

# Practical Issues in Tax Audit



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# Role of a Chartered Accountant & Articled Assistants in carrying out Tax Audit

- As a tax auditor
  - Primarily an auditor – who is also aware of tax provisions
- Accordingly, has to consider all of the following when carrying out the assignment of Tax Audit
  - Auditing Standards
  - Accounting Standards prescribed by ICAI (and notified standards under section 133 of the Companies Act 2013 in the case of Companies)
  - Guidance Notes (G.N.) issued by ICAI
  - Directions issued by Council including those relating to ethical requirements in regard to communication with previous auditor, limits for tax audit etc.
- Role of the articled student – crucial
  - inputs will decide quality of audit & level of professional services

# Responsibility In Carrying Out Tax Audit

- Responsibility for preparation of accounts lies with the assessee himself.
- G.N.(Para 13.4) states that “Tax auditor is required to give his opinion whether prescribed particulars furnished by the assessee are true and correct.”
- Hence, signature of Assessee should be obtained on Form 3CD though the form itself does not provide for the same
- Documentation and professional responsibility of CA

# INTRODUCTION

- Audit required vide section 44AB of IT Act
- Limits

<b>If sales or gross turnover or gross receipts exceed</b>	<b>AY 2018-19 onwards</b>
In case of Business	1 crore
In case of Profession	50 Lakhs

# CONCEPT OF TURNOVER

- Whether to include GST?
- For proprietorships: total turnover for each business
- Whether to include sale of capital assets?
- Which limit applies – 1 crore or 50 lakhs?
  - Nursing home
  - Interior decorators
  - Management consultants
  - Coaching classes
  - Dealer in shares/securities
  - Gain on sale on investments
  - Insurance agents, Financial Planning Advisors, etc.

# FORM 3CA, 3CB

- When to use 3CA and 3CB?
- Giving comments in Para 3(a) of Form 3CB
  - Effect thereof?
  - Whether safeguards the auditor?
- Adding responsibility and scope Para in 3CB
  - Results in amending Form 3CB
  - Whether required?

# Form 3CA, 3CB ...Contd

- **Notes to Accounts to normally specify:**
  - Method of accounting followed – accrual or cash
  - Inventory valuation
  - Fixed Assets and Depreciation
  - Investments
  - Accounting of Forex fluctuations
- **Items that may require qualification:**
  - Mandatory AS not followed (esp. for Companies)
  - Non provision of Income Tax
  - Employee benefits – especially retirement benefits
  - Confirmations for balances
  - Inventory valuation on estimated basis

# Form 3CD

- Form 3CD – revised effective 20<sup>th</sup> August 2018
- For a proprietor having 2-3 different business – whether same or different Form 3CD?
- Primary responsibility of management
- To be certified by management



# Form 3CA, 3CB ...

## Physical Copy

- Form 3CA / 3CB to be signed by Chartered Accountant
- Mention of Firm Registration Number (FRN)
- Mention of membership number
- Form 3CD also to be signed by assessee?
- Preferable for CA to put initials / stamp on each page / annexure of 3CD
- The forms are now required to be uploaded electronically

# Part A: Clauses 1 to 3 and 5 to 7 : Basic Details of Assessee

## 1. Name of Assessee

- In case of proprietor, name of business which is being audited – with name [say., XYZ Exports (Prop. ABC)]
- If audit of only branch carried out, then name of Branch

## 2. Address

- Normally of the registered office
- In case of a branch, division, etc addresses thereof

## 3. Permanent Account Number

## 5. Status

## 6. Previous Year ended

## 7. Assessment Year

# Clause 4

1. Whether assessee liable to pay indirect tax like excise duty, service tax, Sales Tax, Goods and Service Tax, Customs Duty, etc.
2. If yes, to furnish registration number or identification allotted.
3. From 20<sup>th</sup> August 2018, to include GST registration number.

# Clause 8

## **CLAUSE 8 : *Indicate the relevant clause of section 44AB under which the audit has been conducted***

- a. The five clauses of section 44AB under which tax audit can be carried out are –
  - a. Under clause (a) if the person is carrying on business whose total sales, turnover or gross receipts, as the case may be, exceed Rs one crore. However, for a person to whom the provisions of section 44AD apply and who declares profits in accordance with the provisions of sub-section (1) of section 44AD the limit of one crore will be substituted by two crore;
  - b. Under clause (b) if the person is carrying on profession whose gross receipts in profession exceed Rs fifty lakhs;
  - c. Under clause (c) if the person satisfies all the following conditions cumulatively –
    - a. the person is carrying on the business,
    - b. the provisions of sections 44AE or s. 44BB or s. 44BBB are applicable to the person,
    - c. he claims that his income is lower than the amount deemed by sections 44AE or 44BB or 44BBB to be his profits and gains;
  - d. Under clause (d) if the person satisfies all the following conditions cumulatively –
    - a. the person is carrying on the profession,
    - b. the provisions of section 44ADA are applicable to the person,

# Clause 8

- c. he claims that his income is lower than the amount deemed by section 44ADA to be his profits and gains;
      - d. his income exceeds the maximum amount which is not chargeable to income-tax
    - e. Under clause (e) if the person satisfies all the following conditions cumulatively –
      - a. the person is carrying on the business,
      - b. the provisions of section 44AD(4) are applicable to the person,
      - c. his income exceeds the maximum amount which is not chargeable to income-tax
  - b. Provisions of section 44AD(4) are applicable if all the following conditions are cumulatively satisfied –
    - a. an eligible assessee has declared profit for any previous year in accordance with provisions of section 44AD;
    - b. he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with provisions of 44AD(1);

# Clause 9

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

- a. This clause applies only to firms and association of persons
- b. If a partner is a partner in representative capacity then name of the beneficial partner should also be indicated
- c. Profit sharing ratio will also include loss sharing ratio
- d. If loss sharing ratio is different from the profit sharing ratio – both should be mentioned eg in a case where minor is admitted to the benefits of the partnership
- e. Payment of remuneration or interest need not be mentioned in this clause
- f. 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

# Clause 9

**CLAUSE 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**

- a. 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
- b. When partner in representative capacity retires & is admitted as partner in individual capacity, will it amount to change in partnership?
- c. Change in remuneration paid to partners without change in profit sharing ratio would not require disclosure in tax audit report
- d. In case share of member of an AOP is indeterminate, the same should be stated

# Clause 9

- a. 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.
- b. 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 10

**CLAUSE 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)

**CLAUSE 10(b)** : If there is any change in the nature of business or profession, the particulars of such change

# Clause II

**CLAUSE II (a)** :Whether books of account are prescribed under section 44AA,if yes, list of books so prescribed

**CLAUSE II (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)

# Clause 11

- a. 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. 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.
- b. 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 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:

# Clause 11

- a. Cash Book
- b. Journal, if the accounts are maintained according to the mercantile system of accounting.
- c. Ledger.
- d. Apart from the aforesaid books of account, a person carrying on medical profession is required to keep the following:
  - e. Daily case register in Form No. 3C showing data, patient's name, nature of professional services rendered, fees received and date of receipt; and
  - f. 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 11

- 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 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 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 –
  - a. rendered or made available in an electronic form; and
  - b. accessible so as to be usable for a subsequent reference.”

# Clause 11

- 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 12 : Whether P & L a/c includes profits assessable on presumptive basis?

- Relevant sections for presumptive taxation are:

44AD	Eligible Business ( Individual, HUF, Firm)
44AE	Transport Business
44AF	Retail Trade
44B	Shipping business of a non- resident
44BB	Providing services in prospecting or extraction of mineral oils
44BBA	Operation of aircraft by non-resident
44BBB	Civil construction in turnkey power projects by non-residents

# Clause 12: Whether P & L a/c includes profits assessable on presumptive basis?

- Reporting is for amounts included in P & L a/c
- Amount assessable under the presumptive section need not be given
- If 2 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 maybe added to that effect
- ✓ Confirm whether common or separate books maintained for such businesses
- ✓ Verify allocation if common books maintained



# Clause 15 – Sec. 45(2) Conversion

- Reporting only if conversion has taken place during the year under audit
  - Conversion as claimed by the assessee or even inferred on the basis of facts?
- No reporting of taxability due to such conversion
- Cost of Acquisition
  - As per books of accounts
  - Depreciable Asset – Original cost and not WDV
  - Asset acquired prior to 1-4-2001 - FMV as on 1-4-2001

# Clause 16 – Items missing from P&L

## A/c

- Five sub-clauses
  - a) Items falling in Section 28
  - b) Tax refunds admitted as due
  - c) Escalation claims accepted
  - d) Any other income
  - e) Capital receipt
- (b), (c) & (d) – overlapping with (a) – but to report under specific sub-clause
- Management Representation in writing may be obtained for reporting under all sub-clauses

# Clause 16(a) – Section 28

- Business income in general and specific items listed in Section 28
- Common cases –
  - Partner's remuneration and interest taxable u/s. 28(v)
  - Incentives in kind taxable u/s. 28(iv)
    - Foreign tour for achieving sales target
  - Sale of asset for which deduction was claimed u/s. 35AD
  - Income reduced from the cost of asset / WIP

# Clause 16(b) – Refunds

- Examine all relevant correspondence, records and evidence
- ‘*admitted by the concerned authorities*’ would mean admitted within the relevant Previous year
  - Admitted as due after Previous year need not be reported

# Clause 16(c) – Escalation Claims

- ‘Accepted’ – unconditional acceptance by the other party
- No reporting where -
  - Claims have been made but not accepted
  - Claims under negotiation
  - Claims which are sub-judice
- Assessee following cash system of accounting
  - Acceptance without actual receipt has no significance
  - To mention the fact that it is not received during Previous year

# Clause 16(d) – Any other income

- Clause (a) vs. Clause (d)
  - Any other item of income means other than those which fall u/s. 28?
- Even exempt income is required to be reported?
  - Share in profits of partnership firm
- Non-business income of proprietor – whether required to be reported?
  - Credited to Capital A/c
  - Not recorded in books related to proprietary concern
- Income out of the books
  - No reporting?

# Clause 16(e) – Capital Receipt

- Illustrative list –
  - Capital subsidy received in the form of government grants which are in the nature of promoters' contribution
  - Government grants related to specific fixed asset and reduced from its value
  - Compensation for surrender of rights
  - Profit/loss on sale of fixed assets/investments to the extent not credited in the P & L A/c
- No reporting of –
  - Share capital
  - Loans and borrowings
  - Gifts

# Clause 17

- Where Land and Building transferred during the previous year
  - For consideration less than the stamp duty value
  - Following details to be furnished
    - Details of Property
    - Consideration received or accrued
    - Value adopted/assessed/assessable for the purpose of stamp duty
- Issues:
  - Does it apply to flat in a co-operative society?
  - Will the difference be taxed in previous year?



# Clause 18

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

- a. Description of asset / block of assets;
- b. Rate of depreciation;
- c. Actual cost or written down value, as the case may be.
- d. Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of-
  - a. 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;
  - b. change in rate of exchange of currency, and
  - c. subsidy or grant of reimbursement, by whatever name called.
- e. Depreciation allowable.
- f. Written down value at the end of the year

# Clause 18

- a. In order to comply with this clause, 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.
  
- b. 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 judgment having regard to the facts and circumstances of the case, developments in law from time to time, etc.

# Clause 19 – Special Deductions

- Amendment – Deduction u/s. 32AD is inserted
- Auditor to ensure the eligibility for deduction and compliance of the concerned conditions
- Amount not debited to P & L A/c but admissible as deduction should also be stated
- If separate audit report has been obtained
  - Make a reference to that report
- If judicial pronouncement is relied upon
  - Mention in Form No. 3CA or 3CB

# Clause 20(a) – Section 36(1)(ii)

- Reporting Format in Utility
  - Description
  - Amount
- Transactions covered –
  - Payment / Payable to employees
    - Who are also partners / shareholders
  - As bonus / commission for services rendered
  - Otherwise payable as profits or dividend
- Whether auditor is required to judge?
  - ICAI Guidance Note
    - Requirement is only in respect of the disclosure of the amount
    - Auditor is not expected to express his opinion about its allow ability or otherwise

# Clause 20(a) – Section 36(I)(ii)

- **Important Decisions**
  - **AMD Metplast (P.) Ltd. vs. DCIT 341 ITR 563 (Del)**
    - Dividend has to be paid to all shareholders equally
  - **Controls & Switchgear Contractors Ltd. (Del)**
    - Guarantee commission paid to directors held to be allowable
  - **Dalal Broacha Stock Broking Pvt Ltd vs. ACIT (Mum SB)**
    - No evidence to show that the directors had rendered any extra services for payment of huge commission in addition to services rendered as an employee for which salary was paid

# Clause 20(b) – Section 36(1)(va)

- Reporting is required irrespective of deductibility
- Grace period should be considered for the purpose of reporting due date
  - 5 days grace period for making remittances to EPFO by employers has been withdrawn effective February 2016
- Many High Courts have allowed deduction if paid before the due date of ITR as per Sec. 43B
  - Bom HC - CIT vs. Ghatge Patil Transports Ltd.
  - SC has dismissed Revenue's SLP in the case of Pr. CIT v. Rajasthan State Beverages Corpn. Ltd. 84 taxmann.com 185

# Clause 22 – Interest under MSME Act

- Whether the auditee is a ‘buyer’?
  - Bought any goods or received any services from a ‘supplier’ for consideration
  - ‘Supplier’ –
    - Micro Enterprise
    - Small Enterprise
- Was there any delay in making payment to the ‘supplier’?
  - Period agreed – required to be paid on or before the agreed date
    - Cannot be more than 45 days from the day of acceptance / deemed acceptance
  - Not agreed – required to be paid within 15 days from the day of acceptance / deemed acceptance

# Clause 22 – Interest under MSME Act

- Interest is payable u/s. 16 of MSME Act
  - Compound interest with monthly rests
  - Three times of the bank rate notified by RBI
  - Notwithstanding any agreement or any other law
- Interest is not deductible while computing income as per Sec. 23 of MSME Act



# Clause 23 – 40A(2)(b)

- Reporting Format in Utility
  - Name of Related Person
  - PAN of Related Person
  - Relation
  - Nature of transaction
  - Payment Made (Amount)

# Clause 23 – 40A(2)(b)

- **Audit Procedure**
  - Obtain full list of specified persons
    - Information supplied may be relied upon
    - Circular No. 143 dated 20-8-1974 in the context of trusts
    - But make an appropriate disclosure
    - Disclosure under AS-18 should be verified
  - Obtain details of expenditure / payments made
  - Scrutinize all items of expenditure / payments made
    - 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.

# Clause 23 – 40A(2)(b)

- Reporting of only payments
  - Disallowance to be decided by the AO
- Payments only for expenditure claimed as a deduction
  - No reporting of capital expenditure – ICAI's Issues on Tax Audit
    - What if capital expenditure is claimed as full deduction?
  - Expenditure which is otherwise disallowable
    - e.g. due to TDS defaults u/s. 40(a)(ia)
  - Whether non-business expenditure to be reported?

# Clause 23 – 40A(2)(b)

- No reporting of incomes
  - Not applicable to discount allowed on sales to sister concern – United Exports vs. CIT 330 ITR 549 (Del)
- No reporting of sharing of resources without recovering costs

# Clause 24

- **CLAUSE 24** :Amounts deemed to be profits and gains under section 32AC or 32AD or 33AB or 33ABA or 33AC
- This clause requires reporting of amounts deemed to be profits and gains under each of these five sections. The sections referred to in clause 24 deal with the following -

Section	Deduction for
32AC	Investment in new plant and machinery
32AD	Investment in new plant and machinery in notified backward areas in certain States
33AB	Tea development account; coffee development account and rubber development account
33ABA	Site Restoration Fund
33AC	Reserves for shipping business

# Clause 25

- **CLAUSE 25** :Any amount of profit chargeable to tax under section 41 and computation thereof
- Section 41(1) provides that where any allowance or deduction has been made in the assessment for any year in respect of any 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.
- 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.

# Clause 25

- a. Explanation (1) to section 41(1) provides that expression “loss or expenditure or some benefiting respect of any such trading liability by way of remission or cessation thereof” shall include the remission or cessation of any liability by a unilateral act of the assessee or successor in the business by way of writing off such liability in his accounts.
- b. 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 honor the liability, when demanded. This is a question of fact whether or not assessee has expressed unequivocally his intentions [CIT v. Chase Bright Steeltd. 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. Shri Vardhman Overseas Ltd. (2012)[SLP has been dismissed by the Supreme Court against this decision.]

# Clause 25

- a. 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 is in existence or not during the previous year in which the capital asset is sold.
- b. 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 utilized 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.



# Clause 25

- a. Section 41(4) provides 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 the debt is recovered. For this purpose, it is immaterial whether the business of the assessee is in existence or not during the previous year in which recovery is made.
- b. 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 is in existence in that year or not.

# Clause 25

- a. 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 subsection (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.

## Clause 26- Allowance / Disallowance under section 43B

- Details to be given whether or not amounts debited to profit & loss account
- Not required to determine any admissible or inadmissible amounts
- Mercantile method of accounting – verify the particulars in clause (a) to (f) from books of accounts for current year as well as succeeding assessment year
- Examine the accounts of preceding year – to determine the amount of liability that pre-existed on the first day of the previous year and allowable as deduction on payment during the current year

# Clause 29A – Income – Section 56(2)(ix)

- Receipt of any sum of money as an advance or otherwise
  - Received in the course of negotiation for
    - transfer of a
    - capital asset
  - Negotiation do not result in transfer of that asset
  - Sum received is forfeited
- Reporting under clause 16 - if not credited to the P & L A/c

# Clause 29A – Income – Section 56(2)(ix)

- Forfeiture of advances / deposits not covered –
  - If not in relation to a capital asset
  - If not in relation to transfer e.g. deposit taken under lease arrangements

# Clause 29B – Income – Section 56(2)(x)

- Reporting of income chargeable under Section 56(2)(x)
- Old clauses of Sec. 56(2) had limited applicability
  - (vii) was applicable only to individual & HUF
  - (viiia) was applicable only to firm or closely held company and only upon receipt of shares of closely held company
- New clause (x) is inserted in Sec. 56(2)
  - Applicable for receipts after 31-3-2017
  - Clauses (vii) & (viiia) shall not apply to such receipts
  - No reporting is required in Clause 28 which deals with receipts falling under the old clause (viiia)

# Clause 29B – Income – Section 56(2)(x)

	Old Clauses		New Clause
	Clause (vii)	Clause (viia)	Clause (x)
Assesses covered	Individual & HUF	Firm & Closely held Company	Any Person
Receipts covered	Money	Share of closely held company	Money
	Immovable Property		Immovable Property
	Specified Movable Property		Specified Movable Property

# Clause 29B – Income – Section 56(2)(x)

- a. Reporting format –
  - a. Whether any income is chargeable u/s. 56(2)(x)?
  - b. If yes, please furnish the following details
    - a. Nature of income
    - b. Amount (in Rs)
- b. Identifying taxable transactions
  - a. Capture gratuitous receipts (gifts)
  - b. Examine purchases of immovable properties during the year – capital assets
    - a. Verify Index II
    - b. Check whether SDV - Purchase consideration > Rs 50,000
    - c. Tolerance – 5% of consideration – not applicable for AY 18-19



# Clause 29B – Income – Section 56(2)(x)

- Identifying taxable transactions
  - Examine purchase of movable assets – capital assets
    - Jewellery, Artistic works & Bullions
      - Exclude purchases from registered dealers
    - Shares & Securities
      - Exclude purchases through RSE
    - Find out the difference in aggregate between FMV and purchase consideration
    - Report if difference is more than Rs 50,000
  - Consider the exceptions from the taxability, if applicable

# Clause 29B – Income – Section 56(2)(x)

- Quantifying the amount of taxable income
  - Valuation Rules – I IU & I IUA
    - Modified with effect from AY 2018-19 – Notification No. 61/2017
  - Registered Valuer's Report in case of jewellery, artistic works
  - Market rates in case of quoted shares & securities

# Clause 29B – Income – Section 56(2)(x)

- a. Quantifying the amount of taxable income
  - a. Unquoted equity shares
    - a. NAV as per given method
    - b. Balance Sheet of the investee company as on the valuation date
      - a. Audited by its statutory auditor
    - c. Assets held by the co. required to be valued in turn as per Rule
      - a. SDV of immovable properties
      - b. FMV of shares and securities
    - d. What if the required data is not available?
  - b. Personal transactions of the proprietor if not recorded in the books related to business
    - a. Whether the auditor needs to report?
    - b. Scope limitation to be specifically mentioned.

# Clause 36A – Dividend - 2(22)(e)

- a. Reporting of receipt of dividend –
  - a. Only of the nature specified in clause (e) of Sec. 2(22)
- b. Only if received by the assessee
  - a. No reporting for the payer company
- c. Advance or loan to a ‘concern’ in which the shareholder has a substantial interest
  - a. Reporting should be made in whose case? Concern or shareholder?
  - b. CIT vs. Ankitech Private Limited (2012) 340 ITR 14 (Del)
  - c. CIT vs. Madhur Housing and Development Company (SC)
  - d. National Travel Services vs. CIT (2018) 401 ITR 154 (SC)

# Clause 36A – Dividend - 2(22)(e)

- Trade advances – commercial transactions would not be covered
  - Circular No. 19/2017 dated 12.6.2017
  - Events occurring after the Balance Sheet date should be examined
- Access the financial statements of the payer company –
  - Existence of accumulated profits as on the date on which the advance or loan was given
  - Disclaimer – if not accessible

# Clause 42

- **CLAUSE 42(a) : Whether the assessee is required to furnish statement in Form No. 6 I or Form No. 6 I A or Form No. 6 I B? (Yes / No).**
- **42(b) : If yes, please furnish**

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Due Date of furnishing if	Whether the Form contains information about all details/furnished transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported

# Clause 42

- Form No. 61, 61A and 61B are required to be filed pursuant to Rule 114D(1), 114E and 114G(8) respectively.
- Rule 114D provides that persons referred to in clauses (a) to (k) of rule 114C(1) and a person referred to in Rule 114C(2) who is required to get his accounts audited under section 44AB of the Act and who has received declaration in Form No. 60 is required to furnish a statement in Form No. 61 containing particulars of such declaration to Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income tax(Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose and obtain an acknowledgement number ;and
- Form No. 61 is to be furnished by 31st October in respect of declarations received upto 30th September and by 30th April where declarations are received by 31st March.

# Clause 42

- a. Rule 114B prescribes 18 transactions. In respect of 18 transactions prescribed in Rule 114B, if they exceed the value mentioned in Rule 114B against the type of transaction being entered, every person is required to quote his PAN in all documents pertaining to the transactions.
- b. Second proviso to Rule 114B(1) requires every person entering into any transaction specified in Rule 114B(1) and who does not have a PAN to make a declaration in Form No. 60 giving particulars of such transaction. In other words, Form No. 60 is a declaration to be given by a person who does not have a PAN and who is entering into a transaction specified in Rule 114B.
- c. Tax auditor will have to examine whether the auditee is a person covered by clauses (a) to (k) of Rule 114C(1).



# Clause 42

- a. If the auditee is either covered by clauses (a) to (k) of Rule 114C(1) or is a person mentioned in Rule 114C(2) and who is required to get his accounts audited under section 44AB (any clause) he is required to file statement in Form No. 61 if he has received any declarations in Form No. 60.
- b. Form No. 61A is a statement of financial transaction required to be furnished under section 285BA(1) in respect of a financial year.
- c. Persons mentioned in column 3 of the table in Rule 114E(1) are required to furnish statement in Form No. 61A.
- d. In respect of specified financial transactions entered into during the financial year, Form No. 61A is required to be furnished by 31st May of the immediately following financial year in which the transaction is registered or recorded.
- e. Rule 114E(6)(a) requires every reporting person mentioned in column 3 of Rule 114E(1) to obtain a registration number.

# Clause 44

- **CLAUSE 44: Break-up of total expenditure of entities registered or not registered under GST:**

Sr 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	

# Clause 44

- a. It appears that the scope of expenditure covered by this clause will include both capital expenditure and also revenue expenditure.
- b. It would be preferable if the details required by the above clause are separately compiled for revenue expenditure as also for capital expenditure. The revenue expenditure can tally with the debits to Profit & Loss Account.
- c. The aggregate expenditure from entities registered under GST can be reconciled with the GST returns.
- d. Information sought under this clause is already part of the Annual Return under GST which has to be furnished by 31st December.
- e. Compiling the details for this clause will cause considerable hardship to small assesseees and it will be onerous for the tax auditor to verify the details so compiled.
- f. In case of individuals / HUFs, personal expenditure incurred may not be required to be reported in the above mentioned clause.
- g. The tax auditor should obtain copies of GST returns and must keep the requisite back up papers supporting the amounts being reported under this clause.

# Clause 44

- a. It appears that the purpose of this clause should be to obtain a reconciliation that every item of P & L is reflected in GST returns. However, this may not be achieved because GST returns in respect of Inward Supplies contain figures of Nil Rated / Exempted / Non- GST supplies. Also, there are items which are not “supply” and may not figure in GST returns e.g. Salaries. Similarly, depreciation is debited to P & L but is an allowance and not an expenditure. Donation, Gifts given are examples of items which are not expenditure and will not be covered by the above mentioned clause.
- b. Compiling the details for this clause will cause considerable hardship to small assesseees and it will be onerous for the tax auditor to verify the details so compiled.
- c. In case of individuals / HUFs, personal expenditure incurred may not be required to be reported in the above mentioned clause.
- d. The tax auditor should obtain copies of GST returns and must keep the requisite back up papers supporting the amounts being reported under this clause.



*Thank You!*