

THE CHAMBER OF TAX CONSULTANTS

PUNE STUDY GROUP MEETING

**Practical & Legal Issues in Tax Audit
AY 2019-20**

CA Rajesh S. Athavale

14 September 2019

Contents

- Clause by Clause Analysis with reporting requirements in Tax Audit Report
- Legal issues in applicability of tax audit under section 44AB, 44AD and 44ADA and calculation of limits
- Recent judicial pronouncements dealing with disclosure requirements of the Tax Audit Report
- Tax Audit Documentation

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
1	<p>Name of the Assessee</p> <p>Name of the assessee whose accounts are being audited under section 44AB as mentioned in the PAN In case of a proprietor – Name of the Business which is being audited In case of audit of only branch carried out – Name of the Branch</p> <p><i>Issues to be considered:</i></p> <ul style="list-style-type: none">• In case of change in name of the company/conversion into public ltd. co./ LLP during the previous year• In case of change in the name of the assessee between the last day of the previous year and the date of tax audit report
2 & 3	<p>Address and Permanent Account Number ('PAN') of the Assessee</p> <p>Address of the Registered Office Branch, Division, etc. – Respective addresses</p> <p>PAN of the assessee is to be stated and copy of the PAN card should be obtained</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
4	<p>Whether the assessee is liable to pay indirect tax like central excise duty , service tax, sales tax/value added tax, goods and services tax ('GST'), customs duty, etc. If yes, assessee is required to furnish the registration number or GST number or other identification number allotted</p> <p>Where an Assessee has multiple GSTIN numbers, being registered under different states as well as under Central GST, all the GSTIN numbers allotted to the Assessee need to be mentioned</p> <p><i>Issue to be considered:</i></p> <ul style="list-style-type: none">• Whether the tax Auditor is required to report the liability to pay GST under Reverse charge mechanism?
5	<p>Status of the Assessee</p> <p>The status does not refer to the residential status. Status of a person is defined under section 2(31) of the Income-tax Act ('the Act') and includes:</p> <p>Individual, HUF, Firm, LLP, Company, Trust, AOP/BOI, Local Authority, Artificial Juridical Person, Co-Operative Society and Co-Operative Bank</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
6	<p>Previous year ('PY') from</p> <p>Reporting to be done for the Financial Year (Section 3 of the Act).</p> <p>In case of amalgamations/ demergers/ reconstitution/new business/closure of existing business, etc., the date of beginning/ending of the PY may be different. Accordingly, the relevant date of beginning and ending of PY should be mentioned</p>
7	<p>Assessment Year ('AY')</p> <p>AY relevant to the PY for which the accounts are being audited</p>
8	<p>Relevant clause of Section 44AB under which the audit has been conducted</p> <p>Clause 44AB(a) – Total sales/turnover/gross receipts of Business Clause 44AB(b) – Gross receipts of Profession Clause 44AB(c) – Profits/gains lower than deemed profits u/s 44AE,44BB,44BBB Clause 44AB(d) - Profits/gains lower than deemed profits us 44ADA Clause 44AB(e) - Profits/gains lower than deemed profits us 44AD Third proviso to Section 44AB - Audited under any other law</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
8	<p>Under sub-clause (a) - Person carrying on business whose total sales, turnover or gross receipts, as the case may be, exceed INR 1 crore</p> <p>Under sub-clause (b) - Person is carrying on profession whose gross receipts in profession exceed INR 50 lakhs</p> <p>Under sub-clause (c) – Person satisfying all the following conditions:</p> <ul style="list-style-type: none">• The person is carrying on the business• The provisions of sections 44AE or 44BB or 44BBB are applicable to the person• He claims that his income is lower than the amount deemed by sections 44AE or 44BB or 44BBB to be his profits and gains <p>Under sub-clause (d)/(e) - Person satisfying all the following conditions:</p> <ul style="list-style-type: none">• The person is carrying on a Profession/Business• The provisions of section 44ADA/44AD are applicable to the person• He claims that his income is lower than the amount deemed by section 44ADA/44AD to be his professional/business income• His income exceeds the maximum amount which is not chargeable to income-tax

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
8	Calculation of Limits:
Section	Particulars
44AB	Business: Total sales, turnover or gross receipts, as the case may be, exceed INR 1 crore Profession: Gross receipts in profession exceed INR 50 lakhs
44AD	Presumptive scheme for Business <ul style="list-style-type: none">• Limit of INR 2 crores only if profit declared under this scheme• No deduction of Interest and Remuneration to Partners• Declare profits under the scheme for continuous 5 years
44ADA	Presumptive scheme for Profession <ul style="list-style-type: none">• Applicable if Gross Receipt is \leq INR 50 Lakhs• 50% of Gross receipt will be deemed income• No Interest and Remuneration to partners permissible• Commitment for 5 years (as provided in 44AD) not required.

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part A of Form 3CD)

Clause No.	Particulars
------------	-------------

8 *Issues to be considered:*

- Section 44AB(a) – In case of multiple businesses (including presumptive)

Particulars	A Co.	B Co.	C Co. (Presumptive)	Total
Turnover/Gross receipts	75L	15L	20L	110L

- Section 44AB(d) – Whether partner of a professional firm can claim benefit under section 44ADA?
- Section 44AB(e) – Applicability of section 44AD for tax audit if turnover < INR 2 crores and profit declared is < 6%/8%
- The case of an assessee may fall under more than one clauses eg. an assessee carrying on both a business as well as a profession.
Is it possible to mention more than one clauses on the portal?

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

9(a) If firm or association of persons, indicate names of partners/members and their profit sharing ratios:

- This clause applies only to firms and association of persons
- Profit sharing ratio will also include loss sharing ratio
- Payment of remuneration or interest need not be mentioned in this clause
- If a partner is a partner in representative capacity then name of the beneficial partner should also be indicated
- Verify the names and profit sharing ratios from the partnership deed/instrument evidencing the agreement, documents filed with The Registrar, if any / minutes maintained, if any

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

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

S.No.		Name	Profit Sharing Ratio (%)
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

9(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

- In case there is a change in partner/member or profit sharing ratio several times during the previous year, **each** of such changes should be stated
- When partner in representative capacity retires & is admitted as partner in individual capacity, will it amount to change in partnership?
- Change in remuneration paid to partners without change in profit sharing ratio would not require disclosure in tax audit report
- In case share of member of an AOP is indeterminate, the same should be stated

(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.

S.No.		Date of change	Name of Partner/Member	Type of change	Old profit sharing ratio	New profit Sharing Ratio	Remarks
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="Select"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

+ Add
X Delete

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
-------------------	--------------------

- | | |
|---|---|
| 9 | <ul style="list-style-type: none"><li data-bbox="399 398 1974 642">▪ 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.<li data-bbox="399 699 1974 899">▪ 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 firms defined in the Limited Liability Partnership Act, 2008. |
|---|---|

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
10(a)	Nature of business or profession If more than one business or profession is carried on during the previous year, nature of every business or profession
10(b)	If there is any change in the nature of business or profession, the particulars of such change

There is a requirement to furnish Sector and Sub-sector details

Particulars of the business added or discontinued during the year is also required to be given

Issue: *Business reorganization/reconstruction of a similar/new line of activity*

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
11(a)	Whether books of account are prescribed under Section 44AA If yes, list of books so prescribed
11(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 account are not kept at one location, please furnish the addresses of locations along with the details of books of account maintained at each location)
11(c)	List of books account and nature of relevant documents examined

The list of books of accounts prescribed, maintained and examined has to be stated under this clause. There may be difference between the three lists.

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
11	<p>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.</p> <p>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.</p> <p>As such, every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized 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:</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
11	<ul style="list-style-type: none">▪ Cash Book ▪ Journal, if the accounts are maintained according to the mercantile system of accounting ▪ Ledger ▪ Apart from the aforesaid books of account, a person carrying on medical profession is required to keep the following:<ul style="list-style-type: none">• Daily case register in Form No. 3C showing data• Patient's name• Nature of professional services rendered• Fees received and date of receipt• 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

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
11	<ul style="list-style-type: none"><li data-bbox="399 329 1964 829">▪ 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 electromagnetic data storage device. As to the requirement regarding the mentioning of books of accounts 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 print out of such books obtained from the assessee. Only such books of account and other records which property come within the scope of the expression “proper books of account” should be mentioned. <li data-bbox="399 886 1964 1232">▪ 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 –<ul style="list-style-type: none"><li data-bbox="399 1139 1379 1182">• rendered or made available in an electronic form<li data-bbox="399 1189 1508 1232">• accessible so as to be usable for a subsequent reference”

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
11	<ul style="list-style-type: none">▪ From A.Y. 2014-15, the address at which the books so maintained are kept is also required to be mentioned under clause (b).▪ In case the books of accounts are kept at more than one location then the auditor is required to mention the details of address of each such location along with the detail of books of account maintained thereof.▪ The auditor is advised to obtain from the assessee a list and accordingly report the same 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 accounts at a place other than the registered office:▪ In case, where books of accounts 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).

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
12	Whether the Profit & Loss A/c includes profits assessable on presumptive basis, if yes, indicate the amount and relevant section :
44AD	Individual, HUF, Firm carrying out Eligible Business
44ADA	Profits and gains of Profession on Presumptive basis
44AE	Profits and gains from Transport Business
44AF	Profits and gains from Retail Business
44B	Profits and gains of Shipping Business in case of Non-residents
44BB	Profits and gains in the business of exploration, etc. of mineral oils
44BBA	Profits and gains of business of operation of Aircraft in the case of Non-residents
44BBB	Profits and gains of Foreign Companies in the business of civil construction, etc. in certain turnkey power projects.
Others	Chapter VII-G, First Schedule or any other relevant section

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
12	<ul style="list-style-type: none">▪ Reporting is for amounts included in P & L a/c▪ Amount assessable under the presumptive section need not be given▪ If two or more business exist and presumptive section applicable for some businesses, allocation of expenses may become necessary if common books are maintained

Audit Process

- To confirm whether any of the businesses fall under this category
- If amount included in P & L a/c does not match the amount assessable under the presumptive section, note may be added to that effect
- Confirm whether common or separate books maintained for such businesses
- Verify allocation if common books are maintained

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

15

Reporting of capital Asset converted in to Stock In Trade

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

Points to be taken care:

- The cost of acquisition **as per books of account** is to be mentioned. While verifying the cost of acquisition, principles enunciated in AS 10 on Property, Plant and Equipment/ IND AS 16 should be kept in mind
- Under sub-clause (d) the amount recorded in the books of account at which asset is converted into stock-in-trade should be stated. The valuation of stock-in-trade is to be examined with reference to AS 2/ IND AS 2
- Non-compliance with AS 10/ IND AS 16 or AS 2/ IND AS 2 is to be suitably reported in main audit report
- To **verify the basis of arriving the FMV and a suitable noting to be made in the audit documents**, like – “During the year under consideration, a land admeasuring ____ is converted into stock-in-trade and the fair market value of the same as on date of conversion is based on the valuation report obtained from _____”

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
16	<p>Reporting of amounts not credited to profit and loss account being;</p> <ol style="list-style-type: none">Items falling within the scope of Section 28.Pro forma credits, drawbacks, refund of customs or excise duties or service tax, sales tax or VAT or GST, where the same are admitted as due by concerned authorities.Escalation claimed during the previous year.Any other items of income.Capital Receipt, if any <p><i>Issues to be considered:</i></p> <p>Sub-clause (a):</p> <ul style="list-style-type: none">Section 28(ii): any compensation or other payment due to or received by,—(e) any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business; (<i>w.e.f. 01/04/2019</i>)Section 28(via): the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner; (<i>w.e.f. 01/04/2019</i>)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
16	<p><i>Sub-clause (b):</i> The words ‘admitted by the concerned authorities’ would mean ‘admitted within the relevant previous year’. However, if the assessee follows cash basis of accounting the admittance of claim without actual receipt will have no significance.</p> <p><i>Sub-clause (c): Escalation Claims</i></p> <p>i. Where assessee follows cash basis of accounting, whether details of escalation claims accepted without actual receipt is to be reported?</p> <p>ii. Whether the following escalation claims constitute claims accepted?</p> <ul style="list-style-type: none">• Claims merely made by the assessee• Claims under negotiations• Claims which are subjudice <p>[CIT v. Hindustan Housing & Land Development Trust Ltd. (1986) 27 Taxman 450A (SC) - Mere claims under negotiations cannot constitute accepted claims]</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
16	<p><i>Sub-clause (d): Any Other item of Income</i></p> <ul style="list-style-type: none">i. Does ‘any other income’ include even ‘income from other sources’? YESii. In case of incomes exempt for individuals, should the same be disclosed under ‘any other item of income’? NO <p><i>Sub-clause (e): Capital Receipt</i></p> <ul style="list-style-type: none">i. Does the phrase ‘Capital Receipts, if any’ includes capital contribution like gifts, share capital etc? NOii. Should interest on Fixed Deposits or Other Incomes (like rentals) which are reduced from cost of fixed assets / Capital WIP be mentioned? YES

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

17

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

S. No.	Details of Property	Address of Property					Consideration received or accrued	Value adopted or assessed or assessable
		Line 1	Line 2	City/Town	State	Pin code		

State outside India also covered

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
17	<ul style="list-style-type: none">▪ <u>Issues :</u><ul style="list-style-type: none">• What should be the manner in which provisions of Section 43CA is to be applied in case of builder adopting Percentage completion method for recognition of revenue?• Whether leasehold right/development rights/TDR/FSI, etc. would be covered under this clause?• DCIT vs. Tejinder Singh (ITAT Kolkatta) (ITA No. 1459/ Kol. / 2011) – Sec. 50C will not apply in case of transfer of tenancy/ leasehold rights• Chiranjeev Lal Khanna [TS-155-ITAT-2011 (Mum)] – Sec. 50C applicable on transfer through ‘Development Agreement’

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
17	<ul style="list-style-type: none"><li data-bbox="410 289 1960 629">▪ Section 43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases: It is applicable where an asset (other than capital asset) being land or building or both has been transferred and the value of such an asset is less than the value adopted for the purpose of payment of stamp duty. The value so adopted shall be deemed to be the full value of consideration and the gain arising therefrom is taxable as business income. <li data-bbox="410 746 1960 1041">▪ Section 50C - Special provision for full value of consideration in certain cases: It is applicable where a capital asset being land or building or both has been transferred and the value of such an asset is less than the value adopted for the purpose of payment of stamp duty. The value so adopted shall be deemed to be the full value of consideration and the gain arising therefrom is taxable as capital gain.

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.

Particulars

18

Reporting of particulars of depreciation allowable as per the Income Tax Act, 1961 in respect of each asset or block of asset:

S.No.	Description of the block of Assets/class of assets	Rate of depreciation	Opening WDV/ actual (A)



Additions					
Details	Purchase Value (1)	Adjustments on account of			Total value of purchase (B) (1+2+3+4)
Import CSV		CENVAT (2)	Change in rate of exchange (3)	Subsidy / grant (4)	
Fill Data					
View Data					
Additions CSV Template Deductions CSV Template Help					



Details	Deductions (C)	Depreciation allowable	WDV at the end of the year (A+B+C-D)
Import CSV			
Fill Data			
View Data			

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
18	<p>Points to be taken care of :</p> <ul style="list-style-type: none">• Determine Rate of depreciation as per Appendix I of Income Tax Rules. Rates have been considerably revised from A.Y. 2017-18 onwards• W.e.f. A.Y. 2018-19, any expenditure towards acquisition of an asset incurred in excess of Rs. 10,000/- otherwise than by an account payee cheque/draft/electronic mode, such expenditure shall be ignored for the purpose of determining the Actual cost of Asset as defined in section 43(1) of Income Tax Act• Obtain a depreciation schedule from the client showing opening block, additions and deletions to fixed assets, depreciation rate applied, amount of depreciation claimed, etc.• Verify the opening written down value from the computation enclosed with the previous year's return and the Form 3CD of the previous year. Enquire if there are disputes with respect to classification or rate of depreciation for the assessee raised by the Income tax authorities• In cases where additional depreciation is being claimed, ensure that the conditions specified in the section have been complied with for the assets in respect of which such additional depreciation is being claimed

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
-------------------	--------------------

19

Amounts admissible under certain sections 32AC to 35E :

- Section
- Amount debited to P&L account
- Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.

Points to be taken care of :

- Accounts to be scrutinized to identify the amount which is debited to profit and loss account
- Where deduction is available for consecutive years, and it is not the first year of claim, verify whether any condition has been violated and if it is first year of claim verify whether any conditions for claiming deduction fulfilled
- If it is the first year of claim, verify whether all conditions for claiming deduction are fulfilled

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
-------------------	--------------------

20

Reporting Related to Employee Benefits

Following provisions need to be considered:

- Section 36(1)(ii) – provides for deduction of any sum paid to an employee as **bonus/commission** for services rendered where such sum would not have been otherwise payable to him as profit/dividend
- If bonus/commission is in the nature of profit/dividend, the same would not be allowable as a deduction and therefore, requires reporting under this clause.
- Section 36(1)(va) permits deduction of any sum received by the assessee from his employees to which provisions of sec 2(24)(x) are applicable, if it is credited to the account of employees **on or before the due date**
- Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the ESI Act, or any other fund for the welfare of such employees

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
20	<p>Favourable View was taken in the following case laws :</p> <ul style="list-style-type: none">• Ghatge Patil Transports Ltd [(2014) 368 ITR 0749 (Bom)]• M/s Hindustan Organics Chemicals Ltd. [(2014) 107 DTR 0105 (Bom)] <p>Case Laws Against the Assessee:</p> <ul style="list-style-type: none">• In the case of CIT vs Gujarat State Road Transport Corp. (2014) 23 Taxmann 0398 , it was held by the Gujarat HC that the delayed remittance of employee's contribution beyond due date prescribed in section 36(1)(va), is not deductible while computing business income, even though such remittance is made before due date of filing of return.• In case of ITO 4(3)(3) vs. LKP Securities (ITA No. 638/Mum/2012) it was held that due date of payment of employees contribution to welfare funds was due date specified in respective Act governing the same and not due date of filing return.• In the case of Kalyan Silk Trichur P. Ltd. V. JCIT (2017-TIOL-2451-HC-Kerala-IT), it was held by Kerala High Court that employees contribution to ESI & PF deposited after the statutory period but before due date of filing return of income u/s. 139(1) does not entitle the assessee to deduction.• Similar view is taken by Allahabad High Court in case of Swarup Vegetable Products Ltd. (2017-TIOL-2266-HC-ALL-IT)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
22	<p>Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises (MSME) Development Act, 2006</p> <ul style="list-style-type: none">• Section 23 of the MSME Act lays down that an 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• Section 23 of the Micro Small and Medium Enterprises Development Act, 2006 (MSMEDA) overrides the provisions of the Income Tax Act, 1961• Obtain a full list of suppliers, who fall within the purview of the definition of MSME Act• Verify whether the payments made to such suppliers with interest• MCA notification dated 02.11.2018 on reporting of transactions with MSME

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
23	<p>Particulars of any payment made to the persons specified u/s 40A(2)(b)</p> <ul style="list-style-type: none">• This clause requires to provide the particulars of payments made to persons specified under section 40A(2)(b) and this section basically disallows expenditure incurred by way of payment to specified persons (relatives) if the assessing officer finds them to be excessive in nature• The list of persons covered by the section is quite wide and identification of such relationship can be difficult for the auditor and hence the auditor should obtain a certificate to that effect from the management and a proper disclosure needs to be done• For cross verification, compare the list with related party disclosure in the audited accounts and entries in register maintained under the Companies Act• The reporting is only for revenue expenditure payments made which are claimed as deduction as expenses from the profit and not for amount received

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
-------------------	--------------------

24 **Amounts deemed to be profits and gains under Section 32AC or 33AB or 33ABA or 33AC is to be reported under this clause :**

Sr. No	Section	Particulars
1	32AC	Investment in new plant or machinery
2	33AB	Tea development account, coffee development account and rubber development account
3	33ABA	Site Restoration Fund
4	33AC	Reserves for shipping business

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
25	<p>Reporting of any amount of profit chargeable to tax under section 41 and computation thereof. This section relates to deemed profits arising out of:</p> <ul style="list-style-type: none">• Where a deduction has been allowed in an earlier year in respect of an expenditure but the assessee has received some benefit whether by cash or by reduction in actual liability in the current year, such benefit will be chargeable to tax under this section• Where an asset has been sold by an assessee engaged in the power generation and distribution and such sale consideration exceeds the written down value• Where an asset used in scientific research has been sold for a consideration greater than its original cost• Where a bad debt that was allowed earlier is subsequently recovered• Where an amount has been withdrawn from a special reserve created by a financial company on which deduction was earlier allowed• Where such amounts/benefits as above have been received even after the closure of business

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

25

S.No.		Name of person	Amount of income	Section	Description of Transaction	Computation if any
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	Select <input type="button" value="v"/>	<input type="text"/>	<input type="text"/>

Issues to be considered :

CIT vs. Mahindra and Mahindra Ltd (SC) (2018-TIOL-173-SC- IT)

Whether loan waiver granted by overseas supplier of capital assets is a waiver of trading liability and it falls within the purview of Sec 41(1) - HELD NO

Whether the benefit in the form of cash receipt, arising on account of loan waiver by the creditor is to be taxed u/s. 28(iv), even though, such provisions bring under sweep only the benefits other than in the form of money – HELD NO

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
26	<p>Disallowance under Section 43B</p> <ul style="list-style-type: none">• Amount pre-existing on the first day of the previous year not allowed in any preceding previous year and paid during the year - this amount will not be debited to current years account but will be allowed as a deduction on payment basis• Deduction of certain expenses only on payment basis irrespective of the method of accounting followed• Arithmetically reconcile the details with previous years tax audit and current years accounts, and presentation in the computation/return• Verify the challan, receipts and entries in the books to ascertain the amounts paid and remained unpaid during the year.• 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 - if not routed through the Profit and Loss Account – not paid during the year – whether disallowed u/s 43B?

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
29 A	<p>Whether Assessee received any consideration chargeable under section 56(2)(ix)?</p> <ul style="list-style-type: none">▪ 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)▪ If yes, please furnish the following details:<ul style="list-style-type: none">• Nature of income• Amount thereof; <p>Section 56(2)(ix) - “any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,-</p> <ul style="list-style-type: none">▪ Such sum is forfeited; and▪ The negotiations do not result in transfer of such capital asset”

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
29 A	<p><i>Issues to be considered:</i></p> <ul style="list-style-type: none">▪ No reporting required for forfeited amount in respect of a personal capital asset where no entries are recorded in the books of account▪ Reporting required only if an advance is outstanding for a considerable period of time▪ No reporting unless it is forfeited by an act of the assessee – Should be a positive Act▪ No reporting required for Forfeiture of amount in respect of stock in trade – will get covered u/s. 28(i)▪ There should be a right to forfeiture as per the contract▪ A mere notice of forfeiture contested by other party will not amount to forfeiture▪ If assessee contends that amount is not forfeited then the auditor shall look at totality of developments and may obtain Management Representation▪ Unilateral write back of amount without any contractual right may not amount to forfeiture but may give indication to that effect▪ Write back without forfeiture – Auditor should use professional judgment

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
-------------------	--------------------

29 B

Whether Assessee received any consideration chargeable under section 56(2)(x)?

- 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)
- If yes, please furnish the following details:
 - Nature of income
 - Amount thereof

Audit Process :

- Scope of Tax Audit
- Verify whether any sum of money or property has been received other than in the ordinary course of business.
- Ascertain consideration and compare to the FMV
- Verify whether transaction falls within the exceptions/ exemptions
- If income chargeable, disclosure

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
30 A	Secondary Adjustment – Section 92CE <ul style="list-style-type: none">▪ Whether primary adjustment has been made/accepted and is in excess of INR 1 crore▪ Whether excess money available with AE is required to be repatriated to India▪ If yes, whether repatriated within the prescribed time▪ If no, the quantum of imputed interest on the excess money not repatriated

Audit Process

- In case of Suo moto adjustment verify, Transfer Pricing Report
- In case adjustment by TPO is accepted, nature of adjustment, if appealed stage of litigation
- If order final, whether funds are available with AE
- Whether the auditee is adopting the option contemplated u/s 92(2A)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Concept of Secondary Adjustment ('SA')



- A secondary adjustment results in alignment of actual profit with the assessee's cash account
- The excess money available with the AE due to primary adjustment is required to be repatriated to India within prescribed time
- Imputed interest on such advance is income

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
30 B	Disallowance under section 94B <ul style="list-style-type: none">▪ Is the expenditure by way of interest or similar payment in excess of INR 1 crore▪ Does it exceed 3 years of EBITDA▪ Details of interest expenditure B/F u/s 94B(4)▪ Details of interest expenditure C/F u/s 94B(4)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
30 B	<p>Reporting requirement w.r.t. interest on debt issued by a foreign company, or a permanent establishment of a foreign company in India (Refer section 94B(2))</p> <p>‘Expenditure of similar nature’ – includes discount or premium on securities, finance cost of lease rentals or other finance charges</p> <p>Even debt issued by a lender not being AE but AE provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt is deemed as issued by AE</p> <p>Limit of 1 crore – whether considered vis-a-vis per NR AE or in aggregate - disclosure required</p> <p>Such interest should be deductible in computing "Profits and gains of business or profession" - disallowable u/s. 14A, 36(1)(iii), 40A(i), 40A(2), 92 not to be considered</p> <p>Assessee engaged in business of banking or insurance are exempted from the implication of this section</p>

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
36 A	Receipt of Dividends u/s 2(22)(e) If assessee has received an amount in the nature of dividend referred to in Section 2(22)(e) of the Act, following details to be disclosed: <ul style="list-style-type: none">▪ Amount received▪ Date of receipt

Audit Process

- Verify from assessee whether he/it holds shares of 10% or more in a closely held company
- If assessee is a Firm/LLP/Company whether partner/s or shareholder/s hold shares of 10% or more in a company and such partner or shareholder holds 20% stake in the auditee company
- Verify transactions of auditee with that company

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
36 A	<p>Subject of Deemed Dividend is prone to tremendous litigation</p> <p>Practical Difficulties:</p> <ul style="list-style-type: none">▪ How to find out accumulated profit of the payer company▪ Possession of Accumulated Profits on the date of transaction▪ Difficulty in identifying the payments made on behalf of the share holder▪ Accumulated profits which can be distributed and which cannot be distributed – Bifurcation to be made <p>Who is to be taxed – Registered share holder or beneficial share holder:</p> <ul style="list-style-type: none">▪ ACIT Vs. Bhaumik Colour Pvt. Ltd. 118 ITD 1(Mum. SB)▪ CIT Vs. Universal Medicare Pvt. Ltd. 324 ITR 263 (Bom.)▪ CIT Vs. Ankitech Pvt. Ltd. 340 ITR 14 (Del.) - Approved▪ by SC in CIT Vs. Madhur Housing Development Co. Appeal No. 3961 of 2013▪ CIT Vs. National Travel Services 347 ITR 305 (Del.)▪ National Travel Services Vs. CIT 401 ITR 154 (SC) – Referred to a larger bench▪ Gopal and Sons HUF Vs. CIT 145 DTR 289 (SC) – Loan given to HUF treated as deemed dividend

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
36 A	<ul style="list-style-type: none">▪ Loans Vs. Deposits<ul style="list-style-type: none">• Inter corporate deposits are not loans – not subject to 2(22)(e) - Bombay Oil Industries Ltd. Vs. DCIT 28 SOT 383 (Mum.) ▪ Advances made in the ordinary course of business for business exigencies<ul style="list-style-type: none">• CIT Vs. Ambassador Travels P. Ltd. (Del.)• CIT Vs. Creative Dyeing & Printing P. Ltd. 318 ITR 476 (Del.)• Sri Satchidanand S. Pandit V. ITO 19 SOT 213 (Mum.)• NH Securities Ltd. V. DCIT 11 SOT 302 (Mum.) ▪ Transactions in the nature of Current Account<ul style="list-style-type: none">• ITO Vs. Gayatri Chakraborty 45 ITR 197 (Kol.)(Trib.) – affirmed by Kol HC in CIT Vs. Gayatri Chakraborty 94 taxmann.com 244 (Kol.)• CIT Vs. India Fruits Ltd. 274 CTR 67 (AP)• CBDT Circular No. 19/2017 Dt. 12-6-2017

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
36 A	<ul style="list-style-type: none">▪ Inclusions and Exclusions<ul style="list-style-type: none">• Accumulated Profits shall be commercial profits and not assessed income – CIT Vs. P. K. Badiani 105 ITR 642 (SC)• Capital Profits not to be included – Tea Estate India Pvt. Ltd. Vs. CIT 103 ITR 785 (SC)• Profit earned u/s. 41(2) is not part of Accumulated Profit – CIT vs. Urmila Ramesh 230 ITR 422 (SC)• Revaluation Reserve – Book entry – May not be included• Development Rebate Reserve and Investment Allowance Reserves – to be included• Share Premium and Share forfeiture – Capital Reserves – Dy. CIT Vs. Maipro India Ltd. 116 TTJ 791 (Del.) / Jaikishan Dadlani Vs. ITO 4 SOT 138 (Mum.)• Amount treated as Deemed Dividend in past is to be excluded for determining Accumulated Profits CIT Vs. G. Narsimhan 118 ITR 60 (Mad.)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
36 A	<ul style="list-style-type: none">▪ Exception – ▪ Substantial part of Company's Assets and Income from money lending business<ul style="list-style-type: none">• CIT Vs. Parle Plastics Ltd. 332 ITR 63 (Bom.) – Substantial does not mean more than 50% - If it is not trivial then exception applies• CIT Vs. Jayant H. Modi 232 Taxman 337 (Bom.)• CIT Vs. Shree Balaji Glass Manufacturing P. Ltd. 386 ITR 128 (Cal.)• Tanuj Holdings (P.) Ltd. V DCIT 46 ITR (T) 420 (Kolkata - Trib.)• Mrs. Rekha Modi Vs ITO 13 SOT 512 (Delhi)• DCIT Vs. Kishori Lal Agarwal 150 ITD 741 (Lucknow)

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
42	Assessee required to furnish statement in Forms 61 / 61A/ 61B <ul style="list-style-type: none">▪ Verify whether auditee is one of the reporting entities u/s 285BA for reporting specified financial transactions (SFT)▪ If yes, furnish:<ul style="list-style-type: none">• Identification number• Type• Due date for furnishing statement• Date of furnishing statement• Whether form contains all details▪ If no, furnish details of transactions not reported

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
42	<p>Form 61:</p> <ul style="list-style-type: none">▪ To verify whether assessee has entered any transactions where the other party was required to give PAN but gave Form 60 – Assessee need to file Form 61 – Details to be given about filing of Form 61 <p>Form 61A:</p> <ul style="list-style-type: none">▪ Auditor to verify the applicability of sec. 285BA read with Rule 114E▪ Applies also for Issue of Bonds / Shares and Buy back of shares for listed companies – Not regular transactions – special attention required▪ Receipt of cash payment above Rs. 2 Lakhs by all assessees under Tax Audit – Different in operation than sec. 269ST – Payment for different transactions on different dates covered here <p>Form 61B:</p> <ul style="list-style-type: none">▪ Auditor should refer the CBDT Guidance Note on FATCA/CRS Released in November 2016▪ Tax auditor should review Due Diligence Procedures in accordance with Rule 114H▪ Review list of Reportable Accounts identified by the due diligence process and information to be maintained and reported

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
------------	-------------

43

International groups required to furnish country by country report – Section 286(2)

43 (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286

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

Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity	Name of parent entity	Name of alternate reporting entity (if applicable)	Date of furnishing of report
<input type="text" value="Select"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="DD/MM/YYYY"/>

c) If Not due , please enter expected date of furnishing the report

- Clause 43 – If Sec. 286 applicable – give details
 - Whether report furnished by assessee or parent entity or alternate reporting entity
 - Name of Parent entity
 - Name of alternate reporting entity (if applicable)
 - Date of furnishing report

Clause by Clause Analysis with reporting requirements in Tax Audit Report (Part B of Form 3CD)

Clause No.	Particulars
43	Issues to be considered <ul style="list-style-type: none">• Tax audit report is filed for each assessment year. Under Explanation 2 to section 139(1) the due date for filing the return of income in case of an assessee who is required to furnish report under section 92E is 30th November of the assessment year. The due dates in other cases are even before 30th November of the assessment year. The report referred to in section 286(2) is to be filed within a period of 12 months from the end of the reporting accounting year. The report referred to in section 286(2) is filed by the parent entity or the alternate reporting entity both of whom have to be resident in India. In such a case the reporting accounting year would be the previous year. For of previous year ending on 31st March the report under section 286(2) is to be filed within 12 months from the reporting accounting year. By this time, the due date for obtaining the tax audit report and filing the return will have elapsed. Considering this, the requirement of clause 43 should be taken to be vis-a-vis the obligation that arose for furnishing the report under section 286(2) during the previous year ending on 31st March for which the tax audit is being undertaken. Accordingly, for tax audit for the assessment year 2018-19, the tax auditor should comment upon report section 286(2) that was required to be filed on or before 31 March 2018.• This reporting is not required for a constituent entity resident in India of an international group covered under section 286(4).

Tax Audit Documentation

Documentation plays an important role in Tax Audit:

- Audit appointment documentation – SA 210
- Management Representation letter – SA 580
- Types of Reports (3CA/3CB)
- Deciding on overall audit objectives and conduct of the audit as per standards on auditing – SA 200
- Acquiring knowledge of business and its documentation – SA 310
- Audit planning – SA 300
- Collection of audit evidence vide SA 500 (Audit evidence), SA 501 (specific considerations in obtaining audit evidence) SA 505 (external confirmations), SA 580 (written representations) and SA 520 (analytical procedures)
- Collection of information relating to RPTs - SA 550
- Reliance on expert opinion if warranted – SA 620 and reliance on the work of internal auditor – SA 501
- Qualifications and disclaimers in the audit reports – SA 700
- Audit documentation – SA 230

Questions?



Thank you



CA Rajesh S. Athavale
Mob. No. 9967064422
Email: rajeshanila001@yahoo.co.in