

Practical Issues in Tax audit (Covering GN of ICAI)

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APPLICABILITY OF SEC 44AB

- Every person,—

- (a) carrying on business shall, if **his total sales, turnover or gross receipts**, as the case may be, in business exceed or exceeds **one crore rupees** in any previous year ;

Provided that in the case of a person whose—.....

APPLICABILITY OF SEC 44AB - Cont'd

Provided that in the case of a person whose—

- (a) aggregate of **all amounts received** including amount received for sales, turnover or gross receipts during the previous year, in cash, **does not exceed five per cent** of the said amount; **and**
- (b) aggregate of **all payments made** including amount incurred for expenditure, in cash, during the previous year **does not exceed five per cent** of the said payment,

*this clause shall have effect as if for the words "one crore rupees", the words **"ten crore rupees"** had been substituted; (amendment from AY 2021-22)*

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

Applicability of sec 44AB (proviso to Cl(a) - Limit Rs.10 cr as against Rs.1 Cr - business)

- 5% of cash transactions in receipts and payments permitted
- **Non Account payee cheque/draft - deemed as cash - practical difficulties**
- Both capital and current account transactions are to be considered for this limit
- capital introduction / drawings - in cash - whether to be counted for this purpose??
 - In case of proprietor
 - In case of firm/AOP/BOI
- Exception in clause (a) only -
 - Not for cases of profession as well
 - Not for cases coming out of section 44AD(4) - because that case is falling under clause (e) of sec 44AB
 - For cases coming out of section 44AD because of turnover exceeding Rs. 2 Crore

APPLICABILITY OF SEC 44AB - Cont'd

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

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section **44AE** or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

APPLICABILITY OF SEC 44AB - Cont'd

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section **44ADA** and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his **income exceeds the maximum** amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section **44AD** are applicable in his case and his **income exceeds the maximum amount** which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant **before the specified date** and **furnish by that date** the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

APPLICABILITY OF SEC 44AB - Cont'd

- **Provided** that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of **section 44AD** and his total sales, turnover or gross receipts, as the case may be, in business **does not exceed two crore rupees** in such previous year:
- **Provided further** that this section shall not apply**section 44B or section 44BBA,.....** :
- **Provided also** that in a case where such **person is required by or under any other law to get his accounts audited**, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession **audited under such law before the specified date** and furnishes by that date the **report of the audit as required under such other law** and a **further report by an accountant in the form** prescribed under this section.
 - Prescribed Rule is **Rule 6G**

Choosing of Form - 3CA / 3CB, etc

- Rule 6G

- (1) The report of audit of the accounts of a person required to be furnished under section 44AB shall,—
 - a. in the case of a person who carries on business or profession and who is **required by or under any other law to get his accounts audited**, be in **Form No. 3CA**;
 - b. in the case of a person who carries on business or profession, but **not being a person referred to in clause (a)**, be in **Form No. 3CB**.

Choosing of Form - 3CA / 3CB

- Companies requiring audit under Companies Act
 - Newly started Companies - Form 3CA/3CB? Sec. 2(41) of the Companies Act
 - Existing companies - Form 3CA/3CB?
- LLP requiring audit under LLP Act
 - Newly started LLP - Form 3CA/3CB? - Sec. 2(l) of the LLP Act
 - Voluntary audit by LLP - Form 3CA/3CB/NA
- Co-op Societies
- Audit under GST Act - Audit to express opinion on FS??
- Whether entire Notes & schedules to PNL & BS to be uploaded or only first page of PNL & BS?

APPLICABILITY OF SEC 44AB - Cont'd

- M/s. Vinoth P Ltd carries on business of trading in Electrical Items
 - During the FY its turnover from business was Rs.98.5 lacs
 - Also, the company sold its car for Rs.3.5 lacs during the year
 - The sale of car was shown as turnover for the purpose of GST returns.
 - Whether sec 44AB is applicable in this case?
- Every person,—
 - (a) carrying on business shall, *if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year*

APPLICABILITY OF SEC 44AB - Cont'd

- M/s. Brindha Ltd achieved a turnover of Rs.101 lacs during the financial year
- Also, it has sales return of Rs.2.5 lacs
- Out of the sales returns of Rs.2.5 lacs, Rs.2.25 lacs represents the return out of sales made during the earlier year
- Whether tax audit is applicable?
- View - I - Turnover minus sales return - Rs.98.5 lacs (i.e. 101-2.5)
- View - II - Turnover minus sales return out of sales of Current year - Rs.100.75 lacs (i.e., 101 - 0.25)

APPLICABILITY OF SEC 44AB - Cont'd

- Dr R is a medical practitioner, having clinic and medical shop.
 - His turnover/gross receipts are as under:
 - Fees from Profession - Rs. 40 lacs
 - Sales in medial Shop - Rs. 70 lacs
 - Advise whether sec 44AB is applicable to him.
- Every person,—
 - (a) carrying on business shall, if **his total sales, turnover or gross receipts**, as the case may be, in business exceed or exceeds **one crore rupees** in any previous year ; **Or**
 - (b) carrying on profession shall, if **his gross receipts in profession** exceed fifty lakh rupees in any previous year;

APPLICABILITY OF SEC 44AB - Cont'd

- M/s. S & Co, is a firm engaged in the business of trading in rice. It gives the following details:

Asst Year	Turnover	Taxable Income	Audit u/s
2017-18	80.00 lacs	4.00 lacs	44AB
2018-19	82.00 lacs	4.10 lacs	44AB
2019-20	84.00 lacs	4.20 lacs	44AB
2020-21	90.00 lacs	4.50 lacs	44AB
2021-22	92.00 lacs	4.60 lacs	44AB
2022-23	94.00 lacs	4.70 lacs	???

- Is this firm required to audit its accounts since the income is less than 8/6% of its turnover

BASICS OF 3CD

- Form No: 3CD is an annexure to Form 3CA/3CB.
- The primary responsibility to provide accurate data in Form 3CD is on the assessee.
- The tax auditor only verifies the data furnished by the assessee
- Adequate documentation is necessary
- Materiality concept vis a vis True and correct view
 - In our opinion and to the best of our information and according to examination of books of account including other relevant documents and explanations given to us, **the particulars given in the said Form No.3 CD are true and correct**

BASICS OF 3CD - Cont'd

- Difference of opinion between assessee and tax auditor
 - Para 3 of Form 3CA
 - In our opinion and to the best of our information and according to examination of books of account including other relevant documents and explanations given to us, the particulars given in the said Form No.3 CD are true and correct **subject to the following observations/qualifications, if any:**
 - Para 5 of Form 3CB
 - In our opinion and to the best of our information and according to explanations given to us, the particulars given in the said Form No.3 CD are true and correct **subject to following observations/qualifications, if any:**
 - Impact - Sec 143(1)(a)(iv)
 - **“disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return”**

Basic details - Clause 1 to 8a

- 8. Indicate the relevant clause of section 44AB under which the audit has been conducted
 - a, b, c, d, e or third proviso to sec 44AB
- 8a. Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD?
 - Gap between the due date and date of filing TAR
 - MRL, if this is the first year
 - Previous year filing of forms

Books and documents - Clause 11 (b)

❖ Prescribed

- For Specified 11 professionals - as per Rule 6F
- For others - not yet prescribed

❖ Maintained

- In More than one place - Whether all such place to be reported??
- In such cases whether the details of books maintained at each such place to be reported???
- Refer to sec 133A

❖ Examined

- Whether details of underlying evidences are to be reported??
 - Books **and other relevant documents**

Profession specified u/s. 44AA(1)

- legal,
- medical,
- engineering or
- architectural profession or
- the profession of accountancy or
- technical consultancy or
- interior decoration or

any other profession as is notified by the Board in the Official Gazette

- Authorized representatives
- Film Artists ([No. 17\(E\) - Dated: 12-1-1977 - IT](#))
- Company Secretaries ([No. S.O.2675 - Dated: 25-9-1992 - IT](#)) and
- Information technology ([No. 385\(E\) - Dated: 4-5-2001 - IT](#))

Profession specified u/s. 44AA(1) Vs Code prescribed - Medical - Part 1

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	General hospitals	18001	X	✓	X
	Speciality and super speciality hospitals	18002	X	✓	X
	Nursing homes	18003	X	✓	X
	Diagnostic centres	18004	X	✓	X
	Pathological laboratories	18005	X	✓	X
	Independent blood banks	18006	✓	X	X
	Medical transcription	18007	✓	X	X
	Independent ambulance services	18008	✓	X	X
	Medical suppliers, agencies and stores	18009	✓	X	X
	Medical clinics	18010	X	✓	X

Profession specified u/s. 44AA(1) Vs Code prescribed - Medical - Part 2

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	Dental practice	18011	X	√	X
	Ayurveda practice	18012	X	√	X
	Unani practice	18013	X	√	X
	Homeopathy practice	18014	X	√	X
	Nurses, physiotherapists or other para-medical practitioners	18015	X	√	X
	Veterinary hospitals and practice	18016	X	√	X
	Medical education	18017	X	√	X
	Medical research	18018	X	√	X
	Practice of alternative medicine	18019	X	√	X
	Other healthcare services	18020	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed - Accountancy, Consultancy

Sector	Sub-Sector	Code	44AD	44ADA	44AE
PROFESSIONS	Accounting, book-keeping and auditing profession	16002	X	√	X
	Tax consultancy	16003	X	√	X
	Fashion designing	16007	X	√	X
	Photography	16009	X	√	X
	Business and management consultancy activities	16013	X	√	X
CULTURE AND SPORT	Individual artists excluding authors	20010	X	√	X
	Literary activities	20011	X	√	X
	Other cultural activities n.e.c.	20012	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed - Information technology

Sector	Sub-Sector	Code	44AD	44ADA	44AE
COMPUTER AND RELATED SERVICES	Software development	14001	X	✓	X
	Other software consultancy	14002	X	✓	X
	Data processing	14003	X	✓	X
	Database activities and distribution of electronic content	14004	X	✓	X
	Other IT enabled services	14005	X	✓	X
	BPO services	14006	X	✓	X
	Maintenance and repair of office, accounting and computing machinery	14008	X	✓	X
	Cyber café	14007	✓	X	X
	Computer training and educational institutes	14009	✓	X	X
	Other computation related services n.e.c.	14010	✓	X	X

Inadmissible Deductions - Cont'd

- Sec 43B - cl 26
- Applies to mercantile system of accounting
- Does not cover
(*da*) any sum payable by the assessee as interest on any loan or borrowing from a **deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company**, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- Covers only
 - Tax, cess, duty
 - Labour welfare contributions
 - Bonus
 - Interest on term loan WC loan from Scheduled Banks & Public Financial Institutions
 - Leave encashment
 - Rent for use of railway properties

Inadmissible Deductions - Cont'd

- Reporting of info
 - About disallowances made in the last year for which payment made/ not made during the year
 - About the items outstanding as at year end for which payment made / not made before the due date of filing the Return of income
 - Payment made after issue of TAR considering one month time gap in Filing TAR & ROI - option available
- Advance ED/GST paid - allowable in which year???

Inadmissible Deductions - Cont'd

- Fixed Deposit made with bank in Dec 2021 for 3 years
 - Loan against the FD taken in Feb 2022
 - Interest accrued on FD - Rs.1.5 lacs
 - Interest accrued on Loan against FD - Rs.1.1 lacs (Not paid upto due date)
 - Applicability of sec 43B
- (e) any sum payable by the assessee as interest on any loan or advances from
 - a) a scheduled bank *or*
 - b) *a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank*
- in accordance with the terms and conditions of the agreement governing such loan or advances

Query relating to Expenditure - Sec 43B

- Is section 43B is applicable to even GST outstanding as the same is not debited to profit & loss account and nothing to do with the profit/loss as the input and output GST are debited to separate GST account in the books of account?
- Chowringhee Sales Bureau P Ltd - 1979 - 87 ITR SC
 - *The amount of sales tax collected by the auctioneer should be held to form part of trading or business receipts. The appellant would, of course, be entitled to claim deduction of the amount as and when it pays to State Government*
 - *The fact that the appellant credited the amount received as sales tax under the head "sales tax collection account" would not in our opinion, make any material difference. It is the true nature and the quality of the receipt and not the head under which it is entered in the account books as would prove decisive.*

Inadmissible Deductions - Cont'd

- Sec 40A(3) - Ceiling limit of Rs.10000/- - how to apply ?
- Sec 40A(3A) cases to be reported
- Cash Vs Non- cash transactions - Documentation for sec 40A(3)
- Rule 6DD is to be taken care of while ascertaining the applicability of sec 40A(3).
 - Payment in cash on Sunday/bank holiday (Cl [j] omitted w e f 29-1-2020)
- Applicability of sec 40A(3) to
 - direct deposit in the supplier's bank account??
 - Foreign currency payment - ceiling of Rs.10000 (Ramlord Apparels - 2020 (9) TMI 322 Mum ITAT)
 - Genuine transactions vs compelling circumstances (Natesan Krishnamoorthy - 2019 (1) TMI 607 Mad HC)
 - real estate transactions??

Inadmissible Deductions - Cont'd

- Eligibility of interest paid to partner - on current account balance
- Interest paid to partner
 - Implication for Rule 8D?
 - application of sec 40A(3)
 - Allowability in case of cash basis of accounting
 - non-resident partner - sec 40(a)(i)
- Interest paid by the partner to the firm - TDS applicability
- Interest paid / payable to MSME - cl 22
 - Interest paid, debited to PNL alone is to be reported
 - This requires to be disallowed

Inadmissible Deductions (Contd..)

- Sec 40A(2) payments - Cl 23
 - Only payments for expenditure are covered
 - NOT income side.
 - NOT capital expenditure
 - Trade discount not covered
 - TAR requires the details of payment
 - Tax auditor is not required to report the disallowable portion of expenses

Income/deemed income

- Clause 12 - Presumptive Income credited to P&L
 - Income covered by Presumptive nature included in P&L to be reported
 - How much is the eligible presumptive income for tax purpose is not required to be mentioned
 - If separate books are maintained - no issues - else apportionment of expenses may be necessary
 - Sec 44AD - more than one business

Income/deemed income - Cont'd

- Clause 13 - other income not credited to P&L
 - Items covered by sec 28;
 - Duty Drawback, etc:
 - capital receipts,
 - escalation claims,
 - other income - belated payment of Labour welfare dues
 - Recent notices from CPC
- Principal waiver of loan
 - Mahindra & Mahindra - 404 ITR 1 (SC)

Deemed Income - Cont'd

- Sec 50C/43CA - Cl 17
 - Only as per books
 - **Not applicable for personal transactions**
 - For seller the defence could be sec 50C(2)
 - For business case - 36(1)(vii) r w s 36(2) could be defence
 - Agreement date V sale Date - parity for both sections
 - Stamp duty value
 - 10% tolerance - (110% of txn value less than stamp duty value - permissible) Retrospective - Mum ITAT
 - DVO value - Chapter XX-C - CB Gautham - SC
 - 15% margin - ????

Deemed Income - Cont'd

- Forfeiture of money received for transfer of capital asset where transfer does not take place – income as per sec 56(2)(ix) – cl 29A
- Specified Assets/money received for no consideration / inadequate consideration by any person from any person other than relatives – specified persons – income as per sec 56(2)(x) – cl 29B
 - Only as per books – not for personal transactions
- Deemed dividend as per sec 2(22)(e) – cl 36A

Loans and deposits - clause 31

- Sec applies to loans, deposits, specified sum
- Ceiling limit - Rs.20000 or less than Rs.20000???
- Whether the ceiling is to be seen for
 - Per annum?
 - Per month?
 - Per day?
 - Per transaction?
 - Including the opening balance of the year?
- Whether section would apply for payment of the interest on loan/deposit, if added to the loan /deposit account?

Loans and Deposits - Cl 31 - Cont'd

- the “specified sum” is to be reported separately for all the reports issued on or after 19-07-2017
- ECS is also permitted mode
- For repayment two new sub-clauses introduced
- Out of repayment exceeding the limit u/s. 269T,
 - received during the year in cash
 - Received during the year by instrument (other than account payee) to be separately given

Loans and Deposits - Cl 31 - Cont'd

- Compliance of sec 269ST is to be reported for all the reports issued on or after 20-08-2018
- There are four sub-clauses introduced
 - Two of them are for the receipt of amount
 - Two of them are for payment of the amount - sec does not say anything about payment
 - Exception provided in section and notification are not required to be reported.
 - Circular issued can also be relied on for not reporting the transactions covered by the circular
 - Test check - disclaimer - possible????

Loans and Deposits - Cl 31 - Cont'd

- Whether the section is attracted for
 - Transaction between husband and wife
 - Transaction between Parents and their sons/daughters
 - Retiring partners balance payable
 - Directors current account transactions
 - Closing the loan by Journal entries
- Whether all the transactions by “A/c payee” cheques to be reported or only the violation cases to be reported?
- Can there be 269SS & 269T on same party's borrowing and repaying transactions?
- Sec 68 & sec 269SS - whether both possible?
- Can genuineness be defence?

Loans and Deposits - Cl 31 - Cont'd

- Facts of the case of an individual being a proprietor of two or more business
 - He borrowed money in his personal capacity
 - The interest on such loans are paid in his personal capacity
 - No TDS was effected on the interest paid on loans borrowed
 - The borrowings, interest payment are not recorded in the proprietary concerns books of account (but routed through capital account)
 - Any obligation on tax auditor to report the particulars in Form 3CB and 3CD
 - For loan borrowed
 - For loan repaid
 - For no TDS for the interest paid

Loss/ deductions u/c - VI-A

- Cl 32 (a)
 - Only brought forward loss to be reported
 - Current year loss not to be reported
 - Dispute, if any, to be suitably reported in Remarks
- Whether depreciation loss can be set off against the salary income
 - Chennai ITAT decision
 - Commission Vs Salary
 - Applicability of sec 36(1)(ii)

Loss/ deductions u/c - VI-A - Cont'd

- Cl 32 (c)/(d)
 - Sec 73 - Speculative loss - current year only
 - Sec 73A - loss from specified business - current year only
- Cl 33 - chapter VI-A deductions / Chapter III - 10A/10AA
 - Only as per books - personal info need not be reported
 - Report as per other sections - to be cross verified

TDS/TCS - Cl 21(b)

- This cl requires Party wise details of TDS not deducted/ deducted but not remitted to be reported both for sec 40(a)(i) and sec 40(a)(ia)
- Other clauses of 40(a) are to be separately reported

TDS/TCS - Cl. 34(a) - summary of TDS/TCS

- Party wise details not required to be given
- Payments are to be arranged section wise, TAN wise, deductions at normal rate, lesser or NIL rate, below threshold limit
- Amount not paid to be reported
- TCS details are also to be similarly reported
- Test check permissible as per ICAI guidance note

TDS/TCS - Cl 34(b) - QTR-ly Returns filed

- Need to be filled up where there is requirement to furnish the statement of TDS
- Fact that all the cases requires to be reported are reported or not is to be reported
- If not, the details of unreported cases to be listed.

TDS/TCS- Cl 34(c) - interest u/s. 201(1A)/206C(7)

- Details of Details of interest paid and payable to be reported
- Details as per assessee calculation and dept calculation may vary
- Month - varying factor

Firm/AOP

- Cl 9 - details of sharing of profit - change, etc.
 - Details of each change to be reported
 - Sec 187/188
- Cl 21(c) - inadmissible u/s. 40(b)/(ba)
 - Only inadmissible amount is to be reported
 - Computation of disallowance to be given
 - Munjal Sales Corporation - SC

COMPANY

- Cl 29 - income covered u/s. 56(2)(viib)
 - Issue at premium to residents only covered
 - Issue of shares at face value not covered
 - However, Company law provisions are to be taken into account
- Cl 32(b)/(e) deal with losses for company
 - Speculative loss as per expl to sec 73 - current year loss only
 - Disqualification of loss by invoking sec 79
 - Depreciation loss shall not be hit by sec 79

Other reporting requirements

- Transfer pricing adjustments - secondary adjustments - details to be reported - Cl 30A
- Thin capitalisation Rule - Sec 94B - details to be reported - Cl 30B
- GAAR - Impermissible avoidance agreement - sec 96 - Cl 30C
- Information from Statement in Form 61/61A/61B - cl 42
- Information from Statement u/s. 286 - Cl 43

Other reporting requirements - Cont'd

- Reconciliation of Expenditure based on GST of vendors - Cl 44
 - Expenditure incurred vs Payment
 - Capital or Revenue Expenditure
 - Purchases vs Expenditure
 - Advance payments / discounts
 - Availability of info with the assessee
 - MRL from Assessee
 - Disclaimer

CONSEQUENCES

- Penalty u/s. 271B
- Alternative - penalty u/s. 271A
- Penalty u/s. 271A & 271B - both not possible
- Where presumptive income not offered, penalty for not auditing accounts may apply but income cannot be enhanced to presumptive level
- Audit report is dated 30-09-2022 - Consequences????

Thank you