Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2025)

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961

(Revised 2025)

Direct Taxes Committee

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Foreword to Tenth Edition

In an era of constant regulatory change and rising intricacies in financial reporting, the role of tax audit has never been more critical. In view of the dynamic and ever-evolving nature of income tax law and increasing reporting requirements in Form No.3CD, the role of tax audit is becoming indispensably important year after year. Chartered Accountants are expected to demonstrate not only technical expertise but also sound professional judgment in navigating these changes and ensuring full adherence to statutory requirements. Their role is pivotal in maintaining transparency, accountability, and trust in the financial reporting process.

Considering the recent changes in **Form No. 3CD** and amendments by the **Finance (No. 2) Act, 2024** and **Finance Act, 2025** in the **Income-tax Act, 1961** and recognising the need to stay aligned with continuous legislative changes, judicial pronouncements, and evolving practices, the Direct Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has come out with the Revised (2025) edition of the Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961. This revised edition aims to provide an updated, in-depth, and practical guide to assist members in discharging their professional responsibilities with diligence and confidence.

I extend my sincere appreciation to the Convenors and members of the Study Groups formed for revision of this Guidance Note who have meticulously worked on this updated publication.

I acknowledge the commendable leadership of CA. Piyush S. Chhajed, Chairman, and CA. Vishnu Kumar Agarwal, Vice-Chairman of Direct Taxes Committee, along with the dedicated efforts of all the members of the Committee, for bringing out this revised edition within a limited timeframe.

I am sure this Guidance Note will prove to be an indispensable tool for Chartered Accountants and other stakeholders, aiding them in navigating the complexities of tax audit with clarity, accuracy, and professional excellence.

Place: New Delhi
Date: 30th July, 2025

CA. Charanjot Singh Nanda
President, ICAI

Preface to Tenth Edition

The Direct Taxes Committee (DTC) of ICAI plays a pivotal role in all matters concerning direct taxation. The DTC proactively engages in analyzing legislative developments, submitting Pre-budget and Post-budget memoranda and making representations to the Central Board of Direct Taxes (CBDT). The Committee supports the members of the profession by enhancing their technical competence and practical understanding through its various publications, webinars, seminars and conferences. One of the Committee's key areas of focus is the dissemination of timely and relevant guidance in the domain of tax audit, a core area of professional practice for Chartered Accountants, through its Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961.

The provisions relating to tax audit were introduced in the statute book in the year 1984, marking a milestone in the history of chartered accountancy profession in the realm of professional opportunity in direct taxes. Since tax audit was introduced to ensure the accuracy of books of accounts maintained, which forms the basis of computation of income, the significant responsibility was entrusted to chartered accountants.

Over the years, changes have been made in the reporting requirements in tax audit report widening the scope of audit which reinforces the trust reposed upon the chartered accountancy profession by the Government. It is, therefore, important for the members of the profession to diligently discharge their professional duties, for which this Guidance Note serves as an indispensable tool. This Guidance Note aims to address the situations faced by the Chartered Accountants while conducting audit by offering clear explanations that will help in streamlining the tax audit process. It also emphasizes the importance of maintaining working papers. This Guidance Note provides practical insights that will aid members in discharging their professional responsibility.

As the regulatory environment evolves, it is imperative for our members to stay updated and compliant with the ever-changing tax laws and consequent reporting requirements. To guide the members of ICAI with respect to the recent changes in the provisions w.r.t tax audit as also to provide clarity on various aspects, the Direct Taxes Committee of ICAI has come out with this revised edition of the "Guidance Note on Tax Audit under section 44AB of the Income-tax Act,1961". This publication has dealt with the amendments made

by the Finance (No. 2) Act 2024 and Finance Act 2025 in the Income-tax Act, 1961 and also the additional reporting requirements in Form No.3CD brought in vide Notification No. 27/2024 dated 5th March, 2024 and Notification No. 23/2025 dated 28th March 2025.

We are extremely thankful to CA. Charanjot Singh Nanda, President, ICAI, and CA. Prasanna Kumar D, Vice President, ICAI who have been the guiding force behind the revision of this Guidance Note. Their continued support has been instrumental in strengthening the Committee's initiatives in the field of direct taxes.

We extend our heartfelt gratitude to the Convenors of the Study Groups, the Central Council Members, CA. Sanjay Kumar Agarwal, CA. Pankaj Shah and CA. Umesh Ramnarayan Sharma who have steered the revision of this Guidance Note with their technical expertise and commitment to excellence. We would also like to acknowledge and thank all the members of the Study Groups for their valuable contribution in revision of this Guidance Note. We also thank the regional offices, branches and the members who have sent their suggestions. We also acknowledge the efforts of the Secretariat of the Direct Taxes Committee for bringing this revised edition of the Guidance Note in a timely manner.

We remain committed to support our members in adapting to the ever-changing landscape of taxation and trust that they would find this revised edition very useful in discharging their professional responsibilities diligently.

CA. Piyush S Chhajed
Chairman
Direct Taxes Committee

CA. Vishnu Kumar Agarwal
Vice-Chairman
Direct Taxes Committee

Place: New Delhi

Date: 30th July 2025

Acknowledgement

The Direct Taxes Committee (DTC) of ICAI acknowledges the contribution made by the Committee Members, Co-opted Members and Special Invitees and the Convenors and Members of the Study Groups formed in revising the "*Guidance Note on Tax Audit under Section 44AB of the Income-tax Act,1961"*. DTC of ICAI places on record its gratitude for their contribution in enrichment of knowledge of the members.

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CA. Piyush S Chhajed
Chairman
Direct Taxes Committee

CA. Vishnu Kumar Agarwal
Vice-Chairman
Direct Taxes Committee

Place: New Delhi

Date: 30th July 2025

Foreword to the First Edition

The introduction of the provisions regarding compulsory audit of accounts for tax purposes under Section 44AB of the Income Tax Act, 1961, signified a very healthy development in our tax laws. It fulfils a long felt need and seeks to rectify a weakness which was diagnosed long ago. The requirements of the provisions place a tremendous responsibility on the members of our profession in carrying out the audit and in furnishing the audit report setting forth the prescribed particulars.

I have no doubt that our profession would rise to the occasion, acquit itself well in discharging this responsibility and justify the confidence reposed by the Government in our profession.

I would like to compliment the Taxation Committee in bringing out this timely publication. I am sure this guide would be of help to our members and ensure their full contribution to the achievement of the objectives of this provision.

14-2-1985
New Delhi

A.C. Chakrabortti
President

Preface to the First Edition

Section 44AB has been introduced in the Income-tax Act, 1961, by the Finance Act, 1984. This section provides for audit of accounts of assessees having total sales, turnover or gross receipts exceeding the specified limits of Rs.40 lakhs for business and Rs.10 lakhs for profession. New Rule 6G, inserted in the Income-tax Rules, prescribes the Forms of Audit report for the above purpose. The requirements for the above audit will apply to accounts relating to previous year relevant to assessment year 1985-86 and subsequent years.

Audit of accounts in the corporate sector has been made compulsory by legislation over a period of years. Realising the importance of audit, in recent years, this requirement is being extended to non-corporate sector also.

The Income-tax Act already provides for audit of accounts of Public Charitable Trusts and non-corporate assessee establishing new industrial undertakings. Section 142(2A) gave wide powers to the tax authorities to get the accounts in certain specified circumstances audited by a chartered accountant. The new provision introduced by section 44AB has considerably widened the scope of audit.

The Taxation Committee of the Institute has published (i) Guide for Audit of Public Trusts under section 12A(b) and (ii) Guide to Special Audit under section 142(2A). A monograph on compulsory maintenance of accounts has also been published and the same has been updated.

Considering the fact that the scope of audit under the tax laws has considerably widened after the introduction of section 44AB, the Taxation Committee has prepared this Guidance Note on Tax Audit for the use of our members. In this guidance note an attempt has been made to explain the scope of Tax Audit requirements. It has been emphasised that in any audit assignment the general principles of audit have to be followed. The members accepting these assignments will have to use their professional skill and expertise while expressing their opinion on the financial statements and other particulars required to be stated.

I am happy that with the active co-operation of the members of the Taxation Committee, it has been possible to finalise this Guidance Note soon after the final publication of the audit report forms by CBDT. In particular, I must express my gratitude to Shri P.N. Shah, our past President, Sarvashri N.K. Poddar,

M.G. Patel and A.H. Dalal, members of the Taxation Committee and the Secretary of the Committee for the efforts put in by them in the finalisation of the guidance note. I am confident that this guidance note will be of great assistance to our members in industry or in public practice.

13th February, 1985

G. Narayanaswamy
Chairman
Taxation Committee

Terms, Abbreviations used in this Guidance Note

In this Guidance Note, the following terms and abbreviations occur often in the text. A brief explanation of such terms and abbreviations is given below. Further, reference to a section without reference to the relevant Act means that the section has reference to the Income-tax Act, 1961.

(a)	**Act**	The Income-tax Act, 1961.
(b)	**Accountant**	Accountant means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, as referred to in section 288 of the Income-tax Act, 1961.
(c)	**AS**	Accounting Standards notified vide the Companies (Accounting Standards) Rules, 2021 for company assessees not required to follow Ind AS and Accounting Standards as prescribed by the Institute of Chartered Accountants of India for non company assessees.
(d)	**Assessee**	As defined in section 2(7) of the Act.
(e)	**AY**	Assessment Year as defined under section 2(9) of the Act.
(f)	**Audit report**	Any report submitted in Form No. 3CA/3CB along with the statement of particulars in Form No. 3CD.
(g)	**Board/CBDT**	The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963.
(h)	**Circular**	A circular or instructions issued by the Board under section 119(1) of the Act.
(i)	**Form or Forms**	Collectively refer to Forms 3CA, 3CB and 3CD.
(j)	**HUF**	Hindu Undivided Family.
(k)	**ICAI/Institute**	The Institute of Chartered Accountants of India.
(l)	**ICDS**	Income Computation and Disclosure Standards issued by the Board u/s 145 of the Act.
(m)	**Ind AS**	The Indian Accounting Standards (Ind AS), as notified vide Companies (Indian Accounting Standards) Rules, 2015 along with the

		amendments notified from time to time.
(n)	**Limited Liability Partnership (LLP)**	As defined in the Limited Liability Partnership Act, 2008.
(o)	**Person**	As defined in section 2(31) of the Act.
(p)	**Previous year**	As defined in section 3 of the Act.
(q)	**Rules**	The Income-tax Rules, 1962.
(r)	**SA**	Standards on Auditing issued, prescribed and made mandatory by the Institute of Chartered Accountants of India.
(s)	**STT**	Securities transactions tax leviable under Chapter VII of the Finance (No.2) Act, 2004.
(t)	**Tax audit**	The audit carried out under the provisions of section 44AB of the Act.
(u)	**Tax auditor**	Auditor appointed by an assessee to carry out tax audit under section 44AB of the Act.

Contents

Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2025)

1. Introduction

What is an audit?

1.1 The dictionary meaning of the term "audit" is check, review, inspection, etc. There are various types of audits prescribed under different laws; for example, company law requires a company audit, cost accounting law requires a cost audit, etc.

Tax Audit

1.2 The Income-tax law requires the taxpayer to get the audit of the accounts of his business/profession from the view point of Income-tax law.

Section 44AB entails the provisions relating to the class of taxpayers who are required to get their accounts audited from a chartered accountant. The audit under section 44AB aims to ascertain the compliance of various provisions of the Income-tax law and the fulfillment of other requirements of the Income-tax law. The audit conducted by the chartered accountant of the accounts of the taxpayer in pursuance of the requirement of section 44AB is called tax audit.

1.3 The chartered accountant conducting the tax audit is required to give his findings, observation, in form 3CA and 3CB, of audit report. The report of tax audit is to be given by the chartered accountant in Form Nos. 3CA/3CB and statement of particulars in Form 3CD.

What is the objective of the tax audit?

1.4 One of the objectives of tax audit is to ascertain/derive the requirement of Form No. 3CD and report in Form Nos. 3CA/3CB. Apart from reporting requirements of Form Nos. 3CA/3CB, an audit for tax purposes would assure that the books of account and other records are properly maintained, that they reflect the true and correct particulars in Form No. 3CD. It can also facilitate the administration of tax laws by a proper presentation of accounts before the tax authorities and considerably save the time of Assessing Officers in carrying out routine verifications, like checking correctness of totals and verifying

whether purchases and sales are properly vouched for or not. The time of the Assessing Officers saved could be utilised for attending to more important and investigational aspects of a case.

Tax Audit Guidance Note

1.5 The law has entrusted onerous responsibility of conducting tax audit under section 44AB on chartered accountants in practice. For compiling particulars for tax audit, conduct of audit and issuing of audit report, inputs are required by auditors and the other stakeholders. In order to address this requirement, the Direct Taxes Committee (DTC) of the ICAI, has issued a Guidance Note on Tax Audit. Since the law and particulars for reporting keep on changing, Guidance Note requires to be updated from time to time.

2. Background

2.1. The Finance Minister, while presenting the Union Budget for 1984-85, had observed and stated in the Memorandum explaining the provisions of the Finance Bill, 1984, the compulsory audit is intended to ensure proper maintenance of books of account and other records in order to reflect the true income of the tax payer and to facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities. This would also save the time of the Assessing Officers considerably in carrying out the verification. The scope of section 44AB was enlarged to provide that audit under the section would be required in case of a person carrying on the business of the nature referred to in section 44AD or 44AE or 44AF (by the Finance Act 1997 w.e.f. assessment year 1998-99) or 44BB or 44BBB (by the Finance Act 2003 w.e.f. assessment year 2004-05) or Section 44ADA (for persons carrying on profession by the Finance Act 2016 w.e.f. assessment year 2017-18), if such person claims that his income is lower than the amount of income deemed under these sections as presumptive income. Thereafter, Finance (No.2) Act, 2009 (w.e.f. AY 2011-12) enlarged the scope of section 44AD to encompass within its ambit the assessees covered by the provision of erstwhile section 44AF and hence, section 44AF has been omitted. While section 44AF dealt with assessees carrying on retail trade, the amended section 44AD covers all assessees carrying on eligible business except professionals as referred to in section 44AA (1), a person earning income in the nature of commission or brokerage, or a person carrying on any agency business.

2.2. Besides tax audit, certain other sections in the Income-tax Act, 1961 also require audit/certifications by a chartered accountant. A table appearing in the ***Appendix III*** provides information about such audits and reports/Certifications.

2.3. The first edition of this Guidance Note was published in the year 1985 immediately after the introduction of tax audit provision to help members in discharging their responsibility in an efficient manner. In order to incorporate changes made by the amendments to the Finance Act, as well as judicial pronouncements, circulars etc., the said Guidance Note has been revised in the years 1989, 1998, 1999, 2005, 2013, 2014, 2022 and 2023. Further, a publication titled 'Implementation Guide on Revision in Form No. 3CD in March 2024' was also issued in the year 2024 (now incorporated and merged in this revised edition). The sequence of certain significant events is as follows:

(a) The Government had substituted revised Rule 6G and Forms 3CA, 3CB and 3CD in the Official Gazette on June 4, 1999, vide Notification No 10950/F.No. 153/74/98/TPL and omitted Forms No.3CC and 3CE.

(b) These forms have been subsequently revised vide CBDT's Notification No. 280/2004 dated 16th November 2004.

(c) Significant changes in Form No.3CD were made in the year 2006 through Notification No. 208/2006 dated 10th August, 2006 which notified the Income tax (Ninth Amendment) Rules, 2006.

(d) Significant changes in Form No.3CD were again made in the year 2014 through Notification No. 33/2014 dated 25.07.2014 which notified the Income-tax (7th Amendment) Rules, 2014.

(e) Further changes were made to Form 3CD by inserting sub-clauses (d),(e) and (f) in Clause 13 to incorporate changes relating to ICDS. The insertion was made w.e.f. 01.04.2017 by Notification No. 88/2016 dated 29.09.2016 which notified the Income Tax (23rd Amendment) Rules, 2016.

(f) Clause 31 of Form No. 3CD was substituted vide Notification No. 58/2017 dated 3rd July 2017, further corrected by corrigendum Notification No. 60/2017 dated 6th July 2017.

(g) Significant changes in the Form No. 3CD were again made in the year 2018 through Notification No. 33/2018 dated 20.07.2018 which notified the Income-tax (8th Amendment) Rules, 2018.

(h) Certain amendments were made in Form No. 3CD by Notification No. 82/2020 dated 01.10.2020. However, the said Notification was substituted by Notification No. 28/2021 dated 01.04.2021.

(i) Certain amendments were marde in Form 3CD in clauses 8A, 17, 18, 32 and 36 through Notification No. 28/2021 dated 01.04.2021 which notified the Income-tax (eighth Amendment) Rules, 2021.

(j) The Income-tax (8th Amendment) Rules, 2018 w.e.f. 20.08.2018, *inter alia*, inserted Clause 30C and 44 in Form No. 3CD. Circular No. 05/2021 dated 25.03.2021 has kept clause no. 30C and 44 in abeyance till 31.03.2022.

(k) The Income-tax (Fourth Amendment) Rules, 2024 w.e.f. 05.03.2024 notified vide Notification No. 27/2024 dated 05.03.2024 read with Corrigenda to Notification no. 34/ 2024 dated 19.03.2024, inter alia, amended the clauses 8a, 12, 18(ca), 19, 21(a), 21(b)(ii)(B)(IV), 22, 26 and 32(a) in Form No. 3CD .

(l) The Income-tax (Eighth Amendment) Rules, 2025 (which came into force on notified vide Notification No. 23/2025 dated 28.03.2025, inter alia, amended the clauses 12, 19, 21(a), 22, 26, 31(a)(ii), 31(b(ii)) and 31(c)(ii) in Form No. 3CD. Note 1 has been inserted after clause 31 and clause 36B has been inserted after clause 36A in Form No. 3CD. Further, clauses 28 and 29 have been omitted

2.4. Form No. 3CD is quite comprehensive and covers generally all the items included in Form No. 6B prescribed for reporting under section 142(2A), and hence this Guidance Note would meet almost all the reporting requirements of audit under section 142(2A) also. However, if under section 142(2A), the Assessing Officer requires specific information, the same has to be given separately along with Form No. 6B.

2.5. The audit of accounts was introduced by section 11 of the Finance Act, 1984, which inserted section 44AB with effect from 1st April, 1985 [Assessment Year 1985-86]. This audit is popularly known as tax audit. 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. For a professional, the provisions of tax audit become

applicable if his gross receipts in the profession exceed the prescribed limit in the relevant previous year.

2.6. The *vires* of section 44AB has been upheld by Hon'ble Supreme Court in *T.D. Venkata Rao v. Union of India [1999] 237 ITR 315 (SC)*. The Apex Court has made the following significant observations:

> ***"Chartered Accountants, by reason of their training have special aptitude in the matter of audits. It is reasonable that they, who form a class by themselves, should be required to audit the accounts of businesses whose income (sic: turnover) exceeds Rs.40 lakhs* and professionals whose income (sic: gross receipts) exceeds Rs.10 lakhs* in any given year. There is no material on record and indeed in our view, there cannot be that an income-tax practitioner has the same expertise as chartered accountants in the matter of accounts. For the same reasons the challenge under article 19 must fail, and it must be pointed out that these income-tax practitioners are still entitled to be authorised representatives of assessees."***
>
> **(those were the then existing limit)*

3. Provisions of section 44AB

3.1. Section 44AB reads as under:

> "**Audit of accounts of certain persons carrying on business or profession**".
>
> 44AB. *Every person, --*
>
> *(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees 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 five per cent 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 five per cent of the said payment:

this clause shall have effect as if for the words "one crore rupees", the words "ten crore rupees" had been substituted;

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, 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 to be the profits and gains of his business, as the case may be, in any previous year; or

(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 under section 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 any previous year; or

(e) carrying on the business shall, 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,

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:

Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation - For the purposes of this section, -

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "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 under sub-section (1) of section 139

3.2. The Explanation below section 288(2) defines “accountant”. Please refer to Para 9 of this Guidance Note for elucidation.

3.3. The above section stipulates that every person carrying on business or profession is required to get his accounts audited by a chartered accountant before the "specified date" and furnish by that date the report of such audit, in the following circumstances:

(i) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees 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 five per cent 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 five per cent of the said payment,

this clause shall have effect as if for the words "one crore rupees", the words “ten crore rupees" had been substituted;

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; [Section 44AB(a)] or

(ii) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; [Section 44AB(b)]or

(iii) carrying on the business shall, 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 to be the profits and gains of his business, as the case may be, in any previous year; [Section 44AB(c)] or

(iv) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 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 any previous year; [Section 44AB(d)] or

(v) carrying on the business shall, 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 [Section 44AB(e)].

However, in the following circumstances, audit under section 44AB is not applicable:

(a) This section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of 44ADA

(b) This section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant

section came into force, whichever is later (Second proviso to section 44AB).

(c) The third proviso to section 44AB provides that in a case where such person is required by or under any other law to get his accounts audited it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

3.4. In a case where the tax audit is applicable, the assessee is required to get his accounts audited and furnish report as prescribed under Rule 6G. The said Rule 6G provides as follows:

(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.

3.5. In case of Company/LLP assessee, they should select third proviso to section 44AB as the applicable section for tax audit instead of section 44AB(a) while filling up clause 8 of Form 3CD since their accounts are audited under any other law. Similar precautions need to be exercised in case of co-operative societies/trusts assessee etc. where audit is applicable under respective laws.

3.6. A question may arise in the case of an assessee who is eligible to claim deductions under various sections like sections 80-IA, 80-IB or 80-IE etc., as to whether it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the complete set of accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether situated at one place or at

different places. Therefore, when the turnover of all the units put together exceed the prescribed limits, the assessee will have to get the audit report under section 44AB in the prescribed form. Separate audit reports in the forms prescribed for different purposes like sections 80-IA, 80-IB or 80-IE etc. will also have to be obtained by the assessee to meet the specific requirements of the relevant sections.

4. 'Profession' and 'business' explained

4.1 The term "business" is defined in section 2(13) of the Act, as under:

"Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

The word `business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only - *Barendra Prasad Ray v ITO [1981] 129 ITR 295 (SC).*

4.2 Section 2(36) of the Act defines profession to include vocation. Profession is a word of wide import and includes "vocation" which is only a way of living. – Additional *CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All).*

4.3 Whether a particular activity can be classified as 'business' or 'profession' will depend on the facts and circumstances of each case. 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).*

4.4 The following have been listed out as professions in section 44AA(1) of the Act:

(i) legal, (ii) medical, (iii) engineering or (iv) architectural profession or (v) the profession of accountancy or (vi) technical consultancy or (vii) interior decoration.

Further, under Rule 6F and other professions notified thereunder (Notifications No. 1620 SO-18(E) dated 12.01.1977, No. 9102SO 2675 dated 25.09.1992

and No.116 SO 385(E), dated 04.05.2001), the following can also be considered as a profession:

(i) Authorised Representative,

(ii) Company Secretary,

(iii) Film Artists/Actors, Cameraman, Director including an assistant director; a music director, including an assistant music director, an art director, including an assistant art director; a dance director, including an assistant dance director; Singer, Story-writer, a screen-play writer, a dialogue writer; editor, lyricist and dress designer,

(iv) Information Technology. (Attention is invited to *Notification No.* 890(E)/2000 dated 26-9-2000/Notification S.O. 385(E) dated 4-5-2001)

4.5 The following activities have been held to be business:

(i) Advertising agent

(ii) Clearing, forwarding and shipping agents - *CIT v. Jeevanlal Lalloobhai & Co. [1994] 206 ITR 548 (Bom).*

(iii) Couriers

(iv) Insurance agent

(v) Nursing home

(vi) Stock and share broking and dealing in shares and securities - *CIT v. Lallubhai Nagardas & Sons [1993] 204 ITR 93 (Bom)*

(vii) Travel agent.

5. Sales, turnover, gross receipts

5.1 It may be noted that the provision relating to tax audit under section 44AB applies to every person carrying on business, if his total sales, turnover or gross receipts in business exceed the prescribed limit (Rs.1 crore or Rs 10 crore in specified cases) and to a person carrying on a profession, if his gross receipts from profession exceed the prescribed limit (Rs. 50 lakhs) in any previous year. It is pertinent to note here that the turnover limits as provided in section 44AD and 44ADA have been further revised upwards by the Finance Act, 2023 applicable w.e.f. A.Y. 2024-25. The threshold turnover limit of Rs.2 crores in section 44AD has been revised upwards to Rs.3 crores from

A.Y.2024-25 in respect of eligible assessees where aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total turnover or gross receipts of such previous year. Likewise, the threshold limit of Rs.50 lakhs has been revised upwards to Rs. 75 lakhs in Section 44ADA in case of an assessee where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total gross receipts of such previous year However, the terms "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.

5.2 Section 2(j) of the Central Sales Tax Act, 1956 defines “turnover” as follows:

“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 this 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. Also, if goods are returned within the prescribed time, their sale price is excluded—provided there is proper documentation and accounting adjustment.

It is pertinent to note that since implementation of GST from July 1, 2017, central sales tax is leviable on inter-State sale of only six products viz. petroleum crude, diesel, petrol, aviation turbine fuel, natural gas and alcoholic liquor for human consumption.

5.3 Turnover under the Central Goods and Services Act, 2017 (CGST Act, 2017)

(i) Section 2(6) defines ‘aggregate turnover’ as under:

"aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

The term “aggregate turnover” is a key concept under GST law, referring to the total value of all outward supplies made by a person having the

same Permanent Account Number (PAN), computed on an all-India basis. It encompasses value of taxable supplies, exempt supplies, zero rated supplies of goods or services, inter-state supplies and also the supplies between distinct persons having the same PAN.

Exempt supplies forming part of aggregate turnover include supplies attracting a nil rate of tax, supplies wholly exempt from GST as well as non-taxable supplies *[Detailed discussion may be referred to in paras 79.8-79.11].*

However, aggregate turnover expressly excludes inward supplies liable to tax under the reverse charge mechanism, as well as taxes levied under the GST law—namely, CGST, SGST, UTGST, IGST—and any compensation cess.

This definition plays a critical role in determining registration thresholds, eligibility for the composition scheme, and various other compliance requirements under the GST regime like applicability of e-invoice provisions.

(ii) Section 2(112) defines 'Turnover in State/Union territory'' as under:

'turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The expression "turnover in State" (or Union Territory) closely mirrors the definition of "aggregate turnover", with a key distinction. While aggregate turnover is computed on a PAN-India basis, encompassing value of supplies by all registrations held by a person across different States or Union Territories under the same PAN, turnover in State is limited to the turnover of a taxable person within a particular State or Union Territory

5.4 The term "turnover" has been defined under Section 2(91) of the Companies Act, 2013 as follows:

"2(91) turnover means gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;"

5.5 In the "Glossary of Terms used in Financial Statements" published by the Institute, the expression "Sales Turnover" has been defined as under:

"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".

The term "turnover" is a commercial term, and it should be construed in accordance with the method of accounting regularly employed by the company. It is also pertinent to mention that the value of "Sales Turnover" as per the CGST Act, 2017, as reported in the periodical GST returns, may be different than the value of "Sales Turnover" calculated as per this clause.

5.6 The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. Trade discounts can be deducted from sales but not the commission allowed to third parties. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover. However, sales of scrap shown separately under the heading 'miscellaneous income' will have to be included in turnover.

5.7 Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) 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. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts in the light of the above discussion.

5.8 Applying the above generally accepted accounting principles, a few typical cases may be considered:

(i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.

(ii) Cash discount other than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.

(iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.

(iv) 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.

(v) Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year/s.

(vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.

(vii) Sale proceeds of property held as investment property will not form part of turnover.

(viii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However, if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover.

5.9 (a) A question may also arise as to whether the sales by a commission agent or by a person on consignment basis forms part of the turnover of the commission agent and/or consignee as the case may be. In such cases, it will be necessary to find out, whether the property in the goods or all significant risks, reward of ownership of goods belongs to the commission agent or the consignee immediately before the transfer by him to third person. If the property in the goods or all significant risks and rewards of ownership of goods continue to belong to the principal, 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. If, however, the property in the goods, significant risks and reward of ownership belongs to the commission agent and/or the consignee,

as the case may be, the sale price received/receivable by him shall form part of his sales/turnover.

(b) In this context, it would be useful to refer to the CBDT Circular No.452 dated 17th March, 1986, where the Board has clarified the question of applicability of section 44AB in the cases of Commission Agents, Arhatias, etc. The Circular is published in ***Appendix IV.***

5.10 Share brokers, on purchasing securities on behalf of their customers, do not get them transferred in their names but deliver them to the customers who get them transferred in their names. The same is true in case of sales also. The share broker holds the delivery merely on behalf of his customer. The property in goods does not get transferred to the share brokers. Only brokerage which is being accounted for in the books of account of share brokers should be taken into account for considering the limits for the purpose of section 44AB. However, in case of transactions entered into by share broker on his personal account, the sale value should also be taken into account for considering the limit for the purpose of section 44AB. The case of a sub-broker is not different from that of a share broker.

5.11 The turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined in the following manner:

(a) **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. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving 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 a transaction, the difference amount is 'turnover'. In the case of an assessee undertaking speculative transactions, there can be both positive and negative differences arising from the settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, the amount paid on account of negative difference is not related to the amount received on account of positive difference. In such 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

differences. Accordingly, the aggregate of both favourable and unfavourable 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 actual delivery of shares or securities or commodities etc. These are squared up by receipts/payments of differences. The contract notes are issued for the full value of the underlined shares or securities or commodities etc. purchased or sold but entries in the books of account are made only for the differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia. The turnover in such types of transactions is to be determined as follows (This is only and only for the purpose of computing 'turnover' for tax audit):

(i) The total of favourable and unfavourable differences in case of squared off transactions shall be taken as turnover.

(ii) Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, then such net profit should not be separately included.

(iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.

(iv) In case of an open position as at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been actually squared off.

(v) In case of delivery based settlement in a derivatives transaction, the difference between the trade price and the settlement price shall be considered as turnover. Further, in the hands of the transferor of underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade.

(c) **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.

It is clarified that the method of computation of turnover/gross receipts provided here is solely for the purpose of determining applicability of section 44AB and does not alter the treatment of such transactions for income classification under the head 'Capital Gains' or 'Profits or gains of business or profession'.

5.12 (a) Further, an issue may arise whether such transactions of purchase or sale of stocks and shares undertaken by the assessee are in the course of business or as investment. The answer to this issue will depend on the facts and circumstances of each case taking into consideration the nature of the transaction, frequency and volume of transactions etc. For this, attention is invited to the following judgments where this issue has been considered.

(i) CIT v. P.K.N. and Co Ltd (1966) 60 ITR 65 (SC)

(ii) Saroj Kumar Mazumdar v. CIT (1959) 37 ITR 242 (SC)

(iii) CIT v. Sutlej Cotton Mills Supply Agency Ltd. (1975) 100 ITR 706 (SC)

(iv) G. Venkataswami Naidu & Co. v. CIT (1959) 351TR 594 (SC)

Further, CBDT Circular No.4/2007 dated 15.06.2007, Circular No. 6/2016 dated 29.02.2016 and Letter F.No. 225/12/2016/ITA.II dated 02.05.2016 - ***Appendix V*** may also be referred to.

(b) In case such transactions are for the purposes of investment and income/loss arising therefrom is to be computed under the head 'Capital Gains', then the value of such transaction is not to be included in sales or turnover for deciding the applicability of audit under section 44AB. However, in case such transactions are in the course of business, then the total of such sales is to be included in the sales, turnover or gross receipts as the case may be, of the assessee for determining the applicability of audit under section 44AB.

5.13 The term "gross receipts" is also not defined in the Act. It will include all receipts as per books of account whether in cash or in kind arising from carrying of the business or profession which will normally be assessable under the head "Profits and gains of business and profession" .Broadly speaking, the following items of income and/or receipts would be covered by the term "gross receipts in business":

(i) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;

(ii) Any indirect tax re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995;

(iii) The aggregate of gross income by way of interest received by the money lender;

(iv) Commission, brokerage, service and other incidental charges received in the business of chit funds;

(v) Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.), and if the same is credited to a separate account in the books, only the net surplus on this account should be added to the turnover for the purposes of Section 44AB;

(vi) The net exchange rate difference on export sales during the year on the basis of the principle explained in (v) above will have to be added;

(vii) Hire charges of cold storage;

(viii) Liquidated damages;

(ix) Insurance claims - except for fixed assets;

(x) Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;

(xi) Gross receipts including lease rent in the business of operating lease;

(xii) Finance income to reimburse and reward the lessor for his investment and services;

(xiii) Hire charges and instalments received in the course of hire purchase;

(xiv) Advance received and forfeited from customers.

(xv) The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

5.14 The following items would not form part of "gross receipts in business" for purposes of section 44AB:

(i) Sale proceeds of fixed assets including advance forfeited, if any;

(ii) Sale proceeds of assets held as investments;

(iii) Rental income unless the same is assessable as business income;

(iv) Dividends on shares except in the case of an assessee dealing in shares;

(v) Income by way of interest unless assessable as business income;

(vi) Reimbursement of customs duty and other charges collected by a clearing agent;

(vii) In the case of a recruiting agent, the advertisement charges received by him by way of reimbursement of expenses incurred by him;

(viii) In the case of a travelling agent, the amount received from the clients for payment to the airlines, railways etc. where such amounts are received by way of reimbursement of expenses incurred on behalf of the client. If, however, the travel agent is conducting a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts;

(ix) In the case of an advertising agent, the amount of advertising charges recovered by him from his clients provided these are by way of reimbursement. But if the advertising agent books the advertisement space in bulk and recovers the charges from different clients, the amount received by him from the clients will not be the same as the charges paid by him and in such a case the amount recovered by him will form part of his gross receipts;

(x) Share of profit, interest, remuneration, bonus, commission, etc. received by a partner from the partnership firm

(xi) Agriculture receipts [as covered in section 2(1A)]

(xii) Write back of amounts payable to creditors and/or provisions for expenses or taxes no longer required.

5.15 Thus, the principle to be applied is that if the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts. But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts.

5.16 In the case of a professional, the expression "gross receipts" in profession would include all receipts arising from carrying on of the profession. A question may, however, arise as to whether the out of pocket expenses received by him should form part of his gross receipts for purposes of this section. Normally, in the case of solicitors, advocates or chartered accountants, 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. These amounts, if collected separately either in advance or otherwise, should not form part of the "gross receipts". If, however, 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 and no adjustment should be made in respect of actual expenses paid by the professional person for and/or on behalf of his clients out of the gross fees so collected. However, the amount received by way of advance for which services are yet to be rendered will not form part of the receipts, as such advances are the liabilities of the assessee and cannot be treated as his receipts till the services are rendered.

5.17 A question may arise in the case of an assessee carrying on business and at the same time engaged in a profession as to what are the limits applicable to him under section 44AB for getting the accounts audited. In such a case, if his professional receipts are, say, rupees fifty-four lakhs but his total sales, turnover or gross receipts in business are, say, rupees seventy two lakhs, it will be necessary for him to get his accounts of the profession and also the accounts of the business audited because the gross receipts from the profession exceed the limit of rupees fifty lakhs. If, however, the professional receipts are, say, rupees forty two lakhs and total sales turnover or gross receipts from business are, say, rupees eighty-six lakhs, in these circumstances, gross receipts, turnover etc. from profession or business is not in excess of the limits specified in section 44AB for mandate of audit.

5.18 It may, however, be noted that in cases where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore and Rs. 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not. However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE or 44BB or 44BBB and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded. So far as a partnership firm is concerned, each firm is an independent assessee for purposes of Income-tax Act. Therefore, the figures

of sales of each firm will have to be considered separately for purposes of determining whether or not the accounts of such firm are required to be audited for purposes of section 44AB.

5.19 It must also be understood that the issue whether the turnover exceeds the prescribed limit (Presently Rs. 1 crore & Rs 10 crore for certain specified cases) in the case of business or the gross receipts exceed the prescribed limit of Rs. 50 lakhs (Rs 75 lakhs in certain cases for A.Y. 2024-25 and onwards) in the case of profession is to be determined in each year independent of the results obtained in the preceding year or years. Further, this section applies only if the turnover exceeds the prescribed limit according to the accounts maintained by the assessee.

5.20 Under section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by, a partner of a firm from such firm shall be chargeable under the head profits and gains of business and profession. However, interest, remuneration, etc. received by an assessee from a partnership firm cannot be treated as gross receipt/turnover as partner is not doing any business/profession independently, but it is the firm which is carrying on the business/profession, in which assessee is only a partner.(*Perizad Zorabian Irani v PCIT, Mumbai* – WP No. 1333/2021- Bombay High Court – dated 09.03.2022)

6. Liability to Tax Audit - Special cases

6.1 A question may arise in the case of an assessee whose income is not chargeable to income-tax by reason of a specific exemption contained in the law or otherwise, as to whether he is required to get his accounts audited and to furnish such report under section 44AB. Such cases may cover those assessees who are wholly outside the purview of income-tax law as well as those whose income is otherwise exempt under the Act. It appears that neither section 44AB nor any other provision of the Act stipulate exemption from the compulsory tax audit to any person whose income is exempt from tax. This section seems to make it mandatory for every person carrying on any business or profession to get his accounts audited where conditions laid down in the section are satisfied and to furnish the report of such audit in the prescribed form.

6.2 A trust/association/institution carrying on business may enjoy exemptions as the case may be under sections 10(21) or 10(23A) or 10(23B) or section 10(23BB) or section 10(23C) or section 11. A co-operative society carrying on

business may enjoy deduction under section 80P. Such institutions/associations of persons will have to get their accounts audited and to furnish such audit report for purposes of section 44AB if their turnover in business exceeds the prescribed limit (Presently Rs. 1 crore and Rs 10 crore in certain specified cases).

6.3 It may be appreciated that the object of audit under section 44AB is only to assist the Assessing Officer in computing the total income of an assessee in accordance with different provisions of the Act. Therefore, even if the total income of a person is below the taxable limit laid down in the relevant Finance Act of a particular year, he will have to get his accounts audited and to furnish such report under section 44AB, if any condition prescribed under section 44AB requires to get the accounts audited under that section. These conditions have been stated earlier in this Guidance Note above.

6.4 The case of non-residents may be considered separately. Section 44AB does not make any distinction between a resident or non-resident. Therefore, a non-resident assessee is also required to get his accounts audited and to furnish such report under section 44AB if his turnover/sales/gross receipts exceed the prescribed limits. This audit, however, would be confined only to the Indian operations carried out by the non-resident assessee since he is chargeable to income-tax in India only in respect of income accruing or arising or received in India.

7. Specified date and tax audit

7.1. As per clause (ii) of Explanation to 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 date one month prior to the due date for furnishing the return of income under sub-section (1) of section 139.

7.2. Further, Explanation 2 to sub-section (1) of section 139 of the Income-tax Act has defined the due date for filing of the return of income in respect of an assessee including but not limited to a company, firm and its partners who are required to get their accounts audited under the Income-tax Act, 1961 or any other under any other law for the time being in force. As such, the chartered accountant should always keep a tab on what is the due date for filing the return of income in respect of the assessee whose tax audit is being conducted. Accordingly, the specified date for furnishing of the tax audit report shall be applicable. In practical sense, for most of the assessees the due

specified date for furnishing the tax audit report would be 30th September, unless the assessee is also required to furnish a report under section 92E, in which case, the due date to furnish the tax audit report shall be 31st October.

7.3. The tax audit report is required to be uploaded using the digital signature of the tax auditor. In other words, as per the prevailing practice, furnishing of the tax audit report involves following steps:

(a) The assessee is required to assign the prescribed tax audit form i.e. Form No. 3CA/Form No. 3CB, as the case may be, to the Chartered Accountant every year.

(b) The assessee has to fill up the particulars annexed in Form No. 3CD.

(c) The Chartered Accountant is then required to accept the assignment to upload Form No. 3CA/Form No. 3CB and Particulars in Form No. 3CD in specified format using his digital signature. These forms should be accompanied by the audited financial statements.

(d) In case the Chartered Accountant is not in agreement with the particulars filled up by the assessee in any clause of Form No. 3CD, then, he should mention the same in his observation/qualification in Para 3 of Form No. 3CA and Para 5 of Form No. 3CB.

(e) The assessee needs to login and approve these Forms from his worklist on e-filing portal. Once the acceptance is done, only then the furnishing of the Form is considered as completed.

(f) It should be kept in mind that the department tracks the filing of the tax audit report with respect to the date on which the tax audit report was uploaded by the chartered accountant on the portal. In a case, where the assessee wasn't able to accept the uploaded audit report on or before the specified date of filing of the audit report and the assessee does so on the next day after the expiry of the specified date of filing of the tax audit report, even then, the department doesn't mention the date of acceptance of the tax audit report but the date of upload on the acknowledgement generated for the filing of the audit report. However, the chartered accountant should try to ensure that the assessee accepts the tax audit report so filed on or before the specified date of filing of the tax audit report to avoid any possible technical issues or penal consequences with the Income-tax Department.

7.4 Individuals and HUFs can now verify Form No.3CB–3CD using an Electronic Verification Code (EVC). Before (including FY 2023–24): only Digital Signature Certificate (DSC) was accepted.

Now: taxpayer logins (Individual/HUF) can choose EVC or DSC; CAs must continue using DSC per mandatory rules

8. Penalty

8.1 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."*

8.2 As such, 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. The onus of proving reasonable cause is on the assessee.

8.3 Some of the instances where Tribunals/Courts have accepted as "reasonable cause" are as follows:

(a) Resignation of the tax auditor and consequent delay;

(b) *Bona fide* interpretation of the term `turnover' based on expert advice;

(c) Death or physical inability of the partner in charge of the accounts;

(d) Labour problems such as strike, lock out for a long period, etc.;

(e) Loss of accounts because of fire, theft, etc. beyond the control of the assessee;

(f) Non-availability of accounts on account of seizure;

(g) Natural calamities, commotion, etc.

(i) Resignation of the accountant and his consequent non-cooperation.

(j) Official E filing portal (of the Income-tax department) failure

9. Tax auditor

9.1 The tax audit is to be carried out by an "accountant". The term "accountant" has been defined in sub-clause (i) of Explanation to section 44AB as under:

"For the purposes of this section, -

(i) *"accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;*".

The above-mentioned Explanation reads as under:

"*In this section, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—*

(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or

(b) in any other case,

(i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;

(ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;

(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify

the return under section 139 in accordance with the provisions of section 140;

(iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

(v) an officer or employee of the assessee;

(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;

(vii) an individual who, or his relative or partner—

(I) is holding any security of, or interest in, the assessee:

Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;

(II) is indebted to the assessee:

Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;

(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:

Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;

(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;

(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

For the purposes of aforesaid provisions, "relative" in relation to an individual, means—

(a) spouse of the individual;

(b) brother or sister of the individual;

(c) brother or sister of the spouse of the individual;

(d) any lineal ascendant or descendant of the individual;

(e) any lineal ascendant or descendant of the spouse of the individual;

(f) spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);

(g) any lineal descendant of a brother or sister of either the individual or the spouse of the individual.

Rule 51A is also relevant to understand the meaning of 'business relationship' which reads as under:

Nature of business relationship.

51A. For the purposes of sub-clause (viii) of Explanation below sub-section (2) of section 288, the term "business relationship" shall be construed as any transaction entered into for a commercial purpose, other than,

(i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 (38 of 1949) and the rules or the regulations made under those Acts;

(ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

Thus, wide ranging changes have been brought in the definition of 'accountant' with restrictions on carrying out the audit /certification as required under the Income-tax Act, 1961 by chartered accountant having relationship with the auditee as specified in the aforesaid Explanation. One needs to be, therefore, more cautious while accepting the tax audit assignment and ensure that he/she does not fall into the prohibited categories given in Explanation to Section 288(2) read with Rule 51A.

9.2 The third proviso to section 44AB lays down that in a case where the accounts of an assessee are required to be audited by or under any other law, it shall be sufficient compliance with the provisions of this section, if such

person gets the accounts of such business or profession audited under such other law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section. Therefore, in such cases, the tax auditor will issue tax audit report in Form No. 3CA. In case of co-operative societies also, where persons other than Chartered Accountants are allowed to do the financial audit, the tax auditor will issue Form No. 3CA

9.3 Though the section refers to the accounts being audited by an accountant which means a chartered accountant as defined above, the audit can also be done by a firm of chartered accountants. This has been a recognised practice under the Act. In such a case, it would be necessary to state the name of the partner who has signed the audit report on behalf of the firm. The member signing the report as a partner of a firm or in his individual capacity should give his membership number while registering himself on the e-filing portal.

9.4 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.

9.5 It may be noted that the Council at its 242nd meeting has passed a resolution effective from 1st April 2005, that any member in part-time practice (namely, holding a certificate of practice and also engaging himself in any other business and/or occupation) is not entitled to perform attest functions including tax audit.

9.6 A question may arise in the case of a public sector company or any other company where the statutory auditor has not been appointed by the authorities concerned as to whether 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. It may be noted that Form No. 3CA requires the tax auditor to enclose a copy of the audit report conducted by the statutory auditor or the auditor of the financial statements as the case may be. Where a statutory auditor has not been appointed by the authorities concerned or where the report of the statutory auditor is not available for whatever reasons, it will be possible for the tax auditor to give his report in Form No. 3CB and to certify the relevant particulars in Form No. 3CD. This is particularly important in those cases where the assessee concerned has suffered losses in the relevant

accounting year or in the cases where deduction or exemption under a particular section is dependent on filing the return in time given under section 139(1). It may, however, be noted that 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.

9.7 Tax audit under section 44AB being a recurring audit assignment, for expressing professional opinion on the financial statements and the particulars, the member accepting the assignment should communicate with the member who had done tax audit in the earlier year as provided in the Chartered Accountants Act. When making the enquiry from the retiring auditor, the member accepting the assignment should find out whether there is any professional or other reasons why he should not accept the appointment. The professional reasons for not accepting the appointment include:

- Non-compliance of the provisions of sections 139 and 140 of the Companies Act 2013 as mentioned in Code of Ethics issued by ICAI under Clause (9) of Part I of First Schedule to Chartered Accountants Act, 1949.
- Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 2013 or various other statutes.
- Issuance of qualified report

9.8 In the case of a person whose accounts of the business or profession have been audited under any other law (i.e. a company, a co-operative society, etc. which is required to get the accounts audited under a Statute), it is not necessary to communicate with the statutory auditor if he had not done tax audit in the earlier year. Attention of the members is invited to the detailed discussion in the publication of ICAI, "Code of Ethics" – ***Appendix VI.*** Further, attention of members is invited to the Chapter- VII “Appointment of an Auditor in case of non-payment of undisputed fees” of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 - ***Appendix VII*** or any other guidelines issued by the Council from time to time.

9.9 Some of the issues which are commonly raised in regard to different aspects of tax audit vis-à-vis the liability/ obligations of the tax auditor are discussed hereunder.

9.10 The liability of the tax auditor in respect of tax audit will be the same as in any other audit assignment. It may be noted that when any question relating to the audit conducted by a tax auditor arises, he is answerable to the Council of the Institute under the Chartered Accountants Act, 1949. In all matters concerning tax audit, ICAI's disciplinary jurisdiction will prevail.

9.11 In case the assessee is found guilty of having concealed the particulars of his income, it would not *ipso facto* mean that the tax auditor is also responsible. If the Assessing Officer comes to the conclusion that the tax auditor was grossly negligent in the performance of his duties, he can refer the matter to the ICAI so that appropriate action can be taken against the tax auditor under the Chartered Accountants Act, 1949.

9.12 If the actual work relating to examination of books and records is done by a qualified assistant, being a chartered accountant, in a firm of chartered accountants and the partner of the firm signing the audit report has relied upon this work; action, if any, for professional negligence may be initiated against the member who has signed the report and in such an event, it would be open for the member concerned to prove that he has taken due care and diligence in the performance of his duties and is not aware of any reason to believe that he should not have so relied.

9.13 If the qualified assistant (whether or not holding the certificate of practice) is found to be grossly negligent in the performance of his duties, the Council of the Institute can take disciplinary action against him.

9.14 A tax auditor can accept the assignment of tax representation. The provisions of Volume-I of Code of Ethics should be referred to in this regard.

9.15 Under the Code of Ethics, no tax auditor shall charge or offer to charge, accept or offer to accept, professional fees by way of percentage of profits or which are contingent upon findings, or results of such employment, except as permitted under any regulation made under the Chartered Accountants Act. In this connection, reference is invited to Clause (10) of Part I of the First Schedule to the Chartered Accountants Act and the commentary on the subject at page 183 of the Code of Ethics (Volume II - 2020 Edition). Certain exceptions are made in Regulation 192. As per Regulation 192 (b), in the case of an auditor of a cooperative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits.

9.16 The opinion expressed by the tax auditor is not binding on the assessee. If the tax auditor has qualified his report and expressed an opinion on a particular item, the assessee may take a different view while preparing his return of income. In such cases, it is advisable for the assessee to state his viewpoint and support the same by any judicial pronouncements on which he wants to rely.

9.17 In terms of Council Guidelines No.1 CA(7)/02/2008, dated 8th August, 2008 – ***Appendix VII***, in Chapter-X regarding "Appointment of an auditor when he is indebted to a concern", a chartered accountant should not accept the tax audit of a person to whom he is indebted for more than rupees one lakh. A member of the Institute shall be deemed to be guilty of professional misconduct if he accepts appointment as an auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding rupees one lakh. However, Explanation to Section 288(2) does not provide for any such threshold and hence irrespective of the quantum of indebtedness, a chartered accountant should not accept the assignment of tax audit as the same is prohibited by the said Explanation to Section 288(2).

9.18 The relaxation provided in the said Explanation is only with respect to the relatives of the individual and not for the individual so appointed as tax auditor. This must be carefully noted by the member before accepting the assignment of tax audit. A member of the Institute in practice or a partner of a firm in practice or a firm, or a relative of such member or partner shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 1,00,000/-.

9.19 The Council has issued a Guideline No.1-CA(7)/02/2008, dated 8th August, 2008 given in ***Appendix VII*** *wherein Chapter- IX "Appointment as Statutory auditor" states that* a 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.

9.20 The above restrictions shall apply in respect of fees for other work or service or assignment payable to the statutory auditors and their associate concerns put together.

9.21 As per the said Guideline, 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: -

(i) audit under any other statute;

(ii) certification work required to be done by the statutory auditors; and

(iii) any representation before an authority.

9.22 Since 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 Guideline and thus the above restriction shall not apply in respect of tax audit fees.

9.23 The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB. It is advisable that such an appointment letter should be signed by the person competent to sign the return of income in terms of the provisions of section 140 of the Act. It would also be useful if the letter affirms that no other auditor was appointed to conduct the tax audit for the year for which the appointment is being made. The letter may also give the name and address of the tax auditor for the previous year, wherever relevant. This would give the necessary information to the incoming tax auditor to enable him to communicate with the previous auditor. The letter of appointment should also specify the remuneration of the tax auditor. SA-210, *Agreeing the Terms of Audit Engagement* issued by the ICAI requires the auditor to agree with the terms of audit engagement with management or those charged with governance as appropriate. The agreed terms would need to be recorded in an audit engagement letter, the sample of which is given in ***Appendix IX*** or other suitable form of written agreement and shall include: (a) The objective and scope of the audit of the financial statements; It should be specifically mentioned that the scope of audit is restricted to the provisions contained in section 44AB of the Income-tax Act,1961 and the Income-tax Rules, 1962. (b) The responsibilities of the auditor; (c) The responsibilities of management; (d) Identification of the

applicable financial reporting framework for the preparation of the financial statements; and (e) Reference to the expected form and content of any reports to be issued by the auditor as per the provisions of Income-tax Act, 1961 and Income-tax Rules, 1962 along with a statement that there may be circumstances in which a report may differ from its expected form and content. In the interest of both assessee and auditor, the auditor should send an engagement letter, preferably before the commencement of the engagement, to help avoid any misunderstanding with respect to the engagement. The engagement letter documents and confirms the auditor's acceptance of the appointment, the objective and scope of the audit and the extent of the auditor's responsibilities to the assessee. However, it may be noted that wherever an audit is to be conducted under a Statute, acknowledgement of the letter of the auditor by the assessee is considered to be sufficient compliance of SA-210. The tax auditor should get the statement of particulars, as required in the annexure to the audit report, authenticated by the assessee before he does the same. The tax auditor is required to upload the tax audit report directly in the e-filing portal.

9.24 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. 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. 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. In this regard, attention is invited to Para 17 of the SA 299 (Revised), *Joint Audit of Financial Statements* issued by ICAI reproduced below:

> *" The joint auditors are required to issue common audit report, however, where the joint auditors are in disagreement with regard to the opinion or any matters to be covered by the audit report, they shall express their opinion in a separate audit report. A joint auditor is not bound by the views of the majority of the joint auditors regarding the opinion or matters to be covered in the audit report and shall express opinion formed by the said joint auditor in separate audit report in case of disagreement. In such circumstances, the audit report(s) issued by the*

joint auditor(s) shall make reference to the separate audit report(s) issued by the other joint auditor(s)

The responsibility of joint tax auditors will be the same as in the case of other audits e.g. audit under the Companies Act, 2013. For details relating to such responsibility, in the case of joint tax audit, reference may be made to SA 299 (Revised), *Joint Auditors of Financial Statements*.

9.25 A chartered accountant who is responsible for writing or maintenance of the books of account of the assessee should not audit such accounts. This principle will apply to the partner of such a member as well as to the firm in which he is a partner. In view of this, a chartered accountant who is responsible for writing or maintenance of the books of account or his partner or the firm in which he is a partner should not accept tax audit assignment under section 44AB in the case of such an assessee.

9.26 The audit of accounts of a professional firm of chartered accountants under section 44AB cannot be conducted by any partner or employee of such firm.

9.27 A chartered accountant/firm of chartered accountants, that is appointed as tax consultant of the assessee, can conduct tax audit under section 44AB. The Council of ICAI in its 281st meeting held from 3rd to 5th October, 2008 decided that an internal auditor of an assessee, whether working with the organisation or independently practicing chartered accountant or a firm of chartered accountants, cannot be appointed as his tax auditor. The decision was made effective from 12-12-2008.

9.28 A question may arise whether an assessee can remove a tax auditor appointed under section 44AB. The answer depends upon the facts and circumstances of the case. It is, however, possible for the management to remove a tax auditor where there are valid grounds for such removal. This may arise where the tax auditor has delayed the submission of audit report under section 44AB for an unreasonable period and if it is found that there is no possibility of getting the audit report uploaded before the specified date. In such cases, the management may be justified in removing the tax auditor. However, 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 Institute can intervene in such cases. No other chartered accountant should

accept the audit assignment if the removal of his predecessor is not on valid grounds.

9.29 Before accepting a tax audit, the chartered accountant should take into consideration the ceiling on tax audit assignments fixed under the Chapter VI-Tax Audit assignments under Section 44AB of the Income-tax Act, 1961 of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 as amended by a decision of the Council taken in its 331st meeting held from 10.02.2014 to 12.02.2014, its 333rd meeting held from 14.05.2014 to 16.05.2014 and its 368th meeting held in August, 2017 - ***Appendix VII.***

9.30 In view of the said Guidelines a member of the Institute in practice, shall be deemed to be guilty of professional misconduct if, he accepts more than 60 tax audit assignments relating to an assessment year or such other limit as may be prescribed by ICAI from time to time under section 44AB, whether in respect of a person whose accounts have been audited under any other law or a person who carries on business or profession but who is not required by or under any other law to get his accounts audited.

9.31 (a) As per the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 (as amended from time to time), audit of books of account of persons carrying on businesses/professions covered by sections 44AD, 44ADA and 44AE, is not included in the aforesaid limit. The auditor is advised to maintain the details of the audits conducted by virtue of the provisions of section 44AD, 44ADA and 44AE separately.

(b) Furthermore, a clarification was issued for reckoning the "specified number of tax audit assignments" conducted under section 44AB of the Income-tax Act, 1961, the text of the clarification is reproduced below:

> *"Various statutes prevailing in India like DVAT, 2004 requires the assessee to furnish an audit report in a form duly signed and verified by such particulars as may be prescribed under section 44AB of the Income-tax Act, 1961 i.e. Form 3CB/3CD. This had lead to the doubts as to whether such audits would be included in the ceiling of "specified number of tax audit assignments".*
>
> *Considering the same, the Council at its 311th meeting held on 8th and 9th November, 2011 clarified that 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 between 40 to 60 Lakhs) etc. will not be considered for inclusion in the present limit of 60 audits"*

**w.e.f. 1.04.2014*

9.32 In case the member is a partner of 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. 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 partner. 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 of the firm of chartered accountants in practice shall not exceed 60 tax audit assignments. If two members or firms of chartered accountants are appointed as joint tax auditors, then the assignment will have to be included in the case of both the members or firms separately. It has, however, been clarified that the audit of the head office and branch offices concerned shall be regarded as one tax audit assignment. Similarly, 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. In computing the specified number of tax audit assignments, each year's audit would be taken as a separate assignment. Every chartered accountant in practice shall maintain a record of the tax audit assignments accepted by him in each financial year in the format prescribed by the Council. This format is reproduced in **Appendix VIII.**

9.33 In the 442nd meeting of the Council of ICAI held on 26.5.2025 and 27.5.2025 and 443rd meeting of the Council of ICAI held on 30.6.2025 and 1.7.2025, the following changes tabulated below have been effected in respect of limit on number of tax audits with effect from 1.4.2026. The guidelines notified vide Notification F. No.1-CA/(7)/234/2025 dated 25.7.2025 are given in **Appendix VIIIA**. It may be noted that as per the Council decision, the ceiling of 60 would be in relation to the number of tax audit assignments accepted and signed by a member in a particular financial year. Also, the changes would apply in respect of tax audits assignments with effect from 1.4.2026. This is the reason why "From 1.4.2026" has been mentioned in the heading of the last column.

	Particulars	For A.Y.2025-26	From 1.4.2026
1	What is the maximum number of tax audit assignments which a member of the Institute in practice can accept and sign?	60 (to be reckoned relating to an Assessment Year)	60 in a Financial Year
2	What is the maximum number of tax audit assignments which a firm of chartered accountants in practice can accept?	60 tax audit assignments per partner in the firm, relating to an assessment year	60 tax audit assignments per partner in the firm in a financial year
3	Can an individual member who is also a partner in a firm sign more than 60 tax audits in a financial year by utilising the maximum permissible limit available to a firm based on number of partners?	Yes, he can sign more than 60 tax audit reports relating to an assessment year by utilising the maximum limit permissible for the firm.	No, he cannot sign more than 60 tax audits in the financial year. The limit of 60 is the overall limit which includes the reports signed by him as a proprietor and/or as a partner of a firm(s).
4	Are audits under clauses (c), (d) and (e) of section 44AB in respect of persons covered under section 44AE, 44ADA and 44AD included in the ceiling limit?	No, the audits under these clauses are not included in the ceiling limit.	No, the audits under these clauses are not included in the ceiling limit of 60 in a financial year.

Note – It may be noted that in the case of revision of tax audit report, the revised tax audit report shall not be taken into account for the purpose of reckoning the said limit of 60.

9.34 The Institute has recommended fees for professional services on the basis of time devoted by a chartered accountant and his assistants. The fees for tax audit assignment can be charged by a chartered accountant on the basis of the work involved in the assignment. It may be appreciated that no uniform fees can be recommended on the basis of turnover because an assessee having turnover of Rs.1 crore in a trading activity may have less transactions as compared to an assessee having the same turnover in a manufacturing activity. Similarly, the transactions in a wholesale business will be less than the transactions in a retail business. The revised minimum recommended scale of fees recommended by the Committee for Members in Practice as on date is given in ***Appendix X.***

9.35 The chartered accountants should charge reasonable fees depending upon the responsibility involved under the revised forms and taking into consideration the work involved in tax audit assignment which has increased considerably consequent to the revision of the forms. It is necessary that members of the profession should also maintain reasonable standards of professional fees.

9.36 As mentioned above, the audit of the head office and branch offices of an assessee shall be regarded as one tax audit assignment. However, if tax audit of any branch is conducted, it shall be considered as one separate tax audit for considering limit.

9.37 It may also be noted that a chartered accountant is required to generate and mention UDIN (Unique Documentation Identification Number) on each attestation/audit reports issued by him. The Institute of Chartered Accountants of India, through the Gazette notification dated 2nd August, 2019, has declared mandatory generation of UDIN for all kind of Certifications, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions performed by practicing members as required by various regulators. Further, the CBDT has made quoting of UDIN mandatory effective 27th April 2020, for all documents certified or attested by Chartered Accountants under the Income-tax Act, 1961. The UDIN so mentioned for the tax audit reports/certificates by the Chartered Accountants on the e-filing portal, is validated online with the ICAI system-level integration. This validation of UDIN help in weeding out fake or incorrect tax audit reports not duly authenticated with the ICAI. If, for any reason, a Chartered Accountant is unable to generate UDIN before submission of audit report/certificate, the income tax e-filing portal allows such submission. However, the said Chartered Accountant has to generate and Update the UDIN

within 60 calendar days from the date of form submission on the income tax e-filing portal.

10. Form of Financial Statements

10.1 In case of certain category of assesses e.g., company, society, charitable trusts etc., respective law governing the assessee prescribe form in which financial statements should be prepared and presented. In such a case, relevant provisions of law should be complied with for preparation and presentation of the financial statements. It should be noted that the responsibility for maintenance of books and records and that for preparation of financial statements is that of the assessee.

10.2 In case of certain assessees, law does not prescribe any specific format or requirements for preparation and presentation of financial statements. The ICAI through Accounting Standards Board has issued Guidance Note on Financial Statements of Non-Corporate Entities' and Guidance Note on Limited Liability Partnerships (LLPs). These Guidance Notes are effective for financial statements covering periods beginning on or after April 1, 2024. In this regard, clarification issued by the ICAI regarding the level of authority attached to the various documents issued by the Institute may be considered. The same is given as **Appendix II**.

11. Accounting Standards

11.1 Recognizing the need to harmonize the diverse accounting policies and practices in use in India and keeping in view the International developments in the field of accounting, the Council of the ICAI has issued Accounting Standards.

11.2 The legal recognition to the Accounting Standards formulated by the ICAI was granted in October 1998 with insertion of Section 211(3A), (3B), and (3C) in the Companies Act, 1956. The Companies Act, 2013 has replaced Companies Act, 1956. Section 211(3C) of the erstwhile Companies Act had provided that Accounting Standards issued by the ICAI may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards (NACAS). As per the proviso to the section, till the notification of the Accounting Standards by the Government, the Accounting Standards issued by the ICAI were required to be followed by companies. In the year 2006, Accounting Standards 1 to 7 and 9 to 29 were notified by the

Ministry of Corporate Affairs, Government of India, under the Companies (Accounting Standards) Rules, 2006 vide its notification dated December 7, 2006 in the Gazette of India. These were made effective in respect of accounting periods commencing on or after the publication of these Accounting Standards (i.e., December 7, 2006). As per the Companies (Accounting Standards) Rules, 2006, Companies are classified into two categories, i.e., Small and Medium Companies (SMCs) and Non-SMCs. Under the Companies Act, 2013, Section 129 provides for compliance to Accounting Standards. In accordance with section 133, the Central Government prescribes the standards of accounting as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. It was prescribed that the standards of accounting as specified under the Companies Act, 1956, shall be deemed to be the Accounting Standards until Accounting Standards are specified by the Central Government under section 133 of the Companies Act 2013. Accordingly, Accounting Standards notified under Companies (Accounting Standards) Rules, 2006 continued to be followed under the Companies Act, 2013 until 2021, when Companies (Accounting Standards) Rules 2006 were mirrored under the Companies Act, 2013 and notified as Companies (Accounting Standards) Rules, 2021 applicable in respect of accounting periods commencing on or after April 01, 2021. Another set of Accounting Standards, i.e., Indian Accounting Standards (Ind AS) that are converged with globally accepted International Financial Reporting Standards have been notified under Companies (Indian Accounting Standards) Rules 2015 and already been implemented as per the Roadmap issued by the MCA by all the listed companies and Non-banking financial companies (NBFCs) and unlisted companies and NBFCs with net worth of INR 250 crores or more.

11.3 ICAI also issues Accounting Standards for non-company entities which are harmonised with Accounting Standards Rules notified by the Ministry of Corporate Affairs with minor differences. The ICAI also announced the scheme for applicability of accounting standards issued by ICAI to non-company entities. The criteria for classification of companies under the Companies (Accounting Standards) Rules, 2021 and revised criteria for classification of non-company entities as decided by ICAI are given in ***Appendix XII.***

11.4 The Accounting Standards, issued by ICAI are for use in the presentation of general purpose financial statements which are issued to the public by such commercial, industrial or business enterprises as may be

specified by the Institute from time to time and subject to the attest function of its members. The term `General Purpose Financial Statements' includes balance sheet, statement of profit and loss, a cash flow statement (wherever applicable) and other statements and explanatory notes which form part thereof, issued for the use of various stakeholders, Governments and their agencies and the public at large.

11.5 Information about the Accounting Standards can be seen from the publications of the Institute. Important publications in the matter are, as updated from time to time:

(a) Compendium of Accounting Standards

(b) Compendium of Indian Accounting Standards

(c) Accounting Standards Quick Referencer

(d) Indian Accounting Standards: An Overview

(e) Quick Referencer on Indian Accounting Standards

It may be noted that certain exemptions/relaxations from the applicability of Accounting Standards have been given to Small and Medium Companies (SMCs) and Micro, Small and Medium Sized Non-company Entities (MSMEs) that are given in ***Appendix XII***

11.6 AS also apply in respect of financial statements audited under section 44AB of the Income-tax Act, 1961. Accordingly, members should examine compliance with the mandatory Accounting Standards when conducting such audit.

12. Accounts and Income-tax law

12.1 Accounts are basis for ascertainment of income. The Income-tax Act, 1961 has made prescription for maintenance of accounts. Section 145 of the Act deals with provisions relating to method of accounting for ascertainment of income. Section 145 deals with method of accounting and is reproduced below:

"Method of accounting.

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 income computation and disclosure 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) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."

12.2 **Income Computation and Disclosure Standards (ICDSs):** In exercise of powers contained in sub-section (2) of section 145 of the Act, the Central Government has issued 'Income Computation and Disclosure Standards'. ICDS are applicable for computation of income under the head 'profits and gains from business and profession' or 'income from other sources'. There are 10 ICDSs issued till date.

12.3 ICDSs are applicable only for computation of income under the above two referred heads of income. ICDS are not applicable for maintenance of the books of accounts.

12.4 ICDSs have been elucidated in publication titled 'Technical Guide on Income Computation and Disclosure Standards' of the Direct Taxes Committee of the Institute.

13. Audit Procedures

13.1 In the case of an audit, the tax auditor is required to express his opinion as to whether the financial statements give a true and fair view of the state of affairs of the assessee in the case of the balance sheet and in the case of the profit and loss account/ income and expenditure account, of the profit/loss or surplus/deficit for the Income tax purposes. As regards the statement of particulars (i.e. Form 3CD) to be annexed to the audit report (i.e. Form 3CA or 3CB), the tax auditor is required to give the opinion as to whether the particulars are true and correct. In giving the report, the tax auditor will have to use his professional skill and expertise and apply such audit tests/procedures as the circumstances of the case may require, considering

the contents of the audit report. The auditor will have to conduct the tax audit by applying the generally accepted auditing procedures which are applicable for any other audit. The auditor should use professional judgment to apply the technique of audit sampling in accordance with the principles enunciated in SA 530 *"Audit Sampling"* depending on the nature and volume of transactions, the materiality involved and the internal control procedures followed by the assessee. The tax auditor should also refer to the other Standards on Auditing (SAs) as may be relevant, issued by ICAI, as well as the "Guidance Note on Audit Reports and Certificates for Special Purposes". If the statutory auditor is also appointed to undertake tax audit, it is advisable to carry out both the audits concurrently.

13.2 Section 143 of the Companies Act, 2013 gives certain powers to the auditors to call for the books of account, information, documents, explanations, etc. and to have access to all books and records. Attention is invited to SA 210, *Agreeing the Terms of Audit Engagements*. The Standard requires an auditor to establish whether the pre-conditions for an audit are present so as to accept or continue an audit engagement. As per para 6(b) (iii) of SA 210, the auditor is required to obtain agreement of management that it acknowledges and understands its responsibilities to provide the auditor with (a) access to all information of which the management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters, (b) additional information that the auditor may request from management for the purpose of the audit and (c) unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence. Moreover, since the appointment of the tax auditor is made by assessee, it will be in the interest of the assessee to furnish all the information and explanations and produce books of account and records required by the tax auditor. If, however, after agreeing to the terms of the engagement, the assessee subsequently refuses to produce any particular record or to give any specific information or explanation in relation to the reporting requirement under section 44AB, the tax auditor should see the impact thereof from the perspective of "management integrity" vis-a-vis overall assessment of risk of misstatements in accordance with SA 315, *Identifying and Assessing the risks of material misstatement through understanding the entity and its environment* and, consequently on his/her opinion for reporting in clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB as the case may be.

13.3 The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. The auditor should keep necessary working papers about the evidence on which he has relied upon while conducting the audit and also maintain all the necessary working papers. Such working papers should include the auditor's notes on the following, amongst other matters:

(a) work done while conducting the audit and by whom;

(b) explanations and information given to him during the course of the audit and by whom;

(c) decision on the various points taken;

(d) the judicial pronouncements relied upon by him while making the audit report; and

(e) certificates issued by the assessee/management letters.

13.4 The requirements of documentation are applicable in respect of tax audit conducted by chartered accountants. For this purpose, attention is also invited to SA 230, "*Audit Documentation"*, which provides that the tax auditor should prepare documentation that provides a sufficient and appropriate record of the basis for the auditor's report and evidence that the audit was planned and performed in accordance with SA's and applicable legal and regulatory requirements.

13.5 Form 3CD requires reporting on certain items like payments to persons covered under section 40A(2)(b), ICDS etc. for which full information may not be available in books of account. In respect of percentage of work in progress, good, doubtful or bad debts, MSME enterprises appearing as creditors etc. will require inputs from the management. Tax auditor may raise certain issues for soliciting views of those charged with governance. Therefore, the tax auditor should consider SA 580 – Written Representations and consider obtaining representation from management in appropriate circumstances and at appropriate time i.e. before commencement of audit or after conclusion of audit process. The draft Sample Management Representation Letter is given in ***Appendix IXA.***

13.6 If the accounts of the business or profession of a person have been audited under any other law by the statutory auditor(s), it is not necessary for the tax auditor appointed under section 44AB to conduct the audit once again in the matter of expression of "true and fair view" of the state of affairs of the

entity and of its profit/loss for the period covered by the audit. However, the said section envisages the certification of the particulars in the prescribed form on which the tax auditor has to express his opinion as to whether these are `true and correct'. In other words, where an audit has already been conducted and the opinion of the auditor has been expressed on the accounts, it would not be necessary to repeat the entire exercise to express similar opinion all over again. The tax auditor has only to annex a copy of the audited accounts and the auditor's report and other documents forming part of these accounts to his report and verify the particulars in the prescribed form for expressing his opinion as to whether these are true and correct.

13.7 In case of the conduct of a statutory audit for the purpose of expression of the auditor's opinion as to whether the financial statements depict a 'true and fair' view, the statutory auditor applies audit sampling. Similarly, in case of tax audits also the tax auditor may apply audit sampling techniques as prescribed in SA 530, *Audit Sampling* on the information provided by the assessee to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion. The extent of checks undertaken would have to be indicated by the tax auditor in the working papers and audit notes. The tax auditor would be advised to so design the tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

13.8 Where the assessee has been subjected to an internal audit and the tax auditor decides to use the work of the internal auditor for the purpose of the tax audit under section 44AB, the latter's procedures would be guided by the principles laid down in Standard on Auditing (SA) 610 (Revised), *Using the Work of Internal Auditors.*

13.9 Audit procedures applicable to a person whose accounts of the business or profession have been audited under any other law will apply as well to a person who carries on business or profession but who is not required by or under any other law to get the accounts audited. In order to express the opinion on the accounts of a person belonging to the latter category, the tax auditor should apply the same procedures as he would have applied in the conduct of audit of the former category. In case the relevant vouchers for the expenditure and payments made by a non-corporate entity are not available, it will be necessary for the tax auditor to call for any other evidence in support of such expenditure and payments. The entity should be advised to maintain vouchers/records in evidence of transactions to avoid a qualification/

observation in the matter by the tax auditors. The qualification in respect of this matter would, in the normal course, be necessary in case the vouchers or other evidence required to be maintained are not produced in evidence of the income/expenditure or assets/liabilities. The entity should be encouraged to maintain office vouchers with the recipient's signatures for the amounts reimbursed on account of expenditure like local conveyance etc., for which other supporting evidence is not possible to obtain. It would also be advisable to give appropriate notes on accounts in the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited. These may include disclosures regarding method of accounting and practices consistently and regularly followed, and whether a change in such methods or practice has been made during the year, notwithstanding the fact that such disclosures are required to be made in Form No. 3CD. Attention of the members is invited to the principles laid out in SA 705 (Revised), *Modifications to the Opinion in the Independent Auditor's Report*.

13.10 The ICAI had, pursuant to the issuance of the Revised SA 700, *Forming an Opinion and Reporting on Financial Statements*, prescribed a revised format of the auditor's report on financial statements, which has been made effective in respect of audits of financial statements for periods beginning on or after 1st April 2018. Since Form No. 3CA and Form No. 3CB are required to be filed online in a preset form and the same are not in line with the requirements of SA 700 (Revised), there is no specifically allocated field for providing information relating to the respective responsibilities of the assessee and the tax auditor as required in terms of the principles laid out in SA 700 (Revised). However, having regard to the importance of these respective responsibility paragraphs from the perspective of the readers of the tax audit report, it is suggested that these respective responsibility paragraphs can be given in the space provided for giving observations, etc., under clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB as the case may be.

13.11 The illustrative assessee's responsibility paragraph and tax auditor's responsibility paragraphs in respect of Form No. 3CB are given hereunder. The same may be suitably reworded to meet the situation envisaged in Form No. 3CA.

"Assessee's Responsibility for the Financial Statements and the Statement of Particulars in Form 3CD

1. *The assessee is responsible for the preparation of the aforesaid financial statements that give a true and fair view of the financial position and financial performance (if applicable) in accordance with the applicable financial reporting framework. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.*

2. *The assessee is also responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income-tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, Circulars etc that are to be included in the Statement.*

Tax Auditor's Responsibility

3. *My/ Our responsibility is to express an opinion on these financial statements based on my/our audit. I/We have conducted this audit in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.*

4. *An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purposes of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of*

the accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

5. *I/We believe that the audit evidence I/we have obtained is sufficient and appropriate to provide a basis for my/our audit opinion.*

6. *I/We are also responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income-tax Rules, 1962. I/We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India."*

13.12 In this regard, attention of the members is also invited to the Announcement regarding "Applicability of SA 700 (Revised), forming an opinion and reporting on financial statements, to formats of auditor's reports prescribed under various laws and/ or regulations" (01.04.2018), issued by ICAI, given in ***Appendix XIII*.**

14. Professional misconduct

14.1 It may be noted that when any question relating to professional misconduct in connection with tax audit arises, the tax auditor would be liable under the Chartered Accountants Act, 1949 and the ICAI's disciplinary jurisdiction will prevail in this regard. ICAI has constituted the Taxation Audits Quality Review Board (TAQRB) with a sole aim to review any report prescribed under the Income-tax Act, 1961 and Rules framed thereunder and any report prescribed under the Indirect Tax Laws including GST Law which are certified by a Chartered Accountant with a view to determine, to the extent possible, compliance with the reporting requirements prescribed under the respective Acts and related Rules and pronouncements, guidance notes issued, if any, by ICAI in respect of the same. When Tax Audit Quality Review Board (TAQRB) finds material/serious non-compliance in the tax audit report, then appropriate action, including referring the case for disciplinary proceedings, may be initiated.

15. Audit Report

15.1 Section 44AB requires the tax auditor to submit the audit report in the prescribed form and setting forth the prescribed particulars. Sub-rule (1) of

Rule 6G provides that 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.

15.2 Sub-rule (2) of Rule 6G further provides that the particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.

15.3 It may be noted that the audit report in Form No. 3CB is in two parts. The first part requires the tax auditor to give his opinion as to whether or not the accounts audited by him give a true and fair view:

(i) in the case of the balance sheet, of the state of affairs as at the last date of the accounting year.

(ii) in the case of the profit and loss account/income and expenditure, of the profit or loss/surplus or deficit of the assessee for the relevant accounting year.

15.4 The second part of the report states that the statement of particulars required to be furnished under section 44AB is annexed to the audit report in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished by the assessee are true and correct, subject to observations and qualifications, if any.

15.5 In paragraph 3 of Form No. 3CB, the auditor has to report that the financial statements audited by him give a `true and fair' view. With regard to the term "true and fair view", the auditor is advised to consider the Framework for Preparation and Presentation of Financial Statements as also paragraph 12, 13, 14 and 27 of SA 700 (Revised), *Forming an opinion and reporting on Financial Statements*. Attention of the members is drawn to Para 5 of SA 200, "*Overall Objectives of the Independent Auditor and the Conduct of An Audit in Accordance with Standards on Auditing"* reproduced below:

> *"5. As the basis for the auditor's opinion, SAs require the auditor to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance. It is obtained when the auditor has obtained sufficient appropriate audit evidence to*

reduce audit risk (i.e., the risk that the auditor expresses an inappropriate opinion when the financial statements are materially misstated) to an acceptably low level. However, reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive."

15.6 The requirement in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB relating to particulars in Form No. 3CD is that the auditor should report that these particulars in Form No. 3CD are "true and correct". The terminology "true and fair" is widely understood though not defined even under the Companies Act, 2013. On the other hand, the words "true and correct" lay emphasis on factual accuracy of the information. In this context, reference is invited to AS-1 relating to Disclosure of Accounting Policies. These standards recognise that the major considerations governing the selection and application of accounting policies are (i) prudence, (ii) substance over form and (iii) materiality. Therefore, while verifying/examining particulars in Form No. 3CD, these aspects should be kept in view. In particular, considering the nature of particulars to be given in Form No. 3CD, the aspect of materiality should be considered. In other words, particulars should be given in respect of material items and the auditors should assess factual correctness relating to these particulars. Attention of the members, in this context is, however, also drawn to Para 51 of "Framework for Assurance Engagements" reproduced below:

"51. "Reasonable assurance" is less than absolute assurance. Reducing assurance engagement risk to zero is very rarely attainable or cost beneficial as a result of factors such as the following:

- *The use of selective testing.*
- *The inherent limitations of internal control.*
- *The fact that much of the evidence available to the practitioner is persuasive rather than conclusive.*
- *The use of judgment in gathering and evaluating evidence and forming conclusions based on that evidence.*
- *In some cases, the characteristics of the subject matter when evaluated or measured against the identified criteria."*

15.7 In the case of a person whose accounts of the business or profession have been audited under any other law, it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view as indicated herein above. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor with his report in Form No. 3CA along with Form No. 3CD.

15.8 In the case of a person who carries on business and also renders professional services but who is not required by or under any other law to get his accounts audited, report should be given in Form No. 3CB. The statement of particulars should be given in Form No. 3CD.

15.9 In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the expression "proper books of account" should mean, the books of original entry and other books of account required to be maintained to record all the transactions of the assessee in the same manner, as in the case of a person whose accounts of the business or profession have been audited under any other law.

15.10 In case, the accounts of a person who carries on business or profession are being audited for the first time, the tax auditor should ensure compliance with SA 510 (Revised), *Initial Audit Engagements-Opening Balance*.

15.11 In the case of companies having their accounting year which is different from the financial year, accounts of the financial year are required to be prepared and audited. The audit report shall be in Form No. 3CB. The above position has also been clarified by the CBDT in its Circular No. 561 dated 22.5.1990. The Circular is reproduced in ***Appendix XIV***.

Revision of Tax Audit Report

15.12 In certain cases, members are called upon to report on the accounts reopened and revised by the board of directors. The accounts of a company once adopted at its annual general meeting should not normally be re-opened and revised. The Institute and the Ministry of Corporate Affairs have affirmed this position. In case of revision, the audit report should be given in the manner as required by the Institute in SA-560 (Revised), *Subsequent Events*. The Ministry of Corporate Affairs had also clarified that accounts can be revised to comply with technical requirements. It may be pointed out that report under

section 44AB should not normally be revised. However, sometimes a member may be required to revise his tax audit report on grounds such as:

(i) revision of accounts of a company after its adoption in annual general meeting.

(ii) change of law e.g. retrospective amendment.

(iii) change in interpretation, e.g., CBDT Circulars, judgements of Jurisdictional High Courts/Supreme Courts, etc.

15.13 In case where a member is called upon to report on the revised accounts, then, he must mention in the revised report that the said report is a revised report and a reference should be made to the earlier report also. In the revised report, reasons for revising the report should also be mentioned.

15.14 Under Sub-rule (3) in Rule 6G, the auditor is expressly allowed to revise the Audit Report in certain circumstances. Sub-Rule (3) reads as under:

> (3) The report of audit furnished under this rule 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, if there is payment by such person after furnishing of report under sub-rule (1) and (2) which necessitates recalculation of disallowance under section 40 or section 43B.

15.15 Thus, a situation might arise where after issuing the audit report, but before the due date for filing the return under section 139(1), the assessee makes payment of sums referred to in sections 40 and 43B, deduction of which is allowed only on actual payment basis, which may require revision of the Tax Audit Report.

15.16 As per the law, there is no restriction for the number of times for revision of tax audit reports. The same can be revised a number of times, but revision should be done only to meet some technical requirements or amendments in law. It should be ensured that the revised report should carry the reference of old reports and should be signed in the current date. It is recommended that all the revisions required should be done at a time. However, there may reasons, like, a court ruling subsequent to the signing and uploading of the revised tax audit report which may necessitate further revision of tax audit report. In such cases, the auditor may, if he deems fit, amend the tax audit report.

15.17 The tax auditor must ensure that the latest amended report must contain the reference to the earlier report(s) and he must sign the same on the present date and generate a new UDIN. The tax auditor should also ensure that Guidance Notes and SA-560 as well as the guidelines and the rules specified for revision for tax audit report by the CBDT are being followed.

15.18 The tax auditor is required to mention in the revised book of account and in the Revised Tax Audit Report that the report is the Revised Tax Audit Report giving the reference of the previous report. The tax auditor is also required to mention the reason for revision both in the revised books of account as well as in the Revised Tax Audit Report.

15.19 The e-filing portal permits uploading the revised audit reports via CA login id. Further, the e-filing utility permits insertion of comments under the heading OTHERS in the tab, and uploading it on the e-filing portal. The tax auditor should insert the comments or observations in Form No. 3CA/Form3CB in the space given in the e-form.

15.20 Revision of tax audit has to be done by the same tax auditor who has done the original tax audit and not by another tax auditor. It is to be noted that a new UDIN is required to be generated for the Revised Tax Audit Report and the same has to be generated each time. The UDIN so generated should also be updated on the online Income-tax Portal.

16. Issuing Audit Report

16.1 Tax Auditor should obtain a hard copy or soft copy of the financial statements for the previous year under audit duly signed by the signatories eligible to sign the financial statements on behalf of the assessee. For example, a proprietor in case of a proprietary concern, working partner or partners for the Firm, Managing Director and other directors for a company as prescribed under the Companies Act, 2013 etc.

16.2 Where the accounts are audited under any other law for the time being in force, accounts contain signature of auditors for the purpose of identification of financial statements upon which report has been issued.

16.3 If the accounts are not audited under any other law for the time being in force, the tax auditor should sign such financial statements for the purpose of identification.

16.4 Tax audit report should be issued by the tax auditor in Form No. 3CA or 3CB as may be applicable along with particulars in Form No. 3CD. These should be in hard copy form physically signed or soft copy digitally signed by the tax auditor. When issued in hard copy, Form No. 3CA or 3CB, as may be applicable along with the particulars in Form No. 3CD, signature and stamp/seal of the tax auditor is required at the end.

16.5 Tax audit report is required to be submitted electronically on the income-tax portal. The tax auditor is required to upload Form No. 3CA or 3CB and Form No. 3CD along with audited balance sheet, profit and loss/income and expenditure account and statutory audit report where the accounts have been audited under any other law for the time being in force. The same are required to be digitally signed by the tax auditor. After submission of the tax audit report by the tax auditor, the assessee is required to accept the same on the Income tax portal, only after which, online furnishing of tax audit report gets completed and acknowledgment number is generated on the income tax portal. UDIN is also required to be updated by the tax auditor on the income tax portal under CA login. This is the prescribed procedure for furnishing of tax audit report.

17. Form No. 3CA

17.1 This form is to be used in a case where the accounts of the business or profession of a person have been audited under any other law like Companies Act or Limited Liability Partnership Act. Particulars of address and PAN or Aadhaar Number wherever applicable is required to be given in report. The first part of the report refers to the fact that the statutory audit of the assessee was conducted by a chartered accountant or any other auditor in pursuance of the provisions of the relevant Act, and the copy of the audit report along with the audited profit and loss account and balance sheet and the documents declared by the relevant Act to be part of or annexed to the profit and loss account and balance sheet, are annexed to the report in Form No. 3CA. In a case where the tax auditor carrying out the audit under section 44AB is different from the statutory auditor, a reference should be made to the name of such statutory auditor. In case the statutory auditor is carrying out the audit under section 44AB, the fact that he has carried out the statutory audit under the relevant Act should be stated. Attention of the members in this context is invited to SA 600 *Using the work of Another Auditor.*

17.2 The next paragraph states that the statement of particulars required to be furnished under section 44AB is annexed with the particulars in Form No.

3CD. The tax auditor has to further state that, in his opinion and to the best of his information and according to examination of books of account including other relevant documents and explanations given to him, the particulars given in the said Form No. 3CD and the annexure thereto are true and correct subject to the observations/qualifications, if any.

17.3 The tax auditor is required to examine not only the books of account but also other relevant documents directly related to transactions relevant to clauses in Form No. 3CD like copy of bank statements, various agreements/ contracts, challans for payment of government dues, TDS returns, GST returns or any other relevant document. Tax auditor can place reliance on electronic record provided its authenticity is confirmed.

17.4 Attention is also drawn to the definition of 'document' as per section 2(22AA) of the Act which is as under:

> *"document" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).*

Section 2(1)(t) of the Information Technology Act, 2000 as referred above is reproduced below:

"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

The definition of term "document" is an inclusive definition and includes within its ambit documents other than those considered as electronic record as per section 2(1)(t) of the Information Technology Act, 2000. The above definition can also be relied when reporting under clause 11(c) of Form No. 3CD discussed later in this Guidance Note.

17.5 Where any of the requirements in this form is answered in negative or with qualification, the report shall state the reasons thereof. 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.

17.6 It is possible that in the case of a person whose accounts of the business or profession have been audited under any other law, which has branches at various places, the branch accounts might have been audited by branch auditors under the relevant Statute. If the audit under section 44AB is also

carried out by the same branch auditors or other chartered accountants, they should submit the report in Form No. 3CA to the management or the principal tax auditor appointed for the head office under Section 44AB. Attention in this regard is drawn to SA 600, *Using the Work of Another Auditor* which discusses the procedures in this regard as well as the principal tax auditor's responsibility in relation to his use of the work of the branch auditor. The principal tax auditor should submit his consolidated report on the registered office/head office and branch accounts and report in his tax audit report as his observation in paragraph 3 of Form No. 3CA as under:

> *"I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, duly appointed under the relevant Act, of the branches not audited by me/us".*

17.7 It is recommended that the tax auditor should also refer to reporting requirements as per SA 700 as discussed in Para above. Further, the Tax Auditor in Para 3 of Form 3CA should give his observations/comments/ adverse remarks/disclaimers found during their audit on any of the clauses of Form 3CD, wherever required. The tax auditor may be of the view that any elucidation, qualification, disclaimer, etc. is required in relation to any clause of Form No. 3CD These aspects be stated in Para 3 of Form No 3CA . All these aspects should also refer to the clause number of Form No. 3CD to which it relates.

17.8 Item No. 4 of the notes to Form No. 3CA requires that the person, who signs this audit report, shall indicate reference of his membership No./certificate of practice number/authority under which he is entitled to sign this report. No separate certificate of practice number is allotted by ICAI. As such, where a chartered accountant acts as a tax auditor, he should give his membership number with ICAI while registering himself in the e-filing portal. In case, the e-filing utility of Form No. 3CA requires the mention of the Firm Registration number and the name of the firm on whose behalf the member has conducted audit, the same should invariably be provided by the tax auditor. The tax auditor should also mention the Unique Document Identification Number (UDIN) for issuing the audit report, if available at the time of signing.

17.9 An assessee may have one or more branches outside India. The accounts of such branches are normally audited by the professional accountants overseas. The results of such branches are also incorporated in the consolidated accounts prepared in this country. In the case of foreign

branches, the relevant information in respect of such branches as is required by Form No. 3CD, may be obtained by the tax auditor in India from the assessee who should obtain the same from the overseas auditor who had audited the accounts of such foreign branches. The tax auditor in India, while certifying the information in Form No. 3CD, may rely upon the information obtained by him from the overseas auditor, and while submitting his consolidated report in Form No. 3CD, he should specifically point out the following in his audit report in paragraph 3 of Form No.3CA as his observation:

> *"I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, appointed under the relevant law, of the overseas branches not audited by me/us".*

If the assessee is unable to obtain relevant information in respect of the overseas branches duly certified by the overseas auditor, the relevant facts should be suitably disclosed and reported upon.

17.10 Where the tax auditor is unable to obtain the required information in respect of branches situated in India or outside India, then the fact should be suitably disclosed along with its impact on the Auditor's opinion on the particulars furnished in Form No. 3CD, as an observation in para (3) of Form No, 3CA. Reference is drawn to SA 705 (Revised), *Modifications to the opinion in the Independent Auditor's report*.

18. Form No. 3CB

18.1 In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the audit report has to be given in Form No. 3CB. Form No. 3CB consists of five paragraphs.

18.2 The tax auditor has to state whether he has examined the balance sheet as on a particular relevant date and the profit and loss account/income and expenditure account for that period. Further, such a balance sheet and the profit and loss account must be attached with the audit report.

18.3 The tax auditor has to certify that the balance sheet and the profit and loss account/income and expenditure account are in agreement with the books of account maintained at the head office and branches. Also, he has to mention the total number of branches.

18.4 He has to report his observations, comments, discrepancies or inconsistencies, if any. Subject to the above observations, comments, discrepancies, inconsistencies; he has to state whether:

(a) he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purposes of the audit;

(b) in his opinion proper books of account have been kept by the head office and branches of the assessee so far as appears from his examination of the books;

(c) in his opinion and to the best of his information and according to the explanations given to him, 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 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.

18.5 Under clause (a) of paragraph 3 of Form No. 3CB, the tax auditor has to report his "observations/comments/ discrepancies/inconsistencies," if any. The expression "Subject to above" appearing in clause (b) makes it clear that such observations/comments/ discrepancies/ inconsistencies which are of qualificatory nature relate to necessary information and explanations for the purposes of the audit or the keeping of proper books of account or the true and fair view of the financial statements, respectively to be reported on in paragraphs (A), (B) and (C) under clause (b) of paragraph 3. While reporting on clause (a) of paragraph 3 of Form No. 3CB, the tax auditor besides mandatory requirements of SA 700 should report 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. Further, only such observations/comments/discrepancies/inconsistencies which are of a qualificatory nature should be mentioned under clause (a). The tax auditor, while verifying the particulars reported under the different clauses of Form No. 3CD, may be of the view that any elucidation, qualification, disclaimer, etc. is

required to be stated. These aspects may be stated in the said paragraph, giving reference to the number of the clause (of Form No. 3CD) to which it relates. In case the tax auditor has no observations/comments/ discrepancies/inconsistencies to report which are of qualificatory nature, "NIL" should be reported in this part of paragraph 3. The tax auditor may then give his report as required by sub-paragraphs (A), (B), and (C) of paragraph 3. The tax auditor should comply with the Standards of Auditing (SA) issued by the ICAI while giving his opinion on the financial statements in para 3 of Form 3CB.

18.6 Paragraph 4 of Form No. 3CB provides that the prescribed particulars are furnished in Form No. 3CD annexed to the report. Paragraph 5 of Form No. 3CB requires the auditor to report whether in his opinion and to the best of his information and according to the explanations given to him, the particulars given in Form No. 3CD are true and correct subject to observations/qualifications, if any. The tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee. These differences are to be reported in paragraph 5 of Form 3CB.

18.7 Further, the Tax Auditor in Para 5 of Form 3CB should give his observations/comments/adverse remarks/disclaimers found during their audit on any of the clauses of Form 3CD, wherever required. The tax auditor should also refer to reporting requirements as per SA 700 as discussed in the Para above.

18.8 If a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, has branches and separate accounts are maintained at the branches, the assessee can request the tax auditor appointed under section 44AB to audit the head office and branch accounts. In the alternative, the assessee can appoint separate tax auditors for branches. The branch tax auditor in such a case will have to give an audit report in Form No. 3CB to the management or the tax auditor appointed for the audit of head office accounts. The tax auditor appointed for the audit of head office can rely on the report of branch tax auditors subject to such checks and verifications as he may choose to make and shall submit his consolidated report on the head office and branch accounts. He should make suitable reference to the audit conducted by separate branch tax auditors in the same manner as stated earlier in para above. The tax auditor should also mention the Unique Document Identification Number (UDIN) for issuing the audit report, if available at the time of signing the report.

18.9 In case of amalgamation, merger, demerger of companies; courts/ authorities approve it from a date specified in the application/petition. At times, there is lapse of number of years between the date of merger/demerger and the date of order. Return of income of earlier period of the merged/demerged entities is required to be furnished. The Financial Statements of the merged/demerged entities are not required to be audited under the Companies Act, 2013 or any other law for the time being in force. Therefore, in such cases, Form No. 3CB should be issued, certifying the Financial Statements.

18.10 If the tax auditor is called upon to give his report only in respect of one or more businesses carried on by the assessee and the books of account of the other businesses are not produced as the same are not required to be audited under the Act, the tax auditor should mention the fact that audit has not been conducted of those businesses whose books of account had not been produced. However, if the financial statements include, *inter alia*, the results of such business for which books of account have not been produced, the auditor should qualify his report in Form No. 3CB.

19. Form No. 3CD

19.1 The statement of particulars given in Form No. 3CD as annexure to the audit report contains a number of clauses. The tax auditor has to report whether the particulars are true and correct in Form No.3CA/Form No.3CB. Form No.3CD is a statement of particulars required to be furnished under section 44AB. The same is to be annexed to the reports in Form 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.

19.2 As stated earlier, the tax auditor should obtain from the assessee, the statement of particulars in Form No. 3CD duly authenticated by him. It would be advisable for the assessee to take into consideration the following general principles while preparing the statement of particulars:

(a) He can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Form No. 3CD.

(b) If there is a conflict of judicial opinion on any particular issue, he may refer to the view which has been followed while giving the particulars under any specified clause.

(c) The AS, Ind AS, Guidance Notes, SA issued by the Institute from time to time should be followed.

19.3 While verifying the particulars in Form No. 3CD, it would be advisable for the tax auditor to consider the following:

(a) Where in respect of any particular aspect, reporting is required at more than one clause, in that case, the tax auditor may ensure that information may be furnished at any one of the clauses and reference may be given in the other clause.

(b) If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in his report in order to enable the tax authority to take a decision in the matter.

(c) In computing the allowance or disallowance, he should keep in view the law applicable in the relevant year, even though the form of audit report may not have been amended to bring it in conformity with the amended law.

(d) In case the assessee has furnished prescribed particulars in part or piecemeal or relevant form is incomplete or the assessee does not give the information against all or any of the clauses, the auditor should not withhold the audit report. In such a case, he should qualify his report in para 3 of Form 3CA or para 5 of Form 3CB as applicable on matters in respect of which information is not furnished or if furnished, is inadequate/insufficient.

(e) The information in Form No. 3CD should be based on the books of account, records, documents, information and explanations made available to the tax auditor for his examination. In case it is not in accordance with the books and documents, he has to mention the same in his observations.

(f) In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in para (3) of Form No. 3CA or para (5) provided in Form No. 3CB, as the case may be.

20. Particulars to be furnished in Form No. 3CD.

PART – A

1. Name of the assessee : _____

2. Address : _____

3. Permanent Account Number or Aadhaar Number : _____

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

: _____

5. Status : _____

6. Previous year : from _____ to _____

7. Assessment year : _____

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

8a. Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD/115BAE?

: _____

[Clauses 1 to 8a]

The requirements of clauses 1 to 8a of Part-A are discussed below:

20.1 Under clause 1, the name of the assessee whose accounts are being audited under section 44AB should be given as specified in PAN, and in case there is a different trade name, the same should be reported. 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. In case of change in the name of the assessee, if the change has taken place during the financial year, name at the end of the financial year should be stated. However, if the change in name has taken place after the close of the financial year but before signing of tax audit report, name as at the year ending date should be mentioned. In either case, fact of name change should be suitably clarified by the tax auditor as an observation in audit report.

20.2 The address to be mentioned under clause 2 should be the same as has been communicated by the assessee to the Income-tax Department as on the date of signing of the audit report. If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given. In the case of a company, the address of the registered office should be stated. In the case of a new assessee, the address should be that of the principal place of business. The tax auditor should verify the relevant details of the assessee from the available income tax records or from the profile of the assessee on Income Tax portal. In case of difference, the same should be given as an observation in the audit report.

20.3 Under clause 3, the permanent account number (PAN) allotted to the assessee should be indicated. Clause further asks to mention Aadhaar number (in case of Individuals) as an alternative. It may be noted that in the e-filing format, PAN is a mandatory field and Aadhaar is an optional field.

20.4 Under clause 4, the auditor is required to examine from appropriate evidence, the registration number or any other identification number, if any, allotted, in case the assessee is liable to pay indirect taxes like customs duty, excise duty, VAT, sales tax, goods and services tax, etc. Moreover, for any indirect tax, if multiple registration numbers are available, the tax auditor should ensure that all such registration numbers are duly reported.

20.5 Part A of Form No. 3CD generally requires the factual details of the assessee. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

20.6 The term “Indirect taxes” is neither defined in the Income-tax Act, 1961 nor under any other law. The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law. For example, GSTIN, State Excise, State VAT etc. The assessee may have multiple registrations for various manufacturing units, service units, branches, godowns etc. under the same law. In such circumstances also, a copy of all registration certificates is to be obtained from the assessee for appropriate disclosure under this clause. Where the indirect tax law does not require any registration, appropriate identification number

may be reported in this clause. For example, in Customs Act, 1962, since there is no registration number, a copy of Importer Exporter Code (IEC) may be obtained and information be accordingly furnished.

20.7 The information may be obtained and maintained in the following format:

Sr. No	Relevant Indirect tax Law which requires registration	Place of Business/ profession/service unit for which registration is in place/ or has been applied for	Registration/ Identification number
1	2	3	4

20.8 The auditor has to keep in mind the provisions of Standard on Auditing 580 "Written Representation". In case the auditor prima facie is of the opinion that any indirect taxes laws is applicable on the business or profession of the assessee but the assessee is not registered under the said law, he should report the same appropriately.

20.9 Under clause 5, the status of the assessee is to be mentioned. This refers to the different classes of assessees included in the definition of "person" in 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.

20.10 Under clause 6, the period of the previous year has to be stated. Since the previous year under the Act now uniformly begins on 1st April and ends on 31st March, the relevant previous year should be mentioned. In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc. the date of beginning/ ending of the previous year may be different, accordingly, the relevant date of beginning and ending of the previous year may be mentioned in this clause. Hence, the tax auditor has to apply his professional judgement depending on the facts and circumstances of the case.

20.11 Under clause 7, the assessment year relevant to the previous year for which the accounts are being audited should be mentioned.

20.12 Under clause 8, the relevant clause of section 44AB under which the audit has been conducted has to be mentioned. In case the assessee is carrying on business and his total sales, turnover or gross receipts as the case may be, exceed one crore rupees in the relevant previous year, the auditor is required to mention clause (a) under this head.

If the assessee is carrying on profession and his gross receipts exceed fifty lakh rupees in the relevant previous year, the auditor is required to mention clause (b) under this head. Likewise, if the audit under section 44AB is being conducted by virtue of provisions of section 44AE, 44BB and 44BBB, the auditor is required to mention clause (c). For audit being conducted by virtue of provisions of section 44ADA, clause (d) is to be mentioned under this head. For audit being conducted by virtue of provisions of section 44AD(4), clause (e) is to be mentioned under this head. Where a person is required by or under any other law to get his accounts audited, say a company, a society etc., then audit under section 44AB is conducted under proviso to section 44AB and not under clause (a) or (b) of that section.

20.13 Clause 8A of Form No.3CD is in respect of whether the assessee has opted for any of the special tax regimes under the Income-tax Act, 1961 wherein the assessee would be entitled to concessional rates of tax, subject to the assessee not claiming certain deductions while computing total income.

20.14 Sections 115BA, 115BAA and 115BAB contain the special tax regime which domestic companies can opt for, subject to fulfilling the specified conditions. In particular, sections 115BA and 115BAB are available for manufacturing domestic companies fulfilling the specified conditions. Section 115BAA is available to any domestic company fulfilling the specified conditions. Section 115BAC(1A) is the default tax regime for individuals/HUFs/AOPs (other than co-operative societies)/BoIs and artificial juridical persons with effect from A.Y.2024-25. These assessees can opt out of the default tax regime and pay tax as per the regular provisions of the Act. Section 115BAD contains the special tax regime which co-operative societies resident in India can opt for, subject to fulfilling specified conditions. The Finance Act, 2023 had inserted section 115BAE, which new manufacturing co-operative societies can opt for from A.Y.2024-25, subject to fulfilment of certain conditions. Accordingly, reporting requirement in relation to section 115BAE has been inserted in this clause.

20.15 Under the regular provisions of the Act, an assessee is required to pay income-tax at the rates specified in the relevant Finance Act. However, sections 115BA, 115BAA, 115BAB, 115BAC, 115BAD and 115BAE provide for concessional tax rates, subject to computation of total income, without claiming certain deductions, exemptions etc. The assessee can opt to pay tax under the rates prescribed in the Finance Act or at the concessional rates specified in any of the aforesaid sections. In either case, certain income would

be chargeable to tax at the rates specified in Chapter XII of the Income-tax Act, 1961, such as, long-term capital gains taxable under section 112/112A, short-term capital gains taxable under section 111A etc

20.16 Clause 8A requires whether the assessee has opted for taxation under any of the aforesaid sections and in case answer is yes, then, the appropriate section has to be selected. The tax auditor is advised to examine the previous year Income-tax return to verify the option which has been exercised by the assessee. However, as the assessee has to file the return, he may opt for different alternative rates than reported by the auditor. Hence, the auditor should mention the selection or the choice of the assessee as on the date of signing of the Report. For the purpose of verifying the reporting under clause 8a, the tax auditor should examine whether the relevant form being 10-IB, 10-IC, 10-ID, 10-IF and 10-IFA furnished under section 115BA, 115BAA, 115BAB, 115BAD and 115BAE respectively for availing new tax regime is already filed by the assessee. In case, the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the new regime or otherwise and based on written representation, the reporting under this clause should be made. Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.

20.17 Form 10-IEA has to be filed by an assessee, being an individual, HUF, AOP (other than a co-operative society), BOI or Artificial Judicial Person having income from business and profession on or before the due date specified under section 139(1) for filing return of income, to opt out of the default tax regime under section 115BAC(1A) and pay tax under the regular provisions of the Act, In case of such assessees, tax auditor should verify whether Form 10-IEA has been already filed by the assessee. In case the assessee has not filed Form 10-IEA, written representation should be obtained from him on the basis of which reporting has to be done under this clause.

20.18 The scheme of taxation under the respective sections is broadly summarised below. The tax auditor should go through the relevant provisions in the Income-tax Act, 1961 and Income-tax Rules, 1962 along with the relevant circulars/notifications to ascertain whether the conditions specified in the respective section have been satisfied.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
115BA	Manufacturing Domestic Company (w.e.f. A.Y.2017-18)	1. The company should be set up and registered on or after 1st March 2016. 2. It should not be engaged in any business other than the business of manufacture/ production of article/thing and research in relation to, or distribution of, such article/thing manufactured/ produced by it. 3. It should not claim deduction under sections 10AA, 32(1)(iia),33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and sections under the heading "Deductions in respect of certain	25% (plus surcharge - @7% of income-tax, if the total income exceeds Rs.1 crore but does not exceed Rs.10 crore and @12% of income-tax, if the total income exceeds Rs.10 crore; and cess@4% of income-tax and surcharge, if any. In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		incomes" other than the provisions of section 80JJAA while computing its total income. 4. It should not set-off loss carried forward from any earlier assessment year, if such loss is attributable to the deductions mentioned in 3 above. 5. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable. 6. An option once exercised is irrevocable.	
115BAA	Domestic Company (w.e.f. A.Y.2020-21)	1. The company should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii),	22% (plus surcharge@10% of such tax and cess@4% on such tax and surcharge) Effective tax rate is 25.168%

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and deduction under Chapter VI-A (other than sections 80JJAA and 80M) while computing its total income. 2. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above. 3. It should not set-off any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is	In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		attributable to the deductions referred to in 1 above. 4. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable. 5. An option once exercised is irrevocable.	
115BAB	New Manufacturing Domestic Company (w.e.f. A.Y.2020-21)	1. The company should be set up and registered on or after 1st October 2019 2. It should have commenced manufacture/production of an article/thing or business of generating electricity on or before 31st March 2024 3. The business should not be	(i) 15%, for income derived from or is incidental to manufacturing or production of an article or thing. (ii) In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		formed by splitting up/ reconstruction of business already in existence 4. It does not use machinery/plant previously used for any purpose 5. It does not use any building previously used as hotel/ convention centre in respect of which deduction u/s 80-ID has been claimed and allowed 6. It is not engaged in any business other than manufacture/ production of article/ thing (which includes the business of generation of electricity) and research in relation to or distribution of such article/ thing	(iii) In respect of other incomes, the rate of tax is 22%, and no deduction or allowance in respect of any expenditure or allowance shall be allowed. (iv) Profits in excess of the amount of the profits determined by the Assessing Officer in respect of transactions with persons having close connection would be deemed to be income of the assessee and would be subject to tax@30%. (v) In respect of STCG derived from transfer of a capital asset

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		manufactured/ produced by it. 7. It should not claim deduction under sections 10AA, 32(1)(iia) 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and Chapter VI-A (except section 80JJAA and 80M) while computing its total income. 8. It should not set-off any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to the deductions referred to in 7 above.	on which no depreciation is allowable under the Act, the rate of tax is 22%. Surcharge@10% of such tax and cess@4% on such tax and surcharge will apply.

<table>
<tr><th>Section</th><th>Eligible assessee</th><th>Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)</th><th>Rate of Tax</th></tr>
<tr><td></td><td></td><td>9. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable.
10. An option once exercised is irrevocable.</td><td></td></tr>
<tr><td>115BAC</td><td>Individual/HUF/ AOP (other than co-operative society)/BOI/ Artificial Juridical Person</td><td>It is the default tax regime of such persons w.e.f. A.Y.2025-26.
1. The assessee should not claim deduction under sections 10(5), 10(13A), 10(14), 10(17), 10(32), 10AA, 16(ii)/(iii), 24(b) [in respect of the property referred to in section 23(2)], 32(1)(iia) 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC and Chapter VI-A</td><td>Slab rates as prescribed in section for AY 2025-26<table><tr><th>Total Income</th><th>Rate of tax</th></tr><tr><td>Upto Rs.3,00,000</td><td>Nil</td></tr><tr><td>From Rs. 3,00,001 to Rs.7,00,000</td><td>5%</td></tr><tr><td>From Rs. 7,00,001 to Rs.10,00,000</td><td>10%</td></tr><tr><td>From Rs. 10,00,001 to Rs.12,00,000</td><td>15%</td></tr></table></td></tr>
</table>

<table>
<tr><th>Section</th><th>Eligible assessee</th><th>Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)</th><th>Rate of Tax</th></tr>
<tr><td></td><td></td><td>(except section 80CCD(2), 80CCH(2) and section 80JJAA) while computing total income.
2. The assessee should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above.
3. The assessee should not set-off loss under the head “Income from house property” with any other head of income.
4. Depreciation should be determined in the prescribed manner. Additional</td><td><table><tr><td>From Rs. 12,00,001 to Rs.15,00,000</td><td>20%</td></tr><tr><td>Above Rs.15,00,000</td><td>30%</td></tr></table>In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.
Surcharge at the applicable rates, where the income exceeds the specified threshold, will apply.
Cess@4% will apply on the income-tax plus surcharge, if any.</td></tr>
</table>

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		depreciation is not allowable. 5. No exemption or deduction can be claimed for allowances or perquisites provided under any other law for the time being in force. 6. Option is to be exercised before the due date u/s 139(1). Option once exercised is revocable only once for assessee having income from business and profession. Subsequently this option cannot be exercised.	
115BAD	Resident Co-operative Society (other than those mentioned in section 115BAE) (From A.Y.2021-22)	1. The co-operative society should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD,	22% (plus surcharge@10% of such tax and cess@4% on such tax and surcharge) Effective tax rate is 25.168%

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		35CCC and Chapter VI-A (except section 80JJAA) while computing total income. 2. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above. 3. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable. 4. Option once exercised is irrevocable.	In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.
115BAE	Resident new manufacturing Co-operative Society	1. The Co-operative Society should be set up and	(i) 15%, for income derived from or is incidental to

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
	(w.e.f. A.Y. 2024-25)	registered on or after 1st April 2023 2. It should commence manufacture/production of article/thing on or before 31st March 2024 3. The business should not be formed by splitting up/ reconstruction of business already in existence 4. It does not use machinery/plant previously used for any purpose 5. It is not engaged in any business other than manufacture/ production of article/thing (including the business of generation of electricity) and research in relation to or distribution of	manufacturing or production of an article or thing. (ii) In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply. (iii) In respect of other incomes, the rate of tax is 22%, and no deduction or allowance in respect of any expenditure or allowance shall be allowed. (iv) Profits in excess of the amount of the profits determined by the Assessing Officer in respect of transactions

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		such article/thing manufactured/produced by it. 6. It should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, and Chapter VI-A (except section 80JJAA) while computing total income. 7. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 6 above. 8. Depreciation should be determined in the	with persons having close connection would be deemed to be the income of the assessee and would be subject to tax@30%. (v) In respect of STCG derived from transfer of a capital asset on which no depreciation is allowable under the Act, the rate of tax is 22%. Surcharge@10% of such tax and cess@4% on such tax and surcharge will apply.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
		prescribed manner. Additional depreciation is not allowable. 9. Option once exercised is irrevocable.	

Note - MAT shall not be applicable to the company which exercises option under section 115BAA or 115BAB.

21. (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.

[Clause 9(a) and (b)]

21.1 Where the assessee is a firm or association of persons (AOP) or body of individuals, the names of partners of the firm or members of the association of persons or body of individuals and their profit sharing ratios (%) have to be stated. In case the partner of a firm or the member of AOP/ BOI acts in a representative capacity, the name of the beneficial partner/member should be stated. Thus, the details of partners or members during the entire previous year will have to be furnished. The term "profit sharing ratios" would include loss-sharing ratio also since loss is nothing but negative profits. This would not cover any specific ratio or understanding in relation to payment of remuneration or interest to partners or members. In this connection, reference may be made to Circular No. 739 dated 25.3.1996 issued by the Board reproduced in ***Appendix XV.***

21.2 If there is any change in the partners of the firm or members 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 must be stated. All the changes occurring during the entire previous year must be stated.

21.3 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 or other documents effecting such changes. For this purpose, the tax auditor may also verify:

(i) in case of registered firms (including Indian LLPs), whether the relevant documents have been filed with the concerned authorities,

(ii) whether notice of changes, if required, has been given to the registrar of firms, and

(iii) any minutes or any other understanding recording any changes in the partners/members or their profit sharing ratios.

21.4 The tax auditor should obtain certified copies of the deeds, documents, understanding, notice of changes etc. including certified copies of the acknowledgment, if any, evidencing filing of documents with the concerned authorities, if registered.

21.5 In certain cases of association of persons or body of individuals, it may be possible that the shares of the members are not precisely ascertainable during the previous year resulting in a situation whereby the shares of the members are indeterminate or unknown. In such circumstances, the relevant fact should be stated.

21.6 As per section 2(23) of the Income-tax Act, 1961; the term "Firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a Limited Liability partnership firm as defined in Limited Liability Partnership Act, 2008.

22. (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.

[Clause 10(a) and (b)]

22.1 In regard to the nature of business, 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. In case a person belongs to service sector, the nature of each type of service should be broadly stated. Thereafter, the sub-sector pertaining to the sector selected has to be mentioned.

22.2 Information has to be furnished in respect of each business profession carried on during the previous year based on review of the profit and loss account. The code to be mentioned against the nature of business pertains to the main area of business activity. For ease of reference, the list of business/ profession code for tax audit form is provided in the ***Appendix XVI*** to this Guidance Note.

22.3 Any material change in the nature of business should be precisely set out. The change will include change from manufacturer to trader as well as change in the principal line of business. For example, an assessee switching over from wholesale business to retail business or an assessee switching over from manufacturing his own commodities to manufacturing goods on job basis for others. Likewise, any addition to or other than temporary discontinuance of, a particular line of business may also amount to change requiring reporting. However, temporary suspension of the business may not amount to change and therefore need not be reported.

22.4 A review of business report or the minutes of meetings would enable the tax auditor to note the changes, if any. Based thereon, he may make necessary enquiries and seek information and determine whether any change has occurred or not. If need be, the tax auditor should get a declaration from the assessee regarding change in the nature of business, if any.

22.5 In the case of business reorganization/ reconstruction, if there is a similar line of activity, no reference needs to be made. However, if a new line of activity emerges because of business reorganization/ reconstruction, the same may be stated. In the case of restructuring, if any line of activity is being hived off, the same may also be reported.

22.6 The auditor should keep in mind the above guidance while verifying information under this clause

23. (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.

[Clause 11(a) to (c)]

23.1 Clause (12A) of section 2 defines books of account as *"books or books of account"* includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device.

23.2 The list of books of accounts prescribed, maintained and examined have to be stated under this clause. Under section 44AA read with Rule 6F, the books of account have been prescribed only in respect of persons carrying on specified profession. No books of account have been prescribed for the persons carrying on business or non-specified profession. This may be considered while verifying the reporting under clause 23(a).

23.3 There may be differences between the list of books of account prescribed, maintained and examined. For example, books of account may have been prescribed but all the prescribed books might not have been maintained or the entire books of account maintained might not have been produced for examination. The tax auditor should exercise his professional judgment in order to arrive at the conclusion whether such a situation warrants any disclosure or qualifications while forming his opinion on the matters covered by reporting requirements in Form No. 3CB.

23.4 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. As such, every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist and whose total gross receipts 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, his total gross receipts in the profession for that year are likely to exceed the said amount, is required to maintain the following books of account:

1. Cash book.
2. Journal, if the accounts are maintained according to the mercantile system of accounting.
3. Ledger.

Apart from the aforesaid books of account, a person carrying on medical profession is required to keep the following:

(a) daily case register in Form No. 3C showing data, patient's name, nature of professional services rendered, fees received and date of receipt; and

(b) 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.

23.5 In the case of a person for whom the books of account have been prescribed under rule 6F, the list of books so prescribed have to be stated under clause 11(a). It may be noted that the daily case register and the inventory under broad heads do not constitute books of account and hence the same need not be mentioned under clause 11(a). Sometimes an assessee may carry on multiple activities. Books of account might have been prescribed for one of the activities. In that case, mention may be made of the activity for which books have been prescribed.

23.6 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) and make appropriate marks of identification to ensure the identification of the books and records produced before him for audit. The list of books of account maintained by the assessee should be given under clause 11(b).

23.7 Section 44AA(2) provides that persons carrying on business or profession, other than those specified in sub-section (1), shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, if his income from business or profession exceeds the monetary limits prescribed under section 44AA(2) or his total sales, turnover or gross receipts in business or profession exceed the

monetary limits prescribed under section 44AA(2) in any one of the three years immediately preceding the previous year. The tax auditor will, therefore, have to verify that the assessee has maintained such books of account and documents as may enable the Assessing Officer to compute the total income of the assessee in accordance with the provisions of the Act. It may be noted that though the Central Board of Direct Taxes has been empowered under sub-section (3) of section 44AA to prescribe books of account to be maintained under sub-section (2), so far no books of account have been prescribed.

23.8 For a person 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 assessees, normal books of account to be maintained will be cash book/bank book, sales/purchase journal or register and ledger. Assessees engaged in trading/manufacturing activities should also maintain quantitative details of principal items of stores, raw materials and finished goods. While giving his report in Form No. 3CB about maintenance of proper books of account, the tax auditor should ensure that they are maintained in accordance with the above requirements. In case stock records are not properly maintained by the assessee due to the nature, level, volume and variety of items/ transactions, the tax auditor will have to consider the concept of materiality and practicality while giving his report in Form No. 3CB.

23.9 (a) As per section 2(12A) of the Income-tax Act, 1961, "books or books of account" include 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. As to the requirement regarding the mentioning of the books of account generated by the computer system, the tax auditor should obtain a list of books of account which are generated by the computer system. The list given by the assessee can be verified from the printout of such books obtained from the assessee. Only such books of account and other records which properly come within the scope of the expression "proper books of account" should be mentioned.

(b) It may be noted that 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."

23.10 The address at which the books so maintained are kept is also required to be mentioned under clause 11(b). In case the books of account are kept at more than one location, the details of address of each such location along with the details of books of account maintained thereof is required to be mentioned. The auditor is advised to obtain from the assessee a list in the following format and accordingly, verify the same with details reported in clause 11(b). In case of a company assessee, auditor should also verify as to whether any forms are filed under the Companies Act for maintenance of books of account at a place other than the registered office:

Sr No.	Principal place of maintenance of books of account	Details of books maintained
1	2	3

23.11 In case, books of account are maintained and generated through computer system, the auditor should obtain from the assessee the details of address of the place where the server is located or the principal place of business/Head office or registered office by whatever name called and mention the same accordingly in clause 11(b). Where the books of account are stored on cloud or online, IP address (unique) of the same may be reported. The auditor should also verify the specification as to which books of account have been maintained in computer system and which of the records have been maintained in hard copy form.

23.12 Books of account examined would constitute the books of original entry and the other books of account. In addition to the list of books of account examined, the nature of relevant documents examined also required to be mentioned. The assessee is required to maintain evidence such as bills, vouchers, receipts, debit note, credit note, inventory register, agreements, orders etc. as the auditor generally examines these documents while conducting audit. The underlying documents would differ from assessee to assessee depending on the nature of activity carried on by the assessee.

Reference to such supporting evidence/ relevant documents is also required to be made under this clause.

23.13 Whereas sub-clause 11(b) requires furnishing list of books of account maintained by the assessee and address of the place where books of account are kept, sub-clause (c) requires tax auditor to examine the list of books of account maintained and the nature of relevant documents.

24. 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, 44ADA, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, 44BBC Chapter XII-G, First Schedule or any other relevant section).

[Clause 12]

24.1 Clause 12 of Form No. 3CD requires to state if the profit and loss account includes any profits and gains assessable on presumptive basis. If the profit and loss account includes any such profits and gains, then, the tax auditor has to verify the amount so included in the profit and loss account. It may be noted that what is required to be stated is the amount of profits and gains of the business or profession covered by presumptive taxation included in the profit and loss account and not the amount assessable on presumptive basis.

24.2 This clause contains the reporting requirement in relation to sections 44AD, 44AE, 44AF (Section not operative from assessment year 2011-12), 44B, 44BB, 44BBA, 44BBB, 44BBC Chapter XII-G, First Schedule of the Act and any other relevant section. With effect from A.Y.2024-25, reporting requirement in relation to section 44ADA was specifically included and with effect from A.Y.2025-26, reporting requirement in relation to section 44BBC has been specifically included.

24.3 Where the profits and gains of the business are assessable to tax under presumptive basis under any of the sections mentioned below, the amount of such profits and gains credited/debited to the profit and loss account should be indicated under this clause:

S. No.	Section	Business covered
1	44AD	Eligible business of an eligible assessee resident in India

S. No.	Section	Business covered
2	44ADA	Professions referred to in section 44AA(1)
3	44AE	Business of plying, hiring or leasing goods carriages of an assessee owning not more than ten goods carriages at any time during the previous year.
4	44AF	Not relevant from A.Y.2011-12
5	44B	Shipping business other than cruise shipping in case of non-residents
6	44BB	Business (of a non-resident) of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in prospecting for, or extraction or production of, mineral oils
7	44BBA	Business of operation of aircraft in case of a non-resident
8	44BBB	Business (of a foreign company) of civil construction/erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government
9	44BBC	Business of operation of cruise ships in case of non-residents
10	Chapter XII-G	Tonnage income of shipping companies
11	First Schedule	Insurance Business

S. No.	Section	Business covered
12	Any other relevant section	This refers to the sections not listed above under which income may be assessable on presumptive basis and will include any other section that may be enacted in future for presumptive taxation (like section 44BBD inserted by the Finance Act, 2025 w.e.f A.Y. 2026-27. This section covers the business of providing service or technologies for setting up electronic manufacturing facility or in connection with manufacturing or producing electronic goods, article or things in India under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology).

24.4 The tax auditor will have to verify if the assessee is covered by the provisions of any of the sections specified in clause 12 and the assessee will be offering to tax profits under presumptive taxation, where applicable.

24.5 If the profit and loss account does not include profit assessable on presumptive basis, then, there is no requirement to furnish the particulars under this clause.

24.6 The amount to be mentioned under this clause means the amount included in the profit and loss account. It does not require mentioning whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the reporting requirement gets satisfied if the amount as per profit and loss account is reported.

24.7 The tax auditor may come across three different situations as follows:

(a) Where the assessee, maintaining regular books of account has more than one business which include business of the nature assessable on presumptive basis under any of the said sections and the profit and loss account prepared from such books of account, *inter alia*, includes the income of the business assessable under the scheme of presumptive taxation.

(b) Where the assessee has more than one business including some business(es) falling under any of the aforesaid sections but maintains

separate sets of accounts for each such business and opts for getting the accounts of all such businesses audited under section 44AB.

(c) Where the assessee, having regular books of account for his main business, has some additional business of the nature described in any of the aforesaid sections and no books of account whatsoever is maintained for such additional business but the net income is credited to the main profit & loss account of the assessee.

24.8 Under each of the aforesaid three situations, the tax auditor may proceed as follows:

(a) This situation may give rise to the problem of apportionment of common expenditure in order to check the correct amount of profit credited to profit and loss account and assessable on a presumptive basis. In such a situation, the endeavour of the tax auditor should be to arrive at a fair and reasonable estimate of such expenditure on the basis of evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked by him. 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 in his observation in Para 3 of Form No. 3CA and Para 5 of Form No. 3CB.

(b) In this case, since a separate set of accounts are maintained for respective businesses, the tax auditor should check the amount of profit to be disclosed from such books.

(c) Here, the tax auditor is unable to satisfy himself about the correctness of the net income from the presumptive business credited to the profit and loss account. He should, therefore, state the amount of income as appearing in the profit and loss account, with a suitable note expressing his inability to verify the said figure. In the absence of books of account, the tax auditor would be unable to form an opinion about the true and fair view of the profit and loss account or balance sheet of the assessee and therefore, it would become necessary for him to appropriately qualify his report in Form No. 3CB.

24.9 In the case of an assessee not opting for presumptive taxation u/s 44AE, 44BB or section 44BBB, the provisions of section 44AB(c) require such an assessee to get his accounts audited irrespective of the fact that his turnover has not exceeded the prescribed limit. There may be another circumstance

where an assessee has mixed nature of business amenable to taxation on presumptive basis and under normal provisions of law – turnover of which does not exceed the prescribed limit. In such a case, the tax auditor auditing the books of account etc. relating to business covered by the provisions relating to presumptive taxation should sufficiently indicate in his report that his audit report in Form No. 3CB and particulars in Form No. 3CD only relate to the business covered by the provisions relating to presumptive taxation and his audit report does not relate to business assessable under the normal provisions of the Act.

24.10 Even where the assessee opts for presumptive taxation, the tax auditor should consider to impress upon the assessee that it would be advisable to maintain some basic records to support the turnover/gross receipts declared for presumptive taxation.

24.11 A summary of the main provisions of sections 44AD, 44ADA and 44AE are given below in a tabular format -

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
1	Eligible Assessee	An Individual, HUF, Partnership firm (other than LLP) being a resident, who has not claimed deduction u/s 10AA or deduction under any provision of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" in the relevant assessment year	Individual, HUF, Partnership firm (other than LLP), who is resident in India	Any assessee owning not more than 10 goods carriages at any time during the previous year.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
2	Nature of activity covered	Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE	Profession referred to u/s 44AA(1)	Business of plying, hiring or leasing goods carriages
3	Threshold relating to turnover/ gross receipts for being covered by this section	Total turnover/gross receipts not to exceed Rs. 2 crore. However, if the amount or aggregate of amounts received during the previous year, in cash, does not exceed 5% of the total turnover/gross receipts of such previous year, the threshold would be Rs. 3 crore.	Gross receipts not to exceed Rs. 50 lakh. However, if the amount or aggregate of amounts received during the previous year in cash does not exceed 5% of the total gross receipts of such previous year, the threshold would be Rs.75 lakh.	N.A.
4	Persons not eligible for declaring income on presumptive basis	Person carrying on profession referred to in section 44AA(1) Person earning income in the nature of		An assessee who owns more than 10 goods carriages at any time during the previous year.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
		commission or brokerage Person carrying on agency business An eligible assessee having declared profit u/s 44AD(1) for any previous year, declares profit not in accordance with section 44AD(1) in any of the five assessment years relevant to the previous year succeeding such previous year, then, he is not eligible to declare profits in accordance with section 44AD(1) for five assessment years subsequent to the assessment year relevant to the previous year in which he declares profit not in accordance with section 44AD(1)		

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
5	Presumptive Income	Higher of – (i) 8% of total turnover / gross receipts [6% of total turnover/gross receipts of the assessee in the previous year on account of such business received through account payee cheque/bank draft, use of ECS through bank account or through prescribed electronic modes on or before the due date of filing return u/s 139(1)]; and (ii) amount claimed to have been earned by the eligible assessee from such eligible business.	Higher of - (i) Amount equal to 50% of the gross receipts of the assessee from such profession; and (ii) Amount claimed to have been earned by the assessee from such profession.	In respect of heavy goods vehicle: Higher of – (i) Rs.1,000/- per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of the month during which the vehicle is owned by the assessee in the previous year, and (ii) Amount claimed to have been actually earned from such goods vehicle. In respect of other than heavy goods vehicle: Higher of – (i) Rs.7,500/- for every month or part of the month during which the goods carriage is owned by the assessee in the previous year; and

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
				(ii) Amount claimed to have been actually earned from such goods carriage.
6	Deduction for remuneration and interest to partners	Deductions u/s 30 to 38 shall be deemed to have already been given full effect to and no further deduction under those sections shall be allowed.		
		Where the assessee is a firm, no separate deduction for remuneration and interest to partners is allowed.	Where the assessee is a firm, no separate deduction for remuneration and interest to partners is allowed.	Where the assessee is a firm, salary and interest to partners shall be deducted from the presumptive income, subject to the conditions and limits specified u/s 40(b).

24.12 A summary of presumptive income provisions relating to non-residents is given below in tabular format –

Sr. No.	Particulars	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
1	Eligible Assessee	A non-resident, engaged in the business of operation of ships (other than cruise ships referred to in	A non-resident, engaged in the business of providing services or facilities in connection with, or supplying	A non-resident, engaged in the business of operation of aircraft.	A foreign company, engaged in the business of civil construction or the business of erection of plant or machinery or

Sr. No.	Particulars	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
		section 44BBC).	plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils.		testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.
2	Nature of business	Income from carriage of passenger, livestock, mail or goods, from India via ships	Income from 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	Income from operation of aircraft	Civil construction, erection, testing and commissioning in connection with a turnkey power project approved by the Central Government
3	Presumptive Income (Deemed profits and gains of business	A sum equal to 7.5% of the aggregate of the amounts specified in	A sum equal to 10% of the aggregate of the amounts specified in sub-section	A sum equal to 5% of the aggregate of the amounts	A sum equal to 10% of the amount paid or payable (whether in or out of India) to

Sr. No.	Particulars	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
	chargeable to tax under the head "Profits and gains of business or profession"	sub-section (2) of the section	(2) of the section	specified in sub-section (2) of the section	the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning
4	Amounts specified in sub-section (2) [Aggregate of (i) and (ii) below]				
(i)	the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of	the carriage of passengers, livestock, mail or goods shipped at any port in India;	the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India;	the carriage of passengers, livestock, mail or goods from any place in India;	

Sr. No.	Particulars	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
(ii)	the amount received or deemed to be received in India by or on behalf of the assessee on account of	the carriage of passengers, livestock, mail or goods shipped at any port outside India.	the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.	the carriage of passengers, livestock, mail or goods from any place outside India.	
5	Can the assessee claim that his income is lower than the presumptive income?	No	Can claim lower profit, if books of accounts and other documents required u/s 44AA(2) are maintained and accounts are audited and audit report under section 44AB is furnished.	No	Can claim lower profit, if books of accounts and other documents required u/s 44AA(2) are maintained and accounts are audited and audit report under section 44AB is furnished.
6	Whether set-off of unabsorbed	N.A.	No	N.A.	No

Sr. No.	Particulars	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
	depreciation and brought forward business loss is allowable?				

Note - Section 44BBC has been inserted by the Finance (No.2) Act, 2024 to be effective from A.Y.2025-26 and section 44BBD has been inserted by the Finance Act, 2025 to be effective from A.Y.2026-27. The following is a summary of these provisions -

Sr. No.	Particulars	Section 44BBC (effective from A.Y.2025-26)	Section 44BBD (effective from A.Y.2026-27)
1	Eligible assessee and eligible business	A non-resident, engaged in the business of operation of cruise ships and fulfilling the following conditions prescribed in Rule 6GB - (i) operate a passenger ship having a carrying capacity of more than two hundred passengers or length of seventy-five meters or more, for leisure and recreational purposes and having appropriate dining and cabin facilities for passengers;	Non-resident engaged in the business of providing services or technology for setting up of electronics manufacturing facility in India or in connection with manufacturing or producing electronic goods, article or thing in India.

Sr. No.	Particulars	Section 44BBC (effective from A.Y.2025-26)	Section 44BBD (effective from A.Y.2026-27)
		(ii) operate such ship on scheduled voyage or shore excursion touching at least two sea ports of India or same sea ports of India twice; (iii) operate such ship primarily for carrying passengers and not for carrying cargo; and (iv) operate such ship as per the procedure and guidelines if any, issued by the Ministry of Tourism or Ministry of Shipping.	
2	Recipient of services	Passengers of ship	A resident company - (a) which is establish-ing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and (b) satisfying the prescribed conditions.

Sr. No.	Particulars	Section 44BBC (effective from A.Y.2025-26)	Section 44BBD (effective from A.Y.2026-27)
3	Presumptive Income (Deemed profits and gains of business chargeable to tax under the head "Profits and gains of business or profession"	A sum equal to 20% of the aggregate of the amounts specified in sub-section (2) of the section	
4	Amounts specified in sub-section (2) [Aggregate of (i) and (ii) below]		
	(i)	the amount paid or payable to the assessee or to any person on his behalf on account of the carriage of passengers;	the amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology;
	(ii)	the amount received or deemed to be received by or on behalf of the assessee on account of the carriage of passengers .	the amount received or deemed to be received by the non-resident assessee or on behalf of non-resident assessee on account of providing services or technology
			Note - The provisions of section 44DA or section 115A shall not apply in respect of the amounts referred to in (i) and (ii).

Sr. No.	Particulars	Section 44BBC (effective from A.Y.2025-26)	Section 44BBD (effective from A.Y.2026-27)
5	Can the assessee claim that his income is lower than the presumptive income?	No	No
6	Whether set-off of unabsorbed depreciation and brought forward business loss is allowable?	-	No

24.13 Where the profit and loss account includes any profits and gains assessable by virtue of provisions of section 44AE, the auditor should obtain and verify the following information from the assessee:

Sr No.	Nature of vehicle	No. of Vehicles	Month of acquisition in case of vehicle purchased during the relevant previous year	Presumptive income per month	Number of months Owned during the previous year (Part of the month to be rounded off)	Nature of Vehicle/ Gross Vehicle weight	Presumptive income for the previous year
1	2	3	4	5	6		7

The above information will enable the auditor to determine whether profits and gains from business are assessable under section 44AE of the Act.

24.14 In respect of provisions relating to Chapter XII-G, the auditor should obtain and verify the following information from the assessee being a qualifying shipping company:

Sr No.	Name of the Ship	Net tonnage capacity as per DGS certificate	Net tonnage capacity rounded off to nearest 100	Tonnage income per day	No of days operated during the previous year as per DGS Certificate	Tonnage income per year
1	2	3	4	5	6	7

The tax auditor should keep in mind the above guidance while verifying information under this clause

25. (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) Whether any adjustment is 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).

(e) If answer to (d) above is in the affirmative, give details of such adjustments:

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and Contingent Assets			
	Total			

(f) Disclosure as per ICDS:

(i)	ICDS I-Accounting Policies	
(ii)	ICDS II-Valuation of Inventories	
(iii)	ICDS III-Construction Contracts	
(iv)	ICDS IV-Revenue Recognition	
(v)	ICDS V-Tangible Fixed Assets	
(vi)	ICDS VII-Governments Grants	
(vii)	ICDS IX Borrowing Costs	

(viii)	**ICDS X-Provisions, Contingent Liabilities and Contingent Assets".**	

[Clause 13 (a) to (f)]

25.1 Section 145 provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Effective from 01.04.2015, it has been provided that the Central Government may notify in the Official Gazette from time to time the income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income. The hybrid system of accounting viz. a mixture of cash and mercantile is not permitted. However, the assessee may adopt a cash system of accounting for one business and mercantile system of accounting for other business. Once the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed. If he employs different methods for different businesses regularly and consistently, the profits would have to be computed in accordance with the respective methods, provided the result is a proper determination of profits. As regards the accrual system of accounting, the Institute has published a "Guidance Note on Accrual Basis of Accounting" which may be referred to.

25.2 It may be noted that in view of Section 128 of the Companies Act, 2013, every company is required to keep books of account on accrual basis. The provisions of the Companies Act, 2013 are, however, not applicable to entities other than companies.

25.3 Under sub-clause (b), whether there has been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year is to be stated. As already noted, an assessee can follow either a cash or mercantile system of accounting.

25.4 If there is any change, the effect thereof i.e. increase or decrease in profits has to be stated under this clause. So far as the question of effect of such change on the profit or loss is concerned, the concept of materiality is the basic governing factor. If it is not possible to quantify the effect of the change in the method of accounting, appropriate disclosure should be made under this clause.

25.5 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). It may be noted that a change in the method of valuation of stock will amount only to a change in an accounting policy and hence such a change need not be mentioned under sub-clause 13(b) but should be mentioned in the financial statements.

25.6 The tax auditor should apply reasonable checks to the earlier year's accounts to ascertain whether there is any change in the method of accounting as compared to that of the year under audit, after obtaining a written confirmation from the assessee as to the method of accounting followed. In case there is any change in the method of accounting employed *vis-à-vis* the method employed in the immediately preceding previous year, he has to verify whether the details of the same along with the impact on the profit for the year are mentioned in clause 13(c) of Form no. 3CD.

25.7 Clause 13(d) requires the tax auditor to examine whether any adjustment is required to be made to profits or loss for complying with the provisions of income computation and disclosure standards (ICDS) notified under section 145(2). Such adjustments are required to be stated separately in respect of each ICDS.

25.8 In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961, the Central Government has notified the Income Computation and Disclosure Standards ("ICDS") to be followed by all assessees following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

25.9 ICDS does not apply to assessees following the cash method of accounting. So far, 10 ICDS have been issued by the Government. Each of the ICDS, in preamble, states that '*this Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts*'. Thus, prescription of ICDSs is not applicable for maintenance of books of account even under mercantile system of accounting. As the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of book profit under section 115JB of the Act. However, as AMT under section 115JC of the Act is computed on adjusted total income derived by making specified adjustment to total income computed under regular provisions of the Act, the provisions of ICDS will apply for computation of AMT. The general provisions of ICDS shall

apply to all persons (e.g., Banks, Non-banking financial institutions, Insurance companies, Power sector etc.) unless there are sector specific provisions contained in the ICDS or the Act. The provisions of ICDS shall also be applicable for computation of income on gross basis (e.g. interest, royalty, fees for technical services under section 115A of the Act) for arriving at the amount chargeable to tax. The CBDT has issued ten ICDS as follows:

(a) *ICDS I relating to Accounting Policies* - This ICDS deals with the application of significant accounting assumptions and policies in computation of income for the purposes of the Act. Financial statements of an assessee reflect his state of financial affairs. They form the base for computation of taxable income under the Act.

(b) *ICDS II relating to Valuation of Inventories* - The concept of inventory as well as the term `inventory' as defined in para 2(1) of this ICDS contemplates business. Although sub-clause (iii) of clause (a) of the para 2(1) dealing with materials and supplies to be consumed in the production process or in rendering of services does not specifically refer to business, even in that sub-clause the existence of business is contemplated.

(c) *ICDS III relating to Construction Contracts* - A construction contract is a contract negotiated for the construction of an asset or a combination of assets. A construction contract, by nature entails time and resources. In cases where the activity continues for more than a year, the question is whether the contractor is to be taxed in the year in which the work is completed or proportionately over all the years?

(d) *ICDS IV relating to Revenue Recognition* - This Income Computation and Disclosure Standard is based on Accounting Standard 9–Revenue Recognition. While some of the principles contained in AS 9 have been adopted in this ICDS, there are also certain significant differences between the ICDS and AS 9.

(e) *ICDS V relating to Tangible Fixed Assets* - This ICDS covers assets being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and not held for sale in the normal course of business.

(f) *ICDS VI relating to Effects of Changes in Foreign Exchange Rates* - This ICDS corresponds to Accounting Standard (AS) 11 – The Effects of Changes in Foreign Exchange Rates issued/notified by ICAI/MCA and

Indian Accounting Standard (Ind AS) 21 – The Effects of changes in foreign exchange rates, notified vide the Companies (Indian Accounting Standards) Rules, 2015.

(g) *ICDS VII relating to Government Grants* - This ICDS deals with the meaning, scope, forms, point of taxation and disclosure aspects of government grants. Although the Finance Act, 2015 expanded the definition of 'income' to include all kinds of government grants save asset specific grants, there are many aspects such as the year of taxation or capitalization, refund mechanism, point of recognizing grants, treatment of grants in relation to group of assets etc., the guidance for which is available in this ICDS.

(h) *ICDS VIII relating to Securities* - ICDS VIII is divided into two parts. Part A deals with securities held as stock-in-trade by taxpayers but does not apply to securities held by taxpayers engaged in the business of insurance, securities held by mutual funds, venture capital funds. Securities held by banks and public financial institutions are also excluded from the purview of Part A. Specific provisions have been incorporated in Part B of this ICDS for scheduled banks and public financial institutions.

(i) *ICDS IX relating to Borrowing Costs* - This ICDS would need to be considered for the purposes of section 36(1)(iii) of the Act regarding deduction of interest paid in respect of capital borrowed for the purposes of the business or profession, and explanation 8 to section 43(1) of the Act, regarding interest which cannot be capitalised. It will also apply for the purposes of clause (iii) of section 57 of the Act, for deductibility of interest under the head "Income from Other Sources".

(j) *ICDS X relating to Provisions, Contingent Liabilities & Contingent Assets* - This ICDS specifically excludes provisions, contingent liabilities and contingent assets resulting from financial instruments, executory contracts and insurance business from contracts with policyholders. It also excludes such transactions from financial instruments, irrespective of whether the financial instruments are held as investments or as stock-in-trade.

25.10 The Central Board of Direct Taxes has issued certain clarifications on ICDS through Circular No. 10/2017 dated 23rd March, 2017.

25.11 For the purpose of verifying clause (d), the tax auditor should obtain draft computation of total income and disclosures required under ICDS. Based on information and books of account, the tax auditor should consider whether any adjustment is required to be made to the profit or loss and accordingly, if the answer is in affirmative, whether 'yes' has been stated; or if otherwise, no has been stated. While verifying the reporting, the auditor has to consider the draft of income computation provided by the assessee, this fact should be mentioned in the audit report in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB.

25.12 In case answer to clause 13(d) is affirmative, i.e. in case an adjustment is required for complying with ICDS, the details of such adjustments have to be given in clause 13(e) i.e., amount of increase or decrease in profit relating to each ICDS and total. Tax auditor may refer to the technical guide on ICDS issued by the Institute of Chartered Accountants of India in July, 2017. In the working paper file, ICDS checklist should be prepared and maintained along with computation working for any increase/decrease in income as per ICDS. Also, last year's tax audit report should be reviewed to ascertain any effect in the current year.

25.13 If the answer to clause 13(d) above is in affirmative, the amount of adjustment against each ICDS is required to be quantified in clause 13(e). For the purpose, the table is prescribed in the clause.

25.14 Clause 13(f) requires disclosure of significant income computation and disclosure policies adopted by a person for computation of income chargeable under the head 'profits and gains from Business or Profession' or 'income from other sources'. In this clause, if information furnished is based on income computation furnished by the assessee, appropriate disclosure of this fact should be mentioned in Form No. 3CA or 3CB as the case may be.

26. (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.)

[Clause 14(a) and (b)]

26.1 The method of valuation of closing stock is to be stated under this clause. AS-2 “Valuation of Inventories” issued/notified by ICAI/MCA requires disclosure of significant accounting policies. Similarly, Ind AS 2 "Inventories” notified vide the Companies (Indian Accounting Standards) Rules, 2015 also requires the similar treatment. Accordingly, a reference may be invited to the same or the method of valuation may be again described in Form No. 3CD.

26.2 The method of valuation followed by the assessee having regard to the articles or goods dealt in or manufactured by the assessee, should be clearly indicated. Some examples are given below:

(i) raw material at cost or net realisable value whichever is lower,

(ii) finished goods at cost or net realizable value whichever is lower.

(iii) Work in Progress - at cost or net realizable value whichever is lower

(iv) Consumables - at cost

(v) Stock in trade being Goods held for Sale at cost or net realizable value whichever is lower

(vi) Loose Tools - at cost or net realizable value whichever is lower

In each case where reference is to 'cost', Accounting Standards require a statement as to how cost is determined.

26.3 In sub-clause (a) of clause 14 of Form No. 3CD, the reference is made to "closing stock". The expression "stock-in-trade" means finished goods and raw materials. Since sub-clause (b) refers to section 145A where the term "inventory" is used, the term "closing stock" will include all items of inventories. AS-2 and Ind AS-2 define the term "inventories" to include finished goods, raw materials, work-in-progress, materials, maintenance supplies, consumables and loose tools. Therefore, method of valuation of all items of inventories will have to be given under sub-clause (a).

26.4 The tax auditor should study the procedure followed by the assessee in taking the inventory of closing stock at the end of the year and the valuation thereof. He should obtain the inventory of closing stock, indicating the basis of valuation thereof, for verifying the reporting on the method of valuation of closing stock under this clause.

26.5 The method of stock valuation must be consistently followed from year to year and the method followed must be brought out clearly. The tax auditor should examine the basis adopted for ascertaining the cost and this basis

should be consistently followed. It is necessary to ensure that the method followed for valuation of stock results in disclosure of correct profit and gains. The Supreme Court in case of *CIT v. British Paints Ltd. [1991] 188 ITR 44 (SC)* has held that the method of valuation of stock at actual cost of raw materials and not taking into account overhead charges was not the correct method of valuation even though the said method has been consistently followed. As per AS-2 - Valuation of inventories (Revised), cost of inventories also include a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods and the allocation of fixed production overheads should be based on the normal level of production only for inclusion in the cost of inventories. It is further provided that overheads should be included as part of the inventory cost only to the extent that they clearly relate to brining the inventories to their present location and condition.

26.6 It is not necessary to indicate any change in the method of valuation of closing stock under this clause. However, as stated earlier in paragraph above, any such change in the method of valuation of closing stock would amount to change in an accounting policy and needs to be disclosed in the financial statements as required by AS-5/Ind AS-8.

26.7 The details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss have to be stated under clause 14(b). Section 145A has been amended to give effect to ICDS. Section 145A covers not only goods but services & securities also.

26.8 Section 145A provides that the valuation of purchase and sale of goods and inventory for the purpose of computation of income from business or profession shall be made on the basis of the method of accounting regularly employed by the assessee but this shall be subject to certain adjustments. Therefore, 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 prescribed for valuation of inventory, inventory of unlisted/not regularly quoted securities and listed & quoted securities and should be as per provisions of ICDSs notified under section 145(2). ICDS II relating to valuation of inventories prescribes that cost of inventory shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase. ICDS VIII relating to securities

in respect of assessees other than Scheduled Banks or Public Financial Institutions (PFI) formed under Central or State Act or so declared under the Companies Act 1956/2013 provides that where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost. In respect of above referred Banks and PFI, measurement shall be in accordance with Guidelines issued by the Reserve Bank of India.

26.9 In case the assessee is covered under GST, eligible input tax credit (ITC) claimed on inputs, input services and capital goods in accordance with the provisions of section 16 of the CGST Act, 2017 can be set-off against output tax payable on outward supplies. The two methods that are generally followed for accounting of ITC are illustrated below:

I. Tax paid on inputs, input services and capital goods which are eligible for ITC, may be debited to a separate account, e.g. ITC credit receivable account. As and when the ITC is actually utilised against payment of GST on outward supplies of goods or services or both, appropriate accounting entries will be required to adjust the GST paid out of "ITC receivable account" against the account maintained for payment/ provision for GST on outward supplies of goods or services or both. In this case, the purchase cost of the inputs would be net of input tax. Therefore, the inputs consumed and the inventory of inputs would be valued on the basis of purchase cost net of input tax. This method is hereinafter referred to as “exclusive method”.

II. In the second alternative, the cost of inputs may be recorded at the total amount paid to the supplier inclusive of input tax. To the extent the ITC is utilised for payment of GST on outward supplies of goods or services or both, the amount could be credited to a separate account, i.e. ITC availed account. Out of the ITC availed account, the amount of ITC availed in respect of consumption of inputs would be reduced from the total cost of inputs consumed. This method is hereinafter referred to as “inclusive method”.

The effect of section 145A is to reflect the figures on “inclusive method”.

26.10 It may be pointed out that the "inclusive method" is not permitted by AS-2/ INDAS-2 (AS-2 made mandatory from the accounting year beginning on or

after 01.04.1999). In view of the above, the adjustments under section 145A will have to be made in all cases where 'exclusive method' is followed.

26.11 In this connection, it is worthwhile to note that the Memorandum explaining the provisions of section 145A inserted by the Finance (No.2) Bill, 1998 states as follows:

> ***"Computation of value of inventory.***
>
> *The issue relating to whether the value of closing stock of the inputs, work-in-progress and finished goods must necessarily include the element for which MODVAT* credit is available has been the matter of considerable litigation.*
>
> *In order to ensure that the value of opening and closing stock (bold for emphasis) reflect the correct value, it is proposed to insert a new section to clarify that while computing the value of the inventory as per the method of accounting regularly employed by the assessee, the same shall include the amount of any tax, duty, cess or fees paid or liability incurred for the same under any law in force.*
>
> *The proposed amendment which is clarificatory in nature shall take effect retrospectively from the 1st day of April, 1986 and will accordingly apply in relation to assessment year 1986-87 and subsequent years.*
>
> ***[Clause 45]"***

26.12 It may be noted that while making the adjustments stated in paragraphs above, the tax auditor should ensure that if any deduction is claimed for any tax, duty, cess or fee on the items covered by aforesaid paragraphs by way of debit in the profit and loss account, either in the earlier year or in the year under report, adjustment for the same should be made in such a manner that no double deduction is claimed for the same expenditure. Similarly, adjustment should be made for any item of income to ensure that the same item is not treated as income twice.

26.13 Where common inputs, input services and capital goods are used for effecting both taxable including zero rated supplies and exempt supplies, proportionate ITC of inputs, input services and of capital goods attributable to exempt supplies should be calculated in terms of section 17 of the CGST Act, 2017 read with rule 42 and rule 43 of the CGST Rules, 2017 and be added to the cost of inputs, input services and capital goods as applicable. Further, where input tax credit is blocked/not available, in terms of section 17 of the

CGST Act, 2017, the same should also be added to the cost of the inputs / input services / capital goods, as the case may be.

26.14 GST is collected from the customers on behalf of the GST authorities and, therefore, its collection from the customers is not an economic benefit for the enterprise. It does not result in any increase in the equity of the enterprise. Accordingly, it should not be recognized as an income of the enterprise. Similarly, the payment of GST should not be treated as an expense in the financial statements of the enterprise. Therefore, it should be credited to an appropriate account, say. 'GST Payable Account'. The amount of GST payable adjusted against the GST Credit Receivable Account and amounts paid in cash will be debited to GST Payable account. The credit balance in GST Payable Account at the year-end should be shown on the 'Liabilities' side of the balance sheet under the head 'Current Liabilities'. In case GST has not been charged separately but as a composite charge (such as in the case of composition levy), the amount of GST paid needs to be transferred to Indirect Expenses.

26.15 Section 145A of the Income-tax Act,1961 provides that the valuation of purchase and sales of goods and inventory for the purpose of computation of income from business or profession shall be made on the basis of method of accounting regularly employed by the assessee but this shall be subject to certain adjustments. Therefore, it is not necessary to change the method of valuation of purchase, sale and inventory regularly employed in the books of account. The adjustment provided for in this section should be made while computing the income for the purpose of preparing the return of income. Therefore, the recommended method for accounting of GST will not result in non-compliance of section 145A of the Income-tax Act.

26.16 The adjustments envisaged by section 145A will not have any impact on the trading account of the assessee. In other words, both under exclusive method of accounting and inclusive method of accounting, the gross profit in the trading account will remain the same.

27. 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.

[Clause 15]

27.1 For furnishing the particulars required by clause 15, the provisions of sections 2(47), 45(2), 47(iv), 47(v) and 47A have to be kept in mind.

27.2 The conversion by the owner of an 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). Under 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. However, the capital gains arising from such a transfer will become chargeable in the previous year in which such converted asset is sold or otherwise transferred. In the case of long-term capital asset, Indexed cost of acquisition and cost of improvement, if any, will be with respect to the previous year in which such conversion took place. Indexation benefit will be available only in respect of long-term capital asset which have been transferred before 23rd July 2024. While computing tax liability on capital gains under section 112 in respect of an asset, being land or building or both acquired before 23rd July, 2025 but transferred on or after that date by a resident individual or HUF, the excess tax liability over and above the tax liability computed as per the erstwhile provisions of the Act (with indexation benefit) should be ignored. In effect, in respect of long-term capital gains arising to a resident individual or HUF from transfer, on or after 23.7.2024, of land and building acquired before that date, he can opt to pay tax@ 12.5% of capital gains computed without indexation benefit or 20% of capital gains computed with indexation benefit, whichever is more beneficial to him. The fair market value 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 capital gains being the difference between the cost of acquisition and the fair market value on the date of the conversion or treatment as stock-in-trade will be chargeable to tax in the year in which the asset is sold.

27.3 The particulars to be stated under clause 15 should be furnished with respect to the previous year in which the asset has been converted into stock-in-trade. The clause does not require details regarding the taxability of capital gains or business income arising from such deemed transfer.

27.4 Under column (a), description of the capital asset is required to be mentioned, for example, shares, security, land, building, plant, machinery etc.

27.5 Under column (b), the date of acquisition is to be reported. For ascertaining the correct date, the accounts of the financial year in which such capital asset is acquired will have to be referred to. The date assumes importance for the purpose of determining whether the asset is long-term or short-term in nature.

27.6 Under column (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 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. Even in the case of an asset acquired prior to the 1st day of April, 2001; the value to be reported will be the original cost of acquisition. The assessee may exercise the option of considering the fair market value of the asset as on 1st April, 2001 for assets acquired prior to that date for the purpose of computation of capital gains as provided under section 55(2)(b)(i) read with proviso thereto. Further, in case of block of assets, a particular asset loses its identity and therefore to report the original cost of acquisition may not be possible in all cases. In case of corporate entities where the requirements of CARO are applicable, the cost may be available from the fixed asset register. However, in case of companies where CARO is not applicable and other partnership concerns, the reporting requirements as to the original cost of acquisition may not be practically possible.

27.7 Under column (d), the amount recorded in the books of account at which the asset is converted into stock-in-trade should be stated. Such an amount may not be the fair market value as on the date of conversion or treatment as stock-in-trade. If a value other than carrying cost is recorded, then the auditor has to examine the basis of arriving at such a value. The valuation of stock-in-trade is to be examined with reference to AS-2 – Valuation of Inventories or Ind AS-2 – Inventories, as applicable. Non-compliance with AS-2/IND AS-2 is to be suitably qualified in the main audit report.

27.8 It is desirable that necessary accounting entry be passed in the books of account at the time of conversion of the asset into or treatment of the same as stock-in-trade.

27.9 In case of corporate assessee, any resolution passed in this behalf can substantiate the fact of conversion of capital asset into stock- in- trade. In the case of assessees like a proprietorship concern, prior to the conversion of the asset into stock-in-trade, the details regarding the date of acquisition and cost of acquisition may not be recorded in the books of account. It is also possible

that the year in which the capital asset is acquired, the accounts of the assessee may not have been subjected to audit. Also, an assessee can acquire a capital asset through various modes such as discussed under section 49 of the Act. Under such circumstances, the auditor may have to verify the cost and the date of acquisition. The following broad principles need to be kept in mind.

27.10 While verifying the cost of acquisition of an item of property, plant and equipment, the auditor should bear in mind the principles enunciated in Accounting Standard (AS) 10, Property, Plant and Equipment/Ind AS 16 - Property, Plant and Equipment. As per AS 10/Ind AS 16, the cost of Property, Plant and Equipment comprises of its purchase price and any attributable cost of bringing the asset to its working condition for its intended use. Thus, in case of capital assets purchased by the assessee, it would relatively be easy for the auditor to verify the cost of acquisition, the evidence being provided by the supporting purchase invoices from the supplier, entries appearing in the bank statements in respect of payment to the supplier, entries appearing in the cash book/ bank statement for payment of cartage, instalment etc. In case of self-constructed capital assets, the cost would comprise those costs that relate directly to the specific capital asset and those that are attributable to the construction activity in general and can be allocated to the specific asset. The cost of the asset acquired in exchange of other assets is the fair value of the asset given up unless the fair value of the asset received is more clearly evident. . In case the capital asset is recorded at the net book value of the asset, the fixed asset register would provide the prime evidence of the value. If, however, the capital asset so acquired is recorded at the fair value, the auditor would need to examine the basis for arriving at the fair market value, for example, the valuer's report, market quotes (in case of listed securities). Where the valuer is internal/ external, the tax auditor should have regard to the principles laid down in SA 620, *Using the Work of An Auditor's Expert*. In any case, the auditor would also need to look into how the assessee has decided the value at which the asset is recorded in the books of account is more clearly evident than the other value. In case of a capital asset acquired by way of inheritance, the auditor may find it difficult to verify the cost of acquisition to the original owner. In case there does not exist any documentary evidence as to the cost of acquisition of the asset to the original owner, say the sale/purchase agreement, the auditor may need to rely upon the reports of the experts such as valuers. In addition to the above, the auditor should also

refer to the guidance contained in the Guidance Note on Audit of Property, Plant and Equipment issued by the Institute.

28. 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.

[Clause 16(a) to (e)]

28.1 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 information under sub-clauses (a), (d) and (e) of clause (16) is to be given with reference to the entries in the books of account and records made available to the tax auditor for the purpose of tax audit under section 44AB. Sub-clauses 16 (b), (c) & (d) require information in respect of items which may also be covered under section 28 and as such will also fall in clause 16 (a). However, those items which are reported in clauses 16(b), (c) and (d) need not be reported in clause 16 (a). The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause.

28.2 It may be possible that an item of income may be taxable under certain specific section yet not credited to profit and loss account e.g. benefit u/s 28(iv) tax on which is deducted u/s 194R. Such income should be reported under clause 16(a).

28.3 Section 28 refers to:

(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,

(iiia) profits on sale of a licence granted under the Imports Control Order, 1955,

(iiib) cash assistance against exports,

(iiic) customs duty or excise repaid or repayable as drawback against exports,

(iiid) profit on the transfer of DEPB Scheme being the Duty Remission Scheme,

(iiie) 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, whether—

(a) convertible into money or not; or

(b) in cash or in kind or partly in cash and partly in kind;

(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 or professions (b) not sharing any know how, patent, copyright, trademark, 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,

(via) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset,

(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.

28.4 As per Explanation 2, where speculative transactions constitute a business, such speculation business is deemed to be distinct and separate business from any other business.

28.5 Explanation 3 clarifies that any income from letting out of a residential house or part of the house by the owner shall be chargeable under the head "Income from House Property" and will not be chargeable under the head "Profits and Gains from Business". As such, no reporting shall be required in respect of any rental income from residential house property under clause 16(a). This Explanation has been brought into effect from 01-04-2025 and is made applicable from A.Y. 2025-26.

28.6 The details of the following claims, if admitted as due by the concerned authorities but not credited to the profit and loss account, are to be stated under sub-clause (b).

(i) Pro forma 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

(vii) Refund of Goods and Services Tax

(viii) Others

In respect of items falling under sub-clause (b), the tax auditor should examine all relevant correspondence, records, assessee's particulars on portal of the concerned departments and evidence in order to determine whether any particular refund/claim has been admitted as due and accepted during the relevant financial year.

28.7 There may be practical difficulties in verifying the information in regard to such refunds and credits. It may, therefore, be necessary for the tax auditor to scrutinise the relevant files or subsequent records relating to such refunds while verifying the particulars and also obtain an appropriate management representation.

28.8 The words 'admitted by the concerned authorities' would mean 'admitted by the authorities within the relevant previous year'.

28.9 The system of accounting followed in respect of these particular items may also be brought out in appropriate cases. If the assessee is following cash basis of accounting, it should be clearly brought out, 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. Credits/claims which have been admitted as due after the relevant previous year need not be reported here. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/ income heads, such fact should be clearly brought out.

28.10 Under sub-clause (c) of clause 16, 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". If such amount has not been credited to the profit and loss account, the fact should be brought out. The system of accounting followed in respect of this particular item may also be brought out in appropriate cases. If the assessee is following cash basis of accounting with reference to this item, it should be clearly brought out since acceptance of claims during the relevant previous year without actual receipt has no significance in cases where cash method of accounting is followed.

28.11 Escalation claims would normally arise pursuant to a contract (including contracts entered into in earlier years), if so, permitted by the contract. Only those claims to which the other party has signified unconditional acceptance could constitute accepted claims. Mere making of claims by the assessee or claims under negotiations or claims which are sub-judice [*CIT v. Hindustan Housing & Land Development Trust Ltd. [1986] 161 ITR 524 (SC)*] cannot constitute claims accepted. The Auditor should take a professional judgment about acceptance of claim based on facts and circumstances of each case.

28.12 Sub-clause (d) covers any other items which is considered as 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. In giving the details under sub-clauses (c) and (d), due regard should be given to AS-9 - Revenue Recognition/ Ind AS 115 Revenue from Contracts with Customers, as applicable.

28.13 The tax auditor should scrutinise all the items including casual and nonrecurring items appearing in the books of account, particularly the credit items, and ensure himself whether any such credit which is in the nature of income has been credited to the profit and loss account or not.

28.14 Under sub-clause (e), capital receipt, if any which are of income nature, which has not been credited to the profit and loss account has to be stated. The tax auditor should use his professional expertise and judgement in determining whether the receipt is capital or revenue. The tax auditor may record various judicial pronouncements on which he has relied in his working papers.

28.15 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) Capital subsidy received in the form of Government grants which are in the nature of promoters' contribution i.e., they are given with reference to the total investment of the undertaking or by way of contribution to its total capital outlay. e.g. Capital Investment Subsidy Scheme.

(b) Compensation for surrendering certain rights.

(c) Profit on sale of fixed assets/investments to the extent not credited to the profit and loss account.

(d) Receipt of non-refundable deposits or forfeiture of any deposits not credited to P&L.

(e) Government grant in relation to a specific fixed asset where such grant is shown as a deduction from the gross value of the asset by the concern in arriving at its book value.

28.16 Equity, Loans and borrowings are not required to be stated under sub-clause (e). The tax auditor may use his professional expertise and judgement in determining whether the receipt is taxable or not for the purpose of verifying the eporting under sub-clauses (a) to (d) of clause 16 and may report in the observation para of audit report, disclosing the basis of the same.

28.17 If during the course of audit, the auditor finds that certain incomes (e.g. income referred to in section 41(1)) are not credited to profit and loss account, the particulars of the same along with the amount are required to be reported.

29. 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	Whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 applicable? [Yes/No]

(Clause 17)

29.1 Section 43CA is applicable where the assessee has transferred an asset (other than a capital asset) being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty. In such a case, for purpose of computing profit & gains from such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration. However, if the value so adopted or assessed or assessable does not exceed 110% of the consideration received or accruing as a result of the transfer, then the consideration received or accruing as a result of the transfer would be deemed to be the full value of consideration. It appears that reference to fourth proviso to section 56(2)(x) may not be relevant here in the fourth column of the table as in clause 17.

29.2 Section 50C is applicable where the assessee has transferred a capital asset being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty. In such a case, for purpose of section 48, the value so adopted or assessed or assessable by stamp duty authority shall be deemed to be the full value of consideration. However, if the value so adopted or assessed or assessable does not exceed 110% of the consideration received or accruing as a result of the transfer, then the consideration received or accruing as a result of the transfer would be deemed to be the full value of consideration.

29.3 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, the auditor is required to verify the following details:

(a) Details of property

(b) Consideration received or accrued

(c) Value adopted or assessed or assessable

29.4 In the column requiring the details of property, the details about the nature of property i.e. whether the property transferred by him is land or a building along with the address of such property have to be furnished. If the assessee has transferred more than one property, the details of all such properties are required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the

case may be. Attention is invited to the meaning of the term "transfer" as defined in section 2(47) of the Act.

29.5 Under the heading "consideration received or accrued", the the amount of consideration received or accrued, during the relevant previous year of audit, in respect of land/building transferred during the year as disclosed in the books of account of the assessee has to be furnished.

29.6 For verifying the value adopted or assessed or assessable, the auditor should obtain from the assessee relevant information with regard to sale of Land or Building or both during the previous year. In case the property is not registered, the auditor may verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of section 43CA/ section 50C of the Act. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his report in form 3CA/CB.

29.7 The auditor would have to apply professional judgment as to what constitutes land or building e.g. whether leasehold right / development rights / TDR / FSI etc. would fall under these provisions or not, would require to be evaluated based on facts & circumstances of transactions.

29.8 The tax auditor is also required to verify whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 is applicable. Since the second proviso is not applicable for the audit from A.Y. 2023-24 and onwards, so ideally in all cases, the reporting shall be 'No' in this column.

29.9 If the value adopted for stamp duty exceeds the fair market value, then calculation of difference between transaction value and fair market value is considered for the purpose of ascertaining income under section 43CA or section 50C, as the case may be. However, information to this effect is not asked in the clause. Therefore, reporting should be made notwithstanding this provision.

30. 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.

(ca) Adjustment made to the written down value—

(i) under the proviso to sub-section (3) of section 115BAA (for A.Y. 2020-21 only).

(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of 115BAD (for A.Y.2021-22 only).

(iii) under the second proviso to sub-section (3) of section 115BAC (for A.Y.2024-25 only).

(cb) Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession.

(cc) Adjusted written down value.

(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.

[Clause 18(a) to (f)]

30.1 Having regard to the nature of requirements prescribed, it may be necessary for the tax auditor to examine:

(a) Classification of the asset

(b) Classification thereof to a block

(c) The working of actual cost or written down value

(d) The date of acquisition and the date on which it is put to use

(e) The applicable rate of depreciation

(f) The additions / deductions and dates thereof

(g) Adjustments required – specified as well as on account of sale, etc.

30.2 The word "allowable" implies that depreciation should be permissible as a deduction, as per the provisions of the Act and the Rules. This would require exercise of judgement having regard to the facts and circumstances of the case, developments in law from time to time, etc.

30.3 For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. For example, a particular asset may be classified as plant or machinery from the viewpoint of one class of assessees, yet it may not be plant or machinery from the viewpoint of another class of assessees. The purpose for which the asset is used is also very material in this regard. Hence, the tax auditor should ensure that the classification as made by the assessee is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free from doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block. Since the tax auditor is not a technical expert, he has to obtain suitable certificate from concerned experts.

30.4 Once the classification has been ascertained and checked properly the rates applicable as per the Income-tax Rules, 1962 follow as a natural corollary. The tax auditor must have due regard to the Income-tax Rules, 1962, relevant clarifications from the Department and judicial decisions.

30.5 Under sub-clauses (a) and (b), information in respect of description of assets, block of assets under which the concerned asset is classifiable, and the rate of depreciation are to be stated. This will include information about the existing assets. In respect of the existing assets, the computation of depreciation would involve stating the opening written down value of the block of assets which should be taken from the relevant income-tax records. The auditor should ensure the opening block of assets matches with the Income Tax Return filed for the immediately preceding previous year. The tax auditor will be conducting the audit in the current year only. As such the tax auditor can rely upon the classification of assets and written down value stated in the

income tax records available with the assessee. The tax auditor should mention, in his observations, 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.

30.6 There may be disputes in the earlier years between the assessee and the Income-tax Department regarding classification, rate of depreciation etc. in respect of which suitable disclosure should be given depending upon the facts and circumstances of the case. Further, if there is any dispute with regard to the classification of an asset in a particular block or the rate of depreciation applied, and the tax auditor has a different view as regards the system of classification adopted by the assessee, he has to mention the same, along with the workings and effect thereof, in his observations in Form No.3CA/3CB.

30.7 It will, therefore, be advisable to put a suitable note, in the observations Para in Form No. 3CA or 3CB with regard to those items in respect of which disputes for the earlier years are not resolved up to the date of giving the audit report and it should be clarified that the amount of depreciation allowable may change as a result of any decision which may be received after the audit report is given. This note can be in the following manner:

"NOTE: Certain disputes about

(a) the rate of depreciation on _____

(b) determination of WDV of block of assets relating to _____ and

(c) ownership of _____ have arisen in the assessment years _____ for which assessments are pending/appeals are pending. The figures of WDV and/or rate of depreciation mentioned in the above statement may require modification when these disputes are resolved. Therefore, the amount of depreciation allowable as stated in the above statement will have to be accordingly modified."

30.8 For the purpose of determination of actual cost, the tax auditor has to be guided by the relevant legal provisions. Since determination of actual cost has got accounting implications, he can rely on the relevant Accounting Standards and Guidance Notes. Depreciation is also allowable on intangible assets like know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. There may be intangible assets like know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature for

which the assessee might have incurred costs. From 01.04.2021, intangible asset being goodwill does not qualify for depreciation. The tax auditor should examine this and the basis on which the cost of such intangible assets has been arrived at.

30.9 **Requirements as per amended sub-clause (ca) of clause 18**

(i) For the assessment year 2020-21, the domestic companies opting for section 115BAA were required to adjust the amount in the opening written down value in block of assets in terms of proviso to sub-section (3) of section 115BAA read with Rule 5 of the Income-tax Rules, 1962. This adjustment was to be made only for A.Y. 2020-21 by companies which had opted for section 115BAA in A.Y. 2020-21 and these companies are not required to make any adjustment in the subsequent year. In this sub clause the amount of adjustment made in the amount of opening balance in the written down value of block of assets to be reported [item (i) of sub-clause (ca) of clause 18 of Form No. 3CD].

(ii) For the assessment year 2021-22, the individuals or HUFs opting for section 115BAC were required to adjust the amount of opening written down value in block of assets in terms of first proviso to sub-section (3) of section 115BAC read with Rule 5 of the Income-tax Rules,1962. Such adjustment was to be made only for A.Y. 2021-22 by individuals or HUFs who had opted for section 115BAC (1) in A.Y. 2021-22 and they are not required to make any adjustment in subsequent year. In this sub-clause, the amount of adjustment made in the amount of opening balance in the written down value of block of assets to be reported Item (ii) of sub-clause (ca) of clause 18 of Form No. 3CD].

For the assessment year 2021-22, the co-operative societies opting for section 115BAD were required to adjust the amount of opening written down value in block of assets in terms of proviso to sub-section (3) of section 115BAD read with Rule 5 of the Income-tax Rules, 1962. Such adjustment was to be made only for A.Y. 2021-22 by co-operative societies who had opted Section 115BAD in A.Y. 2021-22 and they are not required to make this adjustment in the subsequent assessment year Under this sub-clause the amount of opening balance in block of assets adjusted to be reported [item (ii) of sub-clause (ca) of clause 18 of Form No. 3CD]

(iii) For the assessment year 2024-25, an individual or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, other than a person who has exercised an option under sub-section (6) of Section 115BAC, paying tax under section 115BAC(1A) is required to adjust the amount of opening written down value in block of assets in terms of second proviso to sub-section (3) of Section 115BAC read with Rule 5 of the Income-tax Rules, 1962 [item (iii) of Sub-clause (ca) of clause 18 of Form No. 3CD] and under this-sub-clause the amount of opening balance in block of assets adjusted to be reported. .

30.10 **Provisions in respect of item (i) of sub-clause (ca) of clause 18 of Form No. 3CD relevant for A.Y.2020-21**

(i) A domestic company can opt for concessional tax regime under section 115BAA with effect from A.Y.2020-21. Section 115BAA provides for concessional rate of tax@22% (plus surcharge@10% of income-tax and cess@4% of income-tax and surcharge) on total income computed without claiming certain exemptions and deductions specified therein.

(ii) A domestic company can opt for the concessional tax regime in the previous year 2019-20 relevant to assessment year 2020-21 or in any other subsequent previous year by exercising the option u/s 115BAA(5) on or before the due date of furnishing return of income u/s 139(1) for that year. Once a company exercises this option, the chosen provision will apply for all subsequent assessment years also.

(iii) The provisions regarding payment of Minimum Alternate Tax (MAT) will not apply to companies opting for the concessional tax regime u/s 115BAA. At the same time, MAT credit will also not be allowed to be carried forward to companies opting for the tax regime u/s 115BAA.

(iv) As per sub-section (3) of section 115BAA, the loss and depreciation referred to in clause (ii) of sub-section (2) [loss and depreciation attributable to the impermissible deductions under section 115BAA(2)(i)] and clause (iii) of sub-section (2) [loss and unabsorbed depreciation deemed so under section 72A, attributable to the impermissible deductions under section 115BAA(2)(i)] shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

The proviso to sub-section (3) provides that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the A.Y.2020-21, corresponding adjustment shall be made to the written down value (WDV) of such block of assets as on 1st April, 2019 in the prescribed manner, if the option under section 115BAA(5) is exercised for a previous year relevant to A.Y.2020-21.

(v) In terms of the second proviso to Rule 5, inserted vide Income-tax (Twenty-second Amendment) Rules, 2020 with effect from 1st October, 2020, for the purposes of section 115BAA, if the following conditions are satisfied, namely: -

i. option under sub-section (5) thereof is exercised for a previous year relevant to the assessment year beginning on the 1st April, 2020;

ii. there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A, which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

iii. such depreciation or allowance for unabsorbed depreciation is not allowed to be set off under clause (ii) or clause (iii) of sub-section (2) thereof,

the written down value of the block of asset as on the 1st April, 2019 shall be increased by such depreciation or allowance for unabsorbed depreciation not allowed to be set off.

(vi) The adjustment (increase by such depreciation or allowance for unabsorbed depreciation not allowed to be set off) needs to be made in the manner prescribed in Rule 5 of the Income-tax Rules, 1962 to the opening written down value as on 1st April 2019 as provided under the proviso to sub-section (3) of section 115BAA. It may be noted that the said adjustment under clause 18(ca)(i) is applicable for Assessment year 2020-21 only.

30.11 Provisions in respect of item (ii) of sub-clause (ca) of Clause 18 of Form No. 3CD relevant for A.Y.2021-22

(i) Section 115BAC(1) provided for a concessional tax regime, which individuals and HUFs could opt for from A.Y.2021-22 to A.Y.2023-24, subject to computation of total income, without claiming exemptions and deductions specified therein. Such option had to be exercised u/s 115BAC(5) in the prescribed manner on or before the due date of filing of return u/s 139(1) for a previous year relevant to that assessment year. In case of an individual or HUF having income from business or profession, the option once exercised shall apply to subsequent assessment years.

(ii) Section 115BAD provides for a concessional tax regime, which co-operative societies can opt for from A.Y.2021-22, subject to computation of total income, without claiming exemptions and deductions specified therein. Such option can be exercised u/s 115BAD(5) in the prescribed manner on or before the due date of filing of return u/s 139(1) for furnishing return of income for any previous year relevant to A.Y.2021-22 or any subsequent assessment year. Such option once exercised shall apply to subsequent years.

(iii) The third proviso to Rule 5, inserted vide Income-tax (Twenty-second Amendment) Rules, 2020 with effect from 1st October, 2020, provides that for the purposes of section 115BAC and section 115BAD, if the following conditions are satisfied, namely: -

i. the option under sub-section (5) of the respective section is exercised for a previous year relevant to the assessment year beginning on the 1st April, 2021;

ii. there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

iii. such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD,

the written down value of the block of asset as on the 1st April, 2020 shall be increased by such depreciation not allowed to be set off.

(iv) The adjustment (increase by such depreciation not allowed to be set off) needs to be made in the manner prescribed in Rule 5 of the Income-tax Rules, 1962 to the opening written down value as on 1st April 2020 as provided under the first proviso to sub-section (3) of section 115BAC and the proviso to sub-section (3) of section 115BAD. It may be noted that the said adjustment under clause 18(ca)(ii) is applicable for assessment year 2021-22 only.

30.12 **Provisions in respect of item (iii) of Sub-clause (ca) of Clause 18 of Form No. 3CD relevant for A.Y.2024-25**

(i) Section 115BAC(1A) is the default tax regime of individuals or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 [other than a person who has exercised an option under sub-section (6) of Section 115BAC], wherein the total income computed without certain exemptions and deductions is subject to tax at concessional rates. The default tax regime under section 115BAC(1A) is effective from A.Y. 2024-25.

(ii) As per section 115BAC(3), the loss and depreciation carried forward from an earlier assessment year attributable to the non-permissible deductions, shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

(iii) The second proviso to section 115BAC(3) provides that in a case where,-

(a) The assessee has not exercised the option under section 115BAC(5) for any previous year relevant to assessment year beginning on or before 1st April, 2023;

(b) The income-tax on the total income of the assessee is computed under sub-section (1A); and

(c) There is a depreciation allowance in respect of a block of assets which has not been given full effect prior to the assessment year beginning on 1st April, 2024,

corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2023 in the manner as may be prescribed.

(iv) In terms of the fourth proviso to Rule 5 of the Income-tax Rules, 1962, inserted vide Income-tax (Tenth Amendment) Rules, 2023 dated 21st June, 2023, where income is chargeable to tax under sub-section (1A) of section 115BAC, the written down value of the block of asset as on the 1st day of April, 2023 shall be increased by such depreciation which is attributable to clause (iia) of sub-section (1) of section 32 and which is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC if both the following conditions are satisfied, namely:-

(a) the assessee has not exercised option under sub-section (5) for any previous year relevant to the assessment year beginning on or before 1st April, 2023; and

(b) there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on 1st April, 2024, and is attributable to the provisions of clause (iia) of sub-section (1) of section 32.

(v) Adjustment (increase by such depreciation not allowed to be set off) needs to be made (in the manner prescribed in Rule 5 of the Income-tax Rules, 1962) to the opening Written down value as on 1st April 2023 as provided under second proviso to sub-section (3) of section 115BAC. It may be noted that clause 18(ca)(iii) of Form No. 3CD is applicable for Assessment year 2024-25 only.

30.13 In cases where the response to clause 8A regarding exercising of option under the relevant sections is yes, the tax auditor has to check adjustments, if any, required in regard to adjustment in opening balance of WDV and thereafter check the reporting requirement in this clause.

The tax auditor needs to verify such aspects covered in the earlier paras and report accordingly. The tax auditor may also verify that the assessee has filed the relevant Form (like form 10-IC, 10-IEA etc.) within the due date while exercising the option, as applicable.

The tax auditor needs to see the relevant Sections and Rules, as applicable to the assessee. The tax auditor is advised to also refer the reporting made in Clause 8A of Form No. 3CD and the guidance given in this regard.

30.14 The additions/deductions during the year have to be reported, with dates. The tax auditor is advised to get the details of each asset or block of asset added during the year or disposed off during the year 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. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned. The provisions of Section 36(1)(iii) and Explanation 8 to section 43(1) of the Act, should be kept in mind for capitalization of interest to the cost of assets. The tax auditor should check the working regarding the calculation of depreciation allowable under the Act. To ascertain when the asset has been put to use, the tax auditor could call for basic records like production records/installation details/excise records/service tax records/goods and service tax records/records relating to power connection for operating the machine, title deeds or building completion certificate etc. in case of immovable assets and any other relevant evidence. In the absence of any specific documentation with regard to the effective date from which the asset is put to use, he could get a representation letter from the management, in respect of the assets acquired. He should examine whether the apportionment of depreciation in cases like succession, amalgamation, demerger etc. has been properly made. The auditor should check whether the additions made in books of account matches with that of additions made for computation of depreciation for income-tax purpose.

30.15 Section 43(1) of the Act defines "actual cost" as under:

> "Actual Cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

Second proviso to section 43(1) provides that any expenditure for acquisition of any asset etc. exceeding Rs 10,000 otherwise than account payee cheque/draft drawn on a bank or use of electronic clearing system, then such expenditure shall be ignored for determining actual cost. Further, section 43(1) has Explanations from 1 to 13 which provides for different situations for the purpose of calculating the actual cost. Section 43(2) defines the word "Paid" and Section 43(3) defines the word "Plant". Section 2(11) defines "Block of assets" and section 43(6) read with Explanations 1 to 7 defines "Written Down Value".

30.16 The tax auditor should also verify that the amount of GST input credit deducted from the cost of capital goods tallies with the credit availed on this account.

30.17 The second adjustment relates to the change in the rate of exchange of currency. Section 43A provides as follows:

(i) where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and,

(ii) in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset,

(iii) there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making the payment towards the whole or part of the cost of the asset or towards repayment of the whole or a part of the monies borrowed by him from any person,

(iv) directly, or indirectly in any foreign currency specifically for the purpose of acquiring the asset along with the interest, if any,

(v) the increase or reduction in the liability during the previous year which is taken into account at the time of making the payment,

(vi) irrespective of the method of accounting followed by the assessee, is to be added to, or as the case may be, deducted from the cost of the asset as defined in clause (1) of section 43.

30.18 In other words, the extent of addition or reduction will be limited to the exchange difference actually paid during the previous year. The tax auditor is required to verify that the adjustments in the cost of fixed assets on account of changes in the rate of exchange of currency in the schedule of fixed assets prepared for computation of depreciation as per Income-tax Rules are in accordance with the provisions of section 43A and information about such adjustment is provided under sub-clause (ii) of clause 18(d). The tax auditor may also prepare a reconciliation statement for his own records for any different treatment followed for the purpose of books of account as per applicable accounting treatment under Accounting Standards. The tax auditor should also refer to the Explanations to section 43A.

30.19 The third 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), , 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. As per the proviso to the above Explanation, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, such of the amount which bears to the total subsidy or reimbursement or grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, 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. Intangible assets being goodwill of a business or profession does not qualify for depreciation from 01.04.2021 i.e. AY 2021-22 (The Finance Act 2021). Goodwill was eligible for depreciation till AY 2020-21. For the purpose of working of depreciation, WDV as per sub-clause (c) above as reduced by amounts reported in sub-clause (ca) and (cb) should be considered. This amount is required to be reported in sub-clause (cc).

30.20 Finally, the amount of depreciation allowable and the WDV at the year end have to be stated. Wherever a claim for depreciation involves any reliance on any judgement or opinion or other contentions (as to its classification, rate applicable, cost, date on which put to use etc.), it may be advisable for tax auditor to disclose full particulars thereof and the basis on which the depreciation allowable has been determined and vouched by him.

30.21 Explanation 5 inserted below sub-section (1) of section 32, to the effect that the provisions of section 32(1) regarding allowing of depreciation shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income. Thus, 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 and the details required under the relevant sub-clauses need to be stated.

30.22 Section 32(1)(iia) provides 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 on fulfillment of the prescribed conditions like specified percentage of increase in installed capacity. Additional

depreciation shall be allowable in respect of new machinery or plant installed on or after 31st day of March, 2005, which is

(i) engaged in the business of manufacture or production of any article or thing or

(ii) In the business of generation or generation or distribution of power

except those machinery or plant which before installation by the assessee was used by any other person, machinery or plant installed in office premises or residential accommodation, office appliances, road transport vehicles and that machinery or plant the actual cost of which is allowed in computing the income. Where assessee is opting for payment of income-tax under section 115BA, 115BAA, 115BAB,, 115BAD or 115BAE (applicable to specified co-operative society assessee w.e.f. AY 2024-25 onwards), claim for depreciation under section 32(1)(iia) cannot be made. The tax auditor will need to verify the claim of additional depreciation under this clause as well. The tax auditor has to examine whether the assessee has opted for payment of income tax under section 115BA, 115BAA, 115BAB, or 115BAD; he may refer to clause 8a in this regard. In case of section 115BAC, the tax auditor has to verify whether the assessee is paying tax under the default tax regime thereunder.

30.23 Wherever 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 asset is not included in the block of assets for the purpose of depreciation. The Auditor should also ensure that the Income Computation and Disclosure Standard (ICDS) V relating to tangible fixed assets is duly considered for working out the amounts.

30.24 The tax auditor has to keep in mind the above guidance while verifying the details in respect of this clause.

30.25 Attention is invited to sub-section (2) of section 32 which provides that where, in the assessment of the assessee, full effect cannot be given to any allowance under section 32(1) in any previous year, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years. Clause 32 deals with unabsorbed depreciation. Therefore, this information is not expected in reporting under this clause.

31. Amounts admissible under sections

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also 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.
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(iia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABA		
35ABB		
35AD		
35CCA		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		
Any other relevant section		

[Clause 19]

31.1 The assessee can claim deduction under the sections, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABA, 35ABB,, 35AD, 35CCA,, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E or any other relevant section subject to the terms and on fulfillment of the conditions specified in these sections.

31.2 In case the assessee has obtained a separate audit report for claiming deductions under any of these sections, he must make a reference to that report while giving the details under this clause.

31.3 The Tax Auditor should verify the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the applicable provisions of law.

31.4 Where the assessee, being a company or co-operative society, has opted to pay income-tax under provisions of section 115BA, 115BAA, 115BAB, 115BAD or 115BAE, as the case may be, the assessee is not entitled to claim any of the deductions under the sections like section 35AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii)/(2AA)/(2AB), 35CCC, 35CCD etc. Where the assessee, being an individual/HUF/AOP (other than Co-operative society)/BOI/artificial juridical person, is paying tax under the default tax regime under section 115BAC(1A) he is not entitled to claim deductions under certain sections like section 35(1)(ii)/(iia)/(iii)/(2AA), 33AB, 33ABA, 35AD, 35CCC etc.

31.5 The amount not debited to the Profit & Loss Account but admissible under any of the Sections mentioned in the clause has also to be stated. For example, sections 33AB and 33ABA allow deduction in respect of the amount deposited in designated account for specified purposes which, as per accounting principles, are not to be debited to the Profit & Loss Account. In this connection, on the basis of the conditions prescribed in the concerned section, the amount admissible there under has to be worked out and reported.

31.6 An assessee may be eligible for deduction under one or more sub-sections of section 35. In such a case, the deduction allowable under each sub-section should be stated separately under the applicable part, i.e. the amount deductible in respect of the amount debited in Profit & Loss Account and the amount not debited to the Profit & Loss Account.

31.7 The Tax Auditor should also examine 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. Tax auditor should also refer Rule 6 of Income-tax Rules, 1962.

31.8 The amount admissible under section 35ABA has to be reported w.e.f. A.Y.2024-25, although such deduction is applicable from A.Y. 2017-18. This section delineates tax treatment for capital expenditure incurred by an assessee to acquire the right to use Spectrum for telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum. As per clause (iii) of Explanation to section 35ABA, "payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed.

As per Rule 6A(1), for the purpose of section 35ABA, the term "payment has actually been made" shall mean –

(a) where an assessee has opted and been allowed by the Department of Telecommunications (DOT), Government of India to make full upfront payment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;

(b) where an assessee has opted and been allowed by the DOT to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

The tax treatment of provisions of section 35ABA are pari materia (analogous or similar) to the amortization of telecom license fees as stipulated under Section 35ABB of the Act.

31.9 In case of section 35ABA and 35ABB, the amount debited to profit and loss account normally would be Nil, since the deduction is in respect of capital expenditure. In the case of [CIT v Bharti Hexacom Ltd. [2023] 155 taxmann.com 322 (SC, Hon'ble Supreme Court Held that where the assessees, engaged in the business of telecommunication services, paid license fees to the Department of Telecommunications (DoT) under New

Telecom Policy, 1999 which was non-transferable and non-assignable and furthermore the said payment was intrinsic to the existence of the licence as well as trade itself, entry fee as well as variable annual licence fee paid would be capital in nature which were to be amortised in accordance with section 35ABB. Review petition dismissed *[Bharti Hexacom Ltd. v CIT [2024] 159 taxmann.com 357 (SC*)]

31.10 The tax auditor should verify that the amounts reported under this clause as deduction u/s 35ABA shall consist of the following:-

(a) The reported amounts represent capital expenditure incurred. The assessee has actually paid a Spectrum fee to acquire the right to use Spectrum for telecommunication services. Further, deduction shall be allowed in equal instalments over the tenure of the Spectrum, viz., say 5 years, 7 years or 10 years, as the case may be, depending on the terms and conditions of such sanction.

(b) Deduction under section 35ABA would commence from the year when the assessee makes actual payment toward such Spectrum fees and not from the date of sanction. Thus, deduction under section 35ABA is admissible only from the year of the actual payment or the year of commencement of business, whichever is later.

(c) In the event of the Spectrum being transferred in the previous year and the proceeds of the transfer are less than the remaining unallowed expenditure, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the Spectrum has been transferred.

(d) If the whole or part of the Spectrum is transferred during the previous year and proceeds of the transfer exceed the amount of expenditure remaining unallowed, so much of the excess amount (to the extent it does not exceed deduction claimed under section 35ABA) shall be chargeable to tax as profits and gains of business in the previous year in which the Spectrum has been transferred.

(e) If there is a part transfer of Spectrum during the previous year, then unallowed expenditure on account of Spectrum fees shall be amortised over the remaining Spectrum tenure.

(f) If any deduction claimed as well as admissible is reported under this clause, then, no deduction shall be allowed or claimed on account of depreciation u/s 32(1) for the same previous year or any subsequent

previous year. The tax auditor should verify that no depreciation is claimed in clause 18 of Form No. 3CD.

Amalgamation and/or Demerger Scenario

(g) If, through a scheme of amalgamation as per section 2(1B) of the Act, the amalgamating company **sells or otherwise transfers the Spectrum to an amalgamated company, being an Indian company,** the provisions of this section will apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the spectrum. **Similar tax treatment applies in case of a Demerger as defined u/s 2(19AA) of the Act involving the demerged company and the resulting company,** being an Indian Company pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013. The tax auditor should examine the scheme of amalgamation and/or the demerger scheme for verifying the reporting of any such deduction under this clause.

Deferred Payment – Spectrum Fee Expenditure

(h) Additionally, Rule 6A of the Income-tax Rules, 1962 read with Section 35ABA provides that where an assessee has opted for and has been allowed by the DOT (Department of Telecommunications, Government of India) to make deferred payments, the amount that would have been payable by the assessee had he opted for full upfront payment of Spectrum fee, will be considered as the amount "actually paid"(for this purpose, previous year in which the liability for the expenditure is incurred according to the method of accounting regularly employed by an assessee, will not be considered). In such cases, deduction under this section is admissible in equal instalments only for the remaining Spectrum tenure based on the instalments paid by the assessee in accordance with sanctions granted by the DOT.

Consequences for non-compliance of DOT Sanction conditions

(i) If the assessee has claimed and been granted deduction in a previous year as per the above provisions and there is a failure to comply with any of the DOT conditions, the deduction shall be deemed wrongly allowed in the case of upfront payment. The Assessing Officer shall recompute the assessee's total income for the previous year in which the deduction has been claimed and make necessary rectification u/s 154 of the Act. Such rectification is permissible within 4 years from the

end of the previous year in which the failure to comply with the provisions of the section takes place.

(j) If, in the case of deferred payment, the assessee fails to comply with any of the conditions specified by the scheme and DOT terminates the allotment or assignment of the spectrum, the Assessing Officer shall recompute the assessee's total income for the relevant previous year in which the deduction has been claimed and granted to him by deeming that –

(i) The total amount of spectrum fee paid upto the date of termination is the amount of "payment actually been made";

(ii) The spectrum was in force upto the date of its termination for the purpose of computing "relevant previous year".

31.11 **Any other relevant section**

The objective of reporting in clause 19 is to quantify the amounts debited to the profit and loss account and the amounts admissible under various specified sections while ensuring compliance with the conditions laid down by the relevant provision, the rules, or any other guideline or circular issued in that behalf. Accordingly, the reporting under "any other relevant section" should align with reporting under preceding sections as required under clause 19 of Form No. 3CD. The tax auditor should take note of the principle of "Ejusdem Generis," while verifying the reporting under this clause. The tax auditor may give an appropriate observation in this regard.

The tax auditor should maintain detailed working papers with appropriate reasoning to support conclusions drawn for verifying the reporting under this clause.

31.12 In case the tax auditor relies on a judicial pronouncement, he may mention the fact in his observations para provided in Form No. 3CA or Form No. 3CB, as the case may be.

31.13 The following Table summarizes sub-section wise eligibility, requirement of compliance of the conditions and the amount of deductions required to be mentioned under this clause (The summary is only illustrative, and tax auditor is advised to refer actual provision of the Act at the time of signing of the audit report):

Table showing deductions applicable from A.Y. 2025-26 onwards (as per law prevailing on 1-4-2025)

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
33AB	**Applicability**: This section is applicable to an assessee carrying on the business of growing and manufacturing of Tea, Coffee, and Rubber in India. **Eligible Amount:** (i) any amount or amounts deposited by such assessee in special account maintained with NABARD in accordance with scheme approved by the Tea Board, Coffee Board, or Rubber Board, or (ii) any amount deposited in a deposit account opened by the assessee in accordance with a scheme approved by the Tea Board or Coffee Board or Rubber Board, with the previous approval of the Central Government. The amount should have been deposited before the expiry of six months from the end of the previous year or before the due date of furnishing the return of his income. whichever is earlier.	The assessee shall be allowed a deduction of -- (a) a sum equal to the amount or the aggregate of the amounts so deposited or (b) a sum equal to 40% of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section), whichever is less.
33ABA	**Applicability:** This section is applicable to an assessee carrying on the business consisting of the prospecting for, or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into	The assessee shall be allowed a deduction of -- (a) a sum equal to the amount or the aggregate of the

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
	an agreement with such assessee for such business. **Eligible Amount:** (i) any amount or amounts deposited by such assessee in special account maintained with State Bank of India in accordance with, and for the purposes specified in, the scheme approved by Govt. of India in the Ministry of Petroleum and Natural Gas; or (ii) any amount deposited in Site Restoration Account (Deposit Account) opened by the assesee in accordance with, and for the purposes specified in, the scheme framed by the said Ministry. The amount has to be deposited before the end of the previous year. Any amount credited in the special account or the Site Restoration Account by way of interest shall be deemed to be a deposit under this section.	amounts so deposited or (b) a sum equal to 20% of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section), whichever is less.
35(1)(i)	**Applicability:** This section is applicable to assessees incurring expenditure for scientific research related to the business. **Eligible Amount:** Any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research during the previous year.	100% of the expenditure incurred

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
	In respect of expenditure laid out or expended by the assessee before the commencement of business on payment of any salary to an employee engaged in scientific research or on purchase of materials used in such scientific research , the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall be deemed to have been expended in the previous year in which the business is commenced. However, such expenditure has to be certified by the prescribed authority.	
35(1)(ii)	**Applicability:** This section is applicable to assessees in respect of sum paid by them to an approved research association, university, college or other institutions, notified in the Official Gazette **Eligible Amount:** Any sum paid to an approved — (i) research association which has as its object the undertaking of scientific research; or (ii) university, college or other institution to be used for scientific research.	100% of the sum paid.

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35(1)(iia)	**Applicability:** This section is applicable to assessees in respect of sum paid to an Indian company to be used by it for scientific research. **Eligible Amount:** Any amount paid to a Company which is registered in India, having its main object of carrying out of scientific research and development and is approved by the prescribed authority in the prescribed manner and fulfills the prescribed conditions.	100% of the sum paid.
35(1)(iii)	**Applicability:** This section is applicable to assessees in respect of any sum paid to an approved research association, university, college or other institution, notified in the Official Gazette. **Eligible Amount:** Any sum paid to an approved — (i) research association which has as its object the undertaking of research in social science or statistical research; or (ii) university, college or other institutions to be used for research in social science or statistical research.	100% of the sum paid.

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35(1)(iv) read with 35(2)	**Applicability:** This section is applicable to assessees incurring capital expenditure on scientific research related to their business. **Eligible Amount:** Any expenditure of a capital nature on scientific research, (other than expenditure on acquisition of land and any interest in land), incurred in relation to the business carried on by the assessee. In respect of capital expenditure which has been incurred by the assessee before the commencement of business, the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been expended in the previous year in which the business is commenced. No depreciation shall be allowed on assets acquired in respect of which capital expenditure has been claimed as a deduction under this section.	100% of the capital expenditure incurred

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35(2AA)	**Applicability:** This section is applicable to assesses in respect of any sum paid to a National Laboratory; or a University; or Indian Institute of Technology or specified person (a person approved by the prescribed authority) for scientific research. **Eligible Amount:** Any sum paid to a National Laboratory; or a University; or Indian Institute of Technology or specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved by the prescribed authority.	100% of the sum paid.
35(2AB)	**Applicability:** This section is applicable to a company engaged in business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule. **Eligible Amount:** Any expenditure incurred on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority.	100% of the expenditure incurred.

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35ABA	**Applicability:** This section is applicable to an assessee engaged in the business of telecommunication services in respect of expenditure incurred for obtaining a right to use spectrum. **Eligible Amount:** Any expenditure, being in the nature of capital expenditure incurred for acquiring any right to use spectrum for telecommunication services [either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum]	The deduction shall be allowed equal to appropriate fraction of the amount of capital expenditure. "Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years. "relevant previous years" means,— (a) in a case where the spectrum fee is actually paid before the commencement of the business to operate telecommunication services, the previous years beginning with the previous year in which such business commenced; (b) in any other case, the previous years beginning with the previous year in which the spectrum fee is actually paid,

35ABB	**Applicability:** This section is applicable to assessees engaged in the business of telecommunication services in respect of expenditure incurred for obtaining a licence. **Eligible Amount:** Any expenditure, being in the nature of capital expenditure incurred for acquiring any right to operate telecommunication services either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year and for which payment has actually been made to obtain a licence.	The deduction shall be allowed equal to appropriate fraction of the amount of capital expenditure. "Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years. "relevant previous years" means,— (a) in a case where the licence fee is actually paid before the commencement of the business to operate telecommunication services, the previous years beginning with the previous year in which such business commenced; (b) in any other case, the previous years beginning with the previous year in which the licence fee is actually paid, and the subsequent previous year or years during which the licence for which the fee is paid, shall be in force.

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35AD	**Applicability**: This section is applicable to an assessee engaged in the specified business, who opts for claiming deduction under this section in respect of capital expenditure incurred wholly and exclusively for such business. **Eligible Amount:** Any capital expenditure incurred wholly and exclusively for any specified business carried on by him during the previous year in which such expenditure is incurred by him. Further, any capital expenditure, incurred wholly and exclusively for the purpose of any specified business shall be allowed as deduction during the previous year in which he commences operations of his specified business, if— (a) the expenditure is incurred prior to the commencement of its operations; and (b) the amount is capitalised in the books of account of the assessee on the date of commencement of its operations.	100% of the capital expenditure incurred
35CCC	This section is applicable to an assessee incurring expenditure on agricultural extension project notified by the Board in accordance with the prescribed guidelines.	100% of expenditure incurred.

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
35CCD	This section is applicable to a company incurring expenditure on skill development project notified by the Board in accordance with the prescribed guidelines.	100% of expenditure incurred.
35D	This section is applicable to Indian company and a person (other than a company) who is resident in India which has incurred any expenditure— (a) before the commencement of his business, or (b) after the commencement of his business, in connection with the extension of his undertaking or in connection with his setting up a new unit.	**An amount equal to one-fifth of such expenditure** for each of the five successive previous years beginning with the previous year in which business commences or, as the case may be, the previous year in which the extension of the undertaking is completed or the new unit commences production or operation.
35DD	This section is applicable to Indian company incurring any expenditure wholly and exclusively for the purposes of amalgamation or demerger of an undertaking.	An amount equal to **one-fifth of such expenditure** for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.
35DDA	This section is applicable to an assessee incurring any expenditure by	An amount equal to **one-fifth of the**

Section & Sub-section	Applicability, Eligible expenditure/payment	Amount/Quantum of Deduction
	way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement.	**amount so paid** shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal installments for each of the four immediately succeeding previous years.
35E	This section is applicable to Indian company or a person (other than a company) who is resident in India, engaged in any operations relating to prospecting for, or extraction or production of, any mineral, in respect of any eligible expenditure incurred therefor. [For details, please refer to the section]	An amount equal to one-tenth of the eligible expenditure [For details, please refer to the section]
Any other relevant section	Deduction for expenditure as per stipulated terms/s and condition/s specified under any other relevant section.	The deduction is to be claimed as provided under any other relevant section not covered above. At present, for A.Y.2025-26, there is no other relevant section.

31.14 Where under any section, an assessee is eligible for deduction under one or more of the sub-sections of the said section, the tax auditor should

verify the amount of deduction available under each sub-section separately in the applicable part, i.e. the amount deductible in respect of the amount debited to Profit & Loss Account and the amount not debited to the Profit & Loss Account.

32. (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)]

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

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

[Clause 20(a) and (b)]

32.1 Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission. In other words, if bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction unless such payment is wholly and exclusively made to the employee *[Shahzada Nand & Sons v. CIT [1977)] 108 ITR 358 (SC).*

32.2 Under Clause 20(b), the requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/ contract details of the employees so as to ascertain the nature of payments.

32.3 Section 36(1)(va) 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.

32.4 Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or ESI Fund or any other Fund for employees' welfare

(hereafter referred to as "Welfare Fund"). Explanation 5 to section 43B that the provisions of section 43B are not applicable to a sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) applies. In this regard, Hon'ble Supreme Court in case of *Checkmate Services (P.) Ltd. vs. CIT-1, Civil Appeal no. 2830 to 2833 of 2016 and 159 of 2019* has held that, non obstante clause under section 43B could not apply in case of amounts which were held in trust as was case of employee's contribution which were deducted from their income and was held in trust by assessee-employer as per section 2(24)(x), thus, said clause would not absolve assessee-employer from its liability to deposit employee's contribution on or before due date as a condition for deduction.

32.5 As per the Explanation 1 to 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. In respect of such sum, if any extension is granted by respective authorities, it shall be considered. This can be taken into consideration for determining the due date of payment. Also, Explanation 2 to section 36(1)(va) clarifies that the provisions of section 43B shall not apply and shall be deemed never to have applied for the purposes of determining the "due date" under section 36(1)(va).

32.6 The tax auditor should get a list of various contributions recovered from the employees which come within the scope of this clause and the date on which they are deposited. He should also verify the documents relating to provident funds and other welfare funds. He should verify the agreement under which employees have to make contributions to provident fund and other welfare funds. The ledger account of contributions from employees should be reviewed; the due dates of payments and the actual dates of payment should be verified with the evidence available. In view of the voluminous nature of the information, the tax auditor can apply test checks and compliance tests to satisfy himself that the system of recovery and remittance is proper. 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 have to be stated.

32.7 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

(a)

Description	Amount
1	2

(b)

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
1	2	3	4	5	6

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

[Clause 21(a)]

	Nature	Serial number	Particulars	Amount in Rs.
(i)	Capital Expenditure			
(ii)	Personal Expenditure			
(iii)	Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party			

(iv)	Expenditure incurred at clubs being entrance fees and subscriptions			
(v)	Expenditure incurred at clubs being cost for club services and facilities used.			
(vi)	Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)			
(via)	Expenditure by way of any other penalty or fine not covered above			
(vii)	Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India			
(viii)	Expenditure incurred to provide any benefit or			

	perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person			
(ix)	Expenditure incurred to settle proceedings initiated in relation to contravention under such law as notified by the Central Government in the Official Gazette in this behalf			

34. 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 (iia)**

(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)**

[Clause 21(b)]

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

[Clause 21(c)]

36. 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 or Aadhaar 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	Amt	Name and Permanent Account Number or Aadhaar Number of the payee, if available

[Clause 21(d)]

37. provision for payment of gratuity not allowable under section 40A(7);

[Clause 21(e)]

38. any sum paid by the assessee as an employer not allowable under section 40A(9);

[Clause 21(f)]

39. particulars of any liability of a contingent nature;

[Clause 21(g)]

40. 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

[Clause 21(h)]

41. amount inadmissible under the proviso to section 36(1)(iii)

[Clause 21(i)]

33. Clause 21

This clause requires stating the amount of expenditure incurred by the assessee in respect of various items listed above. These expenses may be allowable or may not be allowable or may be allowable subject to certain limits. It is important to note that the amount of expenditure in respect of each of the items is required to be stated. Accordingly, for verifying the same, tax auditor will have to obtain the information and make necessary enquiries in that behalf. It will necessitate verification of books of account and other relevant documents, basis of classification, groups under which such expenses have been debited, and so on.

Clause 21(a) - Expenditure in the nature of capital, personal, advertisement expenditure etc.

(i) Expenditure of Capital nature:

33.1 Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act. The word "capital expenditure" is not defined in the Act and no conclusive test or rules can be laid down to determine whether a particular expenditure is capital or revenue in nature. Different tests have been applied by the courts in different cases depending upon the facts and circumstances of each case and the case law

on the subject as evolved over a period of years gives guidance for determining the nature of expenditure.

33.2 Some tests which, however, are generally applied to determine whether a particular item of expenditure is of capital nature, are set out hereunder:

(i) Whether it brings into existence an asset or advantage of enduring benefit. The question whether a particular benefit is of an enduring or permanent nature will depend upon the facts and circumstances of each case, the concept of permanency being relative.

(ii) Whether it is referable to fixed capital or fixed assets in contrast to circulating capital or current assets.

(iii) Whether it relates to the basic framework of the assessee's business.

(iv) Whether it is an expenditure to acquire an intangible asset.

33.3 The above factors are not exhaustive and the tax auditor is required to verify the expenditure based on facts of the case after considering the applicable provisions of the Act.

33.4 The nature of receipt in the hands of the recipient is not a determining factor to decide the nature of payment in the hands of payer. If the amount is in the nature of capital receipt in the hands of the payee, it does not necessarily imply that it is a capital expenditure for the payer and vice versa. The case of the payer has to be considered independently based on the facts concerning him.

33.5 Under the Act, capital expenditure of certain types e.g., on scientific research referred to in section 35, is deductible in computing the income. Ordinarily, the capital expenditure should not be debited to profit and loss account. The tax auditor needs to keep in mind that the accounting standards also apply in respect of financial statements audited under section 44AB of the Act. Therefore, besides disclosing the amount of such capital expenditure debited to profit and loss account under this clause, the tax auditor should give suitable disclosure/ qualifications in para 3(a) of Form No. 3CB, depending on the facts of the case.

33.6 The details of capital expenditure, if any, debited to the profit and loss account should be maintained in a classified manner stating the amount under various heads separately. Since part of this capital expenditure may be allowable as deduction in the computation of total income, it is advisable to maintain particulars regarding the nature of expenditure, the amount of

expenditure incurred, and the relevant provision under which the expenditure is admissible. Preliminary expenses incurred by the assessee which is capital expenditure is debited to profit and loss account and therefore should be reported. However, the total amount of capital expenditure to the extent written off and debited to the profit and loss account is to be reported under this clause in the e-filing portal.

(ii) Expenditure of personal nature:

33.7 Personal expenses debited to the profit and loss account are to be specified under this sub-clause as they are not deductible in the computation of total income under section 37. It may be noted that the word "personal" is confined to and attached with the "assessee" and not necessarily to and with persons other than the assessee.

33.8 Tax auditor may note that certain personal expenditure, although debited under business heads such as travel, communication or entertainment, may be identified based on narration, employee interviews or internal audit reports and classified as inadmissible. Examples are expenditure on family air travel booked under staff head, personal driver salary, etc.

33.9 Section 143(1)(e) of the Companies Act 2013 specifically requires the auditor to inquire whether personal expenses have been charged to revenue account. In the case of a person whose accounts of the business or profession have been audited under any other law, the tax auditor will have to verify if the personal expenses debited in the profit and loss account have been reported. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the tax auditor will have to verify the personal expenses, if debited in the expenses account while conducting the audit and check whether the amount of such expenses has been mentioned under this clause.

33.10 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sl. No.	Nature and particulars of expenditure	Account head under which debited	Amount of expenditure	Remarks
1	2	3	4	5

(iii) Expenditure on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party:

33.11 Section 37(2B) provides that 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. Therefore, the expenditure of this nature should be segregated and reported under this clause.

33.12 The tax auditor may come across expenditure incurred on advertising in a souvenir, brochure, tract, pamphlet or journal published by a trade union or a labour union formed by a political party. The trade union or labour union though promoted or formed by a political party may have a distinct legal entity in which case, expenditure incurred by the assessee by way of advertisement given in the souvenir, brochure, tract, pamphlet or journal published by the trade union or the labour union is not required to be indicated against clause 21(a) in Form No. 3CD. If the trade union or labour union formed by the political party does not have a separate and distinct legal entity, then, the expenditure incurred on such an advertisement will have to be indicated against this clause.

33.13 The auditor may also keep in mind the provisions of section 80GGB which allow deduction in respect of contribution made by a company to political parties and electoral trust, as required to be reported in clause 33 of Form No.3CD.

(iv) & (v) Expenditure incurred at clubs being cost for club services and facilities used, entrance fees and subscriptions:

33.14 The amount of payments made to clubs by the assessee during the year being cost for club services and facilities used should be indicated under this clause. The payments may be for entrance fees as well as membership subscription and for catering and other services by the club, both in respect of directors and other employees in case of companies and for partners or proprietors in other cases. The fact whether such expenses are incurred in the course of business or whether they are of personal nature should be ascertained. If they are personal in nature, they are to be shown separately under Clause 21(a) referred to earlier and not reported here. If they are incurred in course of business activities, the amount should be mentioned

33.15 Details of payments made to clubs are also required by tax authorities for the purpose of determining whether any portion of club expenses could be treated as perquisite in the hands of the person concerned. All payments made

to credit card agencies should be carefully. scrutinized to check for payments made to clubs and should be reported. In order to determine whether the payments have been made to a club, one has to look into the substantive activity of the institution concerned.

33.16 This clause requires reporting of particulars and the amount of such expenses incurred in the respective fields. It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

33.17 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Name of the Club	Nature of Amount paid			
		Entrance/ admission Fees	Subscription expenses	Cost of Club Services and facilities used	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

Items (vi) to (ix) of Clause 21(a) in relation to Explanation 3 to section 37(1)

33.18 **Section 37(1) along with Explanations thereto read as under:**

Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2……

Explanation 3.—For the removal of doubts, it is hereby clarified that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee,—

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India.

(iv) to settle proceedings initiated in relation to contravention under such law as may be notified by the Central Government in the Official Gazette in this behalf].

Accordingly changes have been made in clause 21(a) to align the reporting in line with Explanation 3 to section 37 as inserted vide the Finance Act, 2022.

To clarify the position further, it is pertinent to read the provisions under Section 37(1) of the Income-tax Act, 1961 which states that if an assessee, during the course of business and profession incurs certain expenditure, which is an offence or expense incurred which is prohibited by law, then, the said expenditure shall be disallowed while computing his income.

33.19 **The differences are in the reporting requirements from (vi) of clause 21(a) [(i) to (v) have not undergone change]**

Prior to amendment by Notifications issued in March, 2024 and March, 2025		**Post amendment vide Notifications issued in March, 2024 and March, 2025**	
(vi)	Expenditure by way of penalty or fine for violation of any law for the time being in force	(vi)	Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)

Prior to amendment by Notifications issued in March, 2024 and March, 2025		Post amendment vide Notifications issued in March, 2024 and March, 2025	
(via)	Expenditure by way of any other penalty or fine not covered above.	(via)	Expenditure by way of any other penalty or fine not covered above.
(vii)	Expenditure incurred for any purpose which is an offence or which is prohibited by law	(vii)	Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India
–		(viii)	Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person.
–		(ix)	Expenditure incurred to settle proceedings initiated in relation to contravention under such law as notified by the Central Government in the Official Gazette in this behalf

33.20 **Accordingly changes have been made in clause 21(a) to align with Explanation to Section 37:**

Earlier the reporting under the said clause covered all types of expenses debited to the profit and loss account, the purpose of which is an offence or which is prohibited by law, but there was no specific reporting requirement relating to such expenses prohibited by law in force outside India;

(vi) contains the reporting requirement in relation to expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India) which was earlier covered in items (vi) and (vii), though earlier there was no specific reporting requirement in relation to such expenses which was prohibited by law outside India.

(via) containing the reporting requirement in respect of expenditure by way of any other penalty or fine not covered above is continuing in the amended clause 21(a).

(vii) and (viii) now contain the specific reporting requirements in alignment with clauses (iii) and (ii) of Explanation 3 to section 37(1), namely, in relation to -

(vii) expenditure incurred to compound an offence under any law for the time being in force, in India or outside India; and

(viii) expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person

In fact, the specific reporting requirements in items (vii) and (viii) in amended clause 21(a) were earlier covered in the general reporting requirement in item (vii), since they fell within the meaning of "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" as per Explanation 3 to section 37(1).

(ix) now contains specific reporting requirement in alignment with clause (iv) of Explanation 3 to section 37(1), namely, in relation to –

(ix) Expenditure incurred to settle proceedings initiated in relation to contravention under such law as notified by the Central Government in the Official Gazette in this behalf.

33.21 **(vi) - Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India) & (via) - Expenditure by way of any other penalty or fine not covered above**

A. (vi) Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)

(a) Under (vi), any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law is to be reported. Item (vi) also requires reporting of expenditure by way of penalty or fine for violation of any law (enacted in India or outside India).

(b) In the pre-amended clause, as there was no specific reporting requirement for penalty and fines paid for violation of law in force in a country outside India, the same had to be reported under (via), which required reporting of expenditure by way of any other penalty or fine not covered in (vi). Now, post amendment, the same has to be reported in (vi) since there is a specific requirement to report penalties and fines paid for violation of law in force in India as well as in a country outside India.

(c) The tax auditor should obtain in writing from the assessee the details of all payments by way of penalty or fine for violation of any laws which have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of account produced for audit. The courts have laid down that any penalty or fine for violation of law is not admissible as expenditure. It is in this context that the requirement stipulated by clause 21(a) has to be addressed.

(d) The tax auditor may obtain a representation from the assessee as to whether an expenditure which is debited to the profit and loss account is prohibited by law or not. If any show cause notice/order is received by the assessee for violation of a law, then, the auditor should examine whether expenditure in relation to the same has been incurred against such notice or order and is debited to the profit and loss account, and if so, the same is required to be reported under this clause. He may also consider taking expert opinion on the subject matter of law involved.

B. Items (vi) and (via)

(a) The tax auditor may not be an expert to decide the nature of payment as to whether it is prohibited by law or not and may not be aware of the intricacies of all the laws of the land. He can rely on the expert opinion. It must be kept in mind that the tax auditor while verifying the reporting under this clause is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law. He is only required to give the details of such items as have been charged in the books of account. This clause covers only penalty or fine

for violation of law and not the payment for contractual breach or liquidator damages. The tax auditor should keep in mind the difference between the amount prohibited by law and the amount paid which is compensatory in nature under the relevant Statue. Supreme Court in *Mahalakshmi Sugar Mills Co. Ltd. v CIT (123 ITR 429) and CIT v Hyderabad Allwyn Metal Works Ltd 172 ITR 113 (SC)* wherein it was held that there is a distinction between amount paid by the assessee as compensatory in nature or penal in nature and only amounts paid in penal nature were not allowable. While verifying the particulars under this clause, the tax auditor should also take into consideration the concept of materiality.

(b) In order to ascertain the facts whether the sum debited in the profit and loss account is by way of penalty or fine for any violation of law, the tax auditor will have to refer to the relevant law under which the amount has been paid or incurred and ascertain whether such amount is in the nature of penalty or fine. He should also ascertain all the facts by having recourse to the order of the jurisdictional authority which has levied the penalty or fine. Even if the assessee is contesting such an order before higher authorities, the same will not be relevant and the mere point for ascertaining is whether such sum is debited to the profit and loss account and if yes, the same has to be disclosed.

(c) The courts have laid down that any penalty or fine for violation of law is not admissible as expenditure. It is in this context that the requirement stipulated by clause 21(a) is to be answered.

(d) The following Explanation to section 37(1) of the Act has been inserted by Finance Act (No.2) Act, 1998 with effect from assessment year 1962-63.

"For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure".

(e) Under this sub-clause, any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law is to be stated.

Any expenditure in consequence of violation of law like penalty or fine levied for evading provisions of the Act, FEMA, Excise and Customs law

etc., cannot be claimed as deduction under the Act. A penalty imposed for violation of any law during the course of trade cannot be described as a commercial loss. Even if the need for making payments has arisen out of trading operations, the payments are not wholly and exclusively for the purpose of the trade. Violation of law is not a normal incidence of business. This principle was laid down by Hon'ble Supreme Court in case of *CIT v. Maddi Venkataratnam & Co. (P) Ltd [1998] 96 Taxman 643* and in the case of *Hazi Aziz Shekoor Bros v. CIT [1961] 41 ITR 350*. In both the cases it was held that one can carry business or his trade without violating the law.

(f) In *Prakash Cotton Mills (P) Ltd. v CIT [1993] 201 ITR 684 (SC),* it has been held that whenever any statutory impost paid by an assessee by way of damages or penalty or interest is claimed as an allowable expenditure under section 37(1) of the Act, the assessing authority is required to examine the scheme of the provisions of the relevant Statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the Statute, to find whether it is compensatory or penal in nature.

(g) The authority has to allow deduction under section 37(1) wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, partly of compensatory nature and partly of penal nature, the authority would have to bifurcate the two components of the impost and give deduction of that component which is compensatory in nature and refuse to give deduction of that component which is penal in nature. The above principle was reiterated in the case of *Swadeshi Cotton Mills (1998) 233 ITR 199.*

(h) Further, in *CIT v Ahmedabad Cotton Mfg. Co. Ltd. [1993] 205 ITR 163(SC)*, the Supreme Court held that what needs to be done by an Assessing Authority under the Act, in examining the claim of an assessee that the payment made by such assessee was a deductible expenditure under section 37 although called a penalty, is to see whether the law or scheme under which the amount was paid, required such payment to be made, as penalty or as something akin to penalty, that is, imposed by way of punishment for breach for infraction of the law or the statutory scheme. If the amount so paid is found to be not a penalty or something akin to penalty due to the fact that the amount paid

by the assessee was in exercise of the option conferred upon him under the levy, law or scheme concerned, then one has to regard such payment as business expenditure of the assessee, allowable under section 37 as incidental to business laid out and expended wholly and exclusively for the purposes of the business.

(i) In case *of Malwa Vanaspati & Chemical Co. v. CIT [1997] 225 ITR 383(SC)*, it was held that where the assessee is required to pay an amount comprising both the elements of compensation and penalty, the compensation is allowable as business expenditure, but not the penalty.

(j) Further, the CBDT clarified this position vide Circular 722 dated 23.12.1998 whose operative part reads as follows: Section 37 of the Income-tax Act is amended to provide that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure. This amendment will result in disallowance of the claims made by certain assessees in respect of payments on account of protection money, extortion, hafta, bribes etc. as business expenditure. It is well decided that unlawful expenditure is not an allowable deduction in computation of income. This amendment will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to the assessment year 1962-63 and subsequent years.

(k) Where the penalty or fine is in the nature of penalty or fine only, the entire amount thereof will have to be stated. As discussed above, with reference to certain penalty/penal interest, courts have held that it is partially compensatory payment and partially in the nature of penalty. In such a case, on the basis of appropriate criteria, the amount charged will have to be bifurcated and only the amount relating to penalty may be stated.

33.22 **(vii) - Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India**

(a) Compounding of an offence is a settlement mechanism, by which, the person is given an option to pay a fee in lieu of penal action or prosecution, thereby avoiding a prolonged litigation. In certain offences, the parties involved can effect a compromise before launching of prosecution or while the case is under trial in the court or under

litigation. This may be at various levels and it is legally valid under various laws. When an assessee opts for compounding, further action under trial is discontinued. Cases in which this is permissible are called compoundable offences. Examples of such offences may be under various laws. The common laws where compounding is generally done is Income-tax law, Company law, Labour laws, some sections of Indian Penal Code, FEMA, etc.

(b) The tax auditor needs to verify the reporting under the said clause any expenditure incurred by the assessee during the year to compound an offence under any law for the time being in force, in India or outside India. Item (vii) has been specifically included for reporting such expenditure although, prior to amendment of this clause, it was to be reported in pre-amended (vii) by virtue of Explanation 3 to section 37(1) bringing such expenditure within the meaning of "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law".

(c) Item (vii), which now requires reporting the said expenses of compounding, is not restricted to expenses incurred under any law for the time being in force in India but also outside India. The reporting in (vii) is limited to expenditure incurred for compounding an offence. The tax auditor can rely on the expert opinion, in case if he is unable to verify if the expenditure is for compounding of offences. It must be borne in mind that the tax auditor is not required to express any opinion as to the allowability or otherwise of the amount of such expense by way of penalty [item (vi)/(via)/compounding fee]. He is only required to verity the details of such items as have been debited in the books of account. This clause covers reporting of the compounding fees debited during the year to the profit and loss account/income and expenditure account. Accordingly, the tax auditor has to exercise his professional judgement and

(i) verify the nature of litigations which are ongoing and continuing. If he is unable to verify, then, he can obtain the management representation for the same;

(ii) obtain the list of applications and details where such compounding application has been made during the year;

(iii) call for the evidence of payment of fees and the compounding payment details made during the year;

(iv) verify the details with the books of account and see whether the same are debited to the profit and loss account/income and expenditure account during the year;

If in the opinion of the assessee, any penalty or fine or part of it is compensatory in nature, the tax auditor should, report both his stand and the assessee's stand in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be.

33.23 **(viii) - Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person**

(a) Item (viii) requires specifically to report any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, where acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person. It may be noted that, prior to amendment by the notification no. 27/2024 dated. 05/03/2024, the said reporting was covered under residuary item (vii) "Expenses incurred for any purpose which is an offence or which is prohibited by law" by virtue of Explanation 3 to section 37.

(b) The condition for reporting under this clause is as under:

(i) There has to be any benefit or perquisite to be given either in cash or in kind, in whatever form. The value of benefit or perquisite should be debited to the statement of profit and loss/profit and loss account/income and expenditure account;

(ii) Such benefit or perquisite is given to a person, whether or not carrying on business or exercising a profession;

(iii) Acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be for the time being in force.

(c) The tax auditor should refer to Circular No. 5/2012 dated 1-8-2012 issued by CBDT in respect of inadmissibility of expenses particularly incurred in providing freebies to Medical Practitioners by pharmaceutical and allied health sector industry and the Supreme Court decision in Apex Laboratories Pvt. Ltd. v. DCIT (2022) 442 ITR 1. Explanation 3 inserted in section 37(1) is in line with the above Supreme Court judgement. Accordingly, this clause now requires specific reporting of such expenses duly verified.

(d) The tax auditor should obtain the list of beneficiaries from the management. and he should cross verify with list of beneficiaries in respect of whom tax has been deducted at source under section 194R to form an opinion as to whether any benefits and perquisites are inadmissible and require reporting under this clause.

(e) The tax auditor has to verify whether there are any such payments made and debited to the profit and loss account/income and expenditure account. If such payments are identified, then, he is required to take a note of the same and obtain proper clarification in writing from the assessee, before forming an opinion. Also, if required, he may obtain confirmation from the recipient as to the nature of benefit or perquisite.

(f) In case any amount debited to the profit and loss account is to be disallowed as per section 37 and hence, has to be reported under this clause, then, reporting need not be done under clause 21(b) on amounts inadmissible under section 40(a)(ia) for non-deduction of tax at source. Appropriate disclosure should be made in the audit report in respect of such transactions in the observation in Para 3 of Form No. 3CA or Para 5 of Form No. 3CB, as may be applicable.

33.24 **(ix) Expenditure incurred to settle proceedings initiated in relation to contravention under such law as notified by the Central Government in the Official Gazette in this behalf.**

(a) The Finance (No.2) Act, 2024 has inserted clause (iv) in Explanation 3 to section 37(1) from the assessment year 2025-26. This clause provides that for the removal of doubts, it is hereby clarified that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee to settle proceedings initiated in relation to

contravention under such law as may be notified by the Central Government in the Official Gazette in this behalf.

(b) In exercise of the powers conferred by clause (iv) of Explanation 3 of sub-section (1) to section 37 of the Income-tax Act, 1961, the Central Government has vide Notification no. 38/2025 dated 23.04.2025 provided that any expenditure incurred to settle proceedings initiated in relation to contravention or defaults under the following laws shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure, namely:–

(i) the Securities and Exchange Board of India Act, 1992;

(ii) the Securities Contracts (Regulation) Act, 1956;

(iii) the Depositories Act, 1996;

(iv) the Competition Act, 2002.

The notification shall come into force on the date of its publication in the Official Gazette.

(c) The tax auditor has to verify if any expenditure has been incurred to settle proceedings initiated in relation to contravention or defaults under the above Acts and if so, whether the appropriate reporting under this clause has been done.

34. Clause 21(b) – amounts inadmissible under section 40(a)

34.1 This clause has been substantially expanded to furnish detailed information for deduction and deposit of TDS. Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

(i) **Non-Resident Payments:** Any interest, royalty, fees for technical services or other sum chargeable under the Income-tax Act which is payable outside India or in India to a non-resident or 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 on or before the expiry of the time prescribed u/s139(1) {seems inadvertently shown as "section 200(1)" in notified form 3CD}.

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 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.

Further, the second proviso to section 40(a)(i) read with Section 201 provides 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 the first proviso to sub-section (1) of section 201, then, for the purpose of clause (i) of section 40(a), 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 payee referred to in the said proviso.

(ii) **Resident Payments:** 30% of any sum is disallowed where sum is payable to a resident 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).

As per first proviso to Section 40(a)(ia), where tax is deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in section 139(1), disallowed component of the expenditure is allowable as a deduction in the year in which such tax has been paid. Further, the second proviso to section 40(a)(ia) read with Section 201 provides 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 the first proviso to sub-section (1) of section 201, then, for the purpose of clause (ia) of section 40(a), 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 payee referred to in the said proviso.

A certificate is to be obtained in Form 26A by the person who has not deducted tax and obtain the form that the deductee is not responsible for deduction of tax and hence the lack of tax deduction does not attract the provisions of Section 201. Tax Auditor is advised to check the certificate vide Form 26A and how it has been reflected in the statement of TDS filed vide Form 24Q / Form 26Q / Form 27Q.

(iii) Any sum paid on account of wealth tax.

(iv) Under sub-clause (iib) in section 40(a), any amount paid by way of a Royalty, License Fees, Service Fees, Privilege Fees, Service Charges or any other fees or charge by whatever name called, which is levied exclusively on or which is appropriated directly or indirectly from a State Government undertaking by the State Government shall not be allowed as a deduction from the income under the head "profit and gains from business or profession".

(v) Any payment which is chargeable under the head "salaries", if it is payable outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

(vi) Any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangement to secure that tax shall be deducted at source from any payment made from the fund which are chargeable to tax under the head "Salaries".

(vii) Any tax actually paid by an employer referred to in clause (10CC) of section 10.

34.2 The provisions of section 40(a)(ia) disallow only 30% of any sum payable to a resident 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 under section 139(1). The first proviso to section 40(a)(ia) provides that where any sum on which tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty percent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

34.3 In respect of item (i) and (vi) above, the tax auditor should obtain in writing from the assessee the details of all payments debited to the profit and loss account. Where an actual remittance to overseas has been made by the assessee during the relevant previous year without deducting any tax at source, the tax auditor may rely upon the legal opinion and/or certificates from chartered accountants based upon which remittances have been made without deduction of tax at source. The tax auditor may refer SA 620, *Using the work of an auditor's expert* issued by ICAI for reliance on certificates / legal opinion. In this connection the tax auditor is advised to refer the applicable Double Taxation Avoidance Agreement (DTAA). Where no remittances have been

made during the relevant year, the tax auditor may examine the relevant provisions vis-à-vis the agreement or correspondence in pursuant to which the liability is provided by the assessee in the books of account in order to determine whether any amount so provided is at all chargeable to tax under the Act. The tax auditor may use his professional judgement in these matters based upon decided cases and he may rely upon legal opinion obtained by the assessee where no tax is required to be deducted in respect of the amount so provided. In case he disagrees with the stand taken by the assessee, he should give both the views in his report.

34.4 Under clause 21(b)(i)(A), payments to non-residents on which tax is required to be deducted but not deducted in respect of interest, royalty, fees for technical services and other such chargeable amount under the Income-tax Act is required to be reported . The details for each individual payee has to be given under this clause.

34.5 Similarly, under clause 21(b)(i)(B), payments on which tax is deducted but is not deposited within the time prescribed during the previous year or in subsequent year have to be reported. Such details are also required to be given for each individual payee prescribed under Section 40(a)(i).

34.6 Under this sub-clause, the details of payment on which tax is not deducted at source and also the details of payment on which tax has been deducted but not paid during the previous year or in the subsequent year before the expiry of time prescribed u/s 139(1) are to be reported. It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

(a) Details of payment on which tax was not deducted:

Sr. No	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available
1	2	3	4	5	6

(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 u/s 139(1):

Sr. No.	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available	Amount of tax deducted
1	2	3	4	5	6	7

34.7 Under section 40(a)(ia), any payment of the expenses, specified therein on which tax is deductible under Chapter XVIIB and such tax has not been deducted or after deduction has not been paid on or before the date of filing of return specified under section 139(1), 30% of the expenditure is not eligible for deduction while computing income chargeable under the head "profits and gains of business or profession". Accordingly, such amount will be inadmissible and will be required to be disclosed under this clause. For this purpose, the tax auditor will be required to examine whether the provisions relating to tax deduction at source have been complied with in respect of payments specified under the clause. For this purpose, the tax auditor may examine the books of account and tax deduction returns/statements pertaining to these payments.

34.8 Where the auditee claims deduction under the second proviso to sub-section (ia), it is deemed that he has deducted and paid the tax and hence such sum on which tax is so deemed to be deducted and paid is not inadmissible, the tax auditor should verify compliance with the requirements of section 201. He should also obtain and keep in his record a copy of certificate in Form 26A as required by section 201 read with section 40(a)(ia).

34.9 Under clause 21(b)(ii)(A), any payments to residents on which tax is required to be deducted but not deducted under Chapter XVII-B of the Income-tax Act have to be reported. These details under this clause for each individual payee have to be reported.

34.10 Similarly, under clause 21(b)(ii)(B), the payments on which tax is deducted but is not deposited within the time prescribed during the previous year or in subsequent year have to be reported. Such details are also required to be given for each individual payee prescribed under section 40(a)(ia).

34.11 Tax auditor should also verify that the particulars given under this clause do not differ from the particulars given under clause 34 of Form no. 3CD to the extent applicable. Under this sub-clause, the details of payment on which tax is not deducted at source and also the details of payment on which tax have been deducted but not paid on or before the due date specified in section

139(1) are to be reported. The tax auditor should maintain the following data in his working papers for the purpose of reporting under this sub-clause:

(a) Details of payment on which tax was not deducted:

Sr. No	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available
1	2	3	4	5	6

(b) Details of payment on which tax has been deducted but has not been paid on or before the due date specified under section 139(1):

Sr. No.	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available	Amount of tax deducted	Amount out of (7) deposited, if any
1	2	3	4	5	6	7	8

34.12 The amount of wealth tax paid is not allowed as a deduction u/s. 40(a)(iia) and thus is required to be reported under clause 21(b)(iv). It is pertinent to note that Wealth-tax Act, 1957 is abolished w.e.f. 01.04.2016 vide the Finance Act, 2016.

34.13 Sub clause 40(a)(iib) provides that (a) any amount paid by way of a royalty, license fees, service fees, privilege fees, service charge or any other fees 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 is inadmissible expenditure. The explanation to this sub clause (iib) also defines a State Government undertaking. The Tax auditor should verify if any such payment has been made by State Government undertaking to the State Government and if so, the same has been reported under clause 21(b)(v).

34.14 The amount of salary which is paid outside India or to a non-resident in respect of which tax has not been deducted but which is required to be deducted under the applicable provisions of the Income-tax Act or tax has not

been paid after deduction, the same is not allowed as a deduction u/s. 40(a)(iii) and the same is required to be reported under clause 21(b)(vi). This information is required to be given for each individual payee. The date of payment has to be furnished along with the name and address of the payee. It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr No.	Date of payment	Amount of payment	Name of payee	PAN of the payee, if available	Address
1	2	3	4	5	6

34.15 Section 40(a)(iv) provides that any payment to a provident or other fund established for the benefit of employees of the assessee shall be disallowed, 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". The same has to be reported under item (vii) of this sub-clause.

34.16 Any tax paid by an employer on non-monetary perquisites is exempt in the hands of the employee as per section 10(10CC). Further, as per section 40(a)(v), the tax paid by the employer on non-monetary perquisites provided to employees shall not be deductible in computing profits and gains from business or profession. The amount of such tax paid by the employer has to be reported, in case it is debited to the profit and loss account under clause 21(b)(viii).

34.17 In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of clause (a) of section 40, the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should mention the same in his observation in Form No.3CA/Form No.3CB. In case of voluminous nature of the information, the tax

auditor can apply materiality principles, tests-checks and compliance tests for verifying the information required to be provided under this clause.

35. Clause 21(c)- Amount debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof

35.1 Under Clause 21(c) of Form No. 3CD, the amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof have to be reported. Section 40(b) deals with expenditure not allowable in case of a firm/LLP whereas section 40(ba) deals with expenses not allowable in case of an AOP or BOI.

35.2 Under e-filing utility, amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration, amount admissible, amount inadmissible under section 40(b)/40(ba) and remarks, if any have to be mentioned:

Particulars	Section	Amount debited to P & L A/C	Amount admissible	Amount inadmissible	Remarks
1	2	3	4	5	6

35.3 The word "inadmissible" implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prima facie inadmissibility of the deduction and verify if the same has been correctly quantified.

35.4 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.

35.5 The inadmissible remuneration, salary, bonus or commission under section 40(b) has to be determined on the basis of the provisions of sub-clause (v) thereof read with the limits laid down therein. Such limits are laid down as a percentage of book profits. Explanation 3 to section 40(b) provides that "book profits" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit. The inadmissible amount of salary, bonus, commission or remuneration is to be worked out after deducting interest allowable to partners as per the provisions of section 40(b). According to Explanation 4, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner. It is advisable for the auditor to obtain from the assessee a detailed working of the inadmissible remuneration, salary, bonus or commission under section 40(b). He has to verify the computation from the instrument or agreement or any other document evidencing partnership including any supplementary documents or other documents effecting changes which would affect the computation of the inadmissible amounts under section 40(b).

Upto A.Y.2024-25, the limits laid down under section 40(b) were as under:

(a) on the first Rs.3,00,000 of the book profit or in case of loss: Rs.1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more;

(b) on the balance of the book-profit: at the rate of 60%

From A.Y.2025-26 and onwards, the limits laid down under section 40(b) are as under:

(a) on the first Rs. 6,00,000 of the book profit or in case of loss: Rs.3,00,000 or at the rate of 90 per cent of the book-profit, whichever is more;

(b) on the balance of the book-profit: at the rate of 60%

It may be noted that the above limits are consequent to amendment by the Finance (No.2) Act, 2024 with effect from A.Y. 2025-26.

For example, if the partnership deed dated 1.4.2023 of a firm contains a clause authorizing payment of remuneration to its two partners who share profits and losses equally upto the permissible limits as per section 40(b)(v) of the Income-

tax Act, 1961, and the book profit of the firm for the A.Y.2024-25 and A.Y.2025-26 is Rs.70 lakhs and Rs.80 lakhs, respectively, then, the maximum remuneration which can be paid to the partners (which will be allowed as deduction in the hands of the firm) is as follows –

Particulars	A.Y.2024-25	Particulars	A.Y.2025-26
	Rs.		Rs.
Book profit	**70,00,000**	Book profit	**80,00,000**
Computation of partners remuneration		Computation of partners remuneration	
Upto book profit of Rs.3 lakh	2,70,000	Upto book profit of Rs.6 lakh	5,40,000
Balance book profit of Rs.67 lakh	40,20,000	Balance book profit of Rs.74 lakh	44,40,000
Maximum permissible remuneration to the partners which can be allowed as deduction in the hands of the firm	**42,90,000**	Maximum permissible remuneration to the partners which can be allowed as deduction in the hands of the firm	**49,80,000**

35.6 Under section 40(b)(iv), any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time will not be admissible as a deduction.

35.7 Section 40(ba) lays down that any interest or remuneration paid by an AOP to its member shall not be allowed as a deduction to the AOP. It may also be noted that in computing such disallowance:

(a) where interest is paid by AOP / BOI to a member who has also paid interest to AOP/ BOI, only net amount of interest, if any, shall be disallowed;

(b) where a member is in a representative capacity, the disallowance of net interest paid by AOP/BOI shall be the amount of net interest received by the member in a representative capacity or by the person who is so represented by the member;

(c) where a person who is a member in his individual capacity receives the interest for the benefit of or on behalf of any other person, then, interest so paid by AOP/ BOI shall not be disallowed;

35.8 In order to determine the amounts inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.

35.9 In working out the inadmissible amount, the tax auditor must have due regard to the Circular No. 739 dated 25.3.1996 issued by the CBDT reproduced in ***Appendix XV.***

35.10 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Nature of payments made to partner/member	Section 40(b)/ 40 (ba)	Amount debited to profit and loss account	Amount admissible u/s 40(b)/ 40(ba)	Amount inadmissible u/s 40(b)/ 40(ba) [difference between (d) and (e)	Remarks, if any
(a)	(b)	(c)	(d)	(e)	(f)	(g)

36. Clause 21(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 or Aadhaar

				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 or Aadhaar Number of the payee, if available

[Clause 21(d)]

36.1 Section 40A(3)/40A(3A) as of now provides that payment can be made by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through prescribed electronic modes [Rule 6ABBA] but clause 21(d) asks for particulars of all payments exceeding limit specified in section 40A(3) and 40A(3A) for all expenses whether for goods or services, which are deductible while computing income from business or profession made otherwise than by way of an account payee cheque/draft. The clause has not been amended in light of amendment to section 40A(3) and 40A(3A). The tax auditor may, however, take the provisions of section 40A(3) and 40A(3A) and Rule 6ABBA into account while verifying the reporting under this clause and giving his observations in Form No.3CA/Form No.3CB, wherever required. However, in such a case, clarificatory note may be placed in the Form No. 3CA/3CB.

36.2 (a) As per the provisions of sub-section (3) of section 40A where the assessee incurs any expenditure in respect of which 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 or use of electronic clearing system through a

bank account or through such other electronic mode as may be prescribed, exceeding rupees ten thousand, no deduction would be allowed in respect of such expenditure. In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- instead of Rs. 10,000/-.

(b) Further, as per the provisions of 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 any previous year the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed exceeding Rs. 10,000, 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/- in place of Rs. 10,000/-.

(c) Further, no disallowance would be made if the payment or aggregate of payments, exceeding Rs. 10,000 (Rs. 35000 in case of plying, hiring or leasing of goods carriage) is made to a person in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed in respect of cases and circumstances prescribed under Rule 6DD having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

Rule 6DD provides that the disallowance/ addition under sub-section (3) and (3A) of section 40A shall not be made in certain cases or circumstances. In very brief, these are enumerated below:

— Payment to specified entities engaged in banking and insurance activities,

- Payment to Government when required to be made in legal tender,
- Payments through banking channels with use of bill of exchange, book adjustment, transfers,
- Payments to specified growers, cultivators etc.,
- Payment to cottage industry,
- Payment in village not served by a bank to resident of such place,
- Payments of specified terminal benefits to employees up to Rs. 50,000/-,
- Payment to agent who is required to make payment in cash,
- Payment by authorised dealer for purchase of foreign currency etc.,

Auditors are advised to consider Rule 6DD and relative Circulars for complete details of above. Auditors will also need to verify that the conditions laid down for the mitigating circumstances are strictly complied with.

(d) Other electronic modes of payment referred to in section 40A(3) and section 40A(3A) have been prescribed in Rule 6ABBA. For the purpose of sub-sections (3) and (3A), the electronic modes are prescribed by Rule 6ABBA and such modes include:

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer); and

(h) BHIM (Bharat Interface for Money) Aadhaar Pay;

36.3 For the purpose of furnishing the above particulars, the tax auditor should obtain a list of all cash payments in respect of expenditure exceeding Rs. 10,000 (Rs.35000/- in case of plying, hiring or leasing goods carriages

w.e.f. 1.10.2009) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses (a) to (l) of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause. Audit tools are available to find out such payments expeditiously and accurately. These tools may be employed in case data is voluminous.

36.4 Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, it is, thus, desirable that the tax auditor should obtain suitable certificate 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 or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, as the case may be. Where the tax auditor has relied on the certificate of the assessee, the fact shall be reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB, as the case may be. The tax auditor, in his report may comment as suggested below while reporting under this sub-clause:

> "*It is not possible for me/us to verify whether the receipts/payments have been accepted/made otherwise than by an account payee cheque or an account payee bank draft, as necessary evidence is not in the possession of the assessee*".

36.5 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sl. No.	Nature and particulars of expenditure	Date of payment	Payment or aggregate payments made to a person in a day, otherwise than by an account	Total amount of expenditure	Name and Permanent Account number of the payee, if available	Remarks

			payee cheque drawn on a bank or account payee bank draft			
1	2	3	4	5	6	7

36.6 Wherever possible, individual items of inadmissible expenses may be given. However, where, in view of the large volume of transactions it is not possible to give individual items of inadmissible amounts, the tax auditor may furnish such details under broad heads of account.

36.7 Items of expenditure in respect of which specific exemption has been given under Clauses (a) to (l) of Rule 6DD are not required to be stated under this clause.

37. Clause 21(e) - provision for payment of gratuity not allowable under section 40A(7)

37.1 As per section 40A(7)(a), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

37.2 As per section 40A(7)(b), the deduction shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year The gratuity fund should be approved for the relevant previous year by the Commissioner of Income-tax. If the gratuity fund is not approved for the time being, the assessee would not be able to avail of deduction for any provision made for the payment of a sum by way of any contribution towards that gratuity fund.

37.3 The tax auditor should call for the order of the Principal Commissioner of Income-tax/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, rules and regulations governing such trust deed and PCIT/CIT Approval Order stipulations.

37.4 In case the provision made for payment of gratuity is not allowable under section 40A(7), the same is to be stated under this sub-clause.

38. Clause 21(f) - any sum paid by the assessee as an employer not allowable under section 40A(9)

38.1 Under section 40A(9), 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 registered under the Societies Registration Act, 1860, or other institutions (other than contributions to recognised provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund) is not allowable. The tax auditor should examine the details of payments which are not allowable under this section.

38.2 The tax auditor shall maintain detailed working papers documenting the factual nature of such expenses incurred and debited to the Profit and Loss for the previous year under consideration which are considered disallowable u/s 40A(9) of the Income-tax Act, 1961. The tax auditor should get the relevant content in working papers prepared for such disallowance duly confirmed by the assessee as a necessary safeguard.

38.3 If any such contribution is made by the assessee in a capacity other than that of an employer, then such contribution is not to be considered as disallowable u/s 40A(9) of the Income-tax Act, 1961. Thus, the tax auditor should carefully examine the capacity of assessee while making such contribution before reaching any conclusion for allowing or disallowing such contribution.

38.4 It may be noted that section 40A(9) 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. Thus, any contribution made to Employees' Welfare Co-op Society will not be allowed as a deduction in the case of the employer company under section 40A(9), unless such contribution is required by or under any other law for the time being in force. *Instruction: No. 1799, dated 3-10-1988.*

39. Clause 21(g) - particulars of any liability of a contingent nature

39.1 The assessee is required to furnish only particulars of any contingent liability debited to the profit and loss account.

39.2 The tax auditor, for verifying the details of contingent liability debited to the profit and loss account, may conduct a detailed scrutiny of various account heads e.g. outstanding liabilities, provision etc., if required. Accounting policy followed and disclosed would be helpful in ascertaining and verifying details. The tax auditor may also verify reporting under CARO and disclosure in the Notes on accounts. The expenses relating to disputed claims will be revealed only on the basis of the scrutiny of records relating to contingent liabilities. The tax auditor may look into particular items of contingent liabilities of the earlier year in order to determine whether or not any items have been charged to the profit and loss account of the current year and if so, whether the liability continues to be contingent in nature. Wherever necessary, a suitable note should be given by the tax auditor as to the non-availability of such particulars relating to the contingent liabilities.

39.3 Reference may be made to AS-29, 'Provisions, Contingent Liabilities and Contingent Assets'/ Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets, to determine what should normally be treated as a contingent liability. Contingent Liability is defined in Income Computation and Disclosure Standards (ICDS) to mean a possible obligation (as opposed to 'present obligation') existence of which will be confirmed only on occurrence or non-occurrence of an event beyond the control of the assessee.

39.4 Under this clause, only contingent liabilities which are debited to the Statement of Profit and Loss/Profit and Loss account of the previous year under consideration have to be reported and not value of contingent liabilities reported in the notes to the accounts forming part of the audited financial statements of the corporates. The tax auditor should verify whether only the contingent liabilities debited to the Statement of Profit and Loss/Profit and Loss account have been reported in this clause and not the contingent liabilities shown in the Notes to the accounts.

39.5 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Nature of liability	Amount	Remarks
1	2	3

40. Clause 21(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

40.1 For the purposes of computing the total income under Chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It is clarified that Section 14A will apply notwithstanding anything to the contrary contained in this Act and irrespective of the income not forming part of the total income having not accrued, arisen or received during the particular previous year.

40.2 As per sub-section (2), the Assessing Officer shall determine the amount of expenditure incurred in relation to such income, which does not form part of the total income under the Act. Such determination should be in accordance with the method as may be prescribed. Such power of the Assessing Officer can be exercised only when he, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee.

40.3 Sub-section (3) provides that the provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

40.4 Explanation to section 14A clarifies that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.

40.5 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. Such income is dealt with in Chapter III - Incomes Which Do Not Form Part Of Total Income. Section 10 deals with Incomes not included in total income. Sections 10A to 10C deals with the special provisions in respect of the specified undertakings. In general, an assessee may have besides his business income, income from agriculture which is exempt under sub-section (1), share of profit in a partnership firm which is exempt under sub-section (2A) etc. In all such cases, the expenditure relating to the income which is not included in total income is inadmissible under section 14A. In case of an investment in a partnership firm, while the interest and the salary received by the partner are taxable, the share of profit is exempt. The amount of

inadmissible expenditure depends on the facts and circumstances of each case. The disallowance relates to expenditure incurred in relation to income which does not form part of the total income. Hence, the disallowance does not apply to income which is forming part of gross total income and thereafter deductions under Chapter VIA are claimed.

40.6 Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income. Sub-rule (1) of Rule 8D provides that having regard to the accounts of the assessee of a previous year, if 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, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of such inadmissible expenditure in accordance with the method of computation laid down in sub-rule (2) of Rule 8D.

40.7 Sub-rule (2) of Rule 8D provides for the method of computation of the expenditure in relation to income not forming part of the total income. The disallowance shall be the aggregate of the following:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income

provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.

40.8 The method prescribed under sub-rule (2) of Rule 8D is applicable when 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. Normally this situation would arise at the time of assessment i.e. after the tax audit has been completed and the return has been filed. Therefore, at the time of tax audit, the tax auditor will have to verify the amount of inadmissible expenditure as determined by the assessee. The method under sub-rule (2) of Rule 8D is to be adopted by the Assessing Officer when he is not satisfied with the amount as determined by the assessee. Rule 8D does not mandate that the assessee should necessarily compute the disallowance as per the method prescribed under sub-rule (2).

Therefore, the assessee may or may not adopt the same considering facts and circumstances of his case.

40.9 It is primarily the responsibility of the assessee to furnish the details of amount of deduction inadmissible in terms of section 14A i.e. in respect of the expenditure incurred in relation to income, which does not form part of the total income. The tax auditor shall examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination, the tax auditor is entitled to rely on the management representation. Standard on Auditing (SA) 580, "*Written representations"* may be referred to.

40.10 The tax auditor has to verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income 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. This requires proper estimates to be made by the assessee. The tax auditor is required to audit such estimates. Attention is invited to Standard on Auditing - 540 "Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures".

40.11 An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Even in such a case, the provisions of section 14A will apply. Accordingly, the tax auditor is required to verify such contention of the assessee.

40.12 It is explained that notwithstanding anything to the contrary contained in this Act, the provisions of section 14A shall apply and shall be deemed to have always applied in a case where the income not forming part of the total income under this Act has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.

40.13 The broad principles as enunciated in aforesaid paras may be kept in mind while verifying the amount of inadmissible expenditure. After verifying the amount of inadmissible expenditure, if the tax auditor:

(a) is in agreement with the assessee, he should report the amount with suitable disclosures of material assumptions, if any.

(b) is not in agreement with the assessee with regard to the amount of expenditure determined, the tax auditor may give,

A qualified opinion:

A qualified opinion can be given when the auditor is of the opinion that the effect of any disagreement with the assessee is material but not pervasive as to require an adverse opinion or limitation on scope to require a disclaimer of opinion.

An adverse opinion:

The auditor, in rare circumstances, may come across a situation where the impact of his disagreement about the computation of such inadmissible expenditure is so material and pervasive that it affects the overall opinion. In such a case the tax auditor may give an adverse opinion.

The disclaimer of opinion:

When the assessee has neither provided the basis nor the supporting documents, for the claim of such inadmissible expenditure, then due to limitation on the scope of auditors work, and the auditor concludes that the possible effects of such disagreement could be both material and pervasive, the auditor can give disclaimer of opinion.

41. Clause 21(i)- amount inadmissible under the proviso to section 36(1)(iii).

41.1 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 in computing the income referred to in section 28 of the Act.

41.2 The proviso thereunder provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of 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, shall not be allowed as a deduction. Interest as defined under section 2(28A) means interest payable in any manner in respect of any

moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

41.3 The requirements of sub-clause 21(i) are applicable in respect of capital borrowed for acquisition of an asset. The assessee has to furnish the details of amount inadmissible under the proviso to section 36(1)(iii). The tax auditor has to verify the correctness of the particulars furnished by the assessee with the documentary evidence in accordance with the relevant auditing standards and other issuances of the ICAI from time to time.

41.4 The tax auditor while determining the admissible/inadmissible amount under section 36(1)(iii) should also keep in mind the requirements of ICDS IX relating to Borrowing Cost.

41.5 The Explanation to this proviso provides that recurring subscription paid periodically by shareholders or subscribers in Mutual Benefit Society which fulfills such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of section 36(1)(iii). This Explanation becomes applicable only where the computation of the income of such mutual benefit society is to be made under section 28 read with section 44A.

42. (i) Amount of Interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act); or

(ii) Total amount required to be paid to a micro or small enterprise, as referred to in section 15 of the MSMED Act, during the previous year;

(iii) Of amount referred to in (ii) above, amount –

(a) paid up to time given under section 15 of the MSMED Act;

(b) not paid up to time given under section 15 of the MSMED Act and inadmissible for the previous year."

[Clause 22]

42.1 Background

(i) After the publication of the Revised 2023 edition of this Guidance Note, Clause 22 of Form 3CD was amended vide CBDT Notification no. 34/2024 dated 19.3.2024 whereby the reporting requirement under the clause was as follows (the portion in bold is the amendment in the clause):

22. Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 ***or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961.***

(ii) Accordingly, the reporting was applicable for the A.Y. 2024-25. This change was made consequent to the insertion of Clause (h) in Section 43B of the Income-tax Act 1961 vide the Finance Act, 2023 w.e.f. 1.4.2024.

(iii) Clause (h), which was inserted in section 43B of the Income-tax Act, 1961 w.e.f. 1-4-2024, reads as follows:

"43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(g) …….

(h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section ***except the provisions of clause (h)*** *shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.*

Clause (*e*) and Clause (*g*) of *Explanation 4* to section 43B has been substituted with the following by the Finance Act, 2023, w.e.f. 1-4-2024:

Explanation 4:

(e) "micro enterprise" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);

(f)……

(g) "small enterprise" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)."

(iv) An Implementation Guide on Revision in Form No 3CD and Form No 3CEB in March 2024 was released by the Institute in June 2024 to provide guidance to members on reporting under the revised clause 22 applicable for A.Y.2024-25.

(v) Clause 22 has now been further amended w.e.f. 1.4.2025 vide Notification No. 23/2025 dated 28.03.2025 and at present contains three sub-clauses (i), ii) and (iii). This Guidance Note contains the guidance in respect of clause 22 of Form 3CD as applicable for A.Y 2025-26 and onwards.

42.2 The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) is an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. It extends certain benefits to such enterprises, particularly to micro and small enterprises by facilitating timely payment for the supplies made or services rendered by them, and where the payments are delayed, interest for such delayed payments. It also serves as a deterrent to entities dealing with such enterprises which violate the provisions of this Act by prescribing certain disincentives. Failure to make payments to micro or small enterprises within the specified time limit under the MSMED Act attracts disallowance under clause (h) of Section 43B of the Income-tax Act, 1961 w.e.f. A.Y.2024-25.

42.3 Clause 22 of Form No. 3CD deals with the reporting of certain transactions with entities covered under MSMED Act, 2006. For verifying the reporting under the clause, the tax auditor must consider the relevant

provisions and definitions under MSMED Act and the Income-tax Act, 1961 and should refer to the relevant notifications issued under both the statutes.

42.4 Clause 22 has two limbs – under the first limb, covering sub-clause (i), the amount of interest inadmissible under section 23 of the MSMED Act needs to be stated. Under the second limb covering remaining two sub-clauses, under sub-clause (ii) the total amount required to be paid to a micro or small enterprise, as referred to in section 15 of the MSMED Act during the previous year needs to be stated. Sub-clause (iii) begins with "Of the amount referred to in (ii) above", indicating that the amount to be reported in (a) and (b) of sub-clause (iii) are out of the amount referred to in (ii) above. In sub-clause (iii) under (a), the amount paid up to the time given under section 15 of the MSMED Act, and under (b) the amount not paid up to time given under section 15 of the MSMED Act and inadmissible for the previous year needs to be stated. Thus, the amount to be reported under (b) is the payment which satisfies the dual conditions, namely, paid beyond the time given under section 15 of the MSMED Act and inadmissible for the previous year.

42.5 The provisions of the MSMED Act contained in section 15 and section 16 relate to Micro and Small Enterprises. The meaning of the terms "Micro Enterprise" and "Small Enterprise" have to be understood from the relevant provisions of the MSMED Act 2006. While the definitions provided under the MSMED Act has prescribed investment criteria separately for manufacturing enterprises and enterprises rendering services, the Central Government vide MSME notification no. S.O. 2119(E) dated 26-6-2020 has prescribed a composite criterion of "investment in plant and machinery or equipment" and "annual turnover" which applies both to manufacturing enterprises and enterprises rendering services. These revised criteria were made applicable w.e.f. 1.7.2020 and accordingly, apply to reporting under clause 22 for A.Y. 2024-25 and A.Y.2025-26.

The investments and turnover limits have been further revised with effect from 1-4-2025 vide MSME notification S.O. 1364(E) dated 21.03.2025. These revised criteria are relevant for reporting for A.Y. 2026-27 and onwards. The following table provides an overview of the criteria applicable for classification of micro, small and medium enterprises:

Criterion	Applicable Period	Micro Enterprise	Small Enterprise	Medium Enterprise
		Rs.	**Rs.**	**Rs.**
Investment in Plant and Machinery or Equipment does not exceed	1.7.2020 to 31.3.2025 **(relevant upto A.Y.2025-26)**	1 crore	10 crore	50 crore
	w.e.f. 1.4.2025 **(relevant from A.Y.2026-27)**	2.50 crore	25 crore	125 crore
Annual Turnover does not exceed	1.7.2020 to 31.3.2025 (**relevant upto A.Y.2025-26)**	5 crore	50 crore	250 crore
	w.e.f. 1.4.2025 **(relevant from A.Y.2026-27)**	10 crore	100 crore	500 crore

Copy of MSME notification no. SO. 2119(E) dated 26.6.2020 and MSME notification no. S.O. 1364(E) dated 21.03.2025 are given as ***Appendix XVII***

42.6 Although registration is not mandatory for either a micro or a small enterprise, in order to avail benefits under the MSMED Act, such an enterprise needs to get itself registered by filing a memorandum with the prescribed authority. Section 15 provides for benefit of timely payments, and Section 16 which provides for payment of interest on delayed payments, both apply to payments made by a buyer to a "supplier". A supplier, by definition (under section 2(n)), needs to be registered under MSMED Act.

42.7 To classify an enterprise as micro or small, the status on the Udyam Registration Certificate should be relied upon. The Udyam Registration Certificate also specifies the activity type for which the registration has been granted.

42.8 The following provisions of the MSMED Act are important in this regard:

Section 15: Liability of buyer to make payment.

Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day;

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16: Date from which and rate at which interest is payable.

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, 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 23: Interest not to be allowed as deduction from income.

Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 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 24: Overriding effect.

The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Relevant Definitions:

Section of the MSMED Act, 2006	Term	Definition
2(d)	Buyer	Whoever buys any goods or receives any services from a supplier for consideration.

2(n)	Supplier	A micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,-- (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;
2(e)	Enterprise	An industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services.
2(b)	Appointed Day	'Appointed day' means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier *Explanation* – For the purposes of this clause – (i) "the day of acceptance" means-- (a) the day of the actual delivery of goods or the rendering of services; or (b) where any objection is made in writing by the buyer regarding acceptance of goods or

		services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier. ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

42.9 The tax auditor should take note of the definition and scope of the term "enterprise" as per MSMED Act. Traders are neither manufacturers or producers of goods, nor service providers, and hence are not covered under the definition of that term. Traders are allowed to be registered with MSME only for a limited purpose of Priority Sector Lending and not for any other benefit. Accordingly, if the supplier to the auditee is a retail or wholesale trader, the provisions of section 43B(h) of the Income-tax Act, 1961 would not be attracted.

In this regard, Office Memo dated 1st September 2021 of Ministry of MSME has categorically stated that the benefits to the retail and wholesale trade MSMEs are to be restricted to priority sector lending only; and any other benefits, including provisions of delayed payments as per the MSMED Act, 2006, are excluded. In effect, such retail or wholesale traders are eligible for registration under MSMED Act, 2006 for the limited purpose only. Accordingly, if the supplier is a retail or wholesale trader, the provisions of section 15 and 16 of the MSMED Act would **not** be attracted.

Copy of the Office Memo dated 2nd July 2021 as well as 1st September, 2021 are given as ***Appendix XVIII and XIX*** may be referred to in this regard.

42.10 Section 23 of the MSMED Act lays down that the amount of interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of the computation of income under the Income-tax Act,1961, be allowed as a deduction. This provision starts with a non-obstante clause and thus, overrides the provisions of the Income-tax Act 1961. Section 24 of the MSMED Act grants such overriding powers to the provisions of sections 15 to 23 of the MSMED Act.

42.11 The inadmissible interest to be reported under sub-clause (i) has to be determined on the basis of the provisions of the MSMED Act. Section 16 of the MSMED Act provides for the date from which, and the rate at which the interest is payable. Accordingly, where a buyer fails to make payment for the goods supplied or service rendered by any supplier within the period specified under section 15, he shall be liable to pay interest for such delay in payment. The payment of interest is mandatory and shall be made notwithstanding anything contained in any agreement between the buyer and the supplier or any law for the time being in force. The interest shall be computed on a compounded basis with monthly rests at three times of the bank rate notified by the Reserve Bank. It shall be payable from the appointed day (if there is no written agreement regarding due date of payment) or from the date immediately following the date agreed upon.

42.12 Section 15 of the MSMED Act, requires 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.

42.13 To determine whether there is a delay beyond 15 days or 45 days (or the agreed period not exceeding 45 days), as the case may be, and also regarding the day of acceptance, the tax auditor should verify the necessary communications with the suppliers.

42.14 A proper understanding of the specified time limit laid down in Section 15 is required for verifying the correct reporting under clause 22.

(a) **Where the agreement is in writing**: The buyer and supplier may agree in writing for any day for making payment. However, the proviso to section 15 of MSMED Act provides that for the purpose of section 15, the period agreed upon between the buyers and suppliers should not exceed 45 days from the day of acceptance or the day of deemed acceptance. This means that if the agreed upon period is 5 days or 15 days or 30 days or any other number of days (not exceeding 45 days), the payment should be made on or before such agreed upon period of 05 or 15 or 30 or such other number of days (not exceeding 45 days). Agreed period means period agreed in writing. However, if the agreed period is more than 45 days, say 60 days or 90 days, then, the same has to be restricted to 45 days for the purpose of MSMED Act and the buyer needs to pay within 45 days.

The outstanding as on 31st March due to the Micro or small enterprise will not be disallowed under section 43B(h), if the said amount is duly paid before the agreed period in writing or 45 days, whichever is earlier.

In other words, the amount remaining outstanding as on 31st March of the financial year but payment whereof has duly been made in the next financial year but within the time limit [agreed period or 45 days, whichever is earlier) will not attract disallowance under section 43B(h)].

Some examples for applicability of Section 43B(h) in different cases

Sl. No.	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Due date of payment as per Section 15 of MSMED Act	Actual Date of Payment	Status in terms of Section 43B(h)
1	20th March 2025	19th April 2025	19th April 2025	19th April 2025	Allowed in A.Y. 2025-26
2	20th March 2025	19th April 2025	19th April 2025	10th May 2025	Disallowed in A.Y.2025-26; Allowed in A.Y. 2026-27
3	20th March 2025	19th April 2025	19th April 2025	10th June 2026	Disallowed in A.Y. 2025-26; Allowed in A.Y. 2027-28
4	20th March 2025	20th June 2025	04th May 2025	02nd May 2025	Allowed in A.Y. 2025-26
5	20th March 2024	20th June 2025	04th May 2025	08th May 2025	Disallowed in A.Y.2025-26; Allowed in A.Y. 2026-27

(b) **Where there is no agreement in writing**: In such a case, the payment needs to be made before the Appointed Day; Appointed Day means the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Thus, in cases where there is no agreement in writing, the maximum period of 45 days will not hold

good and the payment will have to be made before the Appointed Day for the purpose of section 15 of MSMED Act, 2006.

The outstanding as on 31st March due to the Micro or small enterprise will not be disallowed under section 43B(h) if the said amount is duly paid before the Appointed Day (i.e. the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance), if there is no such agreement in writing.

In other words, the amount remaining outstanding as on 31st March of the financial year but payment whereof has duly been made in the next financial year but within the time limit of 15 days will not attract disallowance under section 43B(h).

Some examples for applicability of Section 43B(h) in different cases

Sl. No	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Appointed Day	Due date of payment as per Section 15 of MSMED Act	Actual Date of Payment	Status in terms of Section 43B(h)
1	20th March, 2025	N.A.	5th April, 2025	04th April, 2025	29th March, 2025	Allowed in A.Y.2025-26
2	20th March, 2025	N.A.	5th April, 2025	04th April, 2025	04th April, 2025	Allowed in A.Y.2025-26
3	20th March, 2025	N.A.	5th April, 2025	04th April, 2025	10th April, 2025	Disallowed in A.Y.2025-26; Allowed in A.Y. 2026-27

Note - The date of acceptance means the day of actual delivery of goods or the rendering of services. However, where any objection is made in writing by the buyer regarding the acceptance of goods or services within 15 days from the day of delivery of goods or rendering of services, the date of acceptance would mean the day on which such objection is removed by the supplier. In such a case, appointed day

would mean the day following immediately after the expiry of the period of 15 days of the day on which the objection is removed by the supplier.

42.15 Section 22 of the MSMED Act provides that where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:-

(i) The principal amount and interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) The amount of interest paid by the buyer in terms of Section 16, along with the amount of payment made to supplier beyond the appointed date during each accounting year;

(iii) The amount of interest due and payable for the delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) The amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

42.16 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 under section 22 of the MSMED Act. This is so even if the assessee is following cash basis of accounting. While section 43B(h) is not applicable if assessee follows cash basis of accounting, the disclosures required by section 22 of MSMED Act in audited accounts are applicable irrespective of whether assessee follows cash basis of accounting or mercantile basis of accounting. If no disclosure is made by the auditee in the financial statements, he should give an appropriate observation in Form No. 3CB, in addition to verifying compliance with the reporting requirement in clause 22 of Form No. 3CD.

42.17 As per Ministry of Corporate Affairs (MCA) Notification S.O. 2751(E) dated 15.7.2024, only those specified companies which are having payments pending to any micro or small enterprises for more than 45 days from the date of acceptance or the date of deemed acceptance of the goods or services under section 9 of the MSMED Act are required furnish the information in MSME Form-1.

Such companies are required to furnish half-yearly return MSME-1 for amounts due to MSMEs and the break-up of the payments made within 45 days of acceptance/deemed acceptance and beyond and also a break-up of outstandings which are within and beyond the 45 days time limit

42.18 Further, as per notification S.O. 1376(E). dated 25.3.2025 of the Ministry of Micro, Small and Medium Enterprises, in exercise of powers conferred by section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 and read with section 15 of the said Act, the Central Government has directed that all companies which get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the said Act, to submit a half yearly return to the MCA stating the following:

(a) the amounts of payments due; and

(b) the reasons of the delay.

42.19 Form MSME-1 filed with MCA may be obtained as audit evidence to verify pending payments.

Reporting under Clause 22(i)

42.20 The tax auditor while verifying the reporting in clause 22(i) should take the following steps:

(a) 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 MSMED Act. It is the responsibility of the auditee to correctly classify and identify suppliers who are covered under that Act.

(b) In respect of payments made to such suppliers, obtain a list of all instances where there was delay in payment beyond the time limit specified under Section 15 of the MSMED Act, the interest payable for such delay and the interest actually paid.

(c) Review the list so obtained and verify the accuracy thereof on test check basis including the calculation of interest. Also, cross check the disclosure made in the financial statements in terms of Section 22 of the MSMED Act with the list so obtained. In case of company auditees, reference may also be made to half-yearly Form MSME-1, if any, furnished by such companies to the ROC.

(d) Verify from the books of account and Financial Statements whether any interest payable or paid to supplier(s) in terms of section 16 of the

MSMED Act has been provided for in the books of account or has been debited to the Profit & Loss Account.

(e) Verify that only interest paid or payable in terms of Section 16 of the MSMED Act which has been debited to the Profit & Loss account is reported under clause 22(i). Such interest is not allowable as deduction for the purposes of computation of income under the Income-tax Act, 1961 in terms of Section 23 of the MSMED Act.

42.21 A question may come up as to what the disallowance would be in a case where the auditee is liable to pay interest under MSMED Act, but has not provided for the same in his books. Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSMED Act, then no amount is inadmissible in terms of section 23 of MSMED Act and the amount to be reported under Clause 22 would be NIL.

42.22 However, where the auditee has adopted mercantile system of accounting, non-provision of interest liability may affect the true and fair view of financial statements, and the tax auditor should give suitable qualification/observation in Form 3CB.

Reporting under Clauses 22(ii) and (iii)

42.23 Sub-clause (ii) of Clause 22 requires reporting of amounts which are payable under the MSMED Act to Micro and Small Enterprises during the year. Sub-clause (iii) of Clause 22 requires reporting of (a) amount paid upto the time given under section 15 of the MSMED Act, 2006; and (b) amount not paid upto time given under section 15 of the MSMED Act and inadmissible for the previous year. In the revised clause (iii)(b) applicable from 1.4.2025, reference to clause (h) of Section 43B has been replaced by the phrase "inadmissible for the previous year" with reference to Section 15 of MSMED Act. It is presumed that the clause seeks to cover only such payments which are covered under clause (h) of Section 43B.

42.24 The provisions of section 43B(h) are applicable only in respect of sum payable by the assessee to a micro or a small enterprise, and not to a medium enterprise. The second limb of Clause 22 now specifically seeks reporting in relation only to micro and small enterprises.

42.25 Section 43B(h) is applicable only in respect of 'a deduction otherwise allowable under this Act'. Thus, amounts which are otherwise inadmissible or which have not been claimed in the Profit & Loss will not be covered under Section 43B(h). For e.g. –

- amount due towards unpaid interest covered by Clause 22(i) which is inadmissible by virtue section 23 of the MSMED Act;
- payment to a supplier in violation to section 40A(3) which attracts disallowance under that provision;
- dues towards capital goods which are not expensed but are capitalised;
- Dues related to a period earlier than the Previous Year, etc.

42.26 The inadmissibility under section 43B(h) applies to only such sums payable by the assessee to a micro or small enterprise which are unpaid on the last date of the previous year, and are paid beyond the time limit specified under section 15 of MSMED Act. Under clause 22, full disclosure is required to be made as required in sub-clauses (ii) and (iii). Accordingly –

(a) Reporting under Clause 22(ii) should include the amount required to be paid to Micro and Small Enterprises during the previous year (including amounts which are not claimed as a deduction in the Profit and Loss Account) irrespective of whether they have been paid during the year and whether or not they are outstanding on the Balance Sheet date. Reporting under this sub-clause should also include amounts which have accrued during the year but are not due for payment as on 31st March.

Thus, under 22(ii) which requires reporting of "**total amount required to be paid to a micro or small enterprise, as referred to in section 15 of the MSMED Act, during the previous year", the total amount required to be paid during the year needs to be stated even if the said amount has been actually paid during the year.**

(b) **Under** Clause **22(iii) –**

(a) **Under (a), all payments out of that included under 22(ii), which have been settled within the time limit laid down in Section 15 of MSMED Act need to be stated.**

(b) Under (b), only such amounts which will attract disallowance under Section 43B(h) should be reported. This will include only amounts which –

(i) have been claimed as a deduction during the year excluding sums specified in Para 42.25;

(ii) are outstanding on the last date of the previous year; and

(iii) have not been paid within the time limit specified in Section 15 of the MSMED Act

42.27 While verifying the amounts reported under this clause, the tax auditor should note that the benefit available under the first proviso to section 43B for payments made upto the due date of filing the return is not available for payments covered under clause (h). Hence, any payment beyond the time limit specified u/s 15 of MSMED Act (and which has not been paid during the previous year) will be inadmissible.

42.28 The responsibility of properly identifying micro and small enterprises and making a correct claim for deduction is on the auditee, hence, the auditee should take appropriate steps to ensure that the classification made by him, and the claim of deduction is correct. The tax auditor is responsible for verifying whether the steps taken by the auditee to ensure proper classification are adequate and whether the claim of deduction is as per law. He is also required to verify if the amount which is inadmissible has been correctly arrived at.

42.29 It is recommended that the tax auditor should obtain the relevant particulars in the formats given below and should verify the details and retain the same as part of his working papers. He should also cross verify the details with the disclosures given in the Financial Statements in terms of Section 22 of the MSMED Act. In case of company auditees, reference should also be made to half-yearly Form MSME-1, if any, furnished by such companies to the ROC.

(a) Full list of entities covered under trade payables and current liabilities containing the following details:

Sl. No.	Name of Supplier	Whether Registered under MSMED Act	Udyam Regn Number	Category (Micro/ Small)	Major Activity (Manufacture/ Service/ Trading etc)	Date of Regn. under MSMED Act	Amount Due to the supplier on Last Day of Previous Year	Amount Claimed as allowable expense for the Previous Year	Amount which is not allowable as expense for the Previous Year	Remarks

(b) In respect of all Micro and Small Enterprise covered u/s 15 of MSMED Act, the following details may be obtained:

Sl. No.	Name of Micro/	Total Purchase of Goods/	Of this amount, paid	Amount Not Paid	Interest not allowable

	Small Supplier	Services during the year	within due date u/s 15 of MSMED Act	within the Specified Time Limit	as deduction

(c) In respect of the amounts payable to a Micro and Small Enterprise outstanding on the Balance Sheet date which are claimed as allowable deduction for the Previous Year, the following further details may be obtained:

Sl. No.	Name of Micro/ Small Supplier	Bill No	Amount	Date of Acceptance/ Deemed Acceptance	Is there any Written Agreement regarding due date of payment*	Due Date in case of Written Agreement**	In case where there is no written agreement, Appointed Day	Date of Actual Payment	Mode of Payment	Remarks

**Terms of payments on invoice/purchase order might constitute a written agreement.*

*** The written agreement may provide for a payment due date which is lower than Appointed Day.*

42.30 The word "or" at the end of sub-clause (i) of Clause 22 in the notified form 3CD should be read as "and" since the reporting under sub-clause (i) and those under sub-clauses (ii) and (iii) are not alternative but are concurrent.

42.31 The amount inadmissible as per sub-clause (iii) for a financial year would become the opening balance/part of the opening balance in the subsequent financial year for purpose of reporting in clause 26(A), i.e. any sum referred to in section 43B(h) which pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year.

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

[Clause 23]

43.1 Section 40A(2)(b) covers the following persons:

(i) where the assessee is an individual - any relative of the assessee; as defined u/s 2(41) of the Income-tax Act 1961;

(ii) where the assessee is a company, firm, association of persons or Hindu un-divided family - any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member or any other company carrying on business or profession in which the first mentioned company has substantial interest;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession

(A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation to Section 40A(2)(b) - For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,

(a) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(b) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

43.2 The section enjoins on the Assessing Officer the power to fix the quantum of disallowance. Under this clause, the particulars of payments stated to be made to persons covered under section 40A(2)(b) should be examined. The following steps may be taken by the tax auditor in this connection:

(a) Obtain full list of specified persons as contemplated in this section. Information furnished by the assessee about specified persons should be cross verified from other data available with the assessee e.g. members register, list of directors, register of concerns in which directors are interested in case of companies or list of members, directors, trustees in case of cooperative societies, trusts etc.

(b) Obtain details of payments made to the specified persons.

(c) Scrutinise all items of payments to the above persons.

(d) It may be difficult to locate all such payments and it may also involve a time consuming effort. It is, however, possible to localise the area of enquiry by ascertaining the following:

(i) Call for all contracts or agreements entered into by the assessee and list out the contracts or agreements entered into with the specified persons and segregate the items of payments made to them under these agreements.

(ii) In case of payments for purchases and expenses on credit basis, the appropriate ledger accounts can be scrutinised to identify the dealings with the specified persons.

(iii) In case of cash purchases and expenses, the purchase or expense account should be scrutinised. It may be difficult to identify such payments in each and every case where the volume of transactions is rather huge and voluminous. Therefore, it may be necessary to restrict the scrutiny only to such payments in excess of certain monetary limits depending upon the size of the concern and the volume of business of the assessee.

(iv) In case of a large company, it may not be possible to verify the list of all persons covered by this section and, therefore, the information supplied by the assessee can be relied upon. In this context, a reference may be made to Circular No. 143 dated 20.8.1974, issued by the Board, in which it is clarified that a tax auditor can rely upon the list of persons covered under Section 13(3) as given by the managing trustee of a Public Trust. 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.

(v) The tax auditor may refer to the details given in the annual accounts for related party transactions as per AS-18, if available, for examining the particulars reported in this clause. The tax auditor while using the information as referred above should consider the difference in the definitions of 'related party' as per AS-18 and 'persons specified' in section 40A(2)(b) of the Act.

43.3 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Name of the related person	PAN of related person	Aadhaar Number of the related person, if available	Relation	Date	Nature of transaction	Payment made (Amount)
1	2	3	4	5	6	7

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

[Clause 24]

44.1 Section 32AC allowed deduction @ 15% in respect of Investment in new Plant & Machinery to a company who is engaged in the business of manufacture or production of any article or thing, etc. and who acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April,2015 and the aggregate actual cost of such new assets exceeds one hundred crore rupees. The tax auditor is required to verify the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (2) of section 32AC. Only because section 32AC(2) provides for chargeability of deemed income under the head "Profit and gains from business or profession" in addition to taxability of capital gains, any capital gains/losses arising on transfer on the said asset is not required to be reported. The tax auditor will be required to verify the compliance to the conditions of the provisions of section 32AC. No deduction under section 32AC(1A) shall be allowed for any AY commencing on or after 01.04.2018.

44.2 Section 32AD allowed deduction for investment in new plant or machinery in notified backward areas in States of Andhra Pradesh or Bihar or Telangana or West Bengal in case an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on 01.04.2015 and ending before 01.04.2020 in the notified backward area. Deduction allowed was of a sum equal to 15% of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed. The deemed income chargeable as profits and gains of business under the circumstances specified in sub-section (2) of section 32AD has to be reported in this clause.

44.3 Section 33AB allowed deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account. The auditor is required to verify the amount reported as deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (4), (5), (7) and (8) of section 33AB.

44.4 Section 33ABA allowed deduction in respect of Site Restoration Fund. The auditor is required to verify the amount reported as the deemed income

chargeable as profits and gains of business under the circumstances specified in sub sections (5), (7) and (8) of section 33ABA. Where deduction has been claimed with respect to interest credited in Special Account or the Site Restoration Account, utilization of withdrawal thereof for purposes other than those specified shall be deemed to be income from business.

44.5 Likewise, section 33AC allowed deduction in respect of reserve created out of the profit of the assessee engaged in shipping business to be utilized in accordance with the provision of sub section (2) of section 33AC. 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 has to be reported. Clause 24 requires disclosure of amounts deemed to be profits and gains under section 32AC, or 32AD, or 33AB, or 33ABA or 33AC.

44.6 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Section	Description	Amount	Remarks
1	2	3	4

Remarks column can mention reference of the transaction(s) resulting into income.

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

[Clause 25]

45.1 (i) Section 41(1) provides that where any allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee obtains any amount, whether in cash or in any other manner whatsoever, in respect of such loss or expenditure or some benefits in respect of trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him is chargeable to tax as business income. In respect of loss, expenditure or trading liability incurred by the assessee, if no allowance or deduction has been made, then provisions of section 41 are inapplicable.

(ii) Where the assessee who has suffered loss or has incurred expenditure for which deduction has been allowed or by whom the trading liability has been incurred is succeeded in his business either because of amalgamation of companies or demerger or on account of the constitution of new firm or the business if continued by some other person when the assessee ceases to carry on the business, then the successor in the business will be chargeable to tax on any amount received in respect of such loss, expenditure or trading liability.

(iii) *Explanation* (1) to section 41(1) provides that the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cession thereof" shall include the remission or cession of any liability by the creditor by a unilateral act of the assessee or successor in the business by way of writing off such liability in his accounts.

(iv)(a) Liability of assessee does not cease merely because liability has become barred by limitation. Liability ceases when it has become barred by limitation and the assessee has unequivocally expressed its intention not to honour the liability, when demanded. This is a question of fact whether or not assessee has expressed unequivocally his intentions {*CIT v Chase Bright Steel Ltd 177 ITR 128 (Bom)}*. When a liability is shown outstanding for more than 4 years, in case of an assessee company, this amounted to acknowledging the debt in favour of creditors for the purposes of section 18 of the Limitation Act, 1963. The assessee's liability to the creditors thus subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in the court of Law. The amount was not assessable under section 41(1). This was so held by Delhi High Court in the case of *CIT V/s Shri Vardhman Overseas Ltd(2012) 343 ITR 408(Del). [SLP has been dismissed by the Supreme Court against this decision.].*

(iv)(b) In the case of *CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 236 ITR 518/102 Taxman 713 (SC)*, Hon'ble Supreme court came to the conclusion that after expiry of limitation period, a debt does not stand extinguished, but it only bars the creditors from taking recourse to a legal remedy for enforcement of the debt. Hence, barring by limitation would not tantamount to cessation of liability u/s 41(1).

45.2 Section 41(2) provides for chargeability to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture of an undertaking engaged in generation or generation and distribution of power is sold, discarded, demolished or

destroyed. Such undertakings are allowed depreciation on such percentage on the actual cost as are prescribed. The depreciation rate is prescribed vide Rule 5(1A) in Appendix IA to the Income-tax Rules, 1962. Depreciation is to be calculated on Straight Line Method (SLM) on individual asset and not on block of assets, under clause (i) of sub-section (1) of section 32. 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. On debt becoming time barred, the liability of the assessee does not cease. Section 41(1) is not attracted in such a case (Liquidator, Mysore Agencies (P.) Ltd v CIT [1978] 114 ITR 853 (Kar.).

45.3 Section 41(3) provides that where any capital asset used in scientific research is sold without having been used for other purposes and 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 was in existence or not during the previous year in which the capital asset was sold.

45.4 It may be noted that section 41(3) is applicable only if an asset is sold without having been used for other purposes. In other words, if an asset which is initially purchased for the purpose of scientific research is utilised for business purposes on completion of scientific research and later on is sold or transferred, then section 41(3) is not applicable but in such case section 50 would apply.

45.5 Section 41(4) provides that where any bad debt has been allowed as deduction under section 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 realisation is chargeable to tax as business income of

the year in which debt is recovered. For this purpose, it is immaterial whether the business of the assessee was in existence or not during the previous year in which recovery was made.

45.6 Section 41(4A) provides that if any amount is withdrawn from the special reserve created under section 36(1)(viii), then it will be chargeable to tax in the year in which the amount is withdrawn, regardless of the fact whether the business was in existence in that year or not.

45.7 Section 41(5) provides that 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. This is irrespective of the number of years that may have elapsed from the year in which the loss has been suffered.

45.8 The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence, etc. He should in all relevant cases examine the past records to satisfy himself about the correctness of the information provided by the assessee. The tax auditor has to examine whether the profit chargeable to tax has been stated under this section. This information has 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. The tax auditor should check whether amounts which have been written back in respect of trading liability by way of remission or cessation thereof or otherwise, is credited to Profit & Loss account. If any such liability credited to profit and loss account is already offered to tax in any prior period, the same shall not, once again, be considered as income in the year in which it is so credited.

45.9 In case the amount given in this clause regarding section 41 of the Act is not routed through profit and loss account or income and expenditure account, the auditor may include the said fact in the observation para of the audit report.

45.10 The tax auditor should maintain the following in his working papers for the purpose of furnishing details required in the format provided in the e-filing utility:

Sr. No.	Name of person	Amount of income	Section	Description of transaction	Computation if any
1	2	3	4	5	6

46. In respect of any sum referred to in section 43B, the liability for which:-

(A) pre-existed on the first day of the previous year but was not allowable 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 ((for clauses other than clause (h) of section 43B) 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.)

[Clause 26]

46.1 In the case of an assessee maintaining its books of account on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year as well as return of income for the earlier assessment years to ensure that the information about the aforesaid payments made in the subsequent year have been correctly reported.

46.2 Section 43B provides that notwithstanding anything contained in any other provisions of the Act, the following amounts shall be allowed as

deduction in computing the business income of an assessee in the previous year in which such amounts are actually paid:

(a) any tax, (GST, sales tax, value added tax, service tax, excise duty, municipal/property tax, etc. but not including Income-tax, TDS and TCS), duty, cess or fee, by whatever name called, payable by the assessee under any law for the time being in force.

(b) any sum payable as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.

(c) any bonus or commission payable by the assessee to its employees for services rendered, where such sum would not have been payable to him as profits or dividend, if it had not been paid as bonus or commission.

(d) interest on any loan or borrowing from any public financial institution, a state financial corporation or a state industrial investment corporation payable in accordance with the terms and conditions of the agreement governing such loan or borrowing.

(da) interest on any loan or borrowing from such class of non-banking financial companies as may be notified by the Central Government in accordance with the terms and conditions of the agreement governing such loan or borrowing.

(e) any sum payable by the assessee as 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.

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee.

(g) any sum payable by the assessee to the Indian Railways for the use of railway assets.

(h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006

46.3 Section 43B is applicable in respect of expenditure for which a deduction is otherwise allowable under the Act. Therefore, where any expenditure is reported under any other clause indicating that deduction is

otherwise not allowable, there is no need of reporting such expenditure under this clause.

46.4 The liability which pre-existed on the first day of the previous year is allowable as deduction if paid during the previous year. This is required to be reported in clause 26(A)(a). If such liability is not paid during the previous year, then, the same has to be reported in clause 26(A)(b). The liability which is incurred in the previous year (except under clause (h) of section 43B) 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). If such liability is not paid before the due date, the same is reported in clause 26(B)(b).

46.5 It may be noted that if the liability which pre-existed on the first day of the previous year but not allowable in assessment of any preceding previous years is paid after the end of the previous year, then, the amount will be allowed as a deduction in the previous year in which it is paid. The proviso allowing payment till due date of furnishing of return is not applicable to such a liability. In respect of reporting made under clause (A), amount of pre-existing liability should be verified from previous year ITR Form.

46.6 With effect from 1.4.2025, the term "allowed" has been replaced with "allowable" in this clause to imply that any sum which was otherwise allowable but not allowed in any preceding previous year(s) due to operation of provisions of section 43B can be allowed in this previous year on payment basis. This will include, in case of any sum referred to in clauses (a) to (g), the amount paid after the due date of filing of income-tax return of any relevant preceding previous year, and in case of clause (h), the sum which was paid after the due date specified in section 15 of the MSMED Act.

46.7 Therefore, the liability incurred during the previous year in respect of all the specified sums referred to in clauses (a) to (g) should be clearly distinguished from the liability that pre-existed on the first day of the relevant previous year. In respect of any sum referred to in clause (h) of section 43B, reported under (A) of this clause as pre-existed on the first day of the previous year, the tax auditor should cross-check the amount so reported with the sum reported as inadmissible in clause 22 during the immediately preceding previous year. If the same is paid during the year it should be reported in (a) and if it is not paid during the year it should be reported in (b). In the next year, tax auditor should cross check the amount reported in Clause 26(A)(a) with the amount reported as inadmissible in clause 22 (iii)(b) and the amount

reported in Clause 26A(b) during the immediately preceding previous year. There is no reporting required under (B) in respect of any sum referred to in clause (h) of section 43B.

46.8 If the assessee is following the cash basis of accounting, sums referred to in clause (a), (b), (c), (d), (da), (e), (f) and (g) of section 43B which are debited to the profit and loss account will be allowable as they would have been actually paid during the year. The tax auditor may consider the following judgements and/or explanations:

46.9 If under the sales tax legislation applicable, sales tax so deferred is treated as actually paid, then statutory liability shall be treated to have been discharged for the purpose of Section 43B – Circular No 496 dated 25.09.87. The Apex Court in case of *CIT v. Gujarat Polycrete Pvt Ltd (2000) 246 ITR 463* has held that the State Government may amend its Sales Tax Act to provide that the sales tax (deferred under an incentive scheme framed by it) will be treated as actually paid so as to meet the requirements of Section 43B.

46.10 If the tax auditor is faced with similar scenario under the GST Law, then after careful consideration of the facts, the treatment of GST dues may be considered on lines similar to those under the erstwhile sales tax regime as underlying principles and inferences drawn may apply to certain cases under both the Statutes.

46.11 The Apex Court in case of *CIT v. McDowell & Co Ltd (2009) 180 Taxman 514* has held that "Furnishing of a bank guarantee in respect of any sum payable by an assessee cannot be equated with actual payment as required under section 43B". It was further 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 manifestation and, consequently bottling fee payable under Excise Law for acquiring a right of bottling IMFL does not fall within the purview of section 43B". The tax auditor can correlate with information disclosed as contingent liabilities in the audited financial statements for the previous year under consideration.

46.12 The Apex Court in case of *CIT v. Modipon Ltd (2017) 87 taxmann.com 275* has held that "Even advance deposit of duty within the meaning of section 43B and it is entitled for the benefit of deduction" on the similar grounds, Delhi High Court in case of *CIT v. Maruti Suzuki India Ltd (2013) 212 Taxman 603*

has held that "advance deposits in Excise Personal Ledger Account cannot be disallowed under section 43B".

46.13 The Apex Court in case of *Berger Paints India Ltd v. CIT (2004) 135 Taxman 586 (SC)* has held that "The entire amount of excise duty/customs duty paid by the assessee in a particular accounting year is an allowable deduction in respect of that year, irrespective of the amount of excise duty/customs duty which is included in the valuation of the assessee's closing stock at the end of the accounting year".

46.14 The Madhya Pradesh High Court, in the case of *CIT v. Mohanlal Mishrilal & Sons (1996) 87 Taxman 194* and *CIT v. Mohansingh & sons (1995) 216 ITR 432* has held that "Mandi tax is not a tax as it is paid by a trader who enjoys the facility of mandi because some services are provided by the mandi and, therefore, that cannot be taken as tax as the same is collected for the services rendered".

46.15 Section 43B starts with non-obstante clause viz. "Notwithstanding contained in any other section ……" which means irrespective of the accounting treatment in the profit and loss account drawn for the previous year under consideration following mercantile or cash basis of accounting as permissible u/s 145 of the Income-tax Act, 1961, deduction under section 43B is allowable only on payment basis.

46.16 Under the first proviso to section 43B, deduction is available in respect of any sum [other than mentioned in clause (h)] which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139. Since the due date of filing of the return would usually be subsequent to the signing of the tax audit report, the tax auditor would be able to verify information in respect of matters only up to the date of signing of the tax audit report. The payment made subsequent to that date but before the date of filing of the return, will still be eligible for deduction under section 43B. Where due date for filing of return of income is extended, payments made up to the extended due date also qualify for deduction.

46.17 Under section 43B(a), Central sales-tax/VAT/excise duty/GST when paid is allowed as a deduction. Although under clause (a) of section 43B, items that have been debited to the profit and loss account but not paid during the previous year, are to be specified, where it is the practice of the company to maintain a separate central sales-tax/ VAT/excise duty/GST account and treat

the central sales tax/excise duty/VAT/GST collected as a liability, it would be necessary to show by way of note under this clause, the amount of central sales tax/excise duty/VAT/GST etc. collected but not paid. In case, any sum has been paid before the due date of filing the return, the date and the amount of payment along with the amount paid should also be disclosed.

46.18 The Finance Act, 2021 added Explanation 5 to Section 43B to clarify that the provisions of this section shall not apply to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies. Similarly, Explanation 1 and 2 have been added to section 36(1)(va). In view of the above Explanations, if there is a delay in payment of these sums to the concerned authority after the relevant due date specified under the respective Act, then such sum even though paid at any time beyond the due date will be disallowable permanently.

46.19 It may be noted that emoluments in the nature of good work reward, incentives or ex-gratia are not bonus or commission as contemplated under section 36(1)(ii) but are deductible under section 37 of the Act as held by the Delhi High Court in *Shri Ram Pistons and Rings Ltd. 307 ITR 363* and *Autopins (India) Ltd. 192 ITR 161.*

46.20 The Explanations 3C, 3CA and 3D to section 43B clarify that a deduction of any sum being interest payable under clause (d), clause (da) and clause (e) of section 43B shall be allowed, if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance or debenture or any other instrument by which liability to pay is deferred to a future date shall not be deemed to have been actually paid.

46.21 The Circular No. 7/2006 dated 17th July, 2006 observes that the clarificatory Explanations only reiterate the rationale 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. Therefore, the converted interest, by whatever name called, in the wake of its conversion into a loan or borrowing or advance, will be eligible for deduction in the computation of income of the previous year in which the converted interest is 'actually paid'. In other words, nomenclature of the sum of converted interest will make no difference as the sum of converted interest whenever is actually paid will not represent repayment of the principal. The Circular clarifies that the fundamental principle remains that once an amount has been determined as interest payable to the

banks or financial institutions, any subsequent change of nomenclature of interest will not affect its allowability and deduction in terms of section 43B will have to be allowed on its actual payment. The Assessing Officer would therefore be justified in seeking a certificate from the assessee to be obtained by the assessee from the lender bank or financial institution etc. as evidence of "actual payment" of interest to banks or financial institutions.

46.22 As per clause (f) of section 43B, sum payable by the assessee as an employer in lieu of any leave at the credit of his employees will be disallowed if not paid before the due date of filling of the return under section 139(1).

46.23 The above particulars are required to be given irrespective of the fact whether they have been debited to profit and loss account or not and such a fact should be stated under this clause. For example, where GST etc. collected could be accounted for as a Balance Sheet item in cases where assessee is following the exclusive method of accounting for reporting of the taxes.

46.24 In some cases, the tax auditor may find amounts of the nature referred to in section 43B being credited to the profit and loss account although the relevant provisions for such liability had not been allowed as a deduction in any previous year in view of the specific provisions of section 43B requiring actual payment as a condition precedent to allowance. The amounts so credited to the profit and loss account are not chargeable to tax since the conditions referred to in section 41(1) have not been satisfied. The tax auditor should identify such items and maintain the same in his working papers. Clause (g) refers to any sum payable by the assessee to the Indian Railways for the use of railway assets. Payments for the use of railway assets would not include basic rail freight, as such freight is for the service of transport and not for use of railway assets. The distinction between contracts of transportation and contracts for user (hire) of assets has been brought out, in the context of tax deduction at source, by the High Courts in the following cases:

CIT v Reliance Engineering Associates (P) Ltd [2012] 209 Taxman 351 (Guj)

CIT v Bharat Electronics Ltd [2015] 230 Taxman 651 (All)

CIT(TDS) v Indian Oil Corporation Ltd. [2018] 92 taxmann.com 281 (Uttarakhand)

46.25 Sums payable for use of railway assets would, however, include amounts payable for hire of railway wagons, or for hire of rail sidings, or lease rent payable for use of railway land or buildings. In case of payments for use

of hoardings/display panels put up on railway premises, whether the payment is for use of railway assets would depend upon the terms of the contract and parties to the contract.

46.26 In case of GST liability under reverse charge mechanism (RCM), if liability is booked but not paid on or before the due date of filing return under section 139(1), the amount must be reported under this clause. Auditor must obtain and verify the same with GST payable ledger or GSTR-3B reconciliations.

46.27 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

S. No.	Section	Nature of liability	Amount
1	2	3	4

47. (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.

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

[Clause 27 (a) and (b)]

47. Clause 27(a)

47.1 Sub-clause (a) requires the factual reporting about the amount of CENVAT credits availed of or utilized during the year as well as its treatment in profit and loss account and treatment of outstanding CENVAT credits in the accounts. CENVAT Credit Rules, 2002 were first introduced in place of MODVAT credit and thereafter, effective 10 September 2004, CENVAT Credit Rules, 2004 became applicable. Post implementation of GST, CENVAT Credit Rules, 2017 became applicable from July 1, 2017. CENVAT credit is available on eligible inputs, input services and capital goods. Such credits are utilized for the payment of the excise duty liability. Accordingly, the tax auditor should check the relevant records maintained under CENVAT Credit Rules, 2017 and ascertain therefrom the amount of credit on eligible inputs, input services and the capital goods and the amount utilized during the previous year.

47.2 In a given case, CENVAT availed may be lesser than the CENVAT credit utilized during the year on account of opening balance in CENVAT account or vice-versa and as such it would be advisable, in order to avoid any misleading conclusion and inferences, to report the opening and closing balances of CENVAT credit. The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant statutory records.

47.3 In so 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.

47.4 Where the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material is debited to the CENVAT Credit Receivable Account and not as part of the purchase cost of raw material. The credit utilized is debited to the Excise Duty A/c and credited to CENVAT Credit Receivable Account. Thus, the credit availed and utilized will not have any impact on the profit and loss account.

47.5 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).

47.6 The tax auditor should consider the above guidance while verifying the reporting in the format provided in the e-filing utility with respect to this clause.

47.7 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.

47.8 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.

47.9 It is pertinent to note that since implementation of GST from July 1, 2017, central excise duty has been largely subsumed in GST and is leviable only on six products viz. petroleum crude, diesel, petrol, aviation turbine fuel, natural gas and tobacco. Accordingly, reporting of CENVAT credit under this clause will be for only those assessees who deal in these products. However,

it is observed that the departments utility and Schema on this clause refers to reporting of "Central Value Added Tax Credits/ Input Tax Credit (ITC)" which differs from notified form.

47.10 The tax auditor should consider maintaining the following information in his working papers for the purpose of verifying the reporting in the format provided in the e-filing utility:

Particulars	CENVAT Amount (Rs.)	Treatment in Profit & Loss /Accounts
Opening balance		
CENVAT Availed		
CENVAT utilized		
Closing/Outstanding Balance		

48. Clause 27(b) - Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

48.1 It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current *year's* expenses/ income even though they may relate to earlier years.

48.2 The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed. In the case of a person whose accounts of the business or profession have been audited under any other law, the information may be available from annual accounts. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, however, a close scrutiny of the ledger in regard to the period for which expenditure or income is entered in the account books may be necessary.

48.3 It may be noted that there is a difference between expenditure of any earlier year debited to the profit and loss account and the expenditure relating to any earlier year, which has crystallised during the relevant year. 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.

48.4 In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the year on the basis that the liability materialised or crystallised during the year and such cases will not be reported under this clause. Similar consideration will apply in relation to income also.

48.5 In AS – 5/ Ind AS 8, it has been explained that material charges (expenses) or credits (income) which arise in the current year as a result of errors or omissions in the accounts of the earlier years will be considered as prior period items/prior period errors. In view of this, the statutory auditor would normally take into consideration all items of prior period income and expenditure while giving his report on the financial statements. It would, therefore, be advisable for the tax auditor to ascertain the circumstances under which a particular expenditure has not been considered as a prior period expenditure. If, on making the enquiries, he comes to the conclusion that a particular item has to be treated as prior period expenditure, he should examine whether the same has been correctly disclosed against this sub-clause. If the auditor is of the view that it is not a prior period item, the same may be disclosed in the observation para of the audit report.

48.6 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Type	Particulars	Amount	Prior Period to which it relates (Year in yyyy-yy format)
1	2	3	4	5

49.(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:

(i) Nature of income:

(ii) Amount thereof:

[Clause 29A]

49.1 This clause requires disclosure of whether any amount is chargeable to tax under section 56(2)(ix), and if so, to furnish prescribed details of such income. Section 56(2)(ix) provides for taxability as Income from Other Sources of any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.

49.2 Any such forfeited amount if it is in respect of a personal capital asset is not required to be reported, where such asset or the advance or the forfeiture is not recorded in the books of account relating to the business or profession. If an advance has been received and has been outstanding for a considerable period of time or has become time barred, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

49.3 Forfeiture of amounts received as advance towards transfer of a capital asset would become income under sub-clause (ix) of section 56(2) and is required to be reported under this clause. Any advances received and forfeited towards sale of stock-in-trade would be taxable under section 28(i) and would not be required to be reported since the amount would be credited to profit & loss account. The tax auditor should verify with the auditee as to whether the amount has been forfeited. If the assessee contends that the amount has not been forfeited, the tax auditor may look at totality of developments and may obtain a management representation that even though the contract permits forfeiture on some conditions and even though such conditions have occurred, the assessee has not yet forfeited the advance and other sums received.

49.4 Mere unilateral writing back of an advance by credit to the profit and loss account, asset account or capital account may not by itself amount to an act of forfeiture by the assessee. Such a write back is, however, an indication of a possible act of forfeiture, which needs further verification by the tax auditor. It is advisable for the tax auditor to disclose all such acts of unilateral write backs as well, out of abundant precaution, with appropriate note regarding the stand taken by the assessee. The Supreme Court, in the case of *Bankura Municipality v. Lalji Raja and Sons AIR 1953 SC 248, 250* has observed:

> "According to the dictionary meaning of the word 'forfeiture', the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a

crime, offence or breach of engagement, it would not come within the definition of forfeiture."

49.5 The tax auditor should therefore obtain representation from the assessee regarding advances received at any point of time towards transfer of capital assets which have been forfeited during the year. The advances might have been received during the previous year. For the purpose of this clause, the previous year in which forfeiture takes place is relevant. He should also examine whether any amount of such advances has been written back during the year, and examine the basis of such write back to determine whether such write back was on account of an act of forfeiture. The reporting requirement is to state whether any amount is to be included as income chargeable under the head "Income from Other Sources". If the answer to this is yes, then details are required to be furnished as under:

(i) Nature of Income

(ii) Amount thereof

49.6 As regards the nature of income, it should be specified that the amount is forfeiture of advance received in the course of negotiation of transfer of capital asset.

50. (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 (in Rs.) thereof:

[Clause 29B]

50.1 Sub-clause (a) requires reporting as to whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x). If the answer is in affirmative, 'Yes' should be stated; in other cases, "no" should be stated.

50.2 Section 56(2)(x) provides that the following shall be income chargeable to income-tax under the head income from other sources, unless chargeable under any other head, being: Where any person receives in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied, then, it is treated as income of the

recipient. The conditions for any such receipt for being treated as income are as follows: --

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent. of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

(c) any property, other than immovable property,

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any sum of money or any property received --

(I) from any relative; or

(II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

(IV) in contemplation of death of the payer or donor, as the case may be; or

(V) from any local authority as defined in the Explanation to clause (20) of section 10; or

(VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(VII) from or by any trust or institution registered under section 12A or section 12AA or section 12AB; or

(VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf) of section 47; or

(X) from an individual by a trust created or established solely for the benefit of relative of the individual.

(XI) from such class of persons and subject to such conditions, as may be prescribed.

(XII) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of

any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(XIII) by a member of the family of a deceased person ,

(A) from the employer of the deceased person; or

(B) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

where the cause of death of such person is illness related to COVID-19 and the payment is,

(i) received within twelve months from the date of death of such person; and,

(ii) subject to such other conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

It has been explained that for the purposes of clauses (XII) and (XIII) of this proviso, "family", in relation to an individual means

(i) the spouse and children of the individual; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;

Provided further that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of section 13.

For the purposes of this clause,

(a) the expressions "assessable", "fair market value", "jewellery", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to section 56(2)(vii); and

(b) the expression "property" shall have the same meaning as assigned to it in clause (d) of the Explanation to section 56(2)(vii) and shall include virtual digital asset.

The term "property" has been defined to include only specific types of assets. It has been defined to mean the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art; or

(ix) bullion

50.3 Receipt of assets, other than these, would not be covered by the provisions of this section, and would therefore not be required to be reported. Stock-in-trade, not being a capital asset, is also not covered by this provision.

50.4 Fair Market Value as per Explanation to section 56(2)(vii) of property other than immovable property means the value determined in accordance with method prescribed under Rule 11U and 11UA. Such receipts which are exempt, cannot be charged as income under section 56(2)(x) and are therefore not required to be reported under this clause. The tax auditor should obtain a representation from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein. Based on such verification, tax auditor has to consider whether the question is to be answered in affirmative or otherwise.

50.5 In case answer to clause 29B(a) is yes, then the following details have to be furnished, namely, nature of income and amount. In case of nature of income, it has to be stated whether the income is by way of receipt of any sum of money or from acquisition of any immovable property like land, building etc. or other than immovable property like shares and securities, jewellery, drawings, paintings etc. Value of income should be determined as provided in sub-clause (x) of section 56(2) which has been discussed hereinabove.

51. 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].

[Clause 30]

51.1 Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment of such borrowings 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 Board explaining the provisions of section 69D - refer ***Appendix XX.***

51.2 For this purpose, the tax auditor should obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account.

51.3 There will be practical difficulties in verifying the loan taken or repaid on hundi by account payee cheque. In such cases, the tax auditor should verify the borrowing/repayments with reference to such evidence which may be available and in the absence of conclusive or satisfactory evidence, the auditor may obtain suitable certificate/ management representation in this regard.

51.4 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Name of the person from whom the amount borrowed or repaid on hundi	PAN of (b), if available	Address of (b) with city, state and PIN code.	Amount borrowed during the previous year	Date of borrowing	Amount due including interest	Amount repaid (including interest) during the previous year	Date of repayment
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

52. (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)

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

(i) Under which clause of sub-section (1) of section 92CE primary adjustment is made?

(ii) Amount (in Rs.) of primary adjustment:

(iii) 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)

(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)

(v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time.

[Clause 30A]

52.1 Clause 30A requires reporting of primary adjustments to the taxable income and various other details, for the purpose of making secondary adjustments under section 92CE. Section 92CE, providing for secondary transfer pricing adjustments, requires making of a secondary adjustment in certain cases where primary transfer pricing adjustments have been made. As per sub-section (1) of section 92CE, the secondary adjustment is required in the following cases where primary transfer pricing adjustment has been:

(i) made by the assessee of his own accord in his return of income;

(ii) made by the Assessing Officer and accepted by the assessee;

(iii) determined under an Advance Pricing Agreement entered into by the assessee under section 92CC on or after 1st day of April 2017;

(iv) made as per Safe Harbour Rules framed under section 92CB; or

(v) arising as a result of a resolution of an assessment under Mutual Agreement Procedure under a double taxation avoidance agreement (DTAA) entered into under section 90 or 90A.

52.2 No secondary adjustment is required if the primary adjustment relates to assessment year 2016-17, or an earlier assessment year.

52.3 No secondary adjustment is required if the amount of primary adjustment made in any previous year does not exceed Rs. 1 crore.

52.4 Sub-section (2) of section 92CE provides that where due to the primary adjustment,

(i) there is an increase in the total income or

(ii) a reduction in the loss of the assessee,

The adjustment (difference between the arm's length price and the actual transaction price) is regarded as excess money available with the associated enterprise and is to be repatriated to India within the prescribed time.

52.5 Where the excess money or part thereof is not repatriated to India within the prescribed time, it is deemed as an advance to the associated enterprise and interest is to be computed on such advance in the prescribed manner, (as per Rule 10CB) as a secondary adjustment. Excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

52.6 Sub-section (2A) however, provides that where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof, as the case may be. Sub-section (2B) further provides that the tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit, therefore, shall be claimed by the assessee or by any other person in respect of the amount of tax so paid. The provisions also state that where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax. Sub-section (2C) further provides that no deduction shall be allowed under the Act for the taxes paid under sub-section (2A).

52.7 Rule 10CB(1) provides for a time limit of 90 days for repatriation of the excess money or part thereof. This period of 90 days is to be computed from the following dates, in respect of each type of primary adjustment:

(i) Where primary adjustments are made in the return of income, from the due date of filing of the return of income under section 139(1);

(ii) Where primary adjustments made by the Assessing Officer have been accepted by the assessee, from the date of order of the Assessing Officer or the appellate authority, as the case may be;

(iii) Where an Advance Pricing Agreement has been entered into by the assessee on or before the due date of filing of Income-tax Return, from the date of filing of the return of income under section 139(1);

(iiia) Where an Advance Pricing Agreement has been entered into by the assessee after the due date of filing of Income-tax Return, from the end of the month in which the Advance Pricing Agreement has been entered.

(iv) Where the adjustment is as per Safe Harbour Rules, from the due date of filing of the return of income under section 139(1);

(v) Where the adjustment is on account of an agreement made under the Mutual Agreement Procedure under a DTAA, from the date of giving effect by the assessing officer under Rule 44H.

52.8 Rule 10CB(2) further provides the manner of computation of interest on excess money or part thereof which is not repatriated in India within the prescribed time limit.

(i) Where the international transaction is denominated in Indian rupees, the rate of interest will be the one-year marginal cost of fund lending rate of State Bank of India as on 1st April of the relevant previous year, plus 325 basis points (i.e. 3.25%).

(ii) Where the international transaction is denominated in foreign currency, the rate of interest shall be the six-month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year plus 300 basis points (i.e. 3%). It may, however, be noted here that effective December 31, 2021, LIBOR was no longer to be used in the case of all Pound sterling, Euro, Swiss franc, and Japanese yen settings, and the 1-week and 2-month US dollar settings, and effective June 30, 2023, in the case of the remaining US dollar settings, and was to be replaced by new risk-free interest rates by adopting Alternative Reference Rates (ARR). However, Rule 10CB has not been amended as yet. Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions.

Following the discontinuation of LIBOR, financial markets have transitioned to Alternative Reference Rates (ARRs). The Secured Overnight Financing Rate (SOFR) has emerged as the primary replacement for USD LIBOR, while other ARRs like Sterling Overnight Index Average (SONIA) for GBP LIBOR and Euro Short-term rate (€STR) for EUR LIBOR have been adopted for other currencies. These alternative rates are based on transaction data.

LIBOR's Replacement:

- USD LIBOR: Replaced by the Secured Overnight Financing Rate (SOFR)- https://www.newyorkfed.org/markets/reference-rates/sofr
- GBP LIBOR: Replaced by the Sterling Overnight Index Average (SONIA)- https://www.bankofengland.co.uk/markets/sonia-benchmark
- EUR LIBOR: Replaced by the Euro Short-Term Rate (€STR)- https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html
- EURIBOR: Remains an alternative benchmark for EURO, but EONIA was replaced by €STR

52.9 Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus, the tax auditor is required to verify whether any primary adjustment is 'made' in terms of Section 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration. To illustrate, consider a case where taxpayer makes a voluntary adjustment in his return of income filed in November 2024 (pertaining to FY 2023-24). Such primary adjustment is to be reported in the tax audit report of FY 2024-25 to be filed on or before October 2025, for the reason that the primary adjustment has taken place in November 2024 (i.e. during FY 2023-24). In the said example, if the excess money or part thereof with the AE is not repatriated to India within 90 days from the due-date of filing of ROI i.e. by 28th February 2025, interest on such excess money computed as per the prescribed rules will also need to be reported in the tax audit report to be filed in October 2025. Excess money or part thereof may be repatriated from any other non-resident AE avoiding additional tax. Further, if the excess money or part thereof was not repatriated within the prescribed time, option is granted to the assessee to pay additional tax on such excess money at the rates as prescribed. The applicable additional tax was prescribed at 18% plus applicable surcharge & cess. The auditor should take care of the same.

52.10 It is also necessary that the disclosure under Clause 30A may need to be done in respect of each and every type of primary adjustment made in the relevant financial year, irrespective of the previous year to which this adjustment pertains to. For instance, an assessment order in relation to say, F.Y. 2021-22 may be passed during F.Y. 2023-24 wherein AO/TPO has made

a primary TP adjustment and the same has been accepted by the taxpayer. Similarly, an APA may be signed by the taxpayer in F.Y. 2024-25, which may provide for primary adjustment for the four roll- back years from FY 2020-21 to FY 2023-24. All these primary adjustments may need to be reported in the tax audit report of FY 2024-25

52.11 For this purpose, the tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return(s) of income filed during the previous year: whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence.

52.12 If there is any such occurrence relating to assessment years 2017-18 or later years, and the amount of primary adjustment exceeds Rs. 1 crore, the fact that there has been a primary adjustment made during the previous year has to be reported. Primary adjustments for earlier years prior to assessment year 2017-18, or primary adjustments totaling less than Rs. 1 crore for a previous year, which do not warrant a secondary adjustment, should also be reported under clause 30A(a)(i).

52.13 The relevant clause of section 92CE(1) under which the relevant adjustment falls, and the amount of adjustment have to be reported. In this regard, the auditor should also obtain a prior management representation on the information obtained to be true and accurate, on the basis which he should verify the amount of adjustment reported. Hence, the primary onus should be with the management.

52.14 Under clause 30A(b)(iii), the requirement is to report whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE(2). If the adjustment relates to an assessment year prior to assessment year 2017-18, or the primary adjustment is of less than Rs. 1 crore, the excess money is not required to be repatriated to India, and the answer to this question may be given as “No”. The answer to this question should be given as “Yes” only if the adjustment relates to assessment year 2017-18 or later assessment years, and if the adjustment exceeds Rs. 1 crore.

52.15 In case any such primary adjustment has taken place, which requires repatriation of the excess money or part thereof, the tax auditor should verify whether the excess money has been received, and whether it has been received within the prescribed time. In case the excess money or part thereof has not been repatriated within the prescribed time and the assessee has not opted to pay additional income-tax, the imputed interest income, which would be the secondary adjustment, needs to be computed. For this purpose, the tax auditor should ask the taxpayer to obtain certificates of the relevant SBI/LIBOR (Effective 31st December 2021/ 30th June 2023, **LIBOR discontinued – See para 52.8 above for the alternative reference rates**) interest rates, and provide the computation of the imputed interest income. The tax auditor should verify the correctness of such calculation of interest, on the basis of the certificates regarding the SBI/LIBOR rates plus the incremental interest, as per Rule 10CB.

52.16 At times the question has been posed with respect to the date up to which the imputed interest income is to be reported i.e. whether interest income imputed till the end of the previous year is to be reported or whether interest income imputed up to the date of furnishing of Tax Audit Report is to be reported. Since the reporting is for the previous year, it is advisable for the tax auditor to ensure that the amount of interest imputed till the end of the previous year is furnished. In case the interest up to the date of furnishing of the tax audit report is given, it is advisable to provide a break-up of the amount of interest imputed till end of the relevant previous year and for the period post the end of the relevant previous year ending with the date of furnishing tax audit report. It is possible that interest income may be imputed during the relevant previous year in connection with primary adjustment made during the earlier previous years.

52.17 **It is possible that amount of imputed interest income on the excess money not repatriated to India may relate to more than one year**. Having regard to Rule 10CB, the interest liability extends till the date of repatriation. Accordingly, for the relevant year under audit, such liability in respect of imputed interest may extend not only to the primary adjustment referred to in clause 30A(a) above but may also relate to primary adjustment made in the earlier years. Prima-facie, it appears that reporting of such interest is not required under clause 30A(b)(v) since clause 30A requires reporting only in relation to primary adjustment made during the relevant previous year. However, on the other hand, such interest income arising from primary

adjustment made in earlier year is also taxable during the previous year under consideration and will be included in the return of income of the concerned previous year. Thus, it may be advisable for the taxpayer to furnish the information pertaining to such primary adjustments in respect of interest income which is chargeable under section 92CE(2).

53.(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)

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

(i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:

(ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):

(iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:

(iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

(v) Details of interest expenditure carried forward as per sub-section (4) of section 94B:

A.Y.	*Amount (in Rs.)*

[Clause 30B]

53.1 Clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest or of similar nature in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession". Section 94B provides that, where an Indian company or a permanent establishment of a foreign company in India, incurs any expenditure by way of interest or of similar nature exceeding Rs. 1 crore which is deductible in computation of income under the head "Profits & Gains of

Business or Profession" in respect of a debt issued by a non-resident AE, such interest, to the extent of excess interest, shall not be deductible. Further, if the debt is issued by a lender who is not associated, but an AE provides either an implicit or explicit guarantee to such lender, or deposits a corresponding and matching amount of funds with the lender, such debt is also regarded as having been issued by an AE.

53.2 The excess interest is to be computed as the lower of:

(i) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA") of the borrower in the previous year; or

(ii) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, can be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this section.

53.3 The term "debt" is widely defined to mean any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in computation of income chargeable under the head "Profits and Gains of Business or Profession".

53.4 Section 94B(3) excludes an Indian company or a PE of a foreign company engaged in the business of banking or insurance from applicability of the Section. With effect from FY 2023-24 (i.e., from AY 2024-25) onwards, class of non-banking financial companies (NBFC) (being a NBFC as per section 45-I (f) of Reserve Bank of India Act, 1934 (2 of 1934) as notified, are also excluded from the purview of section 94(1). W.e.f. A.Y 2025-26, a finance company located in IFSC is also excluded. Section 94B(1A) also excludes interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

53.5 Also, in respect of the assessees mentioned in para 53.4, the **provisions of section 94B do not apply**, and details under this clause are not required to be provided. In such cases, the answer to question (a) may be given as "No".

53.6 Similarly, the section would apply only where interest (or expenditure of similar nature) paid or payable to non-resident AE(s) (or in respect of a debt where an AE – resident or non-resident – has provided an implicit or explicit guarantee or matching deposit) exceeds Rs. 1 crore during the year. In case the interest and similar expenditure paid or payable to non-resident AE(s) (or non-resident lender of such debt) does not exceed Rs. 1 crore, the section is not applicable. Hence, the answer to question (a) should be given as "No".

53.7 Expenditure of similar nature should be read in the context of "debt" as defined in section 94B(5)(ii). "Debt" is defined to mean loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discount or finance charges. "Expenditure of similar nature" for the purposes of this section would therefore include discount or premium on securities, finance cost component of lease rentals in respect of finance leases, guarantee commission, commitment fees or any other finance charges. In computing the limit of Rs. 1 crore, only interest and expenditure of similar nature which is deductible while computing income under the head "Profits and Gains of Business or Profession" should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible. Therefore, any interest disallowable under section 14A, under the proviso to section 36(1)(iii), under section 40A(i) or section 40A(2) should not be considered as interest for the purposes of section 94B(1). Similarly, interest disallowed on account of transfer pricing under section 92, should also not be considered, since such interest is not allowable in computing income under the head "Profits and Gains of Business or Profession".

53.8 In case such interest paid to AEs exceeds Rs. 1 crore, details in part (b) of the clause need to be given. In item (i) of sub-clause (b), details of expenditure incurred by way of interest or of similar nature need to be provided. However, in view of the requirement of clause (a) where a specific question has been asked only with respect to section 94B(1), the subsequent clauses seem to be consequential and flowing from clause (a). Section 94B(1) confines itself to interest paid to Non-resident AE and section 94B(2) can be regarded as controlled by section 94B(1) since section 94B(2) operates "for the purposes of sub-section (1)". The computation of "excess interest" as per section 94B(2) should be within the boundaries of interest referred to in section 94B(1), which is NR AE interest paid. The language of para 46.3 of CBDT's Circular No. 2 of 2018 containing Explanatory Notes to Provisions of Finance Act, 2017 (dated 15 February 2018) is similar to the format of reporting

prescribed by CBDT in clause 30B of Form No. 3CD. In item (i) of sub-clause (b), expenditure incurred by way of interest or of similar nature paid to its non-resident AE or to the lender to whom the AE has provided an implicit or explicit guarantee or has deposited a matching amount of funds has to be reported, out of the total interest and similar expenditure claimed as deduction. It should be kept in mind that word 'paid' in terms of section 43(2) means actually paid or incurred according to the method of accounting employed.

53.9 In item (ii) of sub-clause (b), the amount of EBITDA needs to be disclosed. Collins English Dictionary defines EBITDA as "the amount of profit that a person or company receives before interest, taxes, depreciation, and amortisation have been deducted". Section 94B(2) uses similar terminology. While computing the EBITDA, the figures as per the final audited stand-alone accounts of the company should be considered, and not the figures as adjusted for the income tax computation after various allowances and disallowances. In item (iii) of sub-clause (b), the amount by which the interest incurred as per item (i) exceeds 30% of EBITDA as per item (ii), needs to be given.

53.10 In case the EBITDA is negative, the entire interest and other similar expenditure incurred as per item (i) need to be given here, without any adjustment for the negative figure, the negative figure being taken as nil.

53.11 In item (iv) of sub-clause (b), the details of brought forward excess interest disallowed in earlier years, which has not been allowed as a deduction, and which is available for deduction during the year under audit (without considering the limitation during the year under audit), is required to be given. For this purpose, the tax auditor should verify the computation of income as per the return of income filed or the relevant earlier years. It may be noted that the maximum number of years for which the excess interest can be carried forward is 8 assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

53.12 In item (v) of sub-clause (b), the details of carried forward excess interest are to be given. This figure is to be computed after reducing the brought forward excess interest allowable as a deduction during the year under audit, or adding the excess interest of the year, as the case may be. The tax auditor should verify the draft computation of income certified by the management, or the tax advisor, as the case may be.

54. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)

(b) If yes, please specify:-

(i) Nature of the impermissible avoidance arrangement:

(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement

[Clause 30C]

54.1 Clause 30C of Form 3CD requires reporting of "Impermissible Avoidance Arrangements" (as referred to in Section 96) entered into by the assessee during the previous year and to quantify the tax benefit arising in the aggregate in the previous year to all the parties to such arrangement.

54.2 Chapter X-A provides for General Anti Avoidance Rules. This Chapter deals with impermissible avoidance agreement. The key features of the GAAR provisions are as follows:

- The provisions of General Ant-Avoidance Rule (GAAR) are contained in Chapter X-A comprising of section 95 to section 102 and the procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. Rules 10U to 10UF have been prescribed by the Central Government in respect of GAAR.
- The objective of GAAR is to target abusive transactions entered into with the main object of avoiding taxes with the use of sophisticated structures and codify the doctrine of "substance over form" where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. (Refer Explanatory Memorandum to Finance Bill 2012 which originally introduced GAAR.)
- Arrangements entered into prior to 1st April 2017 are excluded from the application of GAAR provisions.
- The provisions of GAAR are triggered when an arrangement is declared by the Principal Commissioner or the Commissioner or by an Approving

Panel as an Impermissible Avoidance Arrangement ("IAA") in pursuance of provisions of section 144BA.

- An arrangement is to be treated as an IAA, if its main purpose is to obtain tax benefit ("Main Purpose" Test) and it satisfies any one or more of the four tests ("Additional Tests") specified in Section 96.
- The four tests ("Additional Tests") specified in Section 96 are:
  - (i) Arrangement creates rights/ obligations which are not ordinarily created between persons dealing at arm's length, (which may also be referred to as "Abnormal Rights/Obligations");
  - (ii) Arrangement results, directly or indirectly, in misuse or abuse of the provisions of the Act, (which may also be referred to as "Misuse Test");
  - (iii) Arrangement lacks commercial substance or is deemed to lack commercial substance, by virtue of fiction created by section 97(which may also be referred to as "Lack of Commercial Substance' Test"), or
  - (iv) Arrangement entered into or is carried out, by means, or in a manner, which not ordinarily employed for bonafide purposes (which may also be referred to as "Abnormal Manner' Test").

Moreover, it is clear from the provisions contained in the Act that twin conditions will have to be satisfied to treat any arrangement as an IAA. Firstly, there has to be an arrangement entered into by the assessee in respect to which "Main Purpose" test should be satisfied and secondly, any one of the aforesaid "Additional Tests" has to be satisfied.

54.3 Section 96(2) provides that if the main purpose of a step in or a part of the arrangement is to obtain a tax benefit, then, unless proved to the contrary by the assessee, the arrangement shall be presumed to have been entered into or carried out for the main purpose of obtaining a tax benefit, though the main purpose of the arrangement may not have been to obtain a tax benefit.

54.4 Furthermore, detailed provisions have also been made to deem an arrangement to lack commercial substance whereby the scope of the "Lack of Commercial Substance Test" has been amplified under Section 97 As a result, to avoid application of "lack of Commercial Substance Test", it would also be necessary to pass through certain further tests, such as: the test of substance/effect of the arrangement over the form of its individual steps,

whether there is a significant effect upon the business risks or net cash flows of any party to the arrangement or whether the arrangement involves 'round trip financing' (which is also very widely defined): any 'accommodating party' (which is also very widely defined); any element having the effect of off-setting each other and so on. It is also clarified that the factors like the period or time of arrangement, the fact of payment of taxes directly or indirectly under the arrangement, the fact that an exit route is provided by the arrangement may be relevant but not sufficient for determining whether an arrangement lacks commercial substance or not.

54.5 Section 144BA prescribes an elaborate procedure for declaration of the arrangement as impermissible avoidance arrangement in accordance with the provisions of Chapter X-A. Accordingly, if the Assessing Officer, at any stage of the assessment or reassessment proceedings, considers that it is necessary to declare an arrangement as IAA and to determine the consequences of such arrangement, he may make reference to the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income tax (CIT). If PCIT or CIT, as the case may be, is of the opinion that the provisions of Chapter X-A are required to be invoked, he has to issue a notice to the assessee. If the assessee does not furnish any objection to the notice within the time specified in the notice, the PCIT or the CIT shall issue such directions as he deems fit in respect of declaration of the arrangement to be an IAA. In case the assessee objects to the proposed action, the PCIT or the CIT if after hearing the assessee in the matter is not satisfied with the explanation of the assessee, shall make a reference to the Approving Panel for purpose of declaration of the arrangement as an IAA.

54.6 Rule 10UB provides that the Assessing Officer shall, before making a reference to the PCIT or CIT, issue a notice to the assessee. This notice shall contain various details including the details of the arrangement to which the provisions of Chapter X-A are proposed to be applied, the tax benefit arising under the arrangement, basis for considering that the main purpose of the arrangement is to obtain tax benefit, basis and reason why the arrangement satisfies the condition provided in clause (a), (b), (c) or (d) of section 196(1). (that is, twin conditions of the “Main Purpose” test and one of the additional tests). *Onus on the Revenue*: Considering this, the primary onus to establish that an arrangement is an IAA is on the revenue. The Approving Panel is required to give opportunity to the assessee and the Assessing Officer of hearing before issuing directions. Thereafter, the Approving Panel shall issue

such directions, as it deems fit, in respect of the declaration of the arrangement as an IAA. Directions issued by the Approving Panel are binding on the taxpayer and the tax department, and no appeal under the Act will lie against these directions. On the Other hand, the taxpayer would be required to prove that tax benefit is not the main purpose of its arrangement which is in question by the Revenue.

54.7 The Assessing Officer, on receipt of the directions of the PCIT or CIT or the Approving Panel, as the case may be, shall proceed to complete the assessment proceedings in accordance with such directions and the provisions of Chapter X-A. Section 98(1) outlines the consequences in relation to tax when an arrangement is declared to be an IAA. The consequences include among others, the denial of tax benefit or a benefit under a tax treaty. The consequences have to be determined in such manner as is deemed appropriate in the circumstances of the case.

54.8 Section 99 provides that while determining whether there is a tax benefit in the arrangement, parties who are connected persons in relation to each other may be treated as one person, accommodating party in the arrangement may be disregarded, and accommodating party and any other party may be treated as one and the same person or an arrangement may be considered or adopt 'look through' approach disregarding any corporate structure. Section 100 provides that provisions of Chapter X-A shall apply in addition to or in lieu of any other basis for determination of tax liability.

54.9 Section 102 defines various terms used in the Chapter. Under this section, 'arrangement' means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding. The section also defines the term 'connected person' in a wide manner.

54.10 Section 102 defines the term 'tax benefit' to include reduction or avoidance or deferral of tax or other amount payable under the Act, increasing refund or other amount under the Act, reduction or avoidance or deferral of tax or other amount that would be payable under the Act as a result of a tax treaty. It also includes increasing refund of tax or other amount under the Act or reduction of total income or increasing loss in any previous year.

54.11 Under Rule 10U, the GAAR provisions are not applicable in the following cases:

(i) an arrangement where the tax benefit in the relevant assessment year does not exceed three crore rupees in aggregate to all the parties to the arrangement in the relevant assessment year. (In computing such tax benefit, interest and penalty are not to be considered);

(ii) in case of a foreign institutional investor (FII) who has not availed of any tax treaty benefits and has invested in securities (listed/ unlisted) with the prior permission of the competent authority in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable; and

(iii) person being a Non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise in FIIs,

(iv) income accruing or arising to any person from transfer of investments made prior to 1st April 2017. Rule 10U(2) provides that the GAAR provisions shall apply in respect of tax benefit obtained from the arrangement after 1st April 2017, irrespective of when the arrangement was entered into.

54.12 Section 96 dealing with impermissible avoidance arrangement is included in Chapter X-A. Section 101 from this Chapter provides that the provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed. Rule 10U of the Income-tax Rules, 1962 provides certain conditions in this behalf. Sub-rule (1) of Rule 10U provides that the provisions of Chapter X-A shall not apply to an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of Rs 3 crore. Therefore, provisions of Chapter X-A, including section 96 are not applicable unless the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement is Rs 3 crores or more.

54.13 The CBDT vide Circular 7 dated 27th January 2017 has clarified in a question answer format various issues regarding application of these provisions. A reference may be made to the same.

54.14 From the discussion above, salient features of the GAAR, it will be noted that the provisions are complex and before an arrangement can be considered to be an IAA, various conditions have to be satisfied. While concluding whether an arrangement is an IAA, it is necessary that tax benefit arising, in aggregate, to all the parties should be Rs 3 crore or more. The main purpose of the impermissible avoidance agreement itself is an opinion and calls for

examination of the tax benefits arising to the assessee and to all the parties to the arrangement. Similarly, all the elements or conditions specified in section 96(1), satisfaction of which at least one is required to be fulfilled to make an arrangement an IAA. If one considers the provisions of section 99, for determining whether there is a tax benefit, various connected parties may be treated as one and the same person or any accommodating party may be disregarded or accommodating party and any other party may be treated as one and the same person or corporate structure may be disregarded. Apart from the above, the tax benefit is to be calculated in aggregate taking into account effect on all the parties to the arrangement. For the reasons, the Act also has laid down elaborate procedure and authority is entrusted to higher authorities and not to the Assessing Officer. Where the tax auditor has been provided access to the books of account and records of the other parties to the arrangement, he may be able to decide on IAA and report accordingly.

54.15 In the light of the above, the tax auditor should consider these aspects while examining the particulars to be reported under this clause. Further, Form 3CA, as well as Form 3CB require the tax auditor to certify that the particulars given in Form 3CD are true and correct. If due to want of following elaborate investigation process not consonant within confines of audit and due to lack of access to the books of account and other records of other parties to the arrangement, if the tax auditor is unable to come to a conclusion on the basis of which he can certify any arrangement to be 'true and correct', he should make an appropriate disclaimer in respect of reporting under this clause in Form 3CA or Form 3CB, as the case may be. Tax auditor in his report may comment as suggested below while reporting in respect of sub-clause (a):

"*In the absence of access to the books of account and other records of various parties to arrangement and want of elaborate investigations beyond ordinary process of audit involved in determining whether the arrangement is an impermissible avoidance arrangement, and in determining the tax benefit in the assessment year relevant to the previous year under audit arising, in aggregate, to all the parties to the arrangement, we are unable to determine the view of the assessee regarding its/his entrance into any impermissible avoidance agreement as contemplated under section 96 of the Act, during the previous year*".

54.16 In the light of the above discussion, the tax auditor should examine the following:

(i) The tax auditor should examine whether the Principal Commissioner or the Commissioner or the Approving Panel has, in any earlier previous year, declared any arrangement as IAA. In case, if any arrangement has been declared to be an IAA in any earlier previous year, the tax auditor should further examine if any transaction pertaining to or in connection with such declared IAA has taken place during the previous year under the audit. If any transaction pertaining to or in connection with such declared IAA has taken place during the previous year under the audit, this fact is expected to be reported. The tax benefit in the previous year arising from such transaction(s) to all the parties to the arrangement to be reported. If, however, due to the factors mentioned in the earlier paragraphs he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be.

(ii) The Auditor should examine if, in any earlier previous year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, If such references have been made, the auditor should report the fact in form 3CA or form 3CB, as the case may be. The auditor should further examine if any transaction pertaining to or in connection with such arrangement in respect of which reference has been made or has taken place during the previous year under the audit. If any transaction pertaining to or in connection with such arrangement has taken place during the previous year under the audit, the tax auditor should report this fact. The tax benefit in the previous year arising from such transaction(s) to all the parties to the arrangement to be reported. If however, due to the factors mentioned in the earlier paragraphs he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be. Even if the tax auditor is able to identify any impermissible avoidance agreement and amount of tax benefit in aggregate to all the parties in the arrangement, he will not be able to ascertain the same, as record of all the other parties to arrangement will not be available to him. Suitable disclaimer should be stated in such circumstances.

(iii) In either case, where the assessee has given response to any show cause notice or has preferred an appeal, along with outcome thereof, it

should be taken into consideration while verifying the reporting in the clause.

55. (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 or Aadhaar Number (if available with the assessee) of the lender or depositor;

(ii) Amount of each loan or deposit taken or accepted and code of the nature of such amount, as given in Note 1; [Dropdown to be provided];

(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 by cheque or bank draft or use of electronic clearing system through a bank account;

(vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the person from whom specified sum is received;

(ii) Amount of each loan or deposit taken or accepted and code of the nature of such amount, as given in Note 1; [Dropdown to be provided];

(iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

[Clause 31 (a), (b)]

Section 269SS

55.1 Section 269SS prescribes the mode of taking or accepting certain loans or deposits or specified sums. As per this section, no person shall take or accept from any other person any loan or deposit or specified sums otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed (hereinafter referred to as approved banking channels) if,

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan and deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b)

is twenty thousand rupees or more. An exception is provided for deposit accepted by / loan taken from Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") from / by its members. In such cases, a higher limit of Rs. 2 lakhs would be applicable. The CBDT, vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020, has prescribed the other electronic modes under Rule 6ABBA with effect from 1st September 2019. Under the said Rule, the following shall be the other electronic modes for the purposes of Section 269SS:

(a) Credit Card;

(b) Debit Card;

(c) Net Banking.

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer), and

(h) BHIM (Bharat Interface for Money) Aadhar Pay.

55.2 As per the first proviso to section 269SS, the provisions of section 269SS shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,-

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 2(45) of the Companies Act, 2013;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

55.3 Sub-clause (a) and (b) of clause 31 are relating to section 269SS wherein sub-clause (a) seeks details of loan or deposit, whereas sub-clause (b) requires reporting on receipt of 'the specified sum'. Particulars at (a) and (b) need not be given in the case of a government company, a banking company or a corporation established by the Central, State or Provincial Act.

Clause 31(a)

55.4 This clause seeks certain particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year. For the purposes of this section, "loan or deposit" means loan or deposit of money [Clause (iii) of Explanation to section 269SS].

55.5 While verifying the reporting under this clause, the tax auditor may keep in mind the following typical situations:

(i) Sale proceeds collected by the selling agent will not be considered as loan or deposit.

(ii) *CIT vs. Idhayam Publications Ltd. (2006) 285 ITR 221 (Madras)* may also be referred.

(iii) When there is a mixed account, the transactions relating to loans and deposits should be segregated from other accounts and the transactions relating to loans and deposits should be stated under this clause.

(iv) Opening credit balance of loan taken in earlier years is not specifically required to be disclosed. However, while giving figures of maximum amount outstanding at any time during the year or while giving information about acceptance and repayment of loan/deposit, the opening balances in the loan accounts will have to be taken into consideration.

(v) Even if the loans are taken free of interest, the information will still have to be given.

(vi) Security deposits against contracts, etc. will be covered by the definition of 'deposit' and therefore, such information will have to be given. However, the amount retained by the contractee against performance of contract will not be covered as loans/deposits for reporting as amount is not received.

(vii) Loans and deposits taken or accepted by means of transfer entries or journal entries in the books of account constitute acceptance of deposits or loans otherwise than by account payee cheques. Hence, such entries have to be reported under this clause. The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods/services will not be treated as loans or deposits accepted. In this regard it may be noted that the Code list inserted in Note 1 at the end of Clause 31 in Form No.3CD specifically includes the code for "Journal Entry". Therefore, reporting is required in this clause where loan and deposits are taken or accepted by means of journal entries (See para 57.13).

(viii) Interest accrued during the year and credited to deposit or loan account is not required to be reported under this clause.

(ix) Share application money advance supported by appropriate documentation is neither deposit nor loan and subsequent allotment of shares or repayment of application money as a part of allotment process does not alter the character of application money and provision of Section 269SS and section 269T are not attracted in such a case. *Rugmini Ram Ragav Spinners P. Ltd. 304 ITR 417 Madras High Court*

and IP India P. Ltd. 343 ITR 353 and Numero Uno Financial Services P. Ltd. 345 ITR 84 Delhi High Court However, contrary view has been taken in *Bhalotia Engineering Works (P) Ltd. 275 ITR 399.*

(x) Co-operative societies (including credit co-operative societies, housing societies, etc.) are not exempt from compliance with the provisions of Section 269SS/269T unless they qualify as "co-operative banks" under the Banking Regulation Act, 1949 and hold a valid licence from the Reserve Bank of India. Accordingly, any acceptance or repayment of loans or deposits by cash or by journal entries exceeding the prescribed threshold by such societies is required to be reported under this clause.

55.6 Particulars of each loan or deposit falling within the scope of this section as mentioned above taken or accepted during the previous year have to be stated under this sub-clause. Reporting is required only where each loan or deposit in an amount of Rs. 20,000 or more severally or in aggregate of the three sums, as specified in the section. This sub-clause requires six specific particulars in respect of each loan or deposit including the permanent account number or Aadhaar number of the lender or depositor, if available with assessee.

55.7 The tax auditor should obtain the above details from the assessee in respect of each reportable loan or deposit and verify if the amount reported is as pers records and evidence available with the assessee.

55.8 If the total of all loans/deposits/specified sum either severally or in aggregate from a person is Rs. 20,000/- or more but each individual item is less than Rs. 20,000/-, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches Rs. 20,000/- or more and until the balance goes down below Rs. 20,000/. As such the tax auditor should examine all loans/deposits taken or accepted where balance has reached Rs. 20,000 or more during the year for the purpose of verifying the reporting under this clause.

55.9 There will be practical difficulties in verifying the loan or deposit taken or accepted by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, for answering, as to whether bank cheque or bank draft was 'account payee', the tax auditor should make a suggested comment in his report. The suggested comment is as follows:

"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 the necessary evidence is not in the possession of the assessee".

55.10 Codes for the nature of amount or receipt of loan or deposit are provided in Note 1 (Refer para 57.13 of Guidance Note for guidance in this regard). Accordingly, the tax auditor should obtain and verify the Code-wise details of receipt of each loan or deposit.

55.11 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility.

Sr. No.	Name of the lender or depositor	Address of the lender or depositor	PAN/ Aadhaar No. of the lender or depositor, if available	Amount of loan or deposit taken or accepted	Code of the nature of such amount, as given in Note 1 (please see para 57.13 of the Guidance Note)	Whether the loan/ deposit was squared up during the previous year	Maximum amount outstanding in the account at any time during the Previous year	Whether the loan/ deposit was taken or accepted otherwise than by an account payee bank cheque or account payee bank draft
1	2	3	4	5	6	7	8	9

Clause 31(b)

55.12 Under this sub-clause, particulars of any "specified sum" taken or accepted in relation to transfer of an immovable property, whether or not the transfer takes place has been dealt with. Such specified sum may be any sum of money receivable whether by way of advance or otherwise. Clause (iv) of Explanations to Section 269SS defines "specified sum" as 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. The reporting is required irrespective of whether the immovable property is held as capital asset or stock in trade. Reporting of specified sum taken or accepted is required under the circumstances specified above.

55.13 The tax auditor should ascertain whether the assessee has any immovable property which has been transferred or was proposed to be transferred during the year and review the relevant agreements, documents etc. in this regard. The auditor should satisfy himself that the proceeds arising from such transfer, based on the review of documents, has been duly credited to the bank account by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

55.14 Codes relating to the nature of amount or receipt of specified sum are provided in Note 1 (Refer para 57.13 for guidance in this regard). Accordingly, the tax auditor should obtain and verify the Code-wise details of receipt of each specified sum.

55.15 The additional disclosure requirements in clause 31(b)(ii) have been introduced vide Notification No. 23/2025/F.No. 370142/10/2025-TPL dated 28.03.2025, and are applicable with effect from 01.04.2025. These requirements are applicable to audit reports pertaining to A.Y. 2025-26 and onwards. It is, however, noted that Clause 31(b)(ii) inadvertently refers to the phrase: "Amount of each loan or deposit taken or accepted and code of the nature of such amount, as given in Note 1". This should instead read as: "Amount of each specified sum taken or accepted and code of the nature of such amount, as given in Note 1", since Clause 31(b) pertains to 'specified sum' and not to 'loan or deposit'. Accordingly, the reference may be construed to mean 'specified sum' in alignment with the intent and scope of Clause 31(b).

55.16 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Name of the lender or depositor	Address of the lender or depositor	PAN/ Aadhaar number of the person from whom specified sum is received,	Amount of specified sum taken or accepted	Code of the nature of such amount, as given in Note 1 at the end of Clause 31 (Please See para 57.13 of	Whether the specified sum was taken or accepted otherwise than by an account payee bank cheque or	In case the specified sum was taken or accepted by cheque or bank draft,

			if available		Guidance Note)	account bank draft or use of electronic clearing system through a bank account	whether the same was taken or accepted by an account payee bank cheque or an account payee bank draft
1	2	3	4	5	6	7	8

56. (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:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Nature of transaction;

(iii) Amount of receipt (in Rs.);

(iv) Date of receipt;

(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 occasion 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:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Amount of receipt (in Rs.);

(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 occasion 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:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Nature of transaction;

(iii) Amount of payment (in Rs.);

(iv) Date of payment;

(bd) Particulars of each payment 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 occasion 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:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of payment (in Rs.);

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in

section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017)

[Clause 31 (ba), (bb), (bc), (bd)]

Section 269ST

56.1 Section 269ST provides that no person shall receive sum of Rs. 2 lakh 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 demand draft or by use of electronic clearing system through a bank account, or through such other electronic mode as may be prescribed. Contravention of section 269ST attracts penalty under section 271DA.

56.2 Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or `specified sum' referred to in section 269SS. 'Specified sum' means any sum of money receivable, whether as an advance or otherwise, in relation to transfer of an immovable property, whether not the transfer takes place. (Refer clause (iv) of the Explanation below section 269SS.)

56.3 It also does not apply to such persons or class of persons or receipts, which have been notified by the Central Government. The Central Government has issued two notifications in this respect. Under Notification No. S.O. 1057(E) [Notification No. 28/2017, F.No.370142/10/2017-TPL] dated 5th April, 2017, provisions of section 269ST do not apply to receipt by *any person* from an entity referred to in sub-clause (b) of clause (i) of the proviso to section 269ST i.e. any banking company, post office savings bank and co-operative bank.

56.4 Under Notification No. S.O. 2065(E) [No. 57 /2017, F.No.370142/10/2017-TPL] dated 3 July 2017, the Central Government has specified that the provisions of section 269ST shall not apply to the following receipts:

(a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;

(b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);

(c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);

(d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;

(e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

56.5 The CBDT has vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020 prescribed the other electronic modes under Rule 6ABBA with effect from 1st September 2019.

56.6 The sub-clauses 31(ba), (bb), (bc) and (bd) deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 269ST.

56.7 Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, sub-clauses 31(ba), (bb), (bc) and (bd) do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses.

56.8 Sub-clauses 31(ba), (bb), (bc) and (bd) require particulars to be furnished of receipts or payments, as the case may be, in an amount exceeding the limits 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. Thus, particulars are required to be given if receipts or payments, even though individually are lower than Rs. 2 lakh but in aggregate amount to Rs. 2 lakh or more if such receipts or payments are to or from one person in a day (whether related to a single transaction or otherwise) or relate to a single transaction (even if the receipts or the

payments, as the case may be, are on different dates and individual receipts or payments are less than Rs. 2 lakh) or are in respect of more than one transaction but relate to a single event or occasion (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than Rs. 2 lakh).

56.9 Sub-clause 31(ba) and (bb) requires particulars to be furnished in respect of transactions exceeding Rs 2 lakh where assessee has received the amount from a person, whereas sub-clause 31(bc) and (bd) requires information about the transactions exceeding Rs 2 lakh where the payment has been made by the assessee to a person.

56.10 While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while verifying the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments are pertaining to a single transaction.

56.11 Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion. For example, for a function organised by a person, assessee contractor may have been given catering contract as well as contract for flower decoration. In such a case, while the transactions may be different, the occasion or event would be the same and provisions of section 269ST will be attracted if the receipts exceeding the limits specified under section 269ST are by mode other than those specified in the section.

56.12 A reference may be made to Circular No. 22 of 2017 (F.No.370142/10/2017–TPL) dated 3rd July 2017. The CBDT, by the Circular, has clarified that 'in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for the loan shall not be

aggregated for the purposes of determining applicability of the provisions of section 269ST.' The same analogy can be applied to instalment of insurance premium received by insurance companies etc.

56.13 It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party consideration for which exceeds Rs. 2 lakh. In such a case, if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, such set off is not a receipt as contemplated under section 269ST. If the amount of such set- off exceeds Rs. 2 lakh, the tax auditor may give appropriate note to the effect that such set- off not being a receipt or payment has not been included in the particulars given and the relevant sub-clause.

56.14 If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt or payment, as the case may be. He will have to examine whether the receipt or the payment, as the case may be, has been properly classified as under:

(i) otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account, into receipt or payment;

(ii) by cheque or bank draft not being an account payee cheque or an account payee bank draft.

While section 269ST deals only with receipts exceeding Rs. 2 lakh or more otherwise than by the specified modes, sub-clauses 31(ba), (bb), (bc) and (bd) require details to be furnished of both receipts and payments.

Clause 31(ba)

56.15 Sub-clause 31(ba) deals with receipts by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST otherwise than by way of a cheque or bank draft or use of electronic clearing system through a bank account. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payer;

(ii) Nature of transaction;

(iii) Amount of receipt;

(iv) Date of receipt.

Clause 31(bb)

56.16 Sub-clause 31(bb) deals with receipts by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST by way of a cheque or bank draft not being an account payee cheque or account payee bank draft. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payer;

(ii) Amount of receipt.

Clause 31(bc)

56.17 Sub-clause 31(bc) deals with payments made by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST otherwise than by way of a cheque or bank draft or use of electronic clearing system through a bank account. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payee;

(ii) Nature of transaction;

(iii) Amount of payment;

(iv) Date of payment.

Clause 31(bd)

56.18 Sub-clause 31(bd) deals with payments made by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST by way of a cheque or bank draft not being an account payee cheque or account payee bank draft. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of payment.

56.19 In each of the above cases, as discussed earlier, the particulars have to be given of receipts or payments, as the case may be, in an amount exceeding the limits 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.

56.20 Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record, the dates of the receipts and the dates of the payments reported under sub-clauses 31(bb) and 31(bd), although not required to be reported under the said sub-clauses.

56.21 Where payment is made or received by cheque or demand draft, there will be practical difficulties in verifying whether the relevant payment or receipt is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the Institute of Chartered Accountants of India in similar cases to the tax auditors has been to make a suitable comment. The tax auditor, in his report may make comment as suggested below while reporting under sub-clauses 31(bb) and 31(bd):

> *"It is not possible for me/us to verify whether the receipts/payments have been accepted/made otherwise than by an account payee cheque or an account payee bank draft, as necessary evidence is not in the possession of the assessee".*

56.22 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

S. N.	Name of the payer	Address of the payer	PAN/ Aadhaar number of the payer, if available	Nature of transaction	Date of receipt	Amount of receipt	Mode of receipt		Transaction/ Document/ Event reference
							Whether otherwise than by cheque, bank draft or use of electronic clearing system through a bank account	Whether otherwise than by account payee cheque, account payee bank draft	
1	2	3	4		5	6	7	8	9

56.23 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

S. N.	Name of the payee	Address of the payee	PAN/ Aadhaar number of the payee, if available	Nature of transaction	Date of payment	Amount of payment	Mode of payment		Transaction/ Document/ Event reference
							Whether otherwise than by cheque, bank draft or use of electronic clearing system through a bank account	Whether otherwise than by account payee cheque, account payee bank draft	
1	2	3	4		5	6	7	8	9

57. Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of each repayment of loan or deposit or any specified advance and code of the nature of such amount, as given in Note 1; [Dropdown to be provided];

(iii) maximum amount outstanding in the account at any time during the previous year;

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

(v) in case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft.

[Clause 31(c)]

58. Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

[Clause 31(d)]

59. Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)

[Clause 31(e)]

Note 1. – The code for the nature of amount/ receipt/ repayment is as below –

S. No	Nature of amount or receipt or repayment	Code
(1)	(2)	(3)
1.	Cash payment	A
2.	Cash receipt	B

3.	Payment through non account payee cheque	C
4.	Receipt through non account payee cheque	D
5.	Transfer of asset	E
6.	Transfer of liability	F
7.	Conversion of assets	G
8.	Conversion of liabilities	H
9.	Journal entry [Debit]	I
10.	Journal entry [Credit]	J
11.	Any other mode [Debit]	K
12.	Any other mode [Credit]	L

Section 269T

57.1 Section 269T provides that no branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed if—

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is Rs 20,000 or more. An exception is provided for repayment by Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural

and Rural Development Bank ("PCARD") by raising the amount to Rs 2,00,000 applicable w.e.f. 1st April 2023.

Clause 31(c)

57.2 Sub clause 31(c) seeks information in respect of all the repayments made by the assessee of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year. Section 269T is attracted upon repayment of the loan or deposit or specified advance made by a person, where the aggregate amount of such loans or deposits held by such person or specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such loan or deposit or specified advance is Rs. 20,000 or more and is made otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

57.3 The CBDT has vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020 prescribed the other electronic modes under Rule 6ABBA with effect from 1st September 2019.

57.4 Clause (iii) of Explanation to Section 269T contains definition of the term "loan or deposit" for the purposes of section 269T. Accordingly, "loan or deposit" means any deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature. Further, Clause (iv) of Explanation to Section 269T defines "specified advance" mean to any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place. As such, all repayments made to any person where the loan or deposit or specified advance received along with interest payable thereon is Rs. 20,000 or more are to be reported under this sub-clause, even though the amount of repayment may be less than Rs. 20,000. The tax auditor should, accordingly, verify such repayments reported.

57.5 The second proviso to section 269T excludes repayments of loans taken from Government, Government company, banking company, Corporation established by a Central, State or Provincial Act etc. from the scope of the above section, and therefore the tax auditor need not report

repayments from such entities in his report. However, section 269T does not exclude Government companies, banking companies from the scope of its applicability. As such, details of repayment made to such entities are to be shown in the case of these entities also.

57.6 In the case of company assessee, loan or deposit is defined to mean deposit repayable after notice or loan or deposit repayable after a period. Therefore, in case of a company, loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. However, in the case of non-company assessee, loan or deposit is defined to mean loan or deposit of any nature. This distinction will have to be kept in mind while giving information under this sub-clause.

57.7 Loan or deposits discharged by means of transfer entries or journal entries in the books of account constitute repayment of loan or deposits otherwise than by account payee cheque or account payee bank draft. Hence, such entries have to be reported under this clause. In this regard it may be noted that the Code list inserted in Note 1 at the end of Clause 31 in Form No.3CD specifically includes the code for "Journal Entry". Therefore, reporting is required in this clause where loan and deposits are repaid by means of journal entries (See para 57.13).

57.8 Codes for the nature of amount or repayment of loan or deposit or specified advance are provided in Note 1 (Refer para 57.13 of Guidance Note for guidance in this regard). Accordingly, the tax auditor should obtain and verify the details of Code-wise details of repayment of loan or deposit or specified advance.

57.9 The tax auditor has to take into account the technological advancements in the field of banking and information technology where loans have been repaid other than through an account payee cheque of bank draft which are capable of being tracked such as bank transactions made electronically through the internet or through mail transfer or telegraphic transfer. These types of payments, though not made by account payee cheques in the conventional manner, are capable of being tracked. In order to judicially apply the provisions of section 269T, these amounts need not be reported in this clause.

57.10 The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods /services will not be treated as loans or deposits repaid.

57.11 There may be practical difficulties in verifying the loan or deposit repaid by cheque or bank draft is otherwise than by way of an account payee cheque or an account payee bank draft. In such cases, the tax auditor should obtain suitable certificate from the assessee to the effect that the repayments were made by account payee cheque or account payee bank draft. Where the tax auditor has relied on the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No.3CA or clause (5) of Form No.3CB.

57.12 The monetary limit of Rs. 20,000 or more is applicable in respect of a banking company or a cooperative bank with reference to each branch and in all other cases, assessee as a whole. It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Name of the payee	Address of the payee	PAN or Aadhaar Number of the payee, if available	Amount of the repayment	Code of the nature of such amount, as given in Note 1 at the end of Clause 31 (Please See para 57.13 of Guidance Note)	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account	In case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft
1	2	3	4	5		6	7	8

57.13 Note *1. – The code for the nature of amount/ receipt/ repayment is as below–*

Sr. No.	Nature of amount or receipt or repayment	Code
(1)	(2)	(3)
1.	Cash payment	A
2.	Cash receipt	B
3.	Payment through non account payee cheque	C
4.	Receipt through non account payee cheque	D
5.	Transfer of asset	E
6.	Transfer of liability	F
7.	Conversion of assets	G
8.	Conversion of liabilities	H
9.	Journal entry [Debit]	I
10.	Journal entry [Credit]	J
11.	Any other mode [Debit]	K
12.	Any other mode [Credit]	L

Each individual transaction of receipt of loan or deposit or specified sum and individual transaction of loan or deposit or specified advance repaid has to be reported separately by selecting the code from the drop down available, even if it is from the same person. Tax auditor should obtain and verify the details of Code against **each transaction** of receipt of loan or deposit or specified sum or **each transaction** of repayment of loan or deposit or specified advance, as the case may be.

This list covers the modes of receipt of loan/deposit/specified sum. This is required in Clause 31(a) [for loan or deposit taken or accepted] and Clause 31(b) [for specified sum taken or accepted]. Accordingly, the tax auditor should obtain and verify the details of Code against each receipt of loan/deposit/specified sum.

This list also covers the modes of repayment of loan/deposit which would require reporting in Clause 31(c) [for loan or deposit or specified advance repaid]. Accordingly, the tax auditor should obtain and verify the details of Code against repayment or loan or deposit or specified advance.

The reporting is required for receipt/repayment of loan or deposit by way of cash or non-account payee cheque. The Code list inserted by way of Note 1 signifies that receipt of loan or deposit or specified sum or repayment of loan or deposit or specified advance by way of journal entry, transfer of asset/liability or conversion of asset/liability or any other mode

would also require reporting under clause 31(a)/31(b)/31(c), as the case may be, where it exceeds the specified threshold.

For example, the Code list indicates that if loan is repaid by transfer of asset like machinery or land, then, reporting under clause 31(c) relating to repayment of loan is required. Likewise, reporting under clause 31(c) would also be required where loan is converted into equity shares.

As regards loan taken, an example can be where a non-banking finance company or an asset reconstruction company acquires loan assets of a bank, the consideration for which is wholly or partly in the form of security receipts. In this case, reporting would be required by the acquirer in clause 31(a) (in relation to loan accepted) under the relevant code given in Note 1.

The tax auditor must check the complete movement of loans and deposits, including the outstanding loan and deposits at the beginning of the year, loans taken and deposits accepted during the year and loans and deposits repaid during the year. He should carefully examine the books of account and check if the loans taken/repaid and deposits accepted/repaid are through any of the modes as indicated in the code list above. If the same have not been reported in clause 31, he may point out the same in his observations in Form No.3CA/Form No.3CB.

Clause 31(d)

58.1 Under this sub-clause, the details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year based on the examination of books of account & other relevant documents have to be provided. In the case of a repayment of any loan or deposit or any specified advance taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act, the particulars under this sub-clause need not be given.

58.2 However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown. It may be noted that the requirement under this sub-clause is applicable for the repayment of loans or deposits or specified advances together with interest which are in excess of Rs 20,000/-.

58.3 Practically, especially in case the repayments are voluminous, it may not be possible to verify the mode of each repayment received, reflected in the bank statement. It is, thus, desirable that the tax auditor should obtain suitable certificate from the assessee as to the repayment received and the mode of such repayment. Where the tax auditor has verified on the basis of the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

58.4 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Name of the payer	Address of the payer	PAN or Aadhaar Number of the payer, if available	Amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year
1	2	3	4	5

Clause 31(e)

59.1 Under this sub-clause, the tax auditor has to verify details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year based on the examination of books of account and other relevant documents. In the case of a repayment of any loan or deposit or any specified advance taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act, the particulars under this sub-clause need not be given.

59.2 However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown. It may be noted that the requirement under this sub-clause is applicable for the repayment of loans or deposits or specified advances together with interest which are in excess of Rs 20,000/-.

59.3 Practically, it may not be possible to verify each repayment received, reflected in the bank statement, as to whether the same has been through cheque, bank draft which is not an account payee cheque or account payee bank draft. Therefore, certificate may be obtained from the assessee and where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB.

59.4 It is recommended that the tax auditor considers the above guidance while verifying the following particulars reported in this sub-clause in the format provided in the e-filing utility:

Sr. No.	Name of the payer	Address of the payer	PAN or Aadhaar Number of the payer, if available	Amount of repayment of loan or deposit or any specified advance received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year
1	2	3	4	5

60. Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Sr. No.	Assessment year	Nature of loss/ allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA/ 115BAC/ 115BAD/ 115BAE	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/ 115BAD/ 115BAE^	Amount as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

***If the assessed depreciation is less and no appeal pending then take assessed.**

^ [To be filled in only for assessment year 2021-22 and 2024-25, as applicable.]

61. 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.

62. 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.

63. 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.

64. 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.

[Clause 32(a) to (e)]

60. Clause 32(a)- Details of brought forward loss or depreciation allowance

60.1 The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders read with appellate orders, if any. Depreciation on goodwill will not be available from AY 2021-22.

60.2 At times, while the particular claim for loss/allowance pertains to a particular assessment year as per the return of income, the same may relate to another assessment year as per the assessment order, e.g., Depreciation claim in respect of assets capitalized at the end of the financial year. In those cases, once the assessment order is received, the particulars have to be re-stated with reference to the assessment year to which they relate as per the assessment order. This should be accompanied by suitable explanation in the remarks column.

60.3 Brought forward losses may relate to different heads of income such as property income, profits and gains of business or profession, speculation business or capital gains. Different provisions are contained in sections 32 and 70 to 79A of the Income-tax Act with regard to loss/depreciation under different heads. In the remarks column information about the pending assessment or appellate proceedings or about delay in filing loss returns should be given. For

giving the above information, the auditors should study the assessment records i.e. income-tax returns filed, assessment orders, appellate orders, orders giving effect to appellate order and rectification/ revisional orders for the earlier years and ascertain if the figures given in the above clause are correct. Attention of the members is invited to provisions of section 80 read with section 139(3) of the Income-tax Act, 1961. Section 80 provides that notwithstanding anything contained in Chapter VI of the Act, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139 shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (2) of section 73A or sub-sections (1) of section 74 or sub-section (3) of section 74A. Besides these, the tax auditor should keep in mind the provisions of section 71B regarding Carry Forward and Set Off of Loss from House Property, section 73A regarding Carry Forward and Set Off of Losses by Specified Business and also section 78 regarding Carry Forward and Set Off of Losses in case of Change in Constitution of Firm or on Succession. It is to be noted that except for carry forward of loss under house property u/s 71B and unabsorbed depreciation u/s 32(2), no loss is allowed to be carried forward unless the return is filed within the time limit under Section 139(1) read with Section 80.

60.4 The tax auditor should also verify whether any revised or updated return has been filed under Section 139(5) or 139(8A) respectively, and its impact on the claim of carry forward of losses.

The tax auditor should examine if there is any pending assessment or appellate proceedings, or any delay in filing the return of income, impacting the carry forward of losses.

The tax auditor should carefully verify:

- Income-tax returns filed (including original, revised, or updated returns),
- Assessment orders, appellate orders, and orders giving effect thereto,
- Rectification or revision orders.

Losses which cannot be set-off or carried forward:

- Loss from gambling, betting, card games etc.
- Loss from an exempt source [for example, share of loss of partnership firm cannot be set-off against any other business income]

60.5 Maximum period of carry forward of losses and manner of set-off of brought forward losses:

Section	**Nature of loss to be carried forward**	**Income against which the brought forward loss can be set-off**	**Maximum period [from the end of the relevant assessment year] for carry forward of losses**
32(2)	Unabsorbed depreciation	Income under any head other than salaries	Indefinite period
71B	Unabsorbed loss from house property	Income from house property	8 assessment years
72	Unabsorbed business loss	Profits and gains from business or profession	8 assessment years
73	Loss from speculation business	Income from any speculation business	4 assessment years
73A	Loss from specified business u/s 35AD, in case of an assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A)	Profit from any specified business, irrespective of whether such business is eligible for deduction u/s 35AD.	Indefinite period
74	Long-term capital loss	Long-term capital gains	8 assessment years
	Short-term capital loss	Short-term/Long-term capital gains	8 assessment years

Section	Nature of loss to be carried forward	Income against which the brought forward loss can be set-off	Maximum period [from the end of the relevant assessment year] for carry forward of losses
74A	Loss from the activity of owning and maintaining race horses	Income from the activity of owning and maintaining race horses.	4 assessment years

Note - As per section 80, filing of loss return under section 139(3) within the due date specified under section 139(1) is mandatory for carry forward of the above losses except loss from house property and unabsorbed depreciation.

60.6 If any undisclosed income is determined in the case of the assessee during any proceedings of search, requisition or survey, then no adjustment or set- off shall be allowed against such undisclosed income. The set- off shall not be available in case of both brought forward losses as well as the unabsorbed depreciation. From Assessment Year beginning from 2022-23 onwards, the Tax Auditor has to confirm and verify whether any search or survey has taken place or undergoing based on the records of assessment proceedings of the assessee, and accordingly shall check if any undisclosed income has been determined in case of the assessee. The eligibility of brought forward losses and unabsorbed depreciation against such undisclosed income as computed by the assessee should be checked and, based on that, the necessary adjustments should be made to losses to be carried forward by the assessee.

60.7 The tax auditor should make appropriate disclosure in Form No. 3CA/ Form No. 3CB, in this regard.

60.8 Any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be disclosed in the remarks column by way of information. If consequential orders for any revision/appellate order is yet to be passed, the same can be disclosed along with the impact thereof if material. In case, order of appeal/revision is passed, the same shall be considered for reporting. Additionally, if the assessee has filed an updated return under Section 139(8A), he should accordingly adjust the carry forward of losses; and

the tax auditor should verify whether the amount of loss carried forward is based on the updated return filed.

60.9 Consequent to insertion of section 115BAE in the Income-tax Act, 1961 vide the Finance Act, 2023 w.e.f. A.Y.2024-25, reference to this section has been included in columns (5) and (6). Section 115BAE provides for a concessional tax rate of 15% (plus surcharge@10% of tax and cess@4% of tax plus surcharge) for new manufacturing co-operative societies, subject to computation of total income without claiming certain deductions/exemptions.

60.10 The tax auditor must verify Form No. 10-IFA filed by the assessee (mandatory for opting 115BAE). Section 115BAE can be opted subject to satisfying specific conditions including:

- Timely filing of Form No. 10-IFA electronically,
- Commencement of manufacturing of an article or thing on or before 31.3.2024
- Computation of income without specified deductions/exemptions.

The tax auditor should verify that these conditions are fulfilled before confirming eligibility under Section 115BAE.

60.11 A Co-operative society opting for section 115BAE is not eligible to claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, and Chapter VI-A (except section 80JJAA) while computing the total income. It cannot set-off loss brought forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to deductions under these sections..

60.12 Also, in relation to section 115BAA, 115BAC and 115BAD, the tax auditor has to check whether the reporting in clause 18(ca) aligns with the reporting in column (6) in the table in clause 32. The scheme of taxation under section 115BAA, 115BAC, 115BAD and 115BAE are broadly summarised under Clause 8(A).

60.13 Auditor may verify the Income Tax Portal data through 'e-Proceedings – Loss Carry Forward Status' or last year's ITR data to cross-check accuracy of reporting.

61. Clause 32(b)- Details of change in shareholding, if any

61.1 Section 79 of the Act provides that, notwithstanding anything contained in Chapter VI of the Act, in the case of a company, not being a company in which the public are substantially interested, where a change in shareholding has taken place in a previous year, then no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of that previous year and on the last day of the previous year in which the loss was incurred, the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons. The above condition shall not be applicable to eligible startups referred to in Section 80-IAC, if the shareholders of such a company who held shares carrying voting power on the last date of the year or years in which the loss was incurred, continue to hold those shares on the last date of such previous year and such loss has been incurred during the period of ten years beginning for the year in which such company is incorporated .The start-up should hold a certificate of eligible business from the Inter-Ministerial Board of Certification by filing requisite form.

61.2 The words used in section 79 are 'beneficial' ownership of shares and not 'registered' ownership. A declaration be obtained from assessee as to the beneficial ownership of shares. Here, Delhi High Court judgement in case of *Yum Restaurants (India) Pvt. Ltd. v. ITO 380 ITR 637* needs to be kept in mind which has a different viewpoint. Also, this section applies when change in shareholding pattern takes place in a previous year relevant to an assessment year but not prior to said previous year.

61.3 This provision shall **not** apply to a change in the shareholding consequent upon:

(a) the death of a shareholder, or on account of transfer of shares by way of gifts to any relative of the shareholder making such gift

(b) any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company

(c) A resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(d) to a company, and its subsidiary and the subsidiary of such subsidiary, where,—

(i) The Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act and

(ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(e) to a company to the extent that a change in shareholding has taken place during previous year on account of relocation referred to in Explanation to clauses (viiac) & (viiad) of section 47.

(f) to an erstwhile public sector company subject to the condition that the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold 51% voting power in aggregate, directly or indirectly through its subsidiary or subsidiaries

61.4 Sub-section (3) reads as follows -

"Notwithstanding anything contained in sub-section (2), if the condition specified in above clause (f) of the said subsection is not complied with in any previous year after the completion of the strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent years".

61.5 Therefore, the tax auditor has to additionally check the compliances under the above clauses and sub-section The tax auditor should obtain the details of changes in voting power pattern year-on-year and verify the reasons for any such changes before determining the allowability of losses eligible to be carried forward. The tax auditor should obtain necessary representation to

this effect wherever it is not feasible to verify or cross-check the shareholding pattern and changes therein.

61.6 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)*. Also, unabsorbed capital expenditure on scientific research and unabsorbed capital expenditure on promoting family planning amongst the employees is not affected by this provision. Although, the provisions of section 79 are overriding in case of unabsorbed depreciation, the tax auditor should check the provisions of section 79A onwards as regards to undisclosed income during the course of survey or search proceedings.

61.7 Clause 32(b) requires a statement 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. In this regard, the tax auditor should check the compliance of the clauses & sub-section as explained in above paras regarding changes in shareholding and allowability of losses.

61.8 It is recommended that tax auditors maintain working papers including:

- **Shareholding schedules (legal + beneficial)** for current and prior year.
- **Proof of continuity** of shareholding in cases covered under clause (f).
- **Management representation** for complex group structures or indirect holding situations.

61.9 The comparison of the composition of the shareholding is to be done with reference to the last day of the current previous year and the last day of every previous year in which the loss was incurred. The carry forward of the loss incurred in respect of different previous years is to be determined with respect to the individual previous years. Such comparison of the shareholding can be done by referring to the Register of Members and other requisite forms and documents filed with MCA and other statutory authorities.

61.10 The comparison must be carried out for **each year of loss separately**, and the allowability must be evaluated **year-by-year**, rather than in aggregate.

62. Clause 32(c) – Speculation Loss under section 73 of the Income-tax Act, 1961

62.1 Section 73 of the Act provides for the treatment of losses in speculation business. Section 73(1) provides that any loss, computed in respect of a speculation business carried on by the assessee shall not be set off except against profits and gains, if any, of another speculation business.

62.2 Section 73(2) further provides that where for any assessment year, any loss computed in respect of a speculation business has not been wholly set off under section 73(1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of Chapter VI, be carried forward to the following assessment year, and:

(i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

Section 73(3) provides that in respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

62.3 The tax auditor should -

(i) verify that a clear segregation of **depreciation and capital expenditure on scientific research** relating to speculative business is maintained

(ii) confirm that unabsorbed depreciation and capital expenditure on scientific research are carried forward under **Section 72(2)** and set off as per provisions, including timelines and return filing conditions.

(iii) obtain management representation about classification and carry forward of depreciation and scientific research expenditure related to speculation business.

62.4 Furthermore, section 73(4) provides that no loss shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

62.5 As per Circular No. 23(XXXIX-4)-D [Relevant Extracts] [F. No. 4(124)-60/TPL] issued by the CBDT, it has been clarified that, for the purposes of set-

off of brought forward speculation losses, the Income Tax Officer (ITO) may allow the assessee–

(i) either to first set-off the speculation losses carried forward from an earlier year against the speculation profits of the current year and then to set-off the current year's losses from other sources against the remaining part, if any, of the current year's speculation profits,

(ii) or to first set-off the current year's losses from non-speculation business and other sources against the current year's speculation profits and then to set-off the carried forward speculation losses of the earlier year against the remaining part, if any, of the current year's speculation profits,

whichever is advantageous to the assessee.

62.6 Although loss from speculation business cannot be set off against profits from/any other business, if there is loss from any other business the same can be set off against profits from speculation business.

62.7 As per Explanation 2 to section 28, where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

62.8 As per section 43(5), “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:

Provided that for the purposes of this clause—

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him also known as hedging transactions; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations also known as hedging; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or

arbitrage to guard against loss which may arise in the ordinary course of his business as such member; or

(d) an eligible transaction in respect of trading in derivatives referred to in clause (*ac*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; *or*

(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013,

shall not be deemed to be a speculative transaction.

62.9 Having regard to the definition of "speculative business", the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification, if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in section 73, if any incurred by the assessee during the previous year. It may be noted that it is not necessary that same speculation business needs to be continued to set off its loss of earlier year(s) against profit of same speculation business. It can be 'any' speculation business i.e., a different speculation business.

62.10 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility.

S. No.	Nature of loss	Amount of loss for the current year	Brought forward loss of the earlier year(s)	Total loss to be carried forward to the subsequent year	Break-up of the speculation loss in terms of the number of years for which it has been carried forward	Whether the speculation loss has been set off against any other income other than profit & loss, if any, of speculation business
1	2	3	4	5	6	7

63. Clause 32(d) – Details of Losses incurred in respect of a Specified business as referred to under section 73A

63.1 Section 73A provides for provisions relating to carry forward and set off of losses by specified business. It provides that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. It is not necessary that the nature of specified business in which loss is set off should be the same as that of the specified business in which loss was incurred.

63.2 Section 73A(2) provides that where for any assessment year, any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), 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, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(iii) any unabsorbed loss from specified business u/s 35AD can be carried forward for an indefinite period and set off only against profits of any other specified business.

63.3 Under clause 32(d), the tax auditor has 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 auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses, and losses have been incurred in more than one such business, the details of the loss incurred with respect of each business is to be specified separately.

63.4 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

Sr. No.	Nature of specified business	Amount of loss incurred, if any, during the previous year, with regard to the specified business mentioned in (b)	Loss from specified business brought forward from the earlier year	Amount of loss being set off against other specified business	Year of loss	Amount of loss being carried forward to the next assessment year	Whether loss set off against any other income other than from specified business as per sec. 35AD of the Act
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

64. Clause 32(e) – Details of speculation loss, if any, incurred from deemed Speculation business as referred to in Explanation to section 73:

64.1 The Explanation to section 73 provides that where any part of the business of a company (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" and" Income from other sources" or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, 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.

64.2 Under this clause, the tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred in explanation to section 73. The auditor may obtain information in the following format from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents:

Sr No	Applicable section	Nature of loss	AY of incurring loss	Amount of Loss	Amount set off during current AY	Amount to be carried forward
1	2	3	4	5	6	7

64.3 The above information so maintained may be used by the tax auditor for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility. This Explanation applies to losses considered as speculation loss for the purpose of this Explanation. Conversely, loss of other business (other than speculation business under this explanation) can be set off against profit of said speculation business.

65. 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.

[Clause 33]

65.1 Chapter VIA of the Act deals with various deductions which have to be given effect to by way of allowance from gross total Income of the assessee and they have been categorised under the Act as follows:

A. Deduction in respect of certain payments.

B. Deduction in respect of certain incomes.

C. Other Deductions.

While Chapter III relates to Income which do not form part of total income, the reporting under this clause is required only with respect to exemptions that can be claimed under section 10A (Special provisions 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). Attention is also invited to provisions of section 80AC which states that no deduction under Chapter VIA under the heading "C.—Deductions in respect of certain incomes" shall be allowed unless return of income is furnished on or before the due date prescribed under section 139(1). In view of due date for filing of return of income u/s 139(1) being after submission of tax audit report, tax auditor may put remark about admissibility of claim of deduction under Part C of Chapter VIA or section 10A /10AA that it will be subject to furnishing of return of income by assessee within specified time u/s 139(1) of the Act. It may

be noted that deduction u/s 10A is not available from A.Y 2012-13, even though the same is a requirement under this clause.

65.2 As stated earlier, the tax audit report in Form No. 3CA/3CB relates to business or professional activity of the assessee of which the tax auditor is doing audit under section 44AB. Form No. 3CD is an annexure to this Form giving particulars relating to the business/profession covered by the tax audit report. Therefore, the requirement under clause 33 relating to the deductions admissible under Chapter VIA, and section 10AA will have to be with reference to the items appearing in the books of account audited by the tax auditor. If the tax auditor is issuing tax audit report in respect of the accounts of a specific branch or a specific unit, he will have to examine the particulars relating to deduction admissible under Chapter VIA and exemption relating to section 10AA, as the case may be, with reference to the books of account of that branch or that unit which is audited by him. However, in such circumstances, appropriate remarks towards exclusion of data relating to HO and other branches/units of the assessee, is necessary. Similarly, when the tax auditor is issuing report regarding tax audit of the head office, he will have to take into consideration the tax audit reports of the branches as well as other units of the assessee which may have been audited by the other tax auditors and comply with SA-600 - "Using the work of another auditor" issued by ICAI. He will have to consider the particulars of deductions admissible under Chapter VIA and exemption relating to section 10A/10AA, as the case may be with reference to the particulars given by the tax auditor of other branches/units and also particulars of such deductions from books of the head office.

65.3 In the case of a sole proprietor being an individual or HUF, it may so happen that the tax auditor is auditing the accounts of the business/ profession and the sole proprietor is having other activities and other sources of income in respect of which tax audit is not mandatory. In such cases, the particulars of deductions admissible under Chapter VIA will have to be given with reference to the items appearing in the books of account of the business/profession which is subject to audit under section 44AB. The claim of deduction under Chapter VIA in return of income u/s 139(1) may vary from the amount reported in Form 3CD due to additional claim of deduction which is not part of audited books of accounts of assessee.

65.4 The admissibility of the aforesaid deductions/exemptions is dependent upon various conditions laid down in the section under which deduction/exemption is admissible. It is, therefore, advised that while working out the amount of admissible deduction, the tax auditor has to ascertain that

those condition(s) stand fulfilled or not. For ascertaining this, the tax auditor has to obtain all necessary evidence which would enable him to express the opinion regarding the admissibility of deductions. In order to ascertain the fulfillment of this condition, the tax auditor may have to check all documentary evidence. Likewise, if there is any condition which qualifies the admissibility of the amount of deduction, the tax auditor has to see and ascertain that those qualifying conditions are fulfilled on the basis of documentary evidence available with the assessee. There may be cases where there is difference between the amount claimed by the assessee and the amount computed by the tax auditor. In such cases, it is quite possible that the assessee's claim is based on some judicial pronouncement on the subject. In such cases, it may be advisable to report the amount admissible. The amount claimed and the background behind and the basis of the claim of the assessee may form part of the working papers. If the claim of the assessee is well-founded and settled by judicial pronouncement, the tax auditor may accept the claim, but he has to record in his working papers that admissible amount has been reported on the basis of such judicial pronouncement. In appropriate circumstances, such judicial pronouncements etc. should be mentioned in the report.

65.5 It may be noted that there are certain sections under Chapter VIA like section 80-IA, 80-IB, 80-IC, 80JJAA etc. where separate audit report or certificate is required to be issued. Under the said sections, an assessee who has income from industrial undertaking covered under the above sections has also to obtain audit report with reference to the accounts of these undertakings. While giving information with regard to the deduction allowable under such sections, the tax auditor should refer to separate audit reports/ certificates obtained by the assessee. These audit reports/ certificates may have been given by the tax auditor or by any other auditor. The figures given in such separate audit reports/certificates should be taken into consideration while giving information with regard to income covered by these sections. It is hereby mentioned that if certificate has been obtained from other auditor, then the tax auditor should comply with SA-600, *Using the work of another auditor.*

65.6 Since the details of exemptions admissible under sections 10AA are also to be reported in the desired format, the said information can be verified from the certificate issued by the chartered accountant in this regard. In case, a report under section 10AA has been issued by any other chartered accountant, then the same may be taken into consideration while reporting under this clause. Here, attention is invited to *SA-600, Using the work of another auditor*.

65.7 Some sections in Chapter VIA such as section 80G (donations), Section 80GGB/80GGC (contributions to political parties), section 80JJAA (wages of new workmen) etc. relate to the expenditure incurred by an assessee. There are other sections such as section 80P (income of co-operative societies), 80JJA (certain specified business relating to treatment of biodegradable waste) etc. which relate to income of the assessee. In respect of all these sections, the tax auditor should ascertain whether there is any expenditure or income covered by the above sections recorded in the books of account audited by him. Tax Auditor has to verify, on the basis of the examination of the books of account and other records, the information with regard to such expenditure/ income in respect of deduction allowable under Chapter VIA given under clause 33.

65.8 Section 115BA, 115BAA, 115BAB, 115BAC, 115BAD and 115BAE provide that no deductions under Chapter VIA or Chapter III can be claimed by the assessee opting for taxation under any of these sections except certain deductions as specified in the relevant sections, reply to clause 8a shall be considered and accordingly, admissibility of deductions should be examined.

66. 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)

*Should be read as (5) for proper reporting

** Should be read as (7) for proper reporting

*** Should be read as (9) for proper reporting

67. whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, 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. If not, please furnish list of details/transactions which are not reported

68. 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.

[Clause 34(a), (b) and (c)]

66. Clause 34(a)

66.1 While verifying the reporting under this clause, the tax auditor may exercise his judgement in the light of the applicable laws and about the applicability of the provisions of Chapter XVII-B or XVII-BB with regard to the auditee. The tax auditor may rely upon the judicial pronouncements while taking any particular view. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. Where it is not possible to say yes/no, the answer to the question may have to be qualified depending upon the facts and circumstances of each case. Having verified the applicability of the provisions of Chapter XVII-B and Chapter XVII-BB, the tax auditor should answer the question as "Yes" and thereafter provide 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". In case, answer is predominantly based on any judicial pronouncements, mentioning it in appropriate circumstances may be considered.

66.2 Once the tax auditor gives his affirmation with regard to applicability of the provisions of Chapter XVII-B and/ or Chapter XVII-BB, he is required to furnish further details in Clause 34(a). The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS/TCS return by the assessee for verifying the information required to be provided under this clause. Further, under section 194Q, the transaction of purchase of goods requires deduction of tax at source from 01.07.2021 in specified circumstances. On this subject, the CBDT has issued a Circular No. 13/2021 dated 30.06.2021 which may be referred to. Under Section 206C(1H), tax is required to be collected on receipt of amount as consideration for sale of any goods in specified circumstances. It is pertinent to note that TCS provisions under section 206C(IH) are not applicable w.e.f 1-04-2025. Also, it may not always be possible for the tax auditor to decide which expenditure or any amount thereof results into benefit or perquisite (referring to applicability of section 194R w.e.f. 01.07.2022) and it is advisable to seek management representation in this case. Reporting any limitation on such ascertaining amount may also be considered. Further, with regard to the applicability of section 194BA, (w.e.f 01.04.2023), the auditor should examine rule 133 and circular issued in this regard. It may be noted that while determining the amount to be reported in Clause 34(a), the tax auditor has to check and verify the payments made by the assessee and should not only restrict to verification of expenses debited to Profit & Loss or the TDS/TCS returns filed and provided by the assessee. For instance. an advance payment made to any contractor may also be liable for deduction of tax.

66.3 Column (1) of Clause 34(a) requires reporting of each Tax deduction and collection account number with regard to which tax has been deducted or collected at source.

66.4 Column (2) requires various sections under which tax is required to be deducted or collected at source.

66.5 Column (3) requires furnishing the details regarding the nature of payment.

66.6 Column (4) requires furnishing the details of the total amount of payment or receipt of the nature specified in column (3). The details in the said column may be drawn from the books of account and other relevant documents which include aggregate of payments/receipts on which tax is liable to be deducted as well as not liable to be deducted/collected. Auditor may maintain working papers giving reconciliation of amount as per books of account and amount on which TDS/TCS is required to be deducted/collected.

66.7 Column (5) casts an onerous responsibility on the auditor, wherein he is required to furnish the details of total amount on which the tax was required to be deducted or collected out of the amount mentioned in column (4) having regard to the nature of payments/ receipts under the relevant sections of Chapter XVII-B / XVII-BB. Since the reporting under column (4) is required to be made with regard to the nature of payments made or amount received, there may be a difference in the amounts reported under column (4) and column (5). The reasons for difference may be applicability of certificates issued under section 195/197 or threshold limits provided in specific sections or difference of opinion with regard to applicability of a particular section and the like. The auditor may maintain relevant working papers to this effect.

66.8 While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in the clause (3) of Form No. 3CA or clause (5) of Form No. 3CB as the case may be.

66.9 It is essential to note that it is the primary responsibility of the assessee to prepare the information in such a manner that the tax auditor can verify the compliance as required in the clause. The tax auditor is required to verify that no items have been omitted in the information furnished to him and reasonable test checks would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

66.10 In column (6), the total amount, out of the amount deductible or collectible as mentioned in column (5), at which the tax was deducted or collected at the specified rate has to be furnished. The rates of deduction as per the law relevant to the previous year has to be considered. Further, as per the provisions of sections 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source. The tax auditor should refer to the 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 the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued under section 195 or 197, the lower rate or nil rate, as the case may be, will be considered as the specified rate for the purpose of reporting under this clause. In the case of payment to non-residents, the applicable rate of tax deduction at source is to be read along with the Double Taxation Avoidance Agreement. Column (7) requires furnishing of total amount of tax deducted/collected out of the amount furnished in column (6).

66.11 Similarly, column (8) requires furnishing of the total amount, out of the amount deductible or collectible as mentioned in column (5), at which the tax was deducted or collected at the rate less than the specified rate out of Column (7). The lesser deduction is required to be reported in this clause. This will include deduction at a lower rate than what is prescribed, application of wrong section for deduction of tax at source, etc. For example, the assessee deducts tax u/s 194C @ 2%, however, there is another view that tax is required to be deducted @ 10% u/s 194I, the same has to be reported under this clause/column. In case, there is difference of opinion with regard to rate of deduction or applicability of a particular section, the auditor may appropriately report the difference of opinion in the clause (3) of Form No. 3CA or clause (5) of Form No. 3CB as the case may be giving both the views. Further, column (9) requires furnishing of total amount of tax deducted/collected out of the amount furnished in column (8). The tax auditor should also consider applicability of higher rate of TDS/TCS under certain circumstances like non-furnishing of PAN, non-filers of return as provided in section(s) 206AA/206AB/206CC/206CCA. It is pertinent to note that Sections 206AB and 206CCA have been omitted by the Finance Act, 2025 w.e.f 1-04-2025.

66.12 Column (10) requires the details of the amount of tax deducted or collected but not deposited to the credit of the Central Government to be furnished. As such, the tax auditor should verify the cases where the tax has been deducted at source

but not paid to the credit of the Central Government till the date of the audit. It may be seen that tax deducted but deposited late and before the date of Audit will not be required to be reported in this column (10).

66.13 The details in the column(s) (6), (7), (8), (9) and (10) may be examined from the TDS/TCS returns/statements furnished by the assessee to the Income-tax Department and be cross- verified from the books of account and other relevant documents. The auditor may take the status of the demand payable as per the TDS CPC (popularly known as TRACES) for the purpose of verifying the reporting in clause 34.

67. Clause 34(b)

67.1 Under clause 34(b), the tax auditor has to ascertain whether the assessee is required to furnish the statement of tax deducted or tax collected at source, and if so, whether he has furnished the same within the prescribed time. The tax auditor has to verify the details given in the table contained in Clause 34(b) only with regard to the statement required to be furnished by the assessee.

67.2 The information given in clause 34(a) and (b) should be reconciled with the disallowances reported under section 40(a) in clause 21(b) to the extent applicable for cross checking appropriateness of reporting under both the clauses.

67.3 Under sub-clause (b), the scope of the reporting requirements is to furnish information about the statement of tax deducted at source and tax collected at source required to be furnished by the assessee. Under the sub-clause, the tax auditor is required to verify the list of details/transactions which are not reported in the statement of tax deducted at source and statement of tax collected at source under column (5). Depending upon transactions that require tax deduction or collection, the tax auditor should ascertain which statements the assessee was required to furnish for the financial year under audit. He should check which statements have been furnished by the assessee for tax deducted as well as collected. The reporting requirement is notwithstanding the fact that the assessee has furnished the statements of tax deducted at source and tax collected at source.

67.4 In the first column, TAN should be stated. Based on examination of transactions requiring tax deduction or collection, a list of types of each form the assessee was required to furnish should be stated in the second column.

The third column shall state the due date for furnishing the statement listed in the second column. Fourth column shall state the date of furnishing the statement, if furnished. This information should be filled in, on the basis of acknowledgements for furnishing of statements. Fifth column requires the tax auditor to examine all the statements of tax deducted or collected and report whether all details/transactions required to be reported are furnished. If there is any deficiency in contents, the same is required to be reported against the relevant statement.

For example, the tax auditor should verify whether transactions below the threshold limits under relevant sections (e.g., Sections 194C, 194J, etc.) - in respect of which tax was not deducted or collected - have still been appropriately reported in the TDS/TCS statements, as mandated under Income-tax Rules, 1962. Such transactions, although not subject to tax deduction or collection, must be disclosed in the return with suitable flagging.

Also, if the information is voluminous, then the tax auditor should consider reporting significant deficiencies with appropriate remarks in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.

68. Clause 34(c)

68.1 Under this clause, detailed information has to be furnished in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. Section 201(1A) provides for payment of interest at a specified rate in case the tax has not been deducted wholly or partly or after deduction has not been paid to the credit of the Central Government as required by the Act. Similarly, section 206C(7) provides for payment of interest at a specified rate in case the tax is not collected wholly or partly or if collected not paid to the credit of the Central Government as required by the Act. The reporting as to whether the assessee is liable to pay such interest, should be in consonance with the reporting under clause 34(a) where the details of non-deduction are required to be reported.

68.2 Where 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 as on 31st March of the relevant previous year and also from the statement generated by the Department in Form No. 26AS/AIS/TIS of the assessee. In case, the assessee had disputed the levy or calculation of interest under TRACES, or in Form No. 26AS, the auditor may re-calculate the amount of interest under section 201(1A) or section 206C(7) up to the date of audit report for reporting under

this clause and also mention the fact in his observations paragraph provided in Form No. 3CA or Form No. 3CB, as the case may be.

68.3 Under mercantile system of accounting, interest if not paid till 31st March and provision is also not made, its impact on true and fair view should be considered.

69.(a) In the case of a trading concern, give quantitative details of 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.

[Clause 35 (a) and (b)]

Clause 35(a)

69.1 The tax auditor should examine whether the enterprise is a trading concern or not and it is accordingly reported in clause 10(a). If yes, the auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock (alongwith its measurement unit) and the extent of shortage/ excess/damage and the reasons thereof. The entire quantitative information should be examined by the auditor from the records.

Clause 35(b)

69.2 The tax auditor should ascertain whether the enterprise is a manufacturing concern and it is accordingly reported in clause 10(a). If yes, this sub-clause is applicable. The tax auditor should obtain certificate(s) from assessee in respect of principal items of raw materials, finished goods and by-products (alongwith its measurement unit) and quantitative information required to be reported in clause 35(b). This information should be given only in respect of those items where it is practicable to do so, having regard to the records maintained by the assessee.

69.3 The information about 'yield', 'percentage of yield', and 'shortages/ excess' is also required to be given.

69.4 'By-products' represent products whose manufacture results incidentally from the manufacture of the main product or where the waste arising in the manufacture of main product is further processed to create a by-product. Where the by-product is so produced or is continuously generated, it should be treated for the purpose of sale and disposal at par with any other product produced by the company and similar records should be maintained. The quantitative details on the above lines are to be given in respect of by-product also.

69.5 In a large concern, for both the sub-clauses (a) and (b), it may be difficult for tax auditor to verify each and every item of purchase, consumption, sales and production. In such cases, he may verify the figures using sampling method and satisfy himself as to the correctness of the figures furnished. This clause requires that quantitative details of "principal items" of raw materials and finished goods should be given. Therefore, information about petty items need not be given. What would constitute principal items will depend on the

facts of each case. Normally, items which constitute more than 10% of the aggregate value of purchases, consumption or turnover, as the case may be, be classified as principal items.

70. (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)

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

(i) Amount received (in Rs.):

(ii) Date of receipt:

[Clause 36A]

70.1 Clause 22 of section 2 defines the term 'dividend' in an inclusive manner. Sub-clause (e) deems certain payments to be dividend. Conditions for attracting the provisions of the sub-clause (e) are as under:

(i) Payment should be by a company in which public are not substantially interested (referred here as `closely held company');

(ii) Payment should be by way of advance or loan or the payment by such company on behalf, or for the benefit, of any specified shareholder;

(iii) Specified shareholder means a person who is the beneficial owner of shares holding not less than 10% of the voting power. It may be noted that for considering the 10% of the voting power, what is relevant is the percentage of stand-alone shareholding of such shareholder and shareholding of his relatives is not required to be considered; The auditor should consider the shareholding status as on the date on which the loan or advance is received.

(iv) Payment by way of advance or loan should be to the shareholder or any concern in which the shareholder is a member or a partner and in which he has substantial interest;

(v) The company making the payment should have accumulated profits, at least to the extent of loan or advance or payment, as the case may be. The amount of dividend is restricted to the extent to which the company possesses accumulated profits.

70.2 Sub-clause (e) of clause 2(22) deems such loan or advance or payment in the aforementioned circumstances to be 'dividend' for the person being a recipient. The accumulated profits are to be computed up to the date of

payment after considering provisions of Explanation 1, Explanation 2 and Explanation 2A below section 2(22). Explanation 3 defines the term 'concern' to include a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company. A person is deemed to have a substantial interest in a concern (other than a company) if he is, at any time during the previous year, beneficially entitled to not less than 20% of the income of such concern. Section 2(32) defines the term 'person who has substantial interest in the company' to mean a person who is the beneficial owner of shares (not being shares entitled to fixed rate of dividend) carrying not less than 20% of the voting power.

70.3 It may be noted that even if the loan or advance is made by the closely held company to the concern, it is chargeable to tax in the hands of the shareholder and not in the hands of the concern. In this respect, a reference may be made to the decision of the Supreme Court in the case of *CIT v Madhur Housing & Development Co. (340 ITR 14)* confirming decision of Delhi High Court in the case of *CIT v Ankitech (P) Ltd. 340 ITR 14 (Delhi)*. A reference may also be made to the decision of the Bombay Court in the case of *CIT v Universal Medicare Pvt. Ltd. 324 ITR 263 (Bom)*. However, in the case of *National Travel Services v. Commissioner of Income Tax, Delhi-VIII*, the Hon'ble Supreme Court noted conflicting judicial interpretations, particularly the Division Bench decision in *CIT v. Ankitech Private Limited*. In *Ankitech*, the court held that the term 'shareholder' referred exclusively to a registered shareholder, even after the statutory amendment. The Supreme Court found this view inconsistent with both the legislative intent and the plain language of the amended provision. It emphasized that, for the purpose of Section 2(22)(e), the focus should be on the *beneficial owner* holding not less than 10% of the voting power.

In light of the divergent views and the substantial implications of the amended provision, the Supreme Court determined that the issue warranted reconsideration by a larger bench. Accordingly, the matter was referred to the Chief Justice of India for the constitution of a three-judge bench to re-examine the interpretation of 'beneficial owner' and assess whether the facts of the case satisfied the second limb of the amended definition. However, the appeal was ultimately dismissed due to withdrawal under the Vivad Se Vishwas Scheme (VSVS).

As a result, the legal question remains unresolved: whether a partnership firm, holding shares through its partner, can be treated as a 'shareholder' or

'beneficial shareholder' for the purpose of computing deemed income under Section 2(22)(e).

In case the registered shareholder is not the beneficial owner, then, the tax auditor should obtain an undertaking to this effect from him and the same should be mentioned in his observations in Form 3CA/Form 3CB. Where the registered shareholder is not the beneficial owner, the tax auditor should ascertain whether appropriate compliance by way of filing of the requisite forms under the Companies Act, 2013 have been done. In order to verify reporting under this clause, the tax auditor should obtain from the assessee a certificate containing list of closely held companies in which he is a beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has substantial interest. The tax auditor should also obtain a certificate from the assessee giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely-held company in which he is a beneficial owner of shares carrying not less than 10% voting power. These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the assessee. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the assessee. These remarks may be included in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

70.4 The tax auditor should also verify Form No. 26AS/AIS/TIS in the case of the assessee to know if the closely held company has deducted tax at source from any payment made by it to the assessee or the concern under section 194. This will indicate the view taken by the closely- held company making the payment. The tax auditor may consider the same before coming to a conclusion.

70.5 So far as any payment by the closely- held company made on behalf of or for the individual benefit of the assessee is concerned, there may not be any record available for the auditor to verify the same. In such a case, an auditor may make appropriate remarks in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be. It may be noted that if the closely-held company has made payment on behalf of or for the individual benefit of the assessee in his capacity, say, as the managing director of the closely- held company and if such payment has been considered as part of the remuneration, the same payment is not again chargeable to tax under section 2(22)(e) and is not required to be reported under this clause. For attracting

section 2(22)(e), it is necessary that the assessee receiving a loan or advance should be a shareholder.

70.6 In the light of the above position, wherever the beneficial shareholder is not the registered shareholder and the closely- held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make appropriate remark about the basis of reporting in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be. Under the provisions of section 2(22), dividend does not include any advance or loan made to a shareholder or the concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company. As mentioned earlier, the dividend taxable under section 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier, any amount has been considered as income under any of the clauses of section 2(22), the accumulated profits will have to be reduced by such an amount. The tax auditor may not be able to determine the accumulated profits such as on the date of payment of the closely- held company making the payment for various reasons. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case, the auditor should include appropriate remarks in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be, about the methodology adopted by him.

70.7 There may be business transactions between the closely-held company and the concerns in which the assessee has substantial interest. Trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e). In this regard, the Central Board of Direct Taxes has issued Circular No. 19/2017 (F.No.279/Misc. /140/2015/ITJ) dated 12 June 2017. Considering the Circular, business advance or trade advances from closely held companies to the assessee or concerns in which the assessee has substantial interest are out of the purview of 2(22)(e) and need not be reported as dividend under this clause of Form No. 3CD.

70.8 The assessee or the concern may have current account of the closely - held company in its books of accounts. In such a case, there could be various transactions accounted for in such current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the assessee or the concern. Considering various

judicial decisions and the CBDT Circulars, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

70.9 Under sub-clause (a) of clause 36A, it has to be mentioned 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. If the answer is in affirmative, to state 'Yes', otherwise 'No'. If the answer is 'yes', the same is to be reported under sub-clause (b) of clause 36A. Under this sub-clause, each such amount received that is considered as dividend under section 2(22)(e) and the date of receipt thereof should be stated. The tax auditor has to verify the details in respect of this sub-clause, and it is recommended to maintain appropriate working papers.

71. (a) Whether the assessee has received any amount for buyback of shares as referred to in sub-clause (f) of clause (22) of section 2? (Yes/No)

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

(i) Amount received (in Rs.)

(ii) Cost of acquisition of shares bought back

[Clause 36B]

71.1 Sub-clause (f) was inserted in section 2(22) of the Income-tax Act, 1961 with effect from 01-10-2024 in order to further broaden the meaning of the term "dividend" so that it can include any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013.

71.2 The provisions relating to the power of a company to purchase its own shares are contained in section 68 of the Companies Act, 2013 which reads as follows -

> "*Power of company to purchase its own securities u/s 68—(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—*
>
> *(a) its free reserves;*

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—

(a) the buy-back is authorised by its articles

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back

Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting.

(c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company.

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves.

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

(e) all the shares or other specified securities for buy-back are fully paid-up.

(f) the buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the

regulations made by the Securities and Exchange Board in this behalf; and

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed.

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

(3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of shares or securities intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time-limit for completion of buy-back.

(4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2).

(5) The buy-back under sub-section (1) may be—

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market;

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity."

(6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by atleast two directors of the company, one of whom

shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board: Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed: Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company

shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Explanation I.—For the purposes of this section and section 70, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purposes of this section, "free reserves" includes securities premium account."

71.3 As such, while verifying the contents of the reporting under item (i) of sub-clause (b) of clause 36B, it should be verified that only such amount of received in respect of buyback completed on or after 1st October, 2024 is reported and no amount which has been received in respect of buyback completed before such date should be mentioned here. Further, the tax auditor should take into consideration whether the amount that has been received as a buyback is forming part of the accounts that is subject to Tax Audit or not. In case of any individual/HUF, there could be a case where there are two separate sets of financials maintained i.e. one set of financials containing the business accounts and the other one which only has personal accounts. Hence, if the share and securities forms part of the personal accounts, then, ideally no reporting is required to be made in this clause as it is not subjected to tax audit. However, if the business accounts has the shares and securities reported under it, then, a reporting shall be required to be made, even if the assessee claims that the amount has been earned out of tradable stock i.e. the assessee is in the business of trading into shares and securities.

71.4 The said amount of buyback can be cross verified by the Tax Auditor by referring to the TIS/AIS, wherein certain companies would have reported the transactions that are in the nature of buyback of shares. A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013, is required to furnish details of buyback of shares from any person (other than the shares bought in the open market) for an amount of value aggregating to Rs.10 lakh or more in a financial year. Further, in the case of listed entities, the information regarding buyback of shares is available in public domain. Also, the auditor may check and compare with Form SH-8/SH-9 filed with the Registrar of Companies (ROC). However, as a procedural aspect, the tax auditor should always insist on disclosure of

such buyback amounts from the assessee by way of a Management Representation Letter.

71.5 Accordingly, the actual cost incurred to purchase such shares which has been bought back by the company should be mentioned in item (ii) of sub-clause (b) of clause 36B.

71.6 Any reporting made in item (i) and/or (ii) of sub-clause (b) of Clause 36B shall have a direct nexus to the computation of total income. The reporting made in item (i) of sub-clause (b) to Clause 36B shall have a direct effect on the computation of "Dividend Income" of the assessee. Further, the reporting made under item (ii) of sub-clause (b) to Clause 36B shall have a direct effect in computing the "Capital Losses (except where the shares are held as stock-in-trade, in which case it would have an impact on computation of income under the head "Profits and gains of business and profession).

72. 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

[Clause 37]

72.1 The tax auditor should ascertain from the management whether a cost audit was carried out and if yes, a copy of the same should be obtained from the assessee. Even though the tax auditor is not required to make any detailed study of such a report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor. 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.

72.2 In cases where cost audit, which might have been ordered, but has not been completed by the time the tax auditor issues his report, he has to report appropriately in this report stating that since cost audit has not been completed, the cost audit report is not available with the assessee.

72.3 The tax auditor should examine the time period for which the cost audit, if any, was required to be carried out. Information is required to be given only in respect of such cost audit report, the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that cost audit report which is received up to the date of tax audit report.

73. 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

[Clause 38]

73.1 The tax auditor should ascertain from the management whether any audit was conducted under the Central Excise Act, 1944 and if such an audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details if any, of disqualification or disagreement on any matter/item/ value/quantity as may be reported/identified by the auditor. 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.

73.2 In cases where the excise audit which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since excise audit is not completed, the excise audit report is not available with the assessee.

73.3 The tax auditor should examine the time period for which the excise audit, if any, has been required to be carried out. Information is required to be given only in respect of such excise audit report the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that excise audit report which is received up to the date of tax audit report.

74. 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.

[Clause 39]

74.1 With service tax subsumed in GST, and no longer in operation, the relevance of this clause has substantially diminished. Consequently, reporting under this clause would, in most cases, not arise. Only in exceptional cases involving legacy issues from the pre-GST regime—such as where a demand raised, adjudicated or concluded during the year-might some degree of consideration be warranted.

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

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		

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

[Clause 40]

75.1 These ratios have to be calculated for assessees who are engaged in manufacturing or trading activities, except ratio No. 5 which need not be required to be furnished for trading concern. In respect of service provider, only information at S. No. (1) and (3) need to be furnished.

75.2 While calculating these ratios, meaning has to be assigned to the terms used in the above ratios having due regard to the generally accepted accounting principles. All the ratios mentioned in this clause are to be calculated in terms of value only.

(a) ***Gross Profit / Gross Margin*:** The excess of the proceeds of goods sold and services rendered during a period over their cost, before taking into account administration, selling, distribution and financing expenses. When the result of this computation is negative, it is referred to as gross loss.

(b) ***Sales Turnover*:**. Attention is invited to (Sales, Turnover, Gross receipts) in para 5 of this Guidance Note.

(c) ***Net Profit*:** The excess of revenue over expenses during a particular accounting period. When the result of this computation is negative, it is referred to as net loss. It may be noted that the net profit to be shown here in this clause is net profit before tax.

75.3 For the purpose of calculating the ratio mentioned in S. No. (4), only closing stock is to be considered. The term `stock-in-trade' used therein does not include stores and spare parts or loose tools. The term "stock-in-trade" would include only finished goods and would not include the stock of raw material and work-in-progress since the objective here is to compute the stock-turnover ratio.

75.4 Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools.

75.5 The value of finished goods produced may be arrived at by using the following formula:

(a)	Raw material consumption	-	
(b)	Stores and spare parts consumption	-	
(c)	Wages	-	
(d)	Other manufacturing expenses excluding depreciation.	-	
	Sub total		-
	Add : Opening stock in process	-	
	Deduct : Closing stocks in process	-	
	Value of finished goods produced	-	

75.6 Under this clause, calculation of the ratios is also to be stated. As such, computation of various components based upon which these ratios have been worked out is required to be stated under this clause. However, if any of the above components is stated in the financial statements themselves, a reference to the same may be made, to the extent possible.

75.7 There should be consistency between the numerator and the denominator while calculating the above ratios. Any significant deviation thereof should be pointed out in para 3 of Form 3CA or para 5 of Form 3CB.

75.8 The relevant previous year figures are to be taken from last previous year audit report or the reinstated figures to make the ratios comparable with current year. In case, the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column and the same should be disclosed in the observation para of Form No.3CA/Form No.3CB

76. 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.

[Clause 41]

76.1 The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1957 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/ refund orders issued by the governmental authorities during the previous year and received by the assessee up to the date of audit under any tax laws other than Income Tax Act and Wealth Tax Act. Normally, the tax laws such as Goods and Service Tax (GST), Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, Central Sales Tax, Professional Tax etc. would be covered under as tax laws. However, the auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

76.2 It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause. The tax auditor should verify the books of account and the orders passed by the respective Department(s) for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same. It is advisable to cross verify the demands from online portal of the respective Department. If there is any adjustment of refund against any demand, the same should be reported under this clause. Management representation should be obtained from the assessee. In case of corporate assessee, the auditor should check the said details with the disclosures of contingent liabilities in the audited financials, and disclosures in statutory auditor's report pursuant to CARO, if applicable.

76.3 It is recommended that the tax auditor maintains the following information in his working papers for the purpose of verifying the reporting in this clause in the format provided in the e-filing utility:

S. No.	Financial Year to which the Demand / refund relates	Name of the applicable Act	Demand/ Refund Order No., if any	Date of Demand raised/ refund issued	Amount of demand raised/ refund issued	Remarks
1	2	3	4	5	6	7

76.4 The tax auditor also requires details of relevant proceedings. This information should be furnished in remarks column by stating the authority before which the matter is pending.

77 (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:

S. No.	Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.

[Clause 42]

77.1 Sub-clause (a) of clause 42 requires whether the assessee is required to furnish Form No. 61, Form No. 61A or Form No. 61B. The following table contains the provisions requiring the assessee to furnish these forms:

Form No.	Section & Rule	Particulars & Conditions
61	Section 139A(5)(c), Rule 114B, 114C and 114D	Form No. 61 is to be filed by certain persons who have received any declaration in Form No. 60. Persons who have to file Form No. 61 are persons referred to in: (i) Rule 114C(1)(a) to (k), and (ii) Following persons who are required to get their accounts audited under section 44AB of the Act: - persons raising bill in respect of payment made in cash for amount exceeding Rs. 50,000 to a hotel or restaurant, - persons raising bill in connection with foreign travel or purchase of foreign currency payment for which payment is made in cash for an amount exceeding Rs. 50,000, and

Form No.	Section & Rule	Particulars & Conditions
		- person raising bill in respect of transactions of sale or purchase of goods or services other than those specified at serial numbers 1 to 17 of the Table in Rule 114B where value of the transaction exceeds Rs. 2 lakhs per transaction.
61A	Section 285BA, Rule 114E	Rule 114E(2) provides for the nature and value of transaction in respect of which the statement is required to be filed and persons who are required to file the statement.
61B	Rule 114F, 114G and 114H	Rule 114F defines various terms, Rule 114G prescribes the information to be maintained and reported and Rule 114H prescribes the due diligence requirements.

77.2 The requirement of furnishing the forms is based on the conditions stated in the relevant section and rule; and accordingly, 'yes or 'no' should be stated. The tax auditor should ascertain whether the assessee was required to furnish any of these three forms and if so, if he has furnished within the due date. Due dates for furnishing the forms are as under:

Form No.	Due date
61	31st October where declarations in Form No. 60 have been received during 01st April to 30th September; and by 30th April where declarations in Form No. 60 have been received during 01st October to 31st March of the immediately preceding financial year.
61A	31st May of the immediately following financial year
61B	31st May of the immediately following financial year

77.3 In case, answer to sub-clause (a) is in affirmative, the requisite information should be reported in sub-clause (b). Every reporting financial institution has to communicate to the Principal Director General of Income-tax (Systems), the name, designation and communication details of the Designated Director and the Principal Officer and obtain a registration number. This registration number is to be quoted in Form 61B. Form 61B also requires ITDREIN (Income-tax Department Reporting Entity Identification Number) which is a Unique ID issued by the Department which is communicated by the Department after the registration of the reporting entity. Thereafter, type of

Form i.e. Form no. 61, 61A or 61B is to be reported along with due dates of furnishing such Forms. Date of actual furnishing is also to be reported, in case furnished by the assessee and such date can be obtained from assessee's e-filing acknowledgement number of the said Forms.

77.4 The tax auditor is further required to verify whether the Form contains information about all details or furnished transactions which are required to be reported. He may rely on the Management Representation Letter in this regard.

77.5 Form No. 61, 61A and 61B uploaded on the income tax portal should be examined by the tax auditor for the purpose of verifying the reporting under this clause. If the forms have been revised, then, the auditor must verify whether all the particulars required to be reported have been reported in the revised form.

78. (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)

(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

[Clause 43]

78.1 Clause 43 seeks information about applicability to furnish the report as referred to in sub-section (2) of section 286. Section 286 deals with filing of Country by Country Report by `international group'.

78.2 Under section 286(1), every constituent entity resident in India, if it is a constituent of an international group and the parent entity of which is not resident in India, has to notify the prescribed income tax authority in Form No. 3CEAC whether it is the alternate reporting entity of the international group; or the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

78.3 Section 286(9)(g) defines the term 'international group' to mean any group that includes, (i) two or more enterprises which are resident of different countries or territories; or (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in

other countries or territories. Alternate Reporting Entity has been defined in clause (c) of section 286(9) to mean any constituent entity of the international group that has been designated by such a group, in place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group.

78.4 Section 286(2) casts an obligation on the parent entity if it is resident in India or the alternate reporting entity if it is resident in India to furnish for every `reporting accounting year', in respect of the international group of which it is a constituent, a report for the accounting year, which term is defined in section 286(9)(a), to the prescribed authority. The reporting requirement under section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed Rs. 6,400 crores (Rule 10DB).

78.5 Clause 43(a) requires the auditor to verify whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report referred to in section 286(2). Thus, the obligation to furnish the report referred to in section 286(2) arises under following situations requiring reply in affirmative to clause 43(a):

(i) If the assessee itself is the parent entity of the international group and is resident in India, it will have the obligation to furnish the report under section 286(2);

(ii) If the assessee is resident in India and has been designated as the alternate reporting entity of the international group, it will have obligation to furnish the report under section 286(2);

(iii) If the assessee is a constituent of the international group with its parent entity resident in India and the group has not designated any other resident constituent entity as the alternate reporting entity, the parent entity will have the obligation to file the report under section 286(2);

(iv) If the assessee is neither the parent entity nor has it been designated as the alternate reporting entity, but other constituent entity resident in India of the international group has been designated as the alternate reporting entity by the group, such other constituent entity resident in India will have obligation to file the report under section 286(2).

78.6 The tax auditor should verify in the case of the assessee if any of the above four situations exist. The tax auditor should verify if the assessee whose parent is a non-resident has filed Form No. 3CEAC. Form No. 3CEAC has to

be furnished within a period of 10 months from the end of the reporting accounting year referred to in section 286(2). Therefore, the due date for furnishing Form No.3CEAC will fall on 31st January, which is after the specified date of tax audit (30th September/31st October, as the case may be). Therefore, the details required under this clause relating to the immediately preceding previous year in respect of which Form No.3CEAC has been filed in the relevant previous year or before the specified date can be furnished.

78.7 Form No.3CEC will indicate if the assessee or another constituent entity resident in India has been designated as the reporting entity for the international group. The tax auditor may obtain necessary certificate from the assessee in respect of constitution of the international group, entities that are resident in India and not resident in India and entity if appointed as the alternate reporting entity. If none of the above four situations described above exists, the reply to clause 43(a) will be negative.

78.8 If the reply to clause 43(a) is in affirmative, the following information has to be furnished:

(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

If the assessee has filed a report, the tax auditor should verify acknowledgement for furnishing the same. If the report has been filed either by the parent of the assessee or another constituent entity of the international group, the tax auditor should ask for a copy of the report and acknowledgement for filing the report.

78.9 The term parent entity is defined in section 286(9)(h). The tax auditor should examine which is the parent entity and verify whether the same has been correctly reported. The term 'alternate reporting entity' is defined in section 286(9)(c). The tax auditor should examine whether any such alternate reporting entity exists and if yes, name of the alternate reporting entity should be stated. From acknowledgement for furnishing report as referred to in sub-section (2) of section 286, the date of furnishing of the said report should be stated.

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

Sl. No.	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	
1	2	3	4	5	6	7

[Clause 44]

79.1 A question may arise whether the above information is to be given in respect of each and every head of expenditure or only the total expenditure is to be given. Here, guidance may be taken from the heading of the table which starts with the words "Breakup of total expenditure" and hence the total expenditure including purchases as per the above format may be given. It appears that head-wise / nature- wise expenditure details are not envisaged in this clause.

79.2 Depreciation under section 32, deduction for bad debts u/s 36(1)(vii) etc. which are accounting expenses in the nature of non-cash charges on the Profit and Loss account should not be reported under this clause in any of the Columns from 3 to 7, though such amount is included in the amount reported in column 2 - Total amount of Expenditure incurred during the year (see para 79.4).

79.3 Headings of columns 3-6 and column 7 require reporting of "Expenditure in respect of entities registered under GST" and "Expenditure relating to entities not registered under GST" respectively. Thus, the expenses which are within the scope of GST i.e., which tantamount to 'supply' in terms of section 7 of the CGST Act, 2017 are only required to be reported under this

clause in any of the columns from 3 to 7. For example, Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7. For example, Para (1) of the Schedule III covers "Services by an employee to the employer in the course of or in relation to his employment" and thus, remuneration to employees need not be reported.

79.4 It would be beneficial to maintain working paper of total expenditure in the following manner:

Description *	Amount (Rs.)
Total value of expenditure in P&L for the year (To be reported in column 2)	XXXX
Add: Total value capital expenditure not included in P&L for the year	XXXX
Less: Total value of non-cash charges considered as expenditure	XXXX
Less: Total value of expenditure excluded for being transactions in securities and transactions in money	XXXX
Less: Total value of expenditure excluded by virtue of Schedule III to the CGST Act, 2017	XXXX
Balance being value of expenditure for clause 44	**XXXX**

** Details of all deductions & additions must be maintained for each sub-entity (GSTIN-wise) of the legal entity.*

79.5 It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.

79.6 The format as per clause 44 of form 3CD requires that the information is to be given as per the following details:

A. Total amount of expenditure incurred during the year

B. Expenditure in respect of entities registered under GST

C. Expenditure related to entities not registered under GST

79.7 The reporting in respect of B above, i.e. the expenditure in respect of entities registered under GST is further sub-classified into four categories as follows:

a) Expenditure relating to goods or services exempt from GST

b) Expenditure relating to entities falling under composition scheme

c) Expenditure relating to other registered entities

d) Total payment to registered entities

79.8 **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. Section 2(47) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) defines exempt supply as follows:

> *"exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;"*

To ascertain what are taxable and exempt supplies, the following notifications issued under the CGST Act, 2017 and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as IGST Act, 2017) are relevant:

79.9 Notification No. 1/2017 CT (R), which prescribes rates for intra-State supply of goods

(A) Notification No. 2/2017 CT (R), which prescribes intra-State supply of goods which are exempt

(B) Notification No. 11/2017 CT (R), which prescribes rate for intra-State supply of services

(C) Notification No. 12/2017 CT (R), which prescribes intra-State supply of services which are exempt

(D) Notification No. 1/2017 IT (R), which prescribes rates for inter-State supply of goods

(E) Notification No. 2/2017 IT (R), which prescribes rates for inter-State supply of goods which are exempt

(F) Notification No. 8/2017 IT (R), which prescribes rates for inter-State supply of services

(G) Notification No. 9/2017 IT (R), which prescribes rates for inter-State supply of services which are exempt

79.10 Further, the definition of exempt supply also includes non-taxable supply. The term *"non-taxable supply"* has been defined in section 2(78) of the CGST Act, 2017 as follows:

> *"non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act"*

As per the above definition, *"non-taxable supply"* includes supply of goods or services which are not leviable to tax under the CGST Act, 2017 or under the IGST Act, 2017.

79.11 As per section 9 of the CGST Act, 2017 / section 5 of the IGST Act, 2017, the following supplies are not leviable to GST:

(i) supply of alcoholic liquor for human consumption

(ii) supply of petroleum crude, high speed diesel oil, motor spirit, natural gas and aviation turbine fuel

(iii) un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption (w.e.f. 01/11/2024)

Hence, the above supplies, being not leviable to GST, are exempt supplies.

79.12 **Expenditure relating to entities falling under composition scheme (Column 4):** Levy of tax under composition scheme is governed by section 10 of the CGST Act, 2017. While reporting the expenditure under this head, the following should be considered:

a) A composition dealer cannot charge GST in the invoices.

b) A composition dealer cannot make inter-State supply.

c) A composition dealer can issue only bill of supply and not a tax invoice.

d) The composition dealer should have mentioned the specified words at the top of the bill of supply issued by them.

> "Composition taxable person, not eligible to collect tax on supplies"

79.13 In case of ineligible input tax credits which are blocked under section 17(5) of the CGST Act, 2017 or where input tax credit is not allowed in terms of conditional exemption notification (for example in case of restaurant) or in

case of purchases from persons registered under composition levy, it is a normal practice of the small and medium taxpayers not to mention the GSTIN of the said suppliers in their accounting software. Hence, a suitable remark / reference in this regard by the tax auditor may be included in the report. For instance, the tax auditor may give the following remark in his observations in Form No.3CA/Form No.3CB:

"The assessee has not identified GSTIN of the Composition Taxpayer at the time of procurement of goods and services, and hence, the said information is not reported under clause 44".

79.14 **Expenditure relating to other registered entities (Column 5)**. Value of all inward supplies from registered dealers, other than supplies from composition dealers and exempt supply from registered dealers, are to be mentioned here.

79.15 **Total payment to registered entities (Column 6):** The language used in sub-heading of Column 6 is total 'payment' to registered entities. The word 'payment' should harmoniously be interpreted as 'expenditure' as the combined heading of columns (3), (4), (5) is '**Expenditure** in respect of entities registered under GST'. Hence, the total expenditure in respect of registered entities i.e., sum total of values reported in columns (3), (4) and (5) should be reported in Column 6.

79.16 **Expenditure relating to entities not registered under GST (Column 7):** The value of inward supply of goods and/or services received from unregistered persons should be reported here. It should be ensured that the total of columns 6 and 7, tallies with the amount mentioned in column (2) except to the extent of expenditure/ allowance mentioned in above paras. The auditor may retain the reconciliation prepared by the assessee for verification.

79.17 It is important to differentiate the 'current status' of supplier's registration from their status as it was at the time of supply. There are several instances where registration may be cancelled with effect from an earlier date which may be prior to the date of supply to assessee. Events occurring after balance sheet date that alter the data relating to year under audit does not alter the nature of the expenditure, that it is from registered suppliers. Auditors may elect to extend their review up to a certain cut-off date or not at all. In either case, disclosure of notes of the position with regard to (i) known cancellations and (ii) treatment in the disclosure considering possibility of such cancellations would go a long way in making the report meaningful and unambiguous.

79.18 In the table under clause 44, the language used is *"**expenditure** in respect of*". Since, the word used is 'expenditure', it is necessary that the capital expenditure should also be reported in the format prescribed. Separate reporting of capital expenditure will provide ease in reconciliation.

79.19 In case of multiple GST registrations of an entity, there is likelihood of inter-branch supply, which is eliminated at the consolidated financials. Proper reconciliation for such type of transactions may be kept on record. This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information in these columns may have to be filled up consolidating the expenditure incurred under various GST registrations.

79.20 In order to verify the details filled in, the tax auditor needs to obtain from the assessee, the required details in the below tabular format (an illustrative format which may be modified by the Tax auditor according to the facts and circumstances). The Tax auditor should verify the details furnished with the underlying document on a test- check basis and retain the same as part of his working papers.

Expenditure head	Name of the entity to whom payment is made	GSTIN of the entity	Value debited to expenditure account	Value for which input tax credit is taken	Total amount paid to the vendor	Reason for NIL GST	General Remarks, if any

79.21 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. 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. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate.

80. Signature and Stamp/Seal of the signatory

80.1 Form No. 3CD has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB as the case may be. He has also to give his full name, address, membership number, firm registration number, wherever

applicable, place and date. Where the audit report is issued in soft copy, the tax auditor is to affix his Digital Signature.

80.2 The tax auditor should issue such signed copy of tax audit report in Form No. 3CA or 3CB and particulars in Form No. 3CD to the assessee.

81. Furnishing of Tax Audit Report

81.1 Section 44AB provides that every person, who is required to get his accounts audited for any previous year by an Accountant before the specified date should furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant setting forth such particulars as may be prescribed.

81.2 Form No 3CA or Form No 3CB as the case may be and Form No 3CD are required to be uploaded on the website of the Income tax department and should be digitally signed by the Auditors. The assessee is required to accept the tax audit report under his digital signature. The provisions of Information Technology Act, 2000 assume importance in this regard. It is important to note that these forms do not state that they have to be signed digitally or electronically. It is only proviso to Rule 12(2) of Income-tax Rules, 1962 which prescribes that where an assessee is required to furnish a report of audit specified under Section 44AB, he shall furnish the same electronically. Thus, the primary responsibility of furnishing the report electronically lies with the assessee. In this regard, Section 5 and 6 of the Information Technology Act, 2000 gives legal recognition to the electronic or digital signature. It is also relevant to note that electronic signature is a wider term defined in section 2(1)(ta) of the Information Technology Act, 2000 and includes digital signature which is separately defined in Section 2(1)(p) of the said Act. The forms are required to be uploaded with digital signature. It should be kept in mind by the Tax Auditor that the time and date of signature is automatically captured whenever the electronic signature is affixed and this date should be tally with the manual date, if any, written in the hard copy of the Form No 3CA, 3CB and 3CD, as the case may be.

81.3 As stated earlier, particulars of Form 3CD as per law i.e. under the Income-tax Rules, 1962 are different from those available at the Income Tax Department website. Thus, the form available at the website is not as per provisions of law. The procedure laid down in Rule 12 requires furnishing of tax audit report by the assessee on the Income-tax e-filing website. These

forms are required to be uploaded on the website of the Income-tax Department by the Tax Auditor, which are later on approved by the assessee.

81.4 There are certain variations in the contents of Form No. 3CD prescribed under the Rules and are available on the e-filing website. Where the Tax Audit Report has been furnished in accordance with the forms available in the Income-tax Rules, 1962, answers to certain clauses may not be exact response to the clause as stated in the Schema. However, this variation cannot be held against the Tax Auditor, as development of schema is not within his control and there is no specific option to issue the Tax Audit Report by the auditor as per the notified Form 3CD. Moreover, this fact has been brought to the notice of the CBDT by the DTC. Thus, where there is variation in any clause, it would be impossible to respond as per Form prescribed in the Rules.

81.5 In case of Joint Auditor(s), the present Income-tax filing options do not provide for modalities of uploading of report by all the joint auditors and in such a situation, it will be appropriate that the hard copy of the report duly signed in the manner above is given to the assessee client and a consolidated report is uploaded by one of the Auditors with a disclosure in this regard from the Joint Auditor(s).

81.6 At present, there is no specific place to mention paragraphs expected of SA 700, no mechanism to compulsory insert UDIN prior to uploading the forms on the Income-tax website, and thus UDIN should be written in the hard copy of Form 3CA/3CB and thereafter the copy as stated above should be given to the auditee.

81.7 It may be noted that the Apex Court in case of *Life Insurance Corporation of India v. CIT (219 ITR 410)* has held that the law does not contemplate or require the performance of an impossible act - *lex non cogit ad impossibilia*. Similar view has been taken by the Supreme Court in *State of Rajasthan v. Shamsher Singh [(1985) AIR 1082], State of MP v. Narmada Bachao Andolan [(2011) 7 SCC 1019]* or in tax matter by the Allahabad High Court in *CIT v. Prem Kumar [(2008) 214 CTR All 452]*.

82. Useful websites and Reference Material/ Publications

Some of the useful websites and Reference Material/Publications may be referred from ***Appendix XXI and XXII.***

NOTE

- The appendices published hereinafter do not form part of the Statement. These are intended for the ease of reference to the readers.
- These appendices, among other things, also contain reproduction of texts of various sections of relevant statutes and notifications issued by the Government of India. While every effort has been made to avoid errors or omissions in reproduction, some errors are likely to creep in. It is, therefore, suggested that to avoid any doubt, the reader should cross-check all the facts, law and contents of the publication with original Government publication or notifications.

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