Exposure Draft

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

AY 2023-24

(Effective for the AY 2023-24 and subject to amendments made by law, judiciary or administration, for the subsequent assessment years)

(Last date for Comments: **06th August, 2023**)

Direct Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

EXPOSURE DRAFT - GUIDANCE NOTE ON TAX AUDIT UNDER SECTION 44AB OF THE INCOME-TAX ACT, 1961

Following is the Exposure Draft of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Direct Taxes Committee of ICAI for comments. Changes have been made to the extent of amendments made by the Finance Act, 2023.

The Committee invites comments on this Exposure Draft.

Comments are most helpful if they indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale and, where applicable, provide suggestions for alternative wording.

How to comment:

Comments can be sent to dtc@icai.in so as to be received not later than 6th August, 2023.

Terms, Abbreviations used in this Guidance Note

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

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

(k)	**HUF**	Hindu Undivided Family.
(l)	**ICAI/Institute**	The Institute of Chartered Accountants of India.
(m)	**ICDS**	Income Computation and Disclosure Standards issued by the Board u/s 145 of the Act.
(n)	**Ind AS**	The Indian Accounting Standards (Ind AS), as notified vide Companies (Indian Accounting Standards) Rules, 2015 along with the amendments notified from time to time as applicable for certain specified class of companies.
(o)	**Limited Liability Partnership (LLP)**	As defined in the Limited Liability Partnership Act, 2008.
(p)	**Person**	As defined in section 2(31) of the Act.
(q)	**Previous year**	As defined in section 3 of the Act.
(r)	**Rules**	The Income-tax Rules, 1962.
(s)	**SA**	Standards on Auditing.
(t)	**STT**	Securities transactions tax leviable under Chapter VII of the Finance (No.2) Act, 2004.
(u)	**Tax audit**	The audit carried out under the provisions of section 44AB of the Act.
(v)	**Tax auditor**	Auditor appointed by an assessee to carry out tax audit under section 44AB of the Act.

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Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961- AY 2023-24

(Effective for the AY 2023-24 and subject to amendments made by law, judiciary or administration, for the subsequent assessment years)

1. Introduction

What is audit?

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

Tax Audit

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

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

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

What is the objective of tax audit?

1.4 One of the objectives of tax audit is to ascertain/derive the requirement of Form No. 3CD and report in Form Nos. 3CA/3CB. Apart from reporting requirements of Form Nos. 3CA/3CB, an audit for tax purposes would assure that the books of account and other records are properly maintained, that they reflect the true and correct particulars in Form No. 3CD. It can also facilitate the administration of tax laws by a proper presentation of accounts before the

tax authorities and considerably save the time of Assessing Officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched for or not. The time of the Assessing Officers saved could be utilised for attending to more important and investigational aspects of a case.

Tax Audit Guidance Note

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

1.6 This Guidance Note is revised to facilitate compilation of particulars and conducting tax audit and issuing report for the Assessment Year 2023-24. Further, DTC has decided to issue at regular intervals, a revised and updated version of the Tax Audit Guidance Note, offering guidance on all the changes made in the tax audit reporting requirements.

2. Background

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

of erstwhile section 44AF and hence, section 44AF has been omitted. While section 44AF dealt with assessees carrying on retail trade, the amended section 44AD covers all assessees carrying on eligible business except professionals as referred to in section 44AA(1), a person earning income in the nature of commission or brokerage, or a person carrying on any agency business.

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

2.3. The first edition of this Guidance Note was published in the year 1985 immediately after the introduction of tax audit provision to help members in discharging their responsibility in an efficient manner. In order to incorporate changes made by the amendments to the Finance Act, as well as judicial pronouncements, circulars etc., the said Guidance Note has been revised in the years 1989, 1998, 1999, 2005, 2013, 2014 and 2022. Further, a publication titled 'Implementation Guide w.r.t. Notification No. 33/2018 dated 20.07.2018 effective from 20.08.2018' was also issued in the year 2018 (now incorporated and merged in this revised edition). The sequence of certain significant events is as follows:

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

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

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

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

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

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

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

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

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

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

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

2.5. The audit of accounts was introduced by section 11 of the Finance Act, 1984, which inserted a new section 44AB with effect from 1st April, 1985 [Assessment Year 1985-86]. This audit is popularly known as tax audit. This section makes it obligatory for a person carrying on business to get his accounts audited by a chartered accountant, and to furnish by the 'specified date', the report in the prescribed form of such audit, if the total sales, turnover or gross receipts in business in the relevant previous year exceed or exceeds the prescribed limit. For a professional, the provisions of tax audit become applicable, if his gross receipts in profession exceed the prescribed limit in the relevant previous year.

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

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

**(those were the then existing limit)*

3. Provisions of section 44AB

3.1. Section 44AB reads as under:

"**Audit of accounts of certain persons carrying on business or profession**".

44AB. *Every person, --*

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

Provided that in the case of a person whose—

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

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

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

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

be the payment or receipt, as the case may be, in cash; or

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

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

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

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

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

Provided that this section shall not apply to 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:

Following first proviso shall be substituted for the existing first proviso to section 44AB by the Finance Act, 2023 w.e.f. AY 2024-25:

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

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

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

Explanation - For the purposes of this section, -

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

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income under sub-section (1) of section 139

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

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

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

Provided that in the case of a person whose—

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

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed

five per cent of the said payment,

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

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

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

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

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

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

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

(a) This section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD 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 (First proviso to section 44AB – applicable till AY 2023-24 only).

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

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

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

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

(1) The report of audit of the accounts of a person required to be furnished under section 44AB shall —

(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;

(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.

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

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

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

4. 'Profession' and 'business' explained

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

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

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

4.3 Whether a particular activity can be classified as 'business' or 'profession' will depend on the facts and circumstances of each case. The expression "profession" involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of commodities. - *CIT Vs. Manmohan Das (Deceased) [1966] 59 ITR 699 (SC), CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All).*

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

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

Further under Rule 6F and other professions notified thereunder (Notifications No. 1620 SO-18(E) dated 12.1.77, No. 9102SO 2675 dated 25.09.1992 and No.116 SO 385(E), dated 4.5.2001), the following can also be considered as

a profession:

(i) Authorised Representative,

(ii) Company Secretary,

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

(iv) Information Technology. (Attention is invited to *Notification No.* 890(E)/2000 dated 26-9-2000)

Note – However, it is interesting to note for the purpose of section 194J, 'professional services' includes advertising but the same has not yet been notified under rule 6F of the Rules as profession under section 44AA of the Act.

4.5 The following activities have been held to be business:

(i) Advertising agent

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

(iii) Couriers

(iv) Insurance agent

(v) Nursing home

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

(vii) Travel agent.

5. Sales, turnover, gross receipts

5.1 It may be noted that the provision relating to tax audit under section 44AB applies to every person carrying on business, if his total sales, turnover or gross receipts in business exceed the prescribed limit (Rs.1 crore or Rs 10 crore in specified cases) and to a person carrying on a profession, if his gross receipts from profession exceed the prescribed limit (Rs. 50 lakhs) in previous year 2022-23. It is pertinent to note here that the turnover limits as provided in section 44AD and 44ADA have been further revised upwards by the Finance

Act, 2023 applicable w.e.f. AY 2024-25. However, the terms "sales", "turnover" or "gross receipts" are not defined in the Act, and therefore the meaning of the aforesaid terms has to be considered for the applicability of the section.

5.2 The Central Sales Tax Act, 1956 defines "Turnover" as follows:

> *"turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and rules made there under.*

Further, section 8A(1) of the said Act provides that in determining turnover, deduction of sales tax should be made from the aggregate of sales price.

The Central Goods and Services Act, defines 'Turnover' as under:

> Section 2(112)
>
> *'turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.*

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

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

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

> *"The aggregate amount for which sales are effected or services rendered by an enterprise. The term `gross turnover' and `net turnover' (or `gross sales' and `net sales') are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts".*

The term "turnover" is a commercial term and it should be construed in accordance with the method of accounting regularly employed by the company.

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

5.6 Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts in the light of the above discussion.

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

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

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

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

(iv) Special rebate allowed to a customer can be deducted from the sales if

it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

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

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

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

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

5.8 (a) A question may also arise as to whether the sales by a commission agent or by a person on consignment basis forms part of the turnover of the commission agent and/or consignee as the case may be. In such cases, it will be necessary to find out, whether the property in the goods or all significant risks, reward of ownership of goods belongs to the commission agent or the consignee immediately before the transfer by him to third person. If the property in the goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of the sales/turnover of the commission agent and/or the consignee as the case may be. If, however, the property in the goods, significant risks and reward of ownership belongs to the commission agent and/or the consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover.

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

5.9 Share brokers, on purchasing securities on behalf of their customers, do not get them transferred in their names but deliver them to the customers who get them transferred in their names. The same is true in case of sales also. The share broker holds the delivery merely on behalf of his customer. The property in goods does not get transferred to the share brokers. Only brokerage which is being accounted for in the books of account of share

brokers should be taken into account for considering the limits for the purpose of section 44AB. However, in case of transactions entered into by share broker on his personal account, the sale value should also be taken into account for considering the limit for the purpose of section 44AB. The case of a sub-broker is not different from that of a share broker.

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

(a) **Speculative transaction**: A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction, the difference amount is 'turnover'. In the case of an assessee undertaking speculative transactions, there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on account of negative difference is not related to the amount received on account of positive difference. In such transactions, though the contract notes are issued for full value of the purchased or sold asset, the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB.

(b) **Derivatives, futures and options**: Such transactions are completed without actual delivery of shares or securities or commodities etc. These are squared up by receipts/payments of differences. The contract notes are issued for the full value of the underlined shares or securities or commodities etc. purchased or sold but entries in the books of account are made only for the differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia. The turnover in such types of transactions is to be determined as follows:

(i) The total of favourable and unfavourable differences shall be taken as turnover.

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

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

(c) **Delivery based transactions**: Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sales is to be considered as turnover.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Hire charges of cold storage;

(viii) Liquidated damages;

(ix) Insurance claims - except for fixed assets;

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

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

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

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

(xiv) Advance received and forfeited from customers.

(xv) The value of any benefit or perquisite, whether convertible into money

or not, arising from business or the exercise of a profession.

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

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

(ii) Sale proceeds of assets held as investments;

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

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

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

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

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

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

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

(x) Share of profit of a partner of a firm in the total income of the firm excluded from his total income under section 10(2A) of the Income-tax Act;

(xi) Agriculture receipts {as defined in section 2(1A) r.w.s.10(1)}

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

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

5.15 In the case of a professional, the expression "gross receipts" in profession would include all receipts arising from carrying on of the profession. A question may, however, arise as to whether the out of pocket expenses received by him should form part of his gross receipts for purposes of this section. Normally, in the case of solicitors, advocates or chartered accountants, such out of pocket expenses received in advance are credited in a separate client's account and utilised for making payments for stamp duties, registration fees, counsel's fees, travelling expenses etc. on behalf of the clients. These amounts, if collected separately either in advance or otherwise, should not form part of the "gross receipts". If, however, such out of pocket expenses are not specifically collected but are included/collected by way of a consolidated fee, the whole of the amount so collected shall form part of gross receipts and no adjustment should be made in respect of actual expenses paid by the professional person for and/or on behalf of his clients out of the gross fees so collected. However, the amount received by way of advance for which services are yet to be rendered will not form part of the receipts, as such advances are the liabilities of the assessee and cannot be treated as his receipts till the services are rendered.

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

5.17 It may, however, be noted that in cases where the assessee carries on more than one business activity, the results of all business activities should be

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

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

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

6. Liability to tax audit - Special cases

6.1. A question may arise in the case of an assessee whose income is not chargeable to income-tax by reason of a specific exemption contained in the law or otherwise, as to whether he is required to get his accounts audited and to furnish such report under section 44AB. Such cases may cover those

assessees who are wholly outside the purview of income-tax law as well as those whose income is otherwise exempt under the Act. It appears that neither section 44AB nor any other provisions of the Act stipulate exemption from the compulsory tax audit to any person whose income is exempt from tax. This section makes it mandatory for every person carrying on any business or profession to get his accounts audited where conditions laid down in the section are satisfied and to furnish the report of such audit in the prescribed form. A trust/association/institution carrying on business may enjoy exemptions as the case may be under sections 10(21) or 10(23A) or 10(23B) or section 10(23BB) or section 10(23C) or section 11. A co-operative society carrying on business may enjoy deduction under section 80P. Such institutions/associations of persons will have to get their accounts audited and to furnish such audit report for purposes of section 44AB if their turnover in business exceeds the prescribed limit (Presently Rs. 1 crore and Rs 10 crore in certain specified cases).

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

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

7. Specified date and tax audit

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

(a) The tax auditor is required to upload Form No. 3CA/CB and Particulars in Form No. 3CD in specified format using his digital signature. These

forms should be accompanied by the audited financial statements.

(b) The assessee needs to login and approve these Forms from his worklist on e-fling website.

7.2. A question may arise whether a tax auditor appointed under section 44AB can be held responsible if he does not complete the audit and if the tax audit report is not uploaded before the specified date. Answer to this question will depend on the facts and circumstances of the case. Normally, it is the professional duty of the chartered accountant to ensure that the audit accepted by him is completed before the due date. If there is any unreasonable delay on his part, he is answerable to the Institute if a complaint is made by the client. However, if the delay in the completion of audit is attributable to his client, the tax auditor cannot be held responsible. It is, therefore, necessary that no chartered accountant should accept audit assignments which he cannot complete within the prescribed time frame. In this regard, reference may also be made to paragraph 12 of this Guidance Note.

8. Penalty

8.1 In order to ensure proper compliance with section 44AB, section 271B has been enacted which reads as under:-

"Failure to get accounts audited

271B*. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."*

8.2 As such, the failure of a person, to get his accounts audited in respect of any previous year or furnish a copy of such report as required under section 44AB may attract a penalty equal to 0.5% of the total sales, turnover or gross receipts, or Rs.1.5 lakh whichever is less. However, in view of the specific provisions contained in section 273B, no penalty is imposable under section 271B on the assessee for the above failure if he proves that there was reasonable cause for the said failure. The onus of proving reasonable cause is on the assessee.

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

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

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

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

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

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

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

(g) Natural calamities, commotion, etc.

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

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

9. Tax auditor

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

> *“For the purposes of this section, -*
>
> (i) *"accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;*".

The above-mentioned Explanation reads as under:

> “*In this section, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—*
>
> *(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or*
>
> *(b) in any other case,—*

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

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

(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;

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

(v) an officer or employee of the assessee;

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

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

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

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

(II) is indebted to the assessee:

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

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

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

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

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

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

(a) spouse of the individual;

(b) brother or sister of the individual;

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

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

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

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

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

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

Nature of business relationship.

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

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

(ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary

course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

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

9.2 The third proviso to section 44AB lays down that where the accounts of an assessee are required to be audited by or under any other law, it shall be sufficient compliance with the provisions of this section, if such person gets the accounts of such business or profession audited under such other law before the specified date and furnishes by that date the report by an 'accountant' as required under section 44AB. It may be noted that after amendment by the Finance Act, 2001, tax audit can be carried out by an accountant only. Accordingly, in case of any assessee like a co-operative society where the accounts under the relevant law have been audited by a person other than a chartered accountant, the tax audit will have to be conducted by the 'accountant' as defined under section 44AB.

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

9.4 Section 44AB stipulates that only Chartered Accountants should perform the tax audit. This section does not stipulate that only the statutory auditor appointed under the Companies Act or other similar Statute should perform the tax audit. As such the tax audit can be conducted either by the statutory auditor or by any other chartered accountant in full time practice.

9.5 It may be noted that the Council at its 242nd meeting has passed a resolution effective from 1st April 2005, that any member in part-time practice

(namely, holding a certificate of practice and also engaging himself in any other business and/or occupation) is not entitled to perform attest functions including tax audit.

9.6 A question may arise in the case of a public sector company or any other company where the statutory auditor has not been appointed by the authorities concerned as to whether the tax auditor appointed under section 44AB can complete his audit without waiting for statutory audit report on the accounts audited by the statutory auditors. It may be noted that Form No. 3CA requires the tax auditor to enclose a copy of the audit report conducted by the statutory auditor or the auditor of the financial statements as the case may be. Where a statutory auditor has not been appointed by the authorities concerned or where the report of the statutory auditor is not available for whatever reasons, it will be possible for the tax auditor to give his report in Form No. 3CB and to certify the relevant particulars in Form No. 3CD. This is particularly important in those cases where the assessee concerned has suffered losses in the relevant accounting year or in the cases where deduction or exemption under a particular section is dependent on filing the return in time given under section 139(1). It may, however, be noted that the tax auditor in such cases will have to conduct the financial audit as well in order to enable him to certify whether or not the accounts reported upon by him give a true and fair view of the state of affairs of the assessee whose accounts are audited by him under section 44AB.

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

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

Companies Act, 2013 or various other statutes.

- Issuance of qualified report

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

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

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

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

9.12 The Assessing Officer or any other authority who is authorised to issue summons and to call for evidence or documents, can call upon the tax auditor who has audited the accounts to give any evidence or produce documents. For this purpose, notice under section 131 or 133(6) can be issued by the Assessing Officer or other tax authority mentioned in the said section. Also, Section 271J of the Income-tax Act, 1961 dealing with Penalty for furnishing incorrect information in reports or certificates states that where the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under the Income-tax Act, 1961, finds that an accountant has furnished incorrect information in any report or certificate furnished under any provision of Income-

tax Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct that such accountant, shall pay, by way of penalty, a sum of ten thousand rupees for each such report or certificate. Thus, the said provision should also be kept in mind while certifying the above forms.

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

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

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

9.16 Under the Code of Ethics, no tax auditor shall charge or offer to charge, accept or offer to accept, professional fees by way of percentage of profits or which are contingent upon findings, or results of such employment, except as permitted under any regulation made under the Chartered Accountants Act. In this connection, reference is invited to Clause (10) of Part I of the First Schedule to the Chartered Accountants Act and the commentary on the subject at page 83 of the Code of Ethics (Volume II - 2020 Edition). Certain exceptions are made in Regulation 192. As per Regulation 192 (b), in the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits.

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

9.18 In terms of Council Guidelines No.1 CA(&)/02/2008, dated 8th August, 2008 – **Appendix VII**, in Chapter-X regarding "Appointment of an auditor when

he is indebted to a concern", a chartered accountant should not accept the tax audit of a person to whom he is indebted for more than rupees one lakh. A member of the Institute shall be deemed to be guilty of professional misconduct if he accepts appointment as an auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding rupees one lakh. However, Explanation to Section 288(2) does not provide for any such threshold and hence irrespective of the quantum of indebtedness, a chartered accountant should not accept the assignment of tax audit as the same is prohibited by the said Explanation to Section 288(2).

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

9.20 The Council has issued a Guideline No.1-CA(7)/02/2008, dated 8th August, 2008 given in ***Appendix VII*** *wherein Chapter- IX "Appointment as Statutory auditor" states that* a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking/ Government Company /Listed Company and other Public Company having turnover of Rs. 50 crores or more in a year and accepts any other work or assignment or service in regard to the same undertaking/company on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking/company.

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

9.22 As per the said Guideline, the term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of

the Chartered Accountants Act, 1949 but shall not include: -

(i) audit under any other statute;

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

(iii) any representation before an authority.

9.23 Since the obligation for tax audit has been specified in section 44AB of the Income-tax Act, 1961, it will be considered as an audit under any other statute for the purpose of this Guideline and thus the above restriction shall not apply in respect of tax audit fees.

9.24 The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB. It is advisable that such an appointment letter should be signed by the person competent to sign the return of income in terms of the provisions of section 140 of the Act. It would also be useful if the letter affirms that no other auditor was appointed to conduct the tax audit for the year for which the appointment is being made. The letter may also give the name and address of the tax auditor for the previous year, wherever relevant. This would give the necessary information to the incoming tax auditor to enable him to communicate with the previous auditor. The letter of appointment should also specify the remuneration of the tax auditor. SA-210, *Agreeing the Terms of Audit Engagement* issued by the ICAI requires the auditor to agree with the terms of audit engagement with management or those charged with governance as appropriate. The agreed terms would need to be recorded in an audit engagement letter or other suitable form of written agreement and shall include: (a) The objective and scope of the audit of the financial statements; It should be specifically mentioned that the scope of audit is restricted to the provisions contained in section 44AB of the Income-tax Act,1961 and the Income-tax Rules, 1962. (b) The responsibilities of the auditor; (c) The responsibilities of management; (d) Identification of the applicable financial reporting framework for the preparation of the financial statements; and (e) Reference to the expected form and content of any reports to be issued by the auditor as per the provisions of Income-tax Act, 1961 and Income-tax Rules, 1962 along with a statement that there may be circumstances in which a report may differ from its expected form and content. In the interest of both client and auditor, the auditor should send an engagement letter, preferably before the commencement of the engagement, to help avoid any misunderstandings with respect to the engagement. The engagement letter documents and confirms the auditor's

acceptance of the appointment, the objective and scope of the audit and the extent of the auditor's responsibilities to the client. However, it may be noted that wherever an audit is to be conducted under a Statute, acknowledgement of the letter of the auditor by the client is considered to be sufficient compliance of SA-210. The tax auditor should get the statement of particulars, as required in the annexure to the audit report, authenticated by the assessee before he does the same.

9.25 The tax auditor is required to upload the tax audit report directly in the e-filing portal.

9.26 The appointment of the auditor for tax audit in the case of a company need not be made at the general meeting of the members. It can be made by the Board of Directors or even by any officer, if so authorised by the Board in this behalf. The appointment in the case of a firm or a proprietary concern can be made by a partner or the proprietor or a person authorised by the assessee. It is possible for the assessee to appoint two or more chartered accountants as joint auditors for carrying out the tax audit, in which case, the audit report will have to be signed by all the chartered accountants. In case of disagreement, they can give their reports separately. In this regard, attention is invited to Para 17 of the SA 299 (Revised), *Joint Audit of Financial Statements* issued by ICAI reproduced below:

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

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

9.27 A chartered accountant who is responsible for writing or maintenance of the books of account of the assessee should not audit such accounts. This principle will apply to the partner of such a member as well as to the firm in

which he is a partner. In view of this, a chartered accountant who is responsible for writing or maintenance of the books of account or his partner or the firm in which he is a partner should not accept tax audit assignment under section 44AB in the case of such an assessee.

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

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

9.30 A question may arise whether an assessee can remove a tax auditor appointed under section 44AB. The answer depends upon the facts and circumstances of the case. It is, however, possible for the management to remove a tax auditor where there are valid grounds for such removal. This may arise where the tax auditor has delayed the submission of audit report under section 44AB for an unreasonable period and if it is found that there is no possibility of getting the audit report uploaded before the specified date. In such cases, the management may be justified in removing the tax auditor. However, the tax auditor cannot be removed on the ground that he has given an adverse audit report or the assessee has an apprehension that the tax auditor is likely to give an adverse audit report. If there is any unjustified removal of tax auditors, the Ethical Standards Board constituted by the Institute can intervene in such cases. No other chartered accountant should accept the audit assignment if the removal of his predecessor is not on valid grounds.

9.31 Before accepting a tax audit, the chartered accountant should take into consideration the ceiling on tax audit assignments fixed under the Chapter VI-Tax Audit assignments under Section 44AB of the Income-tax Act, 1961 of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 as amended by a decision of the Council taken in its 331st meeting held from 10.02.2014 to 12.02.2014, its 333rd meeting held from 14.05.2014 to 16.05.2014 and its 368th meeting held in August, 2017 - ***Appendix VII.*** In this regard, members may also refer to 'FAQ ON TAX AUDIT ASSIGNMENTS' hosted at ICAI

website (https://www.icai.org/post.html?post_id=10656) and relevant excerpt reproduced for reference: *If there are 10 partners in a firm of Chartered Accountants in practice, then all the partners of the firm can collectively sign 600 tax audit reports. This maximum limit of 600 tax audit assignments may be distributed between the partners in any manner whatsoever. For instance, 1 partner can individually sign 600 tax audit reports in case remaining 9 partners are not signing any tax audit report.*

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

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

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

> *"Various statutes prevailing in India like DVAT, 2004 requires the assessee to furnish an audit report in a form duly signed and verified by such particulars as may be prescribed under section 44AB of the Income-tax Act, 1961 i.e. Form 3CB/3CD. This had lead to the doubts as to whether such audits would be included in the ceiling of "specified number of tax audit assignments".*
>
> *Considering the same, the Council at its 311th meeting held on 8th and 9th November, 2011 clarified that audit prescribed under any statute which requires the audit report in the form as prescribed under section 44AB of the Income-tax Act, shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in section 44AB of the Income-tax Act, 1961. For instance audit under section 44AD, audit*

under DVAT, 2004 (for turnover between 40 to 60 Lakhs) etc. will not be considered for inclusion in the present limit of 60 audits"*

**w.e.f 1.04.2014*

9.34 In case the member is a partner of a firm of chartered accountants in practice, the ceiling of 60 tax audit assignments shall be computed with reference to each of the partner in the said firm. Where any partner of the firm of chartered accountants in practice is also a partner of any other firm or firms of chartered accountants in practice, the ceiling limit of 60 shall apply with reference to all the firms together in relation to such partner. Similarly, where any partner accepts one or more tax audit assignments in his individual capacity, the total number of such assignments under section 44AB which may be accepted by him whether directly in his individual capacity or as partner of the firm of chartered accountants in practice shall not exceed 60 tax audit assignments. If two members or firms of chartered accountants are appointed as joint tax auditors, then the assignment will have to be included in the case of both the members or firms separately. It has, however, been clarified that the audit of the head office and branch offices concerned shall be regarded as one tax audit assignment. Similarly, the audit of one or more branches of the same concern by one chartered accountant in practice shall be construed as only one tax audit assignment. In computing the specified number of tax audit assignments, each year's audit would be taken as a separate assignment. Every chartered accountant in practice shall maintain a record of the tax audit assignments accepted by him in each financial year in the format prescribed by the Council. This format is reproduced in ***Appendix VIII.***

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

9.36 The chartered accountants should charge reasonable fees depending

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

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

9.38 It may also be noted that a chartered accountant is required to generate and mention UDIN (Unique Documentation Identification Number) on each attestation/audit reports issued by him. The Institute of Chartered Accountants of India, through the Gazette notification dated 2nd August, 2019, has declared mandatory generation of UDIN for all kind of Certifications, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions performed by practicing members as required by various regulators. Further, the CBDT has made quoting of UDIN mandatory for uploading any certification/audit report on income tax e-filing portal with effect from 27.04.2020. The UDIN so mentioned for the tax audit reports/certificates by the Chartered Accountants in the e-filing portal, is validated online with the ICAI system-level integration. This validation of UDIN help in weeding out fake or incorrect tax audit reports not duly authenticated with the ICAI. If, for any reason, a Chartered Accountant is unable to generate UDIN before submission of audit report/certificate, the income tax e-filing portal allows such submission. However, the said Chartered Accountant has to generate and update the UDIN within 60 calendar days from the date of form submission on the income tax e-filing portal.

10. Form of Financial Statements

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

10.2 In case of certain assessees, law does not prescribe any specific format

or requirements for preparation and presentation of financial statements. In such a case, the Accounting Standards Board of ICAI has issued guidelines for Form and related preparation and presentation guidelines. These are contained in Publication titled 'Technical Guide on Financial Statements of Non-Corporate Entities'. Tax auditors may consider inviting attention of assesses towards guidelines appearing in the said publication.

11. Accounting Standards

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

11.2 The legal recognition to the Accounting Standards formulated by the ICAI was granted in October 1998 with insertion of Section 211(3A), (3B), and (3C) in the Companies Act, 1956. The Companies Act, 2013 has replaced Companies Act, 1956. Section 211(3C) of the erstwhile Companies Act had provided that Accounting Standards issued by the ICAI may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards (NACAS). As per the proviso to the section, till the notification of the Accounting Standards by the Government, the Accounting Standards issued by the ICAI were required to be followed by companies. In the year 2006, Accounting Standards 1 to 7 and 9 to 29 were notified by the Ministry of Corporate Affairs, Government of India, under the Companies (Accounting Standards) Rules, 2006 vide its notification dated December 7, 2006 in the Gazette of India. These were made effective in respect of accounting periods commencing on or after the publication of these Accounting Standards (i.e., December 7, 2006). As per the Companies (Accounting Standards) Rules, 2006, Companies are classified into two categories, i.e., Small and Medium Companies (SMCs) and Non-SMCs. Under the Companies Act, 2013, Section 129 provides for compliance to Accounting Standards. In accordance with section 133, the Central Government prescribes the standards of accounting as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. It was prescribed that the standards of accounting as specified under the Companies Act, 1956, shall be deemed to be the Accounting Standards until Accounting Standards are specified by the Central Government under section 133 of the Companies Act 2013. Accordingly, Accounting Standards notified under Companies (Accounting

Standards) Rules, 2006 would continue to be followed under the Companies Act, 2013 also. In 2021, AS Rules 2006 were mirrored under the Companies Act 2013 and notified as Companies (Accounting Standards) Rules, 2021 applicable in respect of accounting periods commencing on or after April 01, 2021. Another set of Accounting Standards, i.e., Indian Accounting Standards (Ind AS) that are converged with globally accepted International Financial Reporting Standards have been notified under Companies (Indian Accounting Standards) Rules 2015 and already been implemented as per the Roadmap issued by the MCA by all the listed companies and Non-banking financial companies (NBFCs) and unlisted companies and NBFCs with net worth of INR 250 crores or more.

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

11.4 The Accounting Standards, issued by ICAI are for use in the presentation of general purpose financial statements which are issued to the public by such commercial, industrial or business enterprises as may be specified by the Institute from time to time and subject to the attest function of its members. The term `General Purpose Financial Statements' includes balance sheet, statement of profit and loss, a cash flow statement (wherever applicable) and other statements and explanatory notes which form part thereof, issued for the use of various stakeholders, Governments and their agencies and the public at large.

11.5 Information about the Accounting Standards can be seen from the publications of the Institute. Important publications in the matter are:

(a) Compendium of Accounting Standards – 'Accounting Standards as on February 1, 2022'

(b) Compendium of Indian Accounting Standards – 'Indian Accounting Standards as on April 1, 2023'

(c) Quick Referencer on Accounting Standards

(d) Release of Indian Accounting Standards: An Overview (Revised 2021)

(e) Quick Referencer on Indian Accounting Standards

It may be noted that certain exemptions/relaxations from the applicability of Accounting Standards have been given to Micro, Small and Medium Sized Non-company Entities (MSMEs). Accordingly, the Council at its 400th meeting, held on 18-19 March, 2021 has decided upon the following scheme which has come into effect in respect of accounting periods commencing on or after 1.4.2020:

(1) For the purpose of applicability of Accounting Standards, enterprises are classified into four categories, viz., Level I, Level II, Level III and Level IV. Level II and Level III enterprises are considered as SMEs.

(2) Level I entities are large size entities, Level II entities are medium size entities, Level III entities are small size entities and Level IV entities are micro entities.

(3) Level IV, Level III and Level II entities are referred to as Micro, Small and Medium size entities (MSMEs). The criteria for classification of Non-company entities into different levels are given in Annexure 1 to the Scheme. The terms 'Small and Medium Enterprise' and 'SME' used in Accounting Standards are to be read as 'Micro, Small and Medium size entity' and 'MSME' respectively.

(4) Level I entities are required to comply in full with all the Accounting Standards.

(5) Certain exemptions/relaxations have been provided to Level II, Level III and Level IV Non-company entities. For the updated status of applicability of Accounting Standards to Various Entities (including criteria for classification of entities) please refer ***Appendix_X.***

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

12. Accounts and Income-tax law

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

> ***"Method of accounting. 145.*** *(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*
>
> *(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.*
>
> *(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."*

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

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

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

13. Audit Procedures

13.1 In the case of an audit, the tax auditor is required to express his opinion as to whether the financial statements give a true and fair view of the state of affairs of the assessee in the case of the balance sheet and in the case of the profit and loss account/ income and expenditure account, of the profit/loss or surplus/deficit for the Income tax purposes. As regards the statement of particulars (i.e. Form 3CD) to be annexed to the audit report (i.e. Form 3CA or 3CB), the tax auditor is required to give the opinion as to whether the

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

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

in clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB as the case may be.

13.3 The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. In order that the tax auditor may be in a position to explain any question which may arise later on, it is necessary that the auditor should keep necessary working papers about the evidence on which he has relied upon while conducting the audit and also maintain all the necessary working papers. Such working papers should include the auditor's notes on the following, amongst other matters:

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

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

(c) decision on the various points taken;

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

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

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

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

13.6 If the accounts of the business or profession of a person have been audited under any other law by the statutory auditor(s), it is not necessary for

the tax auditor appointed under section 44AB to conduct the audit once again in the matter of expression of "true and fair view" of the state of affairs of the entity and of its profit/loss for the period covered by the audit. However, the said section envisages the certification of the particulars in the prescribed form on which the tax auditor has to express his opinion as to whether these are `true and correct'. In other words, where an audit has already been conducted and the opinion of the auditor has been expressed on the accounts, it would not be necessary to repeat the entire exercise to express similar opinion all over again. The tax auditor has only to annex a copy of the audited accounts and the auditor's report and other documents forming part of these accounts to his report and verify the particulars in the prescribed form for expressing his opinion as to whether these are true and correct.

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

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

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

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

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

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

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

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

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

Tax Auditor's Responsibility

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

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

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

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

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

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

14. Professional misconduct

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

15. Audit Report

15.1 Section 44AB requires the tax auditor to submit the audit report in the prescribed form and setting forth the prescribed particulars. Sub-rule (1) of Rule 6G provides that the report of audit of the accounts of a person required to be furnished under section 44AB shall -

(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;

(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

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

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

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

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

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

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

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

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

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

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

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

15.7 In the case of a person whose accounts of the business or profession have been audited under any other law, it is not required for the tax auditor

appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view as indicated herein above. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor with his report in Form No. 3CA along with Form No. 3CD.

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

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

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

15.11 In certain cases, members are called upon to report on the accounts reopened and revised by the board of directors. The accounts of a company once adopted at its annual general meeting should not normally be re-opened and revised. The Institute and the Ministry of Corporate Affairs have affirmed this position. In case of revision, the audit report should be given in the manner as required by the Institute in SA-560 (Revised), *Subsequent Events*. The Ministry of Corporate Affairs had also clarified that accounts can be revised to comply with technical requirements. It may be pointed out that report under section 44AB should not normally be revised. However, sometimes a member may be required to revise his tax audit report on grounds such as:

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

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

(iii) change in interpretation, e.g. CBDT Circular, judgements, etc.

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

revised report, reasons for revising the report should also be mentioned.

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

> (3) The report of audit furnished under this rule may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, and furnish it before the end of the relevant assessment year for which the report pertains, if there is payment by such person after furnishing of report under sub-rule (1) and (2) which necessitates recalculation of disallowance under section 40 or section 43B.

Thus, a scenario may arise that after issuing the audit report, but before the due date for filing the return u/s 139(1), the assessee may make payment of tax deducted at source or of tax, duty, cess, fee or other payments referred to in Section 43B deduction of which is allowed only on actual payment basis.

However, it is not mandatory to revise tax audit report in the circumstances mentioned in Rule 6G(3).

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

16. Issuing Audit Report

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

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

16.3 If the accounts are not audited under any other law for the time being in force, it is recommended that the tax auditor should sign such financial

statements for the purpose of identification.

16.4 A tax audit report should be issued by the tax auditor in Form No. 3CA or 3CB as may be applicable alongwith particulars in Form No. 3CD. These should be in hard copy physically signed or soft copy digitally signed by the tax auditor. All the three forms, at the end require signature and stamp/seal of the signatory.

16.5 Tax audit report is required to be submitted electronically on the income-tax e filing portal. It requires the auditor to upload Form No. 3CA or 3CB and Form No. 3CD. The same are required to be digitally signed. UDIN is required to be updated. This is the prescribed procedure for filing of tax audit report.

17. Form No. 3CA

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

17.2 The next paragraph states that the statement of particulars required to be furnished under section 44AB is annexed with the particulars in Form No. 3CD. The tax auditor has to further state that, in his opinion and to the best of his information and according to examination of books of account including other relevant documents and explanations given to him, the particulars given in the said Form No. 3CD and the annexure thereto are true and correct subject to the observations/qualifications, if any.

17.3 The auditor is required to examine not only the books of account but

also other relevant documents directly related to transactions relevant to clauses in Form No. 3CD like copy of bank statements, various agreements/ contracts, challans for payment of government dues, TDS returns, GST returns or any other relevant document. Tax auditor can place reliance on electronic record provided its authenticity is confirmed.

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

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

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

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

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

17.5 Where any of the requirements in this form is answered in negative or with qualification, the report shall state the reasons thereof. The tax auditor should state this qualification in the audit report so that the same becomes a comprehensive report and the user of the audited statement of particulars can realize the impact of such qualifications.

17.6 It is possible that in the case of a person whose accounts of the business or profession have been audited under any other law, which has branches at various places, the branch accounts might have been audited by branch auditors under the relevant Statute. If the audit under section 44AB is also carried out by the same branch auditors or other chartered accountants, they should submit the report in Form No. 3CA to the management or the principal tax auditor appointed for the head office under Section 44AB. Attention in this regard is drawn to SA 600, *Using the Work of Another Auditor* which discusses the procedures in this regard as well as the principal tax auditor's responsibility in relation to his use of the work of the branch auditor. The principal tax auditor

should submit his consolidated report on the registered office/head office and branch accounts and report in his tax audit report as his observation in paragraph 3 of Form No. 3CA as under:

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

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

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

17.9 An assessee may have one or more branches outside India. The accounts of such branches are normally audited by the professional accountants overseas. The results of such branches are also incorporated in the consolidated accounts prepared in this country. In the case of foreign branches, the relevant information in respect of such branches as is required by Form No. 3CD, may be obtained by the tax auditor in India from the assessee who should obtain the same from the overseas auditor who had audited the accounts of such foreign branches. The tax auditor in India while certifying the information in Form No. 3CD may rely upon the information

obtained by him from the overseas auditor and while submitting his consolidated report in Form No. 3CD, he should specifically point out the following in his audit report in paragraph 3 of Form No.3CA as his observation:-

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

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

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

18. Form No. 3CB

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

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

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

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

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

audit;

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

(c) in his opinion and to the best of his information and according to the explanations given to him, the said accounts, read with notes thereon, if any, give a true and fair view;

(i) in the case of the balance sheet of the state of the affairs of the assessee as at 31st March, _____ and

(ii) in the case of the profit and loss account/income and expenditure account of the profit/loss or surplus/deficit of the assessee for the year ended on that date.

18.5 Under clause (a) of paragraph 3 of Form No. 3CB, the tax auditor has to report his "observations/comments/ discrepancies/inconsistencies," if any. The expression "Subject to above" appearing in clause (b) makes it clear that such observations/comments/ discrepancies/ inconsistencies which are of qualificatory nature relate to necessary information and explanations for the purposes of the audit or the keeping of proper books of account or the true and fair view of the financial statements, respectively to be reported on in paragraphs (A), (B) and (C) under clause (b) of paragraph 3. While reporting on clause (a) of paragraph 3 of Form No. 3CB, the tax auditor besides mandatory requirements of SA 700 should report observations/comments/ discrepancies/ inconsistencies which are of qualificatory nature which affect his reporting about obtaining all the information and explanations which were necessary for the purposes of the audit, about the keeping of proper books of account by the head office and branches of the assessee and about the true and fair view of the financial statements. Further, only such observations/ comments/discrepancies/inconsistencies which are of a qualificatory nature should be mentioned under clause (a). In Form 3CD, while reporting under any clause, tax auditor may be of the view that any elucidation, qualification, disclaimer, etc. is required to be stated. These aspects may also be stated in the said paragraph. All these aspects should also refer number of the clause (of Form No. 3CD) to which it relates. In case the tax auditor has no observations/comments/ discrepancies/inconsistencies to report which are of qualificatory nature, "NIL" should be reported in this part of paragraph 3. The tax auditor may then give his report as required by sub-paragraphs (A), (B),

and (C) of paragraph 3. The tax auditor should comply with the Standards of Auditing (SA) issued by the ICAI while giving his opinion on the financial statements in para 3 of Form 3CB.

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

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

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

18.9 In case of amalgamation, merger, demerger of companies; courts/authorities approve it from a date specified in the application/petition. At times, there is lapse of number of years between the date of merger/demerger and the date of order. Return of income of earlier period of the merged/demerged entities is required to be furnished. Financial Statement of the merged/demerged entities are not required to be audited under the

Companies Act, 2013 or any other law for the time being in force. Therefore, in such cases, Form No. 3CB should be issued, certifying the Financial Statements.

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

19. Form No. 3CD

19.1 The statement of particulars given in Form No. 3CD as annexure to the audit report contains a number of clauses. The tax auditor has to report whether the particulars are true and correct. This Form is a statement of particulars required to be furnished under section 44AB. The same is to be annexed to the reports in Form No. 3CA and 3CB in respect of a person who carries on business or profession and whose accounts have been audited under any other law and in respect of person who carries on business or profession but who is not required by or under any other law to get his accounts audited respectively.

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

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

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

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

19.3 While furnishing the particulars in Form No. 3CD, it would be advisable

for the tax auditor to consider the following:

(a) If a particular item of income/expenditure is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.

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

(c) If any particular clause in Form No. 3CD is not applicable, he should state that the same is not applicable.

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

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

(f) The information in Form No. 3CD should be based on the books of account, records, documents, information and explanations made available to the tax auditor for his examination.

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

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

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

PART – A

1. Name of the assessee : _____

2. Address : _____

3. Permanent Account Number or Aadhaar Number : _____

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

: _____

5. Status : _____

6. Previous year : from _____ to _____

7. Assessment year : _____

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

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

: _____

[Clauses 1 to 8a]

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

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

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

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

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

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

20.6 The term “Indirect taxes” is neither defined in the Income-tax Act, 1961 nor under any other law. The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law. For example, GSTIN, State Excise, State VAT etc. The assessee may have multiple registrations for various manufacturing units, service units, branches, godowns etc. under the same law. In such circumstances also, a copy of all registration certificates is to be obtained from the assessee for appropriate disclosure under this clause. Where the indirect

tax law does not require any registration, appropriate identification number may be reported in this clause. For example, in Customs Act, 1962, since there is no registration number, a copy of Export Import Code (IEC) may be obtained and information be accordingly furnished.

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

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

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

20.9 Under clause 5, the status of the assessee is to be mentioned. This refers to the different classes of assessees included in the definition of "person" in section 2(31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person.

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

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

20.12 Under clause 8, the auditor is required to mention the relevant clause of section 44AB under which the audit has been conducted. In case the assessee is carrying on business and his total sales, turnover or gross receipts as the

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

20.13 Assessee is required to pay income-tax at the rates specified in the annual Finance Act. However, Section 115BA, 115BAA, 115BAB, 115BAC and 115BAD provide option to the assessee to pay tax at special rates and forego certain deductions, exemptions etc. The assessee can opt to pay tax under the rates prescribed in the Finance Act or the one made available by any of the aforesaid sections. The tax auditor has to mention whether the assessee has opted for taxation under any of the aforesaid sections and in case answer is yes, then he has to select the appropriate section. Further, the Tax auditor is advised to examine the previous year Income Tax return to verify the option which has been exercised by the assessee. The option once exercised, which has been exercised for any previous year, cannot be subsequently withdrawn for the same or any other previous year. However, as the assessee has to file the return, he may opt for different alternative rates than reported by the auditor. Hence, the auditor should mention the selection or the choice of the assessee as on the date of signing of the Report. For the purpose of reporting under clause 8a, the tax auditor should verify whether the relevant form being 10-IB, 10-IC, 10-ID, 10-IE and 10-IF furnished under section 115BA, 115BAA, 115BAB, 115BAC and 115BAD respectively for availing new tax regime is already filed by the assessee. In case, the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the new regime or otherwise and based on written representation, the reporting under this clause should be made. Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.

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

(b) If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change

[Clause 9(a) and (b)]

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

21.2 If there is any change in the partners of the firm or members of the association of persons/ body of individuals or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change must be stated. All the changes occurring during the entire previous year must be stated.

21.3 The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents or other documents effecting such changes. For this purpose, the tax auditor may also verify:

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

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

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

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

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

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

22. (a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession)

(b) If there is any change in the nature of business or profession, the particulars of such change.

[Clause 10 (a) and (b)]

22.1 In regard to the nature of business, the principal line of each business is to be determined and stated in this clause, i.e. the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry. In case a person belongs to service sector, the nature of each type of service should be broadly stated. Thereafter, the auditor is required to mention the sub-sector pertaining to the sector selected.

22.2 Information has to be furnished in respect of each business. The code to be mentioned against the nature of business pertains to the main area of business activity.

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

22.4 A review of business report or the minutes of meetings would enable the

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

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

22.6 The auditor should keep in mind the above guidance while furnishing information under this clause in the format provided for in the e-filing utility.

23. (a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.

(b) List of books of account maintained and the address at which the books of account are kept.

(In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

(c) List of books of account and nature of relevant documents examined.

[Clause 11 (a) to (c)]

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

23.2 The list of books of accounts prescribed, maintained and examined has to be stated under this clause. There may be difference between the three lists. For example, books of account may have been prescribed but all the prescribed books might not have been maintained or the entire books of account maintained might not have been produced for examination. The tax auditor should exercise his professional judgment in order to arrive at the

conclusion whether such a situation warrants any disclosure or qualifications while forming his opinion on the matters covered by reporting requirements in Form No. 3CB.

23.3 The CBDT under Rule 6F has prescribed the books of account and other documents to be kept and maintained by a person carrying on certain professions specified in sub-section (1) of section 44AA. As such, every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist and whose total gross receipts exceed one lakh fifty thousand rupees in all the three years immediately preceding the previous year, or where the profession has been newly set up in the previous year, his total gross receipts in the profession for that year are likely to exceed the said amount, is required to maintain the following books of account:

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

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

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

(b) an inventory under broad heads, as on the first and the last days of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

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

23.5 The tax auditor should obtain from the assessee a complete list of books

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

23.6 Section 44AA(2) provides that persons carrying on business or profession, other than those specified in sub-section (1), shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, if his income from business or profession exceeds the monetary limits prescribed under section 44AA(2) or his total sales, turnover or gross receipts in business or profession exceed the monetary limits prescribed under section 44AA(2) in any one of the three years immediately preceding the previous year. The tax auditor will, therefore, have to verify that the assessee has maintained such books of account and documents as may enable the Assessing Officer to compute the total income of the assessee in accordance with the provisions of the Act. It may be noted that though the Central Board of Direct Taxes has been empowered under sub-section (3) of section 44AA to prescribe books of account to be maintained under sub-section (2), so far no books of account have been prescribed.

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

23.8 (a) As per section 2(12A) of the Income-tax Act, 1961, "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.

As to the requirement regarding the mentioning of the books of account generated by the computer system, the tax auditor should obtain a list of books of account which are generated by the computer system. The list given by the assessee can be verified from the printout of such books obtained from the assessee. Only such books of account and other records which properly come within the scope of the expression "proper books of account" should be mentioned.

(b) It may be noted that section 4 of the Information Technology Act, 2000 states that "Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(i) rendered or made available in an electronic form; and

(ii) accessible so as to be usable for a subsequent reference."

23.9 The address at which the books so maintained are kept is also required to be mentioned under clause (b). In case the books of account 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 in the following format 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 account at a place other than the registered office:

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

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

23.11 Books of account examined would constitute the books of original entry

and the other books of account. In addition to the list of books of account examined, the auditor is required to mention the nature of relevant documents examined also. The assessee is required to maintain evidence such as bills, vouchers, receipts, debit note, credit note, inventory register, agreements, orders etc. as the auditor generally examines these documents while conducting audit. The underlying documents would differ from assessee to assessee depending on the nature of activity carried on by the assessee. Reference to such supporting evidence/ relevant documents is also required to be made under this clause.

23.12 Whereas sub-clause 11(b) requires furnishing list of books of account maintained by the assessee and address of the place where books of account are kept, sub-clause (c) requires tax auditor to state a list of books of account that has been examined and the nature of relevant documents he has examined.

24. Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB Chapter XII-G, First Schedule or any other relevant section). [Clause 12]

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

S. No.	Section	Business covered
1	44AD	Eligible business
2	44AE	Transport business
3	44B	Shipping business of a non-resident
4	44BB	Providing service or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils
5	44BBA	Operation of aircraft by non-resident
6	44BBB	Civil construction etc. in certain turnkey power project by non-residents

S. No.	Section	Business covered
7	Chapter XII-G	Special provisions relating to Shipping Companies (Section 115V to 115VT)
8	First Schedule	Insurance Business
9	Any other relevant section	This refers to the sections not listed above under which income may be assessable on presumptive basis like section 44D and section 115A(1)(b) and will include any other section that may be enacted in future for presumptive taxation

Express mention of section 44ADA is not made in Form No. 3CD. However, there is a residuary clause requiring reporting under 'any other relevant section'. Therefore, profits and gains assessable under section 44ADA should also be reported under this clause. If the profit and loss account does not include profit assessable on presumptive basis, then, there is no requirement to furnish the particulars under this clause.

24.2 The amount to be mentioned under this clause means the amount included in the profit and loss account. The tax auditor is not required to indicate as to whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the reporting requirement gets satisfied if the amount as per profit and loss account is reported.

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

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

(b) Where the assessee has more than one business including some business(es) falling under any of the aforesaid sections but maintains separate sets of accounts for each such business and opts for getting the accounts of all such businesses audited under section 44AB.

(c) Where the assessee, having regular books of account for his main business, has some additional business of the nature described in any of the aforesaid sections and no books of account whatsoever is

maintained for such additional business but the net income is credited to the main profit & loss account of the assessee.

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

(a) This situation may give rise to the problem of apportionment of common expenditure in order to check the correct amount of profit credited to profit and loss account and assessable on a presumptive basis. In such a situation, the endeavour of the tax auditor should be to arrive at a fair and reasonable estimate of such expenditure on the basis of evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked by him. It is also necessary to mention the basis of apportionment of common expenditure. However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate such fact under this clause by a suitable note.

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

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

24.5 In the case of an assessee not opting for presumptive taxation, the provisions of section 44AB(c) requires such an assessee to get his accounts audited irrespective of the fact that his turnover has not exceeded the prescribed limit. There may be another circumstance where an assessee has mixed nature of business amenable to taxation on presumptive basis and under normal provisions of law – turnover of which does not exceed the prescribed limit. In such a case, the tax auditor auditing the books of account etc. relating to business covered by the provisions relating to presumptive taxation should sufficiently indicate in his report that his audit report in Form

No. 3CB and particulars in Form No. 3 CD only relate to the business covered by the provisions relating to presumptive taxation and his audit report does not relate to business assessable under the normal provisions of the Act.

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

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

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

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

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

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

24.9 The auditor should keep in mind the above guidance while furnishing

information under this clause in the format provided in the e-filing utility.

25. (a) Method of accounting employed in the previous year.

(b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.

(c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

(d) Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2).

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

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments			

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
	Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and Contingent Assets			
	Total			

(f) Disclosure as per ICDS:

(i)	ICDS I-Accounting Policies	
(ii)	ICDS II-Valuation of Inventories	
(iii)	ICDS III-Construction Contracts	
(iv)	ICDS IV-Revenue Recognition	
(v)	ICDS V-Tangible Fixed Assets	
(vi)	ICDS VII-Governments Grants	
(vii)	ICDS IX Borrowing Costs	
(viii)	ICDS X-Provisions, Contingent Liabilities and Contingent Assets".	

[Clause 13 (a) to (f)]

25.1 Section 145 provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Effective from 01.04.2015, it has been provided that the Central Government may notify in the Official Gazette from time to time the income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income. The hybrid system of accounting viz. mixture of cash and mercantile is not permitted. However, the assessee may adopt cash system of accounting for one business and mercantile system of accounting for other business. Once

the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed. If he employs different methods for different businesses regularly and consistently, the profits would have to be computed in accordance with the respective methods, provided the result is a proper determination of profits. As regards the accrual system of accounting, the Institute has published a "Guidance Note on Accrual Basis of Accounting" which may be referred to.

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

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

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

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

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

25.7 Clause (d) requires the tax auditor to assist and state whether any

adjustment is required to be made to profits or loss for complying with the provisions of income computation and disclosure standards (ICDS) notified under section 145(2). Such adjustments are required to be stated separately in respect of each ICDS.

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

25.9 ICDS do not apply to assessees following cash method of Accounting. So far, 10 ICDS have been issued by the Government. Each of the ICDS, in preamble, states that '*this Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts*'. Thus, prescription of ICDSs is not applicable for maintenance of books of account even under mercantile system of accounting. As the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of book profit under section 115JB of the Act. However, as AMT under section 115 JC of the Act is computed on adjusted total income derived by making specified adjustment to total income computed under regular provisions of the Act, the provisions of ICDS will apply for computation of AMT. The general provisions of ICDS shall apply to all persons (e.g., Banks, Non-banking financial institutions, Insurance companies, Power sector etc.) unless there are sector specific provisions contained in the ICDS or the Act. The provisions of ICDS shall also be applicable for computation of income on gross basis (e.g. interest, royalty, fees for technical services under section 115A of the Act) for arriving at the amount chargeable to tax. The CBDT has issued ten ICDS as follows:

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

(b) *ICDS II relating to Valuation of Inventories* - The concept of inventory

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

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

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

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

(f) *ICDS VI relating to Effects of Changes in Foreign Exchange Rates* - This ICDS corresponds to Accounting Standard (AS) 11 – The Effects of Changes in Foreign Exchange Rates issued/notified by ICAI/MCA and Indian Accounting Standard (Ind AS) 21 – The Effects of changes in foreign exchange rates, notified vide the Companies (Indian Accounting Standards) Rules, 2015.

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

(h) *ICDS VIII relating to Securities* - ICDS VIII is divided into two parts. Part

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

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

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

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

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

25.12 In case answer to clause 13(d) is affirmative, i.e. in case an adjustment is required for complying with ICDS, tax auditor has to give details of such adjustments in clause 13(e) i.e., amount of increase or decrease in profit relating to each ICDS and total. Tax auditor may refer technical guide on ICDS issued by the Institute of Chartered Accountants of India in July, 2017. In working paper file, ICDS checklist should be prepared and maintained

alongwith computation working for any increase/decrease in income as per ICDS. Also, last year tax audit report should be reviewed to ascertain any effect in current year.

25.13 If answer to 'd' above is in affirmative, the tax auditor is required to quantify the amount of adjustment against each ICDS in clause 'e'. For the purpose, the table is prescribed in the clause.

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

26. (a) Method of valuation of closing stock employed in the previous year.

(b) Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

[Clause 14 (a) and (b)]

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

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

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

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

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

(iv) Consumables - at cost

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

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

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

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

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

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

26.6 It is not necessary to indicate any change in the method of valuation of closing stock under this clause. However, as stated earlier in paragraph above, any such change in the method of valuation of closing stock would amount to change in an accounting policy and needs to be disclosed in the financial statements as required by AS-1/Ind AS-1.

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

26.8 Section 145A provides that the valuation of purchase and sale of goods and inventory for the purpose of computation of income from business or profession shall be made on the basis of the method of accounting regularly employed by the assessee but this shall be subject to certain adjustments. Therefore, it is not necessary to change the method of valuation of purchase, sale and inventory regularly employed in the books of account. The adjustments provided in this section can be made while computing the income for the purpose of preparing the return of income. These adjustments are prescribed for valuation of inventory, inventory of unlisted/not regularly quoted securities and listed & quoted securities and should be as per provisions of ICDSs notified under section 145(2). ICDS II relating to valuation of inventories prescribe cost of inventory shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase. ICDS VIII relating to securities in respect of assessees other than Scheduled Banks or Public Financial Institutions (PFI) formed under Central or State Act or so declared under the Companies Act 1956/2013 provides that where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost. In respect of above referred Banks and PFI, measurement shall be in accordance with Guidelines issued by the Reserve Bank of India.

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

followed for accounting of ITC are illustrated below:

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

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

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

26.10 It may be pointed out that the "inclusive method" is not permitted by AS-2/ INDAS-2 (AS-2 made mandatory from accounting year beginning on or after 01.04.1999). In view of the above, the adjustments under section 145A will have to be made in all cases where 'exclusive method' is followed.

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

> ***"Computation of value of inventory.***
>
> *The issue relating to whether the value of closing stock of the inputs, work-in-progress and finished goods must necessarily include the element for which MODVAT* credit is available has been the matter of considerable litigation.*
>
> *In order to ensure that the value of opening and closing stock (bold for*

emphasis) reflect the correct value, it is proposed to insert a new section to clarify that while computing the value of the inventory as per the method of accounting regularly employed by the assessee, the same shall include the amount of any tax, duty, cess or fees paid or liability incurred for the same under any law in force.

The proposed amendment which is clarificatory in nature shall take effect retrospectively from the 1st day of April, 1986 and will accordingly apply in relation to assessment year 1986-87 and subsequent years.

[Clause 45]"

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

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

26.14 GST is collected from the customers on behalf of the GST authorities and, therefore, its collection from the customers is not an economic benefit for the enterprise. It does not result in any increase in the equity of the enterprise. Accordingly, it should not be recognized as an income of the enterprise. Similarly, the payment of GST should not be treated as an expense in the financial statements of the enterprise. Therefore, it should be credited to an appropriate account, say. 'GST Payable Account'. The amount of GST payable adjusted against the GST Credit Receivable Account and amounts paid in cash will be debited to GST Payable account. The credit balance in GST Payable Account at the year-end should be shown on the 'Liabilities' side of

the balance sheet under the head 'Current Liabilities'. In case GST has not been charged separately but as a composite charge (such as in the case of composition levy), the amount of GST paid needs to be transferred to Indirect Expenses.

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

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

27. Give the following particulars of the capital asset converted into stock-in-trade:

(a) Description of capital asset;

(b) Date of acquisition;

(c) Cost of acquisition;

(d) Amount at which the asset is converted into stock-in-trade.

[Clause 15]

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

27.2 The conversion by the owner of an asset into or treatment of such asset as stock-in-trade of a business carried on by him is treated as a 'transfer' within the meaning of section 2(47). Under section 45(2), such a conversion or treatment of capital asset into stock-in-trade will be deemed to be a transfer of the previous year in which the asset is so converted or treated as stock-in-trade. However, the capital gains arising from such a transfer will become chargeable in the previous year in which such converted asset is sold or

otherwise transferred. In the case of long-term capital asset, indexation of cost of acquisition and cost of improvement, if any, will be with respect to the previous year in which such conversion took place. The fair market value of the asset, as on the date of such conversion or treatment as stock-in trade, shall be deemed to be the full value of the consideration of the asset. The excess of the sale price over the fair market value as on the date of conversion would be treated as business income and taxed under the head 'profits and gains of business or profession'. The capital gains being the difference between the cost of acquisition and the fair market value on the date of the conversion or treatment as stock-in-trade will be chargeable to tax in the year in which the asset is sold.

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

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

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

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

partnership concerns, the reporting requirements as to the original cost of acquisition may not be practically possible.

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

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

27.9 In case of corporate assessee, any resolution passed in this behalf can substantiate the fact of conversion of capital asset into stock in trade. In the case of assessees like a proprietorship concern, prior to the conversion of the asset into stock-in-trade, the details regarding the date of acquisition and cost of acquisition may not be recorded in the books of account. It is also possible that the year in which the capital asset is acquired, the accounts of the assessee may not have been subjected to audit. Also, an assessee can acquire a capital asset through various modes such as discussed under section 49 of the Act. Under such circumstances, the auditor may have to verify the cost and the date of acquisition. The following broad principles need to be kept in mind.

27.10 While verifying the cost of acquisition of an item of property, plant and equipment, the auditor should bear in mind the principles enunciated in Accounting Standard (AS) 10, Property, Plant and Equipment/Ind AS 16 - Property, Plant and Equipment. As per AS 10/Ind AS 16, the cost of Property, Plant and Equipment comprises of its purchase price and any attributable cost of bringing the asset to its working condition for its intended use. Thus, in case of capital assets purchased by the assessee, it would relatively be easy for the auditor to verify the cost of acquisition, the evidence being provided by the supporting purchase invoices from the supplier, entries appearing in the bank statements in respect of payment to the supplier, entries appearing in the cash book/ bank statement for payment of cartage, installment etc. In case of self-constructed capital assets, the cost would comprise those costs that relate

directly to the specific capital asset and those that are attributable to the construction activity in general and can be allocated to the specific asset. The cost of the asset acquired in exchange of other asset is either the fair value or the net book value of the asset given up, whichever is more clearly evident, adjusted for any balancing payment or receipt of cash or other consideration. In case the capital asset is recorded at the net book value of the asset, the fixed asset register would provide the prime evidence of the value. If, however the capital asset so acquired is recorded at the fair value, the auditor would need to examine the basis for arriving at the fair market value, for example, the valuer's report, market quotes (in case of listed securities). Where the valuer is internal/ external, the tax auditor should have regard to the principles laid down in SA 620, *Using the Work of An Auditor's Expert*. In any case the auditor would also need to look into how the assessee has decided the value at which the asset is recorded in the books of account is more clearly evident than the other value. In case of a capital asset acquired by way of inheritance, the auditor may find it difficult to verify the cost of acquisition to the original owner. In case there does not exist any documentary evidence as to the cost of acquisition of the asset to the original owner, say the sale/purchase agreement, the auditor may need to rely upon the reports of the experts such as valuers. In addition to the above, the auditor should also refer to the guidance contained in the Guidance Note on Audit of Property, Plant and Equipment issued by the Institute.

28. Amounts not credited to the profit and loss account, being,-

(a) the items falling within the scope of section 28;

(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;

(c) escalation claims accepted during the previous year;

(d) any other item of income;

(e) capital receipt, if any.

[Clause 16 (a) to (e)]

28.1 Under this clause, various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated. The information under sub-clauses (a), (d) and (e) of clause (16) is to be given with

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

28.2 It may be possible that an item of income may be taxable under certain specific section e.g. section 145B (relating to enhanced compensation) may also need to be reported under clause 16(c). In such a case, the tax auditor may make suitable disclosure in observation para of the audit report without reporting the amount in this clause of Form No. 3CD.

28.3 Section 28 refers to:

(i) the profits and gains of any business or profession,

(ii) any compensation received on termination of employment, agency etc.

(iii) income derived by a trade, professional or similar association from specific services performed for its members,

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

(iiib) cash assistance against exports,

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

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

(iiie) profit on the transfer of DFRC being the Duty Remission Scheme,

(iv) the value of any benefit or perquisite arising from business or the exercise of a profession, whether—

(a) convertible into money or not; or

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

(clause (a)/(b) inserted w.e.f. AY 2024-25)

(v) any interest, salary, bonus, commission or remuneration, by whatever name called, received by a partner of the firm from such firm,

(va) any sum, whether received for (a) not carrying out any activity in relation to any business or professions (b) not sharing any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services,

(vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy,

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

(vii) any sum received on account of any capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred if the whole of the expenditure on such capital assets has been allowed under Section 35AD.

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

(i) Pro forma credits

(ii) Drawback

(iii) Refund of duty of customs

(iv) Refund of excise duty

(v) Refund of service tax

(vi) Refund of sales tax or value added tax

(vii) Refund of Goods and Services Tax

(viii) Others

In respect of items falling under sub-clause (b), the tax auditor should examine all relevant correspondence, records, assessee's particulars on portal of the concerned departments and evidence in order to determine whether any

particular refund/claim has been admitted as due and accepted during the relevant financial year.

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

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

28.7 The system of accounting followed in respect of these particular items may also be brought out in appropriate cases. If the assessee is following cash basis of accounting, it should be clearly brought out, since the admittance of claims during the relevant previous year without actual receipt has no significance in cases where cash method of accounting is followed. Credits/claims which have been admitted as due after the relevant previous year need not be reported here. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be clearly brought out.

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

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

28.10 Sub-clause (d) covers any other items which the tax auditor considers

as an income of the assessee based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account. In giving the details under sub-clauses (c) and (d), due regard should be given to AS-9 - Revenue Recognition/ Ind AS 115 Revenue from Contracts with Customers, as applicable.

28.11 It may be noted that under clause (x) of section 2(24) of the Act; 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 Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees, is considered as income. Further, as per section 36(1)(va), any such contribution is allowed as a deduction if the sum is credited by the assessee to the employees account in the relevant fund/s on or before the due date as defined under Explanation 1 to section 36(1)(va). Therefore, if any such contribution is not paid on or before the due date under the respective Act, then it becomes income of the assessee. Similar information is also furnished in clause 20(b), therefore cross referencing may be required.

28.12 In case of dealer in immovable property, being land or building or both, if such property is transferred at a price lower than value adopted or assessable for payment of stamp duty, the difference if exceeds 110% of consideration, is considered as income under provisions of section 43CA of the Act. Of course, if stamp duty value exceeds fair market value, then calculation is made with reference to FMV.

28.13 Information as stated in aforesaid paras is required to be furnished under clause 16(d) as well as clause 17. Therefore, there should be cross referencing in these clauses.

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

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

28.16 The following is an illustrative list of capital receipts which, if not credited

to the profit and loss account, are to be stated under this sub-clause:

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

(b) Compensation for surrendering certain rights.

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

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

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

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

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

29. Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:

Details of property	Consideration received or accrued	Value adopted or assessed or assessable	Whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section

			56 applicable? [Yes/No]

(Clause 17)

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

29.2

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

29.4 Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, the auditor is required to furnish the following details:

(a) Details of property

(b) Consideration received or accrued

(c) Value adopted or assessed or assessable

29.5 In the column requiring the details of property, the auditor has to furnish the details about the nature of property i.e. whether the property transferred by him is land or a building along with the address of such property. If the assessee has transferred more than one property, the details of all such properties are required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the case may be. Attention is invited to the meaning of the term "transfer" as defined in section 2(47) of the Act.

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

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

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

29.9 Auditor is also required to answer whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 is applicable. Since the second proviso is not applicable for the audit of AY 2023-24, so ideally in all cases, the reporting shall be 'No' in this column.

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

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

(a) Description of asset/block of assets.

(b) Rate of depreciation.

(c) Actual cost or written down value, as the case may be.

(ca) Adjustment made to the written down value under section 115BAC/115BAD (for assessment year 2021-2022 only).

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

(cc) Adjusted written down value.

(d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –

(i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

(ii) change in rate of exchange of currency, and

(iii) subsidy or grant or reimbursement, by whatever name called.

(e) Depreciation allowable.

(f) Written down value at the end of the year.

[Clause 18 (a) to (f)]

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

(a) Classification of the asset

(b) Classification thereof to a block

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

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

(e) The applicable rate of depreciation

(f) The additions / deductions and dates thereof

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

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

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

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

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

mention the fact that he has relied upon the income tax records of the assessee in respect of the information regarding the classification of assets and written down value of the existing assets.

30.6 If there is any dispute with regard to the classification of an asset in a particular block or the rate of depreciation applied, the tax auditor must give his working with suitable reasons. Further, there may be disputes in the earlier years between the assessee and the Income-tax Department regarding classification, rate of depreciation etc. in respect of which the tax auditor should give suitable disclosure depending upon the facts and circumstances of the case. Alternatively, where the tax auditor adopts a system of classification different from the one adopted by the assessee, suitable disclosure should be made regarding the effect thereof.

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

"NOTE: Certain disputes about

(a) the rate of depreciation on _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.14 The third adjustment relates to the subsidy or grant or reimbursement, by whatever name called. Explanation 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met

directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. As per the proviso to the above Explanation, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, such of the amount which bears to the total subsidy or reimbursement or grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee. Subsidy coming within the scope of Explanation 10 to section 43(1) in respect of asset acquired in any earlier year(s) and received during the year has to be deducted from the written down value of such assets in the year of receipt. Intangible assets being goodwill of a business or profession does not qualify for depreciation from 01.04.2021 i.e. AY 2021-22 (The Finance Act 2021). Goodwill was eligible for depreciation till AY 2020-21. For the purpose of working of depreciation, WDV as per sub-clause (c) above as reduced by amounts reported in sub-clause (ca) and (cb) should be considered. This amount is required to be reported in sub-clause (cc).

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

30.16 Explanation 5 inserted below sub-section (1) of section 32, to the effect that the provisions of section 32(1) regarding allowing of depreciation shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income. Thus, the claim for depreciation is now mandatory and the written down value of each asset every year has to be reduced by the amount of depreciation allowable under the Income-tax Rules and the details required under the relevant sub-clauses need to be stated.

30.17 Section 32(1)(iia) provide for additional depreciation to a concern engaged in the business of manufacturing or production of an article or thing or installation of a new machinery on fulfillment of the prescribed conditions like specified percentage of increase in installed capacity. Additional depreciation shall be allowable in respect of new machinery or plant installed

on or after 31st day of March, 2005, which is

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

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

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

30.18 Wherever the full deduction of the cost of capital goods is allowed (e.g. expenditure on Scientific Research u/s. 35), the auditor should verify that the cost of such asset is not included in the block of assets for the purpose of depreciation. The Auditor should also ensure that the Income Computation and Disclosure Standard (ICDS) V relating to tangible fixed assets is duly considered for working out the amounts.

30.19 **The tax auditor has to keep in mind the above guidance while furnishing details in respect of this clause in the format provided in the e-filing utility**.

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

31. Amounts admissible under sections

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfills the conditions. If any specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
32AC		
32AD		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(iia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

[Clause 19]

31.1 The assessee can claim deduction under the sections 32AC, 32AD, 33AB, 33ABA, 35, 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E subject to the terms and conditions mentioned in these Sections. Where assessee has opted to pay income-tax under provisions of section 115BA, 115BAA, 115BAB, 115BAC or 115BAD; the assessee is not entitled to claim deductions under certain sections like section 32AD, 33AB, 33ABA etc.

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

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

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

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

31.6 The Tax Auditor should also ensure the eligibility of the expenditure/ payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority, notification issued by the Central Government, any other guideline, Circular etc. issued in this behalf. Tax auditor should also refer Rule 6 of Income-tax Rules, 1962.

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

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

Table showing deductions applicable from A.Y. 2023-24 onwards (as per law prevailing on 1-4-2023)

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
32AC	Investment in New Plant & Machinery	15% of the actual cost of qualifying new asset acquired and installed after 31.03.2013 but before 01.04.2015
32AD	Investment in new plant or machinery in notified backward areas in certain States	15% of the actual cost of qualifying new asset acquired and installed from 01.04.2015 and before 01.04.2020
33AB	Amount deposited in Tea/Coffee/Rubber Development Account	Deduction is allowed for the least of the following: (a) Sum equal to the amount or the aggregate of the amounts so deposited.(b) Sum equal to 40% of the profits of such business.
33ABA	Where an amount is being deposited by an assessee in a scheme approved by the Government of India in the Ministry of Petroleum and Natural Gas for the purpose of prospecting or extraction etc. of petroleum or natural gas.	Deduction is allowed for the least of the following: (a) Sum equal to the amount or the aggregate of the amounts so deposited. (b) Sum equal to 20% of the profits of such business
35(1)(i)	Any Expenditure other than Capital Expenditure incurred by the assessee	100% of the expenditure

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
	for scientific research related to its own business.	
35(1)(ii)	Amount paid to Research association which has as its object the undertaking of scientific research Or amount paid to a University, college or other institutions to be used for scientific research. Provided that, such association, university, college or other institution is approved and is specified as such, by notification in the official gazette, by Central Government.	100% of amount paid/contributed from A.Y. 2021-22 and onwards
35(1)(iia)	Amount paid to a Company which is registered in India, having its main object of carrying out of scientific research and development and is approved by the jurisdictional Chief Commissioner of Income Tax in the prescribed manner.	100% of amount paid from A.Y. 2018-19
35(1)(iii)	Amount paid to a research association which has as its main object the undertaking of research in social	100% of amount paid from AY 2018-19.

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
	science or statistical research Or Amount paid to a university, college or other institutions to be used for research in social science or statistical research. Provided that, such association, university, college or other institution is approved and is specified as such, by notification in the official gazette, by Central Government.	
35(1)(iv)	Expenditure of capital nature on scientific research, other than expenditure on acquisition of any land, incurred related to the business carried on by the assessee.	100% of the capital expenditure incurred
35(2AA)	Any amount paid to National Laboratory; or a University; or Indian Institute of Technology or specified person as defined in the Explanation 2 to the section with a specific direction that the said sum shall be used for scientific research undertaken under a	100% of amount paid from A.Y. 21-22 and onwards.

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
	programme approved by the prescribed authority.	
35(2AB)	Deduction is available only to company engaged in business of biotechnology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority	100% of Expenditure incurred from A.Y. 2021-22 and onwards.
35ABB	Any expenditure, being in the nature of capital expenditure incurred for acquiring any right to operate telecommunication services [either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year]	Deduction equal to the appropriate fraction of the amount of such expenditure. Where "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the total number of the relevant previous years;
35AC	Expenditure by way of payment of any sum to a public sector company or a local authority or to an	100% of such expenditure (No deduction available after AY 2018-19)

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
	association or institution approved by the National Committee for carrying out any eligible project or scheme	
35AD	Deduction in respect of any expenditure of capital nature incurred wholly & exclusively for any specified business.	Setting up and Operating cold chain facility-100% of expenditure Setting up and Operating warehousing facility for storage of Agriculture produce-100% of expenditure Laying and operating a cross country natural gas pipeline network for distribution-100% of expenditure Building and operating a new Hotel in India, of two star or above category- 100% of such expenditure Building and operating a new Hospital in India, with at least one hundred beds for patients-100% of expenditure Developing and building a housing project under a scheme for slum rehabilitation-100% of expenditure Developing and building a housing project under a scheme for affordable housing-100% of expenditure

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
		Production of fertilizer in India-100% of expenditure Setting up and operating an inland container depot or a container freight station-100% of expenditure Bee-keeping and production of honey and beeswax-100% of expenditure Setting up and operating a warehousing facility for storage of sugar-100% of expenditure Laying and operating a slurry pipeline for the transportation of iron ore – 100% of expenditure w.e.f AY 2015-16 Setting and operating a semi-conductor wafer fabrication manufacturing unit – 100% of expenditure wef AY 2015-16
35CCA	Expenditure by way of payment to association and institutions for carrying out rural development programmes	100% of expenditure
35CCB	Expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural resources	100% of expenditure

Section & Sub-section	Eligible expenditure/payment	Amount/Quantum of Deduction
35CCC	Expenditure on agricultural extension project notified by the Board	100% of expenditure from AY 2021-22
35CCD	Expenditure incurred by a company on any skill development project notified by the Board	100% of expenditure from AY 2021-22
35D	Expenditure incurred by an Indian Company or a person who is resident in India on amortization of certain preliminary expenses.	One fifth of such expenditure for each of the five successive previous years beginning with the previous year in which business commences or as the case may be.
35DD	Amortisation of Expenditure incurred by an Indian Company for the purpose of amalgamation or demerger	One fifth of such expenditure for each of the five successive previous years beginning with the previous year in which amalgamation or demerger takes place.
35DDA	Expenditure incurred by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme or scheme of voluntary retirement.	One-fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal installments for each of the four immediately succeeding previous years.
35E	Deduction for expenditure on prospecting or extraction or production of certain minerals.	One tenth of amount of such expenditure for each of ten successive previous years.

31.9 Where under any section, an assessee is eligible for deduction under one or more of the sub-sections of the said section, the Tax Auditor should

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

32. (a) Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)]

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

Serial number	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

[Clause 20 (a) and (b)]

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

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

32.3 Section 36(1)(va) of the Act permits deduction of any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) are applicable, if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date.

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

(hereafter referred to as "Welfare Fund"). The Finance Act 2021 by inserting Explanation 5 to section 43B has clarified that the provisions of section 43B are not applicable to a sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) applies.

32.5 As per the explanation provided in section 36(1)(va), "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act., rule, order or notification issued there under or under any standing order, award, contract of service or otherwise, i.e., the date by which it is required to be credited as per the provisions of the applicable law etc. In respect of such sum, if any extension is granted by respective authorities, it shall be considered. This can be taken into consideration for determining the due date of payment.

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

32.7 The tax auditor should maintain the following information in his working papers for the purpose of reporting in the following format:

(a)

Description	Amount
1	2

(b)

Serial number	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
1	2	3	4	5	6

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

[Clause 21(a)]

Nature	Serial number	Particulars	Amount in Rs.
Capital Expenditure			
Personal Expenditure			
Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party			
Expenditure incurred at clubs being entrance fees and subscriptions			

Nature	Serial number	Particulars	Amount in Rs.
Expenditure incurred at clubs being cost for club services and facilities used.			
Expenditure by way of penalty or fine for violation of any law for the time being force			
Expenditure by way of any other penalty or fine not covered above			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

34. (b) Amounts inadmissible under section 40(a):

(i) as payment to non-resident referred to in sub-clause (i)

(A) Details of payment on which tax is not deducted:

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(V) amount of tax deducted

(ii) as payment referred to in sub-clause (ia)

(A) Details of payment on which tax is not deducted:

(I) Date of payment

(II) Amount of payment

(III) Nature of payment

(IV) Name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.

(I) Date of payment

(II) Amount of payment

(III) Nature of payment

(IV) Name and address of the payer*

(V) Amount of tax deducted

(VI) Amount out of (V) deposited, if any

(iii) Under sub-clause (ic) [wherever applicable]

(iv) Under sub-clause (iia)

(v) Under sub-clause (iib)

(vi) Under sub-clause (iii)

(A) Date of payment

(B) Amount of payment

(C) Name and address of the payee

(vii) Under sub-clause (iv)

(viii) Under sub-clause (v)

* should be read as "payee" for proper reporting

[Clause 21(b)]

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

[Clause 21(c)]

36. (d) Disallowance/deemed income under section 40A(3):

(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number or Aadhaar Number of the payee, if available

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3)read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A);

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number or Aadhaar Number of

				the payee, if available

[Clause 21(d)]

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

[Clause 21(e)]

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

[Clause 21(f)]

39. **(g) particulars of any liability of a contingent nature;**

[Clause 21(g)]

40. **(h) amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income**

[Clause 21(h)]

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

[Clause 21(i)]

33. Clause 21

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

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

Expenditure of Capital nature:

Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act. The word “capital expenditure”

is not defined in the Act and no conclusive test or rules can be laid down to determine whether a particular expenditure is capital or revenue in nature. Different tests have been applied by the courts in different cases depending upon the facts and circumstances of each case and the case law on the subject, as evolved over a period of years, gives guidance for determining the nature of expenditure.

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

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

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

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

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

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

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

33.5 Under the Act, capital expenditure of certain types e.g., on scientific research referred to in section 35, is deductible in computing the income. Ordinarily, the capital expenditure should not be debited to profit and loss account. The tax auditor needs to keep in mind that the accounting standards also apply in respect of financial statements audited under section 44AB of the Act. Therefore, besides disclosing the amount of such capital expenditure debited to profit and loss account under this clause, the tax auditor should give suitable disclosure/ qualifications in para 3(a) of Form No. 3CB, depending on the facts of the case.

33.6 The details of capital expenditure, if any, debited to the profit and loss account should be maintained in a classified manner stating the amount under various heads separately. Since part of this capital expenditure may be allowable as deduction in the computation of total income, it is advisable to maintain particulars regarding the nature of expenditure, the amount of expenditure incurred, and the relevant provision under which the expenditure is admissible. Preliminary expenses incurred by the assessee which is capital expenditure is debited to profit and loss account and therefore should be reported. However, the total amount of capital expenditure debited to the profit and loss account is to be reported under this clause in the e-filing portal.

Expenditure of personal nature:

33.7 Personal expenses debited to the profit and loss account are to be specified under this sub-clause as they are not deductible in the computation of total income under section 37. It may be noted that the word "personal" is confined to and attached with the "assessee" and not necessarily to and with persons other than the assessee.

33.8 Section 143(1)(e) of the Companies Act 2013 specifically requires the auditor to inquire whether personal expenses have been charged to revenue account. In the case of a person whose accounts of the business or profession have been audited under any other law, the tax auditor will have to report in respect of personal expenses debited in the profit and loss account. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the tax auditor will have to verify the personal expenses. if debited in the expenses account while conducting the audit and verify the amount of expenses mentioned under this clause.

33.9 The tax auditor is advised to maintain the following details as part of his working papers for the purpose of reporting in the format provided in the e-filing utility:

Sl. No.	Nature and particulars of expenditure	Account head under which debited	Amount of expenditure	Remarks
1	2	3	4	5

Expenditure on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party:

33.10 Section 37(2B) provides that no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party. Therefore, the expenditure of this nature should be segregated and reported under this clause.

33.11 The tax auditor may come across advertising expenditure incurred on advertising in a souvenir, brochure, tract, pamphlet or journal published by a trade union or a labour union formed by a political party. The trade union or labour union though promoted or formed by a political party may have a distinct legal entity. In that event, expenditure incurred by the assessee by way of advertisement given in the souvenir, brochure, tract, pamphlet or journal published by the trade union or the labour union is not required to be indicated against clause 21(a) in Form No. 3CD. If the trade union or labour union formed by the political party does not have a separate and distinct legal entity, then the expenditure incurred on such an advertisement will have to be indicated against this clause.

33.12 The auditor may also keep in mind the provisions of section 80GGB and 80GGC which allow deduction in respect of contribution made by corporate and non-corporate assessees respectively to political parties and electoral trust, as required to be reported by him in clause 33 of Form no. 3CD.

Expenditure incurred at clubs being cost for club services and facilities used, entrance fees and subscriptions:

33.13 The amount of payments made to clubs by the assessee during the year being cost for club services and facilities used should be indicated under this clause. The payments may be for entrance fees as well as membership subscription and for catering and other services by the club, both in respect of directors and other employees in case of companies and for partners or proprietors in other cases. The fact whether such expenses are incurred in the course of business or whether they are of personal nature should be ascertained. If they are personal in nature, they are to be shown separately under Clause 21(a) referred to earlier.

33.14 Details of payments made to clubs are also required by tax authorities for the purpose of determining whether any portion of club expenses could be treated as perquisite in the hands of the person concerned. All payments made

to credit card agencies should be carefully scrutinised. Credit card agency is nothing but credit/collecting agency. In order to determine whether the payments have been made to a club, one has to look into the substantive activity of the institution concerned.

33.15 This clause requires reporting of particulars and the amount of such expenses incurred in the respective fields. However, the following particulars may be maintained as working papers by the auditor for the purpose of reporting in the format provided in the e-filing utility:

Sr. No.	Name of the Club	Nature of Amount paid			
		Entrance/ admission Fees	Subscription expenses	Cost of Club Services and facilities used	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

Expenditure by way of penalty or fine for violation of any law for the time being in force; Expenditure by way of penalty or fine not covered above; Expenditure incurred for any other purpose which is an offence or is prohibited by law:

33.16 This clause requires separate reporting of penalty or fine for violation of any law for the time being in force, and any other penalty or fine. The tax auditor should obtain in writing from the assessee the details of all payments by way of penalty or fine for violation of any laws have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of accounts produced for audit. It has been stated in Explanation 3 to section 37 that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee,—

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and

acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India.

33.17 The tax auditor may not be an expert to decide the nature of payment as to whether it is prohibited by law or not and may not be aware of the intricacies of all the laws of the land. He can rely on the expert opinion. It must be borne in mind that the tax auditor while reporting under this clause is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law. He is only required to give the details of such items as have been charged in the books of account. This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages. The tax auditor should keep in mind the difference between the amount prohibited by law and the amount paid which is compensatory in nature under the relevant Statue. Supreme Court in *Mahalakshmi Sugar Mills Co. Ltd. vs CIT (123 ITR 429) and CIT vs Hyderabad Allwyn Metal Works Ltd (172 ITR 113 SC)* wherein it was held that there is a distinction between amount paid by the assessee as compensatory in nature or penal in nature and only amounts paid in penal nature were not allowable. While stating the particulars under this clause, the tax auditor should also take into consideration the concept of materiality.

33.18 In order to ascertain the facts whether the sum debited in the profit and loss account is by way of penalty or fine for any violation of law, the tax auditor will have to refer to the relevant law under which the amount has been paid or incurred and ascertain whether such amount is in the nature of penalty or fine. He should also ascertain all the facts by having recourse to the order of the jurisdictional authority which has levied the penalty or fine. Even if the assessee is contesting against such order before higher authorities, the same will not be relevant and the mere point for ascertaining is whether such sum is debited to the profit and loss account and if yes, the same has to be disclosed.

33.19 The courts have laid down that any penalty or fine for violation of law is not admissible as expenditure. It is in this context the requirement stipulated by clause 21(a) is to be answered.

33.20 The following Explanation to section 37(1) of the Act has been inserted by Finance Act (No.2) Act, 1998 with effect from assessment year 1962-63.

"For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure".

33.21 Under this sub-clause, any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law is to be stated.

33.22 Any expenditure in consequence of violation of law like penalty or fine levied for evading provisions of the Act, FEMA, Excise and Customs law etc., cannot be claimed as deduction under the Act. A penalty imposed for violation of any law during the course of trade cannot be described as a commercial loss. Even if the need for making payments has arisen out of trading operations, the payments are not wholly and exclusively for the purpose of the trade. Violation of law is not a normal incidence of business. This principle was laid down by Hon'ble Supreme Court in case of *CIT v. Maddi Venkataratnam & Co. (P) Ltd [1998] 96 Taxman 643* and in the case of *Hazi Aziz Shekoor Bros v. CIT [1961] 41 ITR 350*. In both the cases it was held that one can carry business or his trade without violating the law.

33.23 In *Prakash Cotton Mills (P) Ltd. v CIT [1993] 201 ITR 684 (SC),* it has been held that whenever any statutory impost paid by an assessee by way of damages or penalty or interest is claimed as an allowable expenditure under section 37(1) of the Act, the assessing authority is required to examine the scheme of the provisions of the relevant Statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the Statute, to find whether it is compensatory or penal in nature.

33.24 The authority has to allow deduction under section 37(1) wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, partly of compensatory nature and partly of penal nature, the authority would have to bifurcate the two components of the impost and give deduction of that component which is compensatory in nature and refuse to give deduction of that component which is penal in nature. The above principle was reiterated in the case of *Swadeshi Cotton Mills (1998) 233 ITR 199.*

33.25 Further, in *CIT v Ahmedabad Cotton Mfg. Co. Ltd. [1993] 205 ITR 163(SC)*, the Supreme Court held that what needs to be done by an Assessing Authority under the Act, in examining the claim of an assessee that the

payment made by such assessee was a deductible expenditure under section 37 although called a penalty, is to see whether the law or scheme under which the amount was paid, required such payment to be made, as penalty or as something akin to penalty, that is, imposed by way of punishment for breach for infraction of the law or the statutory scheme. If the amount so paid is found to be not a penalty or something akin to penalty due to the fact that the amount paid by the assessee was in exercise of the option conferred upon him under the levy, law or scheme concerned, then one has to regard such payment as business expenditure of the assessee, allowable under section 37 as incidental to business laid out and expended wholly and exclusively for the purposes of the business.

33.26 In case *of Malwa Vanaspati & Chemical Co. v. CIT [1997] 225 ITR 383(SC)*, it was held that where the assessee is required to pay an amount comprising both the elements of compensation and penalty, the compensation is allowable as business expenditure, but not the penalty.

33.27 Further, the CBDT clarified this position vide Circular 722 dated 23.12.1998 whose operative part reads as follows: Section 37 of the Income-tax Act is amended to provide that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure. This amendment will result in disallowance of the claims made by certain assessees in respect of payments on account of protection money, extortion, hafta, bribes etc. as business expenditure. It is well decided that unlawful expenditure is not an allowable deduction in computation of income. This amendment will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to the assessment year 1962-63 and subsequent years.

33.28 Where the penalty or fine is in the nature of penalty or fine only, the entire amount thereof will have to be stated. As discussed above, with reference to certain penalty/penal interest, courts have held that it is partially compensatory payment and partially in the nature of penalty. In such a case, on the basis of appropriate criteria, the amount charged will have to be bifurcated and only the amount relating to penalty may be stated.

34. Clause 21(b) - amounts inadmissible under section 40(a)

34.1 This clause is substantially expanded to furnish detailed information for deduction and deposit of TDS. Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". The relevant provisions for A.Y. 2023-24 are as under:

(i) **Non-Resident Payments:** Any interest, royalty, fees for technical services or other sum chargeable under the Income-tax Act which is payable outside India or in India to a non-resident or a foreign company on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deduction has not been paid during the previous year or in the subsequent year before the expiry of the time prescribed u/s139(1) {seems inadvertently shown as "section 200(1)" in notified form 3CD}.

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed u/s 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Section 40(a)(i) provides that if the tax deducted is paid during the previous year or in the subsequent year before the expiry of time prescribed for filling the tax return u/s. 139(1), the same shall be allowed as deduction in the previous year in which the tax is deducted. Further, the second proviso to section 40(a)(i) read with Section 201 provides that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of clause (i) of section 40(a), it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

(ii) **Resident Payments:** 30% of any sum is disallowed where sum is payable to a resident on which tax is deductible at source under chapter XVII-B and such tax has not been deducted or after deduction has not been paid on or before the due date specified in section 139(1).

As per first proviso to Section 40(a)(ia), where tax is deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in section 139(1), disallowed component of the expenditure is allowable as a deduction in the year in which such tax has been paid. Further, the second proviso to section 40(a)(ia) read with Section 201 provides that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of clause (ia) of section 40(a), it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

Interest payments to MSME vendors are covered under the provisions of Section 197A and the auditor should take care to ensure that the deduction of tax at source has been complied with or report the same under this clause.

A certificate is to be obtained in Form 26A by the person who has not deducted tax and obtain the form that the deductee is not responsible for deduction of tax and hence the lack of tax deduction does not attract the provisions of Section 201. Auditor is advised to check the certificate vide Form 26A and how it has been reflected in the statement of TDS filed vide Form 24Q / Form 26Q / Form 27Q.

(iii) Any sum paid on account of wealth tax.

(iv) Under sub-clause (iib) in section 40(a), any amount paid by way of a Royalty, License Fees, Service Fees, Privilege Fees, Service Charges or any other fees or charge by whatever name called, which is levied exclusively on or which is appropriated directly or indirectly from a State Government undertaking by the State Government shall not be allowed as a deduction from the income under the head “profit and gains from business or profession”.

(v) Any payment which is chargeable under the head “salaries”, if it is payable outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

(vi) Any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective

arrangement to secure that tax shall be deducted at source from any payment made from the fund which are chargeable to tax under the head "Salaries".

(vii) Any tax actually paid by an employer referred to in clause (10CC) of section 10.

34.2 The provisions of section 40(a)(ia) disallow only 30% of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deduction has not been paid on or before the due date specified under section 139(1). The first proviso to section 40(a)(ia) provides that where any sum on which tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty percent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

34.3 In respect of item (i) and (vi) above, the tax auditor should obtain in writing from the assessee the details of all payments debited to the profit and loss account. Where an actual remittance to overseas has been made by the assessee during the relevant previous year without deducting any tax at source, the tax auditor may rely upon the legal opinion and/or certificates from chartered accountants based upon which remittances have been made without deduction of tax at source. The tax auditor may refer SA 620, *Using the work of an auditor's expert* issued by ICAI for reliance on certificates / legal opinion. In this connection the tax auditor is advised to refer the applicable Double Taxation Avoidance Agreement (DTAA). Where no remittances have been made during the relevant year, the tax auditor may examine the relevant provisions vis-à-vis the agreement or correspondence in pursuant to which the liability is provided by the assessee in the books of account in order to determine whether any amount so provided is at all chargeable to tax under the Act. The tax auditor may use his professional judgement in these matters based upon decided cases and he may rely upon a legal opinion obtained by the assessee where no tax is required to be deducted in respect of the amount so provided. In case he disagrees with the stand taken by the assessee, he should give both the views in his report.

34.4 Under clause 21(b)(i)(A), the auditor is required to report payments to non residents on which tax is required to be deducted but not deducted in respect of interest, royalty, fees for technical services and other such

chargeable amount under the Income-tax Act. The Auditor is advised to give details under this clause for each individual payee.

34.5 Similarly, under clause 21(b)(i)(B), the auditor is required to report payments on which tax is deducted but is not deposited within the time prescribed during the previous year or in subsequent year. Such details are also required to be given for each individual payee prescribed under Section 40(a)(i).

34.6 Under this sub-clause, the tax auditor is required to report the details of payment on which tax is not deducted at source and also the details of payment on which tax has been deducted but not paid during the previous year or in the subsequent year before the expiry of time prescribed u/s 139(1). The tax auditor should maintain the following data in his working papers for the purpose of reporting under this sub-clause:

(a) Details of payment on which tax was not deducted:

Sr. No	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available
1	2	3	4	5	6

(b) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed u/s 139(1):

Sr. No.	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available	Amount of tax deducted
1	2	3	4	5	6	7

34.7 Under section 40(a)(ia), any payment of the expenses, specified therein on which tax is deductible under Chapter XVIIB and such tax has not been deducted or after deduction has not been paid on or before the date of filing of return specified under section 139(1), 30% of the expenditure is not eligible for

deduction while computing income chargeable under the head "profits and gains of business or profession". Accordingly, such amount will be inadmissible and will be required to be disclosed under this clause. For this purpose, the tax auditor will be required to examine whether the provisions relating to tax deduction at source have been complied with in respect of payments specified under the clause. For this purpose, the tax auditor may examine the books of account and tax deduction returns/statements pertaining to these payments.

34.8 Where the auditee claims deduction under the second proviso to sub-section (ia), it is deemed that he has deducted and paid the tax and hence such sum on which tax is so deemed to be deducted and paid is not inadmissible, the tax auditor should verify compliance with the requirements of section 201. He should also obtain and keep in his record a copy of certificate in Form 26A as required by section 201 read with section 40(a)(ia).

34.9 Under clause 21(b)(ii)(A), auditor is required to report any payments to residents on which tax is required to be deducted but not deducted under Chapter XVII-B of the Income-tax Act. The auditor is advised to give details under this clause for each individual payee.

34.10 Similarly, under clause 21(b)(ii)(B), auditor is required to report payments on which tax is deducted but is not deposited within the time prescribed during the previous year or in subsequent year. Such details are also required to be given for each individual payee prescribed under section 40(a)(ia).

34.11 Tax auditor should also verify that the particulars given under this clause do not differ from the particulars given under clause 34 of Form no. 3CD to the extent applicable. Under this sub-clause, the tax auditor is required to report the details of payment on which tax is not deducted at source and also the details of payment on which tax has been deducted but not paid on or before the due date specified in section 139(1). The tax auditor should maintain the following data in his working papers for the purpose of reporting under this sub-clause:

(a) Details of payment on which tax was not deducted:

Sr. No	Date of payment	Amount of payment	Nature of payment	Name and address	PAN of the payee, if

				of the payee	available
1	2	3	4	5	6

(b) Details of payment on which tax has been deducted but has not been paid on or before the due date specified under section 139(1):

Sr. No.	Date of payment	Amount of payment	Nature of payment	Name and address of the payee	PAN of the payee, if available	Amount of tax deducted	Amount out of (7) deposited, if any
1	2	3	4	5	6	7	8

34.12 The amount of Wealth Tax paid is not allowed as a deduction u/s. 40(a)(iia) and thus is required to be reported under clause 21(b)(iv). It is pertinent to note that Wealth-tax Act, 1957 is abolished w.e.f. 01.04.2016 vide the Finance Act, 2016.

34.13 Sub clause 40(a)(iib) provides that (a) any amount paid by way of a royalty, license fees, service fees, privilege fees, service charge or any other fees or charge by whatever name called, which is levied exclusively on; or (b) which is appropriated, directly or indirectly from, a State Government undertaking by the State Government is inadmissible expenditure. The explanation to this sub clause (iib) also defines a State Government undertaking. The Tax auditor should verify any such payment made by State Government undertaking to the State Government and should report under clause 21(b)(v).

34.14 The amount of salary which is paid outside India or to a non-resident in respect of which tax has not been deducted but which is required to be deducted under the applicable provisions of the Income-tax Act or tax has not been paid after deduction, the same is not allowed as a deduction u/s. 40(a)(iii) and the same is required to be reported under clause 21(b)(vi). This information is required to be given for each individual payee. The tax auditor should also furnish the date of payment along with the name and address of the payee. The tax auditor should maintain the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

Sr No.	Date of payment	Amount of payment	Name of payee	PAN of the payee, if available	Address
1	2	3	4	5	6

34.15 Section 40(a)(iv) provides that any payment to a provident or other fund established for the benefit of employees of the assessee shall be disallowed, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries". The auditor is required to report the same under item (vii) of this sub-clause.

34.16 Any tax paid by an employer on non-monetary perquisites is exempt in the hands of the employee as per section 10(10CC). Further, as per section 40(a)(v), the tax paid by the employer on non-monetary perquisites provided to employees shall not be deductible in computing profits and gains from business or profession. The tax auditor is required to report the amount of such tax paid by the employer, in case it is debited to the profit and loss account under clause 21(b)(viii).

34.17 In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of sub-section (a) of section 40, the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the viewpoints. In case of voluminous nature of the information, the tax auditor can apply materiality principles, tests checks and compliance tests for verifying the information required to be provided under this clause.

35. Clause 21(c)- Amount debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;

35.1 The tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is also required to be given in respect of interest/ remuneration paid to a member of an Association of

persons (AOP)/Body of individuals (BOI). By Finance Act (No. 2) 2009, w.e.f. 1.4.2010, the term firm includes LLP (as registered under the provisions of LLP Act, 2008) The word "inadmissible" implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prima facie inadmissibility of the deduction and also quantify the same.

35.2 Salary, bonus, commission or remuneration or interest are not admissible, unless the following conditions are satisfied:

(a) Remuneration is paid to working partner(s).

(b) Remuneration or interest is authorised by the partnership deed and is in accordance with the partnership deed.

(c) Remuneration or interest does not pertain to a period prior to the date of partnership deed.

35.3 The inadmissible remuneration, salary, bonus or commission under section 40(b) has to be determined on the basis of the provisions of sub-clause (v) thereof read with the limits laid down therein. Such limits are laid down as a percentage of book profits. Explanation 3 to section 40(b) provides that “book profits” means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit. The inadmissible amount of salary, bonus, commission or remuneration is to be worked out after deducting interest allowable to partners as per the provisions of section 40(b). According to Explanation 4, “working partner” means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner. It is advisable for the auditor to obtain from the assessee a detailed working of the inadmissible remuneration, salary, bonus or commission under section 40(b). He has to verify the computation from the instrument or agreement or any other document evidencing partnership including any supplementary documents or other documents effecting changes which would affect the computation of the inadmissible amounts under section 40(b).

35.4 Under section 40(b)(iv), any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so

far as such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time will not be admissible as a deduction.

35.5 Section 40(ba) lays down that any interest or remuneration paid by an AOP to its member shall not be allowed as a deduction to the AOP. It may also be noted that in computing such disallowance:

(a) where interest is paid by AOP / BOI to a member who has also paid interest to AOP/ BOI, only net amount of interest, if any, shall be disallowed;

(b) where a member is in a representative capacity, the disallowance of net interest paid by AOP/BOI shall be the amount of net interest received by the member in a representative capacity or by the person who is so represented by the member;

(c) where a person who is a member in his individual capacity receives the interest for the benefit of or on behalf of any other person, then, interest so paid by AOP/ BOI shall not be disallowed;

35.6 In order to determine the amounts inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.

35.7 In working out the inadmissible amount, the tax auditor must have due regard to the Circular No. 739 dated 25.3.1996 issued by the CBDT reproduced in **Appendix XIII.**

35.8 The tax auditor should maintain the information in the following format as a part of his working papers and report appropriately in the format provided in the e-filing utility:

Sr. No.	Nature of payments made to partner/member	Section 40(b)/ 40 (ba)	Amount debited to profit and loss account	Amount admissible u/s 40(b)/ 40(ba)	Amount inadmissible u/s 40(b)/ 40(ba) [difference between (d) and €]	Remarks, if any
(a)	(b)	(c)	(d)	(e)	(f)	(g)

35.9 The tax auditor may note that the information required to be reported is the amount of inadmissible expenditure as per section 40(b) or 40(ba) and not the total amount debited to profit and loss account.

36. Clause 21(d) – Disallowance/deemed income under section 40A(3):

(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

Serial Number	Date of Payment	Nature of Payment	Amount	Name and Permanent Account Number or Aadhaar Number of the payee, if available

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A);

Serial Number	Date of Payment	Nature of Payment	Amount	Name and Permanent Account Number or Aadhaar Number of the payee, if available

[Clause 21(d)]

36.1 (a) As per the provisions of sub-section (3) of section 40A where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise

than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, exceeding rupees ten thousand, no deduction would be allowed in respect of such expenditure. In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- instead of Rs. 10,000/-.

(b) Further, as per the provisions of section 40A(3A) where any allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes payment in respect thereof, otherwise than an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed exceeding Rs. 10,000, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income tax with respect to that previous year. In case of payment made for plying, hiring or leasing of goods carriage, limit is Rs.35,000/- in place of Rs. 10,000/-.

(c) Further, no disallowance would be made if the payment or aggregate of payments, exceeding Rs. 10,000 (Rs. 35000 in case of plying, hiring or leasing of goods carriage) is made to a person in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed in respect of cases and circumstances prescribed under Rule 6DD having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

Rule 6DD provides that the disallowance/ addition under sub-section (3) and (3A) of section 40A shall not be made in certain cases or circumstances. In very brief, these are enumerated below:

— Payment to specified entities engaged in banking and insurance activities,

- Payment to Government when required to be made in legal tender,
- Payments through banking channels with use of bill of exchange, book adjustment, transfers,
- Payments to specified growers, cultivators etc.,
- Payment to cottage industry,
- Payment in village not served by a bank to resident of such place,
- Payments of specified terminal benefits to employees up to Rs. 50,000/-,
- Payment to agent who is required to make payment in cash,
- Payment by authorised dealer for purchase of foreign currency etc.,

Auditors are advised to consider Rule 6DD and relative Circulars for complete details of above. Auditors will also need to verify that the conditions laid down for the mitigating circumstances are strictly complied with.

(d) Other electronic modes of payment referred to in section 40A(3) and section 40A(3A) have been prescribed in Rule 6ABBA. For the purpose of sub-sections (3) and (3A), the Electronic modes are prescribed by Rule 6ABBA and such modes include:

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer); and

(h) BHIM (Bharat Interface for Money) Aadhaar Pay;

36.2 For the purpose of furnishing the above particulars, the tax auditor should obtain a list of all cash payments in respect of expenditure exceeding Rs. 10,000 (Rs.35000/- in case of plying, hiring or leasing goods carriages w.e.f. 1.10.2009) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses (a) to (l) of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause. Certain audit tools are available to find out such payments expeditiously and accurately. These tools may be employed in case data is voluminous.

36.3 Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments for expenditure referred to in section 40A(3) and section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the fact shall be reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB, as the case may be. The tax auditor, in his report may make comment as suggested below while reporting under this sub-clause:

> "*It is not possible for me/us to verify whether the receipts/payments have been accepted/made otherwise than by an account payee cheque or an account payee bank draft, as necessary evidence is not in the possession of the assessee*".

36.4 The tax auditor should maintain the following particulars in his audit working papers file for the purpose of reporting in the format provided in the e-filing utility:

Sl. No.	Nature and particulars of expenditure	Date of payment	Payment or aggregate payments made to a person in a	Total amount of expenditure	Name and Permanent Account number of the payee,	Remarks

			day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft		**if available**	
1	2	3	4	5	6	7

36.5 Wherever possible, individual items of inadmissible expenses may be given. However, where, in view of the large volume of transactions it is not possible to give individual items of inadmissible amounts, the tax auditor may furnish such details under broad heads of account.

36.6 Items of expenditure in respect of which specific exemption has been given under Clauses (a) to (l) of Rule 6DD are not required to be stated under this clause.

37. Clause 21(e) - provision for payment of gratuity not allowable under section 40A(7);

37.1 As per section 40A(7), the deduction shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year. The Tax Auditor should be aware that contributions made to approved gratuity fund and gratuity paid or payable on which no deduction has been claimed earlier are mutually exclusive. Thus, deduction can be claimed only in one of these situations. Further, once the deduction is claimed by the Assessee on account of gratuity paid, the same amount cannot be claimed again as deductible while determining Total Income u/s 28 of the Income-tax Act, 1961 when an amount is paid to employee from such approved gratuity fund directly.

The Tax Auditor may correlate the observations to be reported in relevant clause of ICDS u/s 145 of the Income-tax Act 1961 vis-à-vis Accounting Policy for Gratuity valuation and its provision in Clause 13 of form 3CD.

The Tax Auditor should examine the Independent Auditors' Report as well as Notes forming part of Audited Financial Statements for the previous year under consideration. If Provision for Gratuity is not created in the Books or Books of account where the assessee is following mercantile system of accounting u/s 145 of the Income-tax Act, 1961, in such scenario, Tax Auditor shall report the same and may be required to qualify his/her Tax Audit Report in Form No. 3CA/3CB read with Form 3CD issued for the previous year under consideration and appropriate disclosure should be made in Clause 13 of the Tax Audit Report, and such observation can also be disclosed in "Observation and Remarks" part of Form 3CA/3CB, in accordance with the relevant auditing standards and other issuances of the ICAI from time to time.

37.2 The tax auditor should call for the order of the Principal Commissioner of Income-tax/Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed, rules and regulations governing such trust deed and PCIT/CIT Approval Order stipulations.

Gratuity deductible if ascertained

37.3 In *Shree Sajjan Mills Ltd. v. CIT [1985] 23 Taxman 37 (SC)*, the Supreme Court had rejected the contention that section 40A (7) disallows deduction only if provision is made and that if no provision for gratuity is made, the gratuity liability ascertained on actuarial basis would be deductible. If Tax Auditor is faced with such a situation while discharging his audit function, where the Assessee has provided for the ascertained liabilities pertaining to gratuity obligation based on justifiable evidence, even if such obligation and economic outflow would be payable in future years, such accounting shall not invoke disallowance under the provisions of Section 40A(7).

37.4 In case the provision made for payment of gratuity is not allowable under section 40A(7), the same is to be stated under this sub-clause.

38. Clause 21(f) - any sum paid by the assessee as an employer not allowable under section 40A(9);

38.1 Under section 40A(9), any payment made by an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860, or other institutions (other than contributions to recognised provident fund or approved superannuation fund or notified

pension scheme or approved gratuity fund) is not allowable. The tax auditor should furnish the details of payments which are not allowable under this section.

38.2 Tax Auditor shall maintain detailed working papers documenting the factual nature of such expenses incurred and debited to the Profit and Loss for the previous year under consideration which are considered disallowable u/s 40A(9) of the Income-tax Act, 1961. Tax Auditor should get the relevant content in working papers prepared for such disallowance duly confirmed by the Assessee as a necessary safeguard.

38.3 If any such contribution is made by the assessee in a capacity other than that of an employer, then such contribution is not to be considered as disallowable u/s 40A(9) of the Income-tax Act, 1961. Thus, Tax Auditor should carefully examine the capacity of Assessee while making such contribution before reaching any conclusions for allowing or disallowing such contribution.

38.4 It may be noted that section 40A(9) allows deduction of any contributions made as an employer towards recognized provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund or as required by or under any other law for the time being in force. Thus, any contribution made to Employees' Welfare Co-op Society will not be allowed as a deduction in the case of the employer company under section 40A(9), unless such contribution is required by or under any other law for the time being in force. *Instruction: No. 1799, dated 3-10-1988.*

39. Clause 21(g) - particulars of any liability of a contingent nature;

39.1 The assessee is required to furnish only particulars of any contingent liability debited to the profit and loss account.

39.2 The tax auditor, for verifying the details of contingent liability debited to the profit and loss account, may conduct a detailed scrutiny of various account heads e.g. outstanding liabilities, provision etc., if required. Accounting policy followed and disclosed would be helpful in ascertaining and verifying details. The tax auditor may also verify reporting under CARO and disclosure in the Notes on accounts. The expenses relating to disputed claims will be revealed only on the basis of the scrutiny of records relating to contingent liabilities. The tax auditor may look into particular items of contingent liabilities of the earlier year in order to determine whether or not any items has been charged to the

profit and loss account of the current year and if so, whether the liability continues to be contingent in nature. Wherever necessary, a suitable note should be given by the tax auditor as to the non-availability of such particulars relating to the contingent liabilities.

39.3 Reference may be made to AS-29, 'Provisions, Contingent Liabilities and Contingent Assets'/ Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets, to determine what should normally be treated as a contingent liability**.** Contingent Liability as defined in Income Computation and Disclosure Standards (ICDS) X means Contingent liability is a possible obligation (as opposed to 'present obligation') existence of which will be confirmed only on occurrence or non-occurrence of an event beyond the control of the assessee.

39.4 Tax Auditor should be cautious when reporting details under this clause because it has been noticed that amounts by way of Contingent Liabilities forming part of Notes to Accounts in the Audited Financial Statements are inadvertently reported under this clause. Accordingly, only Contingent liabilities which are debited to the Profit and Loss account of the previous year under consideration shall be reported under this clause and not value of contingent liabilities reported in the notes to the accounts forming part of the audited financial statements of the corporates.

39.5 The tax auditor should maintain the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

Nature of liability	Amount	Remarks
1	2	3

ICDS X, Para 10 provides that Contingent liability shall not be deductible. Auditors should note that the Contingent liability shown in Notes to Accounts is not required to be reported, as the amounts debited to Profit and Loss account are required to be reported in this sub-clause.

40. Clause 21(h) - Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income;

40.1 For the purposes of computing the total income under Chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the

assessee in relation to income which does not form part of the total income under the Act. It is clarified that Section 14A will apply notwithstanding anything to the contrary contained in this Act and irrespective of the income not forming part of the total income having not accrued, arisen or received during the particular previous year.

40.2 As per sub-section (2), the Assessing Officer shall determine the amount of expenditure incurred in relation to such income, which does not form part of the total income under the Act. Such determination should be in accordance with the method as may be prescribed. Such power of the Assessing Officer can be exercised only when he, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee.

40.3 Sub-section (3) provides that the provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

40.4 The expenditure which is relatable to the income which does not form part of the total income is not allowed as a deduction in terms of section 14A of the Act. Such income are dealt with in Chapter III - Incomes Which Do Not Form Part Of Total Income. Section 10 deals with Incomes not included in total income. Sections 10A to 10C deals with the special provisions in respect of the specified undertakings. In general, an assessee may have besides his business income, income from agriculture which is exempt under sub-section (1), share of profit in a partnership firm which is exempt under sub-section (2A) etc. In all such cases, the expenditure relating to the income which is not included in total income is inadmissible under section 14A. In case of an investment in a partnership firm, while the interest and the salary received by the partner are taxable, the share of profit is exempt. The amount of inadmissible expenditure depends on the facts and circumstances of each case. The disallowance relates to expenditure incurred in relation to income which does not form part of the total income. Hence, the disallowance does not apply to income which is forming part of gross total income and thereafter deductions under Chapter VIA are claimed.

40.5 Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income. Sub-rule (1) of Rule 8D provides that having regard to the accounts of the assessee of a

previous year, if the Assessing Officer is not satisfied with the correctness of the claim of expenditure made by the assessee or with the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of such inadmissible expenditure in accordance with the method of computation laid down in sub-rule (2) of Rule 8D.

40.6 Sub-rule (2) of Rule 8D provides for the method of computation of the expenditure in relation to income not forming part of the total income. The disallowance shall be the aggregate of the following:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income

provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.

40.7 The method prescribed under sub-rule (2) of Rule 8D is applicable when the Assessing Officer is not satisfied with the correctness of the claim of expenditure made by the assessee or with the claim made by the assessee that no expenditure has been incurred. Normally this situation would arise at the time of assessment i.e. after the tax audit has been completed and the return has been filed. Therefore, at the time of tax audit, the tax auditor will have to verify the amount of inadmissible expenditure as determined by the assessee. The method under sub-rule (2) of Rule 8D is to be adopted by the Assessing Officer when he is not satisfied with the amount as determined by the assessee. Rule 8D does not mandate that the assessee should necessarily compute the disallowance as per the method prescribed under sub-rule (2). Therefore, the assessee may or may not adopt the same considering facts and circumstances of his case.

40.8 It is primarily the responsibility of the assessee to furnish the details of amount of deduction inadmissible in terms of section 14A i.e. in respect of the expenditure incurred in relation to income, which does not form part of the total income. The tax auditor shall examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination, the tax auditor is entitled to rely on the management

representation. However, Standard on Auditing (SA) 580, "*Written representations"* may be referred to.

40.9 The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income etc. For allocation of interest between taxable and non-taxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered. This requires proper estimates to be made by the assessee. The tax auditor is required to audit such estimates. Attention is invited to Standard on Auditing - 540 "Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures".

40.10 An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Even in such a case, the provisions of section 14A will apply. Accordingly, the tax auditor is required to verify such contention of the assessee.

40.11 It is explained that notwithstanding anything to the contrary contained in this Act, the provisions of section 14A shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.

40.12 The broad principles as enunciated in aforesaid paras may be kept in mind while verifying the amount of inadmissible expenditure. After verifying the amount of inadmissible expenditure, if the tax auditor:

(a) is in agreement with the assessee, he should report the amount with suitable disclosures of material assumptions, if any.

(b) is not in agreement with the assessee with regard to the amount of expenditure determined, the tax auditor may give:

A qualified opinion:

A qualified opinion can be given when the auditor is of the opinion that the effect of any disagreement with the assessee is material but not

pervasive as to require an adverse opinion or limitation on scope to require a disclaimer of opinion.

An adverse opinion:

The auditor in rare circumstances may come across a situation where the impact of his disagreement about the computation of such inadmissible expenditure is so material and pervasive that it affects the overall opinion. In such a case the tax auditor may give an adverse opinion.

The disclaimer of opinion:

When the assessee has neither provided the basis nor the supporting documents, for the claim of such inadmissible expenditure, then due to limitation on the scope of auditors work, and the auditor concludes that the possible effects of such disagreement could be both material and pervasive, the auditor can give disclaimer of opinion.

41. Clause 21(i)- amount inadmissible under the proviso to section 36(1)(iii).

41.1 The provisions of section 36(1)(iii) provide that the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession would be allowed as a deduction in computing the income referred to in section 28 of the Act.

41.2 The proviso thereunder provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was put to use, shall not be allowed as a deduction. Interest as defined under section 2(28A) means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

41.3 The tax auditor is also advised to verify the treatment given for such asset under other provision of the Act like Chapter VI A deductions or under other statutes. The requirements of sub-clause 21(i) are applicable in respect of capital borrowed for acquisition of an asset. The assessee has to furnish

the details of amount inadmissible under the proviso to section 36(1)(iii). The Tax Auditor has to verify the correctness of the particulars furnished by the assessee with the documentary evidence in accordance with the relevant auditing standards and other issuances of the ICAI from time to time.

41.4 The Tax Auditor while determining the admissible/inadmissible amount under section 36(1)(iii) should also keep in mind the requirements of ICDS IX relating to Borrowing Cost.

41.5 The Explanation to this proviso provides that recurring subscription paid periodically by shareholders or subscribers in Mutual Benefit Society which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of section 36(1)(iii). This Explanation becomes applicable only where the computation of the income of such mutual benefit society is to be made under section 28 read with section 44A.

42. Amount of Interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006

[Clause 22]

42.1 The tax auditor is required to state the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006. The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) is an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

42.2 Section 23 of the MSMED 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.

42.3 The inadmissible interest has to be determined on the basis of the provisions of the MSMED Act. Section 16 of the MSMED Act provides for the date from which and the rate at which the interest is payable. Accordingly, where a buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed date or, as the case may be, from the date

immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

42.4 Section 15 of the MSMED Act, requires the buyer to make payment on or before the date agreed upon in writing, or where there is no agreement in this behalf, before the appointed day. It also provides that the period agreed upon in writing shall not exceed forty five days from the day of acceptance or the day of deemed acceptance.

42.5 Section 22 of the MSMED Act provides that where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:-

(i) The principal amount and interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) The amount of interest paid by the buyer in terms of Section 16, along with the amount of payment made to supplier beyond the appointed date during each accounting year;

(iii) The amount of interest due and payable for the delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) The amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

42.6 Where the tax auditor is issuing his report in Form No. 3CB, he should verify that the financial statements audited by him contain the information as prescribed under section 22 of the MSMED Act. If no disclosure is made by the auditee in the financial statements, he should give an appropriate qualification in Form No. 3CB, in addition to the reporting requirement in clause 22 of Form No. 3CD.

42.7 The tax auditor while reporting in respect of clause 22 should take the following steps:

(a) The auditor should seek information regarding status of the enterprise i.e. whether the same is covered under the Micro, Small and Medium Enterprises Development Act, 2006. Where the information is available and has been disclosed, the same should be reported as such in Form No. 3CD. Where the information is not available, the auditor should also mention the same in the Form No. 3CD.

(b) Since Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006 requires disclosure of information, the tax auditor should cross check the disclosure made in the financial statements.

(c) Obtain a full list of suppliers of the assessee which fall within the purview of the definition of "Supplier" under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.

(d) Review the list so obtained.

(e) Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account.

(f) Verify the interest payable or paid as mentioned above on test check basis.

(g) Verify the additional information provided by the auditee relating to interest under section 16 in his financial statement.

(h) If on test check basis, the auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22.

42.8 Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSMED Act, then no amount is inadmissible under section 23 of MSMED Act. In such a case, appropriate reporting should be made against this clause in the format provided in the e-filing utility. However, auditor should consider impact of such non-recognition of interest on true and fair view of profit or loss and the liability.

42.9 A question may come up, as to what would be disallowance, in case the auditee is liable to pay any interest under MSMED Act, but he has not provided

the interest in his accounts. In such a case, there can be no disallowance, as he has not claimed the same in his accounts. But whenever he pays and claim such interest, the same will be disallowable in year of payment. In case the auditee has adopted mercantile system of accounting, the non-provision may affect true and fair view and the auditor should give suitable qualification. The relevant extracts of the MSMED Act are given in ***Appendix XIVI.***

43. Particulars of payments made to persons specified under section 40A(2)(b).

[Clause 23]

43.1 Section 40A (2)(b) covers the following persons:

(i) where the assessee is an individual - any relative of the assessee; as defined u/s 2(41) of the Income-tax Act 1961;

(ii) where the assessee is a company, firm, association of persons or Hindu un-divided family - any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member or any other company carrying on business or profession in which the first mentioned company has substantial interest;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation to Section 40A(2)(b) - For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,—

(a) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(b) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

43.2 The section enjoins on the Assessing Officer the power to fix the quantum of disallowance. Under this clause, the particulars of payments stated to be made to persons covered under section 40A(2)(b) should be examined. The following steps may be taken by the tax auditor in this connection:

(a) Obtain full list of specified persons as contemplated in this section. Information furnished by the assessee about specified persons should be cross verified from other data available with the assessee e.g. members register, list of directors, register of concerns in which directors are interested in case of companies or list of members, directors, trustees in case of cooperative societies, trusts etc.

(b) Obtain details of payments made to the specified persons.

(c) Scrutinise all items of payments to the above persons.

(d) It may be difficult to locate all such payments and it may also involve a time consuming effort. It is, however, possible to localise the area of enquiry by ascertaining the following:

(i) Call for all contracts or agreements entered into by the assessee and list out the contracts or agreements entered into with the

specified persons and segregate the items of payments made to them under these agreements.

(ii) In case of payments for purchases and expenses on credit basis, the appropriate ledger accounts can be scrutinised to identify the dealings with the specified persons.

(iii) In case of cash purchases and expenses, the purchase or expense account should be scrutinised. It may be difficult to identify such payments in each and every case where the volume of transactions is rather huge and voluminous. Therefore, it may be necessary to restrict the scrutiny only to such payments in excess of certain monetary limits depending upon the size of the concern and the volume of business of the assessee.

(iv) In case of a large company, it may not be possible to verify the list of all persons covered by this section and, therefore, the information supplied by the assessee can be relied upon. In this context, a reference may be made to Circular No. 143 dated 20.8.1974, issued by the Board, in which it is clarified that a tax auditor can rely upon the list of persons covered under Section 13(3) as given by the managing trustee of a Public Trust. . Where the tax auditor relies upon the information in this regard furnished to him by the assessee, it would be advisable to make an appropriate disclosure.

(v) The auditor may refer to the details given in the annual accounts for related party transactions as per AS-18, if available, for examining and reporting under this clause. The auditor while using the information as referred above should consider the difference in the definitions of 'related party' as per AS-18 and 'persons specified' in section 40A(2)(b) of the Act.

43.3 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

Name of the related	PAN of related	Aadhaar Number of the related	Relation	Date	Nature of transaction	Payment made (Amount)

perso n	perso n	person, if availabl e				
1	2	3	4	5	6	7

44. Amounts deemed to be profits and gains under section 32AC or 32AD or 33AB or 33ABA or 33AC.

[Clause 24]

44.1 Section 32AC allowed deduction @ 15% in respect of Investment in new Plant & Machinery to a company who is engaged in the business of manufacture or production of any article or thing, etc. and who acquires and installs new asset after the 31st day of March,2013 but before the 1st day of April,2015 and the aggregate actual cost of such new assets exceeds one hundred crore rupees. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (2) of section 32AC. Only because section 32AC(2) provides for chargeability of deemed income under the head "profit and gains from business or profession" in addition to taxability of capital gains, the auditor is not required to report any capital gains/losses arising on transfer on the said asset. The tax auditor will be required to verify the compliance to the conditions of the provisions of section 32AC and report the deemed income accordingly. No deduction under section 32AC(1A) shall be allowed for any AY commencing on or after 01.04.2018. Section 32AD allowed deduction for investment in new plant or machinery in notified backward areas in States of Andhra Pradesh or Bihar or Telangana or West Bengal in case an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on 01.04.2015 and ending before 01.04.2020 in the notified backward area. Deduction allowed was of a sum equal to 15% of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub-section (2) of section 32AD.

44.2 Section 33AB allowed deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account.

The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections [4], [5], [7] and [8] of section 33AB.

44.3 Section 33ABA allowed deduction in respect of Site Restoration Fund. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections [5], [7] and [8] of section 33ABA. Where deduction has been claimed with respect to interest credited in Special Account or the Site Restoration Account, utilization of withdrawal thereof for purposes other than those specified shall be deemed to be income from business.

44.4 Likewise, section 33AC allowed deduction in respect of reserve created out of the profit of the assessee engaged in shipping business to be utilized in accordance with the provision of sub section (2) of section 33AC. The tax auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub-sections (3) and (4) of section 33AC for the amount of reserves created on or before 31st March, 2004. Clause 24 requires disclosure of amounts deemed to be profits and gains under section 32AC, or 32AD, or 33AB, or 33ABA or 33AC.

44.5 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

Section	Description	Amount	Remarks
1	2	3	4

Remarks column can mention reference of the transaction(s) resulting into income.

45. Any amount of profit chargeable to tax under section 41 and computation thereof.

[Clause 25]

45.1 (i) Section 41(1) provides that where any allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee obtains any amount, whether in cash or in any other manner whatsoever, in respect of such loss or expenditure or some benefits in respect of trading liability by way of remission or cessation thereof, the amount

obtained by him or the value of benefit accruing to him is chargeable to tax as business income. In respect of loss, expenditure or trading liability incurred by the assessee, if no allowance or deduction has been made, then provisions of section 41 are inapplicable.

(ii) Where the assessee who has suffered loss or has incurred expenditure for which deduction has been allowed or by whom the trading liability has been incurred is succeeded in his business either because of amalgamation of companies or demerger or on account of the constitution of new firm or the business if continued by some other person when the assessee ceases to carry on the business, then the successor in the business will be chargeable to tax on any amount received in respect of such loss, expenditure or trading liability.

(iii) *Explanation* (1) to section 41(1) provides that the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cession thereof" shall include the remission or cession of any liability by the creditor by a unilateral act of the assessee or successor in the business by way of writing off such liability in his accounts.

(iv)(a) Liability of assessee does not cease merely because liability has become barred by limitation. Liability ceases when it has become barred by limitation and the assessee has unequivocally expressed its intention not to honour the liability, when demanded. This is a question of fact whether or not assessee has expressed unequivocally his intentions {*CIT Vs Chase Bright Steel Ltd 177 ITR 128 (BOM)}*. When a liability is shown outstanding for more than 4 years, in case of an assessee company, this amounted to acknowledging the debt in favour of creditors for the purposes of section 18 of the Limitation Act, 1963. The assessee's liability to the creditors thus subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in the court of Law. The amount was not assessable under section 41(1). This was so held by Delhi High Court in the case of *CIT V/s Shri Vardhman Overseas Ltd(2012) 343 ITR 408(Del). [SLP has been dismissed by the Supreme Court against this decision.]*

(iv) (b) In the case of *CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 236 ITR 518/102 Taxman 713 (SC)*, Hon'ble Supreme court came to the conclusion that after expiry of limitation period, a debt does not stand extinguished, but it only bars the creditors from taking recourse to a legal remedy for enforcement of the debt. Hence, barring by limitation

would not tantamount to cessation of liability u/s 41(1).

45.2 Section 41(2) provides for chargeability to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture of an undertaking engaged in generation or generation and distribution of power is sold, discarded, demolished or destroyed. Such undertakings are allowed depreciation on such percentage on the actual cost as are prescribed. The depreciation rate are prescribed vide Rule 5(1A) in Appendix IA. Depreciation is to be calculated on Straight Line Method (SLM) on individual asset and not on block of assets, under clause (i) of sub-section (1) of section 32. Where the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture become due. Where the moneys payable in respect of the building, machinery, plant or furniture become due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, the above provision shall apply as if the business is in existence in that previous year. To ascertain capital gain, if any, provisions of section 50A are relevant. On debt becoming time barred, the liability of the assessee does not cease. Section 41(1) is not attracted in such a case (Liquidator, Mysore Agencies (P.) Ltd v CIT [1978] 114 ITR 853 (Kar.).

45.3 Section 41(3) provides that where any capital asset used in scientific research is sold without having been used for other purposes and the sale proceeds together with the amount of deduction allowed under section 35 exceeds the amount of capital expenditure, such surplus or the amount of deduction allowed, whichever is less, is chargeable to tax as business income in the year in which the sale took place. This is irrespective of whether the business of the assessee is in existence or not during the previous year in which the capital asset is sold.

45.4 It may be noted that section 41(3) is applicable only if an asset is sold without having been used for other purposes. In other words, if an asset which is initially purchased for the purpose of scientific research is utilised for business purposes on completion of scientific research and later on is sold or

transferred, then section 41(3) is not applicable but in such case section 50 would apply.

45.5 Section 41(4) provides where any bad debt has been allowed as deduction under section 36(1)(vii) and the amount subsequently recovered on such debt is greater than the difference between the debt and the deduction so allowed, the excess realisation is chargeable to tax as business income of the year in which debt is recovered. For this purpose, it is immaterial whether the business of the assessee is in existence or not during the previous year in which recovery is made.

45.6 Section 41(4A) provides that if any amount is withdrawn from the special reserve created under section 36(1)(viii), then it will be chargeable to tax in the year in which the amount is withdrawn, regardless of the fact whether the business is in existence in that year or not.

45.7 Section 41(5) provides that where the business or profession referred to in section 41 is no longer in existence and there is income chargeable to tax under sub-section (1), sub-section (3), sub-section (4) or sub-section (4A) in respect of that business or profession, any loss, not being a loss sustained in speculation business which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid. This is irrespective of the number of years that may have elapsed from the year in which the loss has been suffered. In case of Mahindra and Mahindra 93 taxmann.com 32 (SC), it was held that "*To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons: (a) Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money. (b) Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36(1)(iii) of the IT Act qua the payment of interest in any previous year.*" There are decisions where interest on loan was not claimed as expense, in such case waiver of such loan is treated as capital receipt.

45.8 The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence, etc. He should in all relevant cases examine the past records

to satisfy himself about the correctness of the information provided by the assessee. The tax auditor has to state the profit chargeable to tax under this section. This information has to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not. The computation of the profit chargeable under this clause is also to be stated. The tax auditor should check whether amounts which have been written back in respect of trading liability by way of remission or cessation thereof or otherwise, is credited to Profit & Loss account. If any such liability credited to profit and loss account is already offered to tax in any prior period, the same shall not, once again, be considered as income in the year in which it is so credited.

45.9 In case the amount given in this clause regarding section 41 of the Act is not routed through profit and loss account or income and expenditure account, the auditor may include the said fact in the observation para of the audit report.

45.10 The tax auditor should maintain the following in his working papers for the purpose of furnishing details required in the format provided in the e-filing utility:

Sr. No.	Name of person	Amount of income	Section	Description of transaction	Computation if any
1	2	3	4	5	6

46. In respect of any sum referred to in clause (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:-

(A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was

(a) paid during the previous year;

(b) not paid during the previous year;

(B) was incurred in the previous year and was

(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

(b) not paid on or before the aforesaid date.

(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account.)

[Clause 26]

46.1 In the case of an assessee maintaining its accounts on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year as well as return of income for the earlier assessment years so that the information about the aforesaid payments made in the subsequent year can be furnished.

46.2 Section 43B provides that notwithstanding anything contained in any other provisions of the Act, the following amounts shall be allowed as deduction in computing the business income of an assessee in the previous year in which such amounts are actually paid:

(a) any tax, (GST, sales tax, value added tax, service tax, excise duty, municipal/property tax, etc.), duty, cess or fee, by whatever name called, payable by the assessee under any law for the time being in force.

(b) any sum payable as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.

(c) any bonus or commission payable by the assessee to its employees for services rendered, where such sum would not have been payable to him as profits or dividend, if it had not been paid as bonus or commission.

(d) interest on any loan or borrowing from any public financial institution, a state financial corporation or a state industrial investment corporation payable in accordance with the terms and conditions of the agreement governing such loan or borrowing.

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances.

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee.

(g) any sum payable by the assessee to the Indian Railways for the use of railway assets.

46.3 Section 43B is applicable in respect of expenditure for which a deduction is otherwise allowable under the Act. Therefore, where any expenditure is reported under any other clause indicating that deduction is otherwise not allowable, there is no need of reporting such expenditure under this clause.

46.4 Provisions of section 43B are also applicable to interest on any loan or borrowing from such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf (applicable w.e.f. AY 2024-25) or a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company under clause (da) or any sum payable by the assessee to a micro or small enterprise beyond the time-limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 under clause (h) (applicable w.e.f. AY 2024-25). However, clause 26 does not require reporting in respect of clause (da) or (h) of section 43B. All the payments referred in clause (a) to (g) above whether pre-existed on the first day of previous year but not allowed in assessment of any preceding previous years or incurred in the previous year are to be reckoned. In respect of the liability which pre-existed on the first day of the previous year is allowable as deduction if paid during the previous year. This is required to be reported in clause 26(A)(a). In respect of the liability which is incurred in the previous year is allowable to the extent it is paid on or before the due date for furnishing the return of the income under section 139(1). Such items are to be disclosed in clause 26(B)(a).

46.5 It should be kindly noted that the liability which pre-existed on the first day of the previous year but not allowed in assessment of any preceding previous years is paid after the end of the previous year then the amount will be allowed as a deduction in the previous year in which it is paid. Proviso allowing payment till due date of furnishing of return is not applicable to such a liability. In respect of reporting made under clause (A), amount of pre existing i.e. previous year should be adopted/verified from previous/ last/immediate year ITR Form.

46.6 The Tax Auditor, in his Tax Audit report, should, therefore, clearly distinguish the liability incurred during the previous year in respect of all the specified sums referred to in clauses (a) to (g) from the liability that pre-existed on the first day of the relevant previous year.

46.7 If the assessee is following the cash basis of accounting, sums referred to in clause (a), (b), (c), (d), (e), (f) and (g) of section 43B which are debited to the profit and loss account will be allowable as they would have been actually paid during the year. Tax Auditor may consider the following judgements and/or explanations:

46.8 If under the sales tax legislation applicable, if sales tax so deferred is treated as actually paid, then statutory liability shall be treated to have been discharged for the purpose of Section 43B – Circular No 496 dated 25.09.87. The Apex Court in case of CIT V. Gujarat Polycrete Pvt Ltd (2000) 246 ITR 463 has held that ' the State Government may amend its Sales Tax Act to provide that the sales tax (deferred under an incentive scheme framed by it) will be treated as actually paid so as to meet the requirements of Section 43B.

46.9 Some State Governments, instead of amending the Sales Tax Act, have notifying schemes under which sales tax is deemed to have been actually collected and disbursed as loans. The amount of such sales tax liability deemed to be converted into loan may be allowed as deduction in the assessment for the previous year in which such conversion has been permitted – Circular No 674 dated 29.12.93 and also held in Gujarat HC in case of CIT v. Goodluck Silicate Industries (P) Ltd (2002) 178 CTR 92 held that ' where sales tax due to the Government is converted as loan to be repaid by the assessee, subsequently by instalments, it would amount to actual payment of sales-tax.

46.10 If Tax Auditor is faced with similar scenario under the GST Law, then after careful consideration of the facts, the treatment of GST dues may be considered on lines similar to those under erstwhile Sales Tax Regime as underlying principles and inferences drawn may apply to certain cases under both the Statutes.

46.11 The Apex Court in case of CIT V. McDowell & Co Ltd (2009) 180 Taxman 514 has held that "Furnishing of a bank guarantee in respect of any sum payable by an assessee cannot be equated with actual payment as required under section 43B". It was further held that " Bottling fees payable

for acquiring a right of bottling of IMFL, which is determined under Excise Act and Rules, is neither fee nor tax, but is consideration for grant of approval by Government in respect of exclusive right to deal in bottling of liquor in all its manifestation and, consequently bottling fee payable under Excise Law for acquiring a right of bottling IMFL does not fall within the purview of section 43B". Tax Auditor can correlate with information disclosed as contingent liabilities in the audited financial statements for the previous year under consideration.

46.12 The Apex Court (9-member Constitution Bench) in case of Mineral Area Development Authority and Others V. Steel Authority of India and Others (2011) 4 SCC 450 has held that "Royalty is tax". Thus, Royalty payment outstanding as on balance sheet date shall be considered relevant for the purpose of Section 43B.

46.13 The Apex Court in case of CIT V. Modipon Ltd (2017) 87 taxmann.com 275 has held that "Even advance deposit of duty within the meaning of section 43B and it is entitled for the benefit of deduction" on the similar grounds, Delhi High Court in case of CIT V. Maruti Suzuki India Ltd (2013) 212 Taxman 603 has held that "advance deposits in Excise Personal Ledger Account cannot be disallowed under section 43B".

46.14 The Apex Court in case of Berger Paints India Ltd v. CIT (2004) 135 Taxman 586 (SC) has held that " The entire amount of excise duty/customs duty paid by the assessee in a particular accounting year is an allowable deduction in respect of that year, irrespective of the amount of excise duty/customs duty which is included in the valuation of the assessee's closing stock at the end of the accounting year".

46.15 The MP HC in case of CIT V. Mohanlal Mishrilal & Sons (1996) 87 Taxman 194 & CIT V. Mohansingh & sons (1995) 216 ITR 432 has held that "Mandi tax is not a tax as it is paid by a trader who enjoys the facility of mandi because some services are provided by the mandi and, therefore, that cannot be taken as tax as the same is collected for the services rendered".

46.16 Section 43B starts with non-obstante clause viz. "Notwithstanding contained in any other section ……." which means irrespective of the accounting treatment in the profit and loss account drawn for the previous year under consideration following mercantile or cash basis of accounting

as permissible u/s 145 of the Income-tax Act, 1961, deduction under section 43B is allowable only on payment basis.

46.17 Under the first proviso to section 43B, deduction is available in respect of any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139. Since the due date of filing of the return would usually be subsequent to the signing of the tax audit report, the tax auditor would be able to give information in respect of matters only upto the date of signing of the tax audit report. The payment made subsequent to that date but before the date of filing of the return, will still be eligible for deduction under section 43B. Where due date for filing of return of income is extended, payments made upto the extended due date also qualify for deduction.

46.18 Under section 43B(a), Central sales-tax/VAT/excise duty/GST when paid is allowed as a deduction. Although under clause (a) of section 43B, items that have been debited to the profit and loss account but not paid during the previous year, are to be specified, where it is the practice of the company to maintain a separate central sales-tax/ VAT/excise duty/GST account and treat the central sales tax/excise duty/VAT/GST collected as a liability, it would be necessary to show by way of note under this clause, the amount of central sales tax/excise duty/VAT/GST etc. collected but not paid. In case, any sum has been paid before the due date of filing the return, the date and the amount of payment along with the amount paid should also be disclosed.

46.19 The Finance Act, 2021 added Explanation 5 to Section 43B to clarify that the provisions of this section shall not apply to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies. Similarly, Explanation 1 and 2 has been added to section 36(1)(va). In view of the above Explanations, if there is a delay in payment of these sums to the concerned authority after the relevant due date specified under the respective Act, then such sum even though paid at any time beyond the due date will be disallowable permanently.

46.20 It may be noted that emoluments in the nature of good work reward, incentives or ex-gratia are not bonus or commission as contemplated under section 36(1)(ii) but are deductible under section 37 of the Act as held by *Delhi High Court in Shri Ram Pistons and Rings Ltd. 307 ITR 363 and Autopins (India) Ltd. 192 ITR 161.*

46.21 The Explanations 3C, 3CA and 3D to section 43B clarify that a deduction of any sum being interest payable under clause (d) and clause (e) of section 43B shall be allowed, if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance or debenture or any other instrument by which liability to pay is deferred to a future date shall not be deemed to have been actually paid.

46.22 The Circular No. 7/2006 dated 17th July, 2006 observes that the clarificatory Explanations only reiterate the rationale that conversion of interest into a loan or borrowing or advance does not amount to "actual payment". The Circular clarifies that the unpaid interest whenever actually paid to the bank or financial institution will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, the converted interest, by whatever name called, in the wake of its conversion into a loan or borrowing or advance, will be eligible for deduction in the computation of income of the previous year in which the converted interest is 'actually paid'. In other words, nomenclature of the sum of converted interest will make no difference as the sum of converted interest whenever is actually paid will not represent repayment of the principal. The Circular clarifies that the fundamental principle remains that once an amount has been determined as interest payable to the banks or financial institutions, any subsequent change of nomenclature of interest will not affect its allowability and deduction in terms of section 43B will have to be allowed on its actual payment. The Assessing Officer would therefore be justified in seeking a certificate from the assessee to be obtained by the assessee from the lender bank or financial institution etc. as evidence of "actual payment" of interest to banks or financial institutions.

46.23 As per clause (f), sum payable by the assessee as an employer in lieu of any leave at the credit of his employees will be disallowed if not paid before the due date of filling of the return under section 139(1).

46.24 The above particulars are required to be given irrespective of the fact whether they have been debited to profit and loss account or not and such a fact should be stated under this clause. For example, where GST etc. collected could be accounted for as a Balance Sheet item in cases where assessee is following the exclusive method of accounting for reporting of the taxes.

46.25 In some cases, the Tax Auditor may find amounts of the nature referred to in section 43B being credited to the profit and loss account although the relevant provisions for such liability had not been allowed as a deduction in

any previous year in view of the specific provisions of section 43B requiring actual payment as a condition precedent to allowance. The amounts so credited to the profit and loss account are not chargeable to tax since the conditions referred to in section 41(1) have not been satisfied. The tax auditor should identify such items and maintain the same in his working papers. Clause (g) refers to any sum payable by the assessee to the Indian Railways for the use of railway assets. Payments for the use of railway assets would not include basic rail freight, as such freight is for the service of transport and not for use of railway assets. The distinction between contracts of transportation and contracts for user (hire) of assets has been brought out, in the context of tax deduction at source, by the High Courts in the following cases:

CIT v Reliance Engineering Associates (P) Ltd [2012] 209 Taxman 351 (Guj)

CIT v Bharat Electronics Ltd [2015] 230 Taxman 651 (All)

CIT(TDS) v Indian Oil Corporation Ltd. [2018] 92 taxmann.com 281 (Uttarakhand)

46.26 Sums payable for use of railway assets would, however, include amounts payable for hire of railway wagons, or for hire of rail sidings, or lease rent payable for use of railways land or buildings. In case of payments for use of hoardings/display panels put up on railway premises, whether the payment is for use of railway assets would depend upon the terms of the contract and parties to the contract.

46.27 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility;

S.No.	Section	Nature of liability	Amount
1	2	3	4

47. (a) Amount of Central Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.

48. (b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

[Clause 27 (a) and (b)]

47. Clause 27(a)

47.1 Sub-clause (a) requires the factual reporting about the amount of CENVAT credits availed of or utilized during the year as well as its treatment in profit and loss account and treatment of outstanding CENVAT credits in the accounts. CENVAT Credit Rules, 2002 were first introduced in place of MODVAT credit and thereafter, effective 10 September 2004, CENVAT Credit Rules, 2004 have now become applicable. CENVAT credit is available on eligible inputs, input services and capital goods. Such credits are utilized for the payment of the excise duty liability. Accordingly, the tax auditor should check relevant statutory records maintained under the Central Excise Rules,2002 and the records maintained under CENVAT Credit Rules, 2004 and ascertain therefrom the amount of credit on eligible inputs, input services and the capital goods and the amount utilized during the previous year. Records maintained in RG-23, wherever available should also be verified.

47.2 The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant excise records. The tax auditor should report the amount of CENVAT availed and utilized under this sub-clause. In a given case, CENVAT availed may be lesser than the CENVAT credit utilized during the year on account of opening balance in CENVAT account or vice-versa and as such it would be advisable, in order to avoid any misleading conclusion and inferences, to report the opening and closing balances of CENVAT. Further, the sub-clause requires reporting of the credits availed of or utilized during the previous year, it is desirable to report both the credits availed and the credits utilized.

47.3 In so far as the reporting of accounting treatment of CENVAT credit is concerned, the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT credit in the account have to be reported upon.

47.4 Where the assessee follows exclusive method of accounting, the excise duty paid on purchase of raw material is debited to the CENVAT Credit Receivable Account and not as part of the purchase cost of raw material. The credit utilized is debited to the Excise Duty A/c and credited to CENVAT Credit Receivable Account. Thus, the credit availed and utilized will not have any impact on the profit and loss account.

47.5 The reporting requirement under clause 14(b) of Form No. 3CD is a requirement distinct and separate from the reporting requirement under this

clause. The tax auditor should verify that information furnished under this sub-clause is compatible with the information furnished under clause 14(b).

47.6 The tax auditor should consider the above guidance while reporting in the format provided in the e-filing utility with respect to this clause.

47.7 With regard to reporting of the amount of CENVAT credits availed or utilized during the previous year and its treatment in the profit and loss account, wherever possible, it is advisable to give the details of the credit availed and utilized as separate line items.

47.8 With regard to reporting of the treatment of outstanding CENVAT Credits in the account, it is desirable to mention the opening and the closing outstanding balances in the CENVAT Credits accounts as separate line items. The account in which the outstanding amount is appearing, should also be mentioned appropriately.

47.9 It is pertinent to note that since implementation of GST from July 1, 2017, central excise duty has been subsumed in GST and is leviable only on six products viz. petroleum crude, diesel, petrol, aviation turbine fuel, natural gas and tobacco. Hence, reporting under this clause is restricted for only those assessees who deal in these products.

47.10 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

CENVAT	Amount	Treatment in Profit & Loss /Accounts
Opening balance		
CENVAT Availed		
CENVAT utilized		
Closing/outstanding Balance		

48. Clause 27(b) - Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

48.1 It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of

accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current *year's* expenses/income even though they may relate to earlier years. The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed. In the case of a person whose accounts of the business or profession have been audited under any other law, the information may be available from annual accounts. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, however, a close scrutiny of the ledger in regard to the period for which expenditure or income is entered in the account books may be necessary.

48.2 It may be noted that there is a difference between expenditure of any earlier year debited to the profit and loss account and the expenditure relating to any earlier year, which has crystallised during the relevant year. Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items.

48.3 In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the year on the basis that the liability materialised or crystallised during the year and such cases will not be reported under this clause. Similar consideration will apply in relation to income also.

48.4 In AS – 5/ Ind AS 8, it has been explained that material charges (expenses) or credits (income) which arise in the current year as a result of errors or omissions in the accounts of the earlier years will be considered as prior period items/prior period errors. In view of this, the statutory auditor would normally take into consideration all items of prior period income and expenditure while giving his report on the financial statements. It would, therefore, be advisable for the tax auditor to ascertain the circumstances under which a particular expenditure has not been considered as a prior period expenditure. If, on making the enquiries, he comes to the conclusion that a particular item has to be treated as prior period expenditure, he should disclose the same against this sub-clause. In the circumstances, auditor is of the view that it is not a prior period item, the same may be disclosed in the observation para of the audit report.

48.5 The tax auditor should consider maintaining the following information in his working papers file for the purpose of reporting in the following format:

Sr. No.	Type	Particulars	Amount	Prior Period to which it relates (Year in yyyy-yy format)
1	2	3	4	5

49. Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia), if yes, please furnish the details of the same.

[Clause 28]

49.1 Section 56(2)(viia) provides that where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year from any person/s on or after 01.06.2010 ***but before 01.04.2017*** any property being shares of a company (not being a company in which the public is substantially interested,

(i) without consideration, the aggregate fair value of which exceeds rupees fifty thousand, the whole of the aggregate fair market value of such property

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration

shall be chargeable to income-tax under the head "Income from other sources". Thus, section 56(2)(viia) is not applicable for AY 2022-23 and onwards.

50. Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish the details of the same.

[Clause 29]

50.1 Section 56(2)(viib) provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident ('being a resident' omitted vide the Finance Act, 2023 w.e.f. AY 2024-25), any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head "Income from other sources".

50.2 The provisions of this clause are not applicable where the consideration is received

(a) by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund.

(b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf. Please refer Notification No. 13/2019 dated 05.03.2019 issued under this provision.

50.3 (c) from a non-resident. (till AY 2023-24)Proviso to section 56(2)(viib) states that where in terms of provisions of above referred notification under clause (viib) of section 56(2) is not applied to a company on account of fulfilment of conditions specified in the said notification, and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.

50.4 As per the Explanation to section 56(2)(viib), the fair market value shall be the value as may be determined in accordance with such method as prescribed under Rule 11UA or as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher.

50.5 Since section 56(2)(viib) is applicable to companies in which public is not substantially interested, reporting under this clause is to be done only for such companies. The auditor should obtain from the auditee, a list containing

the details of shares issued, if any, by him to any person and verify the same from the books of account and other relevant documents. Attention is invited to the provisions of section 2(18) which defines the company in which public are substantially interested.

50.6 For reporting under this clause with respect to unquoted equity shares, the auditor has to consider the provisions of Rule 11UA(2) which provides for manner of determining the fair market value of unquoted equity shares.

50.7 Where the fair market value of unquoted shares for the purpose of its issue is determined under:

- the Discounted Cash Flow Method for issue of equity shares - valuation report obtained by the assessee from a merchant banker,
- Rule 11UA(2)(a) for issue of equity shares - a valuation report obtained by the assesee from an Accountant or Management,
- Rule 11UA(1)(c)(c) for issue of shares other than equity shares – valuation report obtained from a merchant banker or an accountant
- Explanation (a)(ii) to Section 56(2)(viib) based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature – valuation report obtained from an expert. The auditor should obtain a copy of the valuation report. Here, attention is invited to the Standard on Auditing-620 "Using the work of an Auditor's expert".

50.8 The auditor should consider maintaining the following information in his working paper file:-

Sr No	Name and status of the person to whom shares have	PAN of person, if available	Whether the company is a company in which public are substantially interested	No. of Shares issued	Consideration received	Fair Market value as per Rule 11UA(1)(c)/11UA(2)	Face value of shares issued	Amount taxable under section 56(2)(viib) (Report the difference (f)-(g), ONLY if (f) is greater

	been issued							than (g), else report "Not Applicable"*)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

***** If status of person to whom shares are issued is a non-resident (till AY 2023-24) or a venture capital or specified unit then there is no tax under section 56(2)(viib).

51. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)

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

(i) Nature of income:

(ii) Amount thereof:

[Clause 29A]

51.1 This clause requires disclosure of whether any amount is chargeable to tax under section 56(2)(ix), and if so, to furnish prescribed details of such income. Section 56(2)(ix) provides for taxability as Income from Other Sources of any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.

51.2 The auditor is not required to report any such forfeited amount if it is in respect of a personal capital asset, where such asset or the advance or the forfeiture is not recorded in the books of account relating to the business or profession. If an advance has been received and has been outstanding for a considerable period of time or has become time barred, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

51.3 Forfeiture of amounts received as advance towards transfer of a capital asset is required to be reported under this clause. Any advances received and forfeited towards sale of stock-in-trade would be taxable under section 28(i) and would not be required to be reported since the amount would be credited to profit & loss account.

The tax auditor should verify with the auditee as to whether the amount has been forfeited. If the assessee contends that the amount has not been forfeited, the tax auditor may look at totality of developments and may obtain a management representation that even though the contract permits forfeiture on some conditions and even though such conditions have occurred but the assessee has not yet forfeited the advance and other sums received. Without right to forfeit, the amount so forfeited may become income under sub clause (ix) and the tax auditor should report such forfeiture with appropriate note.

51.4 Mere unilateral writing back of an advance by credit to the profit and loss account, asset account or capital account may not by itself amount to an act of forfeiture by the assessee. Such a write back is however an indication of a possible act of forfeiture, which needs further verification by the tax auditor. It is advisable for the tax auditor to disclose all such acts of unilateral write backs as well, out of abundant precaution, with appropriate note regarding the stand taken by the assessee. The Supreme Court, in the case of *Bankura Municipality v. Lalji Raja and Sons AIR 1953 SC 248, 250* has observed:

> "*According to the dictionary meaning of the word 'forfeiture', the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement, it would not come within the definition of forfeiture*."

51.5 The tax auditor should therefore obtain representation from the assessee regarding advances received at any point of time towards transfer of capital assets which have been forfeited during the year. The advances might have been received during the previous year. For the purpose of this clause, the previous year in which forfeiture takes place is relevant. He should also examine whether any amount of such advances has been written back during the year, and examine the basis of such write back to determine whether such write back was on account of an act of forfeiture. The reporting requirement is to state whether any amount is to be included as income chargeable under the head “Income from Other Sources”. If the answer to this is yes, then details are required to be furnished as under:

(i) Nature of Income

(ii) Amount thereof

51.6 As regards nature of income, the tax auditor should specify that the amount is forfeiture of advance received in the course of negotiation of transfer of capital asset.

52. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)

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

(i) Nature of income:

(ii) Amount (in Rs.) thereof:

[Clause 29B]

52.1 Sub-clause (a) requires reporting as to whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x). If the answer is in affirmative, tax auditor should state 'yes', in other cases, he should state 'no'.

52.2 Section 56(2)(x) provides that the following shall be income chargeable to income-tax under the head income from other sources, unless chargeable under any other head, being: Where any person receives in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied, then, it is treated as income of the recipient. The conditions for any such receipt for being treated as income are as follows: --

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,--

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:--

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent. of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

(c) any property, other than immovable property,-

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any sum of money or any property received --

(I) from any relative; or

(II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

(IV) in contemplation of death of the payer or donor, as the case may be; or

(V) from any local authority as defined in the Explanation to clause (20) of section 10; or

(VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(VII) from or by any trust or institution registered under section 12A or section 12AA or section 12AB; or

(VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf) of section 47; or

(X) from an individual by a trust created or established solely for the benefit of relative of the individual.

(XI) from such class of persons and subject to such conditions, as may be prescribed.

(XII) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(XIII) by a member of the family of a deceased person --

(A) from the employer of the deceased person; or

(B) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

where the cause of death of such person is illness related to COVID-19 and the payment is --

(i) received within twelve months from the date of death of such person; and

(ii) subject to such other conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

It is explained that for the purposes of clauses (XII) and (XIII) of this proviso, "family", in relation to an individual means

(i) the spouse and children of the individual; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;

For the purposes of this clause, --

(a) the expressions "assessable", "fair market value", "jewellery", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to section 56(2)(vii); and

(b) the expression "property" shall have the same meaning as assigned to it in clause (d) of the Explanation to section 56(2)(vii) and shall include virtual digital asset.

The term "property" has been defined to include only specific types of assets. It has been defined to mean the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art; or

(ix) bullion

52.3 Receipt of assets, other than these, would not be covered by the provisions of this section, and would therefore not be required to be reported. Stock-in-trade, not being a capital asset, is also not covered by this provision.

52.4 Fair Market Value as per Explanation to section 56(2)(vii) of property other than immovable property means the value determined in accordance with method prescribed under Rule 11U and 11UA. Such receipts which are exempt, cannot be charged as income under section 56(2)(x) and are therefore not required to be reported under this clause. The tax auditor should obtain a representation from the assessee regarding any such receipts during the year, either received in his business or profession and recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein. Based on such verification, tax auditor has to consider whether the question is to be answered in affirmative or otherwise.

52.5 In case answer to clause 29B(a) is yes, then tax auditor has to furnish the following details namely nature of income and amount. In case of nature of income, tax auditor should state whether the income is by way of receipt of any sum of money or from acquisition of any immovable property like land, building etc. or other than immovable property like shares and securities, jewellery, drawings, paintings etc. Value of income should be determined as provided in sub-clause (x) of section 56(2) which has been discussed hereinabove.

53. Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D].

[Clause 30]

53.1 Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment of such borrowings otherwise than by an account payee cheque, are required to be indicated under this clause. In this context, a reference may also be made to Circular No. 208 dated 15th November, 1976 and Circular No. 221 dated 6th June, 1977 issued by Board explaining the provisions of section 69D - refer ***Appendix XV.***

53.2 For this purpose, the tax auditor should obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account.

53.3 There will be practical difficulties in verifying the loan taken or repaid on hundi by account payee cheque. In such cases, the tax auditor should verify

the borrowing/repayments with reference to such evidence which may be available and in the absence of conclusive or satisfactory evidence, or the auditor may obtain suitable certificate/ management representation in this regard. Attention is invited to difference in wordings employed in section 69D and section 40A(3)/(3A). In later sections, payment through use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed is permitted whereas in section 69D, acceptance and payment through these measures is not mentioned and accordingly not permitted.

53.4 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting against the said clause in the format provided in the e-filing utility:

Sr. No.	Name of the person from whom the amount borrowed or repaid on hundi	PAN of (b), if available	Address of (b) with city, state and PIN code	Amount borrowed during the previous year	Date of borrowing	Amount due including interest	Amount repaid (including interest) during the previous year	Date of repayment
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

54. (a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes/No)

(b) If yes, please furnish the following details:-

(i) Under which clause of sub-section (1) of section 92CE primary adjustment is made?

(ii) Amount (in Rs.) of primary adjustment:

(iii) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)

(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)

(v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time.

[Clause 30A]

54.1 Clause 30A requires reporting of primary adjustments to the taxable income and various other details, for the purpose of making secondary adjustments under section 92CE. Section 92CE, providing for secondary transfer pricing adjustments, requires making of a secondary adjustment in certain cases where primary transfer pricing adjustments have been made. As per sub-section (1) of section 92CE, the secondary adjustment is required in the following cases where primary transfer pricing adjustment has been:

i. made by the assessee of his own accord in his return of income;

ii. made by the assessing officer and accepted by the assessee;

iii. determined under an Advance Pricing Agreement entered into by the assessee under section 92CC on or after 1st day of April 2017;

iv. made as per Safe Harbour Rules framed under section 92CB; or

v. arising as a result of a resolution of an assessment under Mutual Agreement Procedure under a double taxation avoidance agreement (DTAA) entered into under section 90 or 90A.

54.2 No secondary adjustment is required if the primary adjustment relates to assessment year 2016-17, or an earlier assessment year. No secondary adjustment is required if the amount of primary adjustment made in any previous year does not exceed Rs. 1 crore. Sub-section (2) of section 92CE provides that where due to the primary adjustment, there is an increase in the total income or a reduction in the loss of the assessee, the adjustment (difference between the arm's length price and the actual transaction price) is regarded as excess money available with the associated enterprise, and is to be repatriated to India within the prescribed time. Where the excess money or part thereof is not repatriated to India within the prescribed time, it is deemed as an advance to the associated enterprise and interest is to be computed on such advance in the prescribed manner, (as per Rule 10CB) as a secondary adjustment. Vide Finance Act 2019, an Explanation was inserted in the said

sub-section to provide that excess money or part thereof may be repatriated from any of the non-resident AE.

54.3 Sub-section (2A) however, provides that where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof, as the case may be. Sub-section (2B) further provides that the tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid. The provisions also state that where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax. Sub-section (2C) further provides that no deduction shall be allowed under the Act for the taxes paid under sub-section (2A).

54.4 Rule 10CB(1) provides for a time limit of 90 days for repatriation of the excess money or part thereof. This period of 90 days is to be computed from the following dates, in respect of each type of primary adjustment:

(i) Where primary adjustments are made in the return of income, from the due date of filing of the return of income under section 139(1);

(ii) Where primary adjustments made by the Assessing Officer have been accepted by the assessee, from the date of order of the Assessing Officer or the appellate authority, as the case may be;

(iii) Where an Advance Pricing Agreement has been entered into by the assessee before the due date of filing of Income-tax Return, from the date of filing of the return of income under section 139(1);

(iiia) Where an Advance Pricing Agreement has been entered into by the assessee after the due date of filing of Income-tax Return, from the end of the month in which the Advance Pricing Agreement has been entered.

(iv) Where the adjustment is as per Safe Harbour Rules, from the due date of filing of the return of income under section 139(1);

(v) Where the adjustment is on account of an agreement made under the Mutual Agreement Procedure under a DTAA, from the date of giving effect by the assessing officer under Rule 44H.

54.5 Rule 10CB(2) further provides the manner of computation of interest on excess money or part thereof which is not repatriated in India within the prescribed time limit. Where the international transaction is denominated in Indian rupees, the rate of interest will be the one-year marginal cost of fund lending rate of State Bank of India as on 1st April of the relevant previous year, plus 325 basis points (i.e. 3.25%). Where the international transaction is denominated in foreign currency, the rate of interest shall be the six-month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year plus 300 basis points (i.e. 3%). It may, however, be noted here that effective December 31, 2021, LIBOR was no longer to be used in the case of all Pound sterling, Euro, Swiss franc, and Japanese yen settings, and the 1-week and 2-month US dollar settings, and effective June 30, 2023, in the case of the remaining US dollar settings, and was to be replaced by new risk-free interest rates by adopting Alternative Reference Rates (ARR). Thus, the present rules would warrant a change to this effect. Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions,

54.6 Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus, the tax auditor is required to verify whether any primary adjustment is 'made' in terms of Section 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration. To illustrate, consider a case where taxpayer makes a voluntary adjustment in his return of income filed in November 2022 (pertaining to FY 2021-22). Such primary adjustment is to be reported in the tax audit report of FY 2022-23to be filed on or before October 2023, for the reason that the primary adjustment has taken place in November 2022 (i.e. during FY 2022-23). In the said example, if the excess money or part thereof with the AE is not repatriated to India within 90 days from the due-date of filing of ROI i.e. by 28th February 2023, interest on such excess money computed as per the prescribed rules will also need to be reported in the tax audit report to be filed in October 2023. Amendments by the Finance Act, 2019 - Amendments were made by the Finance Act, 2019 wherein it was provided that excess money or part thereof may be repatriated from any other non-resident AE avoiding additional tax. Further, if the excess money or part thereof was not repatriated within the prescribed time, option is granted to the assessee to pay additional tax on such excess money at the rates as

prescribed. The applicable additional tax was prescribed at 18% plus applicable surcharge & cess. The auditor should take care of the same.

54.7 It is also necessary that the disclosure under Clause 30A may need to be done in respect of each and every type of primary adjustment made in the relevant financial year, irrespective of the previous year to which this adjustment pertains to. For instance, an assessment order in relation to say, FY 2019 may be passed during FY 2022-23 wherein AO/TPO has made a primary TP adjustment and the same has been accepted by the taxpayer. Similarly, an APA may be signed by the taxpayer in FY 2022-23, which may provide for primary adjustment for the four roll back years from FY2018-19 to FY 2021-22. All these primary adjustments may need to be reported in the tax audit report of FY 2022-23.

54.8 For this purpose, the tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence.

54.9 If there is any such occurrence relating to assessment years 2017-18 or later years, and the amount of primary adjustment exceeds Rs. 1 crore, the tax auditor is required to report the fact that there has been a primary adjustment made during the previous year. Primary adjustments for earlier years prior to assessment year 2017-18, or primary adjustments totalling less than Rs. 1 crore for a previous year, which do not warrant a secondary adjustment, should also be reported under clause 30A(a)(i).

54.10 The tax auditor then needs to report the relevant clause of section 92CE(1) under which the relevant adjustment falls, and the amount of adjustment. In this regard, the auditor should also obtain a prior management representation on the information obtained to be true and accurate, basis which he should make the disclosure in the tax audit report. Hence the primary onus should be with the management.

54.11 Under clause 30A(b)(iii), the requirement is to report whether the excess money available with the associated enterprise is required to be repatriated to

India as per the provisions of section 92CE(2). If the adjustment relates to an assessment year prior to assessment year 2017-18, or the primary adjustment is of less than Rs. 1 crore, the excess money is not required to be repatriated to India, and the answer to this question may be given as "No". The answer to this question should be given as "Yes" only if the adjustment relates to assessment year 2017-18 or later assessment years, and if the adjustment exceeds Rs. 1 crore.

54.12 In case any such primary adjustment has taken place, which requires repatriation of the excess money or part thereof, the tax auditor should verify whether the excess money has been received, and whether it has been received within the prescribed time. He should report accordingly. In case the excess money or part thereof has not been repatriated within the prescribed time, the imputed interest income, which would be the secondary adjustment, needs to be computed. For this purpose, the tax auditor should ask the taxpayer to obtain certificates of the relevant SBI/LIBOR (Effective 31st December 2021/ 30th June 2023, LIBOR discontinued) interest rates, and provide the computation of the imputed interest income. The tax auditor should verify the correctness of such calculation of interest, on the basis of the certificates regarding the SBI/LIBOR rates plus the incremental interest, as per Rule 10CB.

54.13 At times the question has been posed with respect to the date up to which the imputed interest income is to be reported i.e. whether interest income imputed till the end of the previous year is to be reported or whether interest income imputed up to the date of furnishing of Tax Audit Report is to be reported. Since the reporting is for the previous year, it is advisable for the tax auditor to ensure that the amount of interest imputed till the end of the previous year is furnished. In case the interest up to the date of filing of the tax audit report is given, it is advisable for the tax auditor to provide a break-up of the amount of interest imputed till end of the relevant previous year and for the period post the end of the relevant previous year ending with the date of filing tax audit report. It is possible that interest income may be imputed during the relevant previous year in connection with primary adjustment made during the earlier previous years.

54.14 It is possible that amount of imputed interest income on the excess money not repatriated to India may relate to more than one year. Having regard to Rule 10CB, the interest liability extends till the date of repatriation. Accordingly, for the relevant year under audit, such liability in respect of

imputed interest may extend not only to the primary adjustment referred to in clause 30A(a) above but may also relate to primary adjustment made in the earlier years. Prima-facie, it appears that reporting of such interest is not required under clause 30A(b)(v) since clause 30A requires reporting only in relation to primary adjustment made during the relevant previous year. However, on the other hand, such interest income arising from primary adjustment made in earlier year is also taxable during the previous year under consideration and will be included in the return of income of the concerned previous year. Thus, it may be advisable for the taxpayer to furnish and tax auditor to verify and report the information pertaining to such primary adjustments in respect of interest income which is chargeable u/s. 92CE(2).

55. (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)

(b) If yes, please furnish the following details:-

(i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:

(ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):

(iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:

(iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

(v) Details of interest expenditure carried forward as per sub-section (4) of section 94B:

A.Y.	*Amount (in Rs.)*

[Clause 30B]

55.1 Clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest or of similar nature in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession". Section 94B provides that, where an Indian company or a permanent establishment of a foreign company in India, incurs any expenditure by way of interest or of similar nature exceeding Rs. 1 crore which is deductible in computation of income under the head "Profits & Gains of Business or Profession" in respect of a debt issued by a non-resident AE, such interest, to the extent of excess interest, shall not be deductible. Further, if the debt is issued by a lender who is not associated, but an AE provides either an implicit or explicit guarantee to such lender, or deposits a corresponding and matching amount of funds with the lender, such debt is also regarded as having been issued by an AE.

55.2 The excess interest is to be computed as the lower of:

(i) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA") of the borrower in the previous year; or

(ii) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, can be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this section.

55.3 The term "debt" is widely defined to mean any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in computation of income chargeable under the head "Profits and Gains of Business or Profession". Section 94B(3) excludes an Indian company or a PE of a foreign company engaged in the business of banking or insurance from applicability of the Section. With effect from and FY 2023-24 (i.e., from AY 2024-25) onwards, class of non-banking financial companies (NBFC) (being a NBFC as per section 45-I (f) of Reserve Bank of India Act, 1934 (2 of 1934) as notified, are also excluded from the purview of section 94(1). Section 94B(1A) also excludes interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

55.4 Also, if the assessee is not a company or the PE of a foreign company, the provisions of section 94B do not apply, and details under this clause are not required to be provided. In such cases, the answer to question (a) may be given as "No". Similarly, the section would apply only where interest (or expenditure of similar nature) paid or payable to non-resident AE(s) (or in respect of a debt where an AE – resident or non-resident – has provided an implicit or explicit guarantee or matching deposit) exceeds Rs. 1 crore during the year. In case the interest and similar expenditure paid or payable to non-resident AE(s) (or non-resident lender of such debt) does not exceed Rs. 1 crore, the section is not applicable. Hence, the answer to question (a) should be given as "No".

55.5 Expenditure of similar nature should be read in the context of "debt" as defined in section 94B(5)(ii). "Debt" is defined to mean loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discount or finance charges. "Expenditure of similar nature" for the purposes of this section would therefore include discount or premium on securities, finance cost component of lease rentals in respect of finance leases, guarantee commission, commitment fees or any other finance charges. In computing the limit of Rs. 1 crore, only interest and expenditure of similar nature which is deductible while computing income under the head "Profits and Gains of Business or Profession" should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible. Therefore, any interest disallowable under section 14A, under the proviso to section 36(1)(iii), under section 40A(i) or section 40A(2) should not be considered as interest for the purposes of section 92B(1). Similarly, interest disallowed on account of transfer pricing under section 92, should also not be considered, since such interest is not allowable in computing income under the head "Profits and Gains of Business or Profession".

55.6 In case such interest paid to AEs exceeds Rs. 1 crore, details in part (b) of the clause need to be given. In item (i) of sub-clause (b), details of expenditure incurred by way of interest or of similar nature need to be provided.. However, in view of the requirement of clause (a) where a specific question has been asked only with respect to section 94B(1), the subsequent clauses seem to be consequential and flowing from clause (a). Section 94B(1) confines itself to interest paid to Non-resident AE and section 94B(2) can be regarded as controlled by section 94B(1) since section 94B(2) operates "for the purposes of sub-section (1)". The computation of "excess interest" as per

section 94B(2) should be within the boundaries of interest referred to in section 94B(1), which is NR AE interest paid. The language of para 46.3 of CBDT's Circular No. 2 of 2018 containing Explanatory Notes to Provisions of Finance Act, 2017 (dated 15 February 2018) is similar to the format of reporting prescribed by CBDT in clause 30B of Form No. 3CD. The tax auditor has to obtain and report the expenditure incurred by way of interest or of similar nature paid to its non-resident AE or to the lender to whom the AE has provided an implicit or explicit guarantee or has deposited a matching amount of funds, out of the total interest and similar expenditure claimed as deduction. It should be kept in mind that word 'paid' in terms of section 43(2) means actually paid or incurred according to the method of accounting employed.

55.7 In item (ii) of sub-clause (b), the amount of EBITDA needs to be disclosed. Collins English Dictionary defines EBITDA as "the amount of profit that a person or company receives before interest, taxes, depreciation, and amortisation have been deducted". Section 94B(2) uses similar terminology. While computing the EBITDA, the figures as per the final audited stand-alone accounts of the company should be considered, and not the figures as adjusted for the income tax computation after various allowances and disallowances. In item (iii) of sub-clause (b), the amount by which the interest incurred as per item (i) exceeds 30% of EBITDA as per item (ii), needs to be given. In case the EBITDA is negative, the entire interest and other similar expenditure incurred as per item (i) need to be given here, without any adjustment for the negative figure, the negative figure being taken as nil.

55.8 In item (iv) of sub-clause (b), the details of brought forward excess interest disallowed in earlier years, which has not been allowed as a deduction, and which is available for deduction during the year under audit (without considering the limitation during the year under audit), is required to be given. For this purpose, the tax auditor should verify the computation of income as per the return of income filed or the relevant earlier years. In item (v) of sub-clause (b), the details of carried forward excess interest are to be given. This figure is to be computed after reducing the brought forward excess interest allowable as a deduction during the year under audit, or adding the excess interest of the year, as the case may be. The tax auditor should verify the draft computation of income certified by the management, or the tax advisor, as the case may be.

56. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)

(b) If yes, please specify:-

(i) Nature of the impermissible avoidance arrangement:

(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement

[Clause 30C]

56.1 Clause 30C of Form 3CD requires the Tax Auditor to report "Impermissible Avoidance Arrangements" (as referred to in Section 96) entered into by the assessee during the previous year and to quantify the tax benefit arising in the aggregate in the previous year to all the parties to such arrangement.

56.2 Chapter X-A provides for General Anti Avoidance Rules. This Chapter deals with impermissible avoidance agreement. The key features of the GAAR provisions are as follows:

- The provisions of General Ant-Avoidance Rule (GAAR) are contained in Chapter X-A comprising of section 95 to section 102 and the procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. Rules 10U to 10UF have been prescribed by the Central Government in respect of GAAR.
- The objective of GAAR is to target abusive transactions entered into with the main object of avoiding taxes with the use of sophisticated structures and codify the doctrine of "substance over form" where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. (Refer Explanatory Memorandum to Finance Bill 2012 which originally introduced GAAR.)
- Arrangements entered into prior to 1st April 2017 are excluded from the application of GAAR provisions.

- The provisions of GAAR are triggered when an arrangement is declared by the Principal Commissioner or the Commissioner or by an Approving Panel as an Impermissible Avoidance Arrangement ("IAA") in pursuance of provisions of section 144BA.
- An arrangement is to be treated as an IAA, if its main purpose is to obtain tax benefit ("Main Purpose" Test) and it satisfies any one or more of the four tests ("Additional Tests") specified in Section 96.
- The four tests ("Additional Tests") specified in Section 96 are:
    (i) Arrangement creates rights/ obligations which are not ordinarily created between persons dealing at arm's length, (which may also be referred to as "Abnormal Rights/Obligations");
    (ii) Arrangement results, directly or indirectly, in misuse or abuse of the provisions of the Act, (which may also be referred to as "Misuse Test");
    (iii) Arrangement lacks commercial substance or is deemed to lack commercial substance, by virtue of fiction created by section 97(which may also be referred to as "Lack of Commercial Substance' Test"), or
    (iv) Arrangement entered into or is carried out, by means, or in a manner, which not ordinarily employed for bonafide purposes (which may also be referred to as "Abnormal Manner' Test").

Moreover, It is clear from the provisions contained in the Act that twin conditions will have to be satisfied to treat any arrangement as an IAA. Firstly, there has to be an arrangement entered into by the assessee in respect to which "Main Purpose" test should be satisfied and secondly, any one of the aforesaid "Additional Tests" has to be satisfied.

56.3 Section 96(2) provides that if the main purpose of a step in or a part of the arrangement is to obtain a tax benefit, then, unless proven to the contrary by the assessee, the arrangement shall be presumed to have been entered into or carried out for the main purpose of obtaining a tax benefit, though the main purpose of the arrangement may not have been to obtain a tax benefit. Furthermore, detailed provisions have also been made to deem an arrangement to lack commercial substance whereby the scope of the "Lack of Commercial Substance Test" has been amplified under Section 97 As a result, to avoid the application of "lack of Commercial Substance Test", it would also

be necessary to pass through certain further tests, such as: the test of substance/effect of the arrangement over the form of its individual steps, whether there is a significant effect upon the business risks or net cash flows of any party to the arrangement or whether the arrangement involves 'round trip financing' (which is also very widely defined): any 'accommodating party' (which is also very widely defined); any element having the effect of off-setting each other and so on. It is also clarified that the factors like the period or time of arrangement, the fact of payment of taxes directly or indirectly under the arrangement, the fact that an exit route is provided by the arrangement may be relevant but not sufficient for determining whether an arrangement lacks commercial substance or not.

56.4 Section 144BA prescribes an elaborate procedure for declaration of the arrangement as impermissible avoidance arrangement in accordance with the provisions of Chapter X-A. Accordingly, if the Assessing Officer, at any stage of the assessment or reassessment proceedings, considers that it is necessary to declare an arrangement as IAA and to determine the consequences of such arrangement, he may make reference to the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income tax (CIT). If PCIT or CIT, as the case may be, is of the opinion that the provisions of Chapter X-A are required to be invoked, he has to issue a notice to the assessee. If the assessee does not furnish any objection to the notice within the time specified in the notice, the PCIT or the CIT shall issue such directions as he deems fit in respect of declaration of the arrangement to be an IAA. In case the assessee objects to the proposed action, the PCIT or the CIT if after hearing the assessee in the matter is not satisfied with the explanation of the assessee, shall make a reference to the Approving Panel for purpose of declaration of the arrangement as an IAA.

56.5 Rule 10UB provides that the Assessing Officer shall, before making a reference to the PCIT or CIT, issue a notice to the assessee. This notice shall contain various details including the details of the arrangement to which the provisions of Chapter X-A are proposed to be applied, the tax benefit arising under the arrangement, basis for considering that the main purpose of the arrangement is to obtain tax benefit, basis and reason why the arrangement satisfies the condition provided in clause (a), (b), (c) or (d) of section 196(1). (that is, twin conditions of the “Main Purpose” test and one of the additional tests). **Onus on the Revenue** - Considering this, the primary onus to establish that an arrangement is an IAA is on the revenue. The Approving Panel is

required to give opportunity to the assessee and the Assessing Officer of hearing before issuing directions. Thereafter, the Approving Panel shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an IAA. Directions issued by the Approving Panel are binding on the taxpayer and the tax department, and no appeal under the Act will lie against these directions. On the Other hand, the taxpayer would be required to prove that tax benefit is not the main purpose of its arrangement which is in question by the Revenue.

56.6 The Assessing Officer, on receipt of the directions of the PCIT or CIT or the Approving Panel, as the case may be, shall proceed to complete the assessment proceedings in accordance with such directions and the provisions of Chapter X-A. Section 98(1) outlines the consequences in relation to tax when an arrangement is declared to be an IAA. The consequences include among others, the denial of tax benefit or a benefit under a tax treaty. The consequences have to be determined in such manner as is deemed appropriate in the circumstances of the case.

56.7 Section 99 provides that while determining whether there is a tax benefit in the arrangement, parties who are connected persons in relation to each other may be treated as one person, accommodating party in the arrangement may be disregarded, and accommodating party and any other party may be treated as one and the same person or an arrangement may be considered or adopt 'look through' approach disregarding any corporate structure. Section 100 provides that provisions of Chapter X-A shall apply in addition to or in lieu of any other basis for determination of tax liability.

56.8 Section 102 defines various terms used in the Chapter. Under this section, 'arrangement' means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding. The section also defines the term 'connected person' in a wide manner.

56.9 Section 102 defines the term 'tax benefit' to include reduction or avoidance or deferral of tax or other amount payable under the Act, increasing refund or other amount under the Act, reduction or avoidance or deferral of tax or other amount that would be payable under the Act as a result of a tax treaty. It also includes increasing refund of tax or other amount under the Act or reduction of total income or increasing loss in any previous year.

56.10 Under Rule 10U, the GAAR provisions are not applicable in the following cases:

(i) an arrangement where the tax benefit in the relevant assessment year does not exceed three crore rupees in aggregate to all the parties to the arrangement in the relevant assessment year. (In computing such tax benefit, interest and penalty are not to be considered);

(ii) in case of a foreign institutional investor (FII) who has not availed of any tax treaty benefits and has invested in securities (listed/ unlisted) with the prior permission of the competent authority in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable; and

(iii) person being a Non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise in FIIs,

(iv) income accruing or arising to any person from transfer of investments made prior to 1st April 2017. Rule 10U(2) provides that the GAAR provisions shall apply in respect of tax benefit obtained from the arrangement after 1st April 2017, irrespective of when the arrangement was entered into.

56.11 Section 96 dealing with impermissible avoidance arrangement is included in Chapter X-A. Section 101 from this Chapter provides that the provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed. Rule 10U of the Income-tax Rules, 1962 provides certain conditions in this behalf. Sub-rule (1) of Rule 10U provides that the provisions of Chapter X-A shall not apply to an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of Rs 3 crore. Therefore, provisions of Chapter X-A, including section 96 are not applicable unless the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement is Rs 3 crores or more.

56.12 The CBDT vide Circular 7 dated 27th January 2017 has clarified in a question answer format various issues regarding application of these provisions. A reference may be made to the same.

56.13 From the discussion above, salient features of the GAAR, it will be noted that the provisions are complex and before an arrangement can be considered to be an IAA, various conditions have to be satisfied. While concluding whether

an arrangement is an IAA, it is necessary that tax benefit arising, in aggregate, to all the parties should be Rs 3 crore or more. The main purpose of these impermissible avoidance agreement itself is an opinion and calls for examination of the tax benefits arising to the assessee and to all the parties to the arrangement. Similarly, all the elements or conditions specified in section 96(1), satisfaction of which at least one is required to be fulfilled to make an arrangement an IAA. If one considers the provisions of section 99, for determining whether there is a tax benefit, various connected parties may be treated as one and the same person or any accommodating party may be disregarded or accommodating party and any other party may be treated as one and the same person or corporate structure may be disregarded. Apart from the above, the tax benefit is to be calculated in aggregate taking into account effect on all the parties to the arrangement. For the reasons, the Act also has laid down elaborate procedure and authority is entrusted to higher authorities and not to the Assessing Officer. Where the Tax Auditor has been provided access to the books of account and records of the other parties to the arrangement, he may be able to decide on IAA and report accordingly.

56.14 In the light of the above, the Tax Auditor should consider these aspects while reporting under this clause. Further, Form 3CA, as well as Form 3CB require the Tax Auditor to certify that the particulars given in Form 3CD are true and correct. If due to want of following elaborate investigation process not consonant within confines of audit and due to lack of access to the books of account and other records of other parties to the arrangement, if the Tax auditor is unable to come to a conclusion which he can certify any arrangement to be 'true and correct', he should make an appropriate disclaimer in respect of reporting under this clause in Form 3CA or Form 3CB, as the case may be. Tax auditor in his report may comment as suggested below while reporting under sub-clause (a):

"*In the absence of access to the books of account and other records of various parties to arrangement and want of elaborate investigations beyond ordinary process of audit involved in determining whether the arrangement is an impermissible avoidance arrangement, and in determining the tax benefit in the assessment year relevant to the previous year under audit arising, in aggregate, to all the parties to the arrangement, we are unable to determine the view of the assessee regarding its/his entrance into any impermissible avoidance agreement as contemplated under section 96 of the Act, during the previous year*".

56.15 In the light of the above discussion, the auditor should examine the following:

(i) The tax auditor should examine whether the Principal Commissioner or the Commissioner or the Approving Panel has, in any earlier previous year, declared any arrangement as IAA. In case, if any arrangement has been declared to be an IAA in any earlier previous year, the tax auditor should further examine if any transaction pertaining to or in connection with such declared IAA has taken place during the previous year under the audit. If any transaction pertaining to or in connection with such declared IAA has taken place during the previous year under the audit, the tax auditor is expected to report this fact. The Tax Auditor should also report tax benefit in the previous year arising from such transaction(s) to all the parties to the arrangement. If, however, due to the factors mentioned in the earlier paragraphs, if he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be.

(ii) The Auditor should examine if, in any earlier previous year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, If such references been made, the auditor should report the fact in form 3CA or form 3CB, as the case may be. The auditor should further examine if any transaction pertaining to or in connection with such arrangement in respect of which reference has been made or has taken place during the previous year under the audit. If any transaction pertaining to or in connection with such arrangement has taken place during the previous year under the audit, the tax auditor should report this fact. The Tax Auditor should also report tax benefit in the previous year arising from such transaction(s) to all the parties to the arrangement. If however, due to the factors mentioned in the earlier paragraphs he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be. Even if tax auditor is able to identify any impermissible avoidance agreement; amount of tax benefit in aggregate to all the parties in the arrangement, he will not be able to ascertain the same, as record of all the other parties to arrangement will not be available to him. Suitable disclaimer should be stated in such circumstances.

(iii) In either case, where the assessee has given response to any show cause notice or has preferred an appeal, along with outcome thereof should be taken into consideration while reporting.

57. (a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :

(i) name, address and permanent account number or Aadhaar Number (if available with the assessee) of the lender or depositor;

(ii) amount of loan or deposit taken or accepted;

(iii) whether the loan or deposit was squared up during the previous year;

(iv) maximum amount outstanding in the account at any time during the previous year;

(v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the person from whom specified sum is received;

(ii) amount of specified sum taken or accepted;

(iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account

payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

[Clause 31 (a), (b)]

Section 269SS

57.1 Section 269SS prescribes the mode of taking or accepting certain loans or deposits or specified sums. As per this section, no person shall take or accept from any other person any loan or deposit or specified sums otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed (hereinafter referred to as approved banking channels) if,-

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan and deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more. An exception is provided for Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") by raising the amount to Rs 2,00,000 applicable w.e.f. AY 2023-24.

The CBDT, vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020, has prescribed the other electronic modes under Rule 6ABBA w.e.f. 1st September 2019. Under the said Rule, the following shall be the other electronic modes for the purposes of Section 269SS:

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer), and

(h) BHIM (Bharat Interface for Money) Aadhar Pay.

57.2 As per the first proviso to section 269SS, the provisions of section 269SS shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,-

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 2(45) of the Companies Act, 2013;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

57.3 Sub-clause (a) and (b) of clause 31 are relating to section 269SS wherein sub-clause (a) seeks details of loan or deposit, whereas sub-clause (b) requires reporting on receipt of 'the specified sum'. Explanation below clause 31(b) states that particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.

Clause 31(a)

57.4 This clause seeks certain particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year. For the purposes of this section, "loan or deposit" means loan or deposit of money (Explanation (iii) to section 269SS).

57.5 While reporting under this clause, the tax auditor may keep in mind the following typical situations:

(i) Sale proceeds collected by the selling agent will not be considered as loan or deposit.

(ii) CIT vs. Idhayam Publications Ltd. (2006) 285 ITR 221 (Madras) may also be referred.

(iii) When there is a mixed account, the transactions relating to loans and deposits should be segregated from other accounts and the transactions relating to loans and deposits should be stated under this clause.

(iv) The money receivable in relation to transfer of immovable property is also specified sum. Further, "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. This clause (31(b)) would be applicable whether kept as immovable property. Booking advance to be reported.

(v) Opening credit balance of loan taken in earlier years is not specifically required to be disclosed. However, while giving figures of maximum amount outstanding at any time during the year or while giving information about acceptance and repayment of loan/deposit, the opening balances in the loan accounts will have to be taken into consideration.

(vi) Even if the loans are taken free of interest, the information will still have to be given.

(vii) Security deposits against contracts, etc. will be covered by the definition of 'deposit' and therefore, such information will have to be given. However, the amount retained by the contractee against performance of contract will not be covered as loans/deposits for reporting as amount is not received.

(viii) Loans and deposits taken or accepted by means of transfer entries in the books of account constitute acceptance of deposits or loans otherwise than by account payee cheques. Hence, such entries have to be reported under this clause. The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods/services will not be treated as loans or deposits accepted.

(ix) Share application money advance supported by appropriate documentation is neither deposit nor loan and subsequent allotment of shares or repayment of application money as a part of allotment process does not alter the character of application money and provision of Section 269SS and section 269T are not attracted in such a case.

Rugmini Ram Ragav Spinners P. Ltd. 304 ITR 417 Madras High Court and IP India P. Ltd. 343 ITR 353 and Numero Uno Financial Services P. Ltd. 345 ITR 84 Delhi High Court However, contrary view has been taken in *Bhalotia Engineering Works (P) Ltd. 275 ITR 399.*

57.6 Particulars of each loan or deposit falling within the scope of this section as mentioned above taken or accepted during the previous year have to be stated under this sub-clause. Reporting is required only where each loan or deposit in an amount of Rs. 20,000 or more severally or in aggregate of the three sums, as specified in the section. This sub-clause requires six specific particulars in respect of each loan or deposit including the permanent account number or aadhaar number of the lender or depositor, if available.

57.7 The tax auditor should obtain the above details from the assessee in respect of each reportable loan or deposit and verify the same from the records and evidence available with the assessee.

57.8 If the total of all loans/deposits/specified sum either severally or in aggregate from a person is Rs.20,000/- or more but each individual item is less than Rs.20,000/-, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches Rs.20,000/- or more and until the balance goes down below Rs.20,000/. As such the tax auditor should verify all loans/deposits taken or accepted where balance has reached Rs.20,000 or more during the year for the purpose of reporting under this clause.

57.9 There will be practical difficulties in verifying the loan or deposit taken or accepted by account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, for answering, as to whether bank cheque or bank draft was 'account payee', the tax auditors should make a suggested comment in his report. The suggested comment is as follows:

"It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee".

57.10 A reference may be made to Circular No. 22 of 2017 (F.No.370142/10/2017–TPL) dated 3rd July 2017. The CBDT, by the Circular, has clarified that 'in respect of receipt in the nature of repayment of loan by

NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for the loan shall not be aggregated for the purposes of determining applicability of the provisions of section 269ST.'

57.11 The auditor should consider maintaining the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility:

Sr. No.	Name of the lender or depositor	Address of the lender or depositor	PAN/Aadhaar No. of the lender or depositor, if available	Amount of loan or deposit taken or accepted	Whether the loan/deposit was squared up during the previous year	Maximum amount outstanding in the account at any time during the Previous year	Whether the loan/ deposit was taken or accepted otherwise than by an account payee bank cheque or account payee bank draft
1	2	3	4	5	6	7	8

Clause 31(b)

57.12 Under this sub-clause, particulars of any "specified sum" taken or accepted in relation to transfer of an immovable property, whether or not the transfer takes place has been dealt with. Such specified sum may be any sum of money receivable whether by way of advance or otherwise. Explanation (iv) to Section 269SS defines "specified sum" as any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. Reporting of specified sum taken or accepted is required under the circumstances specified above.

57.13 The tax auditor should ascertain whether the assessee has any immovable property which has been transferred or was proposed to be transferred during the year and review the relevant agreements, documents etc in this regard. The auditor should satisfy himself that the proceeds arising from such transfer, based on the review of documents, has been duly credited to the bank account by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

57.14 The auditor should consider maintaining the following information in his working papers for the purpose of reporting against this clause in the following format:

Sr. No.	Name of the lender or depositor	Address of the lender or depositor	PAN/ Aadhaar number of the person from whom specified sum is received, if available	Amount of specified sum taken or accepted	Whether the specified sum was taken or accepted otherwise than by an account payee bank cheque or account bank draft or use of electronic clearing system through a bank account	In case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee bank cheque or an account payee bank draft
1	2	3	4	5	6	7

58. (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing

system through a bank account:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Nature of transaction;

(iii) Amount of receipt (in Rs.);

(iv) Date of receipt;

(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Amount of receipt (in Rs.);

(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Nature of transaction;

(iii) Amount of payment (in Rs.);

(iv) Date of payment;

(bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day

or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of payment (in Rs.);

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017)

[Clause 31 (ba), (bb), (bc), (bd)]

Section 269ST

58.1 Section 269ST provides that no person shall receive sum of Rs. 2 lakh or more

a) in aggregate from a person in a day; or

b) in respect of a single transaction; or

c) in respect of transactions relating to one event or occasion from a person

otherwise than by an account payee cheque or an account payee demand draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. Contravention of section 269ST attracts penalty under section 271DA.

58.2 Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or `specified sum' referred to in section 269SS. 'Specified sum' means any sum of money receivable, whether as an advance or otherwise, in relation to transfer of an immovable property, whether not the transfer takes place. (Refer clause (iv) of the Explanation below section 269SS.)

58.3 It also does not apply to such persons or class of persons or receipts, which have been notified by the Central Government. The Central Government has issued two notifications in this respect. Under Notification No. S.O. 1057(E) [Notification No. 28/2017, F.No.370142/10/2017-TPL] dated 5th April, 2017, provisions of section 269ST do not apply to receipt by *any person* from an entity referred to in sub-clause (b) of clause (i) of the proviso to section 269ST i.e. any banking company, post office savings bank and co-operative bank.

58.4 Under Notification No. S.O. 2065(E) [No. 57 /2017, F.No.370142/10/2017-TPL] dated 3 July 2017, the Central Government has specified that the provisions of section 269ST shall not apply to the following receipts:

a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;

b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);

c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);

d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;

e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

58.5 The CBDT has vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020 prescribed the other electronic modes under Rule 6ABBA w.e.f. 1st September 2019.

58.6 The sub-clauses 31(ba), (bb), (bc) and (bd) deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 269ST.

58.7 Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, sub-clauses 31(ba), (bb), (bc) and (bd) do not distinguish between receipts and payments on capital account and revenue

account. Once the receipt or the payment, as the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses.

58.8 Sub-clauses 31(ba), (bb), (bc) and (bd) require particulars to be furnished of receipts or payments, as the case may be, in an amount exceeding the limits specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person. Thus, particulars are required to be given if receipts or payments, even though individually are lower than Rs. 2 lakh but in aggregate amount to Rs. 2 lakh or more if such receipts or payments are to or from one person in a day (whether related to a single transaction or otherwise) or relate to a single transaction (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than Rs. 2 lakh) or are in respect of more than one transaction but relate to a single event or occasion (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than Rs. 2 lakh).

58.9 Sub-clause 31(ba) and (bb) requires particulars to be furnished in respect of transactions exceeding Rs 2 lakh where assessee has received the amount from a person, whereas sub-clause 31(bc) and (bd) requires information about the transactions exceeding Rs 2 lakh where the payment has been made by the assessee to a person.

58.10 While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments is pertaining to a single transaction.

58.11 Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction,

pertain to a single event or occasion. For example, for a function organised by a person, assessee contractor may have been given catering contract as well as contract for flower decoration. In such a case, while the transactions may be different, the occasion or event would be the same and provisions of section 269ST will be attracted if the receipts exceeding the limits specified under section 269ST are by mode other than those specified in the section.

58.12 A reference may be made to Circular No. 22 of 2017 (F.No.370142/10/2017–TPL) dated 3rd July 2017. The CBDT, by the Circular, has clarified that 'in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for the loan shall not be aggregated for the purposes of determining applicability of the provisions of section 269ST.' The same analogy can be applied to instalment of insurance premium received by insurance companies etc.

58.13 It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party consideration for which exceeds Rs. 2 lakh. In such a case, if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, such set off is not a receipt as contemplated under section 269ST. If the amount of such set off exceeds Rs. 2 lakh, the tax auditor may give appropriate note to the effect that such set off not being a receipt or payment has not been included in the particulars given and the relevant sub-clause.

58.14 If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt or payment, as the case may be. He will have to classify the receipt or the payment, as the case may be, as under:

(i) otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account, into receipt or payment;

(ii) by cheque or bank draft not being an account payee cheque or an account payee bank draft.

While section 269ST deals only with receipts exceeding Rs. 2 lakh or more otherwise than by the specified modes, sub-clauses 31(ba), (bb), (bc) and (bd) require details to be furnished of both receipts and payments.

Clause 31(ba)

58.15 Sub-clause 31(ba) deals with receipts by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST otherwise than by way of a cheque or bank draft or use of electronic clearing system through a bank account. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payer;

(ii) Nature of transaction;

(iii) Amount of receipt;

(iv) Date of receipt.

Clause 31(bb)

58.16 Sub-clause 31(bb) deals with receipts by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST by way of a cheque or bank draft not being an account payee cheque or account payee bank draft. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payer;

(ii) Amount of receipt.

Clause 31(bc)

58.17 Sub-clause 31(bc) deals with payments made by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST otherwise than by way of a cheque or bank draft or use of electronic clearing system through a bank account. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payee;

(ii) Nature of transaction;

(iii) Amount of payment;

(iv) Date of payment.

Clause 31(bd)

58.18 Sub-clause 31(bd) deals with payments made by the assessee of an amount of Rs 2 lakh or more as stated in section 269ST by way of a cheque

or bank draft not being an account payee cheque or account payee bank draft. The details required to be furnished are:

(i) Name, address and PAN or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of payment.

58.19 In each of the above cases, as discussed earlier, the particulars have to be given of receipts or payments, as the case may be, in an amount exceeding the limits specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person.

58.20 Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under sub-clauses 31(bb) and 31(bd), although not required to be reported under the said sub-clauses.

58.21 Where payment is made or received by cheque or demand draft, there will be practical difficulties in verifying whether the relevant payment or receipt is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the Institute of Chartered Accountants of India in similar cases to the tax auditors has been to make a suitable comment. The tax auditor, in his report may make comment as suggested below while reporting under sub-clauses 31(bb) and 31(bd):

> *"It is not possible for me/us to verify whether the receipts/payments have been accepted/made otherwise than by an account payee cheque or an account payee bank draft, as necessary evidence is not in the possession of the assessee".*

58.22 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting of receipts under the sub-clauses 31(ba) and (bb):

S. N.	Name of the payer	Address of the payer	PAN/ Aadhaar number of the payer, if available	Nature of transaction	Date of receipt	Amount of receipt	Mode of receipt		Transaction /Document/ Event reference
							Whether otherwise than by cheque, bank draft or use of electronic clearing system through a bank account	Whether otherwise than by account payee cheque, account payee bank draft	
1	2	3	4		5	6	7	8	9

58.23 The tax auditor should maintain the following information in his working papers for the purpose of reporting of payments under the sub-clauses 31(bc) and (bd)

S. N.	Name of the payee	Address of the payee	PAN/ Aadhaar number of the payee, if available	Nature of transaction	Date of payment	Amount of payment	Mode of payment		Transaction /Document/ Event reference
							Whether otherwise than by cheque, bank draft or use of electronic clearing system through a bank account	Whether otherwise than by account payee cheque, account payee bank draft	
1	2	3	4		5	6	7	8	9

59. (c) Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) amount of the repayment;

(iii) maximum amount outstanding in the account at any time during the previous year;

(iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;

(v) in case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft.

[Clause 31 (c)]

(d) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

[Clause 31 (d)]

61. (e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)

[Clause 31 (e)]

Section 269T

59.1 Section 269T provides that no branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed if—

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is *twenty thousand rupees or more*. An exception is provided for Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") by raising the amount to Rs 2,00,000 applicable w.e.f. AY 2023-24.

Clause 31(c)

59.2 Sub clause 31(c) seeks information in respect of all the repayments made by the assessee of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year. Section 269T is attracted upon repayment of the loan or deposit or specified advance made by a person, where the aggregate amount of such loans or deposits held by such person or specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such loan or deposit or specified advance is Rs. 20,000 or more and is made otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

59.3 The CBDT has vide notification no. 8/2020/F. No. 370142/14/2019-TPL dated 29th January 2020 prescribed the other electronic modes under Rule 6ABBA w.e.f. 1st September 2019.

59.4 Explanation (iii) to Section 269T contains definition of the term “loan or deposit” for the purposes of section 269T. Accordingly, “loan or deposit” means any deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature. Further, explanation (iv) defines "specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place. As such, all repayments made to any person where the loan or deposit or specified advance received along with interest payable thereon is Rs. 20,000 or more are to be reported under this sub-clause, even though the amount of repayment may be less than Rs. 20,000. The tax auditor should verify such repayments and report accordingly.

59.5 The second proviso to section 269T inserted by the Finance Act, 2003 w.e.f. 1.6.2002 excludes repayments of loans taken from Government, Government company, Banking company, Corporation established by a Central, State or Provincial Act etc. from the scope of the above section and therefore the tax auditor need not report such repayments in his report. However, section 269T does not exclude Government companies, banking companies from the scope of its applicability. As such, details of repayment are to be shown in the case of these entities also.

59.6 In the case of company assessee, loan or deposit is defined to mean deposit repayable after notice or loan or deposit repayable after a period. Therefore, in case of a company, loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. However, in the case of non-company assessee, loan or deposit is defined to mean loan or deposit of any nature. This distinction will have to be kept in mind while giving information under this sub-clause.

59.7 Loan or deposits discharged by means of transfer entries in the books of account constitute repayment of loan or deposits otherwise than by account payee cheque or account payee bank draft. Hence, such entries have to be reported under this clause. The tax auditor has to take into account the technological advancements in the field of banking and information technology where loans have been repaid other than through an account payee cheque of bank draft which are capable of being tracked such as bank transactions made electronically through the internet or through mail transfer or telegraphic transfer. These types of payments, though not made by account payee cheques in the conventional manner, are capable of being tracked. In order to judicially apply the provisions of section 269T, the tax auditor need not report such cases under this clause. The Finance (No. 2) Act, 2014 has acknowledged the fact and allowed the "use of electronic clearing system through a bank account" as a permissible mode for the purposes of section 269T. The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods /services will not be treated as loans or deposits repaid.

59.8 The monetary limit of Rs. 20,000 or more is applicable in respect of a banking company or a cooperative bank with reference to each branch and in all other cases, assessee as a whole. The auditor should maintain the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility:

Sr. No.	Name of the payee	Address of the payee	PAN or Aadhaar Number of the payee, if available	Amount of the repayment	Maximum amount outstanding in the account at any time during the previous year	Whether the repayment was made by cheque or bank draft or use of electronic clearing system through a	In case the repayment was made by cheque or bank draft, whether the same was repaid by an account

						bank account	payee cheque or an account payee bank draft
1	2	3	4	5	6	7	8

Clause 31(d)

60.1 Under this sub-clause, the tax auditor has to provide details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year based on the examination of books of account & other relevant documents. In the case of a repayment of any loan or deposit or any specified advance taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act, the particulars under this sub-clause need not be given.

60.2 However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown. It may be noted that the requirement under this sub-clause is applicable for the repayment of loans or deposits or specified advances together with interest which are in excess of Rs 20,000/-.

60.3 Practically, especially in case the repayments are voluminous, it may not be possible to verify each repayment, reflected in the bank statement, as to whether the acceptance of deposits or loans or specified advance has been made through cheque, bank draft or not. It is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the repayments referred to in this sub-clause were originally received by cheque or bank draft or electronic clearing system through a bank account as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be. The tax auditor has to consider the above guidance while reporting against this sub-clause in the format provided in the e-filing utility.

Sr. No.	Name of the payer	Address of the payer	PAN or Aadhaar Number of the payer, if available	Amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year
1	2	3	4	5

Clause 31(e)

61.1 Under this sub-clause, the tax auditor has to provide details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year based on the examination of books of account & other relevant documents. In the case of a repayment of any loan or deposit or any specified advance taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act, the particulars under this sub-clause need not be given.

61.2 However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown. It may be noted that the requirement under this sub-clause is applicable for the repayment of loans or deposits or specified advances together with interest which are in excess of Rs 20,000/-.

61.3 Practically, it may not be possible to verify each repayment, reflected in the bank statement, as to whether the acceptance of deposits or loans or specified advance has been made through cheque, bank draft which is not an account payee cheque or account payee bank draft. It is, thus, desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the repayments referred to in this sub-clause were originally received by account payee cheque or account payee bank draft as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB. The tax auditor should make a suggested comment in his report. The suggested comment is as follows:

> *"It is not possible for me/us to verify whether loans or deposits or specified advance repaid have been taken or accepted otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system*

through a bank account, as the necessary evidence is not in the possession of the assessee".

The tax auditor has to consider the above guidance while reporting against this sub-clause in the format provided in the e-filing utility.

Sr. No.	Name of the payer	Address of the payer	PAN or Aadhaar Number of the payer, if available	Amount of repayment of loan or deposit or any specified advance received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year
1	2	3	4	5

62. (a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Sr. No.	Assessment year	Nature of loss / allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA/ 115BAC/ 115BAD	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/ 115BAD^	Amount as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

***If the assessed depreciation is less and no appeal pending than take assessed. ^ To be filled in for assessment year 2021-22 only**

63. (b) whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.

64. (c) whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same.

65. (d) whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.

66. (e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as

referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.

[Clause 32(a) to (e)]

62. Clause 32(a)- Details of brought forward loss or depreciation allowance

62.1 The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders read with appellate orders, if any. Depreciation on goodwill will not be available from AY 2021-22.

62.2 At times, while the particular claim for loss/allowance pertains to a particular assessment year as per the return of income, the same may relate to another assessment year as per the assessment order, e.g, Depreciation claim in respect of assets capitalized at the end of the financial year. In those cases, once the assessment order is received, the particulars have to be re-stated with reference to the assessment year to which they relate as per the assessment order. This should be accompanied by suitable explanation in the remarks column.

62.3 Brought forward losses may relate to different heads of income such as property income, profits and gains of business or profession, speculation business or capital gains. Different provisions are contained in sections 32 and 70 to 79A of the Income-tax Act with regard to loss/depreciation under different heads. In the remarks column information about the pending assessment or appellate proceedings or about delay in filing loss returns should be given. For giving the above information, the auditors should study the assessment records i.e. income-tax returns filed, assessment orders, appellate orders, orders giving effect to appellate order and rectification/ revisional orders for the earlier years and ascertain if the figures given in the above clause are correct. Attention of the members is invited to provisions of section 80 read with section 139(3) of the Income-tax Act, 1961. Section 80 provides that notwithstanding anything contained in Chapter VI of the Act, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139 shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (2) of section 73A or sub-sections (1) or (3) of section 74 or sub-section (3) of section 74A. Besides these, the tax auditor should keep in mind the

provisions of section 71B regarding Carry Forward and Set Off of Loss from House Property, section 73A regarding Carry Forward and Set Off of Losses by Specified Business and also section 78 regarding Carry Forward and Set Off of Losses in case of Change in Constitution of Firm or on Succession.

62.4 It means in case of any undisclosed income determined in case of an assessee during any proceedings of search, requisition or survey, then no adjustment or set off shall be allowed against such undisclosed income. The set off shall not be available in case of both brought forward losses as well as the unabsorbed depreciation. From Assessment Year beginning from 2022-23 onwards, the Tax Auditor, has to confirm and verify whether any search or survey has taken place or undergoing based on the records of assessment proceedings of the assessee and accordingly shall check if any undisclosed income has been determined in case of the assessee. The eligibility of brought forward losses and unabsorbed depreciation against such undisclosed income as computed by the assessee should be checked and based on that the necessary adjustments should be made to losses to be carried forward by the assessee.

62.5 The tax auditor should make appropriate disclosure in the "Remarks" column of the annexure provided for clause 32(a) of Form 3CD. In case, if the website utility of Form 3CD does not have specific column for such reporting, the tax auditor if deem fit can provide a note/qualification in Form 3CA / Form 3CB, in this regard.

62.6 Any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be disclosed in the remarks column by way of information. If consequential orders for any revision/appellate order is yet to be passed, the same can be disclosed along with the impact thereof if material. In case, order of appeal/revision is passed, the same shall be considered for reporting.

63. Clause 32(b)- Details of change in shareholding, if any

63.1 Section 79 of the Act provides that, notwithstanding anything contained in Chapter VI of the Act, in the case of a company, not being a company in which the public are substantially interested, where a change in shareholding has taken place in a previous year, then no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of that previous year and on the last day

of the previous year in which the loss was incurred, the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons.

63.2 The above condition shall not be applicable to eligible startups referred to in Section 80-IAC, if the shareholders of such company who held shares carrying voting power on the last date of the year or years in which the loss was incurred, continue to hold those shares on the last date of such previous year and such loss has been incurred during the period of ten years beginning for the year in which such company is incorporated

63.3 The words used in section 79 are 'beneficial' ownership of shares and not 'registered' ownership. Here, Delhi High Court judgement in case of *Yum Restaurants (India) Pvt. Ltd. v. ITO 380 ITR 637* needs to be kept in mind which has a different viewpoint. Also, this section applies when change in shareholding pattern takes place in a previous year relevant to an assessment year but not prior to said previous year.

63.4 This provision shall not apply to a change in the shareholding consequent upon:

(a) the death of a shareholder, or

(b) on account of transfer of shares by way of gifts to any relative of the shareholder making such gift.

(c) A resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(d) The Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act and a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(e) to a company to the extent that a change in shareholding has taken place during previous year on account of relocation referred to in Explanation to clauses (viiac) & (viiad) of section 47.

(f) to an erstwhile public sector company subject to the condition that the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold 51% voting power in aggregate, directly or indirectly through its subsidiary or subsidiaries

63.5 Above clauses (e) & (f) has been introduced by the Finance Act, 2022 and are effective from assessment year commencing from 1st April 2022. A new sub-section (3) has been also introduced to section 79 by the Finance Act 2022, w.e.f. 1st April 2022. The new sub-section provides that:

"*Notwithstanding anything contained in sub-section (2), if the condition specified in above clause (f) of the said subsection is not complied with in any previous year after the completion of the strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent years".*

63.6 Therefore, the Tax Auditor has to additionally check the compliances under the above newly inserted clauses and sub-section while reporting. The Tax Auditor should obtain the details of changes in voting power pattern year-on-year and verify the reasons for any such changes before determining the allowability of losses eligible to be carried forward. Tax Auditor should obtain necessary representation to this effect wherever it is not feasible to verify or cross-check the shareholding pattern and changes therein.

63.7

63.8 However, the overriding provisions of section 79 do not affect the set off of unabsorbed depreciation which is governed by section 32(2) *[CIT v Concord Industries Ltd. (1979) 119 ITR 458 (Mad)], CIT v. Shri Subbulaxmi Mills Ltd. 249 ITR 795 (SC). Also, unabsorbed capital expenditure on scientific research and unabsorbed capital expenditure on promoting family planning amongst the employees is not affected by this provision.* Although, the provisions of section 79 are overriding in case of unabsorbed depreciation, the tax auditor should check the provisions of section 79A w.e.f. Assessment Year 2022-23 onwards as regards to undisclosed income during the course of survey or search proceedings.

63.9 Sub-clause 32(b) requires a statement whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79. In this regard, now w.e.f. 1st April 2022 i.e. from Assessment Year 2022-23 onwards, the tax auditor should check the compliance of newly inserted clauses & sub-section as explained in above paras regarding changes in shareholding and allowability of losses.

63.10 The comparison of the composition of the shareholding is to be done with reference to the last day of the current previous year and the last day of every previous year in which the loss was incurred. The carry forward of the loss incurred in respect of different previous years is to be determined with respect to the individual previous years. Such comparison of the shareholding can be done by referring to the Register of Members.

64. Clause 32(c) – Speculation Loss under section 73 of the Income Tax Act

64.1 Section 73 of the Act provides for the treatment of losses in speculation business. Section 73(1) provides that any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

64.2 Section 73(2) further provides that where for any assessment year, any loss computed in respect of a speculation business has not been wholly set off under section 73(1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of Chapter VI, be carried forward to the following assessment year, and:

(i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

64.3 Section 73(3) provides that in respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

64.4 Furthermore, section 73(4) provides that no loss shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

64.5 As per Explanation 2 to section 28, Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business. It is to be seen whether a single speculative transaction can be termed as speculation business or not since it is not an organised activity to constitute a 'business'.

64.6 As per section 43(5), "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

(*a*) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him also known as hedging transactions; or

(*b*) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations also known as hedging; or

(*c*) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; or

(*d*) an eligible transaction in respect of trading in derivatives referred to in clause (*ac*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; *or*

(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013,

shall not be deemed to be a speculative transaction.

64.7 Having regard to the definition of "speculative Business", the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification, if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in section 73, if any incurred by the assessee during the previous year. It may be noted that it is not necessary that same speculation business needs to be continued to set off its loss of earlier year(s) against profit of same speculation business. It can be 'any' speculation business i.e., a different speculation business.

64.8 The tax auditor should maintain the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility:

S. No.	Nature of loss	Amount of loss for the current year	Brought forward loss of the earlier year(s)	Total loss to be carried forward to the subsequent year	Break- up of the speculation loss in terms of the number of years for which it has been carried forward	Whether the speculation loss has been set off against any other income other than profit & loss, if any, of speculation business
1	2	3	4	5	6	7

65. Clause 32(d) – Details of Losses incurred in respect of a Specified business as referred to under section 73A

65.1 Section 73A provides for provisions relating to carry forward and set off of losses by specified business. It provides that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. It is not

necessary that the nature of specified business in which loss is set off should be same as that of the specified business in which loss was incurred.

65.2 Section 73A(2) provides that where for any assessment year, any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*i*) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and

(*ii*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.]

65.3 Under clause 32(d), the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses, and loss has been incurred in more than one such business, the details of the loss incurred with respect of each business is to be specified separately.

65.4 The tax auditor should consider maintaining the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility:

Sr. No.	Nature of specified business	Amount of loss incurred, if any, during the previous year, with regard to the specified business	Loss from specified business brought forward from the earlier year	Amount of loss being set off against other specified business	Year of loss	Amount of loss being carried forward to the next assessment year	Whether loss set off against any other income other than from specified business as per

		mentioned in (b)					sec. 35AD of the Act
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

66. Clause 32(e) – Details of speculation loss, if any, incurred from deemed Speculation business as referred to in Explanation to section 73:

66.1 The Explanation to section 73 provides that where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities"', "Income from house property", "Capital gains" and" Income from other sources" or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

66.2 Under this clause, the tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred in explanation to section 73. The auditor may obtain information in the following format from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents:

Sr No	Applicable section	Nature of loss	AY of incurring loss	Amount of Loss	Amount set off during current AY	Amount to be carried forward
1	2	3	4	5	6	7

66.3 The above information so maintained may be used by the tax auditor for the purpose of reporting against this clause in the format provided in the e-filing utility. This explanation applies to losses considered as speculation loss for the purpose of this explanation. Conversely, loss of other business (other than speculation business under this explanation) can be set off against profit of said speculation business.

67. Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc, issued in this behalf.

[Clause 33]

67.1 Chapter VIA of the Act deals with various deductions which have to be given effect to by way of allowance from gross total Income of the assessee and they have been categorised under the Act as follows:

A. Deduction in respect of certain payments.

B. Deduction in respect of certain incomes.

C. Other Deductions.

While Chapter III relates to Income which do not form part of total income, the reporting under this clause is required only with respect to exemptions that can be claimed under section 10A (Special provisions in respect of newly established undertakings in free trade Zone etc) and section 10AA (Special provisions in respect of newly established units in Special Economic Zones). Attention is also invited to provisions of section 80AC which states that no deduction under Chapter VIA under the heading "C.—Deductions in respect of certain incomes" shall be allowed unless return of income is furnished on or before the due date prescribed under section 139(1). This is to note that at present return of income is furnished after submission of tax audit report.

67.2 As stated earlier, the tax audit report in Form No. 3CA/3CB relates to business or professional activity of the assessee of which the tax auditor is doing audit under section 44AB. Form No. 3CD is an annexure to this Form giving particulars relating to the business/profession covered by the tax audit report. Therefore, the requirement under clause 33 relating to the deductions

admissible under Chapter VIA, section 10A and section 10AA will have to be with reference to the items appearing in the books of account audited by the tax auditor. If the tax auditor is issuing tax audit report in respect of the accounts of a specific branch or a specific unit, he will have to examine the particulars relating to deduction admissible under Chapter VIA and exemption relating to section 10A/10AA, as the case may be, with reference to the books of account of that branch or that unit which is audited by him. However, in such circumstances, appropriate remarks towards exclusion of data relating to HO and other branches/units of the assessee, is necessary. Similarly, when the tax auditor is issuing report regarding tax audit of the head office, he will have to take into consideration the tax audit reports of the branches as well as other units of the assessee which may have been audited by the other tax auditors and comply with SA-600 - "Using the work of another auditor" issued by ICAI. He will have to consider the particulars of deductions admissible under Chapter VIA and exemption relating to section 10A/10AA, as the case may be with reference to the particulars given by the tax auditor of other branches/units and also particulars of such deductions from books of the head office.

67.3 In the case of a sole proprietor being an individual or HUF, it may so happen that the tax auditor is auditing the accounts of the business/ profession and the sole proprietor is having other activities and other sources of income in respect of which tax audit is not mandatory. In such cases, the particulars of deductions admissible under Chapter VIA will have to be given with reference to the items appearing in the books of account of the business/profession which is subject to audit under section 44AB.

67.4 The admissibility of the aforesaid deductions/exemptions is dependent upon various conditions laid down in the section under which deduction/ exemption is admissible. It is, therefore, advised that while working out the amount of admissible deduction, the tax auditor has to ascertain that those condition(s) stand fulfilled or not. For ascertaining this, the tax auditor has to obtain all necessary evidence which would enable him to express the opinion regarding the admissibility of deductions. In order to ascertain the fulfillment of this condition, the tax auditor may have to check all documentary evidence. Likewise, if there is any condition which qualifies the admissibility of the amount of deduction, the tax auditor has to see and ascertain that those qualifying conditions are fulfilled on the basis of documentary evidence available with the assessee. There may be cases where there is difference

between the amount claimed by the assessee and the amount computed by the tax auditor. In such cases, it is quite possible that the assessee's claim is based on some judicial pronouncement on the subject. In such cases, it may be advisable for the tax auditor to report the amount admissible. The amount claimed and the background behind and the basis of the claim of the assessee may form part of the working papers. If the claim of the assessee is well-founded and settled by judicial pronouncement, the tax auditor may accept the claim but he has to record in his working papers that admissible amount has been reported on the basis of such judicial pronouncement. In appropriate circumstances, such judicial pronouncements etc. should be mentioned in the report.

67.5 It may be noted that there are certain sections under Chapter VIA like section 80-IA, 80-IB, 80-IC, 80JJAA etc. where separate audit report or certificate is required to be issued. Under the said sections, an assessee who has income from industrial undertaking covered under the above sections has also to obtain audit report with reference to the accounts of these undertakings. While giving information with regard to the deduction allowable under such sections, the tax auditor should refer to separate audit reports/ certificates obtained by the assessee. These audit reports/ certificates may have been given by the tax auditor or by any other auditor. The figures given in such separate audit reports/certificates should be taken into consideration while giving information with regard to income covered by these sections. It is hereby mentioned that if certificate has been obtained from other auditor, then the tax auditor should comply with SA-600, Using the work of another auditor.

67.6 Since the details of exemptions admissible under sections 10A and 10AA are also to be reported in the desired format, the said information can be verified from the certificate issued by the chartered accountant in this regard. In case, a report under section 10A and 10AA has been issued by any other chartered accountant, then the same may be taken into consideration while reporting under this clause. Here, attention is invited to *SA-600, Using the work of another auditor*.

67.7 Some sections in Chapter VIA such as section 80G (donations), Section 80GGB/80GGC (contributions to political parties), section 80JJAA (wages of new workmen) etc. relate to the expenditure incurred by an assessee. There are other sections such as section 80P (income of co-operative societies), 80JJA (certain specified business relating to treatment of biodegradable waste) etc. which relate to income of the assessee. In respect of all these

sections, the tax auditor should ascertain whether there is any expenditure or income covered by the above sections recorded in the books of account audited by him. Information with regard to such expenditure/ income in respect of deduction allowable under Chapter VIA should be given on the basis of the examination of the books of account and other records under clause 33.

67.8 Section 115BA, 115BAA, 115BAB, 115BAC, 115BAD and 115BAE provide that no deductions under Chapter VIA or Chapter III can be claimed by the assessee opting for taxation under any of these sections except certain deductions as specified in the relevant sections, reply to clause 8a shall be considered and accordingly, admissibility of deductions should be examined.

68. (a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)*	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of **(6) and ***(8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

*Should be read as (5) for proper reporting

** Should be read as (7) for proper reporting

*** Should be read as (9) for proper reporting

69. (b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

Tax deduction and collection	Type of Form	Due date for furnishing	Date of furnishing,	Whether the statement of tax deducted or collected contains

Account Number (TAN)			if furnished	information about all transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported

70. (c) whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

[Clause 34(a), (b) and (c)]

68. Clause 34(a)

68.1 While reporting under this clause, the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the applicability of the provisions of Chapter XVII-B or XVII-BB with regard to the auditee. The tax auditor may rely upon the judicial pronouncements while taking any particular view. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. Where it is not possible to say yes/no, the answer to the question may have to be qualified depending upon the facts and circumstances of each case. Having verified the applicability of the provisions of Chapter XVII-B and Chapter XVII-BB, the tax auditor should answer the question as "Yes" and thereafter provide further details. Where the tax auditor is of the opinion that provisions of Chapter XVII-B and Chapter XVII-BB are not applicable, he should answer the question as "No". In case, answer is predominantly based on any judicial pronouncements, mentioning it in appropriate circumstances may be considered.

68.2 Once the tax auditor gives his affirmation with regard to applicability of the provisions of Chapter XVII-B and/ or Chapter XVII-BB, he is required to furnish further details in Clause 34(a). The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS/TCS return by the assessee for verifying the information required to be provided under this clause. Further, under section 194Q, the transaction of purchase of goods requires deduction of tax at source from 01.07.2021 in specified circumstances. On this subject, the CBDT has issued a Circular No. 13/2021 dated 30.06.2021 which may be referred. Under Section 206C(1H), tax is required to be collected on receipt of amount as consideration for sale of any goods in specified circumstances. Also, it may not always be possible for the tax auditor to decide which expenditure or any amount thereof results into benefit or perquisite (referring to applicability of section 194R w.e.f. 01.07.2022) and it is advisable to seek management representation in this behalf. Reporting any limitation on such ascertaining amount may also be considered. Further, with regard to applicability of section 194BA, (w.e.f 01.04.2023), the auditor should examine rule 133 and circular issued in this regard. It may be noted that while determining the amount to be reported in Clause 34(a), the tax Auditor has to check and verify the payments made by the assessee and should not only restrict to verification of expenses debited to Profit & Loss or the TDS/TCS returns filed and provided by the assessee. E.g. an advance payment made to any contractor may also be liable for deduction of tax.

68.3 Column (1) of Clause 34(a) requires reporting of each Tax deduction and collection account number with regard to which tax has been deducted or collected at source.

68.4 Column (2) requires various sections under which tax is required to be deducted or collected at source.

68.5 Column (3) requires furnishing the details regarding the nature of payment.

68.6 Column (4) requires furnishing the details of the total amount of payment or receipt of the nature specified in column (3). The details in the said column may be drawn from the books of account and other relevant documents which

include aggregate of payments/receipts on which tax is liable to be deducted as well as not liable to be deducted/collected. Auditor may maintain working papers giving reconciliation of amount as per books of account and amount on which TDS/TCS is required to be deducted/collected.

68.7 Column (5) casts an onerous responsibility on the auditor, wherein it is required to furnish the details of total amount on which the tax was required to be deducted or collected out of the amount mentioned in column (4) having regard to the nature of payments/ receipts under the relevant sections of Chapter XVII-B / XVII-BB. Since the reporting under column (4) is required to be made with regard to the nature of payments made or amount received, there may be a difference in the amounts reported under column (4) and column (5). The reasons for difference may be applicability of certificates issued under section 195/197 or threshold limits provided in specific sections or difference of opinion with regard to applicability of a particular section and the like. Auditor may maintain relevant working papers to this effect.

68.8 While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in the clause (3) of Form No. 3CA or clause (5) of Form No. 3CB as the case may be.

68.9 It is essential to note that it is the primary responsibility of the assessee to prepare the information in such a manner that the tax auditor can verify the compliance as required in the clause. The tax auditor is required to verify that no items have been omitted in the information furnished to him and reasonable test checks would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

68.10 In column (6), the tax auditor is required to furnish the total amount out of the amount deductible or collectible as mentioned in column (5) at which the tax was deducted or collected at the specified rate. The auditor has to consider the rates of deduction as per the law relevant to the previous year. Further, as

per the provisions of sections 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source. The tax auditor should refer to the relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source. In case the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued under section 195 or 197, the lower rate or nil rate, as the case may be, will be considered as the specified rate for the purpose of reporting under this clause. In the case of payment to non-residents, the applicable rate of tax deduction at source is to be read along with the Double Taxation Avoidance Agreement. Column (7) requires furnishing of total amount of tax deducted/collected out of the amount furnished in column (6).

68.11 Similarly, column (8) requires the tax auditor to furnish the total amount out of the amount deductible or collectible as mentioned in column (5) at which the tax was deducted or collected at the rate less than the specified rate out of Column (7). The lesser deduction is required to be reported in this clause. This will include deduction at a lower rate than what is prescribed, application of wrong section for deduction of tax at source, etc. For example, the assessee deducts tax u/s 194C @ 2%, however, there is another view that Tax is required to be deducted @ 10% u/s 194I, the same has to be reported under this clause/column. In case, there is difference of opinion with regard to rate of deduction or applicability of a particular section, the auditor may appropriately report the difference of opinion in the clause (3) of Form No. 3CA or clause (5) of Form No. 3CB as the case may be giving both the views. Further, column (9) requires furnishing of total amount of tax deducted/collected out of the amount furnished in column (8). The tax auditor should also consider applicability of higher rate of TDS/TCS under certain circumstances like non-furnishing of PAN, non-filers of return as provided in section(s) 206AA/206AB/206CC/206CCA.

68.12 Column (10) requires the auditor to furnish the details of the amount of tax deducted or collected but not deposited to the credit of the Central Government. As such, the tax auditor should verify the cases where the tax has been deducted at source but not paid to the credit of the Central Government till the date of the audit. It may be seen that tax deducted but deposited late and before the date of Audit will not be required to be reported in this column (10).

68.13 The details in the column(s) (6), (7), (8), (9) and (10) may be examined from the TDS/TCS returns/statements furnished by the assessee to the Income-tax Department and be cross- verified from the books of account and other relevant documents. The auditor may take the status of the demand payable as per the TDS CPC (popularly known as TRACES) for the purpose of reporting in clause 34.

69. Clause 34(b)

69.1 Under clause 34(b), the tax auditor has to ascertain and report as to whether the assessee is required to furnish the statement of tax deducted or tax collected at source within the prescribed time and answer 'yes' or 'no' depending on his examination. If the answer is 'yes', the tax auditor shall provide further details in a table contained in Clause 34(b) only with regard to the statement required to be furnished by the assessee.

69.2 The information given in clause 34(a) and (b) should be reconciled with the disallowances reported under section 40(a) in clause 21(b) to the extent applicable for cross checking appropriateness of reporting under both the clauses.

69.3 Under sub-clause (b), the scope of the reporting requirements is to furnish information about the statement of tax deducted at source and tax collected at source required to be furnished by the assessee. Under the sub-clause, the tax auditor is required to furnish a list of details/transactions which are not reported in the statement of tax deducted at source and statement of tax collected at source under column (5). Depending upon transactions that require tax deduction or collection, tax auditor should ascertain which statements, the assessee was required to furnish for the financial year under audit. He should check which statements have been furnished by the assessee for tax deducted as well as collected. The reporting requirement is notwithstanding the fact that the assessee has furnished the statements of tax deducted at source and tax collected at source or not.

69.4 In first column, TAN should be stated. Based on examination of transactions requiring tax deduction or collection, a list of type of each form the assessee was required to furnish should be stated in second column. Third column shall state due date for furnishing statement listed in the second column. Fourth column shall state date of furnishing the statement, if furnished. This information should be filled in, on the basis of acknowledgements for furnishing of statements. Fifth column requires tax

auditor to examine all the statements of tax deducted or collected and report whether all details/transactions required to be reported are furnished. If there is any deficiency in contents, the same is required to be reported against the relevant statement. If the information is voluminous, then the tax auditor should consider reporting significant deficiencies with appropriate remarks in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.

70. Clause 34(c)

70.1 Under this clause, the auditor is required to furnish detailed information in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. Section 201(1A) provides for payment of interest at a specified rate in case the tax has not been deducted wholly or partly or after deducting has not been paid to the credit of Central Government as required by the Act. Similarly, section 206C(7) provides for payment of interest at a specified rate in case the tax is not collected wholly or partly or if collected not paid to the credit of the Central Government as required by the Act. The reporting as to whether the assessee is liable to pay such interest, should be in consonance with the reporting under clause 34(a) where the details of non-deduction are required to be reported.

70.2 Where the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account as on 31st March of the relevant previous year and also from the statement generated by the Department in Form No. 26AS/AIS/TIS of the assessee. In case, the assessee had disputed the levy or calculation of interest under TRACES, or in Form No. 26AS, the auditor may re-calculate the amount of interest under section 201(1A) or section 206C(7) up to the date of audit report for reporting under this clause and also mention the fact in his observations paragraph provided in Form No. 3CA or Form No. 3CB, as the case may be.

70.3 Under mercantile system of accounting, interest if not paid till 31st March and provision is also not made, its impact on true and fair view should be considered.

71. (a) In the case of a trading concern, give quantitative details of the principal items of goods traded:

(i) Opening stock;

(ii) Purchases during the previous year;

(iii) Sales during the previous year;

(iv) Closing stock;

(v) shortage / excess, if any.

72. (b) In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products :

A. Raw materials:

(i) opening stock;

(ii) purchases during the previous year;

(iii) consumption during the previous year;

(iv) sales during the previous year;

(v) closing stock;

(vi) yield of finished products;

(vii) percentage of yield;

(viii) shortage/excess, if any.

B. Finished products/By-products:

(i) opening stock;

(ii) purchases during the previous year;

(iii) quantity manufactured during the previous year;

(iv) sales during the previous year;

(v) closing stock;

(vi) shortage/excess, if any.

[Clause 35 (a) and (b)]

71. Clause 35(a)

71.1 The tax auditor should examine whether the enterprise is a trading concern or not and it is accordingly reported in clause 10(a). If yes, auditor should obtain certificates from the assessee in respect of the principal items

of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/ excess/damage and the reasons thereof. The entire quantitative information should be examined by the auditor from the records.

72. Clause 35(b)

72.1 The tax auditor should ascertain whether the enterprise is a manufacturing concern and accordingly report it in clause 10(a). If yes, this sub-clause is applicable. The tax auditor should obtain certificate(s) from assessee in respect of principal items of raw materials, finished goods and by-products and quantitative information required to be reported in clause 35(b). This information should be given only in respect of those items where it is practicable to do so, having regard to the records maintained by the assessee.

72.2 The information about 'yield', 'percentage of yield', and 'shortages/ excess' is also required to be given.

72.3 By-products represent products whose manufacture results incidentally from the manufacture of the main product or where the waste arising in the manufacture of main product is further processed to create a by-product. Where the by-product so produced or is continuously generated, it should be treated for the purpose of sale and disposal at par with any other product produced by the company and similar records should be maintained. The quantitative details on the above lines are to be given in respect of by-product also.

72.4 In a large concern, for both the sub-clauses (a) and (b), it may be difficult for tax auditor to verify each and every item of purchase, consumption, sales and production. In such cases, he may verify the figures using sampling method and satisfy himself as to the correctness of the figures furnished. This clause requires that quantitative details of "principal items" of raw materials and finished goods should be given. Therefore, information about petty items need not be given. What would constitute principal items will depend on the facts of each case. Normally, items which constitute more than 10% of the aggregate value of purchases, consumption or turnover, as the case may be, be classified as principal items.

73. [Clause 36]

Omitted by the Income-tax (Eighth Amendment) Rules, 2021, w.e.f. 1-4-2021.

74. (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)

(b) If yes, please furnish the following details:-

(i) Amount received (in Rs.):

(ii) Date of receipt:

[Clause 36A]

74.1 Clause 22 of section 2 defines the term 'dividend' in an inclusive manner. Sub-clause (e) deems certain payments to be dividend. Conditions for attracting the provisions of the sub-clause (e) are as under:

(i) Payment should be by a company in which public are not substantially interested (referred here as `closely held company');

(ii) Payment should be by way of advance or loan or the payment by such company on behalf, or for the benefit, of any specified shareholder;

(iii) Specified shareholder means a person who is the beneficial owner of shares holding not less than 10% of the voting power. It may be noted that for considering the 10% of the voting power, what is relevant is the shareholding of the assessee alone and shareholding of his relatives is not required to be considered;

(iv) Payment by way of advance or loan should be to the shareholder or any concern in which the shareholder is a member or a partner and in which he has substantial interest;

(v) The company making the payment should have accumulated profits, at least to the extent of loan or advance or payment, as the case may be. The amount of dividend is restricted to the extent to which the company possesses accumulated profits.

74.2 Sub-clause (e) of clause 2(22) deems such loan or advance or payment in the aforementioned circumstances to be 'dividend' for the person being a recipient. The accumulated profits are to be computed up to the date of payment after considering provisions of Explanation 1, Explanation 2 and Explanation 2A below section 2(22). Explanation 3 defines the term 'concern' to include a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company. A person is deemed to have a substantial

interest in a concern (other than a company) if he is, at any time during the previous year, beneficially entitled to not less than 20% of the income of such concern. Section 2(32) defines the term 'person who has substantial interest in the company' to mean a person who is the beneficial owner of shares (not being shares entitled to fixed rate of dividend) carrying not less than 20% of the voting power.

74.3 It may be noted that even if the loan or advance is made by the closely held company to the concern, it is chargeable to tax in the hands of the shareholder and not in the hands of the concern. In this respect, a reference may be made to the decision of the Supreme Court in the case of *CIT v Madhur Housing & Development Co. (340 ITR 14)* confirming decision of Delhi High Court in the case of *CIT v Ankitech (P) Ltd. 340 ITR 14 (Delhi)*. A reference may also be made to the decision of the Bombay Court in the case of *CIT v Universal Medicare Pvt. Ltd. 324 ITR 263 (Bom)*. In order to enable reporting under this clause, the tax auditor should obtain from the assessee a certificate containing list of closely held companies in which he is beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has substantial interest. The tax auditor should also obtain a certificate from the assessee giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% voting power. These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the assessee. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the assessee. These remarks may be included in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

74.4 The tax auditor should also verify Form No. 26AS/AIS/TIS in the case of the assessee to know if the closely held company has deducted tax at source from any payment made by it to the assessee or the concern under section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.

74.5 So far as any payment by the closely held company made on behalf of or for the individual benefit of the assessee is concerned, there may not be any record available for the auditor to verify the same. In such a case, auditor may make appropriate remarks in clause (3) of Form No. 3CA or clause (5) of

Form No. 3CB, as the case may be. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the assessee in his capacity, say, as the managing director of the closely held company and if such payment has been considered as part of the remuneration, the same payment is not again chargeable to tax under section 2(22)(e) and is not required to be reported under this clause. For attracting section 2(22)(e), it is necessary that the assessee receiving a loan or advance should be a shareholder.

74.6 In the light of the above position, wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make appropriate remark about the basis of reporting in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be. Under the provisions of section 2(22), dividend does not include any advance or loan made to a shareholder or the concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company. As mentioned earlier, the dividend taxable under section 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier, any amount has been considered as income under any of the clauses of section 2(22), the accumulated profits will have to be reduced by such an amount. The tax auditor may not be able to determine the accumulated profits such as on the date of payment of the closely held company making the payment for various reasons. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case, the auditor should include appropriate remarks in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be, about the methodology adopted by him.

74.7 There may be business transactions between the closely held company and the concerns in which the assessee has substantial interest. Trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e). In this regard, the Central Board of Direct Taxes has issued Circular No. 19/2017 (F.No.279/Misc. /140/2015/ITJ) dated 12 June 2017. Considering the Circular, business advance or trade advances from closely held companies to the assessee or concerns in which the assessee has substantial interest are out of the purview of 2(22)(e) and need not be reported as dividend under this clause of Form No. 3CD.

74.8 The assessee or the concern may have current account of the closely held company in its books of account. In such a case, there could be various transactions accounted for in such current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the assessee or the concern. Considering various judicial decisions and the CBDT Circulars, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

74.9 Under sub-clause (a) of clause 36A, the tax auditor has to report whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2. If the answer is in affirmative, to state 'Yes', otherwise 'No'. If the answer is 'yes', the tax auditor has to report under sub-clause (b) of clause 36A. Under this sub-clause, each such amount received that is considered as dividend under section 2(22)(e) and the date of receipt thereof should be stated. In respect of this sub-clause, preserving appropriate working paper is recommended.

75. Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/ quantity as may be reported/identified by the cost auditor

[Clause 37]

75.1 The tax auditor should ascertain from the management whether cost audit was carried out and if yes, a copy of the same should be obtained from the assessee. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.

75.2 In cases where cost audit which might have been ordered is not completed by the time the tax auditor issues his report, he has to report appropriately in this report stating that since cost audit is not completed and the cost audit report is not available with the assessee.

75.3 The tax auditor should examine the time period for which the cost audit, if any, has been required to be carried out. Information is required to be given only in respect of such cost audit report, the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that cost audit report which is received upto the date of tax audit report.

76. Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/ identified by the auditor

[Clause 38]

76.1 The tax auditor should ascertain from the management whether any audit was conducted under the Central Excise Act, 1944 and if such audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details if any, of disqualification or disagreement on any matter/item/ value/quantity as may be reported/identified by the auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.

76.2 In cases where excise audit which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since excise audit is not completed and the excise audit report is not available with the assessee.

76.3 The tax auditor should examine the time period for which the excise audit, if any, has been required to be carried out. Information is required to be given only in respect of such excise audit report the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that excise audit report which is received upto the date of tax audit report.

77. Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/ identified by the auditor.

[Clause 39]

77.1 At present, no service tax is applicable, and as such no reporting is to be done under this clause.

78. Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

Serial number	Particulars	Previous year	Preceding previous year
1.	Total turnover of the assessee		
2.	Gross profit/turnover		
3.	Net profit/turnover		
4.	Stock-in-trade/turnover		
5.	Material consumed/finished goods produced		

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

[Clause 40]

78.1 These ratios have to be calculated for assessees who are engaged in manufacturing or trading activities, except ratio No. 5 which need not be required to be furnished for trading concern. In respect of service provider, only information at S. No. (1) and (3) need to be furnished.

78.2 While calculating these ratios, the tax auditor should assign a meaning to the terms used in the above ratios having due regard to the generally accepted accounting principles. All the ratios mentioned in this clause are to be calculated in terms of value only.

78.3 The following definitions given by the ICAI in its Guidance Note on the Terms Used in Financial Statements may be noted.

(a) ***Gross Profit*****:** The excess of the proceeds of goods sold and services rendered during a period over their cost, before taking into account administration, selling, distribution and financing expenses. When the result of this computation is negative, it is referred to as gross loss.

(b) ***Turnover*****:** The aggregate amount for which sales are effected or services rendered by an enterprise. The terms gross turnover and net

turnover (or gross sales and net sales) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts. Attention is also invited to (Sales, Turnover, Gross receipts) in this Guidance Note.

(c) ***Net Profit*****:** The excess of revenue over expenses during a particular accounting period. When the result of this computation is negative, it is referred to as net loss. The net profit may be shown before or after tax. It may be noted that the net profit to be shown here in this clause is net profit before tax.

78.4 For the purpose of calculating the ratio mentioned in S. No. (4), only closing stock is to be considered. The term `stock-in-trade' used therein does not include stores and spare parts or loose tools. The term "stock-in-trade" would include only finished goods and would not include the stock of raw material and work-in-progress since the objective here is to compute the stock-turnover ratio.

78.5 Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools.

78.6 The value of finished goods produced may be arrived at by using the following formula:

(a)	Raw material consumption	-
(b)	Stores and spare parts consumption	-
(c)	Wages	-
(d)	Other manufacturing expenses excluding depreciation.	-
	Sub total	-
	Add : Opening stock in process	-
	Deduct : Closing stocks in process	-
	Value of finished goods produced	-

78.7 Under this clause, calculation of the ratios is also to be stated. As such, computation of various components based upon which these ratios have been worked out is required to be stated under this clause. However, if any of the above component is stated in the financial statements themselves, a reference to the same may be made, to the extent possible.

78.8 There should be consistency between the numerator and the denominator while calculating the above ratios. Any significant deviation thereof should be pointed out in para 3 of Form 3CA or para 5 of Form 3CB.

78.9 The relevant previous year figures are to be taken from last previous year audit report or the reinstated figures, to make the ratios comparable with current year. In case, the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column.

79. Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.

[Clause 41]

79.1 The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1957 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/ refund orders issued by the governmental authorities during the previous year and received by the assessee upto the date of audit under any tax laws other than Income Tax Act and Wealth Tax Act. Normally, the tax laws such as Goods and Service Tax (GST), Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, Central Sales Tax, Professional Tax etc. would be covered as other tax laws. However, the auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

79.2 It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause. The tax auditor should verify the books of account and the orders passed by the respective Department(s) for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same. It is advisable to cross verify the demands from online portal of the respective Department. If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause. Appropriate representation should be obtained from the assessee. In case of corporate assessee, the auditor may check the said details with the disclosures of contingent liabilities in the audited financials, disclosures in statutory auditor's report pursuant to CARO, if applicable.

79.3 The tax auditor should maintain the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

S. No.	Financial Year to which the Demand / refund relates	Name of the applicable Act	Demand/ Refund Order No., if any	Date of Demand raised/ refund issued	Amount of demand raised/ refund issued	Remarks
1	2	3	4	5	6	7

79.4 The tax auditor also requires details of relevant proceedings. This information should be furnished in remarks column by stating the authority before which the matter is pending.

80. (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)

(b) If yes, please furnish:

S. No.	Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.

[Clause 42]

80.1 Sub-clause (a) of clause 42 asks tax auditor to state whether the assessee is required to furnish Form No. 61, Form No. 61A or Form No. 61B. The following contain provisions requiring the assessee to furnish these forms:

Form No.	Section & Rule	Particulars & Conditions
61	Section 139A(5)(c), Rule 114B,	Form No. 61 is to be filed by certain persons who have received any declaration in Form No. 60. Persons who have to file Form No. 61 are persons

Form No.	Section & Rule	Particulars & Conditions
	114C and 114D	referred to in: (i) Rule 114C(1)(a) to (k), and (ii) Following persons who are required to get their accounts audited under section 44AB of the Act: - persons raising bill in respect of payment made in cash for amount exceeding Rs. 50,000 to a hotel or restaurant, - persons raising bill in connection with foreign travel or purchase of foreign currency payment for which payment is made in cash for an amount exceeding Rs. 50,000, and - person raising bill in respect of transactions of sale or purchase of goods or services other than those specified at serial numbers 1 to 17 of the Table in Rule 114B where value of the transaction exceeds Rs. 2 lakhs per transaction.
61A	Section 285BA, Rule 114E	Rule 114E(2) provides for the nature and value of transaction in respect of which the statement is required to be filed and persons who are required to file the statement.
61B	Rule 114F, 114G and 114H	Rule 114F defines various terms, Rule 114G prescribes the information to be maintained and reported and Rule 114H prescribes the due diligence requirements.

80.2 On the basis of conditions stated in the relevant section and rule, the tax auditor should ascertain whether the assessee was required to furnish any of these three forms. If the answer is in affirmative, he should state 'yes', otherwise should state 'no'. Due dates for furnishing the forms are as under:

Form No.	Due date
61	31st October where declarations in Form No. 60 have been received before 30th September; and by 30th April where declarations in Form No. 60 have been received by 31st March of the immediately preceding financial year.
61A	31st May of the immediately following financial year
61B	31st May of the immediately following financial year

80.3 In case, answer to sub-clause (a) is in affirmative, tax auditor should report requisite information in sub-clause (b). Every reporting financial institution has to communicate to the Principal Director General of Income-tax (Systems), the name, designation and communication details of the Designated Director and the Principal Officer and obtain a registration number. This registration number is to be quoted in Form 61B. Form 61B also requires ITDREIN (Income-tax Department Reporting Entity Identification Number) which is a Unique ID issued by the Department which is communicated by the Department after the registration of the reporting entity. Thereafter, type of Form i.e Form no. 61, 61A or 61B is to be reported along with due dates of furnishing such Forms. Date of actual furnishing is also to be reported, in case furnished by the assessee and such date can be obtained from assessee's e-fling acknowledgement number of the said Forms.

80.4 The tax auditor is further required to state whether the Form contains information about all details or furnished transactions which are required to be reported. In case it is not, the tax auditor is required to furnish list of the details of transactions which are not reported. If the volume of deficiencies is large, the tax auditor may state certain deficiencies by way of an illustration and make appropriate remark in clause 3 of Form 3CA or clause 5 of Form 3CB.

80.5 Form No. 61, 61A and 61B uploaded on the income tax portal should be examined by the tax auditor for the purpose of reporting under this clause.

81. (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)

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

(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity

(ii) Name of parent entity

(iii) Name of alternate reporting entity (if applicable)

(iv) Date of furnishing of report

[Clause 43]

81.1 Clause 43 seeks information about applicability to furnish the report as referred to sub-section (2) of section 286. Section 286 deals with filing of Country by Country Report by `international group'.

81.2 Under section 286(1), every constituent entity resident in India if it is a constituent of an international group and the parent entity of which is not resident in India, has to notify the prescribed income tax authority in Form No. 3CEAC whether it is the alternate reporting entity of the international group; or the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

81.3 Section 286(9)(g) defines the term 'international group' to mean any group that includes, (i) two more enterprises which are resident of different countries or territories; or (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories. Alternate Reporting Entity has been defined in clause (c) of section 286(9) to mean any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group.

81.4 Section 286(2) casts an obligation on the parent entity if it is resident in India or the alternate reporting entity if it is resident in India to furnish for every `reporting accounting year', in respect of the international group of which it is a constituent, a report for the accounting year, which term is defined in section 286(9)(a), to the prescribed authority. The reporting requirement under section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed Rs. 6,400 crores (Rule 10DB).

81.5 Clause 43(a) requires the auditor to state whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report referred to in section 286(2). Thus, the obligation to furnish the report referred to in section 286(2) arises under following situations requiring reply in affirmative to clause 43(a):

(i) If the assessee itself is the parent entity of the international group and is resident in India, it will have the obligation to furnish the report under section 286(2);

(ii) If the assessee is resident in India and has been designated as the alternate reporting entity of the international group, it will have obligation to furnish the report under section 286(2);

(iii) If the assessee is a constituent of the international group with its parent entity resident in India and the group has not designated any other resident constituent entity as the alternate reporting entity, the parent entity will have the obligation to file the report under section 286(2);

(iv) If the assessee is neither the parent entity nor has it been designated as the alternate reporting entity, but other constituent entity resident in India of the international group has been designated as the alternate reporting entity by the group, such other constituent entity resident in India will have obligation to file the report under section 286(2).

81.6 The tax auditor should verify in the case of the assessee if any of the above four situations exist. The tax auditor should verify if the assessee whose parent is a non-resident has filed Form No. 3CEAC. It will indicate if the assessee or another constituent entity resident in India has been designated as the reporting entity for the international group. The tax auditor may obtain necessary certificate from the assessee in respect of constitution of the international group, entities that are resident in India and not resident in India and entity if appointed as the alternate reporting entity. If none of the above four situations described above exists, the reply to clause 43(a) will be negative.

81.7 If the reply to clause 43(a) is in affirmative, following information has to be furnished:

(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity.

(ii) Name of parent entity

(iii) Name of alternate reporting entity (if applicable)

(iv) Date of furnishing of report

If the assessee has filed a report, the tax auditor should verify acknowledgement for furnishing the same. If the report has been filed either by the parent of the assessee or another constituent entity of the international group, the tax auditor should ask for a copy of the report and acknowledgement for filing the report.

81.8 The term parent entity is defined in section 286(9)(h). The tax auditor should examine which is the parent entity and report name thereof. The term alternate reporting entity is defined in section 286(9)(c). The tax auditor should examine whether any such alternate reporting entity exists and if yes, name of the alternate reporting entity should be stated. From acknowledgement for furnishing report as referred to in sub-section (2) of section 286, date for furnishing of the said report should be stated.

82. Break-up of total expenditure of entities registered or not registered under GST:

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
1	2	3	4	5	6	7

[Clause 44]

82.1 A question may arise whether the above information is to be given in respect of each and every head of expenditure or only the total expenditure is to be given. Here, guidance may be taken from the heading of the table which starts with the words "Breakup of total expenditure" and hence the total expenditure including purchases as per the above format may be given. It appears that head-wise / nature wise expenditure details are not envisaged in this clause.

82.2 Depreciation under section 32, deduction for bad debts u/s 36(1)(vii) etc. which are accounting expenses in the nature of non-cash charges on the

Profit and Loss account should not be reported under this clause in any of the Columns from 3 to 7.

82.3 Headings of columns 3-6 and column 7 require reporting of "Expenditure in respect of entities registered under GST" and "Expenditure relating to entities not registered under GST" respectively. Thus, the expenses which are within the scope of GST i.e., which tantamount to 'supply' in terms of section 7 of the CGST Act, 2017 are only required to be reported under this clause in any of the columns from 3 to 7. For example, Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7. For example, Para (1) of the Schedule III covers "Services by an employee to the employer in the course of or in relation to his employment" and thus, remuneration to employees need not be reported.

82.4 It would be beneficial to have a 'control sheet' (working sheet) of total expenditure as follows and this will not form part of reporting under this clause:

Description *	Amount (Rs.)
Total value of expenditure in P&L for the year	XXXX
Add: Total value capital expenditure not included in P&L for the year	XXXX
Less: Total value of non-cash charges considered as expenditure	XXXX
Less: Total value of expenditure excluded for being transactions in securities and transactions in money	XXXX
Less: Total value of expenditure excluded by virtue of Schedule III to the CGST Act, 2017	XXXX
Balance being value of expenditure for clause 44	**XXXX**

** Details of all deductions & additions must be maintained for each sub-entity (GSTIN-wise) of the legal entity.*

82.5 It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the

deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.

82.6 The format as per clause 44 of form 3CD requires that the information is to be given as per the following details:

A. Total amount of expenditure incurred during the year

B. Expenditure in respect of entities registered under GST

C. Expenditure related to entities not registered under GST

82.7 The reporting in respect of B above, i.e. the expenditure in respect of entities registered under GST is further sub-classified into four categories as follows:

a) Expenditure relating to goods or services exempt from GST

b) Expenditure relating to entities falling under composition scheme

c) Expenditure relating to other registered entities

d) Total payment to registered entities

82.8 **Expenditure relating to goods or service exempt from GST (Column 3):** Here, the value of all inward supply of goods or services which are exempt from GST is to be given. Section 2(47) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) defines exempt supply as follows:

> *"exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;"*

To ascertain what are exempt supplies, the following notifications issued under the CGST Act, 2017 and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as IGST Act, 2017) are relevant:

(A) Notification No. 1/2017 CT (R), which prescribes rates for intra-State supply of goods

(B) Notification No. 2/2017 CT (R), which prescribes intra-State supply of goods which are exempt

(C) Notification No. 11/2017 CT (R), which prescribes rate for intra-State supply of services

(D) Notification No. 12/2017 CT (R), which prescribes intra-State supply of services which are exempt

(E) Notification No. 1/2017 IT (R), which prescribes rates for inter-State supply of goods

(F) Notification No. 2/2017 IT (R), which prescribes rates for inter-State supply of goods which are exempt

(G) Notification No. 8/2017 IT (R), which prescribes rates for inter-State supply of services

(H) Notification No. 9/2017 IT (R), which prescribes rates for inter-State supply of services which are exempt

82.9 Further, the definition of exempt supply also includes non-taxable supply. The term *"non-taxable supply"* has been defined in section 2(78) of the CGST Act, 2017 as follows:

> *"non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act"*

As per the above definition, *"non-taxable supply"* includes supply of goods or services which are not leviable to tax under the CGST Act, 2017 or under the IGST Act, 2017.

82.10 As per section 9 of the CGST Act, 2017 / section 5 of the IGST Act, 2017, the following supplies are not leviable to GST:

(i) supply of alcoholic liquor for human consumption

(ii) supply of petroleum crude, high speed diesel oil, motor spirit, natural gas and aviation turbine fuel

Hence, the above supplies, being not leviable to GST, are exempt supplies.

82.11 **Expenditure relating to entities falling under composition scheme (Column 4):** Levy of tax under composition scheme is governed by section 10 of the CGST Act, 2017. While reporting the expenditure under this head, the following should be considered:

a) A composition dealer cannot charge GST in the invoices.

b) A composition dealer cannot make inter-State supply.

c) A composition dealer can issue only bill of supply and not a tax invoice.

d) The composition dealer should have mentioned the specified words at the top of the bill of supply issued by them.

"Composition taxable person, not eligible to collect tax on supplies"

82.12 In case of ineligible input tax credits which are blocked under section 17(5) of the CGST Act, 2017 or in case of purchases from persons registered under composition levy, it is a normal practice of the small and medium taxpayers not to mention the GSTIN of the said suppliers in their accounting software. Hence, a suitable remark / reference in this regard by the tax auditor may be included in the report.

82.13 **Expenditure relating to other registered entities (Column 5)**. Value of all inward supplies from registered dealers, other than supplies from composition dealers and exempt supply from registered dealers, are to be mentioned here.

82.14 **Total payment to registered entities (Column 6):** The language used in sub-heading of Column 6 is total 'payment' to registered entities. The word 'payment' should harmoniously be interpreted as 'expenditure' as the combined heading of columns (3), (4), (5) is '**Expenditure** in respect of entities registered under GST'. Hence, the total expenditure in respect of registered entities i.e., sum total of values reported in columns (3), (4) and (5) should be reported in Column 6.

82.15 **Expenditure relating to entities not registered under GST (Column 7):** The value of inward supply of goods and/or services received from unregistered persons should be reported here. It should be ensured that the total of columns 6 and 7, tallies with the amount mentioned in column (2) except to the extent of expenditure/ allowance mentioned in above paras. The auditor may retain the reconciliation prepared by the assessee for verification.

82.16 It is important to differentiate the 'current status' of supplier's registration from their status as it was at the time of supply. There are several instances where registration may be cancelled with effect from an earlier date which may be prior to the date of supply to assessee. Events occurring after balance sheet date that alter the data relating to year under audit does not alter the nature of the expenditure, that it is from registered suppliers. Auditors may elect to extend their review up to a certain cut-off date or not at all. In either case, disclosure of notes of the position with regard to (i) known cancellations and (ii) treatment in the disclosure considering possibility of such

cancellations would go a long way in making the report meaningful and unambiguous.

82.17 In the table under clause 44, the language used is *"**expenditure** in respect of*". Since, the word used is 'expenditure', it is necessary that the capital expenditure should also be reported in the format prescribed. Separate reporting of capital expenditure will provide ease in reconciliation.

82.18 In case of multiple GST registrations of an entity, there is likelihood of inter-branch supply, which is eliminated at the consolidated financials. Proper reconciliation for such type of transactions may be kept on record. This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information in these columns may have to be filled up consolidating the expenditure incurred under various GST registrations.

82.19 In order to verify the details filled in, the tax auditor needs to obtain from the assessee, the required details in the below tabular format (an illustrative format which may be modified by the Tax auditor according to the facts and circumstances). The Tax auditor should verify the details furnished with the underlying document on a test check basis and retain the same as part of his working papers.

Expenditure head	Name of the entity to whom payment is made	GSTIN of the entity	Value debited to expenditure account	Value for which input tax credit is taken	Total amount paid to the vendor	Reason for NIL GST	General Remarks, if any

82.20 An appropriate disclosure should be made by the Tax auditor in Form 3CA/3CB, as the case may be, for the view taken by the assessee in relation to the meaning of "Total expenditure" and the method of filling up the appropriate columns. If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate.

83. Signature and Stamp/Seal of the signatory

83.1 Form No. 3CD has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB as the case may be. He has also to give his full name, address, membership number, firm registration number, wherever applicable, place and date. Where audit report is issued in soft copy, the tax auditor to affix his Digital Signature.

83.2 Tax Auditor should issue such signed copy of tax audit report in Form No. 3CA or 3CB and particulars in Form No. 3CD to the assessee.

84. Furnishing of Tax Audit Report

84.1 Section 44AB provides that every person, who is required to get his accounts audited for any previous year by an Accountant before the specified date should furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant setting forth such particulars as may be prescribed.

84.2 Form No 3CA or Form No 3CB as the case may be and Form No 3CD are required to be uploaded on the website of the Income tax department and should be digitally signed by the Auditors. The assessee is required to accept the tax audit report under his digital signature. The provisions of Information Technology Act, 2000 assume importance in this regard. It is important to note that these forms do not state that they have to be signed digitally or electronically. It is only proviso to Rule 12(2) of Income-tax Rules, 1962 which prescribes that where an assessee is required to furnish a report of audit specified under Section 44AB, he shall furnish the same electronically. Thus, the primary responsibility of furnishing the report electronically lies with the assessee. In this regard, Section 5 and 6 of the Information Technology Act, 2000 gives legal recognition to the electronic or digital signature. It is also relevant to note that electronic signature is a wider term defined in section 2(1)(ta) of the Information Technology Act, 2000 and includes digital signature which is separately defined in Section 2(1)(p) of the said Act. The forms are required to be uploaded with digital signature. It should be kept in mind by the Tax Auditor that the time and date of signature is automatically captured whenever the electronic signature is affixed and this date should tally with the manual date if any written in the hard copy of the Form No 3CA, 3CB and 3CD as the case may be.

84.3 As stated earlier, particulars of Form 3CD as per law i.e. under the Income-tax Rules, 1962 is different than the one available at the Income tax department website. Thus, the form available at the website is not as per provisions of law. The procedure laid down in Rule 12 requires furnishing of tax audit report by the Assessee on the Income-tax e-filing website. These forms are required to be uploaded on the website of the Income-tax Department by the Tax Auditor, which are later on approved by the assessee.

84.4 There are certain variations in the contents of Form No. 3CD prescribed under the Rules and available on the e-fling web site. Where Tax Audit Report has been furnished in accordance with the forms available in the Income-tax Rules, 1962, answers to certain clauses may not be exact response to the clause as stated in the Schema. However, this variation cannot be held against the Tax Auditor, as development of schema is not within his control and there is no specific option to issue the Tax Audit Report by the auditor as per the notified Form 3CD. Moreover, this fact has been brought to the notice of the CBDT by the DTC. Thus, where there is variation in any clause, it would be impossible to respond as per Form prescribed in the Rules.

84.5 In case of Joint Auditor(s), the present Income-tax filing options do not provide for modalities of uploading of report by all the joint auditors and in such a situation, it will be appropriate that the hard copy of the report duly signed in the manner above is given to the assessee client and a consolidated report is uploaded by one of the Auditors with a disclosure in this regard from the Joint Auditor(s).

84.6 At present, there is no specific place to mention paragraphs expected of SA 700, no mechanism to compulsory insert UDIN prior to uploading the forms on the Income-tax website and thus UDIN should be written in the hard copy of Form 3CA/3CB and thereafter the copy as stated above should be given to the auditee.

84.7 It may be noted that the Apex Court in case of *Life Insurance Corporation of India v. CIT (219 ITR 410)* has held that the law does not contemplate or require the performance of an impossible act - *lex non cogit ad impossibilia*. Similar view has been taken by the Supreme Court in *State of Rajasthan v. Shamsher Singh [(1985) AIR 1082], State of MP v. Narmada Bachao Andolan [(2011) 7 SCC 1019]* or in tax matter by the Allahabad High Court in *CIT v. Prem Kumar [(2008) 214 CTR All 452]*.

85. Useful websites and Reference Material/Publications

Some of the useful websites and Reference Material/Publications may be referred from ***Appendix XVI and XVII***.

APPENDICES

NOTE

- The appendices published hereinafter do not form part of the Statement. These are intended for the ease of reference to the readers.

- These appendices, among other things, also contain reproduction of texts of various sections of relevant statutes and notifications issued by the Government of India. While every effort has been made to avoid errors or omissions in reproduction, some errors are likely to creep in. It is, therefore, suggested that to avoid any doubt, the reader should cross-check all the facts, law and contents of the publication with original Government publication or notifications.

APPENDIX I

FORM NO.3CA

[See rule 6G(1)(a)]

Audit report under section 44AB of the Income-tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law

*I / we report that the statutory audit of M/s. _____ (Name and address of the assessee with Permanent Account Number or Aadhaar Number) was conducted by *me / us / M/s. _____ in pursuance of the provisions of the_____Act, and*I/we annex hereto a copy of *my / our / their audit report dated _____along with a copy of each of :-

(a) the audited *profit and loss account / income and expenditure account for the period beginning from ----------to ending on ----------.

(b) the audited balance sheet as at, _____; and

(c) documents declared by the said Act to be part of, or annexed to, the *profit and loss account / income and expenditure account and balance sheet.

2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.

3. In *my / our opinion and to the best of *my / our information and according to examination of books of account including other relevant documents and explanations given to *me / us, the particulars given in the said Form No. 3CD are true and correct subject to the following observations/qualifications, if any:

a.

b.

c.

.....

**(Signature and stamp/Seal of the signatory)

Place : _____ Name of the signatory .....

Date : _____ Full address .....

Notes :

1. *Delete whichever is not applicable
2. **This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.
3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefore.
4. The person who signs this audit report shall indicate reference of his membership number / certificate of practice / authority under which he is entitled to sign this report.

FORM NO.3CB

[See rule 6G(1)(b)]

Audit report under section 44AB of the Income-tax Act, 1961, in the case of a person referred to in clause (b) of sub-rule (1) of rule 6G

1. *I / we have examined the balance sheet as on, ____, and the *profit and loss account / income and expenditure account for the period beginning from ----------to ending on ----------., attached herewith, of _____(Name), _____(Address), _____(Permanent Account Number).

2. *I / we certify that the balance sheet and the *profit and loss / income and expenditure account are in agreement with the books of account maintained at the head office at _____ and ** _____ branches.

3.(a) *I / we report the following observations / comments / discrepancies / inconsistencies; if any:

(b) Subject to above, -

(A) *I / we have obtained all the information and explanations which, to the best of *my / our knowledge and belief, were necessary for the purpose of the audit.

(B) In *my / our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from*my / our examination of the books.

(C) In *my / our opinion and to the best of *my / our information and according to the explanations given to *me / us, the said accounts, read with notes thereon, if any, give a true and fair view :-

(i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31st March, ;and

(ii) in the case of the *profit and loss account / income and expenditure account of the *profit / loss or *surplus / deficit of the assessee for the year ended on that date.

4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.

5. In *my/our opinion and to the best of *my / our information and according to explanations given to *me / us, the particulars given in the said Form No.3 CD are true and correct subject to following observations/qualifications, if any:

a.

b.

c.

.....

***(Signature and stamp/seal of the signatory)

Place : _____ Name of the signatory .....

Date : _____ Full address .....

Notes :

1. *Delete whichever is not applicable.
2. **Mention the total number of branches.
3. ***This report has to be signed by person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.
4. The person, who signs this audit report, shall indicate reference of his membership number / certificate of practice number / authority under which he is entitled to sign this report.

FORM NO. 3CD

[See rule 6G(2)]

Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961

PART – A

1.	Name of the assessee	:	_____
2.	Address	:	_____
3.	Permanent Account Number or Aadhaar Number	:	_____
4.	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. If yes, please furnish the registration number or GST number any other identification number allotted for the same	:	_____
5.	Status	:	_____
6.	Previous year	:	from _____ to _____
7.	Assessment year	:	_____
8.	Indicate the relevant clause of section 44AB under which the audit has been Conducted		
8a.	Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD?	:	_____

PART - B

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

(b) If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change

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)

(b) If there is any change in the nature of business or profession, the particulars of such change.

11(a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.

(b) List of books of account maintained and the address at which the books of accounts are kept.

(In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

(c) List of books of account and nature of relevant documents examined.

12. Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.)

13.(a) Method of accounting employed in the previous year

(b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.

(c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

(d) Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2).

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

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

(f) Disclosure as per ICDS:

(i)	ICDS I-Accounting Policies	
(ii)	ICDS II-Valuation of Inventories	
(iii)	ICDS III-Construction Contracts	
(iv)	ICDS IV-Revenue Recognition	
(v)	ICDS V-Tangible Fixed Assets	
(vi)	ICDS VII-Governments Grants	
(vii)	ICDS IX Borrowing Costs	
(viii)	ICDS X-Provisions, Contingent Liabilities and Contingent Assets".	

14.(a) Method of valuation of closing stock employed in the previous year.

(b) In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

15. Give the following particulars of the capital asset converted into stock-in trade:

(a) Description of capital asset;

(b) Date of acquisition;

(c) Cost of acquisition;

(d) Amount at which the asset is converted into stock-in-trade.

16. Amounts not credited to the profit and loss account, being, -

(a) the items falling within the scope of section 28;

(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned;

(c) escalation claims accepted during the previous year;

(d) any other item of income;

(e) capital receipt, if any.

17. Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:

Details of property	Consideration received or accrued	Value adopted or assessed or assessable	Whether provisions of second proviso to sub-section (1) of section 43CA or fourth proviso to clause (x) of sub-section (2) of section 56 applicable?[Yes/No]

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 of written down value, as the case may be.

(ca) Adjustment made to the written down value under section 115BAC/115BAD(for assessment year 2021-2022 only) .....

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

(cc) Adjusted written down value.

(d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –

(i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

(ii) change in rate of exchange of currency, and

(iii) subsidy or grant or reimbursement, by whatever name called.

(e) Depreciation allowable.

(f) Written down value at the end of the year

19. Amounts admissible under sections:

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the 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.
32AC		
32AD		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(iia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

20.(a) Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)]

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

Serial number	Nature of fund	Sum received from employee	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

21.(a) Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc

Nature	Serial number	Particulars	Amount in Rs.
Capital expenditure			
Personal expenditure			
Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party			
Expenditure incurred at clubs being entrance fees and subscriptions			

Nature	Serial number	Particulars	Amount in Rs.
Expenditure incurred at clubs being cost for club services and facilities used.			
Expenditure by way of penalty or fine for violation of any law for the time being force			
Expenditure by way of any other penalty or fine not covered above			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

(b) Amounts inadmissible under section 40(a):-

(i) As payment to non-resident referred to in sub-clause (i)

(A) Details of payment on which tax is not deducted:

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(V) amount of tax deducted

(ii) as payment referred to in sub-clause (ia)

(A) Details of payment on which tax is not deducted:

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub- section (1) of section 139.

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payer

(V) amount of tax deducted

(VI) amount out of (V) deposited, if any

(iii) under sub-clause (ic) [Wherever applicable]

(iv) under sub-clause (iia)

(v) under sub-clause (iib)

(vi) under sub-clause (iii)

(A) date of payment

(B) amount of payment

(C) name and address of the payee

(vii) under sub-clause (iv)

(viiii) under sub-clause (v)

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

(d) Disallowance/deemed income under section 40A(3):

(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number or Aadhaar Number of the payee, if available

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A);

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number or Aadhaar Number of the payee, if available

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

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

(g) particulars of any liability of a contingent nature;

(h) amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income;

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

22. Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

23. Particulars of payments made to persons specified under section 40A(2)(b).

24. Amounts deemed to be profits and gains under section 32AC or 32AD or 33AB or 33ABA or 33AC.

25. Any amount of profit chargeable to tax under section 41 and computation thereof.

26. In respect of any sum referred to in clause (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:-

    (A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was

        (a) paid during the previous year;

        (b) not paid during the previous year;

    (B) was incurred in the previous year and was

        (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

        (b) not paid on or before the aforesaid date.

    (State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)

27.(a) Amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.

(b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.

28. Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia), if yes, please furnish the details of the same.

29. Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish the details of the same.

29A. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)

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

(i) Nature of income

(ii) Amount thereof:

29B. (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)

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

(i) Nature of income :

(ii) Amount (in Rs.) thereof

30. Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D]

30A. (a) Whether primary adjustment to transfer price, as referred to in sub-section 1) of section 92CE, has been made during the previous year? (Yes/No)

(b) If yes, please furnish the following details:—

(i) Under which clause of sub-section (1) of section 92CE primary adjustment is made?

(ii) Amount (in Rs.) of primary adjustment:

(iii) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)

(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)

(v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

30B. (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding

one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No.)

(b) If yes, please furnish the following details:—

(i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:

(ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):

(iii) Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :

(iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

(v) Details of interest expenditure carried forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

30C. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)

(b) If yes, please specify:—

(i) Nature of impermissible avoidance arrangement:

(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement

31. (a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-

(i) name, address and permanent account number or Aadhaar Number (if available with the assessee) of the lender or depositor;

(ii) amount of loan or deposit taken or accepted;

(iii) whether the loan or deposit was squared up during the previous year;

(iv) maximum amount outstanding in the account at any time during the previous year;

(v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the person from whom specified sum is received;

(ii) amount of specified sum taken or accepted;

(iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

(ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Nature of transaction;

(iii) Amount of receipt (in Rs.);

(iv) Date of receipt;

(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) Amount of receipt (in Rs.);

(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Nature of transaction;

(iii) Amount of payment (in Rs.);

(iv) Date of payment;

(bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) Amount of payment (in Rs.);

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017)

(c) Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payee;

(ii) amount of the repayment;

(iii) maximum amount outstanding in the account at any time during the previous year;

(iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;

(v) in case the repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or an account payee bank draft.

(d) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance

received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

(e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:—

(i) name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer;

(ii) repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)

32.(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Serial Number	Assessment Year	Nature of loss /allowance (in rupees)	Amount as returned* (in rupees)	All losses/ Allowances not allowed under section 115BAA/115BAC/115BAD	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/115BAD^	Amounts as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

*If the assessed depreciation is less and no appeal pending than take assessed. ^ To be filled in for assessment year 2021-22 only

(b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.

(c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same.

(d) whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.

(e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.

33. Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

Section under which deduction is claimed	**Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc, issued in this behalf.**

34.(a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

(b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported

(c) whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

35.(a) In the case of a trading concern, give quantitative details of principal items of goods traded :

(i) Opening Stock;

(ii) purchases during the previous year;

(iii) sales during the previous year;

(iv) closing stock;

(v) shortage/excess, if any

(b) In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products :

A. Raw Materials :

(i) opening stock;

(ii) purchases during the previous year;

(iii) consumption during the previous year;

(iv) sales during the previous year;

(v) closing stock;

(vi) yield of finished products;

(vii) percentage of yield;

(viii) shortage/excess, if any.

B. Finished products/by- products :

(i) opening stock;

(ii) purchases during the previous year;

(iii) quantity manufactured during the previous year;

(iv) sales during the previous year;

(v) closing stock;

(vi) shortage/excess, if any.

36. Omitted by the Income-tax (Eighth Amendment) Rules, 2021, w.e.f. 1-4-2021

36A. (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)

(b) If yes, please furnish the following details:-

(i) Amount received (in Rs.):

(ii) Date of receipt:

37. Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

38. Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

39. Whether any audit was conducted under section 72A of the Finance Act,1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

40. Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

S. No	Particulars	Previous year	Preceding previous year
1.	Total turnover of the assessee		
2.	Gross profit/turnover		
3.	Net profit/turnover		
4.	Stock-in-trade/turnover		
5.	Material consumed/finished goods produced		

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

41. Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 alongwith details of relevant proceedings.

42. (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)

(b) If yes, please furnish:

S. No.	Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.

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 (Yes/No)

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

(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity

(ii) Name of parent entity

(iii) Name of alternate reporting entity (if applicable)

(iv) Date of furnishing of report

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

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
1	2	3	4	5	6	7

……

*(Signature and stamp/Seal of the signatory)

Place:_____ Name of the signatory ……

Date:_____ Full address……

Notes:

1. *This Form has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB, as the case may be.

APPENDIX II

Clarification regarding authority attached to the documents issued by the Institute

"Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary".

(Volume I.A of the Compendium of Engagement and Quality Control Standards (9th Edition, 2012), page 3, Para 5)

APPENDIX III

[PARA 2.2]

Various certificates/reports by an Accountant

Besides tax audit, certain other sections in the Income-tax Act, 1961 also require audit/certifications by a chartered accountant as below:

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
1.	Assessees carrying on the business of growing and manufacturing tea/coffee/rubber claiming deduction under section 33AB.	33AB(2)	5AC	3AC
2.	Assessees carrying on business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement for the purpose of deposit	33ABA(2)	5AD	3AD

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	in Special Account/ Site Restoration Account under section 33ABA.			
3.	Assessees other than companies or co-operative societies claiming amortisation of certain preliminary expenses under section 35D and assessee being Indian company or a non-corporate resident claiming deduction for expenditure on prospecting etc. for certain minerals under section 35E.	35D(4) and 35E(6)	6AB	3AE
4.	Assessees carrying on business or profession whose sales, turnover or gross receipts exceed Rs.1 Crore (Rs.25 lakhs in the case of profession) as per the provisions of section 44AB, and assessees who claim their income to be lower than the profits or gains deemed to be the profits and gains of	44AB	6G	3CA/ 3CB/ and 3CD

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	their business under sections 44AD, 44AE, 44BB or 44BBB.			
5.	Assessee being a non-resident (not being a company) or a foreign company receiving income by way of royalty or fees for technical services from Government or India concern as per the provisions of section 44DA.	44DA(2)	6GA	3CE
6.	Every assessee who has effected slump sale in the previous year as per the provisions of section 50B.	50B(3)	6H	3CEA
7.	Every person who has entered into an 'International transaction or specified domestic transaction' as per the requirement of section 92E of the Act.	92E	10E	3CEB
8.	Report from an accountant to be furnished for purpose of section 9A regarding fulfilment of certain	9A	10V(13)	3CEJA

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	conditions by an eligible investment fund			
9.	Company assessee engaged in the business of bio-technology or manufacturing of specified article or thing incurring expenditure on scientific research (other than land and building) on an approved in-house research and development facility.	35(2AB)	6(7A)(c)	3CLA
10.	The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India to furnish Form No 3CT providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.	9(1)(i)	11UC(2)	3CT

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
11.	Certificate of an accountant under sub-rule (6) of rule 8B	2(48)	8B(6)	5BA
12.	Assessees who have been ordered by the Assessing Officer with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under section 142(2A) to get their books of account audited having regard to the nature and complexity of the accounts, volume of accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee and the interests of the revenue.	142(2A)	14A	6B

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
13.	Assessee being a trust or institution claiming deduction u/s 11 & 12 as per the requirement of section 12A(1)(b).	12A(1)(b)(ii)	17B	10B/10BB
14.	Assessee being any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of section 10(23C) claiming exemption under section 10(23C).	Clause (b) of Tenth proviso to 10(23C)(iv)/(v)/(vi)/ (via)	16CC	10B/10BB
15.	Assessees being electoral trust receiving voluntary contributions	13B	17CA(12)	10BC
16.	Certificate of accountant in respect of compliance to the provisions of clause (23FE) of section 10 of the Income-tax Act, 1961 by the notified Pension Fund	10(23FE)	2DB	10BBC
17.	Audit report to be filed by the	10(23FE)	-	-

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	Sovereign Wealth Fund claiming exemption under clause (23FE) of section 10 of the Income-tax Act, 1961			
18.	Assessees claiming deduction in respect of eligible businesses under sections 80 – IA or 80 – IB (except Multiplex Theatres/ Convention Centres/ hospitals in rural areas) and eligible undertakings/enterprises claiming deduction under section 80 – IC.	80-IA (7)/80-IB/ 80-IC and 80-IE	18BBB(1)	10CCB
19.	Assessees claiming deduction under section 80-ID in respect of the profits and gains derived from the business of hotels and convention centres in specified areas.	80-ID(3)(iv)	18DE(3)	10CCBBA
20.	Assessees claiming deduction under section 80-IB (11C) in respect of the	80-IB(11C)	18DDA	10CCBD

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	profits and gains from the business of operating and maintaining a hospital located anywhere in India other than the excluded area.			
21.	Assessees claiming deduction under section 80-IA (6) in respect of profits and gains of business of housing or other activities which are an integral part of a highway project.	80-IA(6)	18BBE(3)	10CCC
22.	Assessees, being scheduled banks owning an offshore banking unit in a Special Economic Zone and International financial services centre, for claiming deduction under Section 80LA in respect of specified incomes.	80LA(3)(i)	19AE	10CCF
23.	Assessees, being Indian companies, claiming deduction under section 80JJAA, in respect of employment of	80JJAA(2)(c)	19AB	10DA

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	new workmen.			
24	Certificate to be issued by accountant under clause (23FF) of section 10 of the Income-tax Act, 1961	10(23FF)	2DD(3)	10-IJ
25	Verification by an Accountant under sub-rule (3) of rule 21AJA Verification	10(4D)	21AJA(3)	10-IL
26.	Assessee responsible for making the payment to a non-resident	195(6)	37BB(1)(ii)(b)	15CB
27.	Assessee who has failed to deduct tax at source in accordance with the provisions of the Act, not be deemed as an assessee in default provided certain conditions are fulfilled and a certificate from an accountant to this effect is furnished in the format prescribed under section 201(1) of the Act.	First Proviso to section 201(1)	31ACB(1)	26A
28.	Assessee who has failed to collect tax	First Proviso to	37J(1)	27BA

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	at source in accordance with the provisions of the Act, not be deemed as an assessee in default provided certain conditions are fulfilled and a certificate from an accountant to this effect is furnished in the format prescribed under section 206C(6A) of the Act.	section 206C(6A)		
29.	Corporate assessees liable to pay Minimum Alternate tax under section 115JB of the Act, to furnish a report from an accountant certifying the computation of book profits.	115JB(4)	40B	29B
30.	Non-corporate assessees liable to pay Alternate Minimum tax under section 115JC of the Act, to furnish a report from an accountant certifying the computation of adjusted book profits.	115JC(3)	40BA	29C

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
31.	Assessee being a non-resident having a liaison office in India prepare and deliver a statement containing such particulars as may be prescribed.	285	114DA	49C
32.	Manufacturer assessee deriving Profits and gains from an undertaking by the export of articles or things or computer software	10A(5)	16D	56F
33.	Corporate assessee being an amalgamated company to furnish certificate from the principal officer, duly verified by an accountant regarding achievement of the prescribed level of production and continuance of such level of production in subsequent years.	72A(2)(b)(iii)	9C(b)	62
34.	Assessee being a venture capital company or a venture capital fund to furnish a statement giving details of	115U(2)	12C(2)	64

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
	the nature of income paid or credited during the previous year and other relevant details to be verified by an accountant as per section 115U.			
35.	Assessee being a business trust distributing income to its unit holders to furnish a statement giving the details of the nature of the income paid during the previous year and other relevant details to be verified by an Accountant as per section 115UA.	115UA(4)	12CA(2)(i)	64A
36.	Assessee being an investment fund making payment of income to unit holder of the said fund to furnish a statement giving details of the nature of the income paid or credited during the previous year and such other relevant details to be verified by an Accountant as per section 115UB.	115UB(7)	12CB(1)(ii)	64D

S. No.	Particulars of Report/ statement/ Certificates	Applicable Section of the Income-tax Act, 1961	Applicable Rule of Income-tax Rules, 1962	Form No.
37.	Assessee being securitisation trust making payment of income to its investor to furnish a statement giving details of the nature of the income paid or credited during the previous year and such other relevant details to be verified by an Accountant as per section 115TCA.	115TCA(4)	12CC(2)(i)	64E
38.	Assessees engaged in the business of operating qualifying ships having opted for computation of income from such business under the tonnage tax scheme contained in chapter XII G of the Act to furnish a report under section 115VW of the Act.	115VW(ii)	11T	66

APPENDIX IV
[PARA 5.8]

CIRCULAR NO. 452, DATED 17.3.1986

Subject: Section 44AB of the Income-tax Act, 1961- Clarification regarding applicability in the cases of Commission Agents, arahtias etc.

1. Section 44AB of the Income-tax Act, 1961, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs.40 lakhs (substituted by Rs. 1 crore by Finance Act, 2012 w.e.f. A.Y. 2013-14) in any previous year relevant to the assessment year commencing on 1.4.1985 or any subsequent assessment year.

2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of Section 44AB of the Income-tax Act, 1961.

3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachha arhatias and pacca arhatias dealing in different commodities in different parts of the country. The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract under consideration. Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether an agent is acting only as an agent or also as a principal.

4. Board are advised that so far as kachha arhatias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of Section 44AB. But the position is different with regard to pacca arhatia.

A pacca arhatia is not, in the proper sense of the word, an agent or even del credre agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principles of distinction can be laid down between a kachha arhatia and a pacca arhatia:

(1) A kachha arhatia acts only as an agent of his constituent and never acts as a principal. A pacca arhatia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as a principal as regards his constituent.

(2) A kachha arhatia brings a privity of contract between his constituent and the third party so that each becomes liable to the other. The pacca arhatia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.

(3) Though the kachha arhatia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arhatia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.

(4) The remuneration of kachha arhatia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arhatia.

(5) The kaccha arhatia, unlike the pacca arhatia does not have any dominion over the goods.

(6) The kaccha arhatia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a pacca arhatia has a personal interest of his own when he enters into a transaction.

(7) In the event of any loss, the kachha arhatia is entitled to be indemnified by his principal as is not the case with pacca arhatia.

5. The above distinction between a kachha arhatia and pacca arhatia may also be relevant for determining the applicability of Section 44AB in cases of other type of agents. In the case of agents whose position is similar to that of kachha arhatia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahtia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of Section 44AB of the Income-tax Act.

Circular No. 452 [F.No.201/3/85-IT(A-II) dated 17th March 1986.

JUDICIAL ANALYSIS

EXPLAINED IN - In *Jeyar Consultant & Investment (P.) Ltd.* v. *Assistant Commissioner [1993] 46 ITD 71 (Mad.-Trib.),* it was observed that it is *ex facie* clear from the CBDT Circular No. 452 of 17-3-1986 which came to be issued in relation to *kacha* and *pacca arhatias,* who are an integral part of the trading sector, that instructions issued by the Board as respects *kacha* and *pacca arhatias* could not be applied to the case of the assessee who has arranged finances for other for a fee. The assessee may choose to label the fee as brokerage or even as commission. But the fee or to use a generic expression 'receipt' could not be regarded as turnover proper.

RELIED ON IN - The above circular was relied on in *ITO* v. *Shantilal Chunilal & Co. [1993] 45 ITD 581 (Pune - Trib.),* with the following observations:

> ". . . Further, reference was made by assessee to pages 52 to 54 which contains Board's Circular No. 452, dated 17-3-1986 which has been issued in connection with section 44AB of the Income-tax Act, 1961. Reliance was placed on para 4 of the said circular according to which the Board were advised that so far as *kachha arahatias* were concerned, the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The submission of the learned counsel for the assessee was that the case of the assessee is one of *kachha arahatia* and not a *pucca arahatia* and, therefore, only gross commission has to be considered for the purpose of section 44AB of the Income-tax Act, 1961. . . The CIT (Appeals) has excluded the adat receipt as well as interest receipt from the purview of turnover for the purpose of section 44AB. Relying on the clarifications given by the Board in its Circular No. 452, dated 17-3-1986,

he has categorised the assessee as *kachha arahatia* and he has charged expenses incurred on such business which resulted in gross profit rate of 1.09 per cent. Therefore, it is very much relevant to clinch the issue whether the assessee is a *kachha arahatia* or not. Going by the clarification issued by the Board in the aforesaid Circular No. 452, dated 17-3-1986 the case of the assessee fits in with the *kachha arahatia vis-a-vis* case of *pucca arahatia. . . .”* (pp. 585-586).

REFERRED TO IN - Manish Textiles v. *ACIT [1991] 38 ITD 365 (Bom.).*

Appendix V
[PARA 5.11]

Circular No. 4/2007, dated 15th June, 2007

F.No.149/287/2005-TPL

Distinction between shares held as stock-in-trade and shares held as investment - tests for such a distinction

1. The Income-tax Act, 1961 makes a distinction between a "capital asset" and a "trading asset".

2. Capital asset is defined in Section 2(14) of the Act. Long-term capital assets and gains are dealt with under Section 2(29A) and Section 2(29B). Short-term capital assets and gains are dealt with under Section 2(42A) and Section 2(42B).

3. Trading asset is dealt with under Section 28 of the Act.

4. The Central Board of Direct Taxes (CBDT) through Instruction No.1827 dated August 31, 1989 had brought to the notice of the assessing officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, it is proposed to update the above instructions for the information of assessees as well as for guidance of the assessing officers.

5. In the case of *Commissioner of Income Tax (Central), Calcutta Vs Associated Industrial Development Company (P) Ltd (82 ITR 586)*, the Supreme Court observed that:

> "Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment."

6. In the case of *Commissioner of Income Tax, Bombay Vs H. Holck Larsen (160 ITR 67)*, the Supreme Court observed :

> "The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact."

7. The principles laid down by the Supreme Court in the above two cases afford adequate guidance to the assessing officers.

8. The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles:

"(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;

(ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

(iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt".

9. Dealing with the above three principles, the AAR has observed in the case of Fidelity group as under:-

> "We shall revert to the aforementioned principles. The first principle requires us to ascertain whether the purchase of shares by a FII in exercise of the power in the memorandum of association/trust deed was as stock-in-trade as the mere existence of the power to purchase and sell shares will not by itself be decisive of the nature of transaction. We have to verify as to how the shares were valued/held in the books of account

i.e. whether they were valued as stock-in-trade at the end of the financial year for the purpose of arriving at business income or held as investment in capital assets. The second principle furnishes a guide for determining the nature of transaction by verifying whether there are substantial transactions, their magnitude, etc., maintenance of books of account and finding the ratio between purchases and sales. It will not be out of place to mention that regulation 18 of the SEBI Regulations enjoins upon every FII to keep and maintain books of account containing true and fair accounts relating to remittance of initial corpus of buying and selling and realizing capital gains on investments and accounts of remittance to India for investment in India and realizing capital gains on investment from such remittances. The third principle suggests that ordinarily purchases and sales of shares with the motive of realizing profit would lead to inference of trade/adventure in the nature of trade; where the object of the investment in shares of companies is to derive income by way of dividends etc., the transactions of purchases and sales of shares would yield capital gains and not business profits."

10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

12. These instructions shall supplement the earlier Instruction no. 1827 dated August 31, 1989.

Circular No. 6/2016, dated 29.02.2016

Issue of taxability of surplus on sale of shares and securities - Capital Gains or Business Income - Instructions in order to reduce litigation

Sub-section (14) of section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—

(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the

income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

4. It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

5. It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

Letter F.No. 225/12/2016/ITA.II dated 02.05.2016

Consistency in taxability of income/loss arising from transfer of unlisted shares under Income-tax Act, 1961

Regarding characterisation of income from transactions in listed shares and securities, Central Board of Direct Taxes ('CBDT') had issued a clarificatory Circular no. 6/2016 dated 29th February, 2016, wherein with a view to reduce litigation and maintain consistency in approach in assessments, it was instructed that income arising from transfer of listed shares and securities, which are held for more than twelve months would be taxed under the head 'Capital Gain' unless the taxpayer itself treats these as its stock- in-trade and transfer thereof as its business income. It was further stated that in other situations, the issue was to be decided on the basis of existing Circulars issued by the CBDT on this subject.

2. Similarly, for determining the tax-treatment of income arising from transfer of unlisted shares for which no formal market exists for trading, a need has been felt to have a consistent view in assessments pertaining to such income. It has, accordingly, been decided that the income arising from transfer of unlisted shares would be considered under the head 'Capital Gain', irrespective of period of holding, with a view to avoid disputes/litigation and to maintain uniform approach.

3. It is, however, clarified that the above would not be necessarily applied in the situations where:

i. the genuineness of transactions in unlisted shares itself is questionable; or

ii. the transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or

iii. the transfer of unlisted shares is made along with the control and management of underlying business and the Assessing Officer would take appropriate view in such situations.

4. The above may be brought to the notice of all for necessary compliance.

APPENDIX VI
[PARA 9.8]

Mandatory Communication - Relevant Extracts of provisions from the Volume-II of Code of Ethics (Revised 2020)

(12th Edition, Volume-II of Code of Ethics, 2020; Pages 64 to 71)

2.14.1.8 *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-*

Clause (8): *accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;*

2.14.1.8 (i) It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment.

2.14.1.8 (ii) It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the clients affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should

always accept the situation with good grace.

Grounds for non-Acceptance of Audit

2.14.1.8 (iii) The existence of a dispute as regards the fees may be root cause of an auditor being changed. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 2013 or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:

(a) Non-compliance of the provisions of Sections 139 and 140 of the Companies Act, 2013 as mentioned in Clause (9) of the Part - I of First Schedule to The Chartered Accountants Act, 1949 ; and

(b) Non-payment of undisputed Audit Fees by auditees other than in case of Sick Units for carrying out the Statutory Audit under the Companies Act, 2013 or various other statutes; and

(c) Issuance of a qualified report.

2.14.1.8 (iv) In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. In this connection, attention of members is invited to the Council General Guidelines, 2008 appearing in Chapter-4. In the said Guidelines, Council has explained that the *provision for audit fee in accounts signed by both the auditee and the auditor along with other expenses, if any, incurred by the auditor in connection with the audit*, *shall* be considered as *"undisputed audit fee"* and *"sick unit"* shall mean *a unit registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.*

Recourse in case of Qualified Audit Report

2.14.1.8 (v) In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit. There is no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the audit, he should ascertain the full facts of the case. For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be "inconvenient" by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasised.

Fees pending due to non-availability of Previous Auditor

2.14.1.8 (vi) Where the Previous Auditor is not available for accepting payment of undisputed audit fees, and it is not otherwise possible to transfer the payment to him electronically, the Incoming Auditor may advise the client to purchase Demand Draft of the amount equivalent to undisputed Audit Fees of retiring auditor, and may accept the Audit assignment after verifying the same. It will be the duty of the Incoming auditor to ensure the payment of undisputed Audit Fees of the retiring auditor at the earliest possibility.

Course of action in case of change of Auditorship

2.14.1.8 (vii) What should be the correct procedure to adopt when a prospective client tells you that he wants to change his auditor and wants you to take up his work? There being two persons involved, the Company and the old auditor, the former should be asked whether the retiring auditor had been informed of the intention to change. If the answer is in the affirmative, then a communication should be addressed to the retiring auditor. If, however, it is learnt that the old auditor has not been informed, and the client is not willing to make the first move, it would be necessary to ask him the reason for the proposed change. If there is no valid reason for a change, it would be healthy practice not

to accept the audit. If he decides to accept the audit he should address a communication to the retiring auditor.

As stated earlier, the object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment. For example, whether the previous auditor has been changed on account of having qualified his report or he had expressed a wish not to continue on account of something inherently wrong with the administration of the business. The retiring auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. In all these cases it would be essential for the incoming auditor to carefully consider the facts before deciding whether or not he should accept the audit, and should he do so, he must also take into account the information while discharging his duties and responsibilities.

Duty of Retiring Auditor

2.14.1.8(viii) On the request of the Incoming Auditor to the retiring auditor for providing known information regarding any facts or other information of which, in the opinion of the retiring auditor, the Incoming auditor needs to be aware before deciding whether to accept the engagement, the retiring auditor shall provide the information diligently.

Sometimes, the retiring auditor fails without justifiable cause except a feeling of hurt because of the change , to respond to the communication of the Incoming auditor. So that it may not create a deadlock, the incoming auditor appointed can act, after waiting for a reasonable time for a reply.

Certificate of Posting not a conclusive proof of communication

2.14.1.8 (ix) The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk.

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. (Pages 72-79 of Vol. V of Disciplinary Cases published by the Institute - Judgement delivered on 29th August, 1975). The following observations of the Court are relevant in this context:-

"Mere obtaining a certificate of posting in my opinion does not fulfill the requirements of clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in this case require. The expression 'in communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee."

Positive Evidence of Delivery required

2.14.1.8 (x) Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, the following would in the normal course provide such evidence:-

(a) Communication by a letter sent through "Registered Acknowledgement due", or

(b) By hand against a written acknowledgement, or

(c) Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email address , or

(d) Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)

Premises found Locked

2.14.1.8 (xi) The communication received back by the Incoming Auditor with "Office found Locked" written on the Acknowledgement Due shall be deemed as having been delivered to the retiring auditor.

Firm not found at the given Registered address

2.14.1.8 (xii) If the Communication sent by the Incoming auditor is received back with remarks "No such office exists at this address", and the address of communication is the same as registered with the Institute on the date of dispatch, the letter will be deemed to be delivered, unless the retiring auditor proves that it was not really served and that he was not responsible for such non-service.

As a matter of professional courtesy and professional obligation it is necessary for the new auditor appointed to act jointly with the earlier auditor and to communicate with such earlier auditor.

Special Audit under Income Tax Act, 1961

2.14.1.8(xiii) It would be a healthy practice if a Tax Auditor appointed for conducting special audit under the Income Tax Act,1961 communicates with the member who has conducted the Statutory Audit.

The Council has also laid down the detailed guidelines on the subject as under:-

Communication required for all kinds of audit

2.14.1.8(xiv) The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of Audit viz., Statutory Audit, Tax Audit, GST Audit, Internal Audit, Concurrent Audit or any other kind of audit.

Communication in case of Assignments done by other professionals

2.14.1.8(xv) A Communication is mandatorily required for all types of Audit/Report where the previous auditor is a Chartered Accountant. In case of assignments done by other professionals not being Chartered Accountants, it would also be a healthy practice to communicate.

Lack of time in acceptance of Government Audits

2.14.1.8(xvi) Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and Non-Government entities, yet in the case of audit of government Companies/ banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit. However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

Meaning of Terms

2.14.1.8(xvii) Various doubts have been raised by the members about the terms "audit", "previous auditor", "Certificate" and "report", normally while interpreting the aforesaid Clause (8). These terms need to be clarified.

- The definition of "Audit" is given in the Framework for Assurance Engagements (the Framework) issued by the Institute which is as under:

  "For assurance engagements relating to historical financial information in particular, such engagements which provide reasonable assurance are called audits".

  The Framework also describes the objective of reasonable assurance engagements which is as under:

  The objective of a reasonable assurance engagement is a reduction in assurance engagement risk to an acceptably low level in the circumstances of the engagement as the basis for

a positive form of expression of the practitioner's conclusion.

- The term "previous auditor" means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. For example, a Chartered Accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a Chartered Accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.

"Auditor's Report" mentioned in SA 700 states the objective of the Report as forming an opinion on the financial statements based on an evaluation of the conclusions drawn from the audit evidence obtained. As explained in the Institute's publication viz., 'Guidance Note on Reports and Certificates for Special Purposes' (which governs reports other than those which are issued in audits or reviews) states that the word 'certificate' as described in the laws and regulations or even in the contracts that an entity might have entered into can normally be associated with reasonable assurance. A practitioner is expected to provide either a reasonable assurance (about whether the subject matter of examination is materially misstated) or a limited assurance (stating that nothing has come to the practitioner's attention that causes the practitioner to believe that the subject matter is materially misstated). A practitioner is not expected to reduce the engagement risk to zero. Therefore, whenever a practitioner is required to give a "certificate" or a "report" for special purpose, the practitioner needs to undertake a careful evaluation of the scope of the engagement, i.e., whether the practitioner would be able to provide reasonable assurance or limited assurance on the subject matter.

APPENDIX VII
[PARA 9.8, 9.18, 9.20 & 9.31]

Council Guidelines No.1-CA(7)/02/2008, dated 8th August,2008

GUIDELINES FOR THE MEMBERS OF ICAI

(Issued under the provisions of The Chartered Accountants Act, 1949)

Chapter I

Preliminary

1.0 Short title, commencement, etc.

(a) These Guidelines have been issued by the Council of the Institute of Chartered Accountants of India under the provisions of The Chartered Accountants Act, 1949, as amended by The Chartered Accountants (Amendment) Act 2006, in supersession of the Notifications issued by the Council under erstwhile Clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(b) These Guidelines be called the 'Council General Guidelines, 2008'.

1.1 Definitions.

1.1.1 For the purpose of these Guidelines:

(a) 'Act' means the Chartered Accountants Act, 1949.

(b) "Chartered accountant" means a person who is a member of the Institute.

(c) "Council" means the Council of the Institute constituted under section 9 of the Act.

(d) "Institute" means the Institute of Chartered Accountants of India constituted under the Act.

1.1.2 All other words and expressions used but not defined herein have the same meaning as assigned to them within the Chartered Accountants Act, 1949 and the Rules, Regulations and Guidelines made there under.

1.2 Applicability of the Guidelines

These guidelines shall be applicable to all the Members of the Institute whether in practice or not wherever the context so requires.

Chapter II

Conduct of a Member being an employee

2.0 A member of the Institute who is an employee shall exercise due diligence and shall not be grossly negligent in the conduct of his duties.

Chapter V

Maintenance of books of accounts

5.0 A member of the Institute in practice or the firm of Chartered Accountants of which he is a partner, shall maintain and keep in respect of his / its professional practice, proper books of account including the following:-

(i) a Cash Book;

(ii) a Ledger.

Chapter VI

Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961

6.0 A member of the Institute in practice shall not accept, relating to an assessment year, more than the "specified number of tax audit assignments" under Section 44AB of the Income-tax Act, 1961.

Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.

Provided further that where any partner of the firm is also a partner of any other firm or firms of Chartered Accountants in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided also that the audits conducted under Section 44AD, 44ADA and 44AE of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".

6.1 Explanation:

For the above purpose, "the specified number of tax audit assignments" means -

(a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 60 tax audit assignments, relating to an assessment year, whether in respect of corporate or non-corporate assesses.

(b) in the case of firm of Chartered Accountants in practice, 60 tax audit assignments per partner in the firm, relating to an assessment year, whether in respect of corporate or non-corporate assesses.

6.1.1 In computing the "specified number of tax audit assignments" each year's audit would be taken as a separate assignment.

6.1.2 In computing the "specified number of tax audit assignments", the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

6.1.3 The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

6.1.4 The audit of one or more branches of the same concern by one Chartered Accountant in practice shall be construed as only one tax audit assignment.

6.1.5 A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

6.1.6 A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him relating to each assessment year in the format as may be prescribed by the Council.

6.1.7 The limit on number of tax audit assignments per partner in a CA Firm may be distributed between the partners in any manner whatsoever. However, it should be in accordance with the Standard on Quality Control (SQC) 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

Chapter VII

Relevant Extracts from the Chapter VII "Appointment of an Auditor in case of non-payment of undisputed fees" of Council General Guidelines, 2008 of Volume-II of Code of Ethics (Revised 2020) (Page 154)

7.0 A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 2013 or various other statutes has not been paid:

Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.

7.1 Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor *along with other expenses, if any, incurred by the auditor in connection with the audit*, shall be considered as "undisputed audit fees"

7.2 Explanation 2:

For this purpose, "sick unit" shall mean *a unit registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.*

Chapter VIII

Specified number of audit assignments

8.0 A member of the Institute in practice shall not hold at any time appointment of more than the "specified number of audit assignments" of Companies under Section 141 of the Companies Act 2013.

Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of audit assignments" shall be construed as the specific number of audit assignments for every partner of the firm.

Provided further that where any partner of the firm of Chartered Accountants in practice is also a partner of any other firm or firms of Chartered Accountants in practice, the number of audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of audit assignments" in the aggregate.

Provided further where any partner of a firm or firms of Chartered Accountants in practice accepts one or more audit of Companies in his individual capacity, or in the name of his proprietary firm, the total number of such assignments which may be accepted by all firms in relation to such Chartered Accountant and by him shall not exceed the "specified number of audit assignments" in the aggregate.

8.1 Explanation:

For the above purpose, the "specified number of audit assignments" means –

(a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 30 audit assignments whether in respect of private Companies or other Companies, *with the exception of one person Companies and dormant companies.*

(b) in the case of Chartered Accountants in practice, 30 audit assignments per partner in the firm, whether in respect of private Companies or other Companies, *with the exception of One person*

Companies and dormant companies[1].

8.2 In computing the "specified number of audit assignments"-

(a) the number of audit of such Companies, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

(b) the audit of the head office and branch offices of a Company by one Chartered Accountant or firm of such Chartered Accountants in practice shall be regarded as one audit assignment.

(c) the audit of one or more branches of the same Company by one Chartered Accountant in practice or by firm of Chartered Accountants in practice in which he is a partner shall be construed as one audit assignment only.

(d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.

8.3 A Chartered Accountant in practice, whether in full-time or part-time employment elsewhere, shall not be counted for the purpose of determination of "specified number of audit of Companies" by firms of Chartered Accountants.

8.4 A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the audit assignments of the firm.

8.5 A Chartered Accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of Chartered Accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible, in the following format:

S. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance
1	2	3	4	5

[1] As incorporated pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., 2020.

Chapter IX

Appointment as Statutory auditor

9.0 A member of the Institute in practice shall not accept the appointment as statutory auditor of Public Sector Undertaking(s)/ Government Company(ies)/ Listed Company(ies) and other Public Company(ies) having turnover of Rs. 50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/ Company(ies) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

Provided that in case appointing authority(ies)/regulatory body(ies) specify(ies) more stringent condition(s)/ restriction(s), the same shall apply instead of the conditions/ restrictions specified under these Guidelines.

9.1 The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together.

9.2 For the above purpose,

(i) the term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include: -

(a) audit under any other statute;

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

(c) any representation before an authority;

(ii) the term "associate concern" means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their "relative(s)" is/are Director/s or partner/s and/or jointly or severally hold "substantial interest" in the said corporate body or partnership;

(iii) the terms "relative" and "substantial interest" shall have the same meaning as are assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

9.3 In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

Chapter X

Appointment of an auditor when he is indebted to a concern

10.0 A member of the Institute in practice or a partner of a firm in practice or a firm, or a relative of such member or partner shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 1,00,000/-

Chapter XI

Directions in case of unjustified removal of auditors

11.0 A member of the Institute in practice shall follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to him being the incoming auditor(s) not to accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s).

Chapter XIII[2]
Guidelines on Tenders

Refer to **Appendix 'J'** of the Code.

[2] Guideline No. 1-CA(7)/03/2016 issued vide Notification dt. 7.4.2016 published in Part-III Section 4 of the Gazette of India , Extraordinary, Dated 7th April, 2016. – Included under Council General Guidelines pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., 2020

Chapter XIV[3]
Unique Document Identification Number (UDIN) Guidelines

Refer to **Appendix 'I'** of the Code.

Chapter XV[4]
Guidelines for Networking

Refer to **Appendix 'K'** of the Code.

Chapter XVI[5]
Logo Guidelines

Refer to **Appendix 'L'** of the Code.

Chapter XVII[6]
Guidelines for Corporate Form of Practice

Refer to **Appendix 'D'** of the Code.

[3] Guideline No.1-CA(7)/192/2019 issued vide Notification dt. 2.8.2019 – Included under Council General Guidelines pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., ,2020

[4] As iissued on 27.9.2011 - Included under Council General Guidelines pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., ,2020

[5] As issued by Council at its 367th Meeting held on 12th to 14th March, 2007 and continued on 10th and 11th April, 2007 - – Included under Council General Guidelines pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., ,2020

[6] As iissued by Council at its 261st Meeting held on 1st to 3rd August, 2006- – Included under Council General Guidelines pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., ,2020

APPENDIX VIII

[PARA 9.34]

FORM OF TAX AUDIT PARTICULARS TO BE FURNISHED BY MEMBERS/FIRM

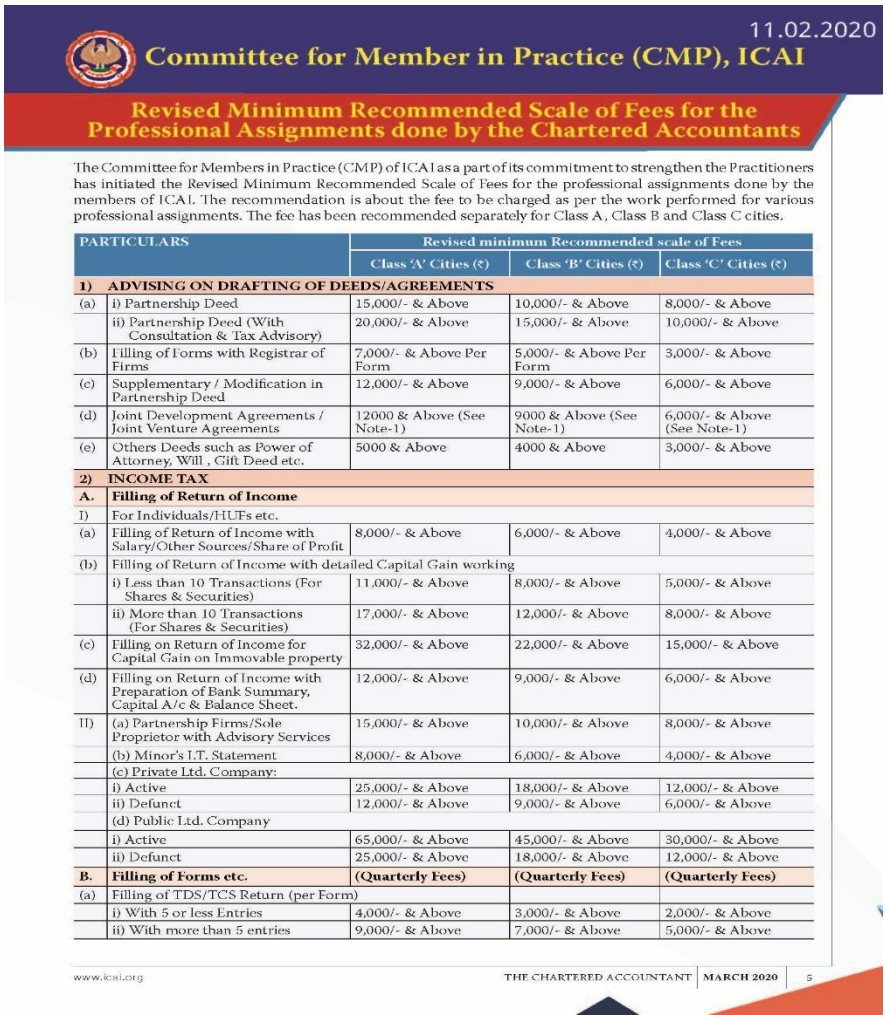
Record of Tax Audit Assignments

1. Name of the Member accepting the assignment
2. Membership No.
3. Financial year of audit acceptance
4. Name and Registration No. of the firm/ firms of which the member is a proprietor or partner.

Sl. No.	Name of the auditee	Assessment year of the auditee	Date of appointment	Date of acceptance	Name of the firm on whose behalf the member has accepted the assignment	Date of communication with the previous auditor (applicable)
1	2	3	4	5	6	7

APPENDIX IX
[PARA 9.35]

Revised Minimum recommended scale of fees chargeable for the professional assignments done by Chartered Accountants - *An announcement hosted by Committee for Members in Practice -Last updated on 11th February,2020:*



11.02.2020

Committee for Member in Practice (CMP), ICAI

Revised Minimum Recommended Scale of Fees for the Professional Assignments done by the Chartered Accountants

The Committee for Members in Practice (CMP) of ICAI as a part of its commitment to strengthen the Practitioners has initiated the Revised Minimum Recommended Scale of Fees for the professional assignments done by the members of ICAI. The recommendation is about the fee to be charged as per the work performed for various professional assignments. The fee has been recommended separately for Class A, Class B and Class C cities.

PARTICULARS		Revised minimum Recommended scale of Fees		
		Class 'A' Cities (₹)	Class 'B' Cities (₹)	Class 'C' Cities (₹)
1)	**ADVISING ON DRAFTING OF DEEDS/AGREEMENTS**			
(a)	i) Partnership Deed	15,000/- & Above	10,000/- & Above	8,000/- & Above
	ii) Partnership Deed (With Consultation & Tax Advisory)	20,000/- & Above	15,000/- & Above	10,000/- & Above
(b)	Filling of Forms with Registrar of Firms	7,000/- & Above Per Form	5,000/- & Above Per Form	3,000/- & Above
(c)	Supplementary / Modification in Partnership Deed	12,000/- & Above	9,000/- & Above	6,000/- & Above
(d)	Joint Development Agreements / Joint Venture Agreements	12000 & Above (See Note-1)	9000 & Above (See Note-1)	6,000/- & Above (See Note-1)
(e)	Others Deeds such as Power of Attorney, Will , Gift Deed etc.	5000 & Above	4000 & Above	3,000/- & Above
2)	**INCOME TAX**			
A.	**Filling of Return of Income**			
I)	For Individuals/HUFs etc.			
(a)	Filling of Return of Income with Salary/Other Sources/Share of Profit	8,000/- & Above	6,000/- & Above	4,000/- & Above
(b)	Filling of Return of Income with detailed Capital Gain working			
	i) Less than 10 Transactions (For Shares & Securities)	11,000/- & Above	8,000/- & Above	5,000/- & Above
	ii) More than 10 Transactions (For Shares & Securities)	17,000/- & Above	12,000/- & Above	8,000/- & Above
(c)	Filling on Return of Income for Capital Gain on Immovable property	32,000/- & Above	22,000/- & Above	15,000/- & Above
(d)	Filling on Return of Income with Preparation of Bank Summary, Capital A/c & Balance Sheet.	12,000/- & Above	9,000/- & Above	6,000/- & Above
II)	(a) Partnership Firms/Sole Proprietor with Advisory Services	15,000/- & Above	10,000/- & Above	8,000/- & Above
	(b) Minor's I.T. Statement	8,000/- & Above	6,000/- & Above	4,000/- & Above
	(c) Private Ltd. Company:			
	i) Active	25,000/- & Above	18,000/- & Above	12,000/- & Above
	ii) Defunct	12,000/- & Above	9,000/- & Above	6,000/- & Above
	(d) Public Ltd. Company			
	i) Active	65,000/- & Above	45,000/- & Above	30,000/- & Above
	ii) Defunct	25,000/- & Above	18,000/- & Above	12,000/- & Above
B.	**Filling of Forms etc.**	**(Quarterly Fees)**	**(Quarterly Fees)**	**(Quarterly Fees)**
(a)	Filling of TDS/TCS Return (per Form)			
	i) With 5 or less Entries	4,000/- & Above	3,000/- & Above	2,000/- & Above
	ii) With more than 5 entries	9,000/- & Above	7,000/- & Above	5,000/- & Above

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PARTICULARS		Revised minimum Recommended scale of Fees		
		Class 'A' Cities (₹)	Class 'B' Cities (₹)	Class 'C' Cities (₹)
(b)	Filling of Form No. 15-H/G (per Set)	4,000/- & Above	3,000/- & Above	2,000/- & Above
(c)	Form No. 49-A/49-B	4,000/- & Above	3,000/- & Above	2,000/- & Above
(d)	Any other Forms filed under the Income Tax Act	4,000/- & Above	3,000/- & Above	2,000/- & Above
C.	**Certificate**			
	Obtaining Certificate from Income Tax Department	14,000/- & Above	10,000/- & Above	7,000/- & Above
D.	**Filling of Appeals etc.**			
(a)	First Appeal Preparation of Statement of Facts, Grounds of Appeal, Etc.	32,000/- & Above	22,000/-& Above	15,000/- & Above
(b)	Second Appeal (Tribunal)	65,000/- & Above	45,000/- & Above	30,000/- & Above
E.	**Assessments etc.**			
(a)	Attending Scrutiny Assessment/Appeal			
	(i) Corporate	See Note 1	See Note 1	See Note 1
	(ii) Non Corporate	32,000/- & Above	22,000/- & Above	15,000/- & Above
(b)	Attending before Authorities	10,000/- & Above Per Visit	7,000/- & Above Per Visit	5,000/- & Above Per Visit
(c)	Attending for Rectifications/ Refunds/Appeal effects Etc.	7,000/- & Above Per Visit	5,000/- & Above Per Visit	3,000/- & Above Per Visit
(d)	Income Tax Survey	80,000/- & Above	55,000/- & Above	35,000/- & Above
(e)	T.D.S. Survey	50,000/- & Above	35,000/- & Above	25,000/- & Above
(f)	Income Tax Search and Seizure	See Note 1	See Note 1	See Note 1
(g)	Any other Consultancy	See Note 1	See Note 1	See Note 1
3)	**CHARITABLE TRUST**			
(a)	(i) Registration Under Local Act	25,000/- & Above	18,000/- & Above	12,000/- & Above
	(ii) Societies Registration Act	32,000/- & Above	22,000/- & Above	15,000/- & Above
(b)	Registration Under Income Tax Act	25,000/- & Above	18,000/- & Above	12,000/- & Above
(c)	Exemption Certificate under section 80G of Income Tax Act	20,000/- & Above	15,000/- & Above	10,000/- & Above
(d)	Filing Objection Memo/other Replies	10,000/- & Above	7,000/- & Above	5,000/- & Above
(e)	Filing of Change Report	10,000/- & Above	7,000/- & Above	5,000/- & Above
(f)	Filing of Annual Budget	10,000/- & Above	7,000/- & Above	5,000/- & Above
(g)	Attending before Charity Commissioner including for Attending Objections	8,000/- & Above per visit	6,000/- & Above per visit	4,000/- & Above
(h)	(i) F.C.R.A. Registration	35,000/- & Above	25,000/- & Above	18,000/- & Above
	(ii) F.C.R.A. Certification	8,000/- & Above	6,000/- & Above	4,000/- & Above
4)	**COMPANY LAW AND LLP WORK**			
(a)	Filing Application for Name Approval	8,000/- & Above	6,000/- & Above	4,000/- & Above
(b)	Incorporation of a Private Limited Company/LLP	35,000/- & Above	25,000/- & Above	18,000/- & Above
(c)	Incorporation of a Public Limited Company	65,000/- & Above	45,000/- & Above	30,000/- & Above
(d)	Advisory or consultation in drafting MOA, AOA	15,000/- & Above	11,000/- & Above	8,000/- & Above

PARTICULARS		Revised minimum Recommended scale of Fees		
		Class 'A' Cities (₹)	Class 'B' Cities (₹)	Class 'C' Cities (₹)
(e)	(i) Company's/LLP ROC Work, Preparation of Minutes, Statutory Register & Other Secretarial Work	See Note 1	See Note 1	See Note 1
	(ii) Certification (Per Certificate)	15,000/- & Above	11,000/- & Above	8,000/- & Above
(f)	Filing Annual Return Etc.	10,000/- & Above per Form	7,000/- & Above per Form	5,000/- & Above
(g)	Filing Other Forms Like : F-32, 18, 2 etc.	5,000/- & Above	4,000/- & Above per Form	3,000/- & Above
(h)	Increase in Authorised Capital Filing of F-5, F-23, preparation of Revised Memorandum of Association/Article of Association/ LLP Agreement	25,000/- & Above	20,000/- & Above	14,000/- & Above
(i)	DPIN/DIN per Application	4,000/- & Above	3,000/- & Above	2,000/- & Above
(j)	Company Law Consultancy including Petition drafting	See Note 1	See Note 1	See Note 1
(k)	Company Law representation including LLP before RD and NCLT	See Note 1	See Note 1	See Note 1
(l)	ROC Representation	See Note 1	See Note 1	See Note 1
5)	**AUDIT AND OTHER ASSIGNMENTS**			
Rate per day would depend on the complexity of the work and the number of days spent by each person				
	(i) Principal	18,000/- & Above per day	12,000/- & Above per day	8,000/- & Above per day
	(ii) Qualified Assistants	10,000/- & Above per day	7,000/- & Above per day	5,000/- & Above per day
	(iii) Semi Qualified Assistants	5,000/- & Above per day	4,000/- & Above per day	3,000/- & Above per day
	(iv) Other Assistants	3,000/- & Above per day	2,000/- & Above per day	1,000/- & Above per day
Subject to minimum indicative Fees as under:				
	(i) Tax Audit	40,000/- & Above	30,000/- & Above	22,000/- & Above
	(ii) Company Audit			
	(a) Small Pvt. Ltd. Co. (Turnover up to ₹ 2 crore)	50,000/- & Above	35,000/- & Above	25,000/- & Above
	(b) Medium Size Pvt. Ltd. Co./ Public Ltd. Co.	80,000/- & Above	55,000/- & Above	35,000/- & Above
	(c) Large Size Pvt. Ltd. Co./ Public	See Note 1	See Note 1	See Note 1
	(iv) Review of TDS Compliance	25,000/- & Above	18,000/- & Above	12,000/& Above
	(v) Transfer Pricing Audit	See Note 1	See Note 1	See Note 1
6)	**INVESTIGATION, MANAGEMENT SERVICES OR SPECIAL ASSIGNMENTS**			
Rate per day would depend on the complexity of the work and the number of days spent by each person				
(a)	Principal	35,000/- & Above + per day charge	25,000/- & Above + per day charge	18,000/- & Above per day charge
(b)	Qualified Assistant	18,000/- & Above + per day charge	12,000/- & Above + per day charge	8,000/- & Above per day charge
(c)	Semi Qualified Assistant	10,000/- & Above + per day charge	7,000/- & Above + per day charge	5,000/- & Above per day charge

PARTICULARS		Revised minimum Recommended scale of Fees		
		Class 'A' Cities (₹)	Class 'B' Cities (₹)	Class 'C' Cities (₹)
7)	**CERTIFICATION WORK**			
(a)	Issuing Certificates under the Income Tax Act i.e. U/s 80IA/80IB/10 A/10B & other Certificates	See Note 1	See Note 1	See Note 1
(b)	Other Certificates For LIC/ Passport/Credit Card/Etc.	10,000/- & Above	7,000/- & Above	5,000/- & Above
(c)	Other Attestation (True Copy)	3,000/- & Above per form	2,000/- & Above per form	1,000/- & Above
(d)	Net worth Certificate for person going abroad	18,000/- & Above	12,000/- & Above	8,000/- & Above
8)	**RERA**			
(a)	Audit of Accounts	10,000/- & Above	7,000/- & Above	5,000/- & Above
(b)	Appearance Before Appellate Tribunal of Regulatory Authority or Adjudicating Authority	50,000/- & Above	35,000/- & Above	25,000/- & Above
(c)	Advisory & Consultation	See Note 1	See Note 1	See Note 1
(d)	Certification for withdrawal of amount	See Note 1	See Note 1	See Note 1
9)	**CONSULTATION & ARBITRATION**			
Rate per hour would depend on the complexity of the work and the number of hours spends by each person				
(a)	Principal	35,000/- & Above (initial fees) + additional fees @ 8,000/- & Above per hour	25,000/- & Above (initial fees) + additional fees @ 6,000/- & Above per hour	18,000/- & Above (initial fees) + additional fees @ 4,000/- & Above per hour
(b)	Qualified Assistant	6,000/- & Above per hour	4,000/- & Above per hour	3,000/- & Above per hour
(c)	Semi Qualified Assistant	3,000/- & Above per hour	2,000/- & Above per hour	1,000/- & Above per hour
10)	**NBFC/RBI MATTERS**			
(a)	NBFC Registration with RBI	See Note 1	See Note 1	See Note 1
(b)	Other Returns	18,000/- & Above	12,000/- & Above	8,000/- & Above
11)	**GST**			
(a)	Registration	20,000/- & Above	15,000/- & Above	10,000/- & Above
(b)	Registration with Consultation	See Note 1	See Note 1	See Note 1
(c)	Tax Advisory & Consultation i.e. about value, taxability, classification, etc.	See Note 1	See Note 1	See Note 1
(d)	Challan/Returns	15,000/- & Above + (4,000/- Per Month)	10,000/- & Above + (3,000/- Per Month)	8,000/- & Above + (2,000/- Per Month)
(e)	Adjudication/Show Cause notice reply	30,000/- & Above	20,000/- & Above	15,000/- & Above
(f)	Filing of Appeal / Appeals Drafting	30,000/- & Above	20,000/- & Above	15,000/- & Above
(g)	Furnish details of inward/outward supply	See Note 1	See Note 1	See Note 1
(h)	Misc services i.e. refund, cancellation/revocation registration, maintain electronic cash ledger etc.	See Note 1	See Note 1	See Note 1
(i)	Audit of accounts and reconciliation Statement	40,000/- & Above	20,000/- & Above	12,000/- & Above
(j)	Any Certification Work	10,000/- & Above	7,000/- & Above	5,000/- & Above

PARTICULARS		Revised minimum Recommended scale of Fees		
		Class 'A' Cities (₹)	Class 'B' Cities (₹)	Class 'C' Cities (₹)
12)	**FEMA MATTERS**			
(a)	Filing Declaration with RBI in relation to transaction by NRIs/ OCBs	35,000/- & Above	25,000/- & Above	18,000/- & Above
(b)	Obtaining Prior Permissions from RBI for Transaction with NRIs/ OCBs	50,000/- & Above	35,000/- & Above	25,000/- & Above
(c)	Technical collaboration: Advising, obtaining RBI permission, drafting and preparing technical collaboration agreement and incidental matters	See Note 1	See Note 1	See Note 1
(d)	Foreign collaboration: Advising, obtaining RBI permission, drafting and preparing technical collaboration agreement and incidental matters (incl. Shareholders Agreement)	See Note 1	See Note 1	See Note 1
(e)	Advising on Non Resident Taxation Matters including Double Tax Avoidance Agreements including FEMA	See Note 1	See Note 1	See Note 1
13)	**PROJECT FINANCING**			
(a)	Preparation of CMA data	See Note 1	See Note 1	See Note 1
(b)	Services relating to Financial sector	See Note 1	See Note 1	See Note 1
14)	**ACCOUNTANCY SERVICES (New Heading)**			
	Book Keeping and the preparation of financial statements			See Note 1
	Other Services			See Note 1
15)	**Other Services not listed above**			See Note 1

Notes:

1) Fees to be charged depending on the complexity and the time spent on the particular assignment.

2) The above recommended minimum scale of fees is as recommended by the Committee for Members in Practice (CMP) of ICAI

3) The aforesaid table states recommendatory minimum scale of fees works out by taking into account average time required to complete such assignments. However, members are free to charge varying rates depending upon the nature and complexity of assignment and time involved in completing the same.

4) Office time spent in travelling & out-of-pocket expenses would be chargeable. The Committee issues for general information the above recommended scale of fees which it considers reasonable under present conditions. It will be appreciated that the actual fees charged in individual cases will be matter of agreement between the member and the client.

5) GST should be collected separately wherever applicable.

6) The Committee also recommends that the bill for each service should be raised separately and immediately after the services are rendered.

7) Classification of Class A, Class B & Class C Cities are given in **Annexure 'A'**

8) The amount charged will be based on the location of the service provider.

S. No	STATES/UNION TERRITORIES	CITIES CLASSIFIED AS "A"	CITIES CLASSIFIED AS "B"	CITIES CLASSIFIED AS "C"
1.	ANDAMAN & NICOBAR ISLANDS	_____	_____	All cities
2	ANDHRA PRADESH	_____	Vijayawada, Greater Visakhapatnam, Guntur, Nellore	Other Cities
3	ARUNACHAL PRADESH	_____	_____	All cities
4	ASSAM	_____	Guwahati	Other Cities
5	BIHAR	_____	Patna	Other Cities
6	CHANDIGARH	_____	Chandigarh	_____
7	CHHATTISGARH	_____	Durg-Bhilai Nagar, Raipur	Other Cities
8	DADRA & NAGAR HAVELI	_____	_____	All cities
9	DAMAN & DIU	_____	_____	All cities
10	DELHI	Delhi	_____	_____
11	GOA	_____	_____	All cities
12	GUJARAT	Ahmedabad	Rajkot, Jamnagar, Bhavnagar, Vadodara Surat	Other Cities
13	HARYANA	_____	Faridabad, Gurgaon	Other Cities
14	HIMACHAL PRADESH	_____	_____	All cities
15	JAMMU & KASHMIR	_____	Srinagar, Jammu	Other Cities
16	JHARKHAND	_____	Jamshedpur, Dhanbad, Ranchi, Bokro Stell City	Other Cities
17	KARNATAKA	Bengaluru	Belgaum, Hubli-Dharwad, Mangalore, Mysore, Gulbarga	Other Cities
18	KERALA	_____	Kozhikode, Kochi, Thiruvanathapuram, Thrissur, Malappuram, Kannur, Kollam	Other Cities
19	LAKSHADWEEP	_____	_____	All cities
20	MADHYA PRADESH	_____	Gwalior, Indore, Bhopal, Jabalpur, Ujjain	Other Cities
21	MAHARASHTRA	Greater Mumbai, Pune	Amravati, Nagpur, Aurangabad, Nashik, Bhiwandi, Solapur, Kolhapur, Vasai-Virar City, Malegaon, Nansws-Waghala, Sangli	Other Cities
22	MANIPUR	_____	_____	All cities
23	MEGHALAYA	_____	_____	All cities
24	MIZORAM	_____	_____	All cities
25	NAGALAND	_____	_____	All cities
26	ODISHA	_____	Cuttack, Bhubaneswar, Rourkela	Other Cities
27	PUDUCHERRY	_____	Puducherry/ Pondicherry	_____
28	PUNJAB	_____	Amritsar, Jalandhar, Ludhiana,	Other Cities
29	RAJASTHAN	_____	Bikaner, Jaipur, Jodhpur, Kota, Ajmer	Other Cities
30	SIKKIM	_____	_____	All cities
31	TAMIL NADU	Chennai	Salem, Tiruppur, Coimbatore, Tiruchirappalli, Madurai, Erode	Other Cities
32	TELANGANA	Hyderabad	Warangal	Other Cities
33	TRIPURA	_____	_____	All cities
34	UTTAR PRADESH	_____	Moradabad, Meerut, Ghaziabad, Aligarh, Agra, Bareilly, Lucknow, Kanpur, Allahabad, Gorakhpur, Varanasi, Saharanpur, Noida, Firozabad, Jhansi	Other Cities
35	UTTARAKHAND	_____	Dehradun	Other Cities
36	WEST BENGAL	Kolkata	Asansol, Siliguri, Durgapur	Other Cities

https://cmpbenefits.icai.org/wp-content/uploads/2020/02/Details-download.pdf

APPENDIX X

[PARA 11.3 & 11.5]

Applicability of Accounting Standards to Various Entities

(including criteria for classification of entities) (as on April 1, 2023)

Applicability of Accounting Standards to Companies other than those following Indian Accounting Standards (Ind AS)[7]

(I) Accounting Standards applicable in their entirety to companies

AS 1 Disclosures of Accounting Policies

AS 2 Valuation of Inventories (revised 2016)

AS 3 Cash Flow Statements

AS 4 Contingencies and Events Occurring After the Balance Sheet Date (revised 2016)

AS 5 Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies

AS 7 Construction Contracts (revised 2002)

AS 9 Revenue Recognition

AS 10 Property, Plant and Equipment

AS 11 The Effects of Changes in Foreign Exchange Rates (revised 2003)

AS 12 Accounting for Government Grants

AS 13 Accounting for Investments (revised 2016)

[7] For applicability of Ind AS to companies, refer Notification dated 16th February, 2015, issued by the Ministry of Corporate Affairs, Government of India.

AS 14 Accounting for Amalgamations (revised 2016)

AS 16 Borrowing Costs

AS 18 Related Party Disclosures

AS 21 Consolidated Financial Statements (revised 2016)

AS 22 Accounting for Taxes on Income

AS 23 Accounting for Investments in Associates in Consolidated Financial Statements

AS 24 Discontinuing Operations

AS 26 Intangible Assets

AS 27 Financial Reporting of Interest in Joint Ventures

(II) Exemptions or Relaxations for Small and Medium Sized Companies (SMCs) as defined in the Notification dated June 23, 2021, issued by the Ministry of Corporate Affairs, Government of India

(1) Accounting Standards not applicable to SMCs in their entirety:

AS 17 Segment Reporting

(2) Accounting Standards in respect of which relaxations from certain requirements have been given to SMCs:

(i) Accounting Standard (AS) 15, Employee Benefits (revised 2005)

(a) paragraphs 11 to 16 of the standard to the extent they deal with recognition and measurement of short-term accumulating compensated absences which are non-vesting (i.e., short-term accumulating compensated absences in respect of which employees are not entitled to cash payment for unused entitlement on leaving);

(b) paragraphs 46 and 139 of the Standard which deal with discounting of amounts that fall due more than 12 months after the balance sheet date;

(c) recognition and measurement principles laid down in paragraphs 50 to 116 and presentation and disclosure requirements laid down in paragraphs 117 to 123 of the Standard in respect of accounting for defined benefit plans. However, such companies should actuarially determine and provide for the accrued liability in respect of defined benefit plans by using the Projected Unit Credit Method and the discount rate used should be determined by reference to market yields at the balance sheet date on government bonds as per paragraph 78 of the Standard. Such companies should disclose actuarial assumptions as per paragraph 120(l) of the Standard; and

(d) recognition and measurement principles laid down in paragraphs 129 to 131 of the Standard in respect of accounting for other long-term employee benefits. However, such companies should actuarially determine and provide for the accrued liability in respect of other long-term employee benefits by using the Projected Unit Credit Method and the discount rate used should be determined by reference to market yields at the balance sheet date on government bonds as per paragraph 78 of the Standard.

(ii) AS 19, Leases

Paragraphs 22 (c),(e) and (f); 25 (a), (b) and (e); 37 (a) and (f); and 46 (b) and (d) relating to disclosures are not applicable to SMCs.

(iii) AS 20, Earnings Per Share
Disclosure of diluted earnings per share (both including and excluding extraordinary items) is exempted for SMCs.

(iv) AS 28, Impairment of Assets

SMCs are allowed to measure the 'value in use' on the basis of reasonable estimate thereof instead of computing the value in use by present value technique. Consequently, if an SMC chooses to measure the 'value in use' by not using the present value technique, the relevant provisions of AS 28, such as discount rate etc., would not be applicable to such an SMC. Further, such an SMC need not disclose the information required by paragraph 121(g) of the Standard.

(v) AS 29, Provisions, Contingent Liabilities and Contingent Assets (revised)

Paragraphs 66 and 67 relating to disclosures are not applicable to SMCs.

(3) AS 25, Interim Financial Reporting, does not require a company to present interim financial report. It is applicable only if a company is required or elects to prepare and present an interim financial report. Only certain Non-SMCs are required by the concerned regulators to present interim financial results, e.g., quarterly financial results required by the SEBI. Therefore, the recognition and measurement requirements contained in this Standard are applicable to those Non-SMCs for preparation of interim financial results.

Applicability of Accounting Standards to Non-company Entities

The Accounting Standards issued by the ICAI are:

AS 1	Disclosure of Accounting Policies
AS 2	Valuation of Inventories
AS 3	Cash Flow Statements
AS 4	Contingencies and Events Occurring After the Balance Sheet Date
AS 5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies
AS 7	Construction Contracts
AS 9	Revenue Recognition
AS 10	Property, Plant and Equipment
AS 11	The Effects of Changes in Foreign Exchange Rates
AS 12	Accounting for Government Grants
AS 13	Accounting for Investments
AS 14	Accounting for Amalgamations
AS 15	Employee Benefits
AS 16	Borrowing Costs
AS 17	Segment Reporting

AS 18	Related Party Disclosures
AS 19	Leases
AS 20	Earnings Per Share
AS 21	Consolidated Financial Statements
AS 22	Accounting for Taxes on Income
AS 23	Accounting for Investments in Associates in Consolidated Financial Statements
AS 24	Discontinuing Operations
AS 25	Interim Financial Reporting
AS 26	Intangible Assets
AS 27	Financial Reporting of Interests in Joint Ventures
AS 28	Impairment of Assets
AS 29	Provisions, Contingent Liabilities and Contingent Assets

(1) Applicability of the Accounting Standards to Level 1 Non-company entities.

Level I entities are required to comply in full with all the Accounting Standards.

(2) Applicability of the Accounting Standards and exemptions/relaxations for Level II, Level III and Level IV Non-company entities

(A) *Accounting* Standards applicable to Non-company entities

AS	Level II Entities	Level III Entities	Level IV Entities
AS 1	Applicable	Applicable	Applicable
AS 2	Applicable	Applicable	Applicable
AS 3	Not Applicable	Not Applicable	Not Applicable

AS	Level II Entities	Level III Entities	Level IV Entities
AS 4	Applicable	Applicable	Applicable
AS 5	Applicable	Applicable	Applicable
AS 7	Applicable	Applicable	Applicable
AS 9	Applicable	Applicable	Applicable
AS 10	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 11	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 12	Applicable	Applicable	Applicable
AS 13	Applicable	Applicable	Applicable with disclosures exemption
AS 14	Applicable	Applicable	Not Applicable (Refer note 2(C))
AS 15	Applicable with exemptions	Applicable with exemptions	Applicable with exemptions
AS 16	Applicable	Applicable	Applicable
AS 17	Not Applicable	Not Applicable	Not Applicable
AS 18	Applicable	Not Applicable	Not Applicable
AS 19	Applicable with disclosures exemption	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 20	Not Applicable	Not Applicable	Not Applicable
AS 21	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))
AS 22	Applicable	Applicable	Applicable only for current tax related provisions (Refer note 2(B)(vi))
AS 23	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))
AS 24	Applicable	Not Applicable	Not Applicable
AS 25	Not Applicable	Not Applicable	Not Applicable

AS	Level II Entities	Level III Entities	Level IV Entities
	(Refer note 2(D))	(Refer note 2(D))	(Refer note 2(D))
AS 26	Applicable	Applicable	Applicable with disclosures exemption
AS 27	Not Applicable (Refer notes 2(C) and 2(D))	Not Applicable (Refer notes 2(C) and 2(D))	Not Applicable (Refer notes 2(C) and 2(D))
AS 28	Applicable with disclosures exemption	Applicable with disclosures exemption	Not Applicable
AS 29	Applicable with disclosures exemption	Applicable with disclosures exemption	Applicable with disclosures exemption

(B) ***Accounting Standards in respect of which relaxations/exemptions from certain requirements have been given to Level II, Level III and Level IV Non-company entities:***

(i) Accounting Standard (AS) 10, Property, Plant and Equipments
Paragraph 87 relating to encouraged disclosures is not applicable to Level III and Level IV Non-company entities.

(ii) AS 11, The Effects of Changes in Foreign Exchange Rates (revised 2018)
Paragraph 44 relating to encouraged disclosures is not applicable to Level III and Level IV Non-company entities.

(iii) AS 13, Accounting for Investments
Paragraph 35(f) relating to disclosures is not applicable to Level IV Non-company entities.

(iv) Accounting Standard (AS) 15, Employee Benefits (revised 2005)

(1) Level II and Level III Non-company entities whose average number of persons employed during the year is 50 or more are exempted from the applicability of the following paragraphs:

(a) paragraphs 11 to 16 of the standard to the extent they deal with recognition and measurement of short-

term accumulating compensated absences which are non-vesting (i.e., short-term accumulating compensated absences in respect of which employees are not entitled to cash payment for unused entitlement on leaving);

(b) paragraphs 46 and 139 of the Standard which deal with discounting of amounts that fall due more than 12 months after the balance sheet date;

(c) recognition and measurement principles laid down in paragraphs 50 to 116 and presentation and disclosure requirements laid down in paragraphs 117 to 123 of the Standard in respect of accounting for defined benefit plans. However, such entities should actuarially determine and provide for the accrued liability in respect of defined benefit plans by using the Projected Unit Credit Method and the discount rate used should be determined by reference to market yields at the balance sheet date on government bonds as per paragraph 78 of the Standard. Such entities should disclose actuarial assumptions as per paragraph 120(l) of the Standard; and

(d) recognition and measurement principles laid down in paragraphs 129 to 131 of the Standard in respect of accounting for other long-term employee benefits. However, such entities should actuarially determine and provide for the accrued liability in respect of other long-term employee benefits by using the Projected Unit Credit Method and the discount rate used should be determined by reference to market yields at the balance sheet date on government bonds as per paragraph 78 of the Standard.

(2) Level II and Level III Non-company entities whose average number of persons employed during the year is less than 50 and Level IV Non-company entities irrespective of number of employees are exempted from the applicability of the following paragraphs:

(a) paragraphs 11 to 16 of the standard to the extent they deal with recognition and measurement of short-

term accumulating compensated absences which are non-vesting (i.e., short-term accumulating compensated absences in respect of which employees are not entitled to cash payment for unused entitlement on leaving);

(b) paragraphs 46 and 139 of the Standard which deal with discounting of amounts that fall due more than 12 months after the balance sheet date;

(c) recognition and measurement principles laid down in paragraphs 50 to 116 and presentation and disclosure requirements laid down in paragraphs 117 to 123 of the Standard in respect of accounting for defined benefit plans. However, such entities may calculate and account for the accrued liability under the defined benefit plans by reference to some other rational method, e.g., a method based on the assumption that such benefits are payable to all employees at the end of the accounting year; and

(d) recognition and measurement principles laid down in paragraphs 129 to 131 of the Standard in respect of accounting for other long-term employee benefits. Such entities may calculate and account for the accrued liability under the other long-term employee benefits by reference to some other rational method, e.g., a method based on the assumption that such benefits are payable to all employees at the end of the accounting year.

(v) AS 19, Leases

(a) Paragraphs 22 (c),(e) and (f); 25 (a), (b) and (e); 37 (a) and (f); and 46 (b) and (d) relating to disclosures are not applicable to Level II Non-company entities.

(b) Paragraphs 22 (c),(e) and (f); 25 (a), (b) and (e); 37 (a), (f) and (g); and 46 (b), (d) and (e) relating to disclosures are not applicable to Level III Non-company entities.

(c) Paragraphs 22 (c),(e) and (f); 25 (a), (b) and (e); 37 (a), (f) and (g); 38; and 46 (b), (d) and (e) relating to disclosures are not applicable to Level IV Non-company entities.

(vi) AS 22, Accounting for Taxes on Income

(a) Level IV Non-company entities shall apply the requirements of AS 22, Accounting for Taxes on Income, for Current tax defined in paragraph 4.4 of AS 22, with recognition as per paragraph 9, measurement as per paragraph 20 of AS 22, and presentation and disclosure as per paragraphs 27-28 of AS 22.

(b) Transitional requirements
On the first occasion when a Non-company entity gets classified as Level IV entity, the accumulated deferred tax asset/liability appearing in the financial statements of immediate previous accounting period, shall be adjusted against the opening revenue reserves.

(vii) AS 26, Intangible Assets

Paragraphs 90(d)(iii); 90(d)(iv) and 98 relating to disclosures are not applicable to Level IV Non-company entities.

(viii) AS 28, Impairment of Assets

Level II and Level III Non-company entities are allowed to measure the 'value in use' on the basis of reasonable estimate thereof instead of computing the value in use by present value technique. Consequently, if Level II or Level III Non-company entity chooses to measure the 'value in use' by not using the present value technique, the relevant provisions of AS 28, such as discount rate etc., would not be applicable to such an entity. Further, such an entity need not disclose the information required by paragraph 121(g) of the Standard.

(a) Also, paragraphs 121(c)(ii); 121(d)(i); 121(d)(ii) and 123 relating to disclosures are not applicable to Level III Non-company entities.

(ix) AS 29, Provisions, Contingent Liabilities and Contingent Assets (revised 2016)

Paragraphs 66 and 67 relating to disclosures are not applicable to Level II, Level III and Level IV Non-company entities.

(C) In case of Level IV Non-company entities, generally there are no such transactions that are covered under AS 14, Accounting for Amalgamations, or jointly controlled operations or jointly controlled assets covered under AS 27, Financial Reporting of Interests in Joint Ventures. Therefore, these standards are not applicable to Level IV Non-company entities. However, if there are any such transactions, these entities shall apply the requirements of the relevant standard.

(D) AS 21, Consolidated Financial Statements, AS 23, Accounting for Investments in Associates in Consolidated Financial Statements, AS 27, Financial Reporting of Interests in Joint Ventures (to the extent of requirements relating to Consolidated Financial Statements), and AS 25, Interim Financial Reporting, do not require a Non-company entity to present consolidated financial statements and interim financial report, respectively. Relevant AS is applicable only if a Non-company entity is required or elects to prepare and present consolidated financial statements or interim financial report.

Annexure 1

Criteria for classification of entities

Criteria for classification of companies under the Companies (Accounting Standards) Rules, 2021

Small and Medium-Sized Company (SMC) as defined in Clause 2(e) of the Companies (Accounting Standards) Rules, 2021:

(e) "Small and Medium Sized Company" (SMC) means, a company-

- **(i)** whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;
- **(ii)** which is not a bank, financial institution or an insurance company;
- **(iii)** whose turnover (excluding other income) does not exceed two hundred and fifty crore rupees in the immediately preceding accounting year;
- **(iv)** which does not have borrowings (including public deposits) in excess of fifty crore rupees at any time during the immediately preceding accounting year; and
- **(v)** which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation: For the purposes of this clause , a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

Non-SMCs

Companies not falling within the definition of SMC are considered as Non-

SMCs.

Instructions

A. General Instructions

1. SMCs shall follow the following instructions while complying with Accounting Standards under these Rules:-

1.1 the SMC which does not disclose certain information pursuant to the exemptions or relaxations given to it shall disclose (by way of a note to its financial statements) the fact that it is an SMC and has complied with the Accounting Standards insofar as they are applicable to an SMC on the following lines:

"The Company is a Small and Medium Sized Company (SMC) as defined in the Companies (Accounting Standards) Rules, 2021 notified under the Companies Act, 2013. Accordingly, the Company has complied with the Accounting Standards as applicable to a Small and Medium Sized Company."

1.2 Where a company, being an SMC, has qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised merely by reason of its having ceased to be an SMC. The fact that the company was an SMC in the previous period and it had availed of the exemptions or relaxations available to SMCs shall be disclosed in the notes to the financial statements.

1.3 If an SMC opts not to avail of the exemptions or relaxations available to an SMC in respect of any but not all of the Accounting Standards, it shall disclose the standard(s) in respect of which it has availed the exemption or relaxation.

1.4 If an SMC desires to disclose the information not required to be disclosed pursuant to the exemptions or relaxations available to the SMCs, it shall disclose that information in compliance with the relevant accounting standard.

1.5 The SMC may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting

Standard:

Provided that such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.

B. Other Instructions

Rule 5 of the Companies (Accounting Standards) Rules, 2021, provides as below:

"5. Qualification for exemption or relaxation in respect of SMC. - An existing company, which was previously not a Small and Medium Sized Company (SMC) and subsequently becomes a SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to a SMC until the company remains a SMC for two consecutive accounting periods."

Criteria for classification of Non-company Entities as decided by the Institute of Chartered Accountants of India

Level I Entities

Non-company entities which fall in any one or more of the following categories, at the end of the relevant accounting period, are classified as Level I entities:

(i) Entities whose securities are listed or are in the process of listing on any stock exchange, whether in India or outside India.

(ii) Banks (including co-operative banks), financial institutions or entities carrying on insurance business.

(iii) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees two-fifty crore in the immediately preceding accounting year.

(iv) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees fifty crore at any time during the immediately preceding accounting year.

(v) Holding and subsidiary entities of any one of the above.

Level II Entities

Non-company entities which are not Level I entities but fall in any one or more of the following categories are classified as Level II entities:

(i) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees fifty crore but does not exceed rupees two-fifty crore in the immediately preceding accounting year.

(ii) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees ten crore but not in excess of rupees fifty crore at any time during the immediately preceding accounting year.

(iii) Holding and subsidiary entities of any one of the above.

Level III Entities

Non-company entities which are not covered under Level I and Level II but fall in any one or more of the following categories are classified as Level III entities:

(i) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees ten crore but does not exceed rupees fifty crore in the immediately preceding accounting year.

(ii) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees two crore but does not exceed rupees ten crore at any time during the immediately preceding accounting year.

(iii) Holding and subsidiary entities of any one of the above.

Level IV Entities

Non-company entities which are not covered under Level I, Level II and Level III

are considered as Level IV entities.

Additional requirements

(1) An MSME which avails the exemptions or relaxations given to it shall disclose (by way of a note to its financial statements) the fact that it is an MSME, the Level of MSME and that it has complied with the Accounting Standards insofar as they are applicable to entities falling in Level II or Level III or Level IV, as the case may be.

(2) Where an entity, being covered in Level II or Level III or Level IV, had qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised merely by reason of its having ceased to be covered in Level II or Level III or Level IV, as the case may be. The fact that the entity was covered in Level II or Level III or Level IV, as the case may be, in the previous period and it had availed of the exemptions or relaxations available to that Level of entities shall be disclosed in the notes to the financial statements. The fact that previous period figures have not been revised shall also be disclosed in the notes to the financial statements.

(3) Where an entity has been covered in Level I and subsequently, ceases to be so covered and gets covered in Level II or Level III or Level IV, the entity will not qualify for exemption/relaxation available to that Level, until the entity ceases to be covered in Level I for two consecutive years. Similar is the case in respect of an entity, which has been covered in Level II or Level III and subsequently, gets covered under Level III or Level IV.

(4) If an entity covered in Level II or Level III or Level IV opts not to avail of the exemptions or relaxations available to that Level of entities in respect of any but not all of the Accounting Standards, it shall disclose the Standard(s) in respect of which it has availed the exemption or

relaxation.

(5) If an entity covered in Level II or Level III or Level IV opts not to avail any one or more of the exemptions or relaxations available to that Level of entities, it shall comply with the relevant requirements of the Accounting Standard.

(6) An entity covered in Level II or Level III or Level IV may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting Standard:

Provided that such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.

(7) In respect of Accounting Standard (AS) 15, *Employee Benefits*, exemptions/ relaxations are available to Level II and Level III entities, under two sub-classifications, viz., (i) entities whose average number of persons employed during the year is 50 or more, and (ii) entities whose average number of persons employed during the year is less than 50. The requirements stated in paragraphs (1) to (6) above, mutatis mutandis, apply to these sub-classifications.

Annexure 1

Criteria for classification of entities

Criteria for classification of companies under the Companies (Accounting Standards) Rules, 2021

Small and Medium-Sized Company (SMC) as defined in Clause 2(e) of the Companies (Accounting Standards) Rules, 2021:

(e) "Small and Medium Sized Company" (SMC) means, a company-

(i) whose equity or debt securities are not listed or are not in the process of

listing on any stock exchange, whether in India or outside India;

(ii) which is not a bank, financial institution or an insurance company;

(iii) whose turnover (excluding other income) does not exceed two hundred and fifty crore rupees in the immediately preceding accounting year;

(iv) which does not have borrowings (including public deposits) in excess of fifty crore rupees at any time during the immediately preceding accounting year; and

(v) which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation: For the purposes of this clause , a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

Non-SMCs

Companies not falling within the definition of SMC are considered as Non-SMCs.

Instructions

A. General Instructions

1. SMCs shall follow the following instructions while complying with Accounting Standards under these Rules:-

1.1 the SMC which does not disclose certain information pursuant to the exemptions or relaxations given to it shall disclose (by way of a note to its financial statements) the fact that it is an SMC and has complied with the Accounting Standards insofar as they are applicable to an SMC on the following lines:

"The Company is a Small and Medium Sized Company (SMC) as defined in the Companies (Accounting Standards) Rules, 2021 notified under the Companies Act, 2013. Accordingly, the Company has complied with the Accounting Standards as applicable to a Small and Medium Sized Company."

1.2 Where a company, being an SMC, has qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or

requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised merely by reason of its having ceased to be an SMC. The fact that the company was an SMC in the previous period and it had availed of the exemptions or relaxations available to SMCs shall be disclosed in the notes to the financial statements.

1.3 If an SMC opts not to avail of the exemptions or relaxations available to an SMC in respect of any but not all of the Accounting Standards, it shall disclose the standard(s) in respect of which it has availed the exemption or relaxation.

1.4 If an SMC desires to disclose the information not required to be disclosed pursuant to the exemptions or relaxations available to the SMCs, it shall disclose that information in compliance with the relevant accounting standard.

1.5 The SMC may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting Standard:

Provided that such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.

B. Other Instructions

Rule 5 of the Companies (Accounting Standards) Rules, 2021, provides as below:

"5. Qualification for exemption or relaxation in respect of SMC. - An existing company, which was previously not a Small and Medium Sized Company (SMC) and subsequently becomes a SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to a SMC until the company remains a SMC for two consecutive accounting periods."

Criteria for classification of Non-company Entities as decided by the Institute of Chartered Accountants of India

Level I Entities

Non-company entities which fall in any one or more of the following categories, at the end of the relevant accounting period, are classified as Level I entities:

(i) Entities whose securities are listed or are in the process of listing on any

stock exchange, whether in India or outside India.

(ii) Banks (including co-operative banks), financial institutions or entities carrying on insurance business.

(iii) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees two-fifty crore in the immediately preceding accounting year.

(iv) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees fifty crore at any time during the immediately preceding accounting year.

(v) Holding and subsidiary entities of any one of the above.

Level II Entities

Non-company entities which are not Level I entities but fall in any one or more of the following categories are classified as Level II entities:

(i) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees fifty crore but does not exceed rupees two-fifty crore in the immediately preceding accounting year.

(ii) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees ten crore but not in excess of rupees fifty crore at any time during the immediately preceding accounting year.

(iii) Holding and subsidiary entities of any one of the above.

Level III Entities

Non-company entities which are not covered under Level I and Level II but fall in any one or more of the following categories are classified as Level III entities:

(i) All entities engaged in commercial, industrial or business activities, whose turnover (excluding other income) exceeds rupees ten crore but

does not exceed rupees fifty crore in the immediately preceding accounting year.

(ii) All entities engaged in commercial, industrial or business activities having borrowings (including public deposits) in excess of rupees two crore but does not exceed rupees ten crore at any time during the immediately preceding accounting year.

(iii) Holding and subsidiary entities of any one of the above.

Level IV Entities

Non-company entities which are not covered under Level I, Level II and Level III are considered as Level IV entities.

Additional requirements

(1) An MSME which avails the exemptions or relaxations given to it shall disclose (by way of a note to its financial statements) the fact that it is an MSME, the Level of MSME and that it has complied with the Accounting Standards insofar as they are applicable to entities falling in Level II or Level III or Level IV, as the case may be.

(2) Where an entity, being covered in Level II or Level III or Level IV, had qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised merely by reason of its having ceased to be covered in Level II or Level III or Level IV, as the case may be. The fact that the entity was covered in Level II or Level III or Level IV, as the case may be, in the previous period and it had availed of the exemptions or relaxations available to that Level of entities shall be disclosed in the notes to the financial statements. The fact that previous period figures have not been revised shall also be disclosed in the notes to the financial statements.

(3) Where an entity has been covered in Level I and subsequently, ceases to

be so covered and gets covered in Level II or Level III or Level IV, the entity will not qualify for exemption/relaxation available to that Level, until the entity ceases to be covered in Level I for two consecutive years. Similar is the case in respect of an entity, which has been covered in Level II or Level III and subsequently, gets covered under Level III or Level IV.

(4) If an entity covered in Level II or Level III or Level IV opts not to avail of the exemptions or relaxations available to that Level of entities in respect of any but not all of the Accounting Standards, it shall disclose the Standard(s) in respect of which it has availed the exemption or relaxation.

(5) If an entity covered in Level II or Level III or Level IV opts not to avail any one or more of the exemptions or relaxations available to that Level of entities, it shall comply with the relevant requirements of the Accounting Standard.

(6) An entity covered in Level II or Level III or Level IV may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting Standard:

Provided that such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.

(7) In respect of Accounting Standard (AS) 15, *Employee Benefits*, exemptions/ relaxations are available to Level II and Level III entities, under two sub-classifications, viz., (i) entities whose average number of persons employed during the year is 50 or more, and (ii) entities whose average number of persons employed during the year is less than 50. The requirements stated in paragraphs (1) to (6) above, mutatis mutandis, apply to these sub-classifications.

APPENDIX XI
[PARA 13.12]

APPLICABILITY OF SA 700 (REVISED), FORMING AN OPINION AND REPORTING ON FINANCIAL STATEMENTS, TO FORMATS OF AUDITOR'S REPORTS PRESCRIBED UNDER VARIOUS LAWS AND/ OR REGULATIONS

(Issued in August 2013 and revised in February, 2022. The revised announcement was considered and approved by the Council of ICAI at its 408th meeting held on 3rd & 4th February, 2022)

1. The Council of ICAI, at its 326th meeting held from 27th to 29th July 2013 considered the issue relating to application of Standard on Auditing (SA) 700¸ Forming An Opinion And Reporting on Financial Statements to such cases where the format of the auditor's report is prescribed under the relevant law or the regulation thereunder and are per se not in line with the requirements of SA 700. The Council further considered the aforesaid matter at its 408th meeting held from 3rd to 4th February 2022 in light of SA 700 (Revised), "Forming an Opinion and Reporting on Financial Statements". The Council noted that in many cases such prescribed auditor's report were required to be filed online in a preset form and, hence, it was not possible for the auditors to make necessary changes in these reports to bring them in line with the SA 700 (Revised). Similarly, many a times, even where the auditor's report were to be submitted in a physical form and not filed online, the concerned regulatory/ government agencies may not accept such audit reports which contained any changes made by the auditors to the prescribed formats to bring them in line with SA 700 (Revised).

2. In view of the above, the Council decided that while the matter was being taken up by the Institute with the relevant regulatory authorities/ Government agencies, etc., to change the prescribed formats for bringing the same in line with the requirements of SA 700 (Revised), the members may, in the situations described in paragraph 1 above, submit the auditor's report in the format/s prescribed under the relevant law or regulation until announcement of necessary change is made by the appropriate authority. In such cases the members would not be viewed as having not complied with the provisions of SA 700 (Revised).

3. In this context, it may also be noted that paragraph A56 of the SA 200, Overall Objectives of the Independent Auditor and the Conduct of An Audit in Accordance With Standards on Auditing clearly states as follows:

> "A56. In performing an audit, the auditor may be required to comply with legal or regulatory requirements in addition to the SAs. The SAs do not override laws and regulations that govern an audit of financial statements……"

4. Further, paragraph 49 of SA 700 (Revised) requires that if the auditor is required by law or regulation applicable to the entity to use a specific layout or wording of the auditor's report, the auditor's report shall refer to Standards on Auditing only if the auditor's report includes, at minimum, each of the elements as prescribed in the said paragraph.

5. On a perusal of a cross section of the formats of the auditor's report prescribed under various laws, specially, the Income-tax Act, 1961 and the Value Added Tax Acts of various States, it is clear that these prescribed formats do not contain all the elements of the auditor's report as required in paragraph 49 of SA 700 (Revised). In the background of the difficulties mentioned in paragraph 1 above, it may also not be possible for the auditors to suitably modify the prescribed format. Accordingly, it would not per se be possible for the auditors to state in their audit reports that the audit has been carried out in accordance with the Standards on Auditing. However, the auditors would be required to carry out the audits in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India.

The same can also be downloaded from ICAI website.

APPENDIX XII
[PARA 15.13]

Circular No.561, dated 22nd May, 1990

Subject: Tax audit under section 44AB of the Income-tax Act, 1961, in the case of companies having accounting year other than financial year - Regarding

1. The Board have received representations regarding difficulties faced in complying with the provisions of section 44AB of the Income-tax Act, 1961, in the case of companies which follow an accounting period other than financial year.

2. Section 3 of the Income-tax Act, *inter alia*, provides that with effect from 1st April, 1989, "previous year" for the purposes of that Act means financial year immediately preceding the assessment year. In spite of the introduction of a uniform previous year for purposes of income-tax, some companies may adopt an accounting period other than the financial year, say the calendar year, under the Companies Act for other purposes.

3. In such cases, a question has arisen as to whether, under section 44AB of the Income-tax Act, the tax auditor can audit and certify the accounts for the period for which accounts have been maintained under the Companies Act (i.e., in this case the calendar year) or whether the tax auditor will have to certify the accounts for the relevant financial year which is the uniform accounting year for tax purposes.

4. The Board have considered the matter and are of opinion that as the income of the previous year is chargeable to tax and, for the purposes of Income-tax Act, the previous year is the financial year, the tax auditor would have to carry out the audit under section 44AB in respect of the period covered by the previous year, i.e., the relevant financial year. The proviso to the aforesaid section 44AB, therefore, covers only the cases where the accounts are audited under any other law in respect of the financial year. Where the accounting year is different from the financial year, the proviso to section 44AB will not apply. Consequently, the tax auditors would have to carry out the tax

audit in respect of the period covered by the relevant financial year and submit his report in Form 3CB as required in rule 6G(1)(b) of the Income-tax Rules.

Sd/-
Nishi Nair
Under Secretary to the Government of India.
[F.No.205/4/90-ITA-II]

APPENDIX XIII
[PARA 21.1 & 35.7]

Circular No.739 dated 25-3-1996

Whether for assessment years subsequent to assessment year 1996-97, no deduction under section 40(b)(v) will be admissible unless partnership deed either specifies amount of remuneration payable to each individual working partner or lays down manner of quantifying such remuneration

1. The Board have received representations seeking clarification regarding disallowance of remuneration paid to the working partners as provided under section 40(b)(v) of the Income-tax Act. In particular, the representations have referred to two types of clauses which are generally incorporated in the partnership deeds.

These are:

(i) The partners have agreed that the remuneration to a working partner will be the amount of remuneration allowable under the provisions of section 40(b)(v) of the Income-tax Act; and

(ii) The amount of remuneration to working partner will be as may be mutually agreed upon between partners at the end of the year.

It has been represented that the Assessing Officers are not allowing deduction on the basis of these and similar clauses in the course of scrutiny assessments for the reason that they neither specify the amount of remuneration to each individual nor lay down the manner of quantifying such remuneration.

2. The Board have considered the representations. Since the amended provisions of section 40(b) have been introduced only with effect from the assessment year 1993-94 and these may not have been understood correctly, the Board are of the view that a liberal approach may be taken for the initial years. It has been decided that for the assessment years 1993-94 to 1996-97 deduction for remuneration to a working partner may be allowed on the basis of the clauses of the type mentioned at 1(i) above.

3. In cases where neither the amount has been quantified nor even the limit of total remuneration has been specified but the same has been left to be determined by the partners at the end of the accounting period, in such cases payment of remuneration to partners cannot be allowed as deduction in the computation of firm's income.

4. It is clarified that for the assessment years subsequent to the assessment year 1996-97, no deduction under section 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.

APPENDIX XIV
[PARA 42.9]

THE RELEVANT EXTRACTS OF THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

"Appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

"Day of acceptance" means the day of actual delivery of the goods or the rendering of service or where any objection is made in writing by the buyer regarding the acceptance of goods or services within 15 days from the day of delivery of goods or rendering of services, the day on which the objection is removed by the supplier.

"Day of deemed acceptance" means , where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of deliver of the goods or rendering of services, the day of the actual delivery of goods or the rendering of services.

"Buyer" means who so ever buys any goods or receives any services from the supplier for a consideration.

"Supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in section 7(1)(a).

"Micro Enterprise" means:

(a) In case of enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries(Development and Regulation) Act, 1951 an enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees;

(b) In case of enterprises engaged in providing or rendering services, an enterprise, where the investment in equipment does not exceed ten lakh rupees.

"Small enterprise" means:

(a) In case of enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries (Development and Regulation) Act, 1951 an enterprise, where the investment in plant and machinery is more than twenty five lakh rupees but does not exceed five crore rupees;

(b) In case of enterprises engaged in providing or rendering services, an enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees.

"Medium enterprise" means

(a) In case of enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries(Development and Regulation) Act, 1951 an enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) In case of enterprises engaged in providing or rendering services, an enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

APPENDIX XV
[PARA 53.1]

Circular No. 208, dated 15th November, 1976

F.No. 208/7/76-ITA-II

Section 69D of the Income-tax Act, 1961 - Clarification Regarding

Whether payment on or after April 1, 1977 of amount borrowed on hundi is to comply with the section regardless of whether hundi was executed prior to the said date or on or after that date

1. The Taxation Laws (Amendment) Act, 1975, has added a new section 69D in Income-tax Act, 1961, with effect from 1st April, 1977, which provides that if any amount is borrowed from any person on a hundi or any amount due on it is repaid to any person, otherwise than through an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be assessed as the income of the tax-payer borrowing or repaying the said amount, for the previous year in which the amount is borrowed or repaid. This will also apply to the amount of interest paid on the amount borrowed on hundies. This provision is applicable only in respect of hundies and does not cover other types of loans, such as, repayment of loan by employees to employers, repayment of loan to banks, co-operative societies etc.

2. The term "hundi" has not been defined in the Income-tax Act, 1961. In common commercial parlance, it denotes an indigenous instrument in vernacular language which can be used by the holder thereof to collect money due thereon without using the medium of currency. It may also be regarded as an indigenous form of a bill of exchange expressed in vernacular language which has been in use in the mercantile community in India for the purpose of collecting dues. There are numerous varieties of hundies, for example Darshani Hundi, Muddati Hundi, Shaha Jogi Hundi, Jokhmi Hundi, Nam Jog Hundi, Dhani Jog Hundi, Jawabi Hundi and Zickri chit. The characteristics of hundies differ according to the varieties of the same. The following characteristics are found in most of the hundies:

1. A hundi is payable to a specified person or order or negotiable without endorsement by the payee.

2. A holder is entitled to sue on a hundi without an endorsement in his favour.

3. A hundi accepted by the drawee could be negotiated without endorsement.

4. If a hundi is lost, the owner could claim a duplicate or triplicate from the drawer and present it to the drawee for payment. Interest can be charged where usage is established.

3. This provision will come into force with effect from 1st April, 1977. Accordingly, any payment on or after 1st April, 1977, in respect of an amount borrowed on a hundi will have to comply with the requirements of this provision regardless of whether the hundi was executed prior to the said date or on or after that date.

Circular No. 221, dated 6-6-1977

[F. No. 208/25/76-IT(A-II)],

Whether provisions of the section are applicable to darshani hundi transactions

1. Reference is invited to Board's Circular No. 208 [F. No. 208/7/76-IT(A-II)], dated 15-11-1976 [printed at Sl. No. 478] in which the provisions of section 69D were explained.

2. A "hundi" in common commercial parlance denotes an indigenous form of bill of exchange, by and large in vernacular language, which is being used by the mercantile community in India. The hundis can be broadly classified as (i) darshani hundis (sight or demand hundis), and (ii) muddati hundis (usance hundis payable after a stipulated period of time mentioned therein). Darshani hundis are of different varieties, *viz, (i)* shahjog hundis, (*ii*) dhanijog hundis, (*iii*) namjog hundis, (*iv*) dekharanarjog hundis, (*v*) farmanijog hundis, and (*vi*) jokhmi hundis.

3. It has been represented to the Board that a darshani hundi created solely for the purpose of remittances of funds or financing inland trade or for operating accounts through indigenous banking channels does not involve borrowal of amounts and as such does not fall within the scope of section 69D. There are more than two parties in a darshani hundi. Normally four parties are involved in the case of a darshani hundi, *viz, (i)* the rakhya (the holder or purchaser), (*ii*) the drawer (an indigenous banker or a vyapari), (*iii*) the drawee

(normally an indigenous banker but can also be a vyapari), and (*iv*) the payee. If the payee is also the rakhya, the parties will be three. Darshani hundi is payable at sight, *i.e,* immediately on presentation. A muddati (usance) hundi generally involving two parties, is payable after a stipulated period of time mentioned in the hundi.

4. The matter has been considered by the Board. We have been advised that *the provisions of section 69D are not applicable to darshani hundi transactions mentioned hereinafter :*

1.(a) A, who is the rakhya obtains on payment from B, the drawer, a hundi drawn on C, the drawee, in favour of D, the payee.

(b) A, the rakhya having a running account or an overdraft account with B, obtains from him a hundi drawn on C, the drawee, in favour of D, the payee.

2.(a) A, a purchaser of goods from B, draws a hundi on C, the drawee, in favour of B or a third party D for the purpose of payment of the price of goods purchased or for settling the account.

(b) For such purposes B can also draw a hundi on A either in his own favour or in favour of a third party D.

3. A has an account with an indigenous banker C, who has granted a credit facility to A and handed over a hundi book to him. A draws amounts through such hundis payable either to self, or bearer or third party. Such an arrangement arises out of the credit facility already granted and, therefore, no debtor creditor relationship has arisen between the parties because of the drawal of a hundi.

5. Normally, borrowal on hundi arises when a person gets money by execution of a hundi but in the instances cited above the hundi is given in the nature of a security and there is no borrowal on such hundis. Thus in cases of transactions referred to at (*1*), (*2*) and (*3*) of para 4, section 69D is not applicable. The settlement of account between any of the parties to such a darshani hundi can, thus, be otherwise than through an account payee cheque within the meaning of section 69D.

6. This circular covers darshani hundi transactions of the types referred to at *(1),* (*2*) and (*3*) of para 4 above. However, it could not be said that there could be no borrowal on darshani hundi. The transactions not of the type referred to above, on darshani hundis have to be examined with reference to

the facts and circumstances of such cases so as to determine whether or not there is a borrowal on such hundis.

APPENDIX XVI

Useful websites

S. No	Particulars	Webpage link
1.	Direct Taxes Committee of ICAI	https://www.icai.org/post/direct-taxes-committee
2.	Central Board of Direct Taxes	https://incometaxindia.gov.in/Pages/default.aspx
3.	Institute of Chartered Accountant of India	https://www.icai.org/
4.	Accounting Standards Board	https://www.icai.org/post/accounting-standards-board
5.	Auditing & Assurance Standards Board	https://www.icai.org/post/auditing-assurance-standards-board
6.	Ethical Standards Board	https://www.icai.org/post/ethical-standards-board
7.	Ministry of Corporate Affairs	https://www.mca.gov.in/content/mca/global/en/home.html

APPENDIX XVII

Reference Material/Publications

S. No	Particulars	Webpage link
1.	Income-tax Act, 1961	https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx
2.	Information Technology Act, 2000	https://www.incometaxindia.gov.in/pages/acts/information-technology-act.aspx
3.	Income-tax Rules	https://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx
4.	Income-tax Forms	https://incometaxindia.gov.in/Pages/downloads/most-used-forms.aspx
5.	FAQs on Tax audit	https://www.incometaxindia.gov.in/Pages/faqs.aspx?k=FAQs+on+Tax+Audit
6.	Approach to Tax Audit under section 44AB of the Income tax Act, 1961 (Checklist)	https://resource.cdn.icai.org/61602dtc-taqrb50133a.pdf
7.	Study on Compliance in reporting Tax Audit Report	https://resource.cdn.icai.org/70872taqrb-scrtar.pdf
8.	Accounting Standards	https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/accounting-standards.html
9.	Code of Ethics	https://www.icai.org/post/applicability-revised-edition-code-of-ethics

S. No	Particulars	Webpage link
10.	IND -AS	https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/accounting-standards.html
11.	ICDS	https://www.incometaxindia.gov.in/communications/notification/notification872016.pdf

APPENDIX XVIII

Options trading – Turnover – Examples

Option Trading

Facts **Remarks**

		Option Writer	Option Holder	In Trading platform both are not known to each other and stock exchange mechanism is available to match the trade
	Call Option	writer is obliged to **sell** underlying asset at the Exercise price if option holder choose to exercise the right	Take to option to buy the underlying asset as predetermined price	
	Put Option	writer is obliged to **Buy** underlying asset at the Exercise price if option holder choose to exercise the right	Take to option to Sell the underlying asset as predetermined price	
	Premium	Receive the premium for writing option	Pay the Premium for holding option	
	Right/Obligation	Obligation to fulfill the option of Holder	Right to buy or sell but no obligation. If he does not exercise the right, the premium paid is forfeited	
	Profit	Premium is maximum Profit	If prices is favorable profit will be higher	
	Risk	Risk will me maximum and directly proportion to profit of Option holder	Minimum and limited to Premium already paid	
	Facts			
	Underlying Asset	Scrips of M/s ABC Ltd (listed at NSE)		
	Spot/current price of Scrip	Rs. 100	Rs. 100	
	Expectation	Price will not go beyond Rs.120	Price will reach to range of Rs.200	
	Bargain	Ready to Sell at Rs.125	Ready to Buy at Rs.120	Trade striked at Rs.122

Example 1	Strike Price	Rs. 122	Rs. 122	
	Premium	2	2	
	Lot Size (500 Shares)			
	Total Premium	1000	1000	
	Gain	Received Rs.1000/-	Pays Rs.1000/-	
	Turnover	1000	0	
	Expired Price	Rs.170	Rs.170	
	Profit/gain	unfavorable difference of Rs.48 per share (Rs.170-122)	Favorable difference of Rs.48 per share (Rs.170-122)	Option is exercised
	Total Difference	24000	24000	
	Impact			
	Premium	1000	1000	
	Favorable/Unfavorable Difference	-24000	24000	
	Profit/-Loss	-24000	24000	
	Payout/Payin (Option 1)	-23000	24000	In normal circumstances payout will be made on settlement of contract or on expiry of the contract, in case of option writer. However in case of option holder premium will be paid on the date of the Exposure.
	Turnover	23000	25000	
	Payout/Payin (Option 2)	Rs 1,000 on date of exposure and Rs. -24,000 on the date of settlement/expiry.	24000	
	Turnover	25000	25000	

Example 2	**Strike Price**	Rs. 122	Rs. 122	
	Premium	2	2	
	Premium	1000	1000	
	Expiry/settlement price	130	130	Option is not exercised
	Profit /-loss	1000	-1000	
	Turnover	1000	1000	

Example 3	**Strike Price**	122	122	
	Premium	2	2	
	Total Premium	1000	1000	
	Expiry price	110	110	Option is not exercised
	Profit /-loss	1000	-1000	Premium paid /received is only loss or gain
	Turnover	1000	1000	