / income and expenditure account are in agreement with the books of account maintained at the head office at and ** branches.	
3.(a) *I / we report the following observations / comments / discrepancies / inconsistencies; if any:	3.(a) *I / we report the following observations / comments / discrepancies / inconsistencies; if any:	
(b) Subject to above, -	(b) Subject to above, -	
(A) *I / we have obtained all the information and explanations which, to the best of *my / our knowledge and belief, were necessary for the purposes of the audit.	(A) *I / we have obtained all the information and explanations which, to the best of *my / our knowledge and belief, were necessary for the <u>purpose</u> of the audit..	

<i>Old Form 3CB</i>	<i>New Form 3CB w.e.f 25.07.2014</i>	<i>Remarks</i>
(B) In *my / our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from *my / our examination of the books.	(B) In *my / our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from *my / our examination of the books.	
(C) In *my / our opinion and to the best of *my / our information and according to the explanations given to *me / us, the said accounts, read with notes thereon, if any, give a true and fair view:-	(C) In *my / our opinion and to the best of *my / our information and according to the explanations given to *me / us, the said accounts, read with notes thereon, if any, give a true and fair view:-	
(i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31 st March,... ;and (ii) in the case of the *profit and loss account / income and expenditure account of the *profit / loss or *surplus / deficit of the assessee for the year ended on that date.	(i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31st March,... ;and (ii) in the case of the *profit and loss account / income and expenditure account of the *profit / loss or *surplus / deficit of the assessee for the year ended on that date.	Period in conflict with clause 1 herein above, not amended either in revised form or utility.
4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.	4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.	
5. In *my/our opinion and to the best of *my / our information and according to explanations given to *me / us, the particulars given in the said Form No.3 CD <u>and the Annexures thereto</u> are true and correct.	5. In *my/our opinion and to the best of *my / our information and according to explanations given to *me / us, the particulars given in the said Form No.3 CD are true and correct <u>subject to following observations/qualifications, if any:</u> <u>a.</u> <u>b.</u> <u>c.</u>	List provided in e-utility (Please refer Note 1 here in below)
*** Signed	*** <u>(Signature and stamp/Seal of the signatory)</u>	Stamp/ Seal of Signatory to Tax Audit Report required
Place.... Name :.... Date....Address....	Place.... Name <u>of the Signatory</u> :.... Date.... <u>Full</u> Address....	E-Utility also requires filling Membership No. & FRN No.
Notes:	Notes:	
1. *Delete whichever is not applicable.	1. * Delete whichever is not applicable	

<i>Old Form 3CB</i>	<i>New Form 3CB w.e.f 25.07.2014</i>	<i>Remarks</i>
2. **Mention the total number of branches.	2. **Mention the total number of branches.	
3. ***This report has to be signed by- (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or (ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State;	3. ***This report has to be signed <u>by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.</u>	
4. The person, who signs this audit report, shall indicate reference of his membership number / certificate of practice number / authority under which he is entitled to sign this report.	4. The person, who signs this audit report, shall indicate reference of his membership number / certificate of practice number / authority under which he is entitled to sign this report.	

Note 1: List of qualification / observation as provided in e-filing utility

- a) Proper book of account, to enable reporting in form 3CD, have not been maintained by the assessee.
- b) All the information and explanations which to the best of my/our knowledge and belief were necessary for the purpose of my /our audit has been provided by the assessee.
- c) Documents necessary to verify the reportable transaction were not made available.
- d) Proper stock records are not maintained by the assessee.
- e) Valuation of closing stock is not possible.
- f) Yield/percentage of wastage is not ascertainable.
- g) Records necessary to verify personal nature of expenses not maintained by the assessee.
- h) TDS return could not be verified with the books of account.
- i) Records produced for verification of payment through account payee cheque were not sufficient.
- j) Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.
- k) Prior period expenses are not ascertainable from books of account.
- l) Fair market value of shares u/s 56(2) (viiia)/(viiib) is not ascertainable.

- m) Reports of audit carried by Excise/Service tax Department were not made available.
- n) GP ratio is not ascertainable from the financial statement prepared by the assessee.
- o) Information regarding demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and Wealth tax Act, 1957 was not made available.
- p) Others

****Observations to be reported in the category "Other" may include:***

1. That in respect of information to be reported vide clause 4, it is hereby stated that assessee is liable for registration under Act, but has not applied for the same.
2. That in respect of information to be reported vide clause 4, it is hereby stated that assessee has applied for the registration no. underAct, but was not allotted till the date of Tax Audit Report.
3. That in respect of information to be reported vide clause 4, it is hereby stated that Assessee has obtained registration no. under Act without having any liability thereof.
4. That in respect of information to be reported vide clause 17, it is hereby stated that Documents substantiating the stamp duty valuation of property sold "..... Address.....", in order to verify compliance with S. 43CA/50C were not made available.
5. That in respect of information to be reported vide clause 22, it is hereby stated that the amount of interest inadmissible under section 23 of the MSMED Act, 2006 is Rs.....
6. That in respect of information to be reported vide clause 22, it is hereby stated that the assessee is maintaining books of accounts on mercantile system of accounting, and as such amount of interest inadmissible under section 23 of the MSMED Act, 2006 is Rs....., which has neither been debited to profit and loss account, nor the provisioning for the same is made.
7. That in respect of information to be reported vide clause 22, it is hereby stated that the assessee has not disclosed the status of suppliers in its financial statements if they fall within the preview of the definition of "Supplier" under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006, moreover it has been stated that assessee has been informed that none of his supplier is registered under MSMEDAct, 2006.
8. That in respect of information to be reported vide clause 26, it is hereby stated that assessee has paid employees contribution towards PF & EPF before the due date of filling of return & in view of decision of hon'ble SC in the case of Commissioner of Income-tax v. Alom Extrusions Ltd [2009] 319 ITR 306 (SC) the same is treated as allowable expenditure.

9. That in respect of information to be reported vide clause 32, it is hereby stated that during the period under consideration assessee carrying on the business of purchase and sale of shares i.e. deemed speculation business in view of explanation to S. 73 however relying upon the ration ofcourt in the matter of, assessee represented that it is not covered by explanation to S. 73 and as such loss to the extent of Rs.....incurred on account of sale and purchase of shares has been set off against income from other sources
10. That in respect of information to be reported vide clause 34(a), it is hereby stated that on amount of Rs....., TDS is deducted under the provisions of S. 194C, however the payment is of the nature of commission on which TDS in our view should be deducted under provisions of S. 194H, and as such there is a short deduction of Rs.....
11. That in respect of information to be reported vide clause 34(a), it is hereby stated that in respect of amount of Rs., TDS was required to be deducted @%, however the same is deducted at lower rate of @.....
12. That in respect of information to be reported under sub clause (b) to clause 34, it is stated that due to voluminous entries, it is not possible for the tax auditor to verify and state as if the statement of tax deducted or collected contains information about all transactions which are required to be reported under this clause.
13. That in respect of information to be reported under sub clause (b) to clause 34, it is stated that below mentioned are the transaction which are not stated in tax deducted / collected statement:
 - a.....
 - b.....
14. That in respect of information to be reported vide clause 35(a)/(b), it is hereby stated that, That assessee is not maintaining stock register, and due to voluminous entries it is not possible to collect quantitative details in respect of opening stock / purchase & sale.
15. That in respect of information to be reported vide clause 35(a)/(b), it is hereby stated that assessee is maintaining stock of voluminous differential items of smaller value, and hence the quantity has been reported lot wise taking value as base for lot size using lot band of value Rs. 0 - 1000, 1000 - 2500, 2500 -5000,
16. That in respect of information to be reported vide clause 35(b), it is hereby stated that the unit of input material i.e. Kgs is different with that of output material i.e Pcs.

***Person other than those referred in Form 3CA & Person whose accounts are required to be audited under any other law but whose accounting year is different from the financial year.*
[Circular : No. 561, dated 22-5-1990]

*** For Revised form 3CB please refer Notification no. 33 dated 25.07.2014

2.3- Comparative Statement of Old and New Form 3CD			
Clause no. of Old 3CD Form	Content of Old 3CD	Clause no. of New 3CD Form	Content of New 3CD
Remarks			
1	Name of the assessee	1	Name of the assessee
2	Address	2	Address
3	Permanent Account Number	3	Permanent Account Number (PAN)
-	-	4	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
4	Status	5	Status
5	Previous year ended _____ 31st March	6	Previous Year from _____ to _____
6	Assessment year	7	Assessment year
-	-	8	Indicate the relevant clause of section 44AB under which the audit has been conducted
7	a) If firm or Association of Persons, indicate names of Partners/ members and their profit sharing ratios. 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.	9	a) If firm or association of persons, indicate names of partners/ members and their profit sharing ratios. 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.
			<p>a) No Change</p> <p>b) Clarification provided</p>

8	<p>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).</p> <p>b) If there is any change in the nature of business or profession, the particulars of such change.</p>	10	<p>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)</p> <p>b) If there is any change in the nature of business or profession, the particulars of such change.</p>	<p>a) No Change</p> <p>b) No Change</p>
9	<p>a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.</p> <p>b) Books of account maintained. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system.)</p> <p>c) List of books of account examined.</p>	11	<p>a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.</p> <p>b) List of books of account maintained and the address at which the books of accounts are kept. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)</p> <p>c) List of books of account and nature of relevant documents examined.</p>	<p>a) No Change</p> <p>b) Requirement of specifying the list of books of account maintained along with detail of Address of all locations where books are kept</p> <p>c) Requirement to specify nature of all the documents examined</p>
10	<p>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).</p>	12	<p>Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.)</p>	<p>The Chapter XII -G (Special provisions relating to income of Shipping companies) and First Schedule (Insurance Business) also specifically covered. However, the same was also covered under "any other relevant section" clause no. 10 of old 3CD Form.</p>

11	<p>a) Method of accounting employed in the previous year.</p> <p>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.</p> <p>c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.</p> <p>d) Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss.</p>	13	<p>a) Method of accounting employed in the previous year</p> <p>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.</p> <p>c) If answer to (b) above is in the affirmative, give details of such change,</p> <table border="1" data-bbox="539 414 637 1057"> <thead> <tr> <th>Serial Number</th> <th>Particular</th> <th>Increase In profit (Rs.)</th> <th>Decrease in profit (Rs.)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>d) Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss.</p>	Serial Number	Particular	Increase In profit (Rs.)	Decrease in profit (Rs.)					<p>a) No Change</p> <p>b) No Change</p> <p>c) Specific format is provided for reporting financial impact due to change in method of accounting.</p> <p>d) No Change</p>
Serial Number	Particular	Increase In profit (Rs.)	Decrease in profit (Rs.)									
12	<p>a) Method of valuation of closing stock employed in the previous year.</p> <p>b) Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss.</p>	14	<p>a) Method of valuation of closing stock employed in the previous year.</p> <p>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:</p> <table border="1" data-bbox="1121 414 1219 1057"> <thead> <tr> <th>Serial Number</th> <th>Particular</th> <th>Increase In profit (Rs.)</th> <th>Decrease in profit (Rs.)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Serial Number	Particular	Increase In profit (Rs.)	Decrease in profit (Rs.)					<p>a) No Change</p> <p>b) Specific format is provided for reporting financial impact due to change in method of stock valuation.</p>
Serial Number	Particular	Increase In profit (Rs.)	Decrease in profit (Rs.)									

12A	<p>Give the following particulars of the capital asset converted into stock-in-trade: -</p> <p>(a) Description of capital asset;</p> <p>(b) Date of acquisition;</p> <p>(c) Cost of acquisition;</p> <p>(d) Amount at which the asset is converted into stock-in-trade.</p>	15	<p>Give the following particulars of the capital asset converted into stock-in-trade: -</p> <p>(a) Description of capital asset;</p> <p>(b) Date of acquisition;</p> <p>(c) Cost of acquisition;</p> <p>(d) Amount at which the asset is converted into stock-in-trade.</p>	<p>a) No Change</p> <p>b) No Change</p> <p>c) No Change</p> <p>d) No Change</p>						
13	<p>Amounts not credited to the profit and loss account, being, -</p> <p>(a) the items falling within the scope of section 28;</p> <p>(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;</p> <p>(c) escalation claims accepted during the previous year;</p> <p>(d) any other item of income;</p> <p>(e) Capital receipt, if any.</p>	16	<p>Amounts not credited to the profit and loss account, being, -</p> <p>(a) the items falling within the scope of section 28;</p> <p>(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned;</p> <p>(c) escalation claims accepted during the previous year;</p> <p>(d) any other item of income;</p> <p>(e) Capital receipt, if any.</p>	<p>a) No Change</p> <p>b) No Change</p> <p>c) No Change</p> <p>d) No Change</p> <p>e) No Change</p>						
-	-	17	<p>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, please furnish:</p> <table border="1" data-bbox="1107 447 1222 1090"> <thead> <tr> <th data-bbox="1107 875 1191 1090">Details of property</th> <th data-bbox="1107 662 1191 875">Consideration received or accrued</th> <th data-bbox="1107 447 1191 662">Value adopted or assessed or assessable</th> </tr> </thead> <tbody> <tr> <td data-bbox="1191 875 1222 1090"></td> <td data-bbox="1191 662 1222 875"></td> <td data-bbox="1191 447 1222 662"></td> </tr> </tbody> </table>	Details of property	Consideration received or accrued	Value adopted or assessed or assessable				<p>Requirement to furnish the details of land or property (being Capital assets or Stock in trade) sold at price less than value adopted by any state authority.</p>
Details of property	Consideration received or accrued	Value adopted or assessed or assessable								

<p>14</p>	<p>Particulars of depreciation allowable as per Income-Tax Act, 1961 in respect of each or block of asset, as the case may be, in the following form :-</p> <ul style="list-style-type: none"> a) Depreciation of asset/block of asset b) Rate of depreciation. c) Actual cost or written down value, as the case may be. d) Addition/Deduction 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"> i. Modified Value added Tax credit claimed and allowed under the Central Excise Rules, 1944m 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 e) Depreciation allowable. f) Written down value at the end of year. 	<p>Particulars of depreciation allowable as per Income-Tax Act, 1961 in respect of each asset or block of asset, as the case may be, in the following form :-</p> <ul style="list-style-type: none"> a. Depreciation of asset/block of asset b. Rate of depreciation. c. .Actual cost of written down value, as the case may be. d. Addition/Deduction 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"> i. Central Value added Tax credit claimed and allowed under the Central Excise Rule, 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. e) Depreciation allowable. f) Written down value at the end of year. 	<ul style="list-style-type: none"> a) No Change b) No Change c) No Change d) No Change e) No Change f) No Change
<p>18</p>			

Amounts admissible under sections -	Amounts admissible under sections -	Amounts admissible under sections:			Detail of amount admissible under the Income Tax Act subject to the fulfillment of other prescribed conditions.
		Section	Amount Debited to Profit and loss accounts	Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf.	Detail of amount admissible under the Income Tax Act subject to the fulfillment of other prescribed conditions. Sections 32AC, 35AD, 35CCC, & 35CCD are specified. Section 33AC is deleted from the list.
a) 33AB		32AC			
b) 33ABA		33AB			
c) 33AC (wherever applicable)		33ABA			
d) 35		35(1)(i)			
e) 35ABB		35(1)(ii)			
f) 35AC		35(1)(iii)			
g) 35CCA)			
h) 35CCB		35(1)(iii)			
i) 35D)			
j) 35DD		35(1)(iv)			
k) 35DDA		35(2AA)			
l) 35E:-		35(2AB)			
a) Debited to the profit and loss account (showing the amount debited and deduction allowable under each section separately);		35ABB			
b) Not debited to the profit and loss account.	19	35AC			
		35AD			
		35CCA			
		35CCB			
		35CCC			
		35CCD			
		35D			
		35DD			
		35DDA			
15		35E			

<p>d) expenditure incurred at clubs, –</p> <ol style="list-style-type: none"> i. as entrance fees and subscriptions; ii. as cost for club services and facilities used; <p>e)</p> <ol style="list-style-type: none"> i. expenditure by way of penalty or fine for violation of any law for the time being in force; ii. any other penalty or fine; iii. expenditure incurred for any purpose which is in offence or which is prohibited by law; 	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party;</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td>Expenditure incurred at clubs being entrance fees and subscriptions.</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Expenditure incurred at club being cost for club services and facilities used.</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Expenditure by way of penalty or fine for violation of any law for the time being in force.</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Expenditure by way of any other penalty or fine not covered above.</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Expenditure incurred for any purpose with is an offence which is prohibited</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party;						Expenditure incurred at clubs being entrance fees and subscriptions.						Expenditure incurred at club being cost for club services and facilities used.						Expenditure by way of penalty or fine for violation of any law for the time being in force.						Expenditure by way of any other penalty or fine not covered above.						Expenditure incurred for any purpose with is an offence which is prohibited						<p>b) New Form 3CD requires reporting even if amount not debited to P&L</p>
Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party;																																						
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Expenditure incurred for any purpose with is an offence which is prohibited																																						
<p>f) amounts inadmissible under section 40 (a)</p>	<p>b) Amounts inadmissible under section 40(a):-</p> <ol style="list-style-type: none"> i. As payment to non residence referred to in sub-clause (i) <ol style="list-style-type: none"> A. Details of payment on which tax is not deducted: <ol style="list-style-type: none"> I. Date of payment II. Amount of payment III. Nature of payment IV. Name and address of the payee B. Details of payment on which tax has been deducted but has not been paid during the previous year or in subsequent year before the expiry of time prescribed under section 200(1) <ol style="list-style-type: none"> I. Date of payment II. Amount of payment III. Nature of payment IV. Name and address of payee V. Amount of tax deducted 																																					

	<p>g) interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;</p> <p>h) (A) whether a certificate has been obtained from the assessee regarding payment relating to any expenditure covered under section 40A(3) that the payment were made by account payee cheques drawn on a bank or account payee bank draft, as the case may be; (B) amount inadmissible under section 40A(3), read with rule 6DD [with break -up of inadmissible amounts;</p>	<p>ii. As payment referred to in sub-clause(ia)</p> <p>A. Details of payment on which tax is not deducted:</p> <ol style="list-style-type: none"> I. Date of payment II. Amount of payment III. Nature of payment IV. Name and address of the payee <p>B. Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub - section (1) of section 139.</p> <ol style="list-style-type: none"> I. Date of payment II. Amount of payment III. Nature of payment IV. Name and address of the payee V. Amount of tax deducted VI. Amount out of (V) deposited, if any <p>iii. Under sub-clause(ic) [Wherever applicable]</p> <p>iv. Under sub-clause(ia)</p> <p>v. Under sub-clause(iib)</p> <p>vi. Under sub-clause(iii)</p> <ol style="list-style-type: none"> A. Date of payment B. Amount of payment C. Name and address of the payee <p>vii. Under sub-clause(iv)</p> <p>viii. Under sub-clause(v)</p> <p>c) Amounts debited to profit and loss account being, interest, salary bonus, commission or r emuneration inadmissible under section 40(b)/ 40(ba) and computation thereof;</p> <table border="1" data-bbox="944 433 1064 1051"> <thead> <tr> <th>Serial Number</th> <th>Date of payment</th> <th>Nature of payment</th> <th>Amount</th> <th>Name and Permanent Account number of the payee, if available</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Serial Number	Date of payment	Nature of payment	Amount	Name and Permanent Account number of the payee, if available						<p>c) Expenses covered u/s 40A(3) to be reported on the bases of examination of books of account. Certificate from assessee as earlier required, would not be sufficient.</p> <p>d) No change.</p>
Serial Number	Date of payment	Nature of payment	Amount	Name and Permanent Account number of the payee, if available									

	<p>i) Provision for payment of gratuity not allowable under section 40A(7);</p> <p>j) Any sum paid by the assessee as an employer not allowable under section 40A(9);</p> <p>k) Particular of any liability of a contingent nature;</p> <p>l) Amount of deduction inadmissible in term of section 14A in respect of the expenditure incurred in relation to income which does not form part of total income;</p> <p>m) amount inadmissible under the provision to section 36(1)(iii)</p>	<p>d) Disallowance/deemed income under section 40A(3):</p> <p>A. On the basis of the examination of books of account and other relevant document/ 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 furnish the details:</p> <p>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):</p> <table border="1" data-bbox="599 420 729 1011"> <thead> <tr> <th>Serial Number</th> <th>Date of payment</th> <th>Nature of payment</th> <th>Amount</th> <th>Name and Permanent Account number of the payee, if available</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>e) provision for payment of gratuity not allowable under section 40A(7);</p> <p>f) any sum paid by the assessee as an employer not allowable under section 40A(9);</p> <p>g) particulars of any liability of a contingent nature;</p> <p>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;</p> <p>i. Amount inadmissible under the proviso to section 36(1)(iii).</p>	Serial Number	Date of payment	Nature of payment	Amount	Name and Permanent Account number of the payee, if available						<p>e) No change.</p> <p>f) No change.</p> <p>g) No change.</p> <p>h) No change.</p>
Serial Number	Date of payment	Nature of payment	Amount	Name and Permanent Account number of the payee, if available									

17A	Amount of interest inadmissible under section 23 of the Micro Small and Medium Enterprises Development Act, 2006.	22	Amount of interest inadmissible under section 23 of the Micro Small and Medium Enterprises Development Act, 2006.	No Change
18	Particulars of payments made to persons specified under section 40A(2)(b).	23	Particulars of payments made to persons specified under section 40A(2)(b).	No Change
19	Amounts deemed to be profits and gains under section 33AB or 33ABA or 33AC.	24	Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.	Expenditure on prospecting certain minerals u/s 32AC also to be reported.
20	Any amount of profit chargeable to tax under section 41 and computation thereof.	25	Any amount of profit chargeable to tax under section 41 and computation thereof.	No Change
21	<p>i. In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which :—</p> <p>:—</p> <p>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</p> <p>a. paid during the previous year;</p> <p>b. not paid during the previous year</p> <p>B. was incurred in the previous year and was</p> <p>a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1);</p> <p>b. not paid on or before the aforesaid date.</p> <p>(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.)</p>	26	<p>In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which :—</p> <p>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</p> <p>a. paid during the previous year;</p> <p>b. not paid during the previous year</p> <p>B. was incurred in the previous year and was</p> <p>a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1);</p> <p>b. not paid on or before the aforesaid date.</p> <p>(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.)</p>	No Change
	<p>ii. (***)</p> <p>*State whether sales tax, customs duty, excise duty or any other indirect tax,</p>			

22	<p>a) Amount of Modified Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Modified Value Added Tax credits in the accounts</p> <p>b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.</p>	27	<p>a) Amount of Central Value Added Tax credits availed of or utilised 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</p> <p>b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.</p>	<p>a) Central Value Added Tax is substituted with Modified Value Added Tax</p> <p>b) No Change</p>
-	-	28	<p>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)(vi ia), if yes, please furnish the details of the same.</p>	<p>Newly inserted. In case of firms and companies in which public is not substantially interested, the detail of receipt of shares of Pvt. Ltd. Company without consideration or for inadequate consideration is required to be provided.</p>
-	-	29	<p>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)(viiib), if yes, please furnish the details .</p>	<p>Newly inserted. Detail in respect of shares issued by a Pvt. Ltd. Company at value more than FMV is required to be provided.</p>
23	<p>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].</p>	30	<p>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]</p>	<p>No Change</p>

<p>24</p>	<p>a) * Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :-</p> <ul style="list-style-type: none"> i. name, address and permanent account number (if available with the assessee) of the lender or depositor; ii. amount of loan or deposit taken or accepted; iii. whether the loan or deposit was squared 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. <p>*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)</p> <p>b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :-</p> <ul style="list-style-type: none"> i. name, address and Permanent Account Number (if available with the assessee) of the payee; ii. amount of the repayment 	<p>a) * Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :-</p> <ul style="list-style-type: none"> i. name, address and permanent account number (if available with the assessee) of the lender or depositor; ii. amount of loan or deposit taken or accepted; iii. whether the loan or deposit was squared 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. <p>*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)</p>	<p>a) No Change</p>
<p>31</p>	<p>b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :-</p> <ul style="list-style-type: none"> v. name, address and Permanent Account Number (if available with the assessee) of the payee; vi. amount of the repayment vii. maximum amount outstanding in the account at any time during the previous year; viii. whether the repayment was made otherwise than by account payee cheque or account payee bank draft. 	<p>b) No Change</p>	

	<p>iii. maximum amount outstanding in the account at any time during the previous year;</p> <p>iv. whether the repayment was made otherwise than by account payee cheque or account payee bank draft.</p> <p>c) Whether a certificate has been obtained from the assessee regarding taking or accepting loan or deposit, or repayment of the same through an account payee cheque or an account payee bank draft. Yes No The particulars (i) to (iv) at (b) and the Certificate at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act;</p>	<p>c) Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents (The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act)</p>	<p>c) Transactions covered u/s 269SS/T to be reported on the bases of examination of books of account. Certificate from assessee as earlier required, would not be sufficient.</p>
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<p>25</p>	<p>Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:</p> <p>a)</p> <table border="1"> <thead> <tr> <th>Serial Number</th> <th>Assessment year</th> <th>Nature of loss / allowance (in rupees)</th> <th>Amount as returned (in rupees)</th> <th>Amount assessed (give reference to relevant order)</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.</p>	Serial Number	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned (in rupees)	Amount assessed (give reference to relevant order)	Remarks							<p>a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:</p> <table border="1"> <thead> <tr> <th>Serial Number</th> <th>Assessment year</th> <th>Nature of loss / allowance (in rupees)</th> <th>Amount as returned (in rupees)</th> <th>Amount as assessed (give reference to relevant order)</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred forward in terms of section 79.</p> <p>c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the detail of the same.</p> <p>d) Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.</p> <p>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, if yes, please furnish the details of speculation loss if any incurred during the previous year.</p>	Serial Number	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned (in rupees)	Amount as assessed (give reference to relevant order)	Remarks							<p>a) No Change</p> <p>b) No Change</p> <p>c) Newly inserted. Any speculation loss incurred during P.Y. as referred in section 73 is to be reported.</p> <p>d) Newly inserted. Loss incurred during P.Y. as referred in section 73A, in respect of any specified business is to be reported.</p>
Serial Number	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned (in rupees)	Amount assessed (give reference to relevant order)	Remarks																						
Serial Number	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned (in rupees)	Amount as assessed (give reference to relevant order)	Remarks																						

26	Section-wise details of deductions, if any, admissible under Chapter VIA.	33	<p>Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).</p> <table border="1" data-bbox="239 429 431 1075"> <tr> <td data-bbox="239 930 407 1075">Section under which deduction is claimed</td> <td data-bbox="239 429 407 930">Amounts admissible as per the provision of Income -tax Act, 1961 and fulfills the conditions, if any, specified under the relevant provisions of Income -tax Act, 1961 or Income -tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.</td> </tr> <tr> <td data-bbox="407 930 431 1075"></td> <td data-bbox="407 429 431 930"></td> </tr> </table>	Section under which deduction is claimed	Amounts admissible as per the provision of Income -tax Act, 1961 and fulfills the conditions, if any, specified under the relevant provisions of Income -tax Act, 1961 or Income -tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.		
Section under which deduction is claimed	Amounts admissible as per the provision of Income -tax Act, 1961 and fulfills the conditions, if any, specified under the relevant provisions of Income -tax Act, 1961 or Income -tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.						
			<p>Deduction u/s 10A (Special provision in respect of newly established undertakings in free trade zone, etc.) and Section 10AA (Special provisions in respect of newly established Units in Special Economic Zones) also included and specified format provided</p>				

a) Whether the assessee has complied with the provisions of Chapter XVII -B regarding deduction of tax at source and regarding the payment thereof to the credit of the Central Government.

b) If the provisions of Chapter XVII-B have not been complied with, please give the following details*, namely:-

- i. Tax deductible and not deducted at all
- ii. Shortfall on account of lesser deduction than required to be deducted
- iii. Tax deducted date

a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-BB, if yes please furnish:

Tax deducted and collected on Account number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected out of (5)	Amount of tax deducted or collected (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of central Government out of (9) and (8)
1	2	3	4	5	6	7	8	9	10

b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

Tax deduction and collection Account Number(TAN)	Type of form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported

c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) payable	Amount paid out of column 2 along with date of payment.

a) Section wise reporting of transactions of TDS/ TCS subject to the provisions of Chapter XVII-BB.

b) Newly inserted. In case the assessee has failed to furnish the statement of TDS or TCS within the prescribed time. If not, please furnish the details:

c) Newly inserted Detail in respect of interest u/s 201(1A) & 206C(7), if any is required to be reported.

<p>28</p>	<p>a. In the case of a trading concern, give quantitative details of principal items of goods traded:</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. sales during the previous year; iv. closing stock; v. Shortage/excess, if any. <p>b. In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products :</p> <p>A. Raw materials :</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. consumption during the previous year; iv. sales during the previous year; v. closing stock; vi. yield of finished products; vii. percentage of yield; viii. Shortage/excess, if any. <p>B. Finished products/By-products :</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. quantity manufactured during the previous year; iv. sales during the previous year; v. closing stock; vi. Shortage/excess, if any. 	<p>35</p>	<p>a. In the case of a trading concern, give quantitative details of principal items of goods traded:</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. sales during the previous year; iv. closing stock; v. Shortage/excess, if any. <p>b. In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products :</p> <p>A. Raw materials :</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. consumption during the previous year; iv. sales during the previous year; v. closing stock; vi. yield of finished products; vii. percentage of yield; viii. Shortage/excess, if any. <p>B. Finished products/By-products :</p> <ol style="list-style-type: none"> i. opening stock; ii. purchases during the previous year; iii. quantity manufactured during the previous year; iv. sales during the previous year; v. closing stock; vi. Shortage/excess, if any. 	<p>a) No Change</p> <p>b) Earlier relaxation provided (in respect of yield of finished products, % of yield and Shortage/ excess, if any) to specify the Information to the extent available now removed.</p>
<p>*Information may be given to the extent available.</p>				

29	<p>In the case of a domestic company, details of tax on distributed profits under section 115 -O in the following form : –</p> <ol style="list-style-type: none"> total amount of distributed profits; total tax paid thereon; dates of payment with amounts. 	36	<p>In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form :-</p> <ol style="list-style-type: none"> total amount of distributed profits; amount of reduction as referred to in section 115-O(1A)(i); amount of reduction as referred to in section 115-O(1A)(ii); total tax paid thereon dates of payment with amounts. 	<p>The provisions of Section 115 O -(1A) incorporated in the format. Further, reporting is required in respect of amount of reductions referred to in sections 115 -O (1A)(i) and 115 - O(1A)(ii).</p>
30	<p>Whether any cost audit was carried out, if yes, enclose a copy of the report of such audit [See section 139(9)].</p>	37	<p>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.</p>	<p>Now Cost Audit reports need not be enclosed, only detail of disqualification and disagreement is to be reported. Earlier the reference was provided to section 139(9) (which refers to statutory cost audit u/s 233A of the Companies Act, 1956). However, in new Form 3CD the reference to section 139(9) has been deleted. Thus, the clause is applicable to all cost audit carried out whether voluntary or statutory.</p>

31	Whether any audit was conducted under the Central Excise Act, 1944, if yes, enclose a copy of the report of such audit.	38	Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be.	Now Excise Audit reports need not be enclosed, only detail of disqualification and disagreement to be provided.																								
-	-	39	Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.	Newly inserted Detail of disqualification or disagreement in the report of audit u/s 72A of the Finance Act, 19 94 (Special Audit) also to be reported.																								
32	Accounting ratios with calculation as follows :- a) Gross Profit/Turnover; b) Net Profit/Turnover; c) Stock-in-trade/Turnover; d) Material Consumed/Finished goods produced.	40	Details regarding turnover, gross profit, etc., for the previous year and preceding previous year: <table border="1" data-bbox="725 420 1082 1084"> <thead> <tr> <th>Serial Number</th> <th>Particulars</th> <th>Previous year</th> <th>Preceding previous year</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Total turnover of the assessee</td> <td></td> <td></td> </tr> <tr> <td>2</td> <td>Gross profit/turnover</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td>Net profit/Turnover</td> <td></td> <td></td> </tr> <tr> <td>4</td> <td>Stock-in-trade/Turnover</td> <td></td> <td></td> </tr> <tr> <td>5</td> <td>Material consumed/finished goods produced</td> <td></td> <td></td> </tr> </tbody> </table> (The details required to be furnished for principal items of goods traded or manufactured or services rendered)	Serial Number	Particulars	Previous year	Preceding previous year	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			Under this clause, the details to be furnished for principal items of goods traded or manufactured or services rendered. Further, the ratios & total turnover of preceding financial year are to be reported.
Serial Number	Particulars	Previous year	Preceding previous year																									
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																											

		41	<p>Please furnish the 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 alongwith details of relevant proceedings.</p>	<p>Newly inserted Demand/ refund under laws other than the Income Tax Act, 1961 and Wealth Tax Act, 1957 is to be reported along with assessment particulars.</p>
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CHAPTER 3

Clause wise Analysis of Revised Form No. 3CD

The statement of particulars is to be given in Form No. 3CD as annexure to the audit report contains forty one clauses. The tax auditor has to opine whether the particulars so given are true and correct. This Form is a statement of particulars required to be furnished under section 44AB. The same is to be annexed to the reports in Forms No. 3CA and 3CB in respect of a person who carries on business or profession and whose accounts have been audited under any other law and in respect of person who carries on business or profession but who is not required by or under any other law to get his accounts audited respectively. While furnishing the particulars in Form No.3CD, it would be advisable for the tax auditor to consider the following:

- (a) If a particular item of income/expenditure is covered in more than one of the specified clauses then suitable cross reference to such items should be made.
- (b) If there is any difference in the point of view of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the view points in form 3CA/3CB (as may be applicable) in the qualification / observation in the category of 'Other'.
- (c) In computing the allowance or disallowance, the law applicable in the relevant year should be taken care of, despite the fact that the form of audit report may not have been amended to bring it in conformity with the amended law.
- (e) if the information in order to complete tax audit is given in part or is incomplete or is not given by assessee against all or any of the clauses, the auditor in such a case, should qualify his report on matters in respect of which information is not furnished to him.
- (g) In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in Form No.3CA / Form No.3CB, as the case may be

Clauses 1 to 8 of Form No. 3CD require routine particulars regarding the assessee - Name, Address, PAN, Status, previous year and assessment year, the same refers as Part - A of the Tax Audit Report.

3.1 Clause 1. - "Name of the assessee"

Under clause (1), the name of the assessee whose accounts are being audited under section 44AB should be given. However, if the tax audit is in respect of a branch, name of such branch should be mentioned along with the name of the assessee.

Below mentioned include the considerations in respect of clause (1) of tax audit report.

- a. Verification of name with which the auditee is assessed, cross checking of the same with income tax record.
- b. In case of proprietorship concern, details of proprietor should be verified. It would be appropriate to mention the name of the proprietorship firm with the proprietor's name while filling up Form No. 3CD in case of individuals since many a time TDS certificates are issued in the name of proprietorship firm
- c. In case of audit of a branch, name of the assessee along with the reference of concerned branch should be stated.
- d. In case of Individual – please check for any change in name on account of marriage or otherwise.

3.2 Clause 2. "Address"

The address in form 3CD should be the same as per income tax records. In case there is any change in address, new address should be furnished in Form 3CD. If the tax audit is in respect of a branch or a unit, the address of the concerned branch or the unit should be stated in form 3CD. In the case of a company, the address of the registered office should also be stated. In the case of a new assessee, the address should be as that of the principal place of business.

3.3 Clause 3. "Permanent Account Number"

In this clause, the permanent account number (PAN) allotted to the assessee should be indicated. In the e-filing format, PAN is a mandatory field. It is a number allotted by the Department having ten alphanumeric characters - the first five alphabets (capital letters), the next four (numbers) and the last one again being alphabet in capital letters. The photocopy of the same duly certified by the assessee be kept in Audit file.

3.4 Clause 4

"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"

E-utility format

4	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*		Yes <input type="text"/>
S:NO	Type	Registration /Identification Number	
1	Select	<input type="text"/>	
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		<ul style="list-style-type: none"> Select Central Excise Duty Central Custom Duty Service Tax Sales Tax/VAT State Excise Duty Other Indirect Tax/duty 	

Points for consideration

- Under this clause of report, the auditor is required to mention as to whether the assessee is liable to pay indirect taxes like excise duty, service tax, sales tax, customs duty, etc.
- In case the answer is yes, the registration number or any other identification number allotted by the concerned authorities is to be furnished by the tax auditor.
- Here, in this clause, the exhaustive list of indirect taxes as intended to be reported is not given. Moreover the word indirect tax is also not defined anywhere under any statute. However, in common parlance the same is understood to mean the taxes which are indirectly recovered, meaning thereby the taxes levied on one person but borne by another person such as Service tax / VAT.
- In order to meet the requirement under this clause, the tax auditor should obtain the list of indirect taxes applicable in respect of all units covered by audit from assessee along with the registration/identification number allotted. Thereupon, the copies of relevant registration certificates etc. should also be obtained for the purpose of cross verification.
- In case assessee has obtained multiple registration numbers under any law, all such numbers should be furnished under this clause.
- While reporting under this clause, the tax auditor should take into consideration the provisions of Auditing Standard SA 580 "Written Representation" and also exercise his due diligence, intellect and professional experience in determining the applicability of any indirect taxes law on the business or profession of the assessee.

Issues:

- In case assessee is liable for registration under any particular indirect tax, but has either not applied for registration or if applied not been allotted the same, then report to be qualified considering the materiality aspect in 3CA/3CB as the case may be. In case assessee has applied for registration but was, for any reason, not allotted and there involves no materiality then the fact could be given via observation.
- In case the registration no. under any Act is obtained without having any liability thereof, in that case, such registration no. to be reported under this clause.
- In the E-utility format only five specific type of indirect taxes are listed. Any other indirect taxes applicable to the assessee are to be reported under the head "Other Indirect Tax / Duty"

3.5 Clause 5 - "Status"

5	Status *	<div style="border: 1px solid black; padding: 2px;"> <div style="text-align: right; border-bottom: 1px solid black;">Select ▼</div> <div style="padding: 2px;"> <p>Select</p> <p>Individual</p> <p>HUF</p> <p>Firm</p> <p>LLP</p> <p>Company</p> <p>Trust</p> <p>AOP/BOI</p> <p>Local Authority</p> <p>Artificial Juridical Person</p> <p>Co-Operative Society</p> <p>Co-Operative Bank</p> </div> </div>
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Points for Consideration

- 'Status' here does not refer to 'residential status' - Resident/Non-Resident.
- In this clause the status of the assessee is to be mentioned, as per section 2 (31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person. Furthermore the residential status may also be furnished separately.
- For a Limited Liability Partnership (LLP) formed and registered under the LLP Act, 2008, status is firm as section 2(23) defines 'firm' to include LLP as defined in the LLP Act, 2008. In the case of LLP incorporated outside India (foreign LLP), the status is 'Company' and not 'firm'.
- In the e-utility, additional specific type of Status has been given in addition to type of Persons as provided in Sec. 2(31) of the Act i.e. Trust, Co-operative society and Co-operative bank.

3.6 Clause 6 - "Previous Year"

Points for Consideration

- The period of the previous year has to be stated. Section 3 defines the previous year as under:
"For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year:
Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year"
- Previous year under the Act normally begins on 1st April of a year and ends on 31st March of the following year. The relevant previous year should be mentioned accordingly.
- In cases where amalgamations, demergers, reconstitution, new business, closure of existing business etc. took place during the period under audit in that case the date of beginning/ ending of the previous year may be different, and as such the relevant date of beginning and ending of the previous year in these cases be reported under this clause.

3.7 Clause 7 - Assessment Year

Under this clause, the assessment year relevant to the previous year for which the accounts are being audited should be mentioned, e.g. for the previous year 2013-14, the assessment year would be 2014-15.

3.8 Clause 8 - Indicate the relevant clause of section 44AB under which the audit has been conducted

E- utility format

S.No.	Relevant clause of section 44AB under which the audit has been conducted
1	Select
<div style="display: flex; justify-content: space-between; align-items: center;"> Add Delete </div>	
	Select Clause 44AB(a)- Total sales/turnover/gross receipts in business exceeding Rs. 1 crore Clause 44AB(b)- Gross receipts in profession exceeding Rs.25 lakhs Clause 44AB(c)-i- Profits and gains lower than deemed profit u/s 44AE Clause 44AB(c)-ii- Profits and gains lower than deemed profit u/s 44BB Clause 44AB(c)-iii- Profits and gains lower than deemed profit u/s 44BBB Clause 44AB(d)- Profits and gains lower than deemed profit u/s 44AD

Points for consideration

Under this clause, the tax auditor has to report the relevant clause of section 44AB in terms of which the provisions of section 44AB apply to the assessee. These clauses are as under:

S. No.	Particulars	Clause No. of Section 44AB
1.	In case of business if total sales, turnover or gross receipts, as the case may be, exceeds one crore rupees.	Clause (a)
2.	In case of profession if gross receipts exceed twenty five lakh rupees	Clause (b)
3.	If Profits u/s 44AE, 44BB or 44BBB claimed to be lower than the presumptive profits and gains	Clause (c)
4.	If Profits u/s 44AD claimed to be lower than the presumptive profits and gains	Clause (d)

Issues

It is possible that an assessee is liable for tax audit in terms of more than one of the above clauses. In that case, all such relevant clauses should be reported.

3.9 Clause 9 (a) & (b)

- (a) If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.
- (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

A. Sub-clause (a) of clause (9)

E- utility format

9 (a) If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.

In case of AOP, whether shares of members are indeterminate or unknown ?

S.No.	Name	Profit Sharing Ratio (%)
1	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>

*Note: The e-utility, however, seeks to know "In case of AoP, whether shares of members are indeterminate". The same did not form part of the Notification dated 25-07-2014,

“In case of AOP, whether the shares of members are indeterminate or unknown”

- In respect of sub-clause (a) of clause (9), below mentioned information is to be furnished in respect of assessee being partnership firm, LLP or AOP or BOI –
 - i. The name of partners of the firm or members of the association of persons (AOP) or body of individuals (BOI).
 - ii. ‘Minor’ admitted to the benefits of partnership is also a “partner” of the firm within the meaning of section 2(23) of the Act. Therefore, name and PSR of such ‘minor partner’ also should be given.
 - iii. Profit sharing ratios (%) of all the partners / members of firm / AOP / BOI.
 - iv. In case where the partner of a firm or the member of AOP/ BOI acts in a representative capacity, the name of the beneficial partner/member be stated.
 - v. The term “profit sharing ratios” would include loss-sharing ratio also since loss is nothing but negative profits.
 - vi. In certain cases of association of persons or body of individuals, it may be possible that the shares of the members are indeterminate or unknown. In such circumstances, the relevant fact be stated.

The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents. The tax auditor should obtain certified copy of partnership deed/ and any other instrument evidencing constitution of AOP/ BOI supplementary document or any other document, as applicable for previous year under audit, along with copy of acknowledgment evidencing filing of documents with the concerned authorities.

Note: E-utility does not provide internal check, it accepts the PSR as may be feeded for eg in case of fraction such as 1/3 PSR for each partner, to make it 100%, 33.34% to be filled in respect of one partner i.e. 33.33% + 33.33% +33.34% = 100%.

B. Sub clause (b) of clause 9

E- utility format

(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.

YES ▾

S.No.	Date of change	Name of Partner/Member	Type of change	Old profit sharing ratio	New profit Sharing Ratio	Remarks
1	<input type="text"/>	<input type="text"/>	Select ▾	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			Select Addition Deletion Change in profit sharing ratio			

Points for Consideration

- Under this clause, all the information about any change in the partners of the firm or member of the association of persons/ body of individuals or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change are to be stated. For example, if the previous year under audit is 2013-14, the “last date of the preceding year” is 31-3-2013 and all changes that took place during 2013-14 should be reported.
- The changes should be cross verified with the partnership deed, instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents or other documents effecting such changes. The tax auditor may also verify:
 - In case of registered partnership firms (including Indian LLPs), whether the relevant documents have been filed with the concerned authorities.
 - whether notice of changes, if required, has been given to the registrar of firms,
 - Any minutes or any other understanding recording any changes in the partners/members or their profit sharing ratios.

Issues

- Clause 9(b) requires particulars of change in partners/members or in their PSRs. The word “particulars” includes the date/s of change/s also.
- All changes occurring during the entire previous year should be stated against clause 9(b).
- When a partner in a representative capacity, say, karta of HUF, retires from a firm and is admitted to that firm in his individual capacity - this is a change

in the constitution of the firm and should be reported against clause 9(b). On the same analogy, it can be opined that if a partner in his individual capacity retires and is admitted as a partner in a representative capacity, the same should be reported.

- Admitting a minor to the benefits of partnership is also a 'change in the partners' [since such a minor is a 'partner' within the meaning of section 2(23) of the Act] and should be reported.
- If a minor opts to be a full-fledged partner on attaining majority, it appears that there is no need to report under this clause (unless there is a change in PSR) so long as the redistribution of shares in losses is ascertainable from the original instrument of partnership. [**Badri Narain Kashiprasad v. Addl. CIT [1978] 115 ITR 858 (All.); Ganesh Rice Mills v. CIT [1981] 132 ITR 257 (MP)**]
- Change in shares of loss on the minor attaining majority is not a change in the constitution of the firm. [**Jagjivandas Govindji & Co. v. CBDT [1981] 132 ITR 769**]. This is so even if there was no mention in the original partnership deed regarding how losses will be shared when the minor elects to be a partner. [**ITO v. Sureshchand Rameshchand [1983] 17 TTJ (Jp.) 228**]
- Whether there is a change in the constitution of the firm or not - this has to be decided in the light of section 187 of the Act read with sections 31 to 44 of the Indian Partnership Act, 1932. When dissolution of firm takes place as provided in sections 40 to 43 of the Indian Partnership Act, 1932 and a new firm is constituted by one or more partners of the erstwhile firm - this is not a mere change in the constitution of the firm. [**Gokuldas & Bros. v. CIT [1989] 34 TTJ (Indore) 582**]
- *Change in remuneration not to be reported*- The clause would not cover any change in relation to payment of remuneration or interest to partners or members without change in Profit/ Loss Sharing ratio. Furthermore, the e-filing utility does not provide any feature for such information.

3.10. Clause 10(a) & (b)

- 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).**
- b. **If there is any change in the nature of business or profession, the particulars of such change.**

A. Sub-clause (a) of clause (10)

E-utility format

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.	Sector	Sub Sector	Code
1	Select		

Select
 Manufacturing Industry
 Trading
 Commission Agents
 Builders
 Contractors
 Professionals
 Service Sector
 Financial Service Sector
 Entertainment Industry
 others

- Under this clause the principal line of each business is to be determined and stated in this clause, i.e. the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry along with the sub-sector in which the client is perusing its business activity. In case assessee is carrying more than one business than information has to be furnished in respect of each business.
- **Each sector involves sub sector the details of such sub sector has also to be furnished (Code will be auto generated once the sub sector is selected), the details of sub sector involved are as under:**
 - i. **Manufacturing Sector** – Agro based industries, Automobile and Auto spare parts, cement, Diamond cutting, Drugs and Pharmaceuticals, Electronics including computer hardware, Engineering goods, Fertilizers, Chemicals and Paints, Flour & rice mills, Food processing units, Marble & Granite, Paper, petroleum & petrochemicals, power and energy, printing & publishing, rubber, steel, sugar, tea & coffee, Textiles, handlooms & powerlooms, Tobacco, tyre, Vanaspati & Edible Oils, Others.
 - ii. **Trading** – Chain stores, Retailers, Wholesalers, others.
 - iii. **Commission Agents** – General Commission Agents.

- iv. **Builders** – Builders, Estate agents, Property Developers, others.
- v. **Contractors** – Civil Contractors, Excise Contractors, Forest Contractors, Mining Contractors.
- vi. **Professionals** – Chartered Accountants, Auditors, Fashion Designers, Legal Professionals, Medical Professionals, Nursing Homes, Specialty Hospitals.
- vii. **Service Sector** – Advertising Agencies, Beauty Parlour, Consultancy Services, Courier Agencies, Computer training, educational & Coaching Institutes, Forex Dealers, Hospitality Services, Hotels, IT enabled services, BPO Service providers, Security Agencies, Software Development Agencies, Transporters, tour operators & others.
- viii. **Financial Service Sector** – Banking companies, Chit funds, Financial Institutions, Financial Service providers, Leasing companies, Money lenders, NBFC, Share broker, Sub broker, Others.
- ix. **Entertainment Industry** – Cable TV production, film distribution, film laboratories, Motion picture producers, Television Channels, others.
- x. **Others** – Other than (i) to (ix) above.

B. Sub-clause (b) of clause (10)

E-utility format

(b) If there is any change in the nature of business or profession, the particulars of such change. YES ▾

S.No.	Business*	Sector	Sub Sector	Code
1	Select ▾	Select ▾	Select ▾	
<div style="display: flex; align-items: center; gap: 10px;"> Add Delete </div> <div style="border: 1px solid gray; padding: 5px; margin-left: 20px;"> Select Added Discontinued </div>				

*Options Sector & sub sector are same as referred in clause 10(a).

Points for consideration

- Under this clause any material change in the nature of business during the previous year is to be reported. Below mentioned include the changes to be reported under this clause:

- a. Change in the principal line of business, e.g. Wholesale to retail or Manufacturing by own to Manufacturing on job work basis, Manufacturing to trader.
- b. Any addition to or permanent discontinuance of a particular line of business.
- c. In case of business reconstruction or business reorganization
- Others that may involve material change in nature of business:
 - a. change from wholesale business to retail business.
 - b. amalgamation/ demerger if a new line of activity emerges as a result.
 - c. hiving off of any activity in restructuring.
- **Issues / Examples of changes in business or profession that needs no reporting against clause 8(b)**
 - a. Temporary suspension of business.
 - b. Amalgamation/ demerger if there is a similar line of activity-i.e. no new line of activity emerges as a result. However, if a new line emerges after the business reorganization / reconstruction, the same would require reporting under clause
 - c. CA who was rendering services related to direct taxes starts rendering services related to indirect taxes also.

3.11. Clause No. 11(a) to (c).

- a. Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.
- b. List of books of account maintained and the address at which the books of account are kept .

(In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

- c. List of books of account and nature of relevant documents examined.

A. Sub clause (a) of Clause 11

E- Utility Format

11 (a) Whether books of accounts are prescribed under section 44AA, if yes, list of books so prescribed.

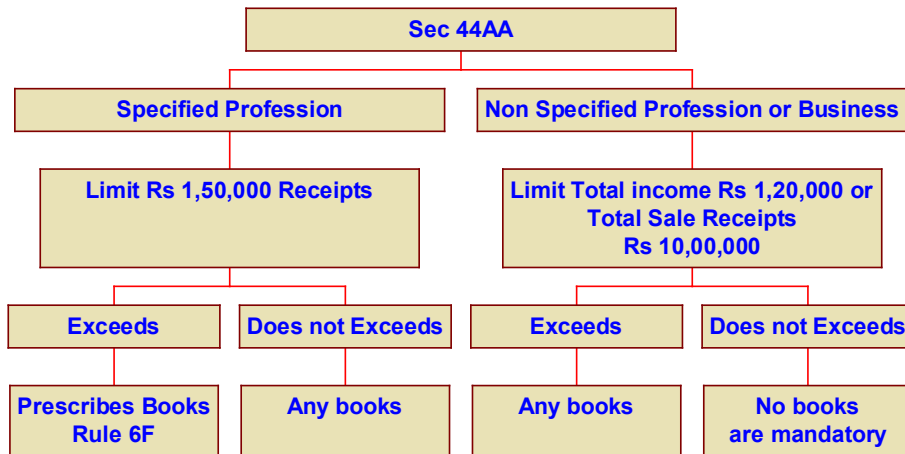
S.No.	Books prescribed
1	

Buttons: + Add, - Delete

Dropdown menu: Select, YES, NO

Points for Consideration

- Under clause (a) of clause 11, list of books of account (if any) prescribed has to be furnished. The CBDT under Rule 6F has prescribed the books of account and other documents to be kept and maintained by a person carrying on certain professions specified in sub-section (1) of section 44AA.
- Requirement of section 44AA about maintenance of books of accounts for specified profession and non-specified profession can be understood with the help of below mentioned chart.



Note: * Limit (total income or Receipts) - In any 1 of the 3 years immediately preceding the previous year or the previous year in which business is set up, if first year.

** Any Books - Any books mean the books so as to enable the AO to compute his total income in accordance with the provisions of this Act.

*** Specified Profession - legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession

- Specified Professions prescribed in sub-section (1) of section 44AA read with rule 6F
 - Legal
 - Medical
 - Engineering
 - Architectural profession
 - Profession of accountancy.
 - Technical consultancy
 - Interior decoration
 - Authorised representative - vide notification : No. SO 17(E), dated 12-1-1977.
 - Film artist - vide notification: No. SO 17(E), dated 12-1-1977.
 - Company Secretary- vide Notification: No. SO 2675, dated 25-9-1992
 - Profession of information technology - vide Notification: No. SO 385(E), dated 4-5-2001

In all the above cases, the total gross receipts should exceed one lakh fifty thousand rupees in all the three years immediately preceding the previous year, or where the profession has been newly set up in the previous year, the total gross receipts in the profession for that year are likely to exceed the said amount.

- Books of account prescribed u/s 44AA read with rule 6F, in respect of specified professions are as under:
 - a. Cash book
 - b. Journal
 - c. Ledger
 - d. Carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him [not applicable for sums not exceeding Rs. 25].
 - e. Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person:
 - f. In addition to above, a person carrying on medical profession is required to keep the following:
- Daily case register in Form No.3C showing data, patient's name, nature of professional services rendered, fees received and date of receipt; and

- an inventory under broad heads, as on the first and the last days of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.
- That daily case register and inventory under broad heads do not constitute books of account and as such does not hold reporting requirement under this clause.

B. Sub clause (b) of Clause 11 (Reporting requirement about books of accounts maintained in respect of non specified professions – please refer chart above)

E-utility format

(b) List of books of account maintained and the address at which the books of accounts are kept. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at onelocation, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

Same as 11(a) above

S.No.	Books maintained	Address Line 1	Address Line 2	City or Town or District	State	PinCode
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▼	<input type="text"/>

Points for Consideration

- Under this clause, list of books of account maintained and the address at which the books of account are kept, is to be reported.
- The tax auditor should obtain from the assessee a complete list of books of account and other documents maintained by him (both financial and non-financial records).
- The tax auditor exercising his due diligence and practical knowledge has to verify that the assessee has maintained such books of accounts and documents as may enable the Assessing Officer to compute the total income of the assessee in accordance with the provisions of the Act.
- Assessee whose accounts of the business or profession have been audited under any other law, the requirement for maintenance of books of account is contained in the relevant statutes.
- In the case of other assesseees, normal books of account to be maintained will be cash book/bank book, sales/purchase, journal or register and ledger.
- Assesseees engaged in trading/manufacturing activities should also maintain quantitative details of principal items of stores, raw materials and finished goods.

- In case of any discrepancy in maintenance of books of accounts, the tax auditor considering the materiality effect and practicality should give particulars in Form No. 3CD.
- In case of books of accounts maintained by computer system, the list of books of account so maintained on computer system is to be given. As per section 2(12A) of the Income-tax Act, 1961, “books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.
- From AY 2014-15, the address at which the books so maintained are kept is also required to be mentioned under clause (b). In case the books of accounts are kept at more than one location, then the auditor is required to furnish the details of address of each such location along with the detail of books of account maintained thereat.
- Section 4 of the Information Technology Act, 2000 states that “where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then notwithstanding, anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –
 - i. rendered or made available in an electronic form; and
 - ii. accessible so as to be usable for a subsequent reference

Issues

- Whether the tax auditor is required to mention the address where books of account were kept during the year or at the time of tax audit?
- Information in respect of location of book during the year has to be mentioned, however management representation may be taken if at the time of tax audit the books are made available for verification at place other than they are normally kept.
- Whether the tax auditor is required to visit all the premises wherever books of account are kept by the assessee? Even where the books of account are maintained in computerized system.
- No need to personally visit the premises where books are kept, however verification of place in existence must be obtained by the Auditor.

C. Sub clause (c) of Clause 11

E-utility format

(c) List of books of account and nature of relevant documents examined.

Same as 11(b) above

S.No.	Books examined
1	<input type="text"/>

- Under this clause, the list of books of account and nature of relevant documents examined are to be given. Books of account examined would constitute the books of original entry and the other books of account. The auditor should mention the nature of relevant documents examined also. Since the assessee is required to maintain proper evidence in the form of bills, vouchers, receipts, debit note, credit note, inventory register, various agreements, orders etc., the auditor should examine these relevant documents while conducting audit. Reference to such supporting evidence/ relevant documents is also required to be made under this clause such as property paper examined, valuation report of property & shares, TDS & Service Tax Returns.
- In **S.J Agarwal and Co. v. ITO [2008] 114 ITD 27(Pune) (SMC), the Hon'ble ITAT bench held that** for the purpose of section 44AB, it is not necessary that any books of account or any accounts maintained by the assessee should at first be such books of account as are required u/s 44AA. Whether the books of account as prescribed u/s 44AA are maintained or not, other books of account are subject to be audited u/s 44AB.

3.12. Clause - 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).

E-utility format

- 12 Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.)

S.No.	Section	Amount
1	Select	

- Under this clause, profits and gains assessable under specified provisions are to be reported separately. From the A.Y. 2014-2015, profits from shipping business and insurance business have also been included. The amount of profits and gains credited/debited to the profit and loss account should be indicated under this clause.

S. No.	Section / Chapter / Schedule	Business covered
1	44AD	Eligible business
2	44AE	Transport business
3	44B	Shipping business of a non-resident
4	44BB	Providing service or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils
5	44BBA	Operation of aircraft by non-resident
6	44BBB	Civil construction etc. in certain turnkey power project by non-residents
7	Chapter XII-G	Special provisions relating to Shipping Companies (Section 115V to 115VT)
8	First Schedule	Insurance Business
9	Any other relevant section	This refers to the sections not listed above under which income may be assessable on presumptive basis like section 44D and section 115A(1)(b) and will include any other section that may be enacted in future for presumptive taxation

- In case profit and loss does not include profits / income as specified under this clause, then no reporting requirement under this clause.
- While reporting under this clause, tax auditor may encounter with following circumstances:
 - Where Assessee A is running two businesses – Business A & Business B (Presumptive basis)

A maintains common set of regular books of accounts and such books of account, include the income of the business B. – In this situation the problem may arise about the apportionment of common expenditure, in order to arrive at the amount of profit / income, i.e., assessable on a presumptive basis. In such a situation, the tax auditor may make a fair and reasonable estimate of common expenditure on the basis of evidence in possession of the assessee or may ask the assessee to prepare such estimate which should be verified by tax auditor. It is also necessary to mention the basis of apportionment of common expenditure. 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.

A maintains separate sets of accounts for each such business A & B and opts for getting the accounts of both the businesses audited under section 44AB - As the separate set of accounts are maintained for respective businesses, it will have no problem for the tax auditor in ascertaining the amount of profit to be disclosed.

Where the assessee, having regular books of account for his business A, and only credits income from business B to the main profit & loss account.

In this situation the tax auditor will not be able to satisfy himself about the correctness of the net income from the presumptive income credited to the profit and loss account. And as such, the tax auditor should qualify his report expressing his inability to verify the said figure.

Where assessee is having mixed nature of business taxable on presumptive basis and under normal provisions of law - turnover of which does not exceed Rs. 10,00,000/-

The tax auditor should indicate in his report that audit report in Form 3CB and particulars in Form 3CD only relate to business taxable on presumptive basis

3.13. Clause 13 (a) to (d)

- (a) Method of accounting employed in the previous year.
- (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.

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

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

- (d) Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss.

A. Sub clause (a) of clause 13

E-utility format

13 (a) Method of accounting employed in the previous year.

Select

Cash system

Mercantile system

- Clause 13(a) to (c) apply to all assessees.
- Clause 13(d) applies only to assessees following mercantile system of accounting as the Accounting Standards notified under section 145 (AS-IT) apply only to assessees following mercantile system of accounting. – please refer Annexure VI for ACCOUNTING STANDARDS NOTIFIED UNDER SECTION 145(2) vide Notification No. 9949 [F. No. 132/7/95-TPL], dated 25-1-1996]
- Under sub clause (a) of clause 13 assessee to mention the method of accounting regularly followed by assessee. Section 145 of the Income Tax Act states the method of accounting to be followed by the assesese, which is reproduced as under:

“145. (1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time [accounting standards] to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) [or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee], the Assessing Officer may make an assessment in the manner provided in [section 144.](#)”

Points of consideration while reporting under this clause:

- In view of above, it is explained that u/s 145, the income chargeable under the head “PGBP” or “Income from other source” must be computed in accordance with either cash or mercantile system of accounting *regularly employed* by the assessee.
- The hybrid system of accounting (i.e. mixture of cash and mercantile) is not permitted.
- Section 128 of the Companies Act,2013 provides that every company is required to keep books of account on accrual basis. And, therefore, a company governed by the Companies Act, 2013 cannot follow cash system of accounting.
- Section 34(1) of the LLP Act, 2008 requires LLPs to follow either the accrual basis or the cash basis of accounting.

A. Sub-clause (b) of clause 13

E-utility format

<p>(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.</p>	<div style="border: 1px solid black; padding: 5px;"> <p>Select ▼</p> <p>Select</p> <p>YES</p> <p>NO</p> </div>
---	--

Under this clause, the details of change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year, is to be furnished. Furthermore, a change in an accounting policy will not amount to a change in the method of accounting and hence such change in the accounting policy need not be mentioned under sub-clause (b) e.g., change in method of valuation is a change in accounting policy and as such the same is not required to be reported. In order to be able to report under this clause, the tax auditor should ascertain whether there is any change in manner of accounting as compared to that of previous year. Further a written confirmation should be obtained to confirm the method of accounting followed by assessee.

B. Sub-clause (c) of clause 13**E-utility format**

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

S.No.	Particulars	Increase in profit	Decrease in profit
1	<input type="text"/>	<input type="text"/>	<input type="text"/>

Under this clause, the tax auditor has to report the effect upon profits whether incremental or decremental in the format given. The reporting under this clause is to be done in the manner or format specified by the e-filing utility in this context, which is given above.

c. Sub clause(d) of clause 13**E-utility format**

(d) Details of deviation, if any, in the method of accounting employed in the previous year from the accounting standards prescribed under section 145 and the effect thereof on the profit or loss.

S.No.	Particulars	Increase in profit	Decrease in profit
1	<input type="text"/>	<input type="text"/>	<input type="text"/>

- Under this clause, tax auditor has to report any deviation made from the AS-IT(I) and (II) notified under the Income Tax Act. In view of section 145(2) till date the Central Government has notified two Accounting Standards [CBDT C. No. 9949 dated July 25, 1996] i.e. Accounting Standard-I on Disclosure of Accounting Policies and Accounting Standard-II on Disclosure of "Prior Period and Extraordinary Items and changes in Accounting Policies. The tax auditor is to report the details of the deviations in the method of accounting in the previous year from the AS(IT) and the effect thereof on the profit or loss. As per AS (IT)-II, paragraph 10, according to which, any change in an accounting policy which has a material effect is required to be disclosed,

e.g., a change in the method of valuation of closing stock would amount to a change in an accounting policy and has to be stated in the financial statements. The tax auditor should ensure that in case the same is not stated in the financial statements, the fact is suitably stated under clause 13(d).

- Vide the Finance Act, 2014, section 145(2) amended as reference to 'Accounting Standards' is changed with Income Computation and Disclosure Standards and section 145(3) amended to reject the books of accounts for not regularly following the income computation and disclosure standards.

ISSUES / JUDICIAL PRONOUNCEMENTS

1. Method of Accounting / Book-keeping

1.1. *Distinction between mercantile system and cash system of Accounting*

Among Indian businessmen, as elsewhere, there are current two principal systems of book-keeping. There is, firstly, the cash system in which a record is maintained of actual receipt and actual disbursements, entries being posted when money or money's worth is actually received, collected or disbursed. There is, secondly, the mercantile system, in which entries are posted in the books of account on the date of the transaction, *i.e.*, on the date on which rights accrue or liabilities are incurred, irrespective of the date of payment. For example, when goods are sold on credit, a receipt entry is posted as of the date of sale, although no cash is received immediately in payment of such goods; and a debit entry is similarly posted when a liability is incurred although payment on account of such liability is not made at the time. . . Whereas under the cash system no account of what are called the outstandings of the business either at the commencement or at the close of the year is taken, according to the mercantile method actual cash receipts during the year and the actual cash outlays during the year are treated in the same way as under the cash system, but to the balance thus arising, there is added the amount of the outstandings not collected at the end of the year and from this is deducted the liabilities incurred or accrued but not discharged at the end of the year. . . Again where the cash system is adopted, there is no question of bad debts or outstanding at all, in the case of mercantile system against the book profits, some of the bad debts may have to be set off when they are found to be irrecoverable. **CIT v. A. Krishnaswami Mudaliar [1964] 53 ITR 122 (SC)**

1.2 *Method of Accounting is relevant and not the entries*

The Income-tax Act permits an assessee to adopt either mercantile system or cash system and the system adopted would be the basis on which he should be assessed and not the actual entries. **CIT v. Chunilal V. Mehta & Sons (P) Ltd., [1971] 82 ITR 54 (SC)**

1.3 Taxability of an item depends on provisions of law and not on entry passed

The matter of taxability cannot be decided on the basis of the entries, which the assessee may choose to make in his accounts, but has to be decided in accordance with law. **CIT v. Mogul Line Ltd., [1962] 46 ITR 590 (Bom.)**

Also see, (expenditure are debited in accounts by an assessee maintaining mercantile system of accounting) **Kedarnath Jute Mfg. Co. Ltd. v. CIT, [1971] 82 ITR 363 (SC) 367;** (receipt credited to profit and loss account but which cannot be regarded as income in law) **CIT v. India Discount Co. Ltd., [1970] 75 ITR 191 (SC) 195**

1.4 Change in method of accounting

- 1.4.1 A change in the method of accounting need not have the approval of the Income-tax authorities when it is bona-fide or not restricted to a particular year. **CIT v. Carborandum Universal Ltd., [1984] 149 ITR 759 (Mad.)**
- 1.4.2 A *bona fide* change in the method of accounting employed by the assessee should be allowed by the Income-tax Officer. It is open to him to see that there is no loss to revenue. **CIT v. Bikaner Trading Company, [1989] 180 ITR 286 (Cal.)**
- 1.4.3 Upto the Assessment Year 1973-74, the assessee was following a hybrid system of accounting, *i.e.* mercantile system in all matters, except casual leave payment, which was on cash basis. In the A.Y. 1973-74, the assessee claimed deduction of the actual amount of payment made during the relevant accounting year and also the amount for the next accounting year for which a provision was made in the books. The High Court held that this was done because in the assessment year 1975-76 there was a loss and the expenditure could not have been set-off but had to be carried forward. In these circumstances the High Court held that the change in the method of accounting was not *bona fide* and rejected the same. **Hada Textile Industries Ltd. v. CIT, [1991] 187 ITR 371 (Cal.)**
- 1.4.4 There is no provision either under the Act or the Rules, which debars an assessee from switching over to one system of accounting from another. But frequent changes resorted to by unscrupulous assesses may be prejudicial to the revenue. Therefore, the courts have insisted on *bone fides* of assessee as a prerequisite for change from one system to another. In a case where the assessee makes an application for a change of system and the ITO allows the same, it is because he is satisfied with the *bona fides* of the assessee. But, mere non-making of an application or its non-acceptance could not result in drawing an inference that the switch over was not *bona fide*. It will

have to be decided on the facts and circumstances of each case. **Dr. Ishwari Prasad v. CIT, [1983] 143 ITR 789 (All.)**

1.4.5 The assessee had changed its method of valuing its closing stock from market price to cost price or market value, whichever was lower, on *bona fide* business considerations and to ward off a notional income in profit and loss on account. The change had been effected before the relevant previous year and the new method had been regularly followed. So change could be considered *bona fide* and for the purpose of business. **Triveni Engineering Works Ltd. v. CIT, [1987] 167 ITR 742 (All.)**

1.4.6 The assessee carried on business of concrete piling for buildings. Upto the assessment year 1965-66 it was crediting 100 per cent of the job value but from A.Y. 1966-67 it credited only 90 per cent deducting the retention money. The Assessing Officer rejected the change in the method of accounting and made an addition of Rs.20.77 lakhs.

The Tribunal held that under the contract agreement only 90 per cent of the contract value were to be paid immediately. The balance was to be paid only after certification by the architect/engineer that the work had been satisfactorily completed. In view of this, the right to receive the retention money did not accrue till verification of satisfactory execution of the contract and hence deleted the addition. The High Court confirmed the Tribunal's finding. **CIT v. Simplex Concrete Piles (India) Pvt. Ltd., [1989] 179 ITR 8 (Cal.)**

1.5 No maintained means Cash system is followed

In absence of proper books of account, it can safely be assumed that the assessee is following cash system of accounting. Income-tax is normally paid on money actually received as income after deducting the allowable deductions. **N.R. Sirker v. CIT, [1978] 111 ITR 281 (Gauh.)**

1.6 Where method of accounting cannot be ascertained, either to be Cash or Mercantile system, receipts shall be taxed on mercantile basis

The basic principle is that the interest received in land acquisition compensation award cases, is the compensation for the deprivation of the right of the use of the land. Therefore, where the assessee's method of accounting is found neither to be the cash system or the mercantile system, the receipt can be taxed on accrued basis and not on the cash basis. **CIT v. Sachindramohan Nandy & Others, [1984] 146 ITR 597 (Cal.)**

1.7 Mercantile System adopted by Non-Resident

Though in the case of residents, mercantile system regularly adopted by the assessee was obligatory on the income-tax authorities, there are certain doubts

whether the position would be available to a non-resident, who maintains his books of account outside India according to the mercantile system. Section 13 of the 1922 Act (corresponding to section 145 of the 1961 Act) would be relevant where the total profits of the assessee have to be computed, but the section would hardly be relevant where stray items of income are caught in taxable territories as received in taxable territories by a non-resident. **Keshav Mills Ltd. v. CIT, [1953] 23 ITR 230 (SC)**

1.8 Once the assessee adopts the mercantile system of accounting, there is no alternative for the ITO but to compute the assessee's income on that system.
CIT v. Vijay Laxmi Trading Co. Ltd., [1984] 147 ITR 372 (Raj.)

1.9 Method of Accounting - Year in which liability / expenditure deductible

1.9.1 The liability to pay in foreign currency had accrued when the books were imported. It did not come about as a result of devaluation; which took place after end of the previous year. However, the assessee was justified in determining its liability on the basis of the actual figure available particularly when the accounts for that year had not been finalised. Therefore, loss on account of devaluation was allowable as deduction, since it is well settled that subsequent events could be taken into account. **CIT v. U.B.S. Publishers & Distributors, [1984] 147 ITR 114 (All.)**

1.9.2 Section 145 of the Act provides that the income chargeable under the head "Profit and gains of business or profession" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee, and it nowhere, provides that if an assessee followed a particular system of accounting during any year, he cannot change the same for any subsequent year unilaterally. There may be a situation when some peculiar business transaction may not admit of one or the other form of accounting and in such a situation, the assessing authority should look at the substance of the situation and decide the matter in such a manner that neither the revenue is put to some unreasonable loss nor the assessee is subjected to any unreasonable hardship. **CIT v. Guranditta Mal Shanti Prakash Zira, [1987] 164 ITR 774 (Punj. & Har.)**

1.10 Rejection of Defective method of accounting

No evidence that the method of accounting employed by the assessee was defective and therefore rejection of method of accounting employed by the assessee was not justified. **CIT v. Sankarapandia Asari and Sons, 165 ITR 616 (Mad.)**

1.11 Money for expenses received by advocates/solicitors, to be credited only at the end of litigation

The assessee, a firm of solicitors and advocates, was maintaining separate bank account as required by the High Court rules in respect of money received from the clients towards the expenses. The assessee was adjusting final accounts with clients and was crediting fees as being realised only at the end of the litigation. Held that as this method of accounting has been accepted by the department for last 35 years, it is not open to the department now to say that the method does not disclose correct income. **Manilal Kher Ambalal & Co. v. A.G. Lulla ITO, [1989] 176 ITR 253 (Bom.)**

1.12 If mercantile system is followed, deduction of liability shall be allowed only when it accrues

When the assessee follows the mercantile system of accounting, he has to claim deduction on the basis of accrual of liability. The fact that the liability is under dispute or that it was quantified at a later date does not change the position. **CIT v. Aggrawal Rice and General Mills, [1989] 180 ITR 29 (P. & H.)**

1.13 Assessee to follow a single method of accounting

The same basis has to be adopted for accounting of receipts and payment of interest. The assessee cannot adopt the mercantile system for payment of interest by it and claim the benefit of the cash system in respect of interest receivable by it. **G. Padmanabha Chettiar and Sons v. CIT, [1990] 182 ITR 1 (Mad.)**

1.14 An assessee cannot be subject to assessment on two different methods

The assessee, a non-resident company entered into a contract for delivery, supervision, assembling and putting into operation its blast furnace at the Rourkela Steel Plant. For the first two years the assessee made up its accounts under the 'complete contract' basis and computed its total income on that basis. This computation was accepted by the Income-tax Appellate Tribunal. For the subsequent two years, the Income-tax Officer adopted a net profit rate of 10 per cent. It was held that the Assessing Officer had not pointed out any defects in the accounts maintained by the assessee. It was also held that though the principles of res judicata were not applicable to assessment proceedings, the assessee could not be subjected to assessment on two different methods when the contract was one and part of the contractual receipts were received in different years. **CIT v. Guttoffnungashutto Strekrado, [1992] 197 ITR 66 (Ori.)**

1.15 Assessee has discretion to follow any method of accounting

'A' advancing loans, followed cash system and appropriated loan repayment towards capital - A.O. however appropriated the amount towards interest and balance towards capital - Tribunal struck down the addition as it was 'A's option to allocate repayment. **CIT v. Modest Enterprises, [1994] 207 ITR 618 (Cal.)**

1.16 Treatment in mercantile basis of Excise duty refunded

Excise duty collected from customers and paid to Govt., which as a result of HC decision, was refunded. Since assessee maintained accounts on mercantile system, on getting excise duty refund and crediting same in accounts of respective customers, it had acknowledged a liability and, consequently, it was entitled to deduction of that amount. **Navjivan Udyog Mandir (P.) Ltd. v. CIT, [1994] 207 ITR 40 (Guj.)**

1.17 Hybrid System of Accounting

1.17.1 An assessee can employ one method of accounting for one class of business / customers / transactions and a different method for another class

1.17.1.1 Bank was following hybrid system of accounting and crediting interest on sticky loans on actual receipt. Interest on sticky loans was not debited to such account but only a memorandum record of such due interest was kept. Hence interest on such loans was not includible on accrual basis. Proviso to Section 145 (1) was held not applicable. **CIT v. Citibank N.A., [1994] 208 ITR 930 (Bom.)**

1.17.1.2 The option regarding method of accounting to be followed lies with the assessee. The assessee is free to follow different methods for different sources. **CIT v. Smt. Vimla D Sonwane and others, [1995] 212 ITR 489 (Bom.)**

1.18. Interest accrued on doubtful debts carried in Suspense Account cannot be taxed Overruling the earlier decision in the case of Kerala Financial Corporation v. CIT, [1994] 210 ITR 129 (SC), it was held that interest accrued on doubtful debts carried to suspense account is in accordance with the accounting practice and as per the board's circular which is binding. The said interest cannot be brought to tax. **UCO Bank v. CIT, [1997] 237 ITR 889 (SC)**

1.19 Advocates can receive cash in advance and issue a bill after client's work is done Advocate's firm following cash system and keeping client's money separately and adjusting towards expenses and fees. Since the Tribunal found that the practice was followed for a number of years and the system

employed was proper and not used as design to reduce income, no question of law arose. ***CIT v. D.C. Gandhi Associates, [1994] 210 ITR 929 (Guj.)***

1.20 Day-to-day production records shall be maintained

Rejection of accounts upheld as no records of day-to-day manufacture of *bidis* kept. ***Bastiram Narayandas Maheshri v. CIT, [1994] 210 ITR 438 (Bom.)***

1.21 Under law, unless an award is made a rule of the court, it cannot be enforced

Interest addition on the basis of arbitration award granting interest is not justifiable unless the award is made a rule of Court and decree is passed. ***CIT v. Associated Soap Stone Distributing Co. Pvt. Ltd., [1994] 210 ITR 661 (Raj.)***

1.22 Deduction of contingent liability under mercantile method of accounting

Assessee following mercantile system can claim deduction in respect of the liability even before its actual quantification or even if it is disputed and can also claim deduction even if provision is not made in accounts. Since the decision in *CIT v. J.K. Synthetics Ltd. [1983] 143 ITR 771 (All.)* covered the points sought to be raised by the CIT in the case, no question for reference arose. Accordingly, the application for reference was rejected. ***CIT v. Swarup Vegetable Productions, [1994] 210 ITR 716 (All.)***

1.23 Amount awarded as interest by the arbitrator is an *ex gratia* payment by way of compensation

Pre-award interest granted by arbitrators to contractor is taxable as incidental to business. ***CIT v. Builders Union, [1995] 211 ITR 993 (Orissa)***

1.24 "Could not determine the correct statement of profit and losses, because stock register was not maintained" is an incorrect statement

The fact that there is no stock register only cautions the Income-tax Officer against the falsity of the returns made by the assessee. He cannot say that merely because there is no stock register the account book must be false. ***Pandit Bros. v. CIT, [1954] 26 ITR 159 (Punj.)***

TRIBUNAL DECISIONS

1. Revised Return filed for change in method of accounting from mercantile to cash method. Held such change was not permissible. ***Pradeshia Industrial & Investment Corpn. Ltd. v. ITO, [1987] 22 ITD 306***
2. The assessee, a transport operator, was accounting his freight receipt on hybrid system *i.e.* accounting the income on cash basis for majority of customers and on mercantile basis for few customers. The method of accounting for freight receipt was changed to cash basis for all customers. Since the change was *bona fide* and regularly followed thereafter, the same was allowed. ***ITO v. Gemlines (P.) Ltd., [1986] 17 ITD 357 (Bang.)***

3. The assessee can make provision of a liability of an individual item in the year in which demand notice is received instead of year to which it relates. **ITO v. Poyilakkada Fisheries (P.) Ltd., [1985] 14 ITD 224 (Coch.)(SB)**
4. Mere low gross profit was not sufficient ground to reject the assessee's books of account under proviso to section 145. **Toco Engineering v. ITO, [1986] 18 ITD 267 (Hyd.)**
5. Assessee can change method of accounting only after adducing proper reasons and showing it to be *bona fide*. When reasons were not adduced regarding change in method of sales-tax set-off from accrual basis to cash basis, ITO was justified in assessing the amount on accrual basis. **Finolex Plastics (P.) Ltd. v. IAC, [1993] 47 ITD 333 (Pune)**
6. 10% retention money is not includible in income unless the warranty period was over as bank guarantee furnished with regard thereto was enforceable without reference to assessee. **Associated Cables (P.) Ltd. v. Dy. CIT, [1994] 48 ITD 141 (Bom.)(TM)**
7. Assessee, a civil contractor followed project completion method for accounting profits – held that the method cannot be rejected as it was being regularly followed and was a recognized method. **Shapoorji Pallonji & Co. (Rajkot) (P.) Ltd. v. ITO, [1994] 49 ITD 479 (Bom.)**
8. In the case of construction companies, recognizing of profits on completion of project is a well-recognized method. **Malad Shopping Centre (P.) Ltd. v. ITO, [1983] 17 TTJ 125 (Bom.)** Also see, *D.K. Enterprises v. ITO, [1960] 39 ITD 394 (Bom.)*. However, contrary view has been taken in *Bhagya Nagar Construction (P.) Ltd. v. ITO, [1993] 46 ITD 236 (Hyd.)*.
9. Where assessee, a construction contractor, had followed percentage completion method of accounting, a recognised method in this type of business, percentage of receipt deducted for unforeseeable factors could not be disallowed as provision for contingencies. **A Construction Co. Pvt. Ltd. v. ITO, [1987] 28 TTJ 1 (Ahd.)**
10. As per the scheme of Section 44AB of the Income Tax Act, 1961, the assessee is not required to maintain the regular books of account and therefore Section 145 is not applicable to the same. As *per* Section 44BB a sum equal to 10 percent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be profits and gains of such business and sub-section (2) deals with the amounts paid or payable, whether in or out of India and also the amounts received or deemed to be received in India. This in a way refers to amount received on accrual basis. **Dy. CIT v. Geoservices Eastern Inc., [1995] 55 ITD 227 (Bom.)**
11. In case of a limited company, the change in the method of accounting was brought about without proper resolution from the Board and such resolution has to be passed within the accounting year. **Growth Leasing & Finance Ltd. v. ITO, [1997] 59 TTJ 772 (Ahd.)**

3.14. Clause 14

- (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, please furnish:

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

A. Sub clause (a) of clause 14

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

- Under this sub-clause, the method of valuation of closing stock is to be furnished. AS-2 “Valuation of Inventories” issued by the ICAI requires disclosure of significant accounting policies, likewise the method of valuation may be again described in Form No.3CD.
- The tax auditor should determine the procedure of identifying the inventory of closing stock at the end of the year and the basis of valuation thereof. The method of stock valuation must be consistently followed from year to year and the method followed must be brought out clearly.

B. Sub clause (b) of clause 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:

S.No.	Particulars	Increase in profit	Decrease in profit
1	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>

Add
Delete

- Under this clause the details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss are to be stated.
- Section 145A, reproduced below, clearly outlines the method of valuation to be employed by assessee :

“145A. Notwithstanding anything to the contrary contained in section 145, –

- (a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head “Profits and gains of business or profession” shall be –

- (i) in accordance with the method of accounting regularly employed by the assessee; and
- (ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation. – For the purpose of this section*, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;

- (b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.]”
- As per this section, it is not necessary to change the method of valuation of purchase, sale and inventory regularly employed in the books of account. The adjustments provided in this section can be made while computing the income for the purpose of preparing the return of income. These adjustments are as follows:
 - (a) Any tax, duty, cess or fee actually paid or incurred on inputs should be added to the cost of inputs (raw materials, stores etc.); if not already added in the books of account.
 - (b) Any tax, duty, cess or fee actually paid or incurred on sale of goods should be added to the sales, if not already added in the books of account.
 - (c) Any tax, duty, cess or fee actually paid or incurred on the inventory (finished goods, work-in-progress, raw materials etc.) should be added to the inventories, if not already added while valuing the inventory in the accounts.

Issues which may arise in view of above include:

- Adjustment of excise duty: The liability for excise duty arises when the manufacture of goods is complete, a provision for unpaid liability of Excise duty on stock lying in the factory or bonded warehouse, need to be created. [Guidance Notes on Accounting treatment for Excise duty (Revised 2000)]. When closing stock is valued at Market Price (being lower than cost) there is no need to add Excise duty
- Adjustment of sales tax: In valuation of closing stock - no adjustment of Sales tax (as liability of sales tax arises at the time of sale).

- Adjustment of VAT: In case VAT is included in the purchase value, the same be adjusted in closing stock to neutralize the effect i.e the inventory of inputs is to be valued at net of the input tax which is refundable. If the inputs are obtained from the dealers who are exempt from the VAT, the actual cost of purchase should be considered as a part of cost of inventory.
- Section 145A is tax neutral as long as the assessee makes payment of the duty in accordance with the provisions of section 43B on closing stock up to the date of Audit.

Other consideration while reporting under this clause

- The input State-Level Value Added Tax (VAT) paid on purchases cannot be included in the cost of purchases where the tax paid on inputs is available for set-off against the tax payable on sales or is refundable.
- The input State-Level VAT, to the extent it is refundable, will not form part of the cost of the inventory.
- A dealer may purchase certain common inputs which can be used for manufacturing goods which are both declared tax free as well as taxable goods. In such a case, the dealer should estimate inputs expected to be used for making tax free goods and for making taxable goods. The dealer should recognize VAT credit only in respect of those inputs which are used for making taxable goods and no VAT credit should be recognized in respect of inputs used for making tax free goods.
- VAT is collected from the customers on behalf of the VAT authorities, therefore it is neither income nor its payment involves expense. Therefore, it should be credited to an appropriate account, say, 'VAT Payable Account'. The amount of VAT payable adjusted against the VAT Credit Receivable (Capital Goods) Account and amounts paid in cash will be debited to this account. The credit balance in VAT Payable Account at the year-end should be shown on the 'Liabilities' side of the balance sheet under the head 'Current Liabilities'.

3.15. Clause 15 (a) to (d)

Give the following particulars of the capital asset converted into stock-in-trade:-

- (a) Description of capital asset;
- (b) Date of acquisition;
- (c) Cost of acquisition;
- (d) Amount at which the asset is converted into stock-in-trade.

E-utility format

15 Give the following particulars of the capital asset converted into stock-in-trade

S.No.	(a) Description of capital asset	(b) Date of acquisition	(c) Cost of acquisition	(d) Amount at which the asset is converted into stock-in trade
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Under this clause, information about capital asset converted in to stock-in-trade has to be furnished. Below mentioned considerations are required to be kept in view while furnishing information sought:

- That the conversion by the owner of an capital asset into or treatment of such asset as stock-in-trade of a business carried on by him is treated as a 'transfer' within the meaning of section 2(47).
- By virtue of section 45(2), such a conversion or treatment of capital asset into stock-in-trade will be deemed to be a transfer of the previous year in which the asset is so converted or treated as stock-in-trade. As such in the case of long-term capital asset, indexation of cost of acquisition and cost of improvement, if any, will be with respect to the previous year in which such conversion took place.
- However, the same shall be taxable in the year in which the stock shall be sold / transferred.
- The fair market value (FMV) of the asset, as on the date of such conversion or treatment as stock-in trade, shall be deemed to be the full value of the consideration of the asset. The excess of the sale price over the fair market value as on the date of conversion would be treated as business income and taxed under the head 'profits and gains of business or profession'.
- The particulars to be stated under new clause 15 should be furnished with respect to the previous year in which the asset has been converted into stock-in-trade.
 - Under clause (a) description of the capital asset is required to be mentioned for example shares, security, land, building, plant, machinery etc.
 - Under Clause (b) the date of acquisition is to be reported.
 - Under clause (c) the cost of acquisition is required to be reported. Here, the cost of acquisition as per the books of account is to be mentioned. In the case of depreciable assets, the carrying cost appearing in the books will be the written down value. But the value to be reported will be the

original cost of acquisition. In case of assets acquired before 01.04.1981, option of adopting FMV is available to assessee.

- Under clause (d) the amount recorded in the books of account at which the asset is converted into stock-in-trade should be stated. It is not necessary that such an amount should be the fair market value as on the date of conversion or treatment as stock-in-trade.
- Accounting Standards to be followed:
 - **AS-2 for valuation of stock-in-trade** - The valuation of stock-in-trade is to be examined with reference to AS-2 - Valuation of Inventories. Any non-compliance with AS-2 is to be suitably qualified in the main audit report.
 - **AS-10 for valuation of fixed assets.** - While verifying the cost of acquisition of the fixed asset, the auditor should bear in mind the principles enunciated in Accounting Standard (AS) 10, Accounting for Fixed Assets. The cost of a fixed asset comprises of its purchase price and any attributable cost of bringing the asset to its working condition for its intended use.

3.16. Clause No. 16 (a) to (e)

Amounts not credited to the profit and loss account, being,-

- (a) the items falling within the scope of section 28;
- (b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;
- (c) escalation claims accepted during the previous year;
- (d) any other item of income;
- (e) capital receipt, if any.

A. Sub-clause (a) of Clause No. 16

E-utility format

16 Amounts not credited to the profit and loss account, being, -

(a) The items falling within in the scope of section 28;

S.No.	Description	Amount
1	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

- Under this clause, various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated. The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause.
- Under sub-clause (a) of this clause, **the items falling within the scope of section 28 but not credited to the profit and loss account, are to be reported, are as under:**
 - (i) the profits and gains of any business or profession
 - (ii) any compensation received on termination of employment, agency etc.
 - (iii) income derived by a trade, professional or similar association from specific services performed for its members
 - (a) profits on sale of a licence granted under the Imports Control Order, 1955
 - (b) cash assistance against exports
 - (c) customs duty or excise repaid or repayable as drawback against exports
 - (d) profit on the transfer of DEPB Scheme being the Duty Remission Scheme,
 - (e) profit on the transfer of DFRC being the Duty Remission Scheme
 - (iv) the value of any benefit or perquisite arising from business or the exercise of a profession
 - (v) any interest, salary, bonus, commission or remuneration, by whatever name called, received by a partner of the firm from such firm
 - (va) any sum, whether received for (a) not carrying out any activity in relation to any business (b) not sharing any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services
 - (vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy
 - (vii) any sum received on account of any capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred if the whole of the expenditure on such capital assets has been allowed under Section 35AD.

**Note - As per Explanation 2 to clause (vii) of the above Section 28, where speculative transactions constitute a business, such speculation business is deemed to be distinct and separate business from any other business.*

C. Sub-clause (b) of Clause No. 16

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(b) The proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refund are admitted as due by the authorities concerned;

S.No.	Description	Amount
1	Select	

- Select
- Proforma Credits
- Drawbacks
- Refund of Duty of Customs
- Refund of Duty of Excise
- Refund of Service Tax
- Refund of Sales Tax
- Refund of Value Added Tax
- Others

Points for consideration.

- Under sub-clause (b) of this clause, the information regarding below mentioned credits if admitted as due by the concerned authorities but not credited to the profit and loss account are to be reported.
 - (i) Proforma credits
 - (ii) Drawback
 - (iii) Refund of duty of customs
 - (iv) Refund of excise duty
 - (v) Refund of service tax
 - (vi) Refund of sales tax or value added tax
- In order to report under this clause, the tax auditor may obtain management representation and may verify all correspondence between assessee & designated authority to ascertain admissibility of claim.
- Information regarding claim admitted during the relevant period is to be furnished. Credits/claims which have been admitted as due after the relevant previous year need not be reported here.
- In case of cash system of accounting, the claim should also be received during the year, since the admittance of claims during the relevant previous year without actual receipt has no significance in cases where cash method of accounting is followed.

- Where an amount required to be reported have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such a fact should be clearly stated in the tax audit report.
- Information in this clause is corresponding to information sought under clause 41 (partially) and as such the information reported under clause 16 and 41 should be in consensus.

D. Sub-clause (c) of Clause No. 16

E-utility format

(c) Escalation claims accepted during the previous year;

S.No.	Description	Amount
1	<input type="text"/>	<input type="text"/>

Under sub-clause (c), the escalation claims accepted during the previous year but not credited to the profit and loss account are to be stated. The escalation claims accepted during the year would normally mean “accepted during the relevant previous year”. In case of cash basis of accounting, escalation claim accepted should also be received. If otherwise, the fact should be clearly brought out since acceptance of claims without actual receipt will have no significance. Mere claims under negotiations cannot constitute accepted claims. **CIT v. Hindustan Housing and Land Development Trust Ltd. [1986] 161 ITR 524 (SC)**

E. Sub-clause (d) of Clause No. 16

E-utility format

(d) any other item of income;

S.No.	Description	Amount
1	<input type="text"/>	<input type="text"/>

- Under sub-clause (d), the tax auditor is to report any other items which he 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. While giving information under this clause, AS-9 - Revenue Recognition should be considered.

F. Sub-clause (e) of Clause No. 16

E- utility Format

(e) Capital receipt, if any.

S.No.	Description	Amount
1	<input type="text"/>	<input type="text"/>

- Under sub-clause (e), capital receipt, if any, which has not been credited to the profit and loss account, has to be stated. The tax auditor may record various judicial pronouncements on which he has relied in his working papers.
- The following is an illustrative list of capital receipts which, if not credited to the profit and loss account, are to be stated under this sub-clause.
 - a. Detail of subsidy, grant or compensation of capital nature if any.
 - b. Details of gift received.
 - c. Details of amount forfeited of partly paid equity shares / preference share / debentures.
 - d. Amount of capital nature received or receivable on transfer of technology, knowhow, patent.
 - e. Compensation for surrendering certain rights.
 - f. Profit on sale of fixed assets/ investments to the extent not credited to the profit and loss account.

** Note: Loans and borrowings are not required to be stated under this sub-clause. Further, income (e.g. income referred to in section 41(1) or section 43CA) not credited to profit and loss account, the particulars of such income along with the amount is required to be reported under this clause.*

3.17. Clause 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, please furnish:

<i>Details of property</i>	<i>Consideration received or accrued</i>	<i>Value adopted or assessed or assessable</i>
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Section 43CA- Special provision for full value of consideration for transfer of assets other than capital assets in certain cases [Introduced by the Finance Act, 2013, w.e.f. 1-4-2014]

Section 50C- Special provision for full value of consideration in certain cases. [for Capital assets]

E-utility format

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, please furnish:

S.No.	Details of property	Address of Property				Consideration received or accrued	Value adopted or assessed or assessable
		Address Line 1	Address Line 2	City or Town or District	State		
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Points for Consideration

- Obtain a list of all properties transferred during the previous year and verify the same from the financial statement.
- Under the heading “consideration received or accrued”, the tax auditor should furnish the amount of consideration received or accrued, during the relevant previous year in respect of land/building transferred during the year as disclosed in the books of account.
- For the value adopted or assessed or assessable, if the property is registered, obtain a copy of the registered sale deed. If the property is not registered, verify relevant documents from relevant authorities to satisfy the compliance of section 43CA/ section 50C of the Act. Where the tax auditor is unable to obtain relevant documents, he may state the same suitably through an observation in the report under form 3CA/CB.
- Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the full value of consideration as per S. 43CA(1) may be taken as the stamp duty value on the date of the agreement, provided the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

3.18. Clause No. 18 (a) to (f)

Particulars of depreciation allowable as per the Income-tax Act, 1961 in respect of each asset or block of assets, as the case may be, in the following form:-

- (a) Description of asset/block of assets.
- (b) Rate of depreciation.
- (c) Actual cost or written down value, as the case may be.
- (d) 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.
- (e) Depreciation allowable.
- (f) Written down value at the end of the year.

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18. Particulars of depreciation allowable as per the Income Tax Act, 1961, in respect of each asset or block of assets, as the case may be, in the following form:-

Sl.No.	Description of the Block of Assets/Class of Assets	Rate of Depreciation	Opening WDV / Actual(A)	Additions				Total Value of Purchases (B) (1+2+3+4)	Details	Deductions (C)	Depreciation Allowable (D)	Written Down Value at the end of the year (A+B-C-D)
				Purchase Value (1)	Adjustments on Account of		Subsidy/Grant (4)					
					CENVAT (2)	Change in Rate of Exchange (3)						
1	Select							Import CSV Fill Data View Data				

[Additions CSV Template](#) [Deductions CSV Template](#) [Help](#)

- Revised e-utility also provides facility to import CSV template to fill the details of additions and deductions.

A. Sub-clauses (a) to (c) of Clause No. 18

- Under sub-clauses (a) and (b), information in respect of description of existing assets, block of assets under which the concerned asset is classifiable and the rate of depreciation are to be stated.
 - The tax auditor should mention the fact that he has relied upon the income tax records of the assessee in respect of the information regarding the classification of assets and written down value of the existing assets. (in case the tax auditor is appointed for the first time, than this fact become most important)
 - In case of dispute between Assessee and/or Department and the Tax Auditor regarding classification of assets, rate of depreciation etc. in current year or any earlier year, a suitable disclosure is required.
- For the purpose of sub-clause (c), the opening written down value of the block of assets could be taken from the relevant income-tax records. Depreciation is allowed on “Actual Cost”- term defined u/s 43(1) of Income Tax Act.
- In case of large no. of small value capital assets, it would be convenient to capitalize the same on one date in books of accounts.

B. Sub-clause (d) of Clause No. 18

- Under sub-clause (d) of clause 18, the additions/deductions during the year have to be reported, with dates.
 - The details of each asset or block of asset added during the year or disposed of during the year along with the dates of acquisition/disposal.
 - Where any addition was made, the date on which the asset was put to use is to be reported. The tax auditor may verify production records/installation details/excise records/service tax records/records relating to power connection for operating the machine in order to know the effective date from which the asset is put to use; or otherwise he could get a representation letter from the management.
 - In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.
- Under clause 18(d)(i), the amount of CENVAT credit claimed and allowed on capital goods and deducted from the cost of the asset has to be mentioned. The tax auditor should also verify that the amount of CENVAT credit deducted from cost of capital goods tallies with the credit availed on this account.
- Under clause 18(d)(ii), the second adjustment relates to the change in the rate of exchange of currency. Section 43A deals with the adjustment on account of change in the rate of exchange of currency.

- Under clause 18(d)(iii), adjustment relates to the subsidy or grant or reimbursement, by whatever name called. Explanation 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Subsidy coming within the scope of Explanation 10 to section 43(1) in respect of asset acquired in any earlier year(s) and received during the year has to be deducted from the written down value of such assets in the year of receipt.
- Issues while feeding information in e-utility:
 - Depreciation to be calculated and fed manually.
 - In case any data skipped from consideration while feeding data under Addition/ Deductions fields, entire data has to be filled again every time.
 - Automatic WDV balance generation.

C. Sub-clause (e) and (f) of Clause No. 18

- Under sub-clause (e), details of depreciation allowable is to be shown, the Finance Act, 2001 had inserted Explanation 5 to sub-section (1) of section 32, by virtue of which the claim for depreciation is now mandatory and the written down value of each asset every year has to be reduced by the amount of depreciation allowable under the Income-tax Rules. Section 32(1)(iia) effective from the financial year 2002-03, provide for additional depreciation to a concern engaged in the business of manufacturing or production of an article or thing or installation of a new machinery.
- In case the full deduction of the cost of capital goods is allowed (e.g. expenditure on Scientific Research u/s. 35), the auditor should verify that the cost of such an asset is not included in the block of assets for the purpose of depreciation.

3.19. Clause 19

a) Amounts admissible under sections:

<i>Section</i>	<i>Amount debited to profit and loss account</i>	<i>Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfills the conditions, if any specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.</i>

32AC		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(ia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

E-utility format

19 Amounts admissible under sections:

S.No.	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.
1	Select		
	Select 32AC 33AB 33ABA 35(1)(i) 35(1)(ii) 35(1)(ia) 35(1)(iii) 35(1)(iv) 35(2AA) 35(2AB)	35ABB 35AC 35AD 35CCA 35CCB 35CCC 35CCD 35D 35DD 35DDA 35E	

Explanation

- Above mentioned are the sections under which assessee can claim deduction subject to terms and conditions, if any. Herein, the tax auditor needs to report

both amount debited to profit and loss account and amount admissible under the relevant section.

- In case assessee has obtained audit report to avail deduction under above mentioned section(s), reference to that should be made while furnishing information under this clause.
- In case amount is not debited but admissible under the relevant section, detail of amount admissible should be furnished.
- In case assessee is eligible for deduction under more than one section or sub-section, information under this clause should be furnished separately in respect of each such section or sub-section.
- The eligibility of the expenditure/payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority, notification issued by the Central Government, any other guideline, circular etc. issued in this behalf should also be verified (Please refer Rule 6 of the Income-tax Rules, 1962).
- If the tax auditor relies on judicial pronouncements, the fact should be stated in Form No. 3CA/ 3CB as the case may be.

3.20 Clause No. 20 (a) & (b)

- 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)].
- Details of contributions received from employees for various funds as referred to in section 36(1)(va):

Serial	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

A. Sub-clause (a) to clause 20

E-utility format

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)]

S.No.	Description	Amount
1	<input type="text"/>	<input type="text"/>

Under this clause, information about 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, is to be furnished. Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered provided the same should not have been payable to him as profit or dividend. In other words, if bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction. [*Shahzada Nand & Sons v. CIT [1977]* 108 ITR 358 (SC)].

B. Sub-clause (b) to clause 20

E-utility format

(b) Details of contributions received from employees for various funds as referred to in section 36(1)(va):

S.No.	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
1	Select				

+ Add X Delete

Select

Provident Fund

Superannuation Fund

Gratuity Fund

Any Fund set up under the provisions of ESI Act, 1948

Any other welfare fund

**Gratuity Fund is not specifically mentioned in Section 2(24)(x)*

Points for Consideration

- Under this sub-clause the tax auditor is to furnish information in respect of **contributions received from employees for various funds and remittance thereof** to the concerned authorities.
- Section 36(i)(va) of the Act permits deduction of any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) are applicable, if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date.
- 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 ESI Fund or any other Fund for employees’ welfare (hereafter referred to as “Welfare Fund”).
- Vide explanation provided in section 36(1)(va), “due date” means the date by which the assessee is required as an employer to credit an employee’s contribution to the employee’s account in the relevant fund under any Act, rule, order or notification issued there under or under any standing order,

award, contract of service or otherwise, i.e., the date by which it is required to be credited as per the provisions of the applicable law etc.

- Employees' P.F. manual provides for 5 days of grace period for payment of contribution, which can be taken into consideration for determining the due date of payment.
- In order to furnish information under this clause, the tax auditor should obtain a list of various contributions recovered from the employees. The due dates of payments and the actual dates of onward payment to the concerned authorities should be verified with the records available.
- Under this clause, details regarding the nature of fund, details of the amount deducted, due date for payment, actual amount paid and actual date of payment to the concerned authorities in respect of provident fund, ESI fund or other staff welfare fund are to be stated.
- In Commissioner of Income-tax v. Alom Extrusions Ltd [2009] 319 ITR 306 (SC) the apex Court has held that if the employees contribution towards PF, EPF, etc are paid by due date of filing of return by the assessee employer, then the same will be an allowable expenditure and section 43B will not be applicable in such circumstances. In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be.

3.21. Clause No. 21 (a) to (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.

<i>Nature</i>	<i>Serial number</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
Capital Expenditure			
Personal Expenditure			
Advertisement Expenditure in any souvenir broacher, tract, pamphlet 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 <u>not covered above</u>			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

- (b) Amounts inadmissible under section 40(a):-**
- (i) as payment to non-resident referred to in sub-clause (i)**
 - (A) Details of payment on which tax is not deducted:**
 - (I) date of payment**
 - (II) amount of payment**
 - (III) nature of payment**
 - (IV) name and address of the 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)**
 - (I) date of payment**
 - (II) amount of payment**
 - (III) nature of payment**
 - (IV) name and address of the payee**
 - (V) amount of tax deducted**
 - (ii) as payment referred to in sub-clause (ia)**
 - (A) Details of payment on which tax is not deducted:**
 - (I) Date of payment**
 - (II) Amount of payment**
 - (III) Nature of payment**
 - (IV) Name and address of the payee**
 - (B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.**
 - (I) Date of payment**
 - (II) Amount of payment**
 - (III) Nature of payment**
 - (IV) Name and address of the payee**
 - (V) Amount of tax deducted**
 - (VI) Amount out of (V) deposited, if any**
 - (iii) Under sub-clause (ic) [wherever applicable]**
 - (iv) Under sub-clause (ia)**

- (v) Under sub-clause (iib)
- (vi) Under sub-clause (iii)
 - (A) Date of payment
 - (B) Amount of payment
 - (C) Name and address of the payee
- (vii) Under sub-clause (iv)
- (viii) Under sub-clause (v)
- (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:*

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

(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);*

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

- (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)

A. Sub-clause (a) of clause 21
E-utility format

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

Capital expenditure

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Personal expenditure

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Expenditure incurred at clubs being entrance fees and subscriptions

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Expenditure incurred at clubs being cost for club services and facilities used.

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Expenditure by way of penalty or fine for violation of any law for the time being force

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Expenditure by way of any other penalty or fine not covered above

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Expenditure incurred for any purpose which is an offence or which is prohibited by law

S.No.	Particulars	Amount
1		
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

Points for Consideration

- This sub-clause requires the tax auditor to state the amount of expenditure incurred by the assessee in respect of various items listed therein.
- Whether the tax auditor should specify each and every transaction? *The format as specified in the notification includes Serial number, particulars, amount.*

I. Issues about Expenditure - Capital in nature

- Cost of repairs & current repairs to building – not capital expenditure.
- Current repairs to machinery – Plant & Furniture – not capital expenditure. [Explanation to Section 30 and 31]
- Separately indicate capital expenses allowed as deduction in computation of total income under the Act.
- Tests which, however, are generally applied to determine whether a particular item of expenditure is of capital nature are enumerated as under:
 - (i) Whether the expenses incurred is of nature that brings into existence an asset or advantage of enduring benefit.
 - (ii) Whether the expense is referable to fixed capital or fixed assets in contrast to circulating capital or current assets.
 - (iii) Whether expense relates to the basic framework of the assessee's business.
 - (iv) Whether it is an expenditure to acquire an intangible asset.

II. Issues about Expenditure - personal in nature

- **“Personal”** is confined to and related with assessee only.
- *Company cannot have personal expenses because it is an artificial entity, which does not have personal needs and thus use of vehicles for directors cannot be treated as personal use by the company. [Sayaji Iron and Engg. Co. v. CIT [2002] 253 ITR 749 (Guj.)]*

III. Issues about Advertisement Expenditure

- Earlier the expenses u/s 37(2B) were only required to be reported; whereas now the tax auditor needs to report all the expenses incurred on advertisement irrespective of the status of assessee.
“Sec. 37(2B)- Notwithstanding anything contained in sub-sec. (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.”
- Donation paid directly to political party, expense on advertisement in newspaper not to be reported

IV. Issues about Expenditure by way of penalty or fine for violation of any law

- Expenditure by way of penalty or fine for violation of any law is not admissible as expenditure.
- Infraction of law even if not deliberate may discredit the claim for deduction.
- **Allowance of legal expenses** depends on nature and purpose of legal proceeding in relation to business whose profits are under computation. The same are not affected by final outcome of the proceeding. [*Vivek P. Talwar vs Asst. CIT [2010] 8 Taxmann.com 268 (Mum.)*]. Also see *CIT v. Hirjee [1953] 23 ITR 427 (SC)*
- In case of illegal business, fine or penalty imposed thereon is not deductible [*Explanation to Sec. 37(1)*].
- It was held that where the assessee is required to pay amount comprising both the element of compensation and penalty. Only the amount of compensation is deductible as business expense. [*Malura Vanaspati & Chemical Co Vs CIT (1997) 225 ITR 383 (SC)*]

B. Sub-clause (b) of clause 21

Under this clause, details of amounts inadmissible in view of Sections 40(a)(i) to (v) need to be furnished. Sub-clauses (i) to (v) of clause (a) to Section 40 are as under:

(i) Section 40(a)(i).....

E- utility format

(b) Amounts inadmissible under section 40(a):-

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

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

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									
<input type="button" value="Import CSV"/> <input type="button" value="Fill Data"/> <input type="button" value="Clear Data"/> CSV Template Help									

(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)

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of tax deducted
1										
<input type="button" value="Import CSV"/> <input type="button" value="Fill Data"/> <input type="button" value="Clear Data"/> CSV Template Help										

* in e-filing utility PAN of the payee is also to be furnished, if available.

** revised e-utility also provides facility to import CSV template to fill the details in Clause 21(b) along with CSV template with specified format.

Provisions of Section 40(a)(i)

Any **interest** (not being interest on a loan issued for public subscription before 01-04-1938), **royalty, fees for technical services** or **other sum** chargeable under this Act, which is **payable**, –

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B 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 200(1).

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed u/s 200(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(ii) Section 40(a)(ia)

E-utility format

(ii) as payment referred to in sub-clause (ia)

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

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									
<input type="button" value="Import CSV"/> <input type="button" value="Fill Data"/> <input type="button" value="Clear Data"/> CSV Template Help									

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub- section (1) of section 139.

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payer	PAN of the Payer, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount out of (VI) deposited, if any
1										
<input type="button" value="Import CSV"/> <input type="button" value="Fill Data"/> <input type="button" value="Clear Data"/> CSV Template Help										

*in e-filing utility PAN of the payee is also to be furnished, if available. _

** Revised e-utility also provides facility to import CSV template to fill the details in Clause 21(b) along with CSV template with specified format.

Provisions of Section 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 sub-contractor, being resident**, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in Section 139(1)

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under first proviso to Sec. 201(1), then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.

Amendment by the Finance Act, 2014

The disallowance u/s 40(a)(ia) is restricted to only 30% of the amount in respect of which either TDS has not been deducted or having been deducted has not been deposited.

The earlier definition of the specified payments have been enlarged to include **ALL PAYMENTS** stated under Chapter XVII-B of the Act, including Salary, Cross Word puzzles prizes, etc. which have been claimed as expenditure. [**w.e.f. 01.04.2015**]

(iii) **Section 40(a)(ic)**- any sum paid on account of **fringe benefit tax** under Chapter XIIIH.

(iv) **Section 40(a)(iia)**- any sum paid on account of **wealth-tax**.

(v) **Section 40(a)(iib)**-

Any amount –

(A) **paid** by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from,

a State Government undertaking by the State Government.

Inserted by the Finance Act, 2013, w.e.f. 1-4-2014

(vi) Section 40(a)(iii)- Any payment which is chargeable under the head “Salaries”, if it is payable –

- (A) outside India; or
- (B) to a non-resident,

and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B

(vii) Section 40(a)(iv)- any payment to a provident or 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) Section 40(a)(v)- any tax actually paid by an employer referred to in clause (10CC) of section 10.

Section 10(10CC)- in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment, within the meaning of Sec. 17(2), the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in sec. 200 of Companies Act, 1956.

In brief: Detail of each payment is to be provided on which provisions of Section 40(a) are applicable in the specified format.

The reporting under sub-clauses (iii) to (viii) is to be done in the manner or format specified by the e-filing utility in this context, which are as under:

- (iii) fringe benefit tax under sub-clause (ic)
- (iv) wealth tax under sub-clause (iia)
- (v) royalty, license fee, service fee etc. under sub-clause (iib)
- (vi) salary payable outside India/to a non resident without TDS etc. under sub-clause (iii)

S.No.	Date of payment	Amount of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1								

[CSV Template](#)
[Help](#)

- (vii) payment to PF /other fund etc. under sub-clause (iv)
- (viii) tax paid by employer for perquisites under sub-clause (v)

C. Sub-clause (c) to clause 21.

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(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;

S.No.	Particulars	Section	Amount debited to P/L A/C	Amount admissible	Amount inadmissible	Remarks
1	Select	Select				
	<div style="display: flex; align-items: center;"> + Add - Del <div style="border: 1px solid gray; padding: 2px;"> Select Interest Salary Bonus Commission Remuneration </div> </div>	<div style="border: 1px solid gray; padding: 2px;"> Select 40(b) 40(ba) </div>				

Points for Consideration

- Reporting under this clause to be made with reference to Partnership firms, LLP, AOP, BOI.
- The tax auditor is required to state the inadmissible amount u/s 40(b)/40(ba).
- By the Finance Act (No.2) 2009, w.e.f. 1.4.2010, the term 'firm' includes LLP (as registered under the provisions of LLP Act, 2008).
- Salary, bonus, commission or remuneration or interest are not admissible, unless the following conditions are satisfied:
 - a. Remuneration is paid to working partner(s).
 - b. Remuneration or interest is authorised by the partnership deed and is in accordance with the partnership deed.
 - c. Remuneration or interest does not pertain to a period prior to the date of partnership deed.
 - d. The inadmissible remuneration, salary, bonus or commission under section 40(b) is to be determined on the basis of the provisions of sub-clause (v) thereof read with the limits laid down therein.
- The tax auditor should verify the computation of inadmissible amounts for the purpose of reporting under this section from the instrument or agreement or any other document evidencing partnership including any supplementary documents.
- Any payment of interest to any partner which relates to any period falling after the date of partnership deed, with which it is authorized, if such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time is not admissible as a deduction.

- Any interest or remuneration paid by an AOP to its member is not allowed as a deduction
- Only net amount of interest, if any, shall be disallowed, where interest is paid by AOP / BOI to a member who has also paid interest to AOP/ BOI. (rule will also apply in case of member in representative capacity)
- While reporting under this clause, the Circular No.739 dated 25.3.1996 may be kept in view. .

D. Sub-clause (d) to clause 21

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(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:

S.No.	Date Of Payment	Nature Of Payment	Amount	Name of the payee	Permanent Account Number of the payee, if available
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(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);

S.No.	Date Of Payment	Nature Of Payment	Amount	Name of the payee	Permanent Account Number of the payee, if available
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Points for Consideration.

- Section 40A(3) - Where the assessee incurs any expenditure in respect of 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 account payee bank draft, exceeding rupees twenty thousand, no deduction would be allowed in respect of such expenditure. However in case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- instead of Rs.20,000/-.
- Section 40A(3A), where any allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during the previous year the assessee makes payment in

respect thereof, otherwise than an account payee cheque drawn on a bank or account payee bank draft exceeding Rs.20,000, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income tax with respect to that previous year. In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- instead of Rs.20,000/-.

- Further, no disallowance would be made if the payment or aggregate of payments exceeding the prescribed limit under this section are made in/ under circumstances as prescribed under Rule 6DD. Further Notification No.97/2008 dated 10.10.2008 has amended Rule 6DD w.e.f. A.Y. 2008-09.
- For reporting under this clause, the tax auditor should obtain a list of all cash payments. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specified exemption granted under clauses (a) to (l) of Rule 6DD are satisfied or the payments are made under prescribed threshold limit.
- Where on account of voluminous entries, it is not possible to verify each payment, the tax auditor should obtain suitable management representation from the assessee to the effect that the payments for expenditure referred to in section 40A(3) and section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft, as the case may be.
- In case the reporting has been done solely on the basis of the management representation from the assessee, the fact shall be reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB.

E. Sub-clause (e) of clause 21.

Points for Consideration

- In case the provision made for payment of gratuity is not allowable under section 40A(7), the same should be reported under this clause.
- Deduction u/s 40A(7) is available in respect of
 - Contribution towards an approved gratuity fund
 - Or for the purpose of payment of any gratuity that has become payable during the previous year.
- The tax auditor should call for the order of the Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.

F. Sub-clause (f) to clause 21.**Points for Consideration.**

- Reporting about contribution made in violation to section 40A(9)
- No deduction available u/s 40A(9) in respect of any payment made by an employer towards
 - the setting up or formation of or as contribution to any
 - fund, trust, company, association of persons, body of individuals, society or other institutions
- Section 40A(9) however allows deduction of any contributions made as an employer towards
 - recognized provident fund
 - or approved superannuation fund
 - or notified pension scheme
 - or approved gratuity fund
 - or as required by or under any other law for the time being in force.
- Any contribution made to Employees' Welfare Co-op Society will not be allowed unless such contribution is required by or under any other law for the time being in force. *Instruction: No. 1799, dated 3-10-1988*

G. Sub clause (g) to clause 21**Points for Consideration**

- The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account.
- The tax auditor may take reference of contingent liabilities of the earlier year in order to determine the contingent liabilities booked during the current year.
- AS-29, 'Provisions, Contingent Liabilities and Contingent Assets' should be referred to determine what should normally be treated as a contingent liability.

H. Sub clause (h) to clause 21**Points for Consideration**

- Section 14A was inserted in Chapter IV – Computation of total income by the Finance Act, 2001 with retrospective effect from 1.4.1962 i.e. A.Y. 1962-63.
- As per section 14A, the expenditure which is relatable to the income which does not form part of the total income is not allowed as a deduction in terms of section 14A of the Act.

- And, therefore, this section operates where assessee has income of below mentioned nature:
 - Section 10 deals with incomes not included in total income. Sections 10A to 10C deal with the special provisions in respect of the specified undertakings.
 - Agriculture income.
 - Share of profit in a partnership firm.
 - Income from dividends.
 - Long term capital gains on the transfer of equity shares which are exempt under sub-section (38).
- The Central Board of Direct Taxes, had through the Income-tax (Fifth Amendment) Rules, 2008 inserted a new Rule 8D which lays down the method for determining the amount of expenditure in relation to income not includible in total income.
- The method prescribed under Rule 8D is applicable, when during assessment the Assessing Officer is not satisfied with the correctness of the claim of expenditure made by the assessee or with the claim made by the assessee that no expenditure has been incurred. Therefore, at the time of tax audit, the tax auditor is entrusted with the responsibility of verifying the amount of inadmissible expenditure as determined by the assessee.
- While reporting under this sub-clause, the tax auditor may obtain management representation about expenses admitted by assessee to be related to exempt income.
- The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee on the basis of allocation of expenditure based on parameters like proportion of exempt and taxable income recorded, turnover, man hours etc.
- For allocation of interest between taxable and non-taxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered.
- In case assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act, the tax auditor in that case should verify the fact.
- After verifying the amount of inadmissible expenditure, if the tax auditor agrees with the assessee, reporting should be made with suitable disclosures of material assumptions, if any.
- In case of difference of opinion, the tax auditor may give a qualified report, an adverse report, or the disclaimer of opinion.

A. Sub-clause (i) to clause 21

Points for Consideration

- **Details of amount inadmissible under the proviso to section 36(1)(iii) to be given.**
- The provisions of section 36(1)(iii) provide that the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession would be allowed as a deduction.
- Further, the proviso to section 36(1)(iii) provides that any amount of the interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books or account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was put to use, is not allowed as a deduction.
- The Tax Auditor while determining the admissible/inadmissible amount for the purpose of this sub-clause should also keep in mind the requirements of Accounting Standards 16 of Indian GAAP – “Borrowing Cost”.
- The Explanation to section 36(1)(iii) further provides that recurring subscription paid periodically by shareholders or subscribers in Mutual Benefit Society which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of section 36(1)(iii).

The reporting under sub-clauses (e) to (i) of clause 21 is to be done in the manner or format specified by the e-filing utility in this context, which is as under:

(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;

S.No.	Nature Of Liability	Amount
1	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

(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;

S.No.	Particulars	Amount
1	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		

(i) Amount inadmissible under the proviso to section 36(1)(iii).

3.22. Clause 22

Amount inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

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22 Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.



Points for Consideration

- This clause was inserted by the Central Board of Direct Taxes through its Notification No. 36/2009 dated 13-4-2009.
- This will have to be reported upon in all tax audit reports signed on or after 13-4-2009 irrespective of the assessment year to which the report pertains
- The inadmissible interest is to be determined on the basis of the provisions of the MSMED Act, 2006.
- Provisions of Micro Small and Medium Enterprises Development Act, 2006, in respect of inadmissible interest is to be reported under this clause are as under:
 - **Section 23:** 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.
 - **Section 16:** Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.
 - **Section 15:** 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 **forty five days** from the day of acceptance or the day of deemed acceptance.
- The tax auditor needs to report the amount of interest inadmissible under section 23 of the MSMED Act, 2006 *irrespective of whether the amount of such interest has been debited to profit and loss account or not*. In case the auditee has adopted mercantile system of accounting, the non-provision may affect true and fair view and the auditor should give suitable observation.

- The tax auditor should verify whether TDS under section 194A is deducted from interest credited/paid to MSEs and deposited with Central Government. [Clause 34 of Form No. 3CD]
- Where the tax auditor is issuing his report in Form No. 3CB, he should verify that the financial statements audited by him contain the information as prescribed u/s 22 of the MSMED Act, 2006. As per section 22 of MSMED Act, 2006, the buyer in its audited annual statement is required to furnish the following additional information:
 - The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of year;
 - The amount of interest paid by the buyer under MSMED Act, 2006 along with the amount of the payments made to supplier beyond the due date during each accounting year.
 - The amount of interest due and payable for the period (where the principal has been paid but interest under the MSMED Act, 2006 not paid);
 - The amount of interest accrued and remaining unpaid at the end of accounting year; and
 - The amount of further due and payable even in the succeeding year, until such date when the interest dues as above are actually paid to the small enterprises, for the purpose of disallowance as a deductible expenditure under section 23.

As will be seen from the above, considerable disclosure requirements are to be made in respect of amount payable, or not paid to micro and small enterprises.

A question then arises is how to ascertain which supplier is a micro or small enterprise? This is an uphill task. As per the provisions of the MSMED Act, 2006 only those micro or small enterprises shall be eligible for interest for delayed payment, which have filed a memorandum with the authority. Thus, every buyer will have to take not only in writing from the supplier that it is a supplier falling under the category of micro or small enterprises as defined under MSMED Act, 2006 but also collect documentary evidences of getting itself registered with prescribed state authority. The task seems to be continuous, warranting extra efforts on part of each “buyer”.

- While reporting under this clause the tax auditor should –
 - Seek information regarding status of the enterprise i.e. whether the same is covered under the Micro, Small and Medium Enterprises Development Act, 2006 and make necessary reporting in Form No. 3CD.
 - Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006.

- Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account, and verify the same on test check basis.
- If no disclosure is made by the auditee in the financial statements, the tax auditor should give an appropriate observation in Form No. 3CB, in addition to the reporting requirement in clause 22 of Form No. 3CD.

3.23. Clause No. 23

Particulars of payments made to persons specified under section 40A(2)(b).

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23 Particulars of any payment made to persons specified under section 40A(2)(b).

S.No.	Name of Related Person	PAN of Related Person	Relation	Nature of trasaction	Payment Made(Amount)
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>					

Points for Consideration

- Section 40A(2)(a) provides that where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person specified u/s 40A(2)(b) and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the :
 - fair market value of the goods,
 - services or facilities for which the payment is made or the legitimate needs of the business or profession
 - or the benefit derived by or accruing to him there from,

So much of the expenditure as is so considered by the assessing officer to be excessive or unreasonable shall not be allowed as a deduction
- Proviso to section 40A(2)(a) provides that no disallowance on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.
- Anomaly between provision and format is that the provisions of Section 40A(2) requires disallowance of amount incurred, however the format / e-utility states about the reporting of payment made.

- For reporting under this clause, the tax auditor may take below mentioned points in consideration
 - Any Payment made by AOP to its member for supply of goods should be reported.
 - “**Specific Person**” means relative, partners, members, directors or person having substantial interest.
 - A person will be deemed to have a **substantial interest** in a business or profession if, (in case of a company) the person is beneficially owning the shares (other than the preference shares), carrying not less than 20% of the voting power and in any other case, person is entitled to not less than 20% of the profits of business or profession.
 - Tax auditor should obtain, from assessee, the list of specified persons and expenditure/payment made to them and then scrutinize the items with reference to section 40A(2).
 - If information is not available about specified persons with the client, suitable disclaimer may be given.
 - Section 40A(2) – Payment to Specific Persons – Where the AO is of the opinion that such payments is excessive or unreasonable, then disallow the excessive or unreasonable amount.
 - Amounts to be reported whether or not debited to profit and loss account.
 - The clause does not require report of the auditor as to his own inference, whether the payment is excessive or unreasonable. He is required to specify the amounts paid to such related persons.
 - **In case of a large assessee**, it may not be possible to verify the list of all persons covered by this section. Therefore, the information supplied by the assessee may be relied upon.
 - **Circular No. 143, dated 20-8-1974**, issued by the CBDT, clarifies that tax auditor can rely upon the list of persons covered u/s 13(3) as given by the managing trustee of a Public Trust. A similar analogy may be drawn for the purpose of this clause. **Where the tax auditor relies upon the information in this regard furnished to him by the assessee, it would be advisable to make an appropriate disclosure.**
 - **In Dy CIT v Joshi Formulabs (P) Ltd (2000) 67 TTJ 396 (Rajkot)** - A fully vouched and genuine expenditure cannot be disallowed u/s 40A(2)(b) even if made to sister concern.
 - **Khan Carpets v CIT (2003) 262 ITR 325 (All)** - Only where there was disproportionate increase in salary without showing exceptional circumstances for it, that the increase in salary could be disallowed.

3.24. Clause No. 24

Amounts deemed to be profits and gains under section 32AC, 33AB or 33ABA or 33AC.

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24 Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.

S.No.	Section	Description	Amount
1	Select		
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> + Add X Delete </div> <div style="border: 1px solid gray; padding: 2px;"> Select 32AC 33AB 33ABA 33AC </div> </div>			

Under this clause, detail of amounts deemed to be profits and gains under section 32AC, 33AB or 33ABA or 33AC are to be furnished.

S. No.	Section	Particulars Centre
1	32AC	<ul style="list-style-type: none"> Section 32AC allows deduction @ 15% in respect of Investment in new Plant & Machinery to a company engaged in the business of manufacture or production of any article or thing who acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 the aggregate actual cost of such new assets exceeds one hundred crore rupees. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (2) of section 32AC.
2	33AB	<ul style="list-style-type: none"> Section 33AB allows deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account. Reporting of deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (4), (5), (7) and (8) of section 33AB.
3	33ABA	<ul style="list-style-type: none"> Section 33ABA allows deduction in respect of Site Restoration Fund Reporting of the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (5), (7) and (8) of section 33ABA.

4	33AC	<ul style="list-style-type: none"> Section 33AC allows deduction in respect of reserve created out of the profit of the assessee engaged in shipping business. Reporting of the deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (3) and (4) of section 33AC for the amount of reserves created on or before 31st March, 2004. No deduction shall be allowed under section 33AC for any assessment year commencing on or after 1st day of April, 2005.
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3.25. Clause No. 25

Any amount of profit chargeable to tax under section 41 and computation thereof.

E-utility format

25 Any amount of profit chargeable to tax under section 41 and computation thereof.

S.No.	Name of person	Amount of income	Section	Description of Transaction	Computation if any
1	<input type="text"/>	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>
<div style="display: flex; align-items: center;"> Add Delete </div>					
<div style="border: 1px solid gray; padding: 5px; margin-top: 5px;"> Select Sec 41(1)(a) Sec 41(1)(b) Sec 41(2) Sec 41(3) Sec 41(4) Sec 41(4A) Sec 41(5) </div>					

Points for Consideration.

- In order to report under this clause, the tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying/ underlying evidence, correspondence, etc.
- Under Section 41 below mentioned are the receipts which are chargeable to tax as business income:

Section	Particulars
41(1)	<ul style="list-style-type: none"> In any of the earlier years a deduction was allowed to the taxpayer in respect of loss, expenditure (revenue or capital expenditure) or trading liability incurred by assessee. During the current year, the taxpayer <ol style="list-style-type: none"> Has obtained a refund of such trading liability (it may be in cash or any other manner); or Has obtained some benefit in respect of such trading liability by way of remission or cessation thereof ("remission or cessation" for this purpose includes unilateral act of the assessee by way of writing off such liability in his books of account.

41(2)	<ul style="list-style-type: none"> • Applicable for undertaking engaged in generation or generation and distribution of power. • To charge income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture is sold, discarded, demolished or destroyed. • Depreciation allowed on such percentage on the actual cost as are prescribed. • The depreciation rate are prescribed vide Rule 5(IA). • Depreciation is to be calculated on Straight Line Method (SLM) on individual asset and not on block of assets • Where the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture become due. • Where the moneys payable in respect of the building, machinery, plant or furniture become due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, the above provision shall apply as if the business is in existence in that previous year. To ascertain capital gain, if any, provisions of section 50A are relevant.
41(3)	<ul style="list-style-type: none"> • Where any capital asset used in scientific research is sold without having been used for other purposes • The sale proceeds together with the amount of deduction allowed under section 35 exceeds the amount of capital expenditure. • Such surplus or the amount of deduction allowed, whichever is less, is chargeable to tax as business income in the year in which the sale took place. • This is irrespective of whether the business of the assessee is in existence or not during the previous year in which the capital asset is sold.
41(4)	<ul style="list-style-type: none"> • Where any bad debt has been allowed as deduction u/s 36(1)(vii) and the amount subsequently recovered on such debt is greater than the difference between the debt and the deduction so allowed, the excess realization is chargeable to tax as business income of the assessee is in existence (or not) during the previous year in which recovery is made. • If there is a succession in business by way of amalgamation, demerger or on death of a person by his son, or where a firm is succeeded by another firm then recovery of bad debt is taxable as business income if the bad debt was earlier allowed as deduction to the predecessor.
41(5)	<ul style="list-style-type: none"> • Where the business or profession referred to in section 41 is no longer in existence and there is income chargeable to tax under sub-section (1), sub-section (3), sub-section (4) or sub-section (4A) in respect of that business or profession, any loss, not being a loss sustained in speculation business which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid.

- The tax auditor should examine the past records to satisfy himself about the correctness of the information provided by the assessee.
- Information under this clause is to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not.
- The computation of the profit chargeable under this clause is also to be stated.

3.26. Clause 26

In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) 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
 - (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.)

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- 26 (i) In respect of any sum referred to in clause (a),(b),(c),(d),(e) or (f) 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
- (a) paid during the previous year;

S.No.	Section	Nature of liability	Amount
1	Select		

Select

Sec 43B(a) -tax , duty,cess,fee etc

Sec 43B(b) -provident /superannuation/gratuity/other fund

Sec 43B(c) - sum referred to u/s 36(L)(ii)

Sec 43B(d) -interest from public financial institution etc

Sec 43B (e) - interest on loan from scheduled bank

Sec 43B(f) - leave encashment

- (b) not paid during the previous year;

S.No.	Section	Nature of liability	Amount
1	Select		

- (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);

S.No.	Section	Nature of liability	Amount
1	Select		

- (b) not paid on or before the aforesaid date.

S.No.	Section	Nature of liability	Amount
1	Select		

(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.)

Select

Points for Consideration

- Information, under sub-clause (A) to clause 26 of tax audit report, is to be given about sums covered under clauses (a) to (f) to section 43B that pre-existed on the first day of assessment year but was not allowed in the assessment of any preceding previous year and was actually paid during the year / not paid during the year.

- Information, under sub-clause (B) to clause 26 of tax audit report, is to be given about sums covered under clauses (a) to (f) to section 43B that incurred during the assessment year was actually paid either before the date of furnishing ROI u/s 139(1) / not paid on or before the said date.
- Section 43B applies only where Books of Account are maintained on mercantile basis.
- Below mentioned expenses are allowable on actual payment basis under this section :
 - Any sum payable by way of tax, duty, cess or fee.
 - Any sum payable by employer by way of contribution to provident fund, or superannuation fund or any other fund for the welfare of employees.
 - Any sum payable as bonus or commission to employees, for services rendered.
 - Any sum payable as interest on any loan or borrowings from public financial institution or a state financial corporation or a state industrial corporation or a state industrial investment corporation.
 - Interest on any loan or advance taken from a scheduled bank including a cooperative bank, and
 - Any sum payable by an employer in lieu of leave at the credit of his employee.
- The above expenses are deductible in the year in which the payment is actually made.
- The tax auditor should verify the aforesaid particulars of section 43B from the books of account, vouchers and documents of year under consideration and immediately preceeding previous year. ROI of previous year should also be referred.
- In respect of the liability which pre-existed on the first day of the previous year is allowable as deduction if paid during the previous year, reporting to be made in clause 26(A)(a).
- In respect of the liability which is incurred in the previous year is allowable to the extent it is paid on or before the due date for furnishing the return of the income under section 139(1). Such items are to be disclosed in clause 26(B)(a).
- Where due date for filing of return of income is extended, payments made upto the extended due date also qualify for deduction.

Issues for Consideration

- The provision made in the accounts for excise duty payable on finished goods in the bonded warehouse is eligible for deduction when the said goods have been cleared and that excise duty thereon has been paid or adjusted against CENVAT credits before the due date as applicable for furnishing the return of income under section 139 (1).

- Sales-tax when paid is allowed as a deduction.
- In **Commissioner of Income-tax v. Alom Extrusions Ltd** [2009] 319 ITR 306 (SC), the apex Court has held that if the employees contribution towards PF, EPF, etc. are paid by due date of filing of return by the assessee employer, then the same will be an allowable expenditure and section 43B will not be applicable in such circumstances.
- If under the sales tax registration, sales tax so deferred is stated as actually paid then section 43B shall be deemed to be complied – **Circular No.496 dated 25/09/1987**. See also **CIT Vs. Gujrat Polycrete Pvt. Ltd.** [2000] 246 ITR 463 (SC).
- Amount of sales tax liability converted into loans may be allowed as deduction in the assessment for the previous year in which such conversion has been permitted by or under Govt. orders - **Circular No.674 dated 29.12.1993**. See also **CIT V. Goodluck Silicate Industries (P) Ltd.** [2002] 178 CTR (Guj) 92.
- **Circular No.7/2006 dated 17th July, 2006** clarifies that conversion of interest into a loan or borrowing or advance does not amount to “actual payment”. The circular clarifies that the unpaid interest whenever actually paid to the bank or financial institution will be in the nature of revenue expenditure deserving deduction in the computation of income.
- Royalty payable to the Govt. in respect of mineral rights is a tax within the meaning of section 43B - **Gorelal Dubey V. CIT** [2001] 248 ITR 3 (SC).
- Rent / Kist is neither tax nor cess - **CIT V. Sree Balaji & Co.** [2001] 114 Taxman 682 (Kar.)
- Interest on delayed payment of taxes is not to be reported u/s 43B - **CIT V. Padmawati Raje Cotton Mills Ltd.** [1999] 239 ITR 355 (Cal.). See also **Mewar Motors v. CIT** [2004] 135 Taxman 155 (Raj.).
- Mandi tax is not a tax - **CIT V. Mohan Singh & Sons** [1995] 216 ITR 432 (MP).
- Electricity charges are neither taxes nor duty nor cess, however duty paid on sale of electricity is covered by section 43B – **CIT V. Gujrat Urja Vikas Nigam Ltd.** [2010] 322 ITR 539 (Guj.).
- Interest on Electricity Duty is compensatory in nature – 43B not applicable. **National Aluminium Co. Ltd. V. CIT** [2006] 153 Taxman 18 (Mag.)
- Govt. Audit Fee is not duty cess or tax payable- **CIT V. Werma Sehkari Sakhar Karkhana Ltd.** [2002] 253 ITR 226 (Bom.)
- Vend Fee is not in nature of tax, duty, cess or fee – **Dy CIT V. Travencore Sugars & Chemicals Ltd.** [1999] 65 TTJ 598 (Coch.)
- Interest on delayed payment of statutory liability to be allowed only when actually paid – **Grasim Industries Ltd. V. CIT** [1999] 64 TTJ 357 (Mum.)
- SEBI turnover charges are cess or duty to be payable under law - 43B applies – **ITO V. Suresh Chand Jain** [2006] 100 ITD 435 (Mum.)

- Service Tax is not covered within the preview of section 43B - CIT V. **Real Image Media Technologies Pvt. Ltd. [2008] 114 ITD 573 (Chennai).**
- Payment to Gratuity Fund operated by LIC covered by section 43B - CIT V. **Popular Vehicles and Services Ltd. [2010] 189 Taxman 14 (Ker.)**
- Provision made for an approved gratuity fund is not covered by section 43B - CIT V. **Common Wealth Trust (I) Ltd. [2004] 269 ITR 290 (Ker.)**
- No deduction in case of waiver of interest as it is not representing actual payment.
- If an assessee made Advance Payment of Excise duty without liability, no deduction shall be given on account of Sec. 43B - **Gopikrishna Gramites Vs DCIT 251 ITR 337 (A.P), Hindustan Liver Ltd Vs K.K Pandey JCIT, 251 ITR 209(Bomb)**
- The provision made in the accounts for excise duty payable on the closing stock of finished goods should also be disclosed against sub-clause (i). The tax auditor should verify that the said goods have been cleared and the excise duty has been paid or adjusted against the Cenvat credit on or before the due date for filing return of income. **[ICAI's Guidance Note on Tax Audit]**
- Information contained in tax audit report does not enable Assessing Officer to make any prima facie adjustments under section 143(1)(a) with reference to provisions of sec. 43B - **Peerless General Finance & Investment Co. Ltd. v. CIT-[2010] 228 CTR 72 (CAL.)**
- In certain cases Sales Tax collected are credited to separate A/c and does not form part of trading receipt, the amount is not charged in P&L A/c. Whether Sec 43B is attracted- The particulars should be reported whether have been debited to P&L A/c or not - **CIT Vs S.P. Foundry 185 ITR 555 (All)**
- Question as to whether unutilized Modvat credit of earlier years adjusted in assessment year-in-question should be treated as actual payment of excise duty u/s 43B is a question of law - Held, yes, **CIT vs. Maruti Udyog Ltd [2010] 186 TAXMAN 407 (SC) (ruling of Hon'ble High Court of Delhi in 92 ITD 119 reversed).**
- Whether rescheduling of interest payable to financial institution by means of fresh loan can be treated as interest payment deductible under section 43B - Held, yes **Vinir Engineering (P.) Ltd v. DCIT [2010] 186 TAXMAN 72 (KAR.)**
- It was held that bottling fees payable for acquiring a right of bottling of IMFL, which is determined under Excise Act and Rules, is neither fee nor tax, but is consideration for grant of approval by Government in respect of exclusive right to deal in bottling of liquor in all its manifestations. Therefore, bottling fee payable under Excise Law for acquiring a right of bottling of IMFL does not fall within purview of section 43B. - **In CIT v. Udaipur Distiller Co. Ltd. [2009] 180 Taxman 539 (SC), CIT v. McDowell & Co. Ltd. [2009] 180 Taxman 528, 526, 524, 521, 514 (SC),**

3.27. Clauses No. 27

- a) 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.
- b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

E-utility format

27 (a) Amount of Central Value Added Tax credits availed of or utilised 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.

Select
YES
NO

CENVAT	Amount	Treatment in Profit & Loss/Accounts
Opening Balance	<input type="text"/>	<input type="text"/>
CENVAT Availed	<input type="text"/>	<input type="text"/>
CENVAT Utilized	<input type="text"/>	<input type="text"/>
Closing /outstanding Balance	<input type="text"/>	<input type="text"/>

(b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

S.No.	Type	Particulars	Amount	Prior period to which it relates (Year in yyyy-yy format)
1	Select <input type="button" value="Select"/>	<input type="text"/>	<input type="text"/>	Select <input type="button" value="Select"/>
	Select <input type="button" value="Add"/> <input type="button" value="Delete"/> <input type="button" value="X"/>			
	Income Credited			1980-81
	Expenditure Debited			1981-82
				1982-83
				1983-84
				▼
				2017-18
				2018-19
				2019-20
				2020-21

A. Sub-clause (a) and (b) to Clause 27

- Sub-clause (a) requires the factual reporting about the amount of CENVAT credits availed of or utilised during the year as well as its treatment in profit and loss account and treatment of outstanding CENVAT credits in the accounts.
- CENVAT credit is available on eligible inputs, input services and capital goods.
- Cenvat credits are utilized for the payment of the excise duty and service tax liability.
- The tax auditor has to verify statutory records and ascertain therefrom the amount of credit on eligible inputs, input services and the capital goods and

the amount utilised during the previous year. Records maintained in RG-23, wherever available should also be verified.

- The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant excise and service tax records.
- The tax auditor should report the amount of CENVAT availed and utilised under this sub-clause.
- Further the sub-clause requires reporting of the credits availed of or utilized during the previous year, it is desirable to report both the credits availed and the credits utilized.
- As far as the reporting of accounting treatment of CENVAT credit is concerned, the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT credit in the account have to be reported upon.
- Where the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material, capital goods and service tax paid on input services is debited to the CENVAT/ Service Tax Credit Receivable Account and not as part of the purchase cost of raw material, capital goods or cost of input services. The credit utilized is debited to the Excise Duty/ Service Tax Payable A/c and credited to CENVAT/ Service Tax Credit Receivable Account. Thus, the credit availed and utilized will not have any impact on the profit and loss account.
- The reporting requirement under clause 14(b) of Form No.3CD is a requirement distinct and separate from the reporting requirement under this clause. The tax auditor should verify that information furnished under this sub-clause is compatible with the information furnished under clause 14(b).
- The tax auditor should consider the above while reporting in the format provided in the e-filing utility with respect of this clause.
- With regard to reporting of the amount of CENVAT credits availed or utilized during the previous year and its treatment in the profit and loss account wherever possible, it is advisable to give the details of the credit availed and utilized as separate line items.
- With regard to reporting of the treatment of outstanding CENVAT Credits in the account, it is desirable to mention the opening and the closing outstanding balances in the CENVAT Credits accounts as separate line items. The account in which the outstanding amount is appearing should also be mentioned appropriately.

3.28. Clause No. 28

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.

E-utility format

28 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

Select Select

Select YES NO NA

S.No.	Name of the person from which shares received	PAN of the person, if available	Name of the company whose shares are received	CIN of the company	No. of Shares Received	Amount of consideration paid	Fair Market value of the shares
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Notification dated 25-07-2014 does not suggest any format for reporting under this clause however format has been given in e-utility and as such information for reporting under this clause has to be collected in view of this specified format.*

- Under this clause, detail of receipt of shares of Pvt. Ltd. Company without consideration or for inadequate consideration is to be provided.



Note: No reporting requirement in respect of the assessee other than firms and companies in which public is not substantially interested. (Section 56(2)(viii), operates only in case of firms and Pvt. Ltd. Companies/ closely held public Ltd company)

- **Situations that may arise**
 - a. Shares are received without consideration and aggregate Fair Market Value (FMV) does not exceed Rs.50000/- - Nothing Taxable, No reporting under this clause.
 - b. Shares are received without consideration and aggregate FMV of these shares exceeds Rs.50000/- - Aggregate FMV taxable, Reportable.
 - c. Shares are received for a consideration which is less than FMV and the aggregate value of difference does not exceed Rs.50000/- - Nothing Taxable, No reporting under this clause.
 - d. Shares are received for a consideration which is less than FMV and the aggregate value of difference exceed Rs.50000/- - Aggregate FMV minus aggregate consideration will be taxable in the hands recipient. Reportable
- As per proviso to section 56(2)(viii), the provisions of the said clause (viii) do not apply to the property received by way of a transaction not regarded as transfer under section 47(via), 47(vic), 47(vicb), 47(vid) and 47(vii).
- The fair market value of shares has to be determined in accordance with the method prescribed in rule 11UA of the Income-tax Rules, 1962 in respect of quoted and unquoted shares.
- In order to report under this sub-clause, the auditor may ask the assessee to provide, a list containing the details of shares received, details of shares received may emerge / appear while perusing the books of account or other relevant documents.
- Such Shares received will be reflecting either as investments or as stock-in-trade.
- In case shares are received without consideration, the same may not be reflected in the books of account.
- Such shares may be verified from the relevant documents such as share certificates issued, if any, demat account statement etc. In either case, the same

are to be reported under this clause.

- For determining the fair market value of unquoted shares which are not listed in any recognized stock exchange, a valuation report should be obtained from assessee.

3.29. Clause 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.

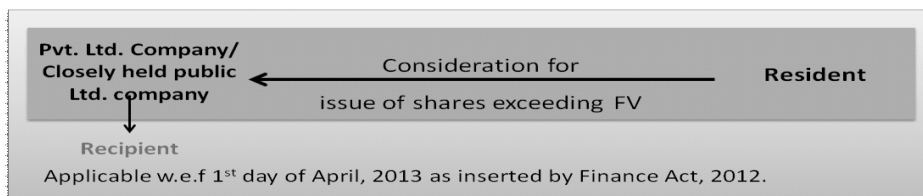
E-utility format

- 29 Whether during the previous year the assessee received any consideration for issue of shares which exceeds value of the shares as referred to in section 56(2)(viib) if yes, please furnish the details of the same

S.No.	Name of the person from whom consideration received for issue of shares	PAN of the person, if available
1	<input type="text"/>	<input type="text"/>

**Notification dated 25-07-2014 does not suggest any format for reporting under this clause however format has been given in e-utility and as such information for reporting under this clause has to be collected in view of this specified format.*

- Under this clause, detail in respect of shares issued by a Pvt. Ltd. Company at value more than FMV is to be provided. [since shares are issued at price which is more than FMV, then the difference shall be chargeable to income tax u/s 56(2)(viib).]



- Reporting under this clause is applicable to Pvt. Ltd. Co. and closely held public limited company.
- The provisions of this clause are not applicable where the consideration is received
 - a) by a venture capital undertaking from a venture capital company or a venture capital fund
 - b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

- As per the explanation to section 56(2)(viib), the fair market value shall be the value as may be determined in accordance with such method as prescribed under Rule 11UA or as may be substantiated by the company to the satisfaction of the AO, based on the value of its Assets, including intangible assets, being goodwill know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, as may be higher.
- For determining the fair market value of unquoted shares which are not listed in any recognized stock exchange, a valuation report should be obtained from assessee.

3.30. Clause 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].

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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]

Select Select
YES
NO

S.No.	Name of the person from whom amount borrowed or repaid on hundi	PAN of the person, if available	Address Line 1	Address Line 2	City or Town or District	State	Pincode	Amount borrowed	Date of Borrowing	Amount due including interest	Amount repaid	Date of Repayment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Add Delete

**Notification dated 25-07-2014 does not suggest any format for reporting under this clause however format has been given in e-utility and as such information for reporting under this clause has to be collected in view of this specified format.*

Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause. In this context, a reference may also be made to Circular No.208 dated 15th November, 1976 and Circular No. 221 dated 6th June,1977 issued by the CBDT explaining the provisions of section 69D – (Please see Annexure – VII & VIII). In order to ascertain the information to be reported under this clause the auditor may obtain suitable certificate/ management representation in this regard.

3.31. Clause No. 31 (a) to (c)

- (a)* Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :-
- (i) name, address and permanent account number (if available with the assessee) of the lender or depositor;
 - (ii) amount of loan or deposit taken or accepted;
 - (iii) whether the loan or deposit was squared 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 need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)*

- (b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year:-
- (i) name, address and permanent account number (if available with the assessee) of the payee;
 - (ii) amount of the repayment;
 - (iii) maximum amount outstanding in the account at any time during the previous year;
 - (iv) whether the repayment was made otherwise than by account payee cheque or account payee bank draft.
- (c) Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents

(The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act.)

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Reporting under clause 31(a)

31 (a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 2695S taken or accepted during the previous year :-

S.No.	Name of the lender or depositor	Address of the lender or depositor	Permanent Account Number (if available with the assessee) of the lender or depositor	Amount of loan or deposit taken or accepted	Whether the loan/deposit was squared up during the Pervious Year	Maximum amount outstanding in the account at any time during the Previous Year	Whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select	<input type="text"/>	Select

(These particulars need not be given in case of a Government Company, a banking company or a corporation established by a Central, State or Provincial Act.)

Reporting under clause 31(b)

(b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :-

S.No.	Name of the payee	Address of the payee	Permanent Account Number (if available with the assessee) of the payee	Amount of the repayment	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made otherwise than by account payee cheque or account payee bank draft.
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select

Select
 YES
 NO

Reporting under clause 31(c)

(c) Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents.

Select ▼

Select
 YES
 NO
 NA

Note: (The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act)

Points for consideration

- Under this clause, detail of transactions covered under section 269SS/269T are to be reported.
- Under sub-clause (a), particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year to be furnished.
- Under sub-clause (b), particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year is to be furnished.
- Under clause (c), the tax auditor is to state whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on his examination of books of account and other relevant documents in “YES/NO/N.A.”
- Now, consequent to the Forms revised vide Notification dated 25th July, 2014, the Certificate from the Assessee would not be sufficient. The responsibility of tax auditor has been extended, since specific reporting is sought in the form of YES/NO/NA. Therefore in the absence of satisfactory evidence, enabling verification of the loan or deposit taken or accepted by account payee cheque or an account payee bank draft the tax auditors should make a suitable comment in his report on the lines given below :

“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 required under provisions of S. 269SS, since the necessary evidence is not in the possession of the assessee”.

- The Finance (No.2) Act, 2014 w.e.f 01.04.2015, has allowed the “use of electronic clearing system through a bank account” as a permissible mode for the purposes of section 269SS and 269T, and as such ECS, RTGS and NEFT etc. are now allowed as permissible mode to accept or repay the deposit or loan specified u/s 269SS & 269T respectively.
- The option of “N.A.” will be applicable when there is no transaction attracting provisions of Section 269SS and 269T i.e.
 - There is no loan or deposit during the year, or
 - The balance of each party is below the specified limit i.e. Rs. 20,000/-
- Below mentioned include the issues for consideration while reporting under this clause:
 - Transaction of current a/c also covered in ‘Deposits’.
 - In case of mixed a/c, transactions only related to Loans/Deposits are to be reported.

- Advance received against Sale & Agreement of sale is not a Loan or Deposit.
- Opening balance of Loan a/c is to be considered for calculation of maximum amount outstanding.
- Security Deposit against contract etc. covered under Deposits.
- Provision of section 269SS/269T are not applicable in respect of share application money. [*CIT v. Numero Uno Financial Services (P.) Ltd.* 345 ITR 84 (Delhi) [Favourable], *Bhalotia Engineering Works (P) Ltd.* 275 ITR 399(Jhar) [Contrary]]
- Accepting/ repaying loans/ advances via journal entries:
 - The provisions of section 269SS of the Act does not get attracted merely for transfer of amount to a loan account in the form of book entry. *CIT Vs. Worldwide Township Projects Ltd., ITA No. 232/2014, Date of Judgment: 21.05.2014, High Court of Delhi*
 - *Contrary view has been taken by High Court of Bombay in CIT vs Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bombay)* wherein it was held that repayment of loan/deposit by merely debiting account through journal entries contravenes provisions of section 269T.
 - Further, held by *ITAT- Bombay in Lodha Builders Pvt Ltd vs. ACIT ITA No. 481/M/2014, Date of decision 27-06-2014*, that penalty cannot be levied if the transactions are bona fide & genuine even where accepting/ repaying loans/ advances via journal entries contravenes section 269SS & 269T.
 - Where the transaction is by an A/c Payee Cheque and no payment was made in Cash. Provisions of Sec 269SS shall not be attracted. *CIT Vs Noida Toll Bridge Co. Ltd 262 ITR 260 (Del)*
 - If the cheque or bank draft through which loan is received is 'crossed' but words 'account payee' is not written in the crossing but the transaction is otherwise genuine and the bank confirms that these amounts have been deposited in assessee's account and are as per the banking norms and there was no flaw in the transaction, penalty under section 271D is not impossible for such a trivial violation. *CIT v. Makhija Construction Co. [2002] 123 Taxman 1003 (MP)*

3.32. Clause No. 32 (a) to (e)

- (a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

SI No.	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned (in rupees)	Amount as assessed (give reference to relevant order)	Remarks

- (b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.
- (c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same.
- (d) Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.
- (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, if yes, please furnish the details of speculation loss if any incurred during the previous year.

A. Sub-clause (a) of clause 32

E-utility format

- 32 (a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available

S.No.	Assessment Year	Nature of loss/allowance	Amount as returned	Amount as assessed (give reference to relevant order)		Remarks
				Amount	Order U/S & Date	
1	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

- Select
- House property loss
- Loss from business other than loss from speculative business and specified business
- Loss from speculative business
- Loss from specified business
- Short-term capital loss
- Long-term Capital loss
- Loss from owning and maintaining race horses
- Unabsorbed depreciation
- Unabsorbed allowance under section 35(4)

Points for consideration

- Under sub-clause (a) of clause 32, the details of brought forward loss or depreciation allowance are to be reported which should be quantified as per return and assessment orders.
- Details of brought forward losses under the below mentioned heads to be considered:
 - Income under the head house property.
 - Profits and gains of business or profession.
 - Speculation business.
 - Capital gains.
- To report information under this clause, the auditor should study the assessment records.
- While furnishing information under this clause due attention should be given to section 80 read with section 139(3).
- Section 71B [Carry Forward and Set Off of Loss From House Property], 73A [Carry Forward and Set Off of Losses by Specified Business] and 78 [Carry Forward and Set Off of Losses in case of Change in Constitution of Firm or on Succession] should also be paid due attention while reporting under this clause.
- Information about any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be given in the remarks column.
- The e filing utility requires additional information regarding the order no./ DCR No. In case of intimation u/s 143(1) of the Act, give Communication Reference No.

B. Sub clause (b) of clause 32**E-utility format**

- (b) Whether a change in share holding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.

Select ▼	Select
	YES
	NO
	NA

Points for consideration

- Under this clause, fact has to be reported by stating Yes / No / NA, with respect to corporate assessee, that whether a change in shareholding of the

company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79. However, the overriding provisions of section 79 do not affect the set off of unabsorbed depreciation which is governed by section 32(2). [CIT v Concord Industries Ltd. (1979) 119 ITR 458 (Mad)], CIT v. Shri Subbulaxmi Mills Ltd. 249 ITR 795 (SC).

- For the purpose of determining change in shareholding pattern, the comparison is to be done with reference to the last day of the previous year under tax audit and the last day of every previous year in which the loss was incurred eligible for carry forward and set off thereof. (For determination of composition under this clause in respect of different previous years is to be determined with respect to the individual previous years - for making this comparison the Register of Members may be referred).

C. Sub clause (c) of clause 32

E-utility format

(c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year.

Select	Select
	YES
	NO

If yes, please furnish the details of the same.

Points for consideration

- Under this clause, information about details of any speculation loss as referred u/s 73, incurred during the previous year has to be furnished. In view of definition of “speculative Business” read with the definition of “speculative transactions”, the tax auditor is to verify with the help of books of account and other relevant documents and underlying evidences as to whether the assessee is carrying on any speculation business.
- It is possible that the assessee on account of any judicial pronouncement or any other document having judicial importance has opined and relied that he is not carrying on speculation business. In such cases, if the tax auditor has different point of view or if the tax auditor finds it difficult to believe the statement of assessee considering the evidences and circumstances, the tax auditor may report the same under his observations.

Issues for Consideration

- Loss incurred on account of cancellation of forward contract could not be regarded as speculative loss under section 43(5) [*Jaimin Jewellery Exports (P.) Ltd. vs. ACIT, 43 taxmann.com 380 (Mumbai - Trib.)*]. Also see [*DCIT vs. Kotak Mahindra Investment Ltd., 35 taxmann.com 225 (Mumbai - Trib.)*][*CIT vs. Panchmahal Steel Ltd., 33taxmann.com 10 (High Court of Gujrat)*]

- Loss incurred on account of purchase and sale of units of UTI could not be said to be speculative loss under section 73. [*Porrrits & Spencer (Asia) Ltd. v. CIT* [2010] 190 taxman 174 (Punj. & Har.)] Also see [*CIT v. Special Prints Ltd.* [2013] 33 taxmann.com 463 (Gujrat)]
- [*Parkar Securitirs Ltd. v. CIT* [2006] 8 SOT 257 (Ahd.)] - Test which can determine nature of business whether it is speculative or not are
 - (i) Nature of assessee's business in general
 - (ii) The purpose behind the particular transaction
 - (iii) The effect of the transaction

Also see [*ITO v. Rajvi Securities (P.) Ltd.* [2012] 19 taxmann.com 274 (Ahd.)]
- It is not a requirement of section 73 that both purchase and sale of shares should take place in same year; what is required to attract section 73 is that business of assessee should consist of purchase and sale of share [*CIT v. Aakrosh Investment & Leasing (P.) Ltd.* [2004] 90 ITD 287 (Mum.)]

D. Sub-clause (d) of clause 32

E-utility format

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

If yes, please furnish details of the same.

Select ▼	Select
	YES
	NO

Points for consideration

- Under this clause, information that the tax auditor is to report about is if the assessee has suffered any loss as referred to in section 73A in respect of any specified business during the previous year.
- As per section 73A, 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.
- Where any loss computed in respect of the specified business referred to in sub-section (1) of section 73A has not been wholly set off, so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, and shall be carried forward to the following assessment year, will be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year, and so on.
- The tax auditor is to verify from the books of account and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD.

- In case the assessee carries on more than one specified businesses, then the details of the loss, if incurred in one or more of such business is to be specified separately.

E. Sub-clause (e) of clause 32

E-utility format

(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.

Select	Select
	YES
	NO
	NA

If yes, please furnish the details of speculation loss if any incurred during the previous year.

Points for consideration

- Reporting under this clause is applicable to corporate assessee. Here details of speculation loss, if any, incurred from deemed speculation business as referred to in Explanation to section 73, is to be furnished.
- The Explanation to section 73 provides that where any part of the business of a company or a company the principal business of which
 - is the business of trading in shares, or
 - banking, or
 - the granting of loans and advances or
 - consists in the purchase and sale of shares of other companies,
 such company shall, for the purposes of the said section 73, 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.

[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
 - Income from other sources]
- For reporting under this clause, the tax auditor may cull out information from income tax returns of earlier returns, books of account & other relevant document.
- It is possible that the assessee on account of any judicial pronouncement or any other document having judicial importance has opined and relied that he is not covered by explanation to S. 73 and not carrying on deemed speculation

business. In such cases, if the tax auditor has different point of view or if the tax auditor finds it difficult to believe the statement of assessee considering the evidences and circumstances, the tax auditor may report the same under his observations in form 3CA/3CB as may apply.

Issues for consideration

- Principal business of assessee-company was earning interest on advances and loans. It also carried on business of purchase and sale of shares from income derived from interest - Whether under Explanation to section 73, business of purchase and sale of shares by assessee was speculation business and it was entitled to set off of losses from sale and purchase of shares against profits of business of company from loans and advances - held that Assessee is entitled to set off losses from sale and purchase of shares against profits of business of company from loans and advances [*Usha Politax Ltd. Vs. ITO, 33 taxmann.com 432 (High Court of Allahabad)*]. Also see [*Saurabh Industrial Financing Ltd. vs. ITO, 38 taxmann.com 400 (High Court of Allahabad)*]
- Explanation to Section 73 is not applicable if shares are purchased as investment or if the assessee company is not engaged in the business of purchase and sale of shares. - [*harrisons Malayalam Ltd. v. CIT [2009] 32 SOT 497 (Cochin)*]
- Where merely because income/loss in dealing in shares in one particular year was more than income/loss from principal business of assessee of granting loans and advances, it could not be said that principal business of assessee was not that of granting loans and advances and as such assessee was not covered by deeming provisions of Explanation to section 73, and therefore loss on purchase and sale of shares was allowed to be set off against income from other sources. **Income-tax Officer, Ward-3(1), New Delhi vs. Bijay Paper Traders & Investments Lt [2010] 38 SOT 578 (Delhi) [13-11-2009]**
- Badla transaction is nothing but interest income earned from granting loans and advances . where Assessee derived income from Badla transactions and after said income was added to assessee's income from interest, interest income of assessee was greater than its other income, loss on purchase and sale of shares is outside purview of provisions of Explanation to section 73. **Assistant Commissioner of Income-tax, Circle 5(8) vs. Tanna Electro Mechanics (P.) Ltd.[2006] 7 SOT 121 (Mumbai)**

3.33. Clause no. 33

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

Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc, issued in this behalf.
--	---

E-utility format

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

Select Select
YES
NO

S.No.	Section under which deduction is claimed	Amounts admissible as per the provision of the Income-tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules,1962 or any other guidelines, circular, etc, issued in this behalf.
1	Select	
<div style="display: flex; align-items: center;"> + Add - Delete <div style="border: 1px solid black; padding: 2px;"> Select 10A 10AA 80C 80CCC 80CCD 80CCF 80CCG 80D 80DD 80DDB 80E 80EE 80G 80GG 80GGA </div> </div>		<div style="border: 1px solid black; padding: 2px;"> 80GGB 80GGC 80IA 80IAB 80IB 80IC 80ID 80IE 80JJA 80JJAA 80LA 80P 80QQB 80RRB 80TTA 80U </div>

Points for consideration

Under this clause, details of any deductions admissible under chapter VIA or chapter III (section 10A, section 10AA), are to be reported. However, clause 33 as per revised form 3CD corresponds to clause 26 of earlier form no. 3CD. The following include the points that may be kept in view while reporting under this clause :

- a. Details of admissible deductions u/s 10A and 10AA are to be furnished.
- b. Tabular format for reporting section-wise admissible deduction has been prescribed.
- c. Tax auditor to verify whether the assessee fulfills the conditions, if any, specified under:
 - The relevant provisions of Income Tax Act, 1961.
 - Income Tax Rules, 1962
 - Any other guidelines, circulars, etc issued in this behalf.

- d. Deductions available under chapter VI A of the Income Tax Act, 1961, may be grouped as under:
- Deduction in respect of payments – Section 80C – 80GGC
 - Deduction in respect of Incomes – Section 80IA, 80, IAB, 80IB, 80IC, 80ID, 80, IE, 80JJA, 80LA, 80QQB, 80RRB, 80TTA.
 - Deductions in respect of additional wages paid to new workmen – Section 80JJAA.
 - Deduction for disabled persons – Section 80U.
 - Deduction available to newly established undertakings in free trade zone, etc. – Section 10A
 - Deduction available to newly established Units in Special Economic Zones – Section 10AA

3.34. Clause No. 34 (a) to (c)

- (a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

- (b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported

- (c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

Points for Consideration

- Reporting under this clause is to be done in the case of assessee to whom provisions of Chapter XVII-B or XVII-BB apply.
- The tax auditor should determine with his professional judgement whether provisions of Chapter XVII-B and/or XVII-BB are applicable to assessee or not.
- Since the reference to Chapter XVII-B has been made, it is clear that TDS under Income-tax Act is only covered. TDS under other laws (e.g. TDS on works contracts under State VAT laws) are not covered. The tax auditor is also not responsible for reporting timely deposit with the State Government of Professional Tax deducted from salaries of employees
- In case of difference of opinion about the applicability or otherwise of Chapter XVII-B and/or XVII-BB, the answer to the question may have to be qualified depending upon the facts and circumstances of each case.
- Whether it is practically possible for the tax auditor to verify all the transactions to report compliance with provisions of Chapter XVII-B or XVII-BB, where the tax audit is time bound like in Bank Audits.

Option provided in Form 3CA and Form 3CB under Qualification Type -
“TDS returns could not be verified with the books of account”

- A disclaimer may be provided by the tax auditor

Disclaimer: During the year, It is not possible for us to verify whether all the transactions of the assessee due to voluminous entries in the book of account and the transactions have been verified on test-check basis and explanation provided by the assessee.

- In case the tax auditor answers the question as “Yes”, thereafter he should proceed to provide for further details.
- Where the tax auditor is of the opinion that provisions of Chapter XVII-B and Chapter XVII-BB are not applicable he should answer the question as “No”.
- The Tax auditor should obtain a copy of the TDS/TCS returns filed by the assessee for reporting under this clause, to the extent possible.
- Column wise considerations while reporting under this clause are as under:

Column	Particulars	Remarks
(1)	Tax deduction and collection Account Number (TAN)	Reporting of each Tax deduction and collection Account number to be made

(2)	Section	Details of the applicable section
(3)	Nature of payment	Details of Nature of Payments.
(4)	Total amount of payment or receipt of the nature specified in column (3)	Details of the total amount of payment under particular head. For reporting under this column, required details may be drawn from TDS/ TCS statements, books of account and other documents.
(5)	Total amount on which tax was required to be deducted or collected out of (4)	Reporting under this clause involves responsibility upon tax auditor, since he has to state the total amount on which tax was deductible or to be collected (under provisions of chapter XVII-B and XVII-BB). Difference in column (4) & (5) may be on account of: Certificates issued u/s 195 / 197A. Threshold limits provided in specific sections. Difference of opinion about chargeability under particular section. In case of Difference in opinion about applicability of particular section - appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
(6)	Total amount on which tax was deducted or collected at specified rate out of (5)	Considerations to be kept in view while furnishing information under this column include the following : The auditor has to consider the rates of deduction as per the law relevant to the previous year. As per the provisions of sections 195/ 197/ 197A certificate can be issued for no deduction or lower deduction of tax at source. Reference to relevant provisions, rules, circulars, notifications etc. should be made in case of deduction/collection was at a rate other than the specified rate. Where payments to Non-residents - the applicable rate should be checked with respect to the Double Taxation Avoidance Agreement.
(7)	Amount of tax deducted or collected out of (6)	Information about total amount of tax deducted or collected at specified rate. Here, the total amount is as actually deducted/ collected vis-à-vis specified rate.

(8)	Total amount on which tax was deducted or collected at less than specified rate out of (7) - (Logically column (5) should be referred here.)	Here, the information about total amount on which tax deducted or collected at less than specified rate has to be furnished - For example section 194C requires deduction @2% in case payment is made to a person other than individual or HUF, but the deductor deducts only 1%, the same has to be reported under this clause. In case of difference of opinion, in respect of information to be filled into this column, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
(9)	Amount of tax deducted or collected on (8)	Information about total amount of tax deducted or collected at less than specified rate is to be furnished
(10)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)	Details of the amount of tax deducted or collected but not deposited to the credit of the Central Government till the date of tax audit are to be furnished under this column. If TDS deposited late - No need of reporting.

Issues / Considerations

- In-built checks not provided.
 - **For example**, Column (5) - ‘Total amount on which tax was required to be deducted or collected out of (4)’, should not exceed the amount specified in column (4).
- The detail is to be provided in accordance with the nature of payment
- The tax auditor is required to furnish the details irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-B or XVII-BB.

Let’s understand this with the help of the following illustration :

Illustration

- The assessee has incurred Legal and Professional expenses amounting to Rs.2,00,000/- (Rs.1,00,000/-, Rs.50,000/-, Rs.40,000/- and Rs.10,000/-).
- Out of this, TDS u/s 194J is required to be deducted on Rs.1,90,000/-.
- The person to whom payment of Rs.40,000/- is made has furnished Certificate u/s 197 to deduct tax @ 5% and TDS has not been deducted on payment of Rs.50,000/-.

Now, based on the above illustration, the following position emerges :

		One View
Tax deduction and collection Account Number (TAN)	(1)	TAN
Section	(2)	194J
Nature of payment	(3)	Professional fees
Total amount of payment or receipt of the nature specified in column (3)	(4)	2,00,000/-
Total amount on which tax was required to be deducted or collected out of (4)	(5)	1,90,000/-
Total amount on which tax was deducted or collected at specified rate out of (5)	(6)	1,40,000/-*
Amount of tax deducted or collected out of (6)	(7)	12,000/- (100000 * 10% + 40000 * 5%)
Total amount on which tax was deducted or collected at less than specified rate out of (7) (5)	(8)	NIL
Amount of tax deducted or collected on (8)	(9)	NIL
Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)-(7) and (9)	(10)	1,500/- (assumed)

***Other view**- Specified rate may be considered as rate mentioned in the relevant section prior to considering section 195/197 certificates.

**There is no specific column to mention non- deduction of tax at source in the specified format. However, the amount may be calculated as follows:

However, there is separate reporting requirement under Clause no. 21(b) regarding amounts in respect of which provisions of chapter XVII-B have not been complied and therefore, information under this clause should be in consensus with information reported in Clause no. 21(b).

B. Sub-clause (b) to clause 34

E-utility format

(b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time
If not, please furnish the details:

Select
 Select
 YES
 NO
 NA

S.No.	Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported
1	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>	Select
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		Select Form 24 Form 24G Form 24Q Form 26 Form 26A Form 26B Form 26Q Form 26QAA	Form 27 Form 27A Form 27B Form 27BA Form 27C Form 27D Form 27E Form 27Q Form 27EQ		Select Yes No

Points for Consideration.

- Applicable to all assesses having TAN. In case, the assessee has not obtained TAN despite of being applicability of the provisions of Chapter XVII-B or XVII-BB, in that case appropriate reporting to be made in Form No. 3CA/ 3CB as the case may be. However, under this clause, option “N.A.” should be selected in order to move forward and validate the e-utility.
- Under clause 34(b), the tax auditor is to ascertain and report as to whether the assessee has furnished the statement of tax deducted or tax collected at source within the prescribed time. In case all the statements as referred in this clause are filed in time the auditor has to mention “yes”. If not then he has to mention “No” in this clause.
- In case the tax auditor finds that in any case the statement of TDS / TCS is not filed within the prescribed time, then the tax auditor is to furnish further details in Clause 34(b) only with regard to the relevant statement not filed within the prescribed time.
- Information to be submitted for TAN wise separately.
- Under each TAN, auditor is required to mention the “Type of form” that was applicable like Form 24, 24G, 24Q, 26, 26A, 26B, 26Q etc., due date of furnishing such statement and the actual date of furnishing.

- Under this sub-clause, the tax auditor is also required to certify as to whether the statement of tax deducted or collected that is furnished beyond prescribed time contains information about all the transactions which are required to be reported. In case it is not possible for the tax auditor to verify each transaction due to their volume, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
- As regards the applicability of the provisions, the tax auditor should take into consideration the relevant sections, rules, notifications, circulars etc. and relevant judicial pronouncements. In case of difference of opinion in respect of information to be furnished into this column, appropriate observation should be given in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB, as applicable.
- The information given in clause 34 should tally with the disallowances reported u/s 40(a) in clause 21(b) to the extent applicable.

C. Sub-clause (c) to clause 34

E-utility format

(c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).
If yes, please furnish:

Select
 YES
 NO
 NA

S.No.	Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.	
			Amount	Dates of payment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Points for Consideration

- As per this clause, the auditor is required to furnish detailed information in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act.
- Section 201(1A) - Levy of simple interest on failure to deduct tax or payment thereof to the credit of Central Government
- Section 206C(7) - Levy of simple interest on failure to collect tax or payment thereof to the credit of Central Government
- The reporting as to whether the assessee is liable to pay such interest should be in consonance with the reporting under clause 34(a).
- Reference to PART G of the statement generated by the Department in Form No.26AS should also be made.

3.35. Clause 35 (a) to (b)

- (a) In the case of a trading concern, give quantitative details of the principal items of goods traded:
- (i) Opening stock;
 - (ii) Purchases during the previous year;
 - (iii) Sales during the previous year;
 - (iv) Closing stock;
 - (v) Shortage / excess, if any. +
- (b) In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products:
- A. Raw materials:
- (i) opening stock;
 - (ii) purchases during the previous year;
 - (iii) consumption during the previous year;
 - (iv) sales during the previous year;
 - (v) closing stock;
 - (vi) yield of finished products;
 - (vii) percentage of yield;
 - (viii) shortage/excess, if any.
- B. Finished products/By-products:
- (i) opening stock;
 - (ii) purchases during the previous year;
 - (iii) quantity manufactured during the previous year;
 - (iv) sales during the previous year;
 - (v) closing stock;
 - (vi) shortage/excess, if any.

E-utility format

35 (a) In the case of a trading concern, give quantitative details of principal items of goods traded;

S.No.	Item Name	Unit Name	Opening stock	Purchases during the pervious year	Sales during the pervious year	Closing stock	Shortage/excess, if any
1	<input type="text"/>	Select	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>		Select gms kilograms litre kilolitre metre kilometre numbers quintal ton pound milligrams	carat numbers (1000s) kwatt mwatt inch feet sqft acre cubicft sqmetre cubicmetre residual				

(b) In the case of manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products.

(A) Raw materials:

S.No.	Item Name	Unit	Opening stock	Purchases during the previous year	Consumption during the previous year	Sales during the previous year	Closing stock	Yield of finished products	Percentage of yield	Shortage/excess, if any
1		Select								

Select

- milligrams
- carat
- numbers (1000s)

Select

- gms
- kilograms
- litre
- kilolitre
- metre
- kilometre
- numbers
- quintal
- ton
- pound

(B) Finished products :

S.No.	Item Name	Unit Name	Opening stock	Purchases during the previous year	Quantity manufactured during the previous year	Sales during the previous year	Closing stock	Shortage/excess, if any
1		Select						

(C) By-products

S.No.	Item Name	Unit Name	Opening stock	Purchases during the previous year	Consumption during the previous year	Sales during the previous year	Closing stock	Shortage/excess, if any
1		Select						

Point for Consideration.

- **Under this clause, quantitative details in respect of principal items of goods traded / raw material / finished goods of stock are to be furnished in case of trading concern & manufacturing concern.**
- ***“Principal Items:-*** Items constitute more than **10% of the aggregate value** of purchase, consumption or turnover.
- The tax auditor should obtain management representation from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/ excess/ damage and the reasons thereof.
- As required by SA-501 “Audit Evidence - Additional Considerations for specific items”, the tax auditor (*if he is issuing Form No. 3CB also*) should attend the physical stock-taking conducted by the management if the inventories are material unless such attendance is impracticable due to matters such as nature and location of the inventory.
- If the assessee is engaged in the manufacture of goods where the input of raw materials and the output of finished goods are recorded in different units of measurement, unless an alternative method is available to convert the end product into the same unit of measure as the inputs, the yield and shortage cannot be ascertained.
- If the end product is a standard item and can be converted back and related to the input of the raw material in the same unit of measurement, it should be done to ascertain the shortage, yield etc. If it is not possible, the tax auditor should state the fact under this clause.
- In case of companies, verify that these details tally with details given in annual accounts in the notes to accounts.
- In case of voluminous items of smaller value, for better reporting, lots can be made taking the value as base for lot size such as items of value Rs. 0 – 100, 100 -500, 500 -100 or more etc, however in that case appropriate disclosure should be given in form 3CA/3CB as may be applicable.
- In case assessee is not maintaining stock register, and due to voluminous entries it is not possible to gather quantitative details in respect of purchase / sale and/or opening stock , appropriate disclosure should be given in form 3CA/3CB as may be applicable.
- In case unit of input (in respect of Raw material) & unit of output (in respect of finished goods is different in that case appropriate observation about units of input & units of output should be given in form 3CA/3CB as may be applicable.

3.36. Clause NO. 36 (a) to (e)

In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form:-

- 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.

E-utility format

36 In the case of Domestic Company, details of tax on distributed profits under section 115-O in the following forms :-

S.No.	(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) Date of Payment with Amounts	
					Amount	Dates of payment
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>						

Under this clause, the tax auditor has to report on profit distributed during the financial year and therefore, the amount of tax on such distributed profit plus surcharge along with the education cess thereon has to be reported under this clause. The amount of the dividend referred to in sub-section (1) is to be reduced by the amount referred to in sub-section (1A). As per section 115O(1A) - Amount of dividend to be reduced by –

- i. the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary,
- ii. the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of section 10.

Points for Consideration

- As per the amendment made by the Finance Act, 2014 w.e.f. 01-10-2014, the dividend distribution tax is to be computed after grossing up of the Dividend distribution tax. For instance, where the amount of dividend paid or distributed by a company is Rs. 85, then DDT under the amended provision would be calculated as follows:
- Dividend amount distributed = Rs. 85 [Increase by Rs. 15 {i.e. $(85 \times 0.15) / (1 - 0.15)$ }
 Increased amount = Rs. 100
 DDT @ 15% of Rs. 100 = Rs. 15
 Tax payable u/s 115-O is Rs. 15
 Dividend distributed to shareholders = Rs. 85

- Section 115-O Tax on distributed profits of Domestic Companies. The special levy at the prescribed rate on the amount of dividend declared, distributed or paid (interim or otherwise) out of current Profits or accumulated Profits.
- This tax will be payable even if no income tax is payable by such Company on its total Income.
- For the purpose of this clause, “Dividend” means dividend under clause (22) of section 2 exclusive of sub-clause (e) advance or loan out of accumulated profit or shareholders etc.
- The Date of Payment should be verified from the Challan and Books of Account etc.
- Tax u/s 115-O should be deposited within 15 days of date of declaration/ distribution or payment, whichever is earlier.

3.37. Clause 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

E-utility format

37 Whether any cost audit was carried out ?

Select	Select
	YES
	NO
	NA

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.

Under this clause, only details of disqualification and disagreement are to be provided and there is no need to enclose copy of Cost Audit reports. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out / or the report of such audit is not received by the time the tax auditor issues the tax audit report. The tax auditor should state the fact under the clause that the cost audit is not completed and the cost audit report is not available with the assessee.

Note : In this clause, it is referred to give details of disqualification or disagreement in respect of cost audit carried out during the previous year, anomaly here is, it is not possible to obtain the cost audit report in respect of the cost audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of cost audit report received during the previous year irrespective of the fact to which period it belongs.

3.38. Clause No. 38

Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/ quantity as may be reported/ identified by the auditor.

E-utility format

38 Whether any audit was conducted under the Central Excise Act, 1944 ?

Select ▼

- Select
- YES
- NO
- NA

If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Under this clause, only details of disqualification and disagreement is to be provided and there is no need to enclose copy of audit report **conducted under the Central Excise Act, 1944**. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out / or where the report of such audit is not received by the time the tax auditor issues the tax audit report. The tax auditor should state the fact under the clause that the audit is not completed and the audit report is not available with the assessee.

Note : In this clause it is referred to give details of disqualification or disagreement in respect of audit under central excise carried out during the previous year, anomaly here is it is not possible to obtain the audit report in respect of the audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of such audit report received during the previous year irrespective of the fact to which period it belongs.

3.39. Clause no. 39

Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter / item / value / quantity as may be reported/ identified by the auditor.

E-utility format

39 Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services as may be reported/identified by the auditor. ?

Select ▼

Select
YES
NO
NA

If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Under this clause, only detail of disqualification and disagreement is to be provided and there is no need to enclose copy of Service tax audit report. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out / or the report of such audit is not received by the time the tax auditor issues the tax audit report. The tax auditor should state the fact under the clause that the audit is not completed and the audit report is not available with the assessee.

Note : In this clause, it is referred to give details of disqualification or disagreement in respect of audit under service tax carried out during the previous year, anomaly here is it is not possible to obtain the audit report in respect of the audit that is ordered within the relevant previous year and as such the prudent practice in respect of this clause would be to report disqualification and disagreement in respect of such audit report received during the previous year irrespective of the fact to which period it belongs.

3.40. Clause 40

Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

S. No.	Particulars	Previous year	Preceding previous year
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		

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

E-utility format

40 Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

Serial Number	Particulars	Previous Year			Preceding previous Year		
(a)	Total turnover of the assessee	<input type="text"/>			<input type="text"/>		
(b)	Gross profit / Turnover	Gross Profit	Turnover	<input type="text"/> (%)	Gross Profit	Turnover	<input type="text"/> (%)
(c)	Net profit / Turnover	Net Profit	Turnover	<input type="text"/> (%)	Net Profit	Turnover	<input type="text"/> (%)
(d)	Stock-in-Trade / Turnover	Stock-in-Trade	Turnover	<input type="text"/> (%)	Stock-in-Trade	Turnover	<input type="text"/> (%)
(e)	Material consumed / Finished goods produced	Materials cons	Finished Goods Pr	<input type="text"/> (%)	Materials cons	Finished Goods Pr	<input type="text"/> (%)

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

****The note given “the details required to be furnished for principal items of goods traded or manufactured or services rendered” is only in respect of sub clause “e”***

Points for consideration

Under this clause, details in respect of principal items are to be provided along with corresponding detail of proceeding previous year taken from last previous year audit report. However, in case where the preceding previous year was not subject to audit, there is no need to mention under the column. Below mentioned include the points for consideration while reporting under this clause:

- Calculate ratios for manufacturing or trading concern in terms of value only.
- Ratios to be calculated for the business as a whole and not product wise.
- Provide overall Gross Profit ratio if gross profit from each product is different.
- Stock-in-trade include only closing stock of finished goods & not stock of raw material, work-in-progress, stores and spare parts or loose tools. And in case closing stock is Nil, then this sub-clause (4) is not applicable.
- For the valuation of finished goods consider depreciation on Plant & Machinery [AS-2 (revised)].
- Exclude extraordinary items for calculation of ratios unless they are of material effect [AS 5, AS(IT) II].
- Take the value of Sales, Purchase & Inventories before the Statutory Adjustment (of section 145A).

- Material consumed / finished goods produced [clause (d) is not applicable to trading concerns].
- **In case of Share broker**
 - Dealing for Commission – Calculate Net Profit Ratio
 - Business – Calculate Gross Profit Ratio

Case law:

In this Case of **N.C. Budhiraja & Co, (1993) 204 ITR 412(SC)** the Hon'ble Supreme Court decided that construction of tunnels, bridges, dams etc. is only a Service activity and it cannot amount to manufacturing activity.

3.41. Clause no. 41

Please furnish the 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.

41 Please furnish the 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 alongwith details of relevant proceedings.

S.No	Financial year to which demand/refund relates to	Name of other Tax law	Type (Demand raised/Refund received)	Date of demand raised/refund received	Amount	Remarks
1	Select	Select	Select			
	Select 1980-81 1981-82 1982-83 1983-84 ▼ 2017-18 2018-19 2019-20 2020-21	Select Central Excise Duty Central Custom Duty Service Tax Sales Tax/VAT State Excise Duty Other Indirect Tax/duty	Select Demand raised Refund received			

Points for Consideration

- Under this clause, the details of demand/refund under laws other than the Income Tax Act, 1961 and Wealth Tax Act, 1957 to be furnished along with assessment particulars.
- Legislative intention behind insertion of this clause in the Tax Audit report under Income Tax Act: Probably due to determine whether such demand has been claimed as expenditure by the assessee or not or whether the refund has been included in income or not.

- Generally, under other tax laws the Indirect tax laws such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax, etc. should be covered [*However, Octroi Duty, Entry Tax, cess or duty such as Marketing cess, cess on Royalty, etc. should not be covered as other tax laws*].
- Obtain a copy of all the demand/refund orders issued by the government authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act.
- Where the demand/refund order pertain to a period other than the relevant previous year but issued during the previous year, the same should be reported.
- If assessee is following accrual system of accounting and have passed the book entries recognizing demand / refund, or in case of cash system of accounting recognized the same in the books of account on actual receipt or payment basis, the tax auditor should make necessary verification for ascertaining whether any such demand has been raised on or refund order has been issued to/received by the assessee.
- If there is any adjustment of refund against any demand, same be reported.
- In case of refunds, the tax auditor should also verify whether the interest on such refund has been shown as income or not.
- No need to report those proceedings in which neither demand is raised nor refund is issued.
- In the Notification dated 25-07-2014, detail of refund issued to assessee is desired however, in e-utility format, amount of refund received is sought.
- The tax auditor should also report the consequential penalty if debited to Profit & Loss account under New Clause No. 21

CHAPTER 4

Important Formats

A. DRAFT MANAGEMENT REPRESENTATION

Document No.

Date:

To

__(Name of Auditor)__

__(Name of Firm)__

Chartered Accountants

__(Address)__

Sub: Management Representation in respect of Tax Audit to be conducted under section 44AB of the Income Tax Act, 1961 for Assessment Year 2014-15

Dear Madam/ Sir,

This representation letter is provided in connection with audit of the Balance Sheet as on _____ and Profit and Loss Account/ Income and Expenditure Account of ____ (Name of Assessee)__ for the period beginning from _____ to _____ for the purpose of expressing an opinion as to whether the financial statement as above gives a true and fair view of the state of the affairs of the assessee as on _____ and profit/ loss or surplus/ deficit of the assessee for the period beginning from _____ to _____.

In connection to the same, I/ We confirm to the best of my/ our knowledge and belief, the following representation:

1. My/ our business/ profession was started as a _____ in the year _____.
2. The address from where business/ profession is carried on is same as we have informed to the income tax department, there is no change in the same. The

details are _____. We have ____ no. of branches and the address are _____.

3. My/ our Permanent Account Number is _____.
4. With regard to the applicability of the Indirect Taxes, we inform that we are liable / not liable to pay any indirect taxes except stated hereunder :

Name of the Act	Nature of the Taxes	Registration No
-----------------	---------------------	-----------------

**Information under the table to be filled in case only if indirect tax applicability.
 "that we have obtained below mentioned no. under various indirect taxes however we are not yet liable to pay any indirect tax thereunder:*

Name of the Act	Nature of the Taxes	Registration No
-----------------	---------------------	-----------------

5. Our Income Tax Status is that of a (state proprietorship/ partnership/ HUF/ Company in which public is not substantially interested).
6. Our previous year is from **01-04-2013 to 31-03-2014**.
7. The details of Proprietor/ partners/ karta/ directors ,their profit sharing ratio (in case of partnership firm) and change (if any) in constitution / PSR are as under:
8. Our **nature of business** is that of
 During the above year there is no change in nature of business & profession and vis-à-vis preceding previous year.
9. No books of accounts have been prescribed for our business under Income Tax Act, 1961. However, following books of accounts are maintained by us in a computer system on accounting software i.e.
 - Cash book
 - Ledger
 - Bill Book
 - Salary Register
 - Journal
 - Vouchers, etc.

The books of accounts so maintained are kept at our head office at point no. 3 supra. In respect of branches books are maintained as per list enclosed.

10. Profit and loss account does not include any profit & gains as per section 44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB or any other relevant section.
11. We are regularly following Mercantile system of Accounting and there is no change in method of accounting compared to previous year. There is no change /deviation in the method of accounting employed in the previous year from the Accounting Standard or Income computation as per standards

- prescribed under section 145 of the Income Tax Act, 1961.
12. All expenditures debited in the financial statements are for the purpose of business except proportionate expenses disallowed u/s 37.
 13. We hereby certify that we have timely valued our closing stock of finished goods at lower of **cost or market price or net realisable value**. We further certify that the valuation of the above stock as on **31.03.14** as arrived by us is(quantity)/ as per list enclosed, amounting to **Rs./-**. There is no change in the method of stock valuation during the previous year. The stock was physically verified and valued by us on **31.03.2014**.
 14. No capital asset has been converted into stock in trade during the period under consideration.
 15. All incomes during the year have been credited to Profit and Loss Account/ Income and Expenditure Account except _____
 16. We certify there is no capital receipt which is credited to Profit & Loss Account.
 17. We hereby confirm that there is no land /building which has been transferred during the previous year for a consideration less than value adopted/ assessed/ assessable by any authority of state government.
 18. The detail of properties sold during the period under consideration is enclosed herewith and the same is disclosed in the books of account. The copy of registered sale deed is enclosed herewith.
 19. Depreciation is provided on W.D.V. method from the date of inception of business at the rate prescribed under Income-tax Rules.
 20. Detail of fixed assets purchased during the period under consideration is enclosed herewith along with the detail of CENVAT claimed and exchange fluctuations.
 21. There is no expenditure which is eligible for deduction under Section 32AC, 33AB, 33ABA, 35(1), 35(2AA), 35(2AB) and 35AB to 35E, of the Income Tax Act, 1961.
 22. No business as specified under section 35AD has been carried out during the period under consideration.
 23. All bonus, commission payable for the year has been accounted in the books of account. There is no sum which has been paid to employee as bonus or commission for services rendered which was otherwise payable to him as profit/dividend.
 24. No expenses of personal or capital nature have been debited in the Profit and Loss Account/ Income and Expenditure Account.
 25. I/ We certify that there is no expenditure on advertisement in any souvenir, broucher, tact, pamphlet etc. published by a political party. Further I/ we confirm that no expenditure has been incurred at clubs except _____.

26. All payments in respect of expenditure covered u/s 40A(3) have been made through account payee cheques or account payee drafts as the case may be except _____
27. No liability of contingent nature has been debited to Profit & Loss account/ Income and Expenditure Account except those, which has been disclosed in the financial statements
28. The detail of provision made for payment of gratuity is enclosed herewith, if any.
29. No expenses have been debited to Profit and Loss account, the corresponding income in respect whereof is exempt and thus no amount is inadmissible u/s 14A.
30. Based on our books of account, subjected to audit, we certify that there is no deemed income accruing or arising to us u/s 56(2)(vii), 56(2)(viia), 56(2)(viib) and 56(2)(ix) of the Income Tax Act,1961.
31. No interest is inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.
32. The details of transactions with the related party u/s 40A(2)(b) of the Income Tax Act,1961 are as under: -

<i>S.No.</i>	<i>Name of Related Person</i>	<i>Nature of Payment</i>	<i>Relationship</i>	<i>Amount</i>
--------------	-------------------------------	--------------------------	---------------------	---------------

In Our opinion, the amount of payments to the related parties is reasonable.

33. There is no profit chargeable under Section 41.
34. I/ We confirm that no prior period income or expense has been debited or credited to the Profit and Loss Account/ Income or Expenditure Account.
35. The details of shares purchased/ received during the period under consideration and the same are disclosed in the books of account. The Demat account statement is enclosed herewith.
36. During the period under consideration, I/ we have not taken or repaid any amount on hundi otherwise than by account payee cheque.
37. We also confirm and certify with regard to taking/accepting &/or repayment of loan/deposits that the acceptance/repayment thereof has been made through account payee cheque/bank draft except in case of interest provided on loans.
38. There is no brought forward loss/unabsorbed depreciation.
39. We certify that we have complied with the provisions of Chapter XVII-B & XVII-BB, regarding deduction/collection of tax at source & regarding the payment thereof to the credit of Central Government. For the purpose of details of payments and Tax deducted thereon we are hereby producing the details of quarterly TDS returns for the Financial Year for your perusal. F

40. I/ we are not liable to pay interest u/s 201(1A) and 206C(7) of the Income Tax Act, 1961.
41. I/we duly acknowledges that statements of tax deducted / tax collected has been furnished within the prescribed time.
42. The quantitative detail of principal item of raw material, finished goods and by-products are enclosed herewith.
43. Detail of tax on distributed profits u/s 115-O is enclosed herewith.
44. I/ We have no requirement of Cost or Excise Audit. However, in respect of Service Tax, audit report is enclosed herewith.
45. We also confirm that no demand or refund has been issued during the previous year under any tax laws except Income Tax Act,1961 and Wealth Tax Act,1957.
46. We certify that on **31st March 2014**, we had a cash balance of **Rs**/-

For and on behalf of

AUTHORISED SIGNATORY

Note: wherever the detailed information is there (i.e. the clause is "applicable") in respect of any clause, the same be taken as per "List" enclosed to make this "management representation" more meaningful & comprehensive.

B. Specimen Letter of Appointment in case of a company

Ref:

Date:

M/s ABC

Chartered Accountants,

.....Place.....

Re: Appointment as Tax Auditors under section 44AB of the Income-tax Act, 1961 for the Previous Year ending relevant to the Assessment Year.....

Sir,

We have to inform you that you have been appointed (*Jointly with M/s.....) as "Tax Auditors" of our company under section 44AB of the Income-tax Act, 1961 for the above mentioned Assessment Year.....as per the Resolution (produced hereunder) passed in the meeting of the Board of Directors held on.....

"Resolved that ABC, Chartered Accountants, (*Jointly with M/s..... Chartered Accountants) be and hereby appointed as Tax Auditors of the Company for The Previous Year ending.....relevant to the Assessment Year.....under section 44AB of Income-tax, Act.

*The remunerations for Tax Audit will be Rs.....plus travelling and out of pocket expenses.

Or

*The Managing Director is hereby authorized to fix the remuneration for Tax Audit in consultation with Tax Auditors.

*For your information, our Statutory Auditors under the Companies Act, 2013 are M/s, Chartered Accountants and our Tax Auditors for the Previous Year endedwere M/sChartered Accountants. Their addresses are enclosed.

Kindly let us have your acceptance of the said appointment.

Yours faithfully,
For and on behalf of
XYZ & Co. Pvt. Ltd.

Secretary/Managing Director/Director

*as may be applicable

C. Specimen Letter of Appointment in case of Branch Auditors**Ref:****Date:****M/s ABC****Chartered Accountants,****.....Place.....**

Re : Appointment as Branch Tax Auditors under section 44AB of the Income-tax Act, 1961 for the Previous Year ending relevant to the Assessment Year.....

Sir,

We have to inform you that you have been appointed "Tax Auditors" (*Jointly with M/s.....Chartered Accountants) forBranch of our company under section 44AB of the Income-tax Act, 1961 for the above mentioned Assessment Year.....as per the Resolution (produced hereinunder) passed in the meeting of the Board of Directors held on.....

"Resolved that ABC, Chartered Accountants (*Jointly with M/s.....Chartered Accountants), be and hereby appointed as Tax Auditors ofBranch for The Previous Year ending.....relevant to the Assessment Year.....under section 44AB of Income-tax, Act.

*The remunerations for Tax Audit will be Rs.....plus travelling and out of pocket expenses.

Or

*The Managing Director is hereby authorized to fix the remuneration for Tax Audit in consultation with Tax Auditors."

*For your information, our Statutory Auditors under the Companies Act, 2013 and Tax Auditors are M/s, Chartered Accountants and our Tax Auditors for the said branch for the Previous Year endedwere M/sChartered Accountants. Their addresses are enclosed.

Kindly let us have your acceptance of the said appointment.

Yours faithfully,
For and on behalf of
XYZ & Co. Pvt. Ltd.

Secretary/Managing Director/Director

*as may be applicable

D. Specimen Letter of Appointment in case of Partnership firm/ Proprietary concern

Ref:

Date:

M/s ABC

Chartered Accountants,

.....Place.....

**Re : Appointment as Tax Auditors under section 44AB of the Income-tax Act, 1961
for the Previous Year endingrelevant to the Assessment
Year.....**

Sir,

We have to inform you that you have been appointed "Tax Auditors" of our firm/
concern for the above mentioned Assessment Year..... The remuneration
for Tax Audit will be Rs.....plus travelling and out of pocket expenses.

*Our Tax Auditors for the Previous Year endedrelevant to Assessment
Yearwere M/sChartered Accountants. The addresses
are given as under.

Kindly let us have your acceptance of the said appointment.

Yours faithfully

Partner/Proprietor

*as may be applicable

E. Specimen Letter of Communication with the Previous Tax Auditors/Present Statutory Auditors

Ref:

Date:

M/s. RST & Co.

Chartered Accountants

....Place.....

Re : Our Appointment as "Tax Auditors" of XYZ & Co. Pvt. Ltd. (* jointly with M/s., Chartered Accountants) for the Previous Year relevant to Assessment Year.....

Sir,

We are appointed as the "Tax Auditors" of the above company for the assessment Year(*jointly with M/s., Chartered Accountants).

*As you are the Statutory Auditors of the Company and as a matter of professional courtesy we are writing to you about our said appointment. Kindly let us know whether you have any objection in our acceptance or the Tax Audit assignment.

*As you are the previous Tax Auditors of the company we request you to let us know whether you have any objection to our accepting the said appointment.

Yours faithfully

ABC & Co.
Chartered Accountants

*as may be applicable

F. Consent letter accepting appointment

Ref:

Date

M/s XYZ & Co. Pvt. Ltd.

-----Place-----

Re: Acceptance for Appointment of Tax Auditor for the financial year 2012-2013.

Sir,

This is in reference to your letter for appointing us as tax auditor. In this regard, we are hereby giving our consent for the appointment in respect of subject matter.

Thanking You,

Yours faithfully

ABC & Co.
Chartered Accountants

G. Specimen Letter from assessee-entity to the joint auditors regarding uploading of report

Ref. No. _____ Date _____
 M/s.A.B.C. & Co.
 Chartered Accountants
Place.....

Sir,

Reg: Tax Audit under Section 44AB of the Income-tax Act, 1961 for the Previous Year, i.e., from _____ to _____ relevant to the Assessment Year _____

This is with reference to your letter of even number dated ----- communicating your acceptance to be our Tax Auditors for the captioned Assessment Year. We thank you and your joint auditors for the same.

We request that the report of audit be uploaded by you, i.e., M/s. _____. While we are endorsing a copy of this to your joint auditors, you may kindly inform the above arrangement to him/them as well.

A line in confirmation will be appreciated.

Yours faithfully,

(_____)
 M/s _____

Copy to : M/s. _____ (joint auditors)

We have no objection to M/s. _____ uploading the report of audit as stated above.

(_____) Date _____
 M/s. A.B.C. & Co.

Joint Auditors

We undertake to upload the report of audit as stated above.

(_____) **Date** _____
M/s. _____
Joint Auditors

H. Format for maintaining a record of the tax audit assignments Ceiling on Tax Audit Assignments

In pursuance of Clause 8 of the Explanation to Notification No. 1-CA(7)/3/88, dated 13th January, 1989, published at page 735 of the February, 1989, issue of 'The Chartered Accountants', the Council has prescribed the following format for maintaining a record of the tax audit assignments accepted by a chartered accountant in practice in each financial year:

Particulars regarding Tax Audit Assignment to be maintained with respect of Sole Proprietors/Firms of Chartered Accountants.

Financial Year _____

FORM OF TAX AUDIT PARTICULARS TO BE FURNISHED BY MEMBERS/FIRM

1. Name of the Firm/Trade Name of Chartered Accountant in Practice:

2. Name(s) of proprietor/partners of the Firm with his/their membership number(s):

<i>Name of Proprietor/Partner(s)</i>	<i>Membership No.</i>	<i>Date from which certificate of practice held</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. (a) Date of formation of proprietary/ partnership firm:

(b) Date on which the present partnership was entered into:

4. Address of the Head Office of the firm/Chartered Accountant in practice _____

5. Address(es) of the branch office(s) of the firm/Chartered accountant in practice, if any:

6.	1.	Whether the proprietor/ any partner stated in column 2 above is/are partner or proprietor with any firm or chartered accountant in practice in practice anywhere in India	Yes/No
----	----	---	--------

If yes, detail in each case:

7.

<i>Name of Partner/ Proprietor</i>	<i>Name/s of the firm of Chartered Accountants with which con- nected</i>	<i>Capacity in which connected</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. In case of a firm, whether any partner is also practicing in his individual name?
 Yes / No

9. If yes, name/s and membership/s of the member/s: _____

10. Particulars of Tax Audit assignments accepted by the Proprietor/Firm at Head Office and Branches, if any-

S.No.	Date of Acceptance	Particulars of Concern of which tax Audit was accepted	
		Name	Address

11. Particulars of the Tax Audit assignments accepted by the Proprietor/Partner(s) in his/their capacity as Partner/Proprietor of any other firm or in his individual name at Head Office and branches, if any-

Name of the member with membership no.	Firm/Trade Name	No. of Assignment	Date of Acceptance	Particulars of Concern of which tax Audit was accepted	
				Name	Address

I.....do hereby declare that the above particulars given for the Financial Year to the Assessment Year Are true to the best of my information and belief.

Verified today the day

of.....at.....

Signature_____

Annexure I

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]**

NOTIFICATION

New Delhi, the 1st day of May, 2013

INCOME-TAX

S.O. 1111 (E).— In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (3rd Amendment) Rules, 2013.
(2) They shall be deemed to have come into force with effect from the 1st day of April, 2013.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in rule 12,—
 - (a) in sub-rule (1),—
 - (A) for the figures “2012”, the figures “2013” shall be substituted;
 - (B) in item (a),—
 - (i) in sub-item (iii), after the words “income from race horses”, the words “and does not have any loss under the head” shall be inserted;
 - (ii) for the proviso, the following proviso shall be substituted, namely:-
“Provided that the provisions of this clause shall not apply to a person who,-

- (I) is a resident, other than not ordinarily resident in India within the meaning of sub-section (6) of section 6 and has,—
 - (i) assets (including financial interest in any entity) located outside India; or
 - (ii) signing authority in any account located outside India;
- (II) has claimed any relief of tax under sections 90 or 90A or deduction of tax under section 91; or
- (III) has income not chargeable to tax, exceeding five thousand rupees.”;

(C) in clause (ca), for the proviso, the following proviso shall be substituted, namely:-

“Provided that the provisions of this clause shall not apply to a person who,-

- (I) is a resident, other than not ordinarily resident in India within the meaning of sub-section (6) of section 6 and has,—
 - (i) assets (including financial interest in any entity) located outside India; or
 - (ii) signing authority in any account located outside India;
- (II) has claimed any relief of tax under sections 90 or 90A or deduction of tax under section 91; or
- (III) has income not chargeable to tax, exceeding five thousand rupees.”;

(b) in sub-rule(2), the following proviso shall be inserted, namely:-

“Provided that where an assessee is required to furnish a report of audit under sections 44AB, 92E or 115JB of the Act, he shall furnish the same electronically.”;

(c) in sub-rule (3), in the proviso,-

(A) in clause (a),—

- (i) for the words “an individual or a hindu undivided family”, the words “a person, other than a company and a person required to furnish the return in Form ITR-7” shall be substituted;
- (ii) for the words “ten lakh rupees” the words “five lakh rupees” shall be substituted;
- (iii) for the figures “2012-13”, the figures “2013-14” shall be substituted;

(B) after clause (aaa), the following clause shall be inserted, namely:-

“(aab) a person claiming any relief of tax under section 90 or 90A or

deduction of tax under section 91 of the Act, shall furnish the return for assessment year 2013-14 and subsequent assessment years in the manner specified in clause (ii) or clause (iii);”

- (C) in clause (b), after the words, brackets and figure “in clause (i)”, the words, brackets and figures “or clause (ii) or clause (iii)” shall be inserted.
 - (D) in sub-rule 4, after the words, brackets and figures “of sub-rule(3)”, the words and figures “and the report of audit in the manner specified in proviso to sub-rule (2)” shall be inserted.
 - (E) in sub-rule (5), for the figures “2011”, the figures “2012” shall be substituted.
3. In the said rules, in Appendix-II, for “Forms SAHAJ (ITR-1), ITR-2, ITR-3, SUGAM (ITR-4S), ITR-4 and ITR-V”, the “Forms SAHAJ (ITR-1), ITR-2, ITR-3, SUGAM (ITR-4S), ITR-4 and ITR-V” shall be substituted.

[Notification No. 34 /2013/ F.No.142/5/2013-TPL]

(Gaurav Kanaujia)

Deputy Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification number S.O.969(E), dated the 26th March, 1962 and last amended by Income-tax (2nd Amendment) Rules, 2013 vide notification S.O. No.410 (E) dated 19th February, 2013.

Annexure II

**F.No.133/24/2014-TPL
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF DIRECT TAXES)**

**Room No. 147 B-II, North Block
New Delhi, the 20th August, 2014**

Order Under Section 119 of the Income-tax Act, 1961

1. In exercise of power conferred by section 119 of the Income-tax Act ('the Act'), the Central Board of Direct Taxes (CBDT) hereby extends the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assesseees who are not required to furnish report under section 92E of the Act from 30th day of September, 2014 to 30th November, 2014.
2. It is further clarified that the tax audit report under section 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in the pre-revised Forms shall be treated as valid tax audit report furnished under section 44AB of the Act.

(J.Saravanan)

Under Secretary (TPL-III)

Copy to:-

- (i) The Chairman (CBDT), All Members, Central Board of Direct Taxes for information.
- (ii) All Cadre Controlling Pr. Chief Commissioners of Income-tax with a request to circulate amongst all officers in their regions/charges.
- (iii) The Pr. Director General of Income Tax (Admn.) Mayur Bhawan, New Delhi.

- (iv) The Director General of Income Tax (Systems) with a request for uploading it on the Departmental website.
- (v) Commissioner of Income Tax (M&TP), CBDT.

(J.Saravanan)

Under Secretary (TPL-III)

Annexure III

CIRCULAR NO. 452, DATED 17.3.1986 - Compulsory Audit - Whether the provision is applicable to commission agents, arahtias, etc.

1. Section 44AB, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakhs in any previous year relevant to the assessment year commencing on 1-4-1985 or any subsequent assessment year.
2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB.
3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachha arahtias and pacca arahtias dealing in different commodities in different parts of the country. *The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contracts under consideration.* Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.
4. The Board are advised that *so far as kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtias.* A pacca arahtia is not, in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principals of distinction can be laid down between a kachha arahtia and a pacca arahtia:
 - a) A kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own

- goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.
- b) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
 - c) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.
 - d) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.
 - e) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.
 - f) The kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a pacca arahtia has a personal interest of his own when he enters into a transaction.
 - g) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.
5. The above distinction between a kachha arahtia and pacca arahtia may also be relevant for determining the applicability of section 44AB in cases of other types of agents. *In the case of agents whose position is similar to that of kachha arahtia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahtia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.*

Circular : No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986.

JUDICIAL ANALYSIS

EXPLAINED IN - In *Jeyar Consultant & Investment (P.) Ltd. v. Assistant Commissioner* [1993] 46 ITD 71 (Mad.-Trib.), it was observed that it is *ex facie* clear from the CBDT Circular No. 452 of 17-3-1986 which came to be issued in relation to *kacha* and *pacca arhatias*, who are an integral part of the trading sector, that instructions issued by the Board as respects *kacha* and *pacca arhatias* could not be applied to the case of the assessee who has arranged finances for other for a fee. The assessee may choose to label the fee as brokerage or even as commission. But the fee—or to use a generic expression ‘receipt’—could not be regarded as turnover proper.

RELIED ON IN - The above circular was relied on in *ITO v. Shantilal Chuni Lal & Co.* [1993] 45 ITD 581 (Pune - Trib.), with the following observations :

“. . . Further, reference was made by assessee to pages 52 to 54 which contains Board’s Circular No. 452, dated 17-3-1986 which has been issued in connection with section 44AB of the Income-tax Act, 1961. Reliance was placed on para 4 of the said circular according to which the Board were advised that so far as *kachha arahatias* were concerned, the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The submission of the learned counsel for the assessee was that the case of the assessee is one of *kachha arahatia* and not a *pucca arahatia* and, therefore, only gross commission has to be considered for the purpose of section 44AB of the Income-tax Act, 1961. . . . The CIT (Appeals) has excluded the admat receipt as well as interest receipt from the purview of turnover for the purpose of section 44AB. Relying on the clarifications given by the Board in its Circular No. 452, dated 17-3-1986, he has categorised the assessee as *kachha arahatia* and he has charged expenses incurred on such business which resulted in gross profit rate of 1.09 per cent. Therefore, it is very much relevant to clinch the issue whether the assessee is a *kachha arahatia* or not. Going by the clarification issued by the Board in the aforesaid Circular No. 452, dated 17-3-1986 the case of the assessee fits in with the *kachha arahatia vis-a-vis* case of *pucca arahatia*. . . .” (pp. 585-586).

REFERRED TO IN - *Manish Textiles v. ACIT* [1991] 38 ITD 365 (Bom.)

Annexure IV

Circular No.561, dated 22nd May, 1990 - Compulsory audit - Tax audit in case of companies have accounting year other than financial year.

1. The Board have received representations regarding difficulties faced in complying with the provisions of section 44AB of the Income-tax Act in case of companies which follow an accounting period other than financial year.
2. Section 3 of the Income-tax Act, *inter alia*, provides that with effect from 1st April, 1989, "previous year" for the purposes of that Act means financial year immediately preceding the assessment year. In spite of the introduction of a uniform previous year for purposes of income-tax, some companies may adopt an accounting period other than the financial year, say the calendar year, under the Companies Act for other purposes.
3. In such cases, a question has arisen as to whether, under section 44AB of the Income-tax Act, the tax auditor can audit and certify the accounts for the period for which accounts have been maintained under the Companies Act (*i.e.*, in this case the calendar year) or whether the tax auditor will have to certify the accounts for the relevant financial year which is the uniform accounting year for tax purposes.
4. The Board have considered the matter and are of opinion that *as the income of the previous year is chargeable to tax and, for the purpose of Income-tax Act, the previous year is the financial year, the tax auditor would have to carry out the audit under section 44AB in respect of the period covered by the previous year, i.e., the relevant financial year. The proviso to the aforesaid section 44AB, therefore covers only the cases where the accounts are audited under any other law in respect of the financial year. Where the accounting year is different from the financial year, the proviso to section 44AB will not apply. Consequently, the tax auditors would have to carry out the tax audit in respect of the period covered by the relevant financial year and submit his report in Form 3CB as required in rule 6G(1)(b) of the Income-tax Rules.*

Annexure V

NOTIFICATION NO. 34/2008, DATED 13-3-2008 - E- payment of taxes made mandatory.

In exercise of the powers conferred by sub-section (1) of section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Fourth Amendment) Rules, 2008.
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, after rule 124, the following rule shall be inserted, namely:-

“Electronic-payment of tax.

125. (1) The following persons shall pay tax electronically on or after the 1st day of April, 2008:-

- (a) a company; and
- (b) a person (other than a company), to whom provisions of section 44AB are applicable.

(2) For the purposes of this rule :-

- (a) “pay tax electronically” shall mean, payment of tax by way of-
 - (i) internet banking facility of the authority bank; or
 - (ii) credit or debit cards;
- (b) the word “tax” shall have the meaning as assigned to it in clause (43) of section 2 of the Act and shall include interest and penalty”.

[F.No. 134/37/2007-TPL]

Annexure VI

ACCOUNTING STANDARDS NOTIFIED UNDER SECTION 145(2)

[No. 9949 [F. No. 132/7/95-TPL], dated 25-1-1996]

In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following accounting standards to be followed by all assesseees following mercantile system of accounting, namely :—

A. Accounting Standard I relating to disclosure of accounting policies :

1. All significant accounting policies adopted in the preparation and presentation of financial statements shall be disclosed.
2. The disclosure of the significant accounting policies shall form part of the financial statements and the significant accounting policies shall normally be disclosed in one place.
3. Any change in an accounting policy which has a material effect in the previous year or in the years subsequent to the previous years shall be disclosed. The impact of, and the adjustments resulting from, such change, if material, shall be shown in the financial statements of the period in which such change is made to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the previous year but which is reasonably expected to have a material effect in any year subsequent to previous year, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted.
4. Accounting policies adopted by an assessee should be such so as to represent a true and fair view of the state of affairs of the business, profession or vocation in the financial statements prepared and presented on the basis of such accounting policies. For this purpose, the major considerations governing the selection and application of accounting policies are following, namely :—
 - (i) Prudence - Provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information;

- (ii) Substance over form - The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form;
 - (iii) Materiality - Financial statements should disclose all material items, the knowledge of which might influence the decisions of the user of the financial statements.
5. If the fundamental accounting assumptions relating to going concern, consistency and accrual are followed in financial statements, specific disclosure in respect of such assumptions is not required. If a fundamental accounting assumption is not followed, such fact shall be disclosed.
6. For the purposes of paragraphs (1) to (5), the expressions, -
- (a) "Accounting policies" means the specific accounting principles and the methods of applying those principles adopted by the assessee in the preparation and presentation of financial statements;
 - (b) "Accrual" refers to the assumption that revenues and costs are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the period to which they relate;
 - (c) "Consistency" refers to the assumption that accounting policies are consistent from one period to another;
 - (d) "Financial Statements" means any statement to provide information about the financial position, performance and changes in the financial position of an assessee and includes balance sheet, profit and loss account and other statements and explanatory notes forming part thereof;
 - (e) "Going concern" refers to the assumption that the assessee has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future.

B. Accounting Standard II relating to disclosure of prior period and extraordinary items and changes in accounting policies :

- 7. Prior period items shall be separately disclosed in the profit and loss account in the previous year together with their nature and amount in a manner so that their impact on profit or loss in the previous year can be perceived.
- 8. Extraordinary items of the enterprise during the previous year shall be disclosed in the profit and loss account as part of taxable income. The nature and amount of each such item shall be separately disclosed in a manner so that their relative significance and effect on the operating results of the previous year can be perceived.
- 9. A change in an accounting policy shall be made only if the adoption of a

different accounting policy is required by statute or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements by an assessee.

10. Any change in an accounting policy which has a material effect shall be disclosed. The impact of, and the adjustments resulting from such change, if material, shall be shown in the financial statements of the period in which such change is made to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the previous year but which is reasonably expected to have a material effect in years subsequent to the previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted.
11. A change in an accounting estimate that has a material effect in previous year shall be disclosed and quantified. Any change in an accounting estimate which is reasonably expected to have a material effect in year subsequent to previous year shall also be disclosed.
12. If a question arises as to whether a change is a change in accounting policy or a change in an accounting estimate, such a question shall be referred to the Board for decision.
13. For the purposes of paragraphs (7) to (12), the expressions, —
 - (a) “Accounting estimate” means an estimate made for the purpose of preparation of financial statements which is based on the circumstances existing at the time when the financial statements are prepared;
 - (b) “Accounting policies” means the specific accounting principles and the method of applying those principles adopted by the assessee in the preparation and presentation of financial statements;
 - (c) “Extraordinary items” means gains or losses which arise from events or transactions which are distinct from the ordinary activities of the business and which are both material and expected not to recur frequently or regularly. Extraordinary items include material adjustments necessitated by circumstances which, though related to years preceding to the previous years, are determined in the previous year :

Provided that income or expenses arising from the ordinary activities of the business or profession or vocation of an assessee, though abnormal in amount or infrequent in occurrence, shall not qualify as extraordinary item;
 - (d) “Financial Statements” means any statement to provide information about the financial position, performance and changes in the financial position of an assessee and includes balance sheet, profit and loss account and other statements and explanatory notes forming part thereof;

- (e) “Prior period items” means material charges or credits which arise in the previous year as a result of errors or omissions in the preparation of the financial statements of one or more previous years :

Provided that the charge or credit arising on the outcome of a contingency, which at the time of occurrence could not be estimated accurately shall not constitute the correction of an error but a change in estimate and such an item shall not be treated as a prior period item.

This notification shall come into force with effect from 1st day of April, 1996 and shall, accordingly, apply to assessment year 1997-98 and subsequent assessment years.

Annexure VII

Circular : No. 221 [F. No. 208/25/76-IT(A-II)], dated 6-6-1977 - Whether provisions of the section are applicable to darshani hundi transactions

1. Reference is invited to Board's Circular No. 208 [F. No. 208/7/76-IT(A-II)], dated 15-11-1976 [printed at Sl. No. 475, p. 1550 post] in which the provisions of section 69D were explained.
2. A "hundi" in common commercial parlance denotes an indigenous form of bill of exchange, by and large in vernacular language, which is being used by the mercantile community in India. The hundis can be broadly classified as (i) darshani hundis (sight or demand hundis), and (ii) muddati hundis (usance hundis payable after a stipulated period of time mentioned therein). Darshani hundis are of different varieties, viz., (i) shahjog hundis, (ii) dhanijog hundis, (iii) namjog hundis, (iv) dekharanarjog hundis, (v) farmanijog hundis, and (vi) jokhmi hundis.
3. It has been represented to the Board that a darshani hundi created solely for the purpose of remittances of funds or financing inland trade or for operating accounts through indigenous banking channels does not involve borrowal of amounts and as such does not fall within the scope of section 69D. There are more than two parties in a darshani hundi. Normally four parties are involved in the case of a darshani hundi, viz, (i) the rakhya (the holder or purchaser), (ii) the drawer (an indigenous banker or a vyapari), (iii) the drawee (normally an indigenous banker but can also be a vyapari), and (iv) the payee. If the payee is also the rakhya, the parties will be three. Darshani hundi is payable at sight, i.e, immediately on presentation. A muddati (usance) hundi generally involving two parties, is payable after a stipulated period of time mentioned in the hundi.
4. The matter has been considered by the Board. We have been advised that *the provisions of section 69D are not applicable to darshani hundi transactions mentioned hereinafter :*
 - i. (a) A, who is the rakhya obtains on payment from B, the drawer, a hundi drawn on C, the drawee, in favour of D, the payee.

Annexure VIII

Circular No.208 dated 15th November, 1976 - Whether payment on or after April 1, 1977 of amount borrowed on hundi is to comply with the section regardless of whether hundi was executed prior to the said date or on or after that date

1. The Taxation Laws (Amendment) Act, 1975 has added a new section 69D with effect from April 1, 1977, which provides that if any amount is borrowed from any person on a hundi or any amount due on it is repaid to any person, otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be assessed as the income of the taxpayer borrowing or repaying the said amount, for the previous year in which the amount is borrowed or repaid. This will also apply to the amount of interest paid on the amount borrowed on hundis. This provision is applicable only in respect of hundis and does not cover other types of loans, such as repayment of loan by employees to employers, repayment of loan to banks, co-operative societies, etc.
2. The term "hundi" has not been defined in the 1961 Act. In common commercial parlance, it denotes an indigenous instrument in vernacular language which can be used by the holder thereof to collect money due thereon without using the medium of currency. It may also be regarded as an indigenous form of bill of exchange expressed in vernacular language which has been in use in the mercantile community in India for the purpose of collecting dues. There are numerous varieties of hundis, for example, darshani hundi, muddati hundi, shahjog hundi, jokhmi hundi, namjog hundi, dhanijog hundi, jwabi hundi and zickri chit. The characteristics of hundis differ according to the varieties of the same. The following characteristics are found in most of the hundis :
 - a. A hundi is payable to a specified person or order or negotiable without endorsement by the payee.
 - b. A holder is entitled to sue on a hundi without an endorsement in his favour.
 - c. A hundi accepted by the drawee could be negotiated without endorsement.
 - d. If a hundi is lost, the owner could claim a duplicate or a triplicate from the drawer and present it to the drawee for payment. Interest can be charged where usage is established.

3. This provision will come into force with effect from April 1, 1977. Accordingly, *any payment on or after April 1, 1977 in respect of an amount borrowed on a hundi will have to comply with the requirements of this provision* regardless of whether the hundi was executed prior to the said date or on or after that date.

Annexure IX

Circular No. 4/2007, dated 15th June, 2007 - Distinction between shares held as stock-in-trade and shares held as investment - tests for such a distinction

1. The Income Tax Act, 1961 makes a distinction between a “capital asset” and a “trading asset”.
2. Capital asset is defined in Section 2(14) of the Act. Long-term capital assets and gains are dealt with under Section 2(29A) and Section 2(29B). Short-term capital assets and gains are dealt with under Section 2(42A) and Section 2(42B).
3. Trading asset is dealt with under Section 28 of the Act.
4. The Central Board of Direct Taxes (CBDT) through Instruction No.1827 dated August 31, 1989 had brought to the notice of the assessing officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, it is proposed to update the above instructions for the information of assessees as well as for guidance of the assessing officers.
5. In the case of Commissioner of Income Tax (Central), Calcutta Vs Associated Industrial Development Company (P) Ltd (82 ITR 586), the Supreme Court observed that:

“Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment.”
6. In the case of Commissioner of Income Tax, Bombay Vs H. Holck Larsen (160 ITR 67), the Supreme Court observed :

“The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact.”

7. The principles laid down by the Supreme Court in the above two cases afford adequate guidance to the assessing officers.
8. The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-

“(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;

(ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

(iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt”.

9. Dealing with the above three principles, the AAR has observed in the case of Fidelity group as under:-

“We shall revert to the aforementioned principles. The first principle requires us to ascertain whether the purchase of shares by a FII in exercise of the power in the memorandum of association/ trust deed was as stock-in-trade as the mere existence of the power to purchase and sell shares will not by itself be decisive of the nature of transaction. We have to verify as to how the shares were valued/held in the books of account i.e. whether they were valued as stock-in-trade at the end of the financial year for the purpose of arriving at business income or held as investment in capital assets. The second principle furnishes a guide for determining the nature of transaction by verifying whether there are substantial transactions, their magnitude, etc., maintenance of books of account and finding the ratio between purchases and sales. It will not be out of place to mention that regulation 18 of the SEBI Regulations enjoins upon every FII to keep and maintain books of account containing true and fair accounts relating to remittance of initial corpus of buying and selling and realizing capital gains on investments and accounts of remittance to India for investment in India and realizing capital gains on investment from such remittances. The third principle suggests that ordinarily purchases and sales of shares with the motive of realizing profit would lead to inference of trade/

adventure in the nature of trade; where the object of the investment in shares of companies is to derive income by way of dividends etc., the transactions of purchases and sales of shares would yield capital gains and not business profits.”

10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.
11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

These instructions shall supplement the earlier Instruction no. 1827 dated August 31, 1989.

(F.No.149/287/2005-TPL)

