

Discussion on practical issues relating to Tax Audit u/s 44AB of Income Tax Act 1961

Sachin Sinha

Chartered Accountant

Northern India Regional Council

Institute of Chartered Accountants of India

Professional skill and expertise

- While giving the tax audit report the tax auditor will have to use his professional skill and expertise and apply such audit tests as the circumstances of the case may require, considering the contents of the audit report.
- The tax Auditor will have to conduct the audit by applying the generally accepted auditing procedures which are applicable for any other audit.

Compliance to be ensured

- Where the auditor issues Form No. 3CB, as the audit of financial statements is being done u/s 44AB of the Income Tax Act, 1961, the auditor should in relation to audit of the financial statements ensure compliance of:
 - Accounting Standards
 - Standards on Auditing
 - Framework for presentation of Financial Statements

Commonly found Errors

- Many of the Tax Audit reports do not have the paragraphs relating to Assessee's responsibility and Tax Auditor's responsibility as required by the Guidance Note in respect of SA 700.
- Some of the tax audit reports contained a reference about the attached physically signed tax audit reports which mention these Paragraphs thereby complying with the requirement of SA 700. However, as per the Guidance Note on Tax Audit the same are specifically required to be mentioned / reported under clause (3) of Form No.3CA or Clause (5) of Form No.3CB, as the case may be.

Applicable sections

Sec 44AB. Every Person –

(a) Carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs. 1 Cr in any previous year.

‘Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed 5% of the said amount; **and**

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said payment,

this clause shall have effect as if for the words “1 Cr”, the words “10 Cr” had been substituted:

Case study - 1

- Sale of ABC Pvt Ltd during FY 2020-21 is Rs, 90 lakh and GST on such sales is Rs. 16.20 lakh. The total turnover including GST is RS. 106.20 lakh.
- Whether audit is applicable in this case or not?

Sales, turnover or gross receipts

- Turnover under Companies Act:

Sec 2(91) 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 the financial year.

- Revenue under ICDS:

Revenue is the gross inflow of cash, receivables, or other consideration arising in the course of ordinary activities of a person from the sale of goods, from the rendering of services or both.....

Sales, turnover or gross receipts

- The “Guidance Note on Terms Used in Financial Statements” published by the Institute, the expression “Sales Turnover”
- *“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.*

Speculative transaction

- A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.
- 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.

Delivery based transactions

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

Turnover of Kachha arhatia

- In case of kachha arhatia, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purposes of sec 44AB
- *Ref: Circular No. 452, dated 17.03.1986*

Turnover of pacca arhatia

- The pacca arhatia is not, in proper sense of the word, an agent. The relation between pacca arhatia and constituent is substantially that between the two principals.
- *Ref: Circular No. 452, dated 17.03.1986*

Revenue recognition – construction Contracts

- POCM to be followed (even for service contract)
- Retention money to be included in revenue and cannot be excluded.
- Incidental income like interest income cannot be deducted from borrowing cost.
- **AMENDMENT TO THE ACT**
- **43CB.** *(1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145*

Case Study - 2

- Total sales during the FY 2020-21 of M/s ABC Pvt Ltd. is Rs. 9 Cr. and Foreign Exchange Fluctuation gain is Rs. 2 cr. Which is shown in P&L A/c as other income. Whether, M/s ABC Pvt Ltd is liable for tax audit?
- Whether, your answer would be different if M/s ABC Pvt Ltd is a SEZ unit and claiming exemption u/s 10AA.
- What if, during the same FY, the Foreign exchange loss is 1.5 Cr. which is debited to the P&L A/c.

Case Study - 3

- Total sales during the FY 2020-21 of M/s ABC Pvt Ltd. is Rs. 9 Cr. and loss of stock due to fire is Rs. 2 cr. Insurance company accepted the claim and compensated by paying 1.50 cr. Which is shown in P&L A/c as other income. Whether, M/s ABC Pvt Ltd is liable for tax audit?
- Whether, your answer would be different if there is loss of factory building of Rs. 5.0 Cr out of which Insurance company paid 3.0 Cr.

Aggregate of all amount

- Since the proviso clause (a) consists the term “aggregate of all amounts received including amount received for sales”, it means received from the previous years receivables shall also be counted while calculating the aggregate of all amount received.
- Whether loan receipt will also be included in this amount?
- Whether capital receipt will also be included in this amount?

Aggregate of all amount

- Similarly, the proviso clause (b) consists the term “aggregate of all payments made including amounts incurred for expenditure ”, it means amount paid towards the previous years payables shall also be counted while calculating the aggregate of all payment made.
- Whether repayment of loan will also be included in this payment?
- Whether expenses incurred towards purchase of capital assets or making investment will also be included in this payment.

Case study - 4

Turnover of Mr. A in the FY 2020-21 is Rs. 7 Cr. out of which cash receipts is Rs. 70 Lakh and receivable is 1 Cr. He also get a loan of Rs. 10 Cr from bank.

Whether Mr. A is eligible for proviso clause of sec 44AB(a)?

Whether your answer would be different if the sales amount is Rs. 12 Cr and the receivable is Rs. 3 Cr. considering the other facts remain same.

What would be the position if the sales during the year is 9 Cr and he also received Rs. 2 Cr. from the preceding years receivable. Considering the other facts remain same.

Case study -5

Turnover of Mr. A in the FY 2020-21 is Rs. 7 Cr. out of which cash receipts is Rs. 32 Lakh and receivable is 1 Cr. Out of receipt of Rs. 6 Cr, one of the debtors of Rs. 1 Cr is creditor of Rs. 50 Lakh of Mr. A and such account were netted off and Rs. 50 Lakh paid to Mr. A by cheque as the final balance amount.

Whether Mr. A is eligible for proviso clause of sec 44AB(a)?

Case study - 6

- The situation may also arise in case of advance received in the preceding year and relating to such advance, sales is appearing in the previous year.
- As per the wording of the proviso clause “all amounts received”, it includes advance money received which is related to sales of the subsequent years should also be counted for the test of 5% in the year of receipt.

Applicable sections

Sec 44AB. Every Person –

(b) Carrying on profession shall, if his gross receipts in profession exceeds 50 lakh rupees in any previous year.

(c) Carrying on the business shall, if the profit and gain from the business are deemed to be the profits and gain of such person u/s 44AE, 44BB or 44BBB as the case may be, and has claimed his income to be lower than the profits or gain of his business in the previous year.

Applicable sections

Sec 44AB. Every Person –

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person u/s 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in the PY.

(e) carrying on the business shall, if the provisions of s/s (4) of sec 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in the PY.

Sec 44AD Vs. 44AB

- Provided that sec 44AB shall not apply to the person, who declares profit and gains for the previous year in accordance with the provisions of sec 44AD(1) and his total sales, TO or GR, in the business does not exceed two crore rupees in the PY.
- What if the profit is not declared in accordance with the provision of Sec 44AD(1).

Sec 44AD Vs. 44AB

- Prior to 01.04.2017, sec 44AB of the Act, provides that every person carrying on the business is required to get his accounts audited if the total sales, TO or GR in the PY exceeds Rs. One crore. The threshold limit for applicability sec 44AD was increased to two crore rupees from one crore rupees with effect from 01.04.2017 relevant to AY 2017-18.
- Further, vide press release dated 20.06.2016, it was clarified that if an eligible person opts for presumptive taxation as per sec 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.
- Further, sec 44AB amended to exclude the eligible person, who declares profits for the PY in accordance with the provisions of sec 44AD(1) and his total sales, TO or GR, in business does not exceed Rs. two crore in such PY, from requirement of audit of books of accounts under sec 44AB.

Sec 44AD Vs. 44AB

As per Sec 44AD(4), where an eligible assessee declares profit for any PY in accordance with the provisions of Sec 44AD, and he declares profit for any of the 5 AY relevant to the PY succeeding such PY not in accordance with the provisions of sec 44AD(1), he shall not be eligible to claim the benefit of the provisions of Sec 44AD for 5 AY subsequent to the AY relevant to the PY in which the profit has been declared in accordance with the provisions of sec 44AD(1).

44AB (C) vs. 44AB, Proviso -1 vs. 44AB, Proviso -2

44AB (C)	44AB, Proviso -1	44AB, Proviso -2
<p><u>Carrying on the business</u> shall, if the profit and gains from the business are deemed to be the profit and gains of such person u/s 44AE, 44BB or 44BBB and he has claimed his income to be lower than the profits or gain so deemed to be the profits and gains of his business.</p>	<p>This section shall not apply to the person, who <u>declares profits and gains for the PY in accordance with the provisions of Sec 44AD(1) and his total sales, TO or GR does not exceed 2 Cr in such PY.</u></p>	<p>This section shall not apply to the person, who <u>derives income of the nature referred to in Sec 44BBA.</u></p>

Amendment in 2016

44AB (Finance Act 2015)

- Clause (d) – carrying on the business shall, if the profit from the business are deemed to the profit u/s 44AD and he has claimed such income to be lower than the profit so deemed to be the profit of his business.

44AB (Finance Act 2016)

- Clause (e) – carrying on the business shall, if the provisions of Sec 44AD(4) are applicable in his case and his income exceeds the maximum amount which in not chargeable to tax.

Specified date

- get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :
- "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income u/s 139(1).

Case study-8

- An Individual assessee carrying on trading business of small machinery which is used for the manufacturing company. The total turnover of such assessee from such business is Rs. 8 Cr. He also satisfies the twin conditions of the proviso clause. It means he is out of sec 44AB and he is not required to get his accounts audited.
- Since the books of the assessee is not required to be audited, whether the department will accept the profit declared by the assessee.
- If the answer to the above question is affirmative, can it be said that return has been filed under presumption.
- If it is under presumption, at what rate the profit should be declared.

Case study -9

- The question may arise that is there any timeline to receive the money or making the payment.
- For example: if an individual assessee sold some good during the year and the payment not received on or before 31st March, whether, that sales to be taken while calculating 5%.
- What if, he receives such payment after 31st March but before filing of return u/s 139(1).

Case study - 10

- First year of business 2020-21
- Total Turnover 150 Lakhs
- Profit declared More than 8%/6%
- Whether assessee can apply 44AD
- What if assessee declares profit less than 8%/6%?
- Whether your answer would be different if this is not the first year of business of the assessee?
- Whether your answer would be different if the TO for year 2020-21 is only 95 Lakhs?

Case study - 11

- Previous year 2018-19 profit declared as per 44AD and filed return of presumptive taxation.
- Previous year 2019-20 turnover was 2.5 crore and tax audit was done u/s 44AB and return filed accordingly.
- Previous year 2020-21, turnover is less than 1 crore and assessee wants to declare profit as per 44AD.

Case study - 12

- Previous year 2018-19 profit declared as per 44AD and filed return of presumptive taxation.
- Previous year 2019-20 turnover was 1.5 crore and assessee opted out from 44AD and went for tax audit u/s 44AB and return filed accordingly.
- Previous year 2020-21, turnover is less than 1 crore and assessee wants to declare profit as per 44AD.
- What if all the receipts and payments during the year are through banking channel.?

Case study - 13

- An individual assessee carrying on business of readymade garments, he is authorised dealer of “ultratech” cement and having “Indian oil” petrol pump. The turnover from each business is Rs 75 lakhs.
- Whether the tax audit is applicable on the assessee?
- What if the revenue from petrol pump exceeds 2 crore and from other business it is 75 lakhs each.
- What if the dealership of “ultratech” cement is on commission basis.

**Form No.
3CA/3CB-
Rule 6G**

- **Form 3CA**
- In case of a person carrying business or profession whose accounts are required to be audited under any other law.
- Name of the statutory auditor, if not same as tax auditor

**Form No.
3CA/3CB-
Rule 6G**

- **Form 3CB**
- Person other than those referred in Form 3CA.
- Person whose accounts are required to be audited under other law but accounting year is different from PY .
[Circular : No. 561, dated 22-5-1990]
- Separate place for discrepancies, comments, observations on the financial statements
- True and Fair view of B/s and P/L
- No of branches to be mentioned

Case study - 14

- M/s. ABC Pvt Ltd incorporated on 25th January 2021 and the TO upto 31.03.2021 is Rs. 12 Cr. Company did not get its account audited for the FY 2021 and appointed you as tax auditor because 44AB is applicable in this case.
- Which Form is applicable in this case Form 3CA or Form 3CB.

Form 3CA / 3CB Qualifications

- The tax auditor should state this qualification in the audit report so that the same becomes a comprehensive report and the user of the audited statement of particulars can realize the impact of such qualifications.
- While reporting on clause (a) of paragraph 3 of Form No. 3CB the tax auditor should report only such of those observations/comments/discrepancies/ inconsistencies which are of qualificatory nature which affect his reporting about obtaining all the information and explanations which were necessary for the purposes of the audit, about the keeping of proper books of account by the head office and branches of the assessee and about the true and fair view of the financial statements.

Form 3CA / 3CB Qualifications

- Proper books of account have not been maintained by the assessee.
- 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 not been provided by the assessee.
- Documents necessary to verify the reportable transaction were not made available.
- Proper Stock records are not maintained by the assessee.
- Valuation of closing stock is not possible.
- Yield/percentage of wastage is not ascertainable.
- Records necessary to verify personal nature of expenses not maintained by assessee.
- TDS returns could not be verified with the books of account.
- Records produced for verification of payments through account payee check were not sufficient.

Form 3CA / 3CB Qualifications

- Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.
- Creditors under Micro, Small and Medium Enterprises Development Act, 2006 are not ascertainable.
- Prior period expenses are not ascertainable from books of account.
- Fair market value of shares u/s 56 (2) (viiia)/(viib) is ascertainable.
- Reports of audit carried by Excise/Service tax Department were not made available.
- GP Ratio is not ascertainable from the financial statements prepared by the assessee.

Basics of Form 3CD

- Particulars are True and Correct
- Rely upon the judicial pronouncements while taking any particular view
- Suitable cross reference in case of particular item of income / expenditure is covered in more than one of the specified clauses
- In case of difference of opinion between auditor & assessee, both view points & relevant information to be stated
- Date of Audit Report and Date of Return Filing

Applicable ITR form

Form ITR 4(Sugam) is to be used by an individual or HUF, who is resident other than not ordinarily resident, or a Firm (other than LLP) which is a resident, whose total income for the assessment year 2020-21 does not exceed Rs.50 lakh and who has income under the following heads:

Income from business where such income is computed on presumptive basis under Section 44AD or Section 44AE; or

Income from Profession where such income is computed on presumptive basis under Section 44ADA; or

Income from Salary/ Pension; or

Income from One House Property; or

Income from Other Sources.

Case study -15

- A doctor is in practice and he is selling medicine too.
- His income from fees is Rs. 45 Lakhs and receipts from sale of medicines is Rs. 56 Lakhs. Considering the total receipt increases 1 crore rupees, he approached you for advise regarding tax audit and posed the following questions before you:
- is his entire revenue to be subjected to Sec 44ADA offering 50% as taxable income?
- Whether he needs to maintain separate set of books of accounts for practice and sale of medicine.
- Can he avail 44AD and 44ADA for the respective source of Income.
- Would your answer be different if the income from medical fees is 56 lakhs and sale of medicine is 45 lakhs.

Form 3CD – Clause 1 - 8

Clause No.	Name
1	Name of the assessee
2	Address
3	PAN
4	Whether the assessee is liable to pay indirect tax. If yes, furnish the registration no./ identification no. allotted for the same
5	Status
6	Previous year
7	Assessment year
8	Relevant clause of the section 44AB under which audit has been conducted
8A	Opted for taxation u/s 115BA/115BBA/115BAB/115BAC/115BAD

Form 3CD - Clause No. 9

- This applies to Firm, Association of Persons (AOPs) and LLPs
- “Profit Sharing Ratio” would include Loss sharing ratio also as “Loss” is nothing but negative profit.
- All the changes occurring during the entire previous year must be stated.
- Change in remuneration not to be reported.
- Sec 9B and Sec 45(4) to be tested separately while reporting under this point.

Documentation

- Supplementary / Admission / Retirement deeds
- Filings with ROF / ROC (wherever applicable)
- Minutes of meetings recording such changes

Form 3CD - Clause No .10

- (a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession)
- (b) If there is any change in the nature of business or profession, the particulars of such change.

Form 3CD - Clause No. 11

- **(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 Address at which the books of accounts are kept. *(If 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.

Form 3CD - Clause No. 11

- **Prescribed Books - RULE 6F**
- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bills/ payment vouchers.
- Daily case register in Form No. 3C (Medical Professional)
- Stock of drugs, medicines & other consumable accessories (Medical Professional)

Form 3CD - Clause No. 12

S. No.	Section/ Chapter/ Schedule	Business Covered
1	44AD	Presumptive basis – Business
2	44ADA	Presumptive basis – Profession
3	44AE	Transport business
4	44B	Shipping business of a non-resident
5	44BB	Business of exploration, etc., of mineral oils.
6	44BBA	Operation of aircraft by non-resident
7	44BBB	Civil construction etc. in certain turnkey power project by NR
8	Chapter XII-G	Special provisions relating to income of shipping companies
9	First Schedule	Rules for Section 44- Insurance Business
10	Any other Section	Eg Section 44D and 115A(1)(b)

Clause-13:-Method of accounting employed during the previous year.

- Can different method of accounting employed for different business of the same assessee.
- Can the assessee change the method of accounting in the mid of the year.
- What if, there is no effect of such change, whether the reporting in this point is required.

Clause-13 :- Effect of ICDS

- Whether adjustment is required to be made in P&L A/c for ICDS.
- Report such change in absolute terms.
- **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.
- **U/s 145(2)- ICDS** to be followed by all assessees following mercantile system of accounting
Points to be taken care off –
- Change in accounting policy does not amount to change in method of accounting and thus need not be reported.
- Change in method of valuation of stock is not a matter of change in method of accounting but only a change in accounting policy.
- If there has been any change in method of accounting employed, the effect i.e. Increase or decrease in profits has to be stated.

Clause-14:-Method of valuation of closing stock employed in the P.Y etc.

- Whether valuation of inventory has to be done as per sec 145A, ICDS II or AS2.
- ICDS II prescribes inclusive method while AS 2 prescribes exclusive method.
- Inventory shall be adjusted to include the amount of any tax, duty, cess or fees.

Section 145A

- (i) the valuation of inventory shall be made at lower of actual cost or net realisable value computed as per ICDS.
- (ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of tax, duty, cess or fees actually paid or incurred by the assessee.

Clause-15:- Particulars of the capital asset converted into stock – in – trade.

- How the conversion value shall be determined when the capital assets is converted into stock in trade.
- Whether reporting is also required in respect of stock-in-trade converted into capital assets?
- *Sec 28(via) says, the FMV of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner.*
- *How the FMV will be determined?*

Form 3CD - Clause No. 17

- Whether reporting is required in case of sale of personal property also.
- Whether reporting is required in case of transfer of property situated outside India.
- While reporting, whether the auditor should also consider the safe harbor provisions.
- What if there is distressed sale of property due to COVID -19

CLAUSE – 20 (a):- Any sum paid to an employee as bonus or commission for services rendered, which is otherwise payable to him as profit or dividend.

- Whether this clause will be applicable for other than company also?
- Whether this clause is applicable to ex-employee also?
- Whether this clause is applicable if the sum is payable.

Clause-20(b):- Details of contributions received from employees for various funds u/s 36(1)(va)

- Whether the contribution received refers the actual receipt or mere passing the book entry is deemed to be contribution received?

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

Mode of payment of contributions

- The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage as the Central Government may fix.
- He shall within 15 days of the close of every month pay the same to the fund to the banks authorized for collection on account of contributions and administrative charge.
- *Sec 38 of The Employees' Provident Funds Scheme, 1952*

Clause 21: Personal nature expenses

Furnish the details of amount debited to the profit and loss account:

- 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 which is an offence, or which is prohibited by law.
- *Section 40(a)(ib)- Equilisation Levy Disclosure similar to TDS – ‘not deducted’ or ‘deducted by not paid’*

Clause No. 23 : Payment to Specified Person

- 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 Sec. 40A(2).
- Amounts to be reported whether or not debited to Profit and Loss Account.
- The item 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.

Clause No. 23 : Payment to Specified Person

- 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 can be relied upon and **make an appropriate disclosure.**
- *Whether a subsidiary company of a company is a relative or not?*

Clause No. 26 : Expenses allowable on payment basis Sec 43B

- Tax, duty, cess or fee, by whatever name called, under any law for the time being in force,
- Employer Contribution to provident / superannuation / gratuity or any other welfare fund.
- Employee bonus / commission
- Interest on any loan / borrowing from any specified institutions
- Interest on any loan / borrowing from a deposit taking NBFC or ND-SI NBFC [AY 2020-21]
- Interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances,
- Leave Salary / Encashment
- Sum payable to Indian Railways for the use of railway assets,

Clause No. 27

- Particulars of income or expenditure of prior period credited or debited to the profit and loss account.
- Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items.
- U/s 145 - Expense or Income which arise in the current year as a result of **error or omission** in the account of earlier years will be considered as prior period items. **AS-5 issued by ICAI need to be considered for the purposes of this Clause.**
- Assessee sustained loss due to theft in one year, but became finally irrecoverable in subsequent year. Held it was allowable in the year in which loss became irrecoverable. **Durga Jewelers 172 ITR 134 (M.P)**
- Expenditure of the earlier years means expenditure which arose, or which accrued in any earlier year and excludes any expenditure of an earlier year for which the liability to pay has crystallized during the year. **3i Infotech Limited [2010] 329 ITR 257 [Bom.]**

Clause 29A: Money received as advance or transfer of capital assets.

- Whether any amount is to be included as income chargeable u/h IOS as referred to Sec 56(2)(ix).
- If yes, furnish the nature of income and amount thereof.

Clause 29B: Refer 56(2)(x)

- Whether any amount is to be included as income chargeable u/h IOS as referred to Sec 56(2)(x).
- If yes, furnish the nature of income and amount thereof.

Clause 30A: Secondary adjustment

- Whether primary adjustment to transfer price, as referred to in Sec 92CE(1), has been made during the previous year? (Yes/No)
- If yes, please furnish the following details:-
- Under which clause of sec 92CE (1) primary adjustment is made?
- Amount of primary adjustment:
- Whether the excess money available with the AE is required to be repatriated to India as per the provisions of sec 92CE(2)? (Yes/No)
- If yes, whether excess money has been repatriated within the prescribed time (Yes/No)
- If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time:

Clause 30B: Limitation on Interest Deduction

- Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sec 94B(1)? (Yes/No)
- If yes, please furnish the following details:-
- Amount of expenditure by way of interest or of similar nature incurred:
- EBITDA during the previous year.
- Amount of expenditure by way of interest which exceeds 30% of EBITDA as per above:
- Details of interest expenditure b/f as per sec 94B(4):
- Details of interest expenditure c/f as per sec 94B(4):

Clause 30C – GAAR Provisions

- Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year?
- If yes
- Nature of impermissible avoidance arrangement
- Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement
- *Reporting for this point has been extended to 31.03.2021 vide Circular No. 5/2021 dated 25th March 2021*

Clause 31

- (ba) **Particulars of each receipt** in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year *where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account.*

Sl. No	Particulars
1	Name, address and PAN of the payer
2	Nature of transactions
3	Amount of receipt
4	Date of receipt

Clause 31

(bb) **Particulars of each receipt** in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions from a person, *received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year*

Sl. No.	Particulars
1.	Name, address and PAN
2.	Amount of receipt

Clause 31

(bc) **Particulars of each payment** made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, *otherwise than by a cheque or bank draft, or use of electronic clearing system through a bank account, during the previous year.*

Name, address and PAN of the payee.	Nature of Transactions	Amount of payment	Date of payment

Clause 31

- (bd) **Particulars of each payment** made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, *made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year.*

Name, address and PAN of the Payee	Amount of Payment

Clause No. 34

- **As per Guidance note issued by the ICAI**
- Rates of deduction is to be consider as per the law relevant to the P. Y.
- Rely upon the judicial pronouncements while taking any particular view.
- Refer relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source.
- In case payer deducts/recipient collects tax at source at rate lower than specified rate on basis of certificate u/s 195 or 197, the said rate to be considered as specified rate
- As per the provisions of Sec 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source.
- In case of payment to NR, the applicable rate of TDS is to be read along with the DTAA.
- The tax auditor is required to provide the detail irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-b or XVII-BB.

Clause No. 34

- Detail in respect of interest u/s 201(1A) & 206C(7), if any to be provided.
- Sec. 201(1A)- Levy of simple interest on **failure to deduct** tax or payment thereof to the credit of Central Government
- Sec. 206C(7)- Levy of simple interest on **failure to collect** tax or payment thereof to the credit of Central Government
- If the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account & also from part G of the statement generated by the department in form no. 26AS.
- In case the assessee had disputed the levy or calculation of interest under TRACES, in form no. 26AS, the auditor may re-calculate the amount of interest u/s 201(1A) or Section 206C(7) up to the date of audit report for reporting under this Clause & also mention the fact in his observations provided in form no. 3CA & form no. 3CB.

Clause no. -36A:- Deemed dividend

- Whether the assessee has received any dividend as referred u/s 2(22) (e).
- This reporting is to be done in the report of receiver.

Clause-40:-Details regarding turnover, gross profit etc. of previous and preceding previous year

- As per sec 145A, the purchase and sales of goods or services shall be adjusted with the tax, duty, cess or fees etc.

Clause-41:- Details of demand raised or refund issued during the P.Y under any tax laws.

- When a refund is said to be issued. Whether the date of passing the order can be taken as date of issue of refund or the date of credit in the A/c of the assessee is the date.
- For example: the officer passed the order on 28th March and the order received by the assessee on 15th April and the refund credited in the assessee A/c on 5th May then in which P/Y it will be reported?

Clause 42

- Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B?

Income Tax department reporting Identification Number	Type of Form	Due date for furnishing	Date of furnishing	Whether the Form contains information about all details/ furnished transactions which are required to be reported. If not, please furnish list of details / transactions which are not reported.

Clause 44

Inserted in FY 2018

Deferred year on year.

Kept in abeyance till 31st March
2022

Now made applicable from 1st
April 2022

History of clause 44

Introduced in Form 3CD in the year 2018.

Reporting u/c 30C and 44 of tax audit report kept in abeyance till 31st March 2019 – Circular dated 17th August 2018.

The matter has been examined and it has been decided by the Board that reporting under proposed clause 30C and proposed Clause 44 of the tax audit report shall be kept in abeyance till 31st March 2019.

Therefore, for tax audit report to be furnished on or after 20th August 2018 but before 1st April 2019, the tax auditor will not be required to furnish details called for under these clauses.

History of clause 44

Thereafter, further extension for reporting were kept in abeyance till:

31st March 2020 – vide circular dated 14.05.2019

31st March 2021 – vide circular dated 24.04.2021

31st March 2022 – vide circular dated 25.03.2021

Clause 44

Break up total expenditure of entities registered or not registered under the GST.

Whether all expenditure is to be reported.

Whether Salary, wages, depreciation, write off of assets etc. are also to be reported.

Whether purchase of future, options, shares, derivatives etc. are also to be reported.

Time of testing of registration, whether at the beginning of the year, during the year, at the end of the year or at the time of transaction.

Clause 44

1. Total amount of expenditure incurred during the year.

2. Expenditure in respect of entities registered under GST.

- Relating to goods or services exempt from GST.
- Relating to the entities falling under composition scheme.
- Relating to the other registered entities.
- Total payment to registered entities.

3. Expenditure relating to entities not registered under GST.

Clause 44

Total payment to registered entities.

What if the payment has made in advance?

What if the payment has not been made during the year?

What if the payment has made after reporting period?

What if the payment has been settled otherwise?

What if the purchase returned after the reporting period?

Whether payment should be reported inclusive of GST?

Whether payment should be reported without TDS?

Guidance by ICAI

- the words “Breakup of total expenditure” and hence the total expenditure including purchases as per the above format may be given.
- Expenditure relating to goods or service exempt from GST (Column 3)
- Here, the value of all inward supply of goods or services which are exempt from GST is to be given.

Guidance by ICAI

- Whether expenditure of capital nature is to be reported?
- In the table under clause 44, the language used is “expenditure in respect of”. Since, the word used is ‘expenditure’, it is advised that the capital expenditure may also be reported separately as serial no. 2 in the format prescribed.

Guidance by ICAI

- If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB.
- An appropriate disclosure should be made by the Tax auditor in Form 3CA/3CB, as the case may be, for the view taken by the assessee in relation to the meaning of “Total expenditure” and the method of filling up the appropriate columns



Difficulties in reporting Clause 44:

- Many Assessee do not maintain bifurcation of purchases from registered and unregistered persons. For eg, there may be printing and stationary expenses from registered persons on which ITC is not claimed and there may be purchases from unregistered persons also – in such situation, going itemwise purchases to give bifurcation might be a very cumbersome job.



Difficulties in reporting Clause 44:

- We verify that purchases on which ITC is claimed are from registered persons. But if ITC is not claimed on purchases (like building construction etc), then assessee does not maintain whether it is from registered or unregistered.
- Among the purchases from registered persons, very difficult to bifurcate purchases from composition and regular registered persons.



Difficulties in reporting Clause 44:

- If bifurcation as expected in Clause 44 is to be given, then lot of training to be given to accountants and even after doing so, the authenticity of data in case of big assesses would be always be difficult.
- Whether expenses for which reporting to be done include revenue expenses or capital expenses both? Whether expense wise details to be given or total figures to be reported in Clause 44?



Purchases on RCM - how to report?

- If reported as unregistered purchases, their system may capture excessive purchases from unregistered persons, thereby selecting cases for scrutiny.

Revision on Tax Audit Report

- The report of audit furnished under Rule 6G may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, and furnish it before the end of the relevant assessment year for which the report pertains.
- This revision is allowed where there is disallowance u/s 40 or u/s 43B and the assessee has paid the sum and now such expenditure is allowable to the assessee and such revision is necessary for recalculation of disallowance u/s 40 or u/s 43B.
- *Notification No. 28/2021 dated 01.04.2021*

Penalty u/s 271B

- If any person fails:-
- to get his accounts audited in respect of any previous year
- to furnish a report of such audit as required u/s 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
- a sum of Rs. 1.50 lakh, whichever is less.

Case study - 16

- Assessee having 2 business, TO of 1st business is 15 Cr and 2nd business is 70 Lakhs. Assessee gets his accounts audited for 1st business and filed the prescribed form within the due date.
- Whether penalty u/s 271B can be invoked in this case, if yes, on which TO.
- **Smt. Bharti Sharma, [2011] 44 SOT 230 (Delhi)**

Tax Audit and UDIN

- While issuing the tax audit report under section 44AB of the Income tax Act, 1961, the Auditor should generate appropriate UDIN and refer the same in its Report.



THANK YOU



HAPPY
LEARNING.....

CA. Sachin Sinha



+91 9891315840



sachin@psc.co.in