



ISSUES IN TAX AUDIT

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CAG Reports observations

- **CAG Reports Non-adherence to various provisions of Income Tax Act by CA s**
- (a) where the CAs failed to report full and correct information in 367 cases leading to short levy of taxes of Rs. 2,813.11 crore and
- (b) where the AOs failed to utilize the information available in 102 reports/ certificates submitted to them leading to short levy of taxes of Rs. 1,310.05 crore.

CAG Reports observations

- Some of the important audit findings are as follows:
 - a. Tax auditors failed to give correct information relating to **allowance of depreciation** in 66 cases involving short levy of tax of Rs. 457.79 Cr.
 - b. Tax auditors did not report correct information regarding **brought forward loss/depreciation** resulting in irregular brought forward loss/depreciation allowance in 46 cases involving short levy of tax of Rs. 557.79 Cr.

CAG Reports observations

c. In 42 cases **personal/capital expenditure** was incorrectly allowed as the auditors did not report the amount in their TAR 's which resulted in short levy of tax of Rs. 477.89 Cr.

d. CAs have certified wrong **information/claims for various exemptions** and deductions in 74 cases having tax effect of Rs. 259.72 Cr.

e. CAs gave incorrect/incomplete information in TARs/certificates in 132 cases having a revenue impact of Rs. 1,037.61 crore

CAG Reports observations

- *We also found in another 616 cases where CAs committed mistakes viz. in allowance of exemption/deductions, charging of tax on Book Profit under Section 115JB, adoption of Arm's Length Price and reporting on cash payments exceeding Rs. 20,000 per day.*
- *In 109 cases, assesseees did not furnish requisite Form 3CEB on verification of ALP and Form 29B relating to certification for Book Profit.*

CAG Reports observations

- *Regarding monitoring of work of CAs and ensuring quality tax audit,*
- *ICAI issued guidance to its members for limiting the tax audit assignments in a financial year.*
- *We found that 18.87 per cent of CAs (12,435 CAs) for AY 2013-14 issued more tax audit reports than prescribed by ICAI*
- *We also got cases where CAs did not mention their membership numbers.*



Presumptive Taxation and Tax Audit

CA Rajiv Mehrotra, Kanupur

Section 44AD

- Applicability:
 - Eligible assessee
 - Eligible business
- Rate- Minimum 8% of Turnover of the Assessee
6% in case of all transactions other than cash
- Benefits: Assessee not required to maintain regular books of account and not required to get them audited u/s 44AB.

Mandatory fields in the ITR Form

Sundry Debtors	<input type="text"/>	Sundry Creditors	<input type="text"/>
Stock-in-trade	<input type="text"/>	Cash Balance	<input type="text"/>

	Gross receipts	Gross profit	Expenses	Net Profit
From Business - >	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
From Profession - >	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Eligible Assessee

- An Individual
- HUF
- Partnership firm other than LLP

Who has not claimed a deduction u/s 10A, 10AA, 10B, 10BA, Chapter VI-A C.


Persons/Entities not Covered

- Companies
- Limited Liability Partnerships
- AOPs
- BOIs
- Trusts, Societies etc.

Eligible Business


Business Other than :

- business of plying, hiring or leasing goods carriages referred to in section 44AE
- Having turnover/gross receipts exceeding Rs.2 crores
- a person carrying on profession as referred to in sub-section (1) of section 44AA;
- a person earning income in the nature of commission or brokerage; or
- a person carrying on any agency business.



Section 44AD(4) and (5) inserted w.e.f. 01.04.17

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).



Section 44AD(4) and (5) inserted w.e.f. 01.04.17

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Section 44AB- Applicability

- Every person carrying on a **profession** if his gross receipts from profession exceed Rs.50 lacs.
- Every person carrying on Business, shall get its books of account audited if:
 - The total Turnover exceeds Rs.1 Crores
 - if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed.

Section 44AB- Applicability

- If the gross receipts of profession are less than Rs.50 lakhs and the assessee declares profit of less than 50% of such gross receipts.
- if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

ISSUE

- An assessee a partnership firm carrying on **business** had a turnover of Rs 90 lacs in AY 2017-18 and profit of Rs 5 lacs and so got its accounts audited for AY 2017-18.
- During the AY 2018-19 he has a turnover of Rs 95 lacs and has an income of Rs.3 lacs. He wants to know will he be liable to tax audit u/s 44AB. Kindly advise.

ISSUE

- An assessee a partnership firm carrying on **profession** had a turnover of less than Rs 50 lacs in AY 2017-18 and profit of less than 50% and so got its accounts audited for AY 2017-18.
- During the AY 2018-19 he has a turnover of Rs 45 lacs and has an income of Rs.15 lacs. He wants to know will he be liable to tax audit u/s 44AB. Kindly advise.



WHETHER BUSINESS or PROFESSION??

- Whether Business or Profession???
- ✓ Motor garage??
- ✓ Educational/vocational Coaching??
- ✓ Private tuitions by a Chartered Accountant??
- ✓ Vedic, astrological Consultant??
- ✓ Stock Brokers??

BUSINESS/PROFESSION!!! ??

- Assessee carrying on:
 - ✓ More than one business activity (60+60)
 - ✓ A business as well as profession. (90 +20)
 - ✓ More than one business activity, one of which is assessable u/s 44AD. (44AD lower than 8%).
- Assessee being a partner in two firms, whose cumulative T.O. exceeds the specified limit.

SPECIAL CASES!!!

- Whether the following assessee shall be covered??
 - ✓ Assessee having only agricultural income.
 - ✓ A Trust (exempt u/s 11) whose total receipts exceeding 100 lacs constitute only donations.
 - ✓ A Trust (exempt u/s 11), carrying on business.
 - ✓ Nursing Home run by medical practitioners, where receipts are > 50 L but less than 100L.

TURNOVER/GROSS RECEIPTS!!!

- GENERAL PRINCIPLES:

- ✓ 'Sales', 'Turnover' and 'Gross receipts' are commercial terms and should be construed in accordance with the method of accounting regularly employed by the assessee.
- ✓ Limit of 100 lacs/50 lacs to be considered every year.

TURNOVER/GROSS RECEIPTS!!!

- Whether the following shall be included/excluded??
 - ✓ Dividends, Interest, Rental Income
 - ✓ Extra and ancillary charges like freight, insurance etc. charged in the sales invoice.
 - ✓ Excise duty & sales tax collected on sales.
 - ✓ Stock Broker making sales on behalf of clients.
 - ✓ Credit balances w/o
 - ✓ Speculative transactions.
 - ✓ Discounts, Sales Returns etc.
 - ✓ Reimbursement recd. From clients.

Issues!!!

- 'A', an LLP, provides the following figures:
 - Sales Rs. 98 Lacs
 - Sales tax collected Rs. 3 Lacs
 - Profit Rs 9 Lacs

Is 'A' liable for tax audit under section 44AB?

Issue..

- PM is a Chartered Accountant and partner in a firm PMA. His salary from firm is Rs 60 lacs. Is he liable to Tax audit as his income from firm is chargeable as per section 28?
- Assuming that his salary is 40 lakhs, can he file return under 44ADA?



Difference b/w 44AB and 44ADA

- Section 44AB(d)- applies to a person:

“Carrying on profession”

“Carrying on means repetition of series of acts”- Firm has staff other things etc.

- Section 44ADA(1)- applies to a person:

“who is engaged in a profession”

“Engaged”- legal lexicon- occupied in doing business

Engaged can include carrying on but carrying on cannot include engaged.

Issue

As assessee earns commodity profits of Rs 1.15 Cr for FY 2017-18. Similarly in case of speculative trade the profits may be less but there would be negatives and positives. Whether tax audit required?

Issues!!!

A survey was conducted during the financial year 2017-18 and the assessee surrendered stocks worth of Rs. 20 lakhs. During the financial year 2017-18 the assessee has a turnover of Rs.90 lakhs. Should the value of surrendered stock be included in the turnover for determining the applicability of section 44AB?

OUR APPROACH!!!



- Intimation to previous auditor.
- Ceiling on total number of tax audit assignments & Maintenance of records of assignments accepted
- Non acceptance of the tax audit assignment if:
 - ✓ Indebted to the auditee for > Rs.10000
 - ✓ Related to the auditee - desist or disclose
 - ✓ Employed by the auditee.
 - ✓ CA in part time practice
- Applicability of Accounting Standards issued by ICAI

OUR APPROACH!!!



- Report to be addressed to the person appointing him.
- Disclaimer should be part of the Report.
- Previous years figures should generally be given
- Take a 3CD form duly signed by the client
- Minimum Fee to be charged.



APPLICABILITY OF AS & AAS

- ✓ All SA's and level wise AS are to be followed
- ✓ ICDS must also be considered as they are mandatory as per section 145 of the Act.
- ✓ Disclosures of accounting policies at one place is a must.
- ✓ Effect of Peer Review and documentation in tax audits.



Notes to the Accounts

- ✓ Method of Accounting and Accounting Policies.
- ✓ Method of Inventory Valuation
- ✓ Fixed Assets and Depreciation
- ✓ Method for Investments
- ✓ Exchange Fluctuation.
- ✓ Employee Benefits
- ✓ Notes as required by ICDS- to be disclosed only in the Tax Audit Report.

AUDIT REPORT U/S 44AB


- ✓ 3CA v 3CB ??
- ✓ Follow SA700 in 3CB as we have to report on true and fair view.
- ✓ Statement of Particulars in Form 3CD
Get them signed by the client
- ✓ Signing of the Report.
- ✓ Revision of tax audit report.



Qualification of Report- Form 3CB

Some instances:

- ✓ If AS are not followed.
- ✓ Non- Provision of Income Tax
- ✓ Employee Benefits not provided for
- ✓ Confirmation of balances
- ✓ Estimation of Inventories



Notification Dated 20th July 2018

- Effective Date- 20th Aug 2018
- 7 items amended
- 1 item replaced.
- New items-10 by way of clauses/sub-clauses.
- New Form 3CD Consists Of 44 main pointers instead Of 41 main pointers earlier.

CLAUSES 1,2,3, 4

- Name, address and PAN of the assessee -
From ROC site or partnership deed or such
other document.
- Registration No of Excise, Service Tax ,
Customs Act, VAT
- *Now GST No has also been added.*


FORM 3CD- ISSUES!!!

- Clause 5: Status of the Assessee
 - ✓ The finding is one of fact.
 - ✓ There may be a difference of opinion in case of entities like HUFs, AOP, BOI or even Firms.
 - ✓ Whether Firm is Registered or not?



Status of the Assessee

- ✓ Co-ownership and HUF- Issues? Can HUF carry on business?
- ✓ Society claiming exemption under I.T.Act u/s 10(23B) - 'Khadi & Village Industries' but failed to obtain necessary certification. Whether status for I.T. purposes shall be that of an AOP??
- ✓ Whether Charitable Trusts carrying on educational activities are covered u/s 44AB?




CLAUSE NO.10(a) & (b): Nature of business or Profession and particulars of change in the same, if any.

- ✓ Similar information is required to be given in I.T. return form and part B of the Annexure to 3CD.
- ✓ Brief nature has to be given
- ✓ Temporary suspension of business may not amount to change and need not be reported.
- ✓ Amalgamation/demerger not to be reported unless line of activity changes.


CLAUSE NO.11(a) to (c): Books of Account-prescribed, maintained and examined.

- ✓ Section 44AA prescribes books of account only in respect of persons carrying on profession.
- ✓ A person engaged in any of the prescribed professions, is covered u/s 44AA if his total receipts exceed Rs.10,00,000 in any one of the three preceding years.
- ✓ No books are prescribed for a person engaged in business.
- ✓ What is our evidence of verification of books?
Documentation.
- ✓ Books of accounts seized by the department. Must to take a copy on record.
- ✓ Statement recorded during the Survey/Search.



CLAUSE NO.12: The amount of profit/loss assessable on presumptive basis, included in the P/L, if any, and the relevant section.

- Only the amount of profit/loss included is to be stated.
- In case of an assessee carrying on more than one business, one or more of which is covered under the scheme of presumptive taxation, there may be:
 - ✓ common books for all businesses together.
 - ✓ Separate books in respect of each of the businesses
 - ✓ No books of account in respect of the business covered u/s 44AD/AE/AF etc.- disclaimer



CLAUSE NO.13: Method of Accounting

- ✓ Generally stated in the Notes- reference may be made.
- ✓ Method of accounting may be different for different heads or even diff. sources of income.
- ✓ Change in method of accounting and not accounting policy is to be reported, along with effect of the same. Eg FIFO and LIFO are policies.

13 (d) ICDS adjustments

- Whether any adjustments required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2)
- if answer to (d) above is in affirmative, give details of such adjustments:


13 (e) ICDS adjustments

ICDS No	Particulars	Increase in Profit	Decrease in Profit	Net effect
I	Accounting Policies			
II	Valuation of Inventories			
III	Construction Contracts			
IV	Revenue Recognition			
V	Tangible Fixed Assets			
VI	Changes in Forex- Rates			
VII	Government grants			
VIII	Securities			
IX	Borrowing Costs			
X	Provisions, Contingent Liabilities and Contingent Assets			

13 (f)- Disclosures as per ICDS

ICDS No	Particulars
I	Accounting Policies
II	Valuation of Inventories
III	Construction Contracts
IV	Revenue Recognition
V	Tangible Fixed Assets
VII	Government grants
IX	Borrowing Costs
X	Provisions, Contingent Liabilities and Contingent Assets

- No disclosures in respect of following ICDS required-
- **ICDS-VI- Changes in Foreign Exchange Rates**
 - **ICDS-VIII- Securities**



CLAUSE NO.14(a) & (b): Method of valuation of closing stock and details of deviation from sec. 145A

- ✓ Generally stated in the Notes- reference may be made.
- ✓ Disclosure required for FG, RM, WIP, consumables etc. separately.
- ✓ Compliance with section 145A- may be through adjustments in the Computation of Income.
- ✓ Issues relating to GST and 145A-Guidance note?
- ✓ Also stocks as per ICDS (service and construction industry).




CLAUSE NO.15: Details of capital asset converted in to Stock in Trade

- ✓ Description of capital asset.
- ✓ Date & cost of acquisition of the asset.
- ✓ Amount at which asset is so converted.


CLAUSE NO.16: Details of amounts not credited to P/L account being:

- ✓ Escalation claims: Only those which has been accepted by the client. Mere making of a claim is not covered. AS-9. ICDS
- ✓ Capital receipts: Subsidy /govt. grants/ loss on sale of Fixed Assets. Please see section 2(24)(viii), now and issue of loan waiver.
- ✓ Drawbacks and refunds of duties, if admitted due.
- ✓ Items falling *within the scope* of section 28.
- ✓ Income Tax Refund
- ✓ Any other item of income.



Section 2(24)(xviii)

Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee ⁹[other than,—



Section 2(24)(xviii)

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of *Explanation 10* to clause (1) of section 43; or

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be];



Clause No 17- Variation 50C/43CA

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:

- Details of property
- Consideration received or accrued
- Value adopted or assessed or assessable

What about

- a. Leased property?
- b. Right in a property?

CLAUSE NO.18: Depreciation allowable under the I.T.Act.

- ✓ Description of the asset & its Block (Now block changed).
- ✓ Ownership of the asset.
- ✓ Working of actual cost/WDV- section 43 of the Act (*Payment in excess of Rs 10000/- in cash*)
- ✓ Treatment of Excise duty, exchange fluctuation, subsidy grant etc. on new assets.
- ✓ Date of acquisition & put to use.(ready to use?)
- ✓ The applicable rates of depreciation, now changed and depreciation disallowed increases the cost.
- ✓ Additional depreciation
- ✓ Date- 2.10 and not 30.9 also disallowances of depn.
- ✓ Depreciation allowable. (All onus on us)

Issues!!!

- Mr. 'A' follows the cash system of accounting.
 - Will it be allowed on full cost or will it be limited to the actual payment made during the relevant previous year?
- In the circumstances where depreciation has not been claimed in the accounts and is not likely to be claimed in the return also, should the tax auditor state the particulars of depreciation under clause 18 or not?

Clause 19

- Existing clause requires reporting of amounts admissible u/s 32AC to 35E.
- *New section 32AD added to the list. (CY)*
- **Section 32AD-Investment in new plant or machinery in notified backward areas in certain States.** The section was brought on the statute w.e.f 01.04.2016 for investments in the States of Bihar, Andhra Pradesh, Telangana and West Bengal.

CLAUSE NO.20(a) & (b)

- a. **Sub-Clause (a):** Sum paid to employees bonus/commission, where the same was payable as profit/dividend: Such sums are not normally allowed in terms of section 36(1)(ii).
- b. **Clause (b):** Employees' contribution recd. against ESIC & PF etc.: Section 36(1)(va)
 - allowed as deduction if paid within the due date i.e. date specified under the relevant law.

Note: Cases now have held that even if paid before the date of filing of return no disallowance, details to be given with note.

CLAUSE NO.21: Sub-Clauses (a)

- a. Expenditure of capital nature: *may or may not* be allowable:
 - a. capital items to the extent written off.
 - b. capital assets on which 100% dep. is claimed.
 - c. expenses relating to increase authorised capital, issue of bonus shares etc.
- b. Expenditure of personal nature:
 - a. Will generally arise in case of non-corporate assessee
 - b. to be quantified expense-wise.
 - c. In case of corporate assessees, sec.227(1A) of the companies Act requires an auditor to report on the same.



....Contd.

CLAUSE NO.21: Sub-Clause (a)

c) Expenditure on advertisement published by a political party:

- Allowable as a deduction under section 80GGB of the Act for corporate assesseees.

d) Expenditure incurred at clubs:

- Payments made to service organizations like Lions Club, Rotary Club and Credit agencies such as Diners Club will not be included.



....Contd.

CLAUSE NO.21: Sub-Clauses (a) to (i)

e. Penalty or fine:

- mere disclosure under this clause does not imply that the expenditure is not allowable. The auditor is not required to opine/examine the allowability of expenditures of the nature specified. All penalties and fine to be given.

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

Issues

- The state government has amended section 6 of the Payment of Wages Act and now if an employer makes a payment of wages in cash in excess of Rs. 5000/- it shall be contravention of law and liable to penalty and prosecution as per section 20 of that Act. (effective 29.1.2018). Whether the same is required to be reported ?
- A builder constructs an excess area and pays compounding fee. Is it to be reported?



.....Contd.

CLAUSE NO.21: Sub-Clause (b)

Amounts inadmissible u/s 40(a) and 40(ia) :

- Disallowance owing to non deduction of TDS, late deposit of TDS.
- Tax paid by an employer on non monetary perquisites given to employees
- FBT paid
- Wealth Tax paid

.....Contd.

CLAUSE NO.21: Sub-Clause (c) to (f)

- (c) Amounts inadmissible u/s 40(b)/40(ba) and computation thereof. (conditions and partnership deed). Say individual and HUF. Defn. of working partner"- "ladies", "students" etc.**

- (d) Disallowance/Deemed Income u/s 40A(3): expenditure exceeding Rs.10000/- made otherwise than by an account payee cheque.
40A(3A)-Outstanding exp. of preceding year paid during the year are also included.-**

- (e) Provision for payment of gratuity u/s 40A(7)**

- (f) Any sum paid by the assessee as an employer not allowable u/s 40A(9).**



....Contd.

CLAUSE NO.21: Sub-Clause (g) to (h)

(g) Liabilities of a contingent nature:

- Provisions made are to be examined.
- Accounting policies followed and disclosed.

(h) Amounts inadmissible u/s 14A

- Judgmental in most cases.
- Rule 8D- several issues- Guidance note
Several case laws now- please be careful in giving the same and give reasons thereof, else apply rule 8D.


CLAUSE NO.21: Sub-Clause (i)

(i) Amount disallowed u/s 36(1)(iii):

- interest paid on capital borrowed for acquisition of an asset, for the period until the asset is put to use, should be reported if it has been charged to the P/L. In harmony with ICDS
- Whether harmonious with AS-16?

CLAUSE NO.22

- Disallowance of Interest under MSMED Act,
- The Tax Auditor is required to disclose the disallowance of interest under MSME Act, 2006.
- Qualify if the client has not written to suppliers regarding MSME Act.




CLAUSE NO.23: Payments to persons specified u/s 40A(2)(b)

- ✓ See the persons covered properly. (inter concerns- substantial interest concept).
- ✓ To be reported only to the extent the same are included in the P/L account.
- ✓ Receipts from related parties are not to be included.
- ✓ Management representations will have to be relied upon.
- ✓ Reference may be drawn from Statutory Records in respect of Corporate entities.

Clause 24

- Amounts deemed to be profits u/s
- 32AC- (Section Not applicable to AY 2018-19)
- 33AB- Tea Development etc.
- 33ABA- Site Restoration Fund- Engaged in extraction of petroleum and natural gas.
- 33AC- Reserves for shipping business
- *32AD. Investment in new plant or machinery in notified backward areas in certain States*



CLAUSE NO.25: Profits Chargeable to tax u/s 41

- ✓ Relates only to cessation/remission of liability previously claimed as deduction.
- ✓ Outstanding on account of loans/deposits that cease to be payable are not included.
- ✓ However, advances received in the ordinary course of business, barred by limitation are included.
- ✓ Mahindra and Mahindra (SC) and now section 2(24)(xviii).




CLAUSE NO.26: Expenditure Allowable on Payment Basis u/s 43B.

- ✓ PF/ESI: Whereas Employer's contribution, deposited upto the due date of filing of return is allowed, the employee's contribution shall be disallowed if payment made beyond the 'due date' under the relevant act.
- ✓ Sales Tax- deferment scheme
- ✓ Advance Customs Duty.
- ✓ Provision of Excise duty payable on stocks of FG and CENVAT outstanding on stocks of RM.
- ✓ *All clauses of section 43B now stand included. Earlier reporting for clause (g)- any sum payable by the assessee to the Indian Railways for the use of railway assets, was not required.*

CLAUSE NO.27(a): CENVAT credits availed & utilised.

- ✓ The CENVAT credit on RM and on capital goods should be stated.
- ✓ Reporting shall depend on the method of employed- i.e. inclusive or exclusive.
- ✓ Inclusive method: the figure of duty utilised shall be the amount of duty on RM consumed rather than what has been stated in the CENVAT register.




CLAUSE NO.27(b): Details of Prior Period Income/Expenses

- Material charges/credits that arise in the current period due to errors/omissions in preparation of Financial Statements of earlier year(s).
- Principles laid down in ICDS Disclosure of Prior period and extraordinary items are to be considered.

Clause 28 & 29

- Receipts covered u/s 56(2)(viia)-
not applicable now, due to 56(2)(x)
- Receipts covered u/s 56(2)(viib)-
Consideration on issue of shares
which exceeds the fair market
value. Individual Net worth only
company DCF or Net worth.



Clause 29A (New)

29A. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)

(b) If yes, please furnish the following details:

- Nature of income :*
- Amount thereof:*


Forfeiture of advance -Issue

- A company received an advance of Rs 1 cr against an agreement to sell in FY 2016-17 from B. The terms stated that if B doesn't make the entire payment within one year the amount will be forfeited.
- Both the parties have not written off in the books of accounts. What should the auditor report?

Section 56(2)(ix)

(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a *capital asset*, if,—

- (a) such sum is forfeited; and
- (b) the negotiations do not result in transfer of such capital asset;



Clause 29B (New)

29B. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)

(b) If yes, please furnish the following details:

(i) Nature of income :

(ii) Amount thereof:

Issues for 56(2)(x)

- Leasehold rights (132 ITD 499)
- Transfer of right to property
- Transfer of TDR's (132 ITD 474).

Issues

- A partner contributes *his land* as capital contribution to the firm at the book value of Rs 20 lacs but the circle rate is Rs 50 lacs. Do we have to report?.
- A partner retires after taking his credit balance of Rs 10 lacs lying in his capital account of a firm where he was a 50% partner, whereas the fair market value of the net asset of the firm as on that date was Rs 40 lacs. Is there any liability on the firm or the other partners?

Issues?

- Trusts or AOP's, not having certificate u/s 12A, now receiving donations/ contributions etc. of more than Rs.50000.00 for a common cause. What will be their status?
- A stock broker receives shares at a value less than FMV?

Issues?

- A Bullion trader receives bullion having fair market value of 1 cr for a consideration of Rs 50 lacs?
- M/s A purchases bullion worth Rs 50 lacs from a bullion trader for Rs 25 lacs?
- Property developer acquires an agricultural land having stamp value of Rs.1 crore at Rs.50 lakhs?

Clause 30

- Amounts borrowed on Hundi (69D)
- I think none.

Clause 30A- New

- *30A. (a) Whether primary adjustment to transfer price, as referred to in sub-section 1) of section 92CE, has been made during the previous year? (Yes/No)*
- *If yes, please furnish the following details:—*
 - *Under which clause of sub-section (1) of section 92CE primary adjustment is made?*
 - *Amount (in Rs.) of primary adjustment:*

Clause 30A- **New.....Contd.**


- *Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)*
- *If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)*
- *If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:*

Clause 30B- **New**

- **30B. (a) 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 sub-section (1) of section 94B? (Yes/No.)**
- **If yes, please furnish the following details:—**
 - **Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:**
 - **Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)**

Clause 30B- **New.....Contd.**

- *Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :*
- *Details of interest expenditure brought forward as per sub-section (4) of section 94B:*




Clause 30C- New GAAR

- *30C. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)*
- *If yes, please specify:—*
 - *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:*


GAAR is applicable

- Conditions in GAAR - Total tax avoidance with respect to all parties to the transaction should be at Rs 3 cr.
- Round tripping, overseas debtors not paying in time (Dubai).
- Capital routed through Mauritius.
- Local arrangements. Say giving an interest free loans etc to a loss making concern.
- Sale and lease back transactions.



GAAR- How to Address these Issues?

- Access/right to obtain information for a 'group'
- Access/right to obtain information in respect of International Group.



CLAUSE No.31(a): Loans/Deposits taken or accepted during the year exceeding limit specified u/s 269SS

- ✓ Disclosure required where individual items are less than 20000/- but are greater when taken together.
- ✓ Mixed accounts maintained by assessee are to be segregated.
- ✓ Does not apply to Govt. & Banking companies
- ✓ Transfer entries also constitute 'acceptance otherwise than by a/c payee cheque' hence are to be reported.
- ✓ Accepting cash from sister concerns, current accounts with directors- may not be covered.



CLAUSE No.31(a): **Changes in the Clause**

- ✓ Earlier clause did not include electronic payment system as an exclusion. The same has now been added.
- ✓ Earlier- it was required to be reported whether any amounts have been taken/accepted otherwise than by way of an account payee cheque or DD.
- ✓ *Now: New sub clause inserted requiring a certification that in case of amounts accepted by way of cheque/DD, such cheque/DD are account payee or not.*

CLAUSE No.31(b): **Amended Clause**


- ✓ Specific reporting requirements for **"Specified Sum"**.
- ✓ Reporting to be on the same lines as 'loans/deposits' received.
- ✓ **"Specified Sum"** defined u/s 269SS, Explanation (iv) as under:

"Specified sum means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place."

Issue..

- M/s Excellent Builders are developing a township. During FY 2017-18, they have received the following amounts towards property booking from its customers:
 - a. Rs.25000 from Mr.A
 - b. Rs.250000/- from Mr.B

M/s Excellent builders had paid cash of Rs.3 lakhs to a farmer for acquiring agricultural land for the project.




New Clause 31(ba), (bb), (bc) & (bd)-
Particulars receipts/payments in an amount
exceeding limit specified u/s 269ST

Section 269ST- [Mode of undertaking transactions.

269ST. No person shall receive an amount of two lakh rupees or more—


- (a) in aggregate from a person in a day; or**
- (b) in respect of a single transaction; or**
- (c) in respect of transactions relating to one event or occasion from a person,**

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:




New Clause 31(ba), (bb), (bc) & (bd)- Particulars receipts/payments in an amount exceeding limit specified u/s 269ST

- *Provided that the provisions of this section shall not apply to—*
 - (i) any receipt by—*
 - (a) Government;*
 - (b) any banking company, post office savings bank or co-operative bank;*
 - (ii) transactions of the nature referred to in section 269SS;*
 - (iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.*




New Clause 31(ba)- Particulars of receipts in an amount exceeding limit specified u/s 269ST

- Particulars of each receipt in an amount exceeding the limit specified u/s 269ST, where such receipt is otherwise than by way of a cheque/DD/Electronic clearing system. (i.e. receipt in cash).
- Name, address, PAN of payer, nature of transaction, amount received and date of receipt to be reported.




New Clause 31(bb)- Particulars of receipts in an amount exceeding limit specified u/s 269ST

- Particulars of each receipt in an amount exceeding the limit specified u/s 269ST, where such receipt is otherwise than by way of an 'account payee' cheque/DD/Electronic clearing system. (i.e. bearer cheque).
- Name, address, PAN of payer, nature of transaction, amount received and date of receipt to be reported.



New Clause 31(bc)- Particulars of payment of an amount exceeding limit specified u/s 269ST

- Particulars of payment of an amount exceeding the limit specified u/s 269ST, where such payment is otherwise than by way of a cheque/DD/Electronic clearing system. (i.e. cash).
- Name, address, PAN of receiver, nature of transaction, amount received and date of receipt to be reported.



New Clause 31(bd)- Particulars of payment of an amount exceeding limit specified u/s 269ST

- Particulars of payment of an amount exceeding the limit specified u/s 269ST, where such payment is otherwise than by way of an 'account payee' cheque/DD/Electronic clearing system. (i.e. bearer instrument).
- Name, address, PAN of receiver, nature of transaction, amount received and date of receipt to be reported.

Issues

- Cash purchase of agricultural produce from *mandi/farmers*.
- Livestock purchased from open market.
- Payments on non banking days.
- Payment made against notice under Negotiable Instruments Act.
- No stated exceptions applicable like in case of section 40A(3).
- Receipt of partners capital of Rs 5 lacs in cash by a firm.
- Receipt of a gift of Rs 4 lacs in cash from father.


Issue

- Xyz has issued following invoices to ABC
- Invoice 1 for Rs 2,50,000.00
- Invoice 2 for Rs 1,50,000.00
- Invoice 3 for Rs 75,000.00
- ABC makes the following payments
- Payment in cash of Rs 2,50,000.00 on a day being part payment against each Invoice, stating that Rs 1,00,000 is against Invoice 1 and balance against the others.

What are the consequences ?


Issues

- XYZ has during the year made several cash sales to ABC but each bill is less than Rs 2,00,000/- and payments received on any day do not exceed Rs 2,00,000/-
- Examine the liability of reporting.
- A Ltd receives Rs 4 lacs in cash from its subscribers to MOA on incorporation.




CLAUSE No.31(c): Loans/Deposits repaid during the year exceeding the limit specified u/s 269T

- ✓ Unlike sec. 269SS, sec.269T includes Govt. & banking companies
- ✓ Section 269T prescribes the mode of payment of only in respect of deposits. However the clause talks of both - loans as well as advances, hence both should be included.




CLAUSE No.31(c): Loans/Deposits repaid during the year exceeding the limit specified u/s 269T

- ✓ Earlier- it was required to be reported whether any amounts have been repaid otherwise than by way of an account payee cheque or DD.
- ✓ Now: New sub clause inserted requiring a certification that in case of amounts accepted by way of cheque/DD, such cheque/DD are accounte payee or not.



New clauses 31(d), 31(e)- Reporting in case assessee himself is recipient of repayment proceeds of loan in excess of the limit specified u/s 269T

- **Section 31(d)-** Reporting in case repayment has been received otherwise than by way of a cheque/DD/ECS. (i.e. cash)
- **Section 31(e)-** Reporting in case repayment has been received by way of a cheque/DD which is not account payee.




CLAUSE NO.32 : Brought Forward Losses and Unabsorbed Depreciation

- ✓ Details to be given as per Format prescribed.
- ✓ Auditor shall have to verify all assessment records including Returns, Asst. Orders etc.
- ✓ Reference may also be drawn from preceding years' tax audit report, more so because though B/f losses can be carried forward only for 8 years, there is no time limit in case of depreciation.
- ✓ Appropriate disclosures be made in cases where appeals may have been decided though effect might not have been given.

.... Contd.


CLAUSE NO.32 : Brought Forward Losses and Unabsorbed Depreciation

- Disallowances in terms of Section 79
- Speculation losses in terms of explanation to section 73 to be quantified.
- Losses in respect of specified businesses in terms of Section 35AD.- Set off only against specified business or carried forward to be set-off subsequently.



CLAUSE NO. 33 : Deductions admissible under chapter VI-A

- ✓ Reporting shall be restricted to items appearing in the Books of account of the assessee.
- ✓ In case of deductions based on GTI of the assessee, quantification of the amount of deduction might not be possible on the date of report- appropriate disclosure should be made.
- ✓ Likewise, where the audit is of a Branch/Unit etc., quantum of deduction may not be ascertainable.
- ✓ Admissibility of deductions must be examined.
- ✓ Where applicable, reference may be made to audit reports required for claiming deduction.



CLAUSE NO. 34(a) : Liability for deduction and collection of tax at source


- ✓ Cases in which no tax has been deducted at all are now required to be reported under this clause.
- ✓ Shortfall in deduction also to be reported.
- ✓ Tax deducted late- has relevance after inclusion of 40(a)(ia)
- ✓ Tax deducted but not deposited at all (Prosecution 276B).

CLAUSE NO. 34(b) :

- Furnishing of statement of tax deducted and collected at source.
- **Prior to 20.08.18-** To give only the if the statement of tax deducted or collected at source has not been filed within prescribed time.
- **w.e.f 20.08.18-** to be given if assessee is required to furnish statements of TDS


CLAUSE NO. 34(c) :

- Whether the assessee is liable to pay interest u/s 201(1A) or section 206C(7)?
- Furnishing of statement in case the assessee is liable and even if he has paid.
- Here the reporting has to be done whether or not there is any default by the assessee.



CLAUSE NO. 35 (a): Quantitative Details of Goods traded.

- ✓ Information regd. principal items of traded goods shall have to be called for from the management. Principal items would constitute more than 10% of the value of turnover.
- ✓ Reconcile the same with the GST returns.
- ✓ Reconcile the same with the figures of closing stocks and now valuation on account of ICDS.
- ✓ Information is required to be given to the extent the same is practically possible.



CLAUSE NO. 35(b) : Quantitative Details of Stocks in Manufacturing concern.

- ✓ Information relating to R.M., F.G and By Products etc. to be given.
- ✓ Reconcile with various returns of other departments.
- ✓ Information relating to yield, shortage etc. is to be given, based on the records of the assessee.
- ✓ Where stock records are not maintained by the assessee, the auditor may consider qualifying the report, considering other circumstances of the case.

Issues!!!

- Is it necessary for an assessee rendering technical consultancy services to give quantity details of raw materials such as tracing papers, drawings, designs etc.? Now Inventory in case of service industry has to be taken as per ICDS.

Clause 36 - DDT Section 115O

In the case of a domestic company, details of DDT. Details to be given

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


New Clause 36A - Deemed Dividend

(a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)

(a) If yes, please furnish the following details:-

(i) Amount received (in Rs.)

(ii) Date of receipt:"




CLAUSE NO. 37 : Whether Cost audit of the assessee was carried out during the relevant year?

- ✓ Have a list of industry where cost audit is mandatory.
- ✓ Information to be called for from the mgt.
- ✓ The fact that a cost audit was in fact carried out may also get revealed from a perusal of the cost records of the assessee, where maintained.
- ✓ Auditor need not express an opinion in case such audit is required but not carried out.
- ✓ Cost audit of earlier years, carried out during the relevant previous year need not be reported.

Clauses 38 & 39

- Clause 38- whether any audit conducted under Central Excise Act, 1944, if yes, give details of disqualification/disagreement....
- Clause 39- whether any audit was conducted u/s 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details of disqualification/disagreement...



CLAUSE NO.40 : Accounting Ratios with Calculation

- ✓ Applicable only in case of manufacturing/trading concerns.
- ✓ Ratios are to be calculated for the business as a whole.
- ✓ Stock in trade/Turnover And Material Consumed/Finished Goods Ratios are to be calculated value wise, not quantity wise.
- ✓ Stock in trade- Only value of Finished Goods is to be included. (even WIP is not to be included)
- ✓ Material Consumed- would include stores, spares and loose tools as well.

Clause 41

- Details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth Tax Act, 1957 along with details of relevant proceedings.

New Clause 42

- (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)
- (b) If yes, please furnish:
- i) Departments RE ID No.
 - ii) Type of form
 - iii) Due date of furnishing
 - iv) Date of furnishing, if furnished.
 - v) Whether all transactions reported, if not, report list of transactions not reported.

Form 61,61A and 61B

- F. No-Transactions prescribed under rule 114C where PAN has to be given and form 60 has been given to be reported.
- The recipients have to give this.
- Certain persons covered. Now on his own account or otherwise.
- All assessee's covered u/s 44AB.

Form 61A, 61B

- Issuing shares, debentures or bonds in excess of Rs 10 lakhs
- Buyback of shares in excess of Rs 10lakhs.
- Receipt of cash payment exceeding two lakhs for sale, by a person, of goods and services of any nature.(No aggregation is required and transaction wise).
- 61B only in respect of reporting FI, Depository etc.

New Clause 43

- (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No) CBC-Reporting.

- (b) if yes, please furnish the following details:
 - (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
 - (ii) Name of parent entity
 - (iii) Name of alternate reporting entity (if applicable)
 - (iv) Date of furnishing of report

New Clause 44- Reporting in respect of GST

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

- Total amount of Expenditure incurred during the year
- Expenditure in respect of entities registered under GST
 - Relating to goods or services exempt from GST
 - Relating to entities falling under composition scheme


New Clause 44- Reporting in respect of GST

- Relating to other registered entities
- Total payment to registered entities
- Expenditure relating to entities not registered under GST.
- This is in respect of all assessees liable for TA whereas in form 6 of ITR it was only for cases not covered under TA. Thus covering this will cover all cases whether part of TAR or otherwise.

New Clause 44- Reporting in respect of GST

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

- Total amount of Expenditure incurred during the year
- Expenditure in respect of entities registered under GST
- Expenditure relating to entities not registered under GST
 - Relating to goods or services exempt from GST
 - Relating to entities falling under composition scheme
 - Relating to other registered entities
- Total payment to registered entities



Issues:

- Have to report in respect of all assesseees whether or not liable to GST.
- Have to report of all expense capital and revenue.
- Have not to report payments not made to entities i.e salaries etc.
- Have to report expense as well as payments made against the same.

THANK YOU

*Please mail your
comments at
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