

STUDY CIRCLE MEETING ORGANISED BY CTC

ISSUES IN CLAUSE 44 OF FORM 3CD

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AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

Clause 44 - Background

- Section 44AB of The IT Act, 1961 read with Rule 6G require specified persons to furnish the Tax Audit report along with prescribed particulars in FORM 3CD
- The Form 3CD was amended vide notification GSR 666(E) dated 20th July, 2018 w.e.f. 20th August, 2018
- Vide circular No. 6/2018 (Order u/s 119) dated 17th August, 2018..... Reporting requirement under clause 44 of FORM 3CD was kept in **abeyance till 31st March, 2019**

Clause 44 - Background

- Vide circular no. 09/2019 (Order u/s 119) dated 14th May, 2019, the reporting requirements under said clause was further **deferred till 31st March, 2020**
- Vide circular No. 10/2020 (Order u/s 119) dated 24th April, 2020, the reporting requirement of clause 44 was kept in abeyance **till 31st March, 2021**
- Vide circular 05/2021 (Order u/s 119) dated 15th March, 2021, the reporting requirement of clause 44 was **kept in abeyance till 31st March, 2022.**

Clause 44 – Applicable Date ???

- The text of Circular No. 5/2021 dated 25.03.2021 defers the applicability of clause 44 in the following words-

“In view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the reporting under clause 30C and Clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2022.”

- The language of the Order creates confusion as to whether the applicability of Clause 44 of Form 3CD shall be in abeyance till all the tax audit reports are signed till 31st March 2022 or the abeyance is applicable for the year ending on 31.03.2022????

Clause 44 – Applicable Date ???

- Clarification..... Language of the Order of 2018
- The order reads as follows:

The matter has been examined and it has been decided by the Board that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019.

Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1 st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report.

- **Harmonious view.....Tax audit report signed after 31st March, 2022 should contain clause 44**

Applicable Date of clause 44 ???

Tax Audit for period F.Y 2020-21

Signed on	UDIN Generated	Furnished /Uploaded on IT portal	Clause 44 Applicable
28 th March, 2022	28 th March, 2022	5 th April, 2022	No
28 th march, 2022	2 nd April, 2022	5 th April, 2022	No
2 nd April, 2022	2 nd April, 2022	5 th April, 2022	Yes

Why clause 44 ???

- Data Mining
- Synchronization of financial data filed on Income Tax portal and GST portal
- Identifying the Tax evaders
- Safeguarding the Revenue leakages
- In line with 26AS

Clause 44 – Reporting requirement

Break-up of **TOTAL EXPENDITURE** of entities registered or not registered under GST:

Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
	Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(2)	(3)	(4)	(5)	(6)	(7)

Issue 1

Whether Information to be given for each head of expenditure or consolidated figure of Total expenditure?

- The term used in clause “ **TOTAL EXPENDITURE**”
- The Law and Form does not envisaged head wise break up of each of Expenditure
- ICAI Guidance note (GN) (Para 82.1) clarifies that **Head-wise/nature wise expenditure not envisaged. Consolidated figures to be incorporated in this clause**

Issue 2

“Total Expenditure” whether includes revenue Expenditure as well Capital Expenditure?

- The language used in clause 44 is “ Expenditure”
- Expenditure includes “Capital Expenditure”
- Details should be given for revenue as well as capital Expenditure
- ICAI GN para 82.15....Separate Reporting of revenue and capital expenditure will provide ease in reconciliation.

Issue 3

Whether details of Depreciation, loss on sale of asset etc. to be included in table??

- As per section 32, depreciation is an allowance
- ICAI GN...Para 82.2....Details of depreciation not to be reported in column 3 to 7.
- Similar treatment for Bad debts, sundry balance written off, Impairment losses, Discount etc.
- However these heads may be included in column 2 of table

Issue 4

Whether details of Provision for expenses such as Auditor remuneration, Product warranty provision etc. to be incorporated in said clause ???

- Provision is estimated Expenditure provided in financial statement to meet the requirement of accrual system of accounting
- Actual expenditure may defer from provision
- Strict interpretation....No need to give details
- However, advisable to incorporate the detail in column 2 with suitable Note

Issue 5

Transaction of expenditure covered in Schedule III of Section 7 or Section 7(2)(b) of CGST Act whether required to be reported?

Example

- Salary, contribution to PF, ESIC, Gratuity
- Court Fee or Tribunal fee
- Purchase of Land and building
- Purchase of goods from foreign vendor and selling the same to foreign customer without bringing goods to India
- Purchases by transfer of document in course of high sea sales
- Imported goods kept in custom bonded warehouse and sold before clearance
- Municipal Taxes, Stamp duty

Issue 5

- All above transaction are neither supply of goods nor service under GST
- ICAI GN para 82.3....No need to report these items in clause 3 to 7.
- However , include these in column 2

Clause 44 – Reporting Requirement

- The reporting in table, i.e. the expenditure in respect of entities registered under GST is further sub-classified into 3 categories as follows:
 - Expenditure relating to goods or services exempt from GST
 - Expenditure relating to entities falling under composition scheme
 - Expenditure relating to other registered entities
- Total **payment** to registered entities

Clause 44 – Reporting Requirement

Expenditure relating to goods or services exempt from GST

- Value of all inward supply of goods or services which are exempt from GST to be given
- **Section 2(47) of CGST Act defines “Exempted supply”**

“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 IGST Act, and includes **non-taxable supply;**”
- Section 2(78) of CGST Act defines “**Non Taxable supply**” means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act

Clause 44 – Reporting Requirement

- Following notification will be relevant for determining **NIL rated and Exempted supply under GST**
 - Notification No.1/2017 CT (R), which prescribes rates for intra-State supply of goods
 - **Notification No.2/2017 CT (R)**, which prescribes intra-State supply of goods which are exempt
 - Notification No.11/2017 CT (R), which prescribes rate for intra-State supply of services
 - **Notification No.12/2017 CT (R)**, which prescribes intra-State supply of services which are exempt

Clause 44 – Reporting Requirement

- As per section 9 of the CGST Act, 2017 / 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
- These details can be captured from Tile 5 of GSTR 3B...SUPPLY UNDER COMPOSITION SCHEME, EXEMPT SUPPLY & NIL RATED SUPPLY.
- OBTAIN BREAK UP THEREOF?

Clause 44 – Few Example of Exempted supplies

- Petrol/Diesel Expense, natural gas and aviation fuel
- Liquor for human consumption
- Electricity
- License fees, permit fees
- Municipal water charges
- Conveyance in Public transport such as Train fare other than air conditioned, Metered Cab, Rickshaw fare, bus fare,
- Fines and penalty under various law
- Toll tax
- Interest on bank loan, Interest on OD, Cash credit, bill discounting charges

Clause 44 – Reporting Requirement

Expenditure relating to entities falling under composition scheme

- Levy of tax under composition scheme is governed by section 10 of the CGST Act, 2017
- Following Points should be noted under this clause:
 - A composition dealer cannot charge GST in the invoices.
 - A composition dealer cannot make inter-State supply
 - A composition dealer can issue only bill of supply and not a tax invoice.
 - The composition dealer should have mentioned at the top **BILL OF SUPPLY**.

Issue - 6

Record/Accounts not maintained separately for Composition dealer. How to deal?

- The Auditor should write suitable Note. E.g.
- Assess has not maintained and recorded expenditure classifying under composition scheme, hence we are unable give details thereof. The expenses for purchase of goods/service from composition dealer are included in payment to registered entity.
- Refer Tile 5 of GSTR 3B wherein details of inward supply from composition dealers are given

Issue - 8

Pre-Paid Expenses or Advance for expenses. Where to classify?

- Pre-Paid Expense/Advance for expense does not form part of Total Expenditure incurred for the year.
- Does not appear in P&L Account, but it is balance sheet item. It is neither capital expenditure.
- No Need to give details thereof with suitable disclosure.

Issue – 9 - RCM

ABC- Advocate rendered services to XYZ Co. and raised the bill which is liable for tax under RCM. The advocate has also mentioned his GST number on Invoice since he was registered for GST

Where to classify this expenses?

- Though Tax is payable under RCM. These transaction will be classified in column 5 (Expense related to registered entity)
- In case, lawyer is not registered, it will get classified in clause 7 (Expenses related to unregistered entity)

Issue – 10

Whether Reconciliation is required with expenses disclosed in clause 44 with that of Clause 27 related to ITC

- No such reconciliation is expected
- Clause 27 deals with only ITC
- Clause 44 deals with expenditure related to goods/service procured from registered and unregistered dealer

Clause 44 – Reporting Requirement

Expenditure relating to other registered entities

- 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.

Clause 44 – Reporting Requirement

Expenditure relating to entities not registered under GST

- The value of inward supply of goods and/or services received from unregistered persons should be reported here, irrespective of fact GST is paid under RCM on these expenses.

Clause 44 – Issue 11

In table whether column 2 is arithmetical total of column 6 & 7 ??

- No
- Expense like Land purchase, Out and out purchaser, Municipal taxes etc. will not be included in column 6 or 7 but same will form part of column 2

Clause 44 – Other Important Aspect

- Reporting under clause 44 is required to be given on consolidated basis i.e. including all branches/GSTIN under same PAN
- Auditor should obtain following working/details from client to verify the compliance of Clause 44

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 Remark, if any

Clause 44 - Disclosure

- 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.
- Total expenditure disclosed in column 2 includes capital expenditure incurred during the year.

Clause 44 – illustrative Notes

- Total Expenditure disclosed in column 2 includes revenue expenditure, claims of expenses, provision for expenses etc. debited to Trading and profit & loss account irrespective of the fact whether they are incurred in connection with goods or services defined under GST law
- The above information is based on details, data and records maintained by assessee. We have verified the same on test check basis. The accounting software used by assessee is not configured to generate report/data as required to be given in table herein above. Considering the above facts, it is not possible for us to certify the correctness of classification of expenditure given in table here in above.

WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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