

**All about Tax audit under  
Income Tax Act  
Date: 19-08-2023**

**BHIWANI BRANCH OF  
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- Experience of litigation handling such as appellate proceeding before ITAT, CIT(A) , Revision etc. and advisory matters of Direct taxes particularly income tax and handling indirect tax matters such as audit, appeal , SCN, adjudication, etc. of GST, service tax, DVAT, CST, Central Excise and other related matters.
- Authored the book **DNA of GST Audit and Annual return, The DNA of TDS&TCS (including withholding tax, advance tax and equalisation levy)** ,Background material on GST for empowerment of girl students ICAI, New Delhi
- Guest faculty for certification course on GST & Certification course on appeal and representation ICAI , New Delhi
- Corporate trainer and guest Faculty with **Indian Institute of Management(IIM)**, NIFMS, Faridabad(Institute of Minister Finance),ICAI New Delhi and ICSI, New Delhi and other trade association.
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# TAX UPDATE



All about tax audit  
under Income Tax  
Act

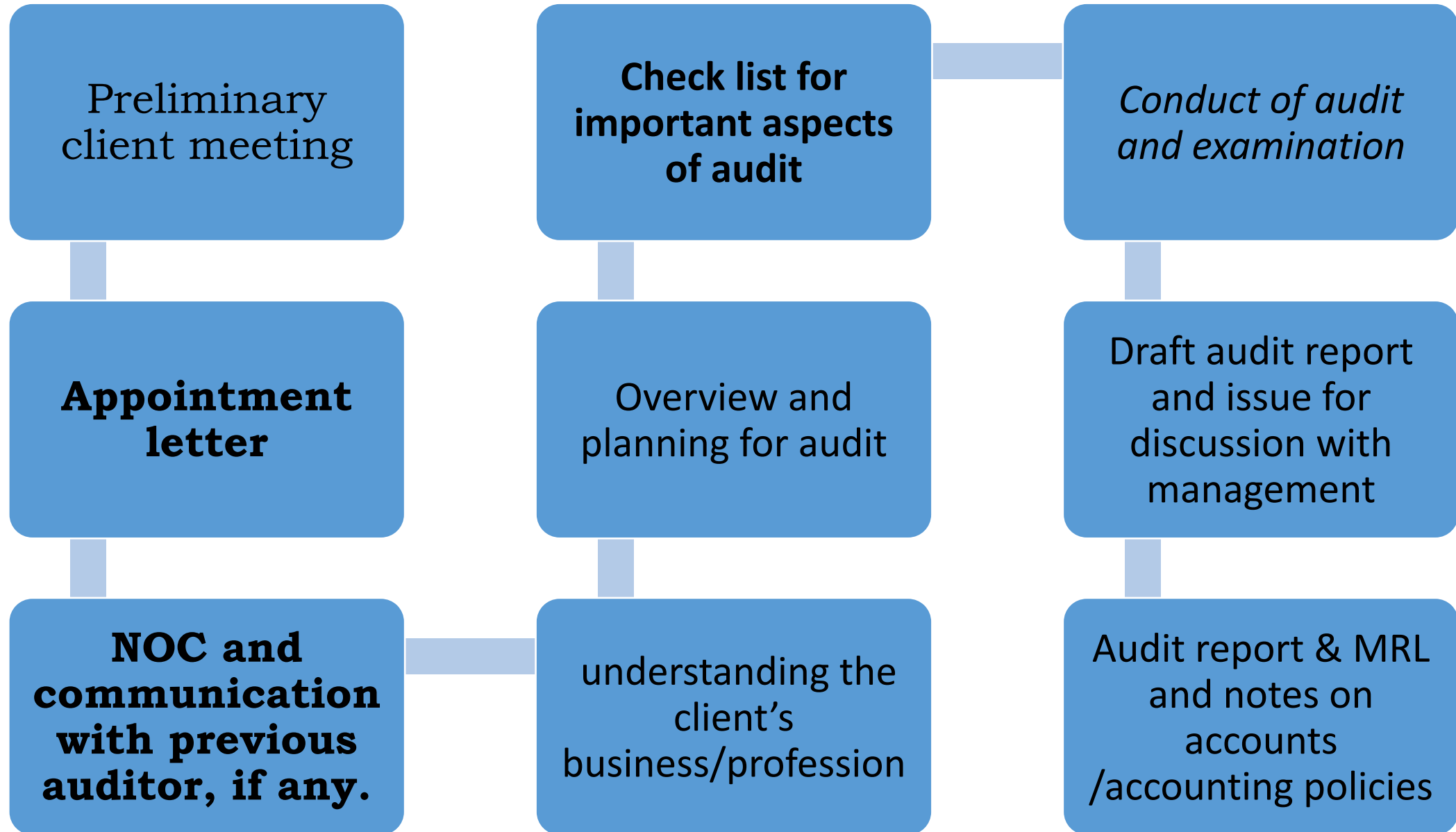
## relevant provisions

- ❑ Section 44AB
- ❑ Rule – 6G
- ❑ Form 3CA, 3CB, 3CD
- ❑ Notification making amendment in the income tax rules and form 3CD-**INCOME-TAX (EIGHTH AMENDMENT) RULES, 2021 vide NOTIFICATION NO. G.S.R. 246(E) [NO. 28/2021/F. NO 370142/9/2018-TPL], DATED 1-4-2021**
- ❑ **Amendment by FA 2021- taxation of partnership firm.**
- ❑ **Section 9B, 45(4), 48(iii) rule 8AB, etc.**
- ❑ **amendment by FA 2022 and recent cases laws**

## Contents

- Section 44AB-Audit of accounts of certain persons carrying on business or profession.
- Forms of reporting audit report- form 3CA/3CB & 3CD
- Revision of tax audit report – notification no 28/2021 dt 01-04-2021
- Changes in tax audit report for AY 2021-22 – notification no 28/2021 dt. 01-04-2021
- General discussion on form 3CA/3CB and Important clauses in tax audit report – form 3CD
- 271 B-Consequence of failure to get accounts audited.
- FAQ

# Process flow chart under Tax audit



# mandatory tax Audit

## Assessee having business

total sales, turnover or gross receipts exceeds ₹ 1cr -44AB(a)

Income u/s 44AE, and claiming lower profit than deemed income u/s-44AB(c)

section 44AD(4) applicable & income exceeds threshold limit -S-44AB(e)

## Assessee carrying on profession

gross receipts exceeds ₹ 50 lakh-S-44AB(b)

44ADA applicable- income exceeds threshold limit and claimed lower income S- 44AB(d)

Section 44AD(4) cover situation where in earlier years assessee opted for section 44AD but now reporting less than deemed income 6%/8%.

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 ₹1 crore in any previous year:
- b) carrying on profession shall, if his gross receipts in profession exceed ₹ 50 lakh 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,



Amendment by FA 2023 AY 24-25

Old 1 <sup>st</sup> proviso to s-44AB	New 1 <sup>st</sup> proviso to s-44AB
<p>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</p>	<p>Following first proviso shall be substituted for the existing first proviso to section 44AB by the Finance Act, 2023, w.e.f. 1-4-2024: 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:</p>
<p><b>Effect: If assessee is eligible for 44AD/44ADA and opt for section 44AD/44ADA – no tax audit required.</b></p> <p><b>Amendment in section 44AD/ADA from AY 2024-25 - if cash transaction within 5%, Limit of turnover for opting section 44AD/ADA enhance to Rs. 3 crore for business / Rs. 75 lakhs for Profession respectively.</b></p>	

## Not mandatory tax Audit

- Assessee having business
  - total sales, turnover or gross receipts upto ₹ 10cr –if aggregate of all amounts received in cash is within 5% &
  - aggregate of all payments made including amount incurred for expenditure in cash within 5%- 1<sup>st</sup> proviso to S-44AB(a)
  - Turnover less than ₹ 2 cr and claiming income u/s 44AD
  - \*1<sup>st</sup> Proviso to S-44AB
  - **Amended by FA 2023 w.e.f AY 2024-25**
  - IF assessee opt 44AD/ADA tax audit section 44AB not applicable
- Assessee carrying on profession
  - gross receipts less than ₹ 50 lakh and not covered by section 44ADA.
  - 44ADA applicable- income is less than threshold limit of tax.

## **Upto AY 2023-24**

### **Proviso to section 44AB(a):**

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 5% 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 5% of the said payment:

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, ]

this clause shall have effect as if for the words “ ₹ 1 crore ”, the words “ ₹ 10 crore ” had been substituted; or]

### **\*1<sup>st</sup> proviso to section 44AB:**

**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.

FROM AY 2024-25:

\* New 1<sup>st</sup> proviso to section 44AB:

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:.

## Time limit for audit report

Assessee 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 .

**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.

**Important  
points of  
income tax  
rule 6G  
form of tax  
audit and  
revision of  
audit report.**

Rule 6G(1):

(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 + 3CD. Example -LLP – audit under LLP Act -annual turnover exceeds Rs. 40 lakhs or whose contribution exceeds Rs. 25 lakhs.

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

6G(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD

6G(3): **Revision of audit report** from AY 2021-22 if payment made after tax audit report but before due date of filing of ITR for which disallowance under section 40/43B is linked with payment. Sub rule (3) inserted by 8<sup>th</sup> amendment to income tax rule.

**Time limit for revision** – before the end of AY.

New sub rule  
6G(3)

*(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.*

# Important part of form 3CA

## Basis of reporting:

1. Information
2. Books of account examined
3. Relevant documents
4. Explanation given to auditor

## Illustrations of mistake in report:

Particulars required to be reported but not reported

Mistake in reporting- employer,s contribution to EPF/ESI also reported in section 36(1)(va)

Reporting done of any other AY of any disallowance or non deduction of tax.

Clause applicable but reported as not applicable  
explanation –MRL

No supporting paper/explanation from assessee still wrong reporting

Recommendation: no factual mistake in report

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:

.....  
.....  
.....

**True (adj) = accurate or exact , not false.**

**Correct (adj)= free from error; factually correct**



# Effects of adverse reporting/mistake in tax audit report

Adjustment to the returned income u/s143(1) by CPC.

Demand of tax , interest

**Sree Gokulam Chit and Finance Co. P. Ltd. Vs DCIT (ITAT Chennai) - yes**

## Can CPC make adjustment to returned income?

### Memorandum finance bill 2008:

Post amendment w.e.f. 01.04.2008, the scope of adjustment u/s.143(1) of the Act has widened and enlarged. It provides that total income shall be computed after making **Correction of arithmetical mistakes** and **incorrect claim**, if such incorrect claim is apparent from any information in the return of income.

### Memorandum finance bill 2016:

It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. (emphasis supplied) However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within 30days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

**Section 143 (1)(a) (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return**

Applicability  
/ non  
applicability  
of certain  
Clauses of  
form 3CD

Clause 28 – gift of unlisted share under section 56(2)(viia) which is inapplicable from AY 2018-19 because new clause (x) in section 56(2) and reporting is covered in clause 29B

Clause 30C- pertaining to GAAR-kept in abeyance till **31/3/2022-circular no -5/2021dated 25/3/2021**

Clause 36- DDT- because DDT abolished – Clause 36 omitted by notification no 28/2021 dt 01-04-2021.

Clause 38 – central excise audit report

Clause 39 – service tax audit for valuation of service

Clause 44- break up of total expenditure of assessee registered in GST into two parts (1) expenditure from GST registered entity (2) expenditure from unregistered entity- deferred till 31-03-2022

**MAJOR CHANGES IN  
FORM 3CD FOR AY 2021-22 onwards**

# **New clause 8A extending newly inserted sections 115BAC & 115BAD**

- Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD?.”
- Not applicable to firm/AOP/BOI/AJP but from AY 2024-25 section 115 BAC applicable to AOP/BOI also/ default tax rate.
- Sec 115 BA/115BAA/115BAB is Special tax rate applicable to Companies.
- Sec 115 BAC is Special tax rate applicable to individual /HUF applicable to AOP/BOI also from AY 2024-25.
- Sec 115 BAD is Special tax rate applicable cooperative society

# section 115 BAC

- In the case of every Individual or HUF.
- This is special Tax rate and it is optional .
- Option to be exercised by Filling form 10-IE for business income assessee.
- individual or HUF does not have business income, the option is to be exercised every year on or before due date of filing of the return of income under section 139(1) for the year .
- individual or HUF has business income, the option is to be exercised on or before the due date of filing the return of income and such option once exercised shall apply for that previous year and to all subsequent years. Only once can be withdrawn if done so not eligible to opt again.
- Form 10IE could be verified from income tax portal. Before this auditor can't comment on this clause

## section 115BAD

1. This Section is applicable to **Co-operative Society Resident in India**.
2. The Total Income of Resident Co-operative Societies is taxable @ 22% + applicable Cess etc
3. This Scheme is Optional and the option is to be exercised on or before due date of Furnishing return under section 139(1).
4. **Option by filling form 10-IF.**
5. No Deduction shall be allowed in respect of the following:
  - u/s 10AA(SEZ) or 32(1)(iia) or 32AD or 33AB or 33ABA or 35(1)(ii)/(iia)/(iii) or 35(2AA) or 35AD or 35CCC(**agricultural extension project**) or any deduction u/c VI-A Other than 80JJAA (New employment) & 80LA (**Offshore Banking Units and International Financial Services Centre**).
  - The total income of Co-operative Society is calculated without adjusting brought forward loss & depreciation from earlier year (if such loss & Depreciation pertains to any deduction under the aforesaid sections)
  - Where there is depreciation allowance in respect of a block of asset which has not been given full effect to prior to AY 21-22, corresponding adjustment shall be made to the WDV of such block of assets as on 1.04.20 in the prescribed manner, if option for Section 115BAD is exercised for PY 20-21 relevant to AY 21-22.

# Clause 17 substituted

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:

<i>Details of property</i>	<i>Consideration received or accrued</i>	<i>Value adopted or assessed or assessable</i>	<i>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]</i>

**Section 5 of the TPA define transfer of property** as "transfer of property" means an act by which a living person **conveys property, in present or in future**, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

**Case: Amit kumar tyagi Vs. DCIT -1 Ghaziabad ITAT DEL Capital gain case.**

# Meaning of transfer

TRANSFER EXCLUDED FROM SECTION 50C/43CA:

Changes in stamp duty on date of date of the agreement and date of registration- value on date of the agreement may be taken- if amount of consideration or a part thereof in banking channel on or before date of agreement [1<sup>st</sup> proviso to S-50C(1) AY 2017-18]

Stamp duty value is not more than 110% of consideration for transfer. [2<sup>nd</sup> proviso to S-50C(1) AY 2019-20]

Assessing Officer may refer the valuation of the capital asset to a Valuation Officer as per request of assessee if he has not disputed stamp duty valuation at any other forum and as per assessee stamp duty value is more than fair value. 50C (2) NOT RELEVANT FOR AUDIT PURPOSE.

- Business assets like stock in trade covered u/S43CA and capital assets u/s 50C
- Transfer is wide and include lease, exchange, gift, sale etc.
- Wide scope of reporting , all type of transfer.



# in clause 18, for sub-clauses (ca) and (cb), substituted

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.....

# Goodwill – no depreciation- block of assets/WDV to be adjusted

- Smiff securities 2012 348 ITR302 (SC) wherein it was held that goodwill of a business or profession is a intangible depreciable assets so depreciation allowable. To overrule this a Amendment by FA 2021 .
- Amendment by FA 2021 – such assets is no more depreciable assets to be excluded from block of assets.
- Section 2(11) block of assets and section 43(6)( c ) to exclude original cost of goodwill reduced by dep. Presuming goodwill the sole assets from WDV.
- *Explanation 3 to section 32(1) assets does not include goodwill of a business or profession.*
- *Explanation added to Section 50( related to computation of capital gain on depreciable assets) by FA 2022 :*
- *Explanation.—For the purposes of this section, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43 shall be deemed to be transfer.*

# in clause 32, sub-clause (a), substituted.

32.[(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Sl 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^	Amounts as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

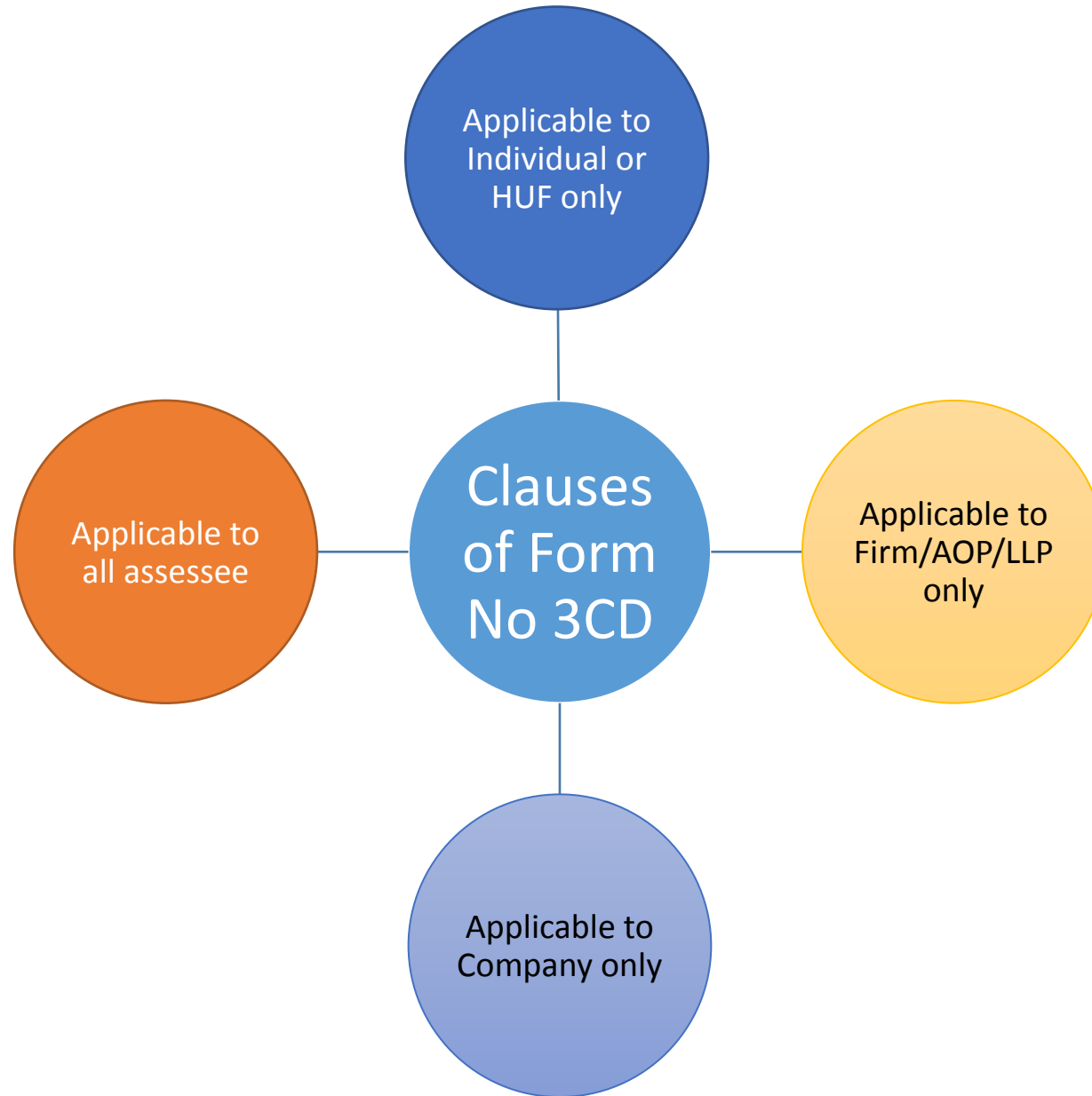
\*If the assessed depreciation is less and no appeal pending than take assessed depreciation .

^ 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. ....



## **Common Clauses of form no 3CD Applicable for all Assessee**

- Clause 1- Name of the assessee**
- Clause 2- Address**
- Clause -3 PAN /Aadhaar Number**
- Clause-4-Registrations under indirect tax laws**
- Clause -5 Status**
- Clause-6 Previous year**
- Clause- 7 Assessment year**
- Clause-8 Relevant clause of section 44 AB under which audit has been conducted**
- Clause 10 Nature of Business /Profession**
- Clause 11 Books of account**
- Clause 12 Presumptive Income**
- Clause 13 Method of Accounting & Compliances**

- Clause 14 Method of stock valuation**
- Clause 15 Capital asset converted into stock in trade .**
- Clause 16 Amounts not credited to profit and loss account**
- Clause 17 Property (land or building or both ) transferred at less than stamp duty value**
- Clause 18 Depreciation**
- Clause 19 Amounts deductible under sections 33 AB,33ABA etc.**
- Clause 20 Bonus /Employee's contributions to PF/ESI etc.**
- Clause 21 Amounts debited to profit and loss account –All Sub clauses except sub- clause (C)**
- Clause 22 Interest not admissible as deduction under section 23 of MSMED Act ,2006**
- Clause 23 Payments to persons specified under section 40A (2) (b).**
- Clause 24 Amount deemed to be profit and gains under sections 32AD,33AB,33ABA.**
- Clause 25 Amount deemed to be profits and gains under sections 41**
- Clause 26 sums covered by sections 43B.**
- Clause 27(a) Cenvat Credit /Input Tax Credit .**
- Clause 27 (b) Prior Period Items**
- Clause 28 Assesse has received during the P.Y share the value of which less than FMV**
- Clause 29A Amount chargeable under section 56(2) (ix)**

- Clause 29B- gifts chargeable to tax u/s 56(2)(x) except gift from close relatives.**
- Clause 30 Hundi transactions**
- Clause 30A Secondary Transfer Pricing Adjustments**
- Clause 30B Thin capitlization adjustments**
- Clause 31 Acceptance , repayment of loan, deposit, specified sum**
- Clause 32 (a) Details of brought forward loss or depreciation allowance**
- Clause 32 (C) Speculations loss**
- Clause 32 (d) Loss Referred to in sections 73 A**
- Clause 33 Chapter VIA Deductions**
- Clause 34 Audit of compliance with TDS Provisions**
- Clause 35 Quantitative details**
- Clause 36A Deemed Dividend**
- Clause 40 Accounting Ratios**
- Clause 41 Demands raised or refunds issued under tax laws**
- Clause 42 Furnishing or Form Nos,61,61A and 61B.**
- Clause 43 Country by country reporting under section 286**

**Clauses of form 3CD applicable  
to individual/HUF**



# Clause -2 address of the assessee

- The address to be reported must be the address on the date of signing of report where correspondence to be made by the income tax department
- The address of all branches to be reported
- In the case of company registered office must be mentioned
- In the case change of address the latest address to be reported here
- Needs correction in PAN database as well
- Address as per MCA 21 Vs. address as per GST registration vs latest address
- Require to have all KYC documents and address proof like electricity bill/ utility bill/valid rent/lease agreement etc. **non existent dealer /bogus invoicing**
- In case of difference in address as per income tax profile and other records either client will update profile or the same should be given as an observation in the audit report.

# Clause No – 4

## Registration Under Indirect Tax Laws

if multiple registration numbers are available, all such registration numbers should be examined by the tax auditor and duly reported.

Reporting of all GST No even though cancelled after the FY

Reporting of all GST NO even though cancelled if appeal pending /writ pending what to do? Report such no also as tax/ITC on such no during FY

If liability to pay but no registration, report the fact , create liabilities and report non availability of registration

MRL- list of applicable indirect tax and registration – certificate /ID.

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* or any other identification number allotted for the same.....

# Important Point Regarding Clause – 4

- **Liability to pay any indirect tax** such as GST , Excise duty , custom duty , vat etc to be examined . Both under forward charge as well as reverse charge under GST, service tax etc.
- **If there is liability but no registration – provision** to be created and qualification in the main report – AS 29/ ICDS
- If there is liability to pay tax, details of registration no / other tax identification no if available
- Tax auditor should obtain list of applicable indirect tax and registration certificate and examination of the validity of those certificate- could be verified from GOVN. website. MRL from auditee.
- If **registration cancelled from retrospective effect even after FY** and no appeal/appeal – report in main report. Due to ITC denial liability of GST may enhance manifold. PORTAL Checking/MRL

# Clause no -5 status

- Status –means **legal status** to be reported and not residential status
- As per section 2(31) of the act a person may have different legal status such as individual /HUF firm /LLP /company / AOP trust /AOP /BOI /local authority / cooperative society etc.
- Drop down menu is available for selecting appropriate status
- In the case of dispute of status particularly in the case of HUF Vs individual, AOP/AOP Trust, MRL to be obtained and suitable reporting in main report
- **Radharaman JewTrust Fund Vs. Income-tax Officer, Ward-43(3), Kolkata** - Under section 143(1), Assessing Officer could not change status of assessee, in this case CPC has changed the status while processing ITR, AOP to AOP trust to enhance tax.

# Tax Audit clauses of Form 3CD applicable to Individuals/HUFs

## Clause 8A – **Whether the assessee has opted for taxation under section 115BAC ?**

- In the Case of every **Individual or HUF**. Tax rate either as per finance act with all deductions, exemptions or special tax rate as per section 115BAC with no deductions and exemptions
- This special Tax rate is optional .
- Filing of **form 10-IE**.
- individual or HUF does not have business income, the option is to be exercised for every year along with the filing of the return of income under section 139(1) for the year .
- individual or HUF has business income, the option is to be exercised on or before the due date of filing the return of income and such option once exercised shall apply for that previous year and to all subsequent years.

# Clause 10 -Nature of Business /Profession

**Nature of business or profession-** each business/profession carried on during the PY to be reported

- a. Refer GST certificate, or other certificate inward invoice, outward supply invoice, e-way bill, bill of entry filed, delivery challan issued/received MOA, partnership deed, notes on account, various licenses and approval etc. – may be a base for disallowance u/s 37 or allowances of various expenses and to establish expense necessary for business.
- b. Reporting of all business or all professional income.
- c. Nature of business or profession as per income tax portal profile/ form 10IE form Vs. as per invoice issued, GST registration, other business documents.
- d. Nature of business important to justify claim of deduction, justification of GP/NP rate etc.

**Change in the nature of business or profession-** particulars of change to be reported.

**Report all changes to justify claim of exp. or variation in profitability ratio etc.**

# Nature of business

- Manufacturing , trading, service provider, commission agent, builder, contractor etc.
- Sector
- Sub-sector and code
- Nature of business reported in ITR vs Nature of business in tax audit report form 3CD.
- Nature of business as per GST Vs. nature of business as per tax audit
- Nature of business Vs. Accounting policies adopted and notes on account forming part of audited balance sheet
- Nature of business as per various trade licenses.

- Changes to be reported keeping in mind the changes/effect on change in GP ratio/ N.P ratio
- Increase in certain expenses
- Decrease in certain expenses
- Changes in inventory level.
- Amount recognized as revenue e. g in the case of sale – full amount/ in the case of commission agent – only commission portion.
- Material changes to be reported help in justifying the claim of deduction under IT Act.

# Clause 11 –Book of Account

- (a) Whether **books of account are prescribed** under section 44AA, if yes, list of books so prescribed. e.g. case register 3C for medical professional, stock of drugs, medicines and other consumable accessories used for the purpose of his profession. Rule 6F

**Note:** so far books of account prescribed for notified professionals only. Different sets of Books of account under companies act, LLP Act, CGST/SGST Act. Here we have to just report as prescribed under income tax Act and that too u/s 44AA.

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

**Books of account may be manual or computerized . If computerized** “In case books of account are maintained in a computer system, mention the **books of account generated by such computer system**.”

In the case of company- **Section 2(13) of Companies Act**, "books of account" includes records maintained in relation to:

all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

all sales and purchases of goods and services by the company;

the assets and liabilities of the company; and

the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;



# Clause 11 –Book of Account

**In the case of LLP- rule 24(2) of LLP rules 2009**

**In the case of GST registered assessee- Section 36 of CGST/SGST Act read with 56 to 58 of CGST Rules for books and documents to maintained.**

**Report those maintained under GST also such as** production or manufacture of goods; input tax credit availed; records of the consigner, consignee for transporter, stock record having details of goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample etc. separate account of advances received, paid and adjustments - advance against supply of goods/services.

If the books of account are not kept at one location, please furnish the addresses of locations along with the details of books of account maintained at each location.

**Note:** books of account is in the place of business in GST so must be in RC.

- c) List **of books of account and nature of relevant documents examined**, report only those books which are actually examined, if not examined then you may write either not produced for verification/ reason why not examined if required- books kept at GST office/income tax office after seizure.

## Scope of audit

- ❑ Books of account prescribed u/s 44AA.
- ❑ Books of account maintained and address
- ❑ Books of account to be examined for audit evidence
- ❑ Relevant documents to be examined for audit evidence

**Meaning of books of account :** "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; section 2(12A)

Leading case laws: **Sheraton Apparels Vs. Assistant Commissioner of Income-tax [2002] 123 Taxman 238 (Bombay)/[2002] 256 ITR 20**

- *credible accounting record provides best foundation for filing return of both direct and indirect taxes.*
- *main objectives of the books of account are to maintain record of business to calculate profit earned or loss suffered during the period of time, to depict the financial position of the business to portray liquidity position, to provide up-to-date information of assets and liabilities.*
- *The books of account referred to are those books of account which are maintained for the purposes of the Act and not the diaries which are maintained merely as man's private record,*
- *The term 'books of account' referred to in clause (1) of Explanation 5 to section 271(1)(c) means 'books of account' which have been maintained for determining any source of income.*
- **book + account= successive entries with totaling or balancing then only qualify as books of account.**

## relevant documents

### Inclusive definition of documents

**Meaning of documents:** "document" includes an **electronic record** as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 [ section 2(22AA)]

**electronic record:** As per the IT ACT 2000 "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.

**Refer section 4 of IT Act :**“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.

System require to report address of books of account: Books in computer server/ cloud – location of server/IP address to be reported.

# Relevancy of books of account – section 34 of the evidence Act.

*Books of account important for claiming deductions, ascertaining net profit or loss etc.*

*section 68 is applicable to credit entries in the books of accounts but not applicable in respect of any entry in documents **DY.CIT Vs RAJA UDAY SHANKAR (2006) 7 SOT 680(Bang)***

*section 292C of the income tax act 1961 the books of account and other evidence found during the course of the survey/search shall be presumed to belong to the person who has been surveyed and the contents are true and presumption of signature/handwriting. **The presumption prescribed in section 292C is a rebuttable presumption. Presumption to both department as well as assessee.***

*For detail refer [www.ppsingh.org](http://www.ppsingh.org)*

**Entries in books of account including those maintained in an electronic form when relevant:**

Entries in books of accounts including those maintained in an electronic form, **regularly kept** in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, **but such statements shall not alone be sufficient evidence to charge any person with liability.** [Section 34] means not a sole conclusive evidence to fix liabilities, may be of persuasive value **subject to other evidences like statement recorded, other party documents.**

**Note:** under GST presumption in section 135 Presumption of culpable mental state. Section 144 presumption of documents produced or seized or received from abroad to be true/signed/handwritten.

## Section 144 of CGST

Rebuttable presumption – clause (b) permit as evidence against section 35 of stamp act which prohibit not to accept as evidence, unregistered documents- affect the right except collateral/specific relief act – section 49 registration act.

### Presumption as to documents in certain cases.

144. Where any document—

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

(a) **unless the contrary is proved** by such person, presume—

(i) the **truth** of the contents of such document;

(ii) that the **signature** and every other part of such document which purports to be in the **handwriting** of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) **admit the document in evidence** notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

## **Clause 12 – whether Income assessable under presumptive basis**

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.)

Section	Applicable on particular type of assessee	Nature of business /profession		Determination of income on presumptive basis.
44AD	Other than LLP/Company	<b>computing profits and gains of business on presumptive basis having turnover less than ₹ 2 cr.</b> <b>Any business except</b> <ol style="list-style-type: none"> <li>1. commission or brokerage;</li> <li>2. Agency business</li> <li>3. Profession notified u/ s 44AA</li> <li>4. business of plying, hiring or leasing goods carriages referred to in section 44AE</li> </ol>		8% of total turnover or gross receipts / 6% in the case of digital transaction.
44AE	assessee, who owns not more than 10 goods carriages	<b>computing profits and gains of business of plying, hiring or leasing goods carriages.</b>		heavy goods vehicle above 12 ton - ₹ 1000 per ton per month other than heavy goods vehicle- ₹ 750 per ton per month
44AF	No more applicable from AY 2011-12			
44B	Non resident	Shipping business	7.5% of amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and 7.5% of amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]	

Section	Applicable on particular type of assessee	Nature of business /profession	Determination of income on presumptive basis.
44BB	Non resident	business of providing services 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:	(i)10% of amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India and (i) 10% amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.
44BBA	Non resident	<b>business of operation of aircraft</b>	5% of amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and 5% of amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India



Section	Applicable on particular type of assessee	Nature of business /profession	Determination of income on presumptive basis.
44BBB	foreign company	<b>business of civil construction, etc., in certain turnkey power projects.</b>	10 % amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning.
115VA Chapter XII-G	Indian co. opting for tonnage taxation scheme	Shipping Business	Computation of taxation income u/s 115 VG
First Schedule	Insurance business	Insurance business	As per Schedule 1
any other relevant section.	44ADA	Professional	50% of Gross receipts

## Scope of Reporting- clause 12 – presumptive taxation

- Amount Included in profit and loss is to be recorded not the amount calculated on presumptive basis.
- This clause will be applicable only when Profit and loss account include income of the nature of any of the relevant section of presumptive income
- If there is no income qualified as presumptive income, the only option no to be opted and no further reporting
- There may be situation profit and loss include both type of income like presumptive income as well as non presumptive income

Case	Situation	Approach by the auditor
1	Separate book of account maintained by the assessee for presumptive and non presumptive income	Reporting of presumptive business as per separate book of account maintained . No audit required of the presumptive income if the amount of profit reported is more than the presumptive amount of income
2	Common book of accounts for both presumptive and non presumptive income	Apportionment of common expenditure on reasonable basis and accordingly the amount of presumptive business shall be determine and reported by the auditor along with basis of apportionment
3	Assessee maintain regular book for non presumptive income and no book of account of presumptive income	Disclaimer of opinion if auditor is unable to verify the correctness of net income of presumptive business included in profit and loss account.

## Clause 13 – Method of Accounting

- (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 adjustment.*

ICDS No	Particulars	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	<i>Revenue Recognition</i>			
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			

*(f) Disclosure as per ICDS :*

<b>ICDS No</b>	<b>Particulars</b>
ICDS I	Accounting Policies
ICDS II	Valuation of Inventories
ICDS III	Construction Contracts
ICDS IV	<i>Revenue Recognition</i>
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

## Method of accounting

- Mercantile / Accrual system or cash
- Distinction between mercantile and cash system

As explain in the case of **CIT Vs. A Krishnaswami Mudalial 1964 53 ITR 122 SC.**

Mercantile System	Cash System
Entries posted in the books of account on the date of transactions i.e the date on which the right accrue or liability incurred irrespective of date of payment or receipts	Entries posted only when money or money worth received , collected ,Disbursed or paid
Debts may be written off when they are found bad or irrecoverable	No question of written of bad debt

# Method of accounting

- After amendment in section 145 hybrid system of accounting is not permissible.
- Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, be computed according to Method of accounting adopted regularly and as per ICDS.
- Company is bound to follow accrual basis of accounting due to section 128(1) of the companies act 2013
- LLP is permissible to follow either **cash or mercantile system** as per section 34(1) of the LLP act which is consistent with the provision of income tax.
- It is important to note that assessee may adopt mercantile system for one source of income and cash for another source of income. Within the same head of income or other head of income.
- **What is prohibited is applicability of hybrid system for Single source of income because hybrid system did not reflect correct income**
- Example: A proprietorship firm having trading business of garments may adopt mercantile system for his business and commission agent business he may adopt cash basis.
- The genesis of method of accounting and taxation based on accrual or mercantile basis is section 5 of the income tax act which determine the scope of income where under the total income not only include income received but also income accrued or arrived.



# Meaning Accrued

- In the case of **CIT vs. Excel Industries Ltd. 2013 358 ITR 295** observed that income accrued when there arise a corresponding liability of the other party from whom amount become due for payment.
- in other words in every case of accrual of income there will be a corresponding liability of other party.

# Cash basis of accounting

- There are two types of cash basis of accounting
  1. **Strict cash basis** follows the cash flow exactly and there is no question of inventory etc.
  2. **Modified cash basis.** In this case some elements of accrual basis of accounting such as inventory and property capitalization.
- In a leading case of **CIT vs A Krishnaswami Mudalial 1964 53 ITR 122 SC** it was held that whichever method of book keeping is adopted in the case of trading venture for computing true profit of the year, stock in trade must be taken into account. In others words as per above judicial decision strict cash basis of accounting is not permissible.

# Effect of reporting in audit report

## **Best judgment assessment u/ s 144.**

- Where the AO is not satisfied about the correctness or completeness of the accounts of the assessee, or
- frequent change of method of accounting: where the method of accounting provided in sub-section 145A(1) has not been regularly followed by the assessee, or
- income has not been computed in accordance with the ICDS notified under section 145A(2).

## Clause 14 : Method of valuation of Closing stock

- (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.)

# Method of valuation of closing stock

**Inventories** is broader term and "Inventories" are assets :

- (i) held for sale in the ordinary course of business;
- (ii) in the process of production for such sale;
- (iii) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

**Cost of inventories** shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition. *Duties and taxes are includible in cost whether or not they are subsequently recoverable by the enterprise from the taxing authority. The* requirements of para 5 of ICDS-II (New) on inclusion of duties and taxes in cost is in line with section 145A(1)(a) of the Act.

# Method of valuation of closing stock

**Method consist of** (1) specific accounting policies( cost or NRV whichever is less) Para 3 of ICDS-II and (2) method of application .i . e cost formulae such as Specific identification ,FIFO, weighted average etc. as per ICDS -2 auditor have to report the method adopted.

**NRV**= Estimated selling price in the ordinary course of business(-) Estimated costs of completion(-) Estimated costs necessary to make a sale(-)

**The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.** [Para 23 of ICDS-II ]

Any deviation from method prescribed u/s 145A, if yes, effect of deviation on profit or loss increase/decrease.

Valuation as per AS-2 Vs. valuation as per section 145A- Adjustment in the form of increase/decrease to be reported and assessee in computation of income and report in ITR only no need to make adjustment in books of account.

Auditor has not to comments on appropriateness of the method of valuation of closing stock in tax audit report.

**Closing stock Vs. inventories used in AS and ICDS.**

## **Clause 15: Details of Capital assets 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

# Meaning of Capital Assets sec 2(14)

Capital assets is defined in section 2 clause 14

capital asset means—

- (a) **Property of any kind** held by an assessee, whether or not connected with his business or profession;
- (b) any **securities held by a Foreign Institutional Investor** which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (c) any **unit linked insurance policy** to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,] threshold limit is 2.5 lakh in respect of ULIP issued on or after 01.02.2021 by finance act 2021

*Explanation.*—For the removal of doubts, it is hereby clarified that "**property**" **includes** and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever; to overcome ruling of **International holding B.V. Vs UOI [2012] 17 taxmann.com202**

Note : **Capital assets** is primarily a property and a right legally enforceable to such property and transferable in nature it may be either fixed assets or investments or in any other forms except stock in trade and may be for business use or held other wise.



## What is not a capital assets?

- Stock In trade except securities held by FII, consumables
- Personal effects except few items like jewellery painting drawing etc.
- Rural agricultural land.
- 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government
- Special Bearer Bonds, 1991, issued by the Central Government
- Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015] notified by the Central Government

# Whether Shares or securities are stock in trade or capital assets

Circular no 4 dt 15.06.2007

Circular no 6/2016 dt 29.02.2016

- (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.

# Computation of capital gain

- Conversion of capital assets into Stock in trade is transfer within u/s 2(47) (iv)
- The amount of capital gain = FMV on the date of conversion – full value of consideration
- Taxable in the P.Y in which stock in trade sold/transfer
- Notwithstanding anything contained in section 45(1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. [Section 45(2)]

# Scope of Audit report

- Tax auditor has to report the date of acquisition which may be difficult in case of depreciable assets where the block of assets is applicable and the capital assets is old one
- The problem of the cost of acquisition is also in such cases where either there is no fixed assets registered maintained
- Disclaimer with suitable reason if it is not practicable to report the date of acquisition and cost of acquisition
- Auditor have to report the original cost of acquisition and not the revalued amount
- In the case of Fixed assets converted into stock in trade So many items capitalized as per Different AS
- **In the case of gifted items** there will be nil cost of acquisition but there may be cost of improvement .Literally the reporting required cost of Acquisition but it should be cost of improvement as well.
- Auditor has not to report the **FMV on the date of conversion** but he has to report only the amount at which capital assets converted into stock in trade.
- **Auditor not to report the date of conversion** of capital assets into stock in trade.
- **In absence of Complete information correct amount of capital gain could not be computed.**

# Clause 16 : Amount not credited in P&L

- 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- **all debit notes.**
- d) any other item of income
- e) **capital receipt**, if any

# Scope of Audit report- clause 16

Clause (b) and (c) not applicable to assessee following cash method of accounting.

For accrual basis accounting all clauses from (a) to (e) applicable

**Found from scrutiny of accounts but not credited in P&L a/c** particularly entry directly credit to capital a/c or reserve and surplus or assets a/c any other account

Clause 16(a)- item within scope of section 28. such as inventory converted or treated as capital assets, insurance claim received for loss of capital assets being destroyed, sum received under a Keyman insurance policy, non compete fee, remuneration, interest to partner to the extent allowed u/s 40(b), export incentive/refund entitlement, drawback, sale of import license.

**Source of information:** 26AS, credit in Capital account, escalation clause in contract

Creditors or debts w/off, entry in passbook, income on investment due but not received, case in favour of assessee, excess contribution collected either from customer /employee like GST Collected on exempted supply.

**Capital receipts by default not taxable** unless specifically mentioned in IT act as income

Loan or borrowings not to be reported here because not of income in nature

**Classification of receipts into capital receipts** – judgments of auditor based on case laws, relied upon case law to be reported .

## Clause 17: Where Land and Building transferred for Consideration less than Stamp duty value u/s 43CA/50C

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]
			No more relevant now

2nd proviso s-43CA To boot real estate sector FA 2021 has increased safe harbor limit from 10% to 20% for limited period of **new allotment** between **12-11-2020 to 30-06-2021** in section 43CA/ 56(2)(x) both for builder as well as buyer with certain conditions like first time allotment **and consideration upto ₹ 2 crore** exclusive of GST as per circular no 23/2017 dt 19-07-2017.

# Scope of audit

- Transfer of land or building during year. For meaning of transfer refer section 5 of TPA 1882. convey of property from one living person including company etc. to another . i. e inter vivos transfer.
- Allotment during 12-11-2020 to 30-06-2011
- Consideration upto ₹ 2cr- allotment letter/sale deed.
- Stamp duty value as per circle rate
- Safe harbor 20% - consideration less than circle rate.
- Applicable to Independent residential unit.
- Stamp duty value may be challenged , suitable note for that.
- Exclusion not to be reported here: compulsory acquisition, conversion of stock into capital assets ,transfer on dissolution of firm etc



# Clause 18: Depreciation allowable as per Income Tax Act 1961

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  
Depreciation allowable
- e) Written down value at the end of the year

# Scope -auditor to certify the followings

- Rate of depreciation- classification of assets is vital
- Actual cost or opening WDV
- necessary adjustment to WDV due to provisions u/ S115BAC/BAD or adjustment to WDV of intangible assets by reducing value of goodwill of a business or profession to nil.
- Addition or adjustment to purchase value for CENVAT/ input tax of capital goods section 16 (3) of CGST- if depreciation no ITC/exchange rate diff and subsidy/grant
- Depreciation allowable as per tax provisions
- WDV after all necessary adjustment

# Nature of depreciation ?

Depreciation is neither a loss nor an expenditure , it is allowance. **Nectar Beverages (P.) Ltd. Vs. Deputy Commissioner of Income-tax [2009] 182 Taxman 319 (SC)**

Depreciation allowance even if depreciation not charged in accounts/profit and loss a/c .

it is statutory allowance and shall be allowed unless prohibited otherwise in any tax provision like in presumptive income or special tax rate. Not charging depreciation in books only affect true and fair view of accounts. No impact on eligibility of tax payer.

Depreciation on both tangible depreciable assets as well as intangible assets except goodwill

Method –WDV, SLM – Power sector -optional

Depreciation on block of assets except power sector opting SLM

Normal depreciation 32(1)(i)&ii) /additional depreciation section 32(1)(iia)

# Conditions-for claiming depreciation

- **Ownership** – theory of economic substance – depreciation is allowed not only in the case of legal ownership but depreciation is allowed on hire purchase assets also – **theory of economic substance. Mysore minerals ltd Vs. CIT [1999] 106 Taxmann 166 (SC)** – Exclusive possession right to exclude other from enjoyment of such assets
- Finance lease – depreciation allowed to lessee
- De facto ownership with possession and use for business sufficient for claiming depreciation de jure ownership not required.
- Use –active or passive
- Use for business or profession
- Depreciation on depreciable assets so no depreciation on non depreciable assets such as land, goodwill of a business or profession
- As per rate prescribed –Appendix 1/1A/rule -5/ of income tax rules 1962.
- **Amalgamation /merger/demerger** –pro rate normal depreciation but full additional depreciation
- 50% depreciation if acquired and used for less than 180 days during the FY

# Important Changes by FA 2021

**Block of assets** – Section 2(11) block of assets" means a **group of assets** falling **within a class of assets** comprising—

- (a) **tangible assets**, being buildings, machinery, plant or furniture ;
- (b) **intangible assets**, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, [**not being goodwill of a business or profession**,  
in respect of which the same percentage of depreciation is prescribed

FA 2021 has excluded **goodwill of a business or profession from block of intangible assets so it will be reduced from WDV of intangible assets. Means no depreciation on such assets.**

**Amendment in section 32(1)(ii) to exclude no depreciation on goodwill of a business or profession.**

Explanation 3 to section 32(1) **goodwill of a business or profession** is excluded from definition of assets so as not to allow deprecation on goodwill.

**Note:** for block of assets there must be firstly assets then question of block of assets. Explanation 3 to section 32(1) has meaning of assets.

Note: amendment to overrule decision in the case of **Commissioner of Income-tax, Kolkata Vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC)** where SC has held that Goodwill is an asset under Explanation 3(b) to section 32(1) and, thus, it is eligible for depreciation

# Additional depreciation – section 32(1)(iia)

- Additional depreciation @ 20%
- new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of **manufacture** or production of any article or thing or in the business of generation, transmission or distribution] of power],
- no deduction shall be allowed in respect of—

(A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(C) any office appliances or road transport vehicles; or

(D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;]

**manufacture** defined in section 2(29BA): "manufacture", with its grammatical variations, means a **change in a non-living physical object or article or thing,—**

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;]

# Adjustment to WDV on opting section 115BAC/BAD

(A) Section 43(6)(c )(ii) :written down value adjustment- on account of goodwill

Calculate WDV of goodwill as on 31-03-2020 assuming the only assets in intangible assets block and reduce that amount from the WDV of block of intangible assets.

**(B) Adjustment to WDV on opting section 115BAC/BAD read with 3<sup>rd</sup> proviso to rule 5(1):**

normal depreciation allowed but additional depreciation not allowed and deemed to have been allowed u/s 115BAC/BAD;

Computation of income without set off of any loss, carried forward or unabsorbed additional depreciation from any earlier assessment year;

*The loss and additional depreciation referred to in clause (ii) of sub-section 32(2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year*

*where there is a unabsorbed depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2020 in the prescribed manner as per rule 5 3<sup>rd</sup> proviso.*

# Adjustment to WDV as per rule 5

Provided also that, for the purposes of section 115BAC and section 115BAD, if the following conditions are satisfied, namely:—

- (i) the option under sub-section (5) of the respective section is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021;
  - (ii) there is a additional depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in section 32(1)(ia) and
  - (iii) such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD,
- the written down value of the block of asset as on the 1st day of April, 2020 shall be increased by such depreciation not allowed to be set off.

Note: normal depreciation on additional total amount shall be available.



**Clause 19: Amount Admissible under following 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 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)(ia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

# Clause 20: Employee Bonus and commission /Details of Contribution **received** from employee

- (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

# Regarding bonus

- Deduction is allowed under section 36(1)(ii) allowed if sum paid to employee as bonus or commission
- As per section 43B(c ) deduction is allowed only if payment actually made on or before due date of furnishing of return under section 139(1)
- Something linked with profit of the assessee may not be bonus .
- Bonus may be to the full time employee directors also .
- It may be in accordance with provision of payment of bonus act or otherwise **but it should not be in lieu of dividend** because dividend is otherwise not allowable expense but bonus is allowable expense .
- **Dividend is for investment** where as **bonus is for performance** in the employment and contractual in nature .
- Employment contract to be examined to determine the nature of payment

## Employee contribution to PF/ESI etc.

**Section 2(24)(x):** 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 (34 of 1948), or any other fund for the welfare of such employees.

**note: Received:** Word used here is received and not merely right to receive. No concept of deemed receiving. Employer can receive only when employee pay. So receiving only at the time of payment of salary by way of deduction, unless received in cash and salary fully paid. Generally deductions are made at the time of payment. There may be situation of increment / arrear as a result of revision of minimum wages by government. Deduction known only after such changes/finalization. Delay in payment due to attachment of bank account so neither salary/wages paid nor deduction, nor contribution deducted / paid. Where both the portion employee and employer share to be born by employer/employee makes any difference .

**Section 36(1)(va):** any sum **received** by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds **on or before the due date**.

**[Explanation 1].**—For the purposes of this clause, "**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 thereunder or under any standing order, award, contract of service or otherwise.]

**[Explanation 2.**—For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;]

**Note: explanation 2 added by FA 2021** w. e. f. **1-4-2021**. nullify order of various court order where under deduction allowed even if employee contribution paid on or before due date of ITR. Order of HC were in interest of justice, equity and good conscience. Whether case will be opened where HC has granted relief and if so opening case after such a long time will be of great injustice. If not then granting relief to a tax payer and not to other is against article 14

**Section 43B (b)** any sum payable by the assessee 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.

**Explanation 5.**—*For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied 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.*

**Explanation 5.** added by FA 2021 w. e. f. **1-4-2021**.

**Checkmate Services (P.)  
Ltd. v. CIT [2022] 143  
taxmann.com  
178/[2023] 290 Taxman  
19/[2022] 448 ITR  
518/2022 SCC Online SC  
1423,**

Apex Court in case of Checkmate Services (P.) Ltd. v. CIT [2022] 143 taxmann.com 178/[2023] 290 Taxman 19/[2022] 448 ITR 518/2022 SCC Online SC 1423, held that non obstante clause under section 43B could not apply in case of employee's contribution which were deducted from their income and was not part of assessee-employer's income and, thus, said clause would not absolve assessee-employer from its liability to deposit employee's contribution on or before due date as a condition for deduction.

Also explain how to read section 43B /40A etc.

# How to read section 43B ?

Section 43B falls in Part-V of the IT Act. What is apparent is that the scheme of the Act is such that **sections 28 to 38 deal with different kinds of deductions**, **whereas sections 40 to 43B spell out special provisions, laying out the mechanism for assessments and expressly prescribing conditions for disallowances**. In terms of this scheme, section 40 (which too starts with a non obstante clause overriding sections 30-38), deals with what cannot be deducted in computing income under the head "Profits and Gains of Business and Profession". Likewise, section 40A(2) opens with a non obstante clause and spells out what expenses and payments are not deductible in certain circumstances. Section 41 elaborates conditions which apply with respect to certain deductions which are otherwise allowed in respect of loss, expenditure or trading liability etc. If this scheme is considered, sections 40- 43B, are concerned with and enact different conditions, that the tax adjudicator has to enforce, and the assessee has to comply with, to secure a valid deduction. [Para 31]

The scheme of the provisions relating to deductions, such as sections 32-37, on the other hand, deal primarily with business, commercial or professional expenditure, under various heads (including depreciation). Each of these deductions, has its contours, depending upon the expressions used, and the conditions that are to be met. It is therefore necessary to bear in mind that specific enumeration of deductions, dependent upon fulfillment of particular conditions, would qualify as allowable deductions: failure by the assessee to comply with those conditions, would render the claim vulnerable to rejection.

# Scope of audit:

- Not to report about correctness of amount of contribution
- Amount received from employee as per salary sheet.
- Reporting of delay in crediting the amount of deduction to relevant statutory fund.
- Distinguish Due date of payment u/s 36(1)(va)-employee's contribution Vs. u/s 43B(b)-employer's contribution
- Due date of payment and actual date of payment as per challan/bank entry
- Employment agreement- both portion employee and employer share to be born by employer/employee makes any difference .
- If amount still not paid – no reporting without date of payment in e-filing utilities.

## Clause 21

Amount debited to P&L A/C  
but not deductible.



Clause 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			
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			

# Regarding clause 21(a)

- Capital expenditure generally not allowed due to section 37 (1) however capital expenditure is allowed especially in other section such as under section 35 for scientific research , on approved in house research and development facility under section 35 , for specified business under section 35AD. here reporting required only when such capital expenditure is otherwise not allowed in section 30 to 36.
- There is no definition of capital expenditure
- Capital expenditure are generally capitalized and not debited in profit and loss account

# Regarding personal expenses

- Disallowance of expense under this clause Vs. reversal of ITC under section 17**
- Personal expense vs contractual expense** allowed to the employee , director , partner – refer contract/ appointment letter
- Personal expenses debited in P&L account.
- Link of expenses with the business – refer contract , use
- If disallowance** on this ground either by the assessee or AO this may lead to **block credit under GST as well**
- Divergent view of tax payer with the assessing officer and appeal pending in this case as well as view ITC blockage of GST officer
- MRL – opinion of expert

# Advertisement expense

- Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party is disallowed under section 37(2B) however contribution to political party by the company is allowed under section 80GGB and to non corporate taxpayer deduction under section 80GGC . However no deduction if assessee has opted special tax rate under section 115BA to BAD
- **Further under section 182 (2) of the companies act 2013 treat the amount of expenditure** in any souvenir, brochure, tract, pamphlet or the like published by a political party as contribution to political party . Even publication for advantage of political party shall also be treated as contribution for political purpose .
- Section 37(2B ) has overriding effect to section 37(1) and not to section 80GGB/80GGC
- Scrutiny of expenditure on advertisement required MRL if no such expenditure traced from invoice of expenditure

# Expenditure incurred at club

- There is no express provision for disallowance of such expenditure , AO may disallowed such expenditure if it is personal in nature
- Auditor have to report the amount of expenditure such entrance fee , subscription , cost for club service and facility used
- Auditor has not to comment upon allowance /disallowance of such expenditure
- The expenditure may be allowed if business nexus however in the GST ITC is in the list of block credit where supply of service received by way membership of a club under section 17(5)(b)(ii)
- Expenditure to be reported only is such expenditure reported in P&L

# Expenditure – fine/ penalty /offence /prohibited by law

## Amendment by FA 2022:

*Explanation 3* inserted to section 37 below explanation 2.

1. Offence/ prohibited under any law in India or outside India
2. Prohibited benefit or perquisite.
3. Compounding fee for any offence in India or outside India

For the removal of doubts, it is hereby clarified 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.'.

Amendment-  
explanation 3 to  
section 37(1) to  
incorporate certain  
judgments of apex  
court

Gift or benefit to medical practicenor – **Apex Laboratories (P.) Ltd Deputy Commissioner of Income-tax LTU [2022] 135 taxmann.com 286 (SC)**

justice UU Lalit bench held that since acceptance of freebies by medical practitioners was punishable as per Circular issued by Medical Council of India under MCI regulations, 2002, gifting of such freebies by assessee-pharmaceutical company to medical practitioners would also be prohibited by law and thus, expenditure incurred in distribution of such freebies would not be allowed as a deduction in terms of Explanation 1 to section 37(1)

## Meaning of offence:

The offences are of various types such as against human body, State and terrorism, property, women and children and public tranquility.

As per section 40 of IPC "offence" refers to a thing made punishable by IPC or any special or local laws.

under GST- chapter xix- offences and penalties- section 122 to 138- offence may lead to penalty, prosecution and compounding fee.

Motor vehicle act – against traffic rule violations/ over weight/ entering into prohibited area.

Pollution control laws

Labour laws

Illegal and unplanned construction of office/factory.



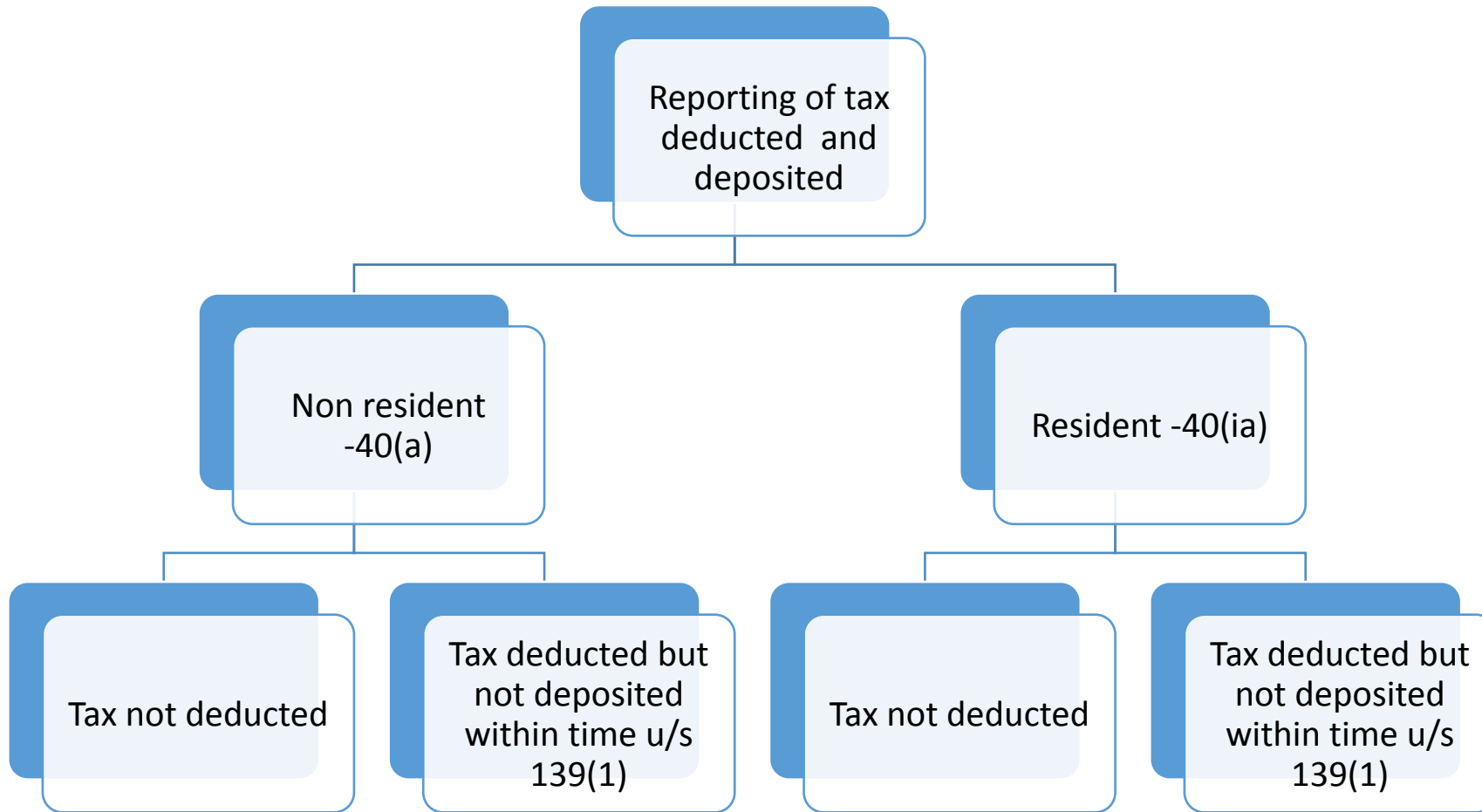
# Expenditure – fine/ penalty /offence /prohibited by law

- 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 such as Compounding of offence should also be reported here . CIT VS MAMTA ENTERPRISES 2004 135 taxman 393 (kar)
- Needs MRL of all litigation confirming demand and scrutiny thereof with reference to amount debited in P&L particularly where taxpayer has not preferred appeal .
- Late fee – whether to be reported by the auditor ?

# non compliance of TDS provisions

Clause 21 Related to disallowance of expenditure where tax not deducted / not paid /short paid

Clause 34 Related reporting of tax deducted but not deposited / short deposited /late filling of TDS statement / TCS statement / interest liability for late deposit of TDS /TCS



Note – tax deducted and deposited although late but before due date u/s 139(1) not to be reported in clause 21(b)

*Clause 21(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 to resident referred to in sub-clause (ia)

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

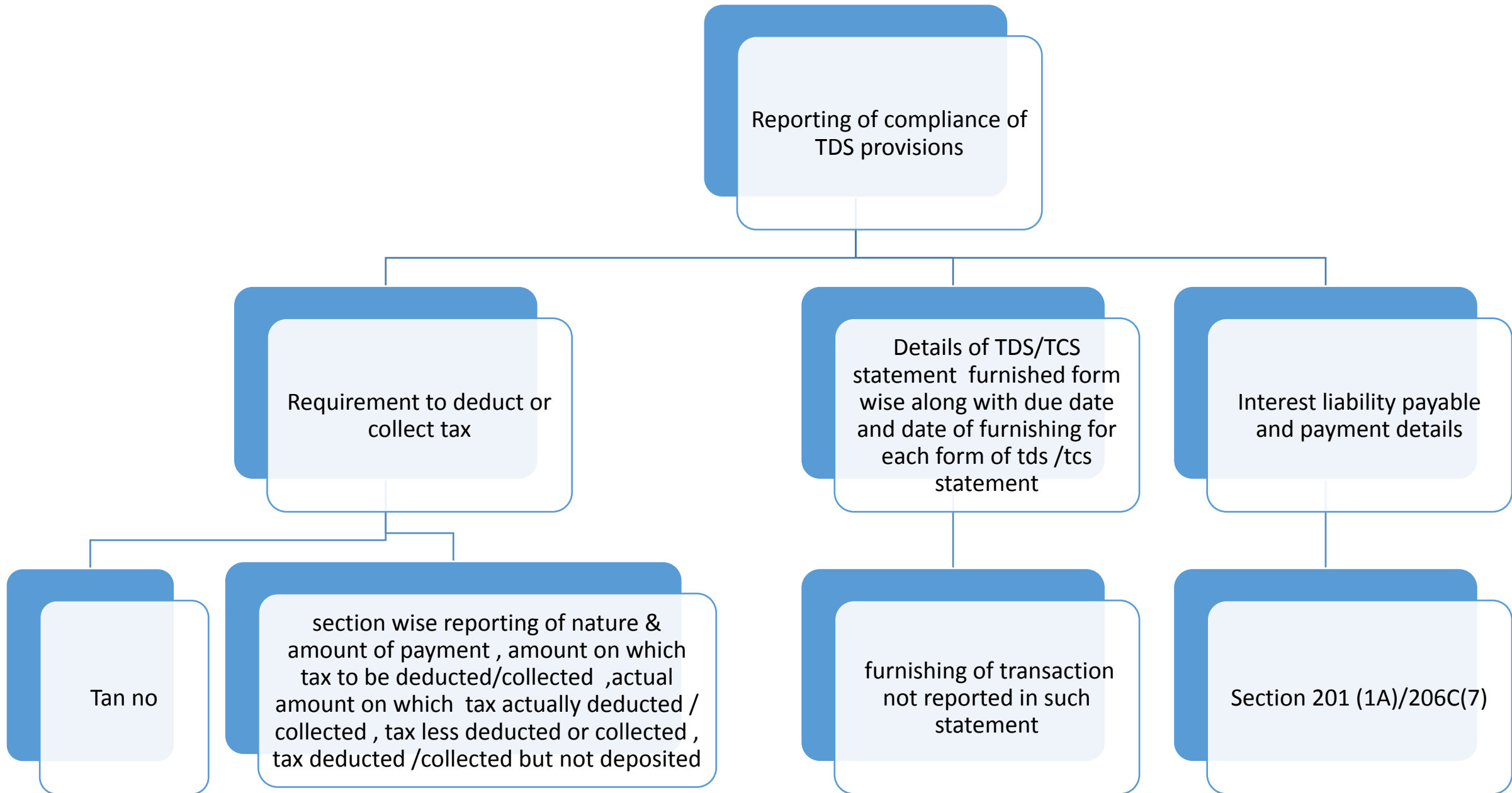
- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name and address of the payee

(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

# Tax deducted but not deposited on or before due date under section 40(a)

- In the tax audit report clause 21(b)(B) has used the wording “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)” but the section was amended in 2014 and the word “ ” replaced by the word “due date of filling of income tax return under section 139 (1) accordingly auditor the payment up to due date of filling of return under section 139(1).
- The due date under section 200(1) is the due date of deposited of tax deducted only
- The auditor have to report both the cases where tax not deducted as well as where tax deducted but not deposited on or before the due date under section 139(1)
- The reconciliation of tax deductible vs tax deducted vs tax not deducted required to be made .





*(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 details/ transactions which are required to be reported. If not, please furnish list of 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.



# Scope of reporting

- Identification of nature of expenses (capital or revenue) subject to TDS / TCS
- Reconciliation of transaction with reference to total expenditure , amount on which tax to be deducted/collected excluding threshold exemption , nil deduction certificate and net amount
- Identification of transaction on which tax not deducted / collected but required to be deducted / collected
- Cases where tax not deducted but assessee has obtain form 26A duly certified by a CA from the deductee and tax paid by the payee and return filed – proper reporting but in such cases interest liability to be reported.
- Transaction on which tax deducted at lesser rate than specified
- Tax deducted / collected vs tax not deposited to the government i.e. tax payable account balance to be reported here
- Interest liability in the case of late deduction / deposit to be reported along with the amount of interest already paid
- Documentation of working file of all reconciliation
- verification of TDS/ TCS default statement from NSDI to be verified

# New provisions of TDS

**section 194R w.e.f** 1st day of July, 2022,  
*Deduction of tax on benefit or perquisite in respect of business or profession- 10% of the aggregate of value. Threshold limit – Rs. 20000/- for the FY.*

Not Applicable, if total sales, gross receipts or turnover of individual/HUF is less than Rs. 1cr ( business)/50lakh( profession).

***Section 194S: Payment on transfer of virtual digital asset.***

**TDS@1% of**

Needs scrutiny of various ledger such as sales promotion , business promotion, festival celebration, gift etc.

Block credit of ITC u/s17(5)– disposed of by way of gift free of cost.

Some time providing gift is offence and prohibited-disallowed otherwise also u/s37 (1)

Distributed to employee – perquisite in their hand deduction of tds u/s192.

CIRCULAR 12/2022 DT 16-06-2022 AND CIRCULAR NO 18/2022 DT 13-09-2022

# TDS ON PURCHASE OF GOODS -194Q from 1<sup>st</sup> July 2021

CIRCULAR NO 13/2021

- purchase of any goods of the value or aggregate of such value exceeding Rs. 50lakh in a FY
- TDS @0.1 % ( 5% without PAN)
- Buyer to deduct tax
- "buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

# Virtual digital assets – section 194-s- from 01-07-2022

VDA schedule in ITR also.

Provided that in a case where the consideration for transfer of virtual digital asset is—

(a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

(b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,

the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

- Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to 1% of such sum.

- no tax shall be deducted in a case, where—

(a) the consideration is payable by a **specified person** and the value or aggregate value of such consideration does not exceed Rs. 50,000 during the financial year; or

(b) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed Rs. 10,000/- during the financial year.

**"specified person"** means a person,—

(a) being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

(b) being an individual or a Hindu undivided family, not having any income under the head "Profits and gains of business or profession".]

clause 21(b) (iii) under sub-clause (ic) of section 40 [Wherever applicable]

**(iii a) under sub-clause (ii) of section 40**

(IV) under sub-clause (iia) of section 40

(V) under sub-clause (iib) of section 40

(VI) under sub-clause (iii) of section 40

(A) date of payment

(B) amount of payment

(C) name and address of the payee

(VII) under sub-clause (iv) of section 40

(VIII) under sub-clause (v) of section 40

**Amendment in section 40(a)(ii) by FA 2022 : after Explanation 2, new explanation 3 inserted** the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2005, namely:—

40(a)(ii) (any sum paid on account of any rate or tax levied<sup>75</sup> on the profits or gains of any business or profession<sup>75</sup> or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

Explanation -1 - any foreign country tax on income for which tax credit u/s90/91 relief allowed shall be deemed to be included in tax in clause 40(a)(ii)

Explanation -2 - any foreign country tax on income for which tax credit u/s90A relief allowed shall be deemed to be included in tax in clause 40(a)(ii)

**'Explanation 3.—For the removal of doubts, it is hereby clarified that for the purposes of this sub-clause, the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.'**

**Note: now no deduction / allowed of surcharge and cess .**

FA 2022 has taken view to disallowed as it will be in favor of revenue.

Against allowance view:

**“CIT Vs. K. Srinivasan” (1972) (SC) 83 ITR 346**, wherein the following questions came for adjudication before the Hon’ble Apex Court:- “Whether the words “Income tax” in the Finance Act of 1964 in subs (2) and sub-s.(2)(b) of s. 2 would include surcharge and additional surcharge.” The Hon’ble Supreme Court answered the question in favour of revenue

ITAT Kolkata has discussed the two High Court judgments as well as other judgments vide order dated 26-10-2021 in the case of ‘Kanoria Chemicals & Industries Ltd’ ITA No. 2184/Kol/2018 (TS-1129-ITAT2021 Kol) and has held that the “Cess” is not to be allowed as deduction.

**DCIT Vs Vinati Organics Ltd. (ITAT Pune) held –not allowed.**

**In favour of assessee for allowance view:**

Hon’ble Bombay High Court in the case of **“Sesa Goa Limited Vs. JCIT” (2020) 117 taxmann.com** and further on the decision of the **Hon’ble Rajasthan High Court in the case of “Chambal Fertilizers & Chemicals Ltd Vs. JCIT”**: D.B Income-tax Appeal No. 52/2018 decided on 31-07-2018, wherein, the Hon’ble High Courts relied upon the aforesaid CBDT Circular Dt. 18-05-1967 and in view of the interpretation made by the CBDT have held that ‘education cess’ can be claimed as an allowable deduction while computing the income chargeable under the heads “profits and gains of business or profession”

- Clause 21(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;
- Refer to the partnership deed or any amendment in the partnership deed to be examined
- Remuneration only to working partners
- Remuneration based on book profit
- MRL that remuneration to only working partner along with examination whether they are really working
- Interest to all partners 12% per Annum

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



# Scope of reporting-clause 21(d)

- Section 40A(3) has been amended to include certain permissible mode of payment and such electronic mode are prescribed under rule 6ABBA such as credit card / debit card , net banking , imps (immediate payment service ),UPI(unified payment interface),RTGS(real time gross settlement )NEFT(national electronic fund transfer) BHIM(Bharat Interface For Money )etc but in this clause 21(d) such mode of payment are not specifically mentioned. Here auditor have to report disallowance / deemed income therefore no need to report permissible mode of transactions
- In the case of other than permissible mode of payment the nature of transaction , amount and pan/ Aadhaar of payee to be reported
- In the case of 40A(3A) if the **payment of existing liability for which deduction / allowance already made in the earlier assessment year and payment made in subsequent previous year** in any of the mode the same shall be deemed income . It is important to scrutinize the payment of existing liability so as to report the deemed income
- Higher limit of 35000 instead of rs10000 where payment made to or transporter for hiring or leasing goods carriage
- Certain cases rule 6DD permit payment in cash as well such as payment for agricultural or forest product or fish product or horticultural or apiculture or animal husbandry or diary or poultry farming , cottage industry without aid of power , termination benefit up to 50000 money changer / authorised dealer payment etc .

## Clause 21(e) Provision of gratuity – 40A(7)

- Provision for gratuity shall not be allowed as deduction except where payment of contribution towards approved gratuity fund or amount of gratuity become payable
- Provision made based on actuarial valuation is also not deductible shree sajjan mills ltd v CIT(1985)23 taxman37(SC)
- Provision for gratuity where approval of scheme is pending but granted retrospectively could not be disallowed u/s 40A(7)Amar poly fa
- bs (p)ltd .Dy CIT(2003)127 Taxman 41(Chd),
- Auditor have to report disallowable portion of gratuity provision out of the total provision for gratuity

# Clause 21(g) – particulars of contingent liability whether debited in P&L account or not

**Contingent liability** is defined in ICDS-X as

1. possible obligation that arises from past event and will be confirmed by one or more uncertain future events not entire within the person control
2. Present obligation arises from the past event but does not meet the recognition criteria i.e out flow of economic resource is not reasonably certain or amount of obligation can not be estimated reliably
3. Joint and several liability of the assessee with other person but portion of obligation to be met by other person is contingent liability

Generally no provision to be made for contingent liability , however if provision made for contingent liability the nature of liability and the amount of provision made to reported here .

**Provision is a liability which can be measured only by way of substantial degree of estimation.**

**A provision** is recognized only when

- a) Enterprises has present obligation as a result of past event
- b) Probable outflow of economic resource to settle the obligation
- c) Reliable estimate can be made of the amount of obligation

**Note-** provision for product warranty is a contingent liability – **Rotork Controls India (P) Ltd vs CIT(2009)180 taxman 422(SC)**

# clause 21F Sum paid by employer not allowable u/s 40A(9)

- No deduction shall be allowed for sum paid as employer towards setting up or formation of or contribution to any fund , trust , company , AOP,BOI, Society or other institution except the sum paid under section 36(1) (v)/(iv)/(iva) or required under any other law for the time being enforce . In other qwords only contribution to recognized PF /approved superannuation fund / approved gratuity fund / contribution to NPS / contribution under any other law is allowed .
- Auditors needs to ascertain payments in this context and any extra contribution except listed above shall be reported and disallowed U/S40A(9)
- What is disallowed is the payment as an employer to trust or society etc for the benefit of employee but payment to a trust not as an employer is not covered in section 40A(9) **Tata Iron And Steel Co LTD Vs IAC 1995 78 Taxman 173(Bom)**

# Check list for provisions / contingent liability

- Notes on account to the financial statement
- Scrutiny of condition of liability
- Scrutiny / review of contingent liability reported in the notes on account in the preceding financial year
- If provision made for contingent liability it violates AS29/ Ind AS -37/ICDS 10
- Such provision shall be disallowed if debited in P&L

## Clause 21(h) In admissible deduction due to section 14A read with 8D

- While computing total income no deduction shall be allowed for any expenditure in relation to income does not form part of total income
- Section 14A must be read with rule 8D for computation of disallowance of expenditure related to exempt income or income do not form part of total income.
- Auditor have to report in admissible expenditure – nature of expenditure and amount and on the basis of reporting disallowance could be made
- Reporting is required only when amount of expenditure debited in P&L but corresponding income does not form part of total income
- MRL where difficult to distinguish common expenses – apply logical rational method for apportionment of expenses to determine the expenses for the income being exempt otherwise does not form part of total income

# Amendment in section 14A

- To overrule **Commissioner of Income Tax, (Central) 1 Vs. Chettinad Logistics (P.) Ltd (2018) 257 taxman 2(SC)** where department has filed SLP against the order of HC of Madras which was dismissed means high court order final now. HC has held in favour of assessee and no disallowance u/s 14A read with rule 8D where **no exempt income during the PY i.e., No dividend was earned in relevant assessment year by assessee, section 14A could not be invoked .**
- **Now explanation by FA 2022 w.e.f. 1-4-2022.**—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section 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. means disallowance of expenditure even if no such income during relevant AY.

# Clause 21(i) disallowance under proviso to section 36(1)(iii)

- **Interest on borrowed capital** for the purpose of business or profession shall be allowed under section 36(1)(iii) however such interest shall not be allowed for acquisition of an asset from the date of borrowing till the date on which asset first put to use and interest for such period shall not be allowed as deduction irrespective of the fact whether such interest is capitalized in the books of account or not .
- Auditor have to report the amount of interest not admissible due to proviso to section 36(1)(iii) as explained above
- Auditor need to scrutinize the interest expense debited in profit and loss account to determine the inadmissible portion of interest
- It is important to obtain first put to use date of assets where amount borrowed for purchase of asset which subject to interest . Put to use date is also relevant for claiming depreciation
- Use may be active or passive use
- MRL with supporting evidence with put to use to be obtained
- Certain assets such as motor car etc. always ready to use therefore no problem in claiming interest on borrowed amount , however in the case of machinery not ready to use and needs proper installation interest to be capitalized .
- The interest capitalized shall form part of actual cost u/s 43 (1) and depreciation could be claimed on the actual cost including interest . Loss of disallowance only to those assessee not entitled to claim depreciation



## Clause 22: Interest inadmissible u/s23 of MSME

Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

As per section 23 of MSME Act:

Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

Classification/ identification available with auditee: MRL basis for correct classification and information on invoice/other documents

If interest paid or due debited in P&L and profit reduced – amount of interest to be bifurcated into allowable and disallowable portion . If interest for late payment beyond permissible period of 45days as per MSME Act interest disallowed. However interest paid or due to buyer for period within permissible limit under MSME – interest shall be allowed.

Classification of MSME - [notification number S.O.1702 \(E\), dated the 1st June, 2020](#) based on turnover as well as investment in plant and machinery.

***Reporting requirement – buyer to report in annual account – section 22 of MSME Act.***

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:—

the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

the amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;

the amount of interest due and payable for the period of 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;

the amount of interest accrued and remaining unpaid at the end of each accounting year; and

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.

# Clause 23 : Payment to a person specified u/s 40A(2)(b)

Particulars of payments made to persons specified under section 40A(2)(b):

s.no	name	PAN	Relation	Nature of transaction	Payment amount

**Scope of auditor:** no need to comments on reasonable/unreasonable/excessiveness.

MRL- list of related person and nature of transaction

Here auditor have to report the actual payment s well as the accrued / outstanding due to specified person because the word use in section 40A(2)(b) is expenditure incurred

MRL of the list of specified person along with nature of transaction and the payment made/accrued to specified person

Examination of contract and entry in the books of account to be examined

# Clause 24 : Amount deemed to profit and gain under certain sections

Amounts deemed to be profits and gains under section 32AC  
*or [32AD or]* 33AB or 33ABA or 33AC

# Clause 25 : Amount of profit chargeable to tax u/s 41

## Any amount of profit chargeable to tax under section 41 and computation thereof

Section 41(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently recovered by assessee or successor- taxable in the hand of assessee or successor.

Section 41(2) balancing charge- power generating /distributing assessee claiming depreciation on SLM basis- building, machinery, plant or furniture sold, discarded, demolished or destroyed and the moneys payable exceeds WDV excess upto difference between actual cost and WDV shall be business income.

Section 41(3) sale of assets used for scientific research- income

Section 41(4) recovery of bad debts

# Regarding section 41

- 41(1)(a)-Applicable if trading liability written off for which deduction or allowance claimed . Such entry may be found either in income and expenditure account or in the capital account or reserve and surplus account or any other account therefore scrutiny of entire account required. The written off may be unilateral or bilateral
- 41(1)(b) shall be applicable where successor recover the loss
- 41(2) balancing charge - applicable if depreciable asset sold above WDV –applicable in the case of undertaking engaged in generation and distribution of power claiming depreciation on SLM basis
- 41(3) is applicable when sale of asset for scientific research without further use in business the amount of income shall be (sale proceeds plus deduction claimed – capital expenditure )or deduction claimed whichever is less . Provision applicable even if there's no business in the year of sale of asset .
- 41(4) applicable when bad debts recover only when deduction already claimed and allowed for bad debts u/s 36(1)(vii).taxable as business income u/s 41 in the year in which bad debts recovered even if no business during PY. Scrutiny of bad debts claimed and allowed if any recovery from the party
- 41(5) deemed profit in above such cases even if business is not in existence

# Section 41 important case laws.

sale of asset on which 100 % depreciation claimed in earlier year shall be reported here because sale amount shall be income as per section 41(2) as balancing charge and therefore to be reported here **Nectar Beverages Pvt Ltd Vs DCIT 2009 182 Taxman 319(SC)**.

**refund sanctioned but still in dispute** – shall be taxed in the year in which refund received and if later on refund become repayable due to decision of appellate forum the same shall be deductible on payment basis as per section 43B . Reporting of refund issued could not be differed as income . **Polyflex India Pvt Ltd vs CIT(2002)124 taxman 373(SC)**.

**where** in the past year tax 9of the assessee calculated on estimated basis applying np ratio it can not be concluded that deduction hve been considered and allowed in past years therefore write back of balance of creditor could not be taxed u/s **CIT vs Bhawan Va Path Nirman (Bohra )& Co( 2003)126 Taxman 210 (Rajasthan)**

in the case of compromise – arrangement / compromise approved by lower forum but reversed by appellate authority there is no compromise at all by the creditors therefore sec 41 not applicable **CIT vs India Meters Ltd (2003)129 taxman 771(Mad HC)**

section 41 (1) there is no role of method of accounting in the taxation . It is the previous year in which amount or benefit obtained would become chargeable to income tax .**CIT vs Bharat Iron And Steel Industries (1993) 70 taxman 353(GUJ)**.

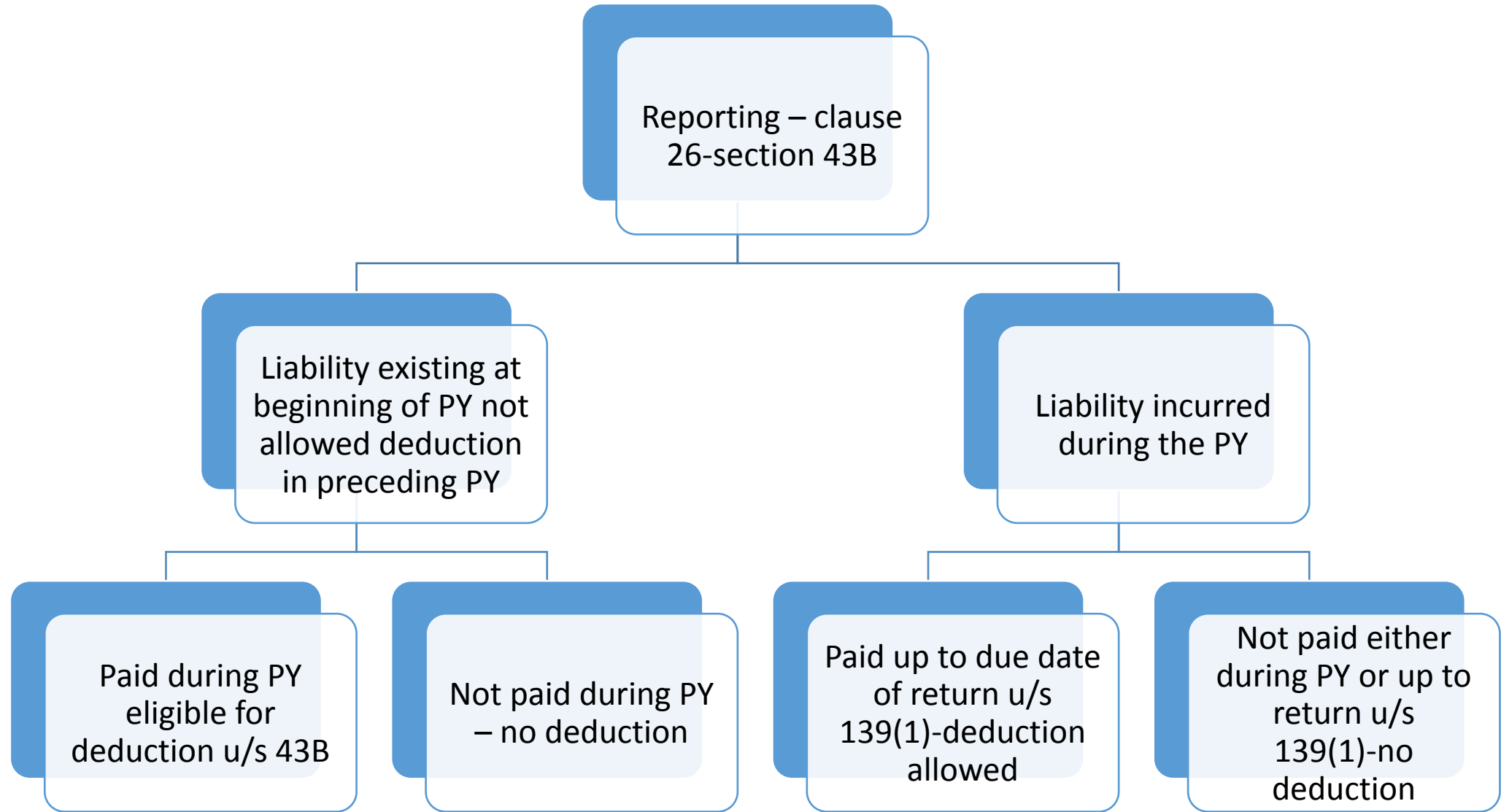
# Clause 26 : Certain payment u/s 43B before due date of filling of return u/s 139(1)

In respect of any sum referred to in clauses (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.)





# List of payments covered in section 43B

Nature of payments	Relevant section
Tax duty CESS fee etc. 43B	43B(a)
Contribution to PF or superannuation fund or gratuity fund or any other fund for welfare of employee	43B(b)
Sum referred to 36(1)(ii)- bonus or commission to employee not as share in profit or dividend	43B(c)
Interest to public financial institution or state financial corporation or state industrial investment corporation	43B(d)
Interest on loan or borrowing from deposit taking NBFC/non deposit taking NBFC	43B(da)
Interest on loan or advance from scheduled bank / cooperative bank /primary agriculture credit society / primary cooperative agricultural and rural development bank	43B(e)
Leave encashment	43B(f)
Payment due to Indian railway for use of railway assets	43B(g)

## **Amendment in section 43B by FA 2022 w. e. f AY 2023-24**

(i) in Explanation 3C, after the words "loan or borrowing", the words "or debenture or any other instrument by which the liability to pay is deferred to a future date" shall be inserted;

(ii) in Explanation 3CA, after the words "loan or borrowing", the words "or debenture or any other instrument by which the liability to pay is deferred to a future date" shall be inserted;

(iii) in Explanation 3D, after the words "loan or advance", the words "or debenture or any other instrument by which the liability to pay is deferred to a future date" shall be inserted.

**Interest on loan or borrowing or debenture or any other instrument by which the liability to pay is deferred to a future date"** to public financial institution/state financial institution/state industrial investment corporation u/s 43b(d) or notified class of NBFC u/S43(da) shall be allowed on actual payment basis as per section 43B.

# Audit check list

Books of accounts , bank statements challan for payments

Statements of profit and loss

Balance sheet for pre existing liability at the beginning of PY and end of PY

Revised audit report if dues paid after furnishing of audit report but before due date of itr rules 6G(3)

Applicable only in the case of mercantile and approval system of accounting

Payment may be actually in cash or payments may be use of cash ledger or credit ledger

Pre deposits for filling of appeal is also payment to be reported here DCIT vs itc ltd Kolkata tribunal

Adjustment of tax liability against payment in advance in preceding PY is also deductible

## Clause 27 : Amount of CENVAT availed or utilised during the P.Y and Prior period adjustment

- (a) Amount of Central Value Added Tax credits/ITC 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.

Note: credit availed as per provisions of GST Vs. utilized for payment of GST liabilities.

## Clause 27(a)- reporting of CENVET credit / ITC

CENVAT/ITC	Amount	Treatment in P&L
Opening balance		
Credit availed		
CENVAT/ITC		
Credit utilized		
Closing balance		

Note: reversal of ITC – not here to reduced from ITC claimed  
Auditor not comments on eligibility of ITC . Just to report based on books of account  
Also match with reporting in annual return -9 /reconciliation statement 9C

**Clause 27(b) income or expenditure of prior period credited or debited to the profit and loss account.**

Expenses Crystallized in previous year is not a prior period item example sales tax demand.

Exp. based on court decree

Arrear of wages decided during the PY as a result of revision in minimum wages not a prior period item

sales return during PY of earlier sales is not prior period item.

Prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods. *as per AS -5 notified by MCA21 applicable to companies -Para 4.3*

***THE COMMISSIONER OF INCOME TAX(CNTL), LUDHIANA Vs. HERO CYCLES PVT. LTD. LUDHIANA (SC)(1997)-***

Not considered earlier no error so not prior period. Details refer [www.ppisngh.org](http://www.ppisngh.org)

**Clause 28 : During the P.Y. assessee has received any share of a co. in which public are not substantially interested without consideration or inadequate **consideration-not applicable from assessment year 2018-2019****

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)(viiia), if yes, please furnish the details of the same



## Clause 29 – section 56(2)(viib)-issue of share above FMV

- Applicable in the case of closely held company receive consideration for issue of shares in excess of FMV of shares except venture capital undertaking or received from other notified class of person such as start up as per notification no 1131(E) dated 5/3/2019 where CBDT has exempted starts up co from such provision startup to declare exemption from section 56(2)(viib) by filing form 2
- FMV shall be value of shares as per prescribed method (rule 11U and UA) or value to the satisfaction of AO on the date of issue whichever is higher
- Auditor have to report the cases where consideration for issue of share more than FMV
- Applicable even in the case where share allotted for consideration other than cash **flutura business solution (p)ltd vs ito Bangalore 2020 117 taxman.com 567(Bangalore tribunal )**
- Reporting in the year in which consideration received against issue of share and not the year in which allotment tax place
- If the company received application money in past years but share allotted in the current year , the transaction of issue of share crystallized in the current year only. the issue of taxability could be examine by AO in the past year in which application money received but also in the current year when allotment made **cimex land and housing (P)ltd vs ito 2019 104 taxman.com 240(Delhi tribunal )**

## Clause 29A- section 56(2)(ix)-forfeiture of advance received for transfer of capital asset

As per section 56(2)(ix) money received as advance or otherwise in the course of negotiation for transfer of capital asset if forfeited and negotiation do not result in transfer of such capital assets shall be income as income from other sources with effect from 1/4/2015(finance act(no.2) 2014)

# Clause 29A :Income chargeable under the head income from other sources u/s 56(2)(ix)- **forfeiture of advance-capital assets**

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:*

*Auditor have to report based on entry in the books of account . If no entry in the books of account no reporting to be made. no reporting required if there wise no **forfeiture of advance received***

*For **amount forfeited against supply of stock in trade** not to be reported here because not to be capital asset **but to be reported u/c 16(a)**because such amount is taxable u/s 28(i) as business income.*

*Forfeiture only when assessee has right for forfeiture as per the agreement . **What would happen if forfeiture is in dispute? Not in the nature of income till dispute finalised.***

# Clause 29B :Income chargeable under the head income from other sources u/s 56(2)(x)- gift

*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*

Section 56(2)(x) is related to taxability of gift / deemed gift from person other than close relative where amount received in aggregate exceeds Rs. 50000 in a financial year ; immovable property without consideration exceeding Rs. 50000; movable property without consideration exceeding 50000 etc .

Even purchase of immovable property for less than stamp duty value beyond 10% of consideration or Rs.50000 which ever is higher is also subject to tax as income from other sources . However certain gifts are outside the provision of section 56(2)(x) and therefore not taxable at all such as gift from close relative , gift on the occasion of marriage , will / inheritance or gift in contemplation of death ,gift/ fund from NGO registered u/s 12A /12AA/12AB /10(23C) etc .

# Scope of audit

- Auditor have to report such income if entry in the books of account about the nature of income and amount
- Gift deed or other instrument to be examined for basis of entry in the books of account
- Certificate / MRL from the auditee
- Verification of stamp duty value of immovable property or / FMV of movable property
- Certificate of registered valuer
- Computation of amount of income

# Clause 30 : Details of amount borrowed on hundi

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

## Clause 30A – secondary transfer pricing adjustment – section 92CE

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:

***clause 30B. –thin capitalization adjustment – 94B(1).***

*(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*

*(v) Details of interest expenditure carried forward as per sub-section (4) of section 94.*



*GAAR(general entry avoidance rule ) kept in abeyance till 31/3/2022*

*30C. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)*

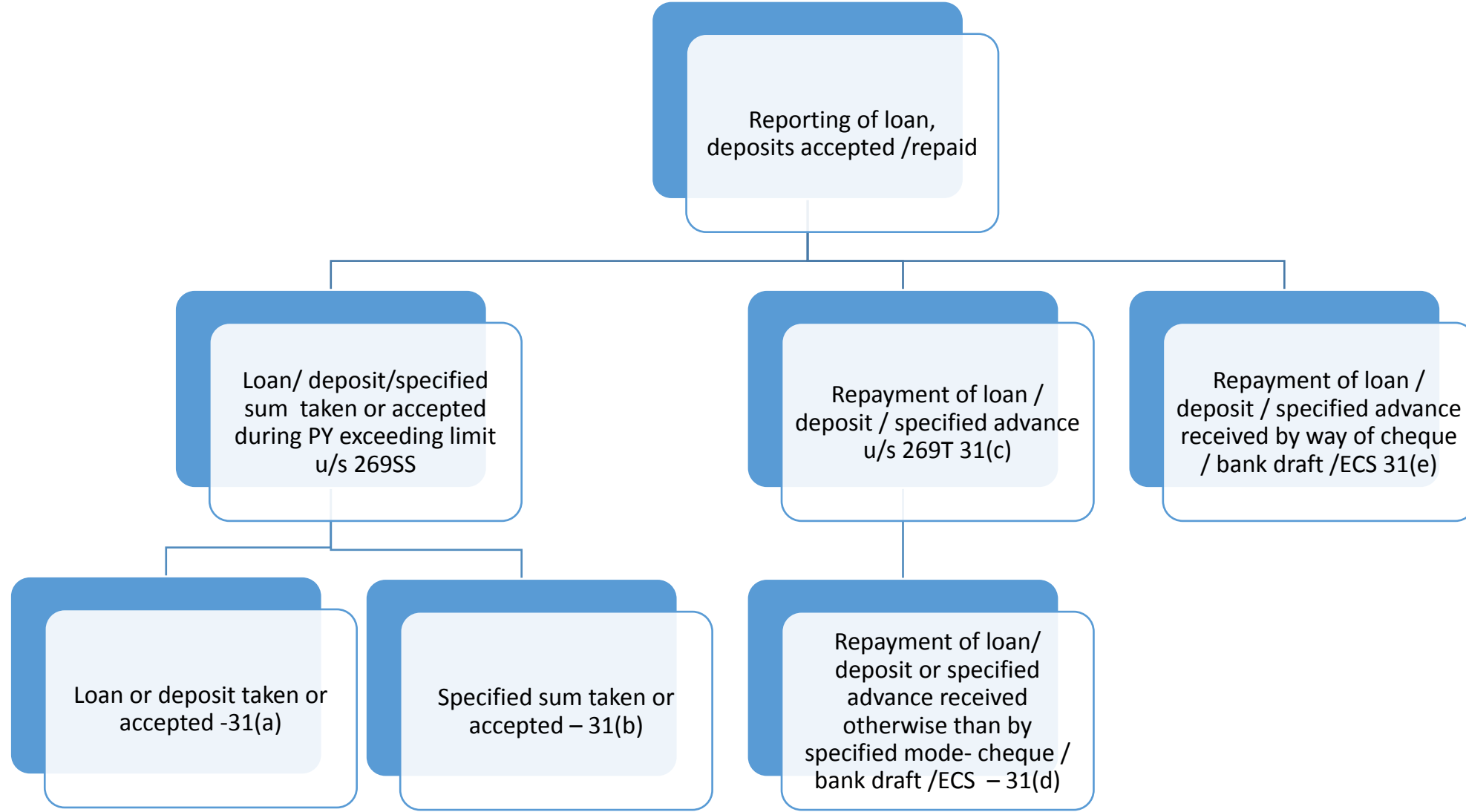
*(b) If yes, please specify*

*(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*

## **Clause 31 –**

**acceptance , repayment , of loan / deposit u/s 269SS/269T  
receipts , payments u/s269ST**



Specified sum means any sum of money receivable as advance or otherwise in relation to transfer of immovable property whether transfer tax place or not. Transfer may be of capital asset or stock in trade . Section 269SS does not have definition of immovable property . Section 269UA(d) has a definition for chapter XX-C

# Acceptable mode of payment / receipts

- Cheque
- Bank draft
- ECS (electronic clearing system )
- Credit card / debit card
- Net banking
- IMPS((immediate payment service)
- NEFT(national electronic fund transfer)
- RTGS(real time gross settlement )
- UPI(unified payment interface),
- BHIM(Bharat Interface For Money )

## Clause 31: Loan and deposit in an amount exceeding the limit specified u/s 269SS

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*

**31(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:

*31(c) Particulars of each **repayment of loan or deposit or any specified advance** 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.**

*31(d) Particulars of each **repayment of loan or deposit or any specified advance** exceeding the limit specified in section 269T made during the previous year **which was received otherwise than by way of cheque /bank draft / ECS***

(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.



*31(e) Particulars of each **repayment of loan or deposit or any specified advance** exceeding the limit specified in section 269T made during the previous year which was received by way of cheque /bank draft not being account payee cheque /bank draft*

(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).

Reporting of receipt  
specified in section 269ST

Reporting of receipt  
exceeding limit u/s 269ST  
otherwise than account  
payee cheque /bank draft  
/ -31(bb)

Reporting of receipt  
exceeding limit u/s 269ST  
otherwise than  
cheque/bank draft /ECS  
-31(ba)

Reporting of payment  
specified in section 269ST

Reporting of payment  
otherwise than cheque  
/bank draft / ECS -31(bc)

Reporting of payment  
exceeding limit u/s 269ST  
by way of account payee  
cheque/bank draft /ECS  
-31(bd)

31(ba) Particulars of each **receipt** in an amount exceeding the limit specified in section 269ST,

- i.
- 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;
  - (iv) Date of receipt;

**31(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, received by a cheque or bank draft, not being an **account payee** cheque /bank draft, during the PY.**

(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 occasions from a person,

*(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer*

*(ii) Amount of receipt (in Rs.)*

**31(bc) Particulars of each **payment** made in an amount exceeding the limit specified in section 269ST, **otherwise than** by way of a cheque or bank draft, or ECS **during the PY.****

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 occasions 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.

*31(bd) Payment exceeding limit specified in section 269ST, by way of a cheque or bank draft, or ECS during the PY.*

(bd) 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 occasions** 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.).*

Note : (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

# Verification and reporting

- Where evidence of account payee cheque / bank draft not available –MRL and suitable comments such as “it is not possible to verify whether loan or deposits taken or accepted otherwise than by account payee cheque / bank draft as necessary evidence not in possession of assessee in the main report
- Share application money not backed by application form / certificate is treated as an unsecured loan
- Retention in contract is not deposits, advance against sale of goods is not a loan or deposits but may be hit by section 269ST
- Information to be reported of interest free loan also.
- 269ST applicable to all assessee may be resident or non resident except exemption by notification no 28/2017 dated 5 April 2017 exempting bank/ post office / cooperative bank and 57/2017 dated 3 July 2017 exempting business correspondent of bank ,ATM operator of bank , company or institution issuing credit card , income exempt u/s 10(17A) – award
- 269ST does not distinguished capital receipts or revenue receipts
- Single invoice may relate to multiple transaction and vice versa multiple invoice for single transaction

# Clause 32: Brought forward loss/depreciation

[(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available

Sl 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^	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

# Clause 33 : Deduction under chapter VIA or chapter III(section 10A , section 10AA)

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 35: Quantitative detail of stock and raw material

(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.

# Scope of reporting – quantitative details

- Applicable only in the case of trading concern or manufacturing concern but not applicable to other entity such as service provider
- Details must match with the stock record
- As per section 35 of the cgst /sgst act read with rule 56 to 58 it is mandatory to have record of stock of goods , goods and goods supplied along with opening and closing balance as well as goods lost , stolen , destroyed , w/o or disposed of as gift / free sample inward or outward supply of goods by all the registered person also required to maintain .  
Record of raw material , finished goods
- Only Quantitative details of raw material / finished goods / stock in trade and not in the currency, record of by product as well
- Quantitative details of principal item to be reported
- Certificate of quantitative details from management , reconciliation with GST record , stock statement to bank etc.

# Clause 37: Cost Audit

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 38: Audit under central excise act 1994

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 39: Audit u/s 72A of the Finance Act 1994

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 40: Detail of Turnover/Gross profit

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)

Report ratio matching with schedule –III.

# Scope of audit

- Ratios for business as a whole
- Ratio and absolute value not in terms of quantity
- Numerator and denominator must have same base
- GP ratio based on the gross profit before deducting administration , selling and distribution and finance expense
- Net profit before tax and ratio considering that
- Partnership firm net profit ratio after charging interest on capital and remuneration to working partners
- Turnover after reducing discount and sales return etc.
- Stock in trade of finished goods only
- Same base to be taken for reporting the figures of both the years
- Construction activity is a service activity and not manufacturing therefore this clause is not applicable similarly job worker need not to report
- Extraordinary item such as sale of capital goods , scrap sale to be excluded while comparative reporting
- Ratio in balance sheet of company as well under schedule -iii requirement .

## Clause 41: Detail of demand raised or refund issued

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 42: Detail of statement in Form no 61/61A/61B

- (a) Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B? (Yes/No)
- (b) ) If yes, please furnish :

<i>Income tax Department Reporting Entity Identification Number</i>	<i>Type of Form</i>	<i>Due date for furnishing</i>	<i>Date of furnishing, if</i>	<i>Whether the Form contains information about all details/furnished transactions which are required to be reported. If not, please furnish list of the details/ transactions which are not reported.</i>
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Form 61 – statement of form 60 received – rule 114 D(1) – 31<sup>st</sup> October  
Form 61A – statement of SFT SECTION285BA read with rule 114E. – 31<sup>st</sup> May  
Form 61B- No more applicable.

# Clause 43: Reporting requirement u/s 286

- (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 44: Break up of total expenditure of entities- kept in abeyance till 31/3/2022-circular no -5/2021dated 25/3/2021

*Break-up of total expenditure of entities registered or not registered  
under the GST*

Sl. No.	<i>Total amount of Expenditure incurred during the Year</i>	Expenditure in respect of entities registered under GST				<i>Expenditure relating to entities not registered under GST</i>
		<i>Relating to goods or services exempt from GST</i>	Relating to entities falling under composition scheme	<i>Relating to other registered entities</i>	Total payment to registered entities	

**Clause of 3CD applicable  
to partnership , LLP**

## Clause 9 -Tax Audit clauses of Form 3CD applicable to Firm /LLPs/AOPs/BOIs who are liable for tax audit u/s 44AB

Clause 9 Details regarding Firms/LLPs/AOPs

(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.....

SN	Date of Change	. Name of Partner/Member	Type of Change	Old Profit Sharing Ratio	New Profit Sharing Ratio	Remarks

Changes by finance act 2021.



## Scope of reporting

- Details of partners /members and profit sharing ratio
- Changes in partners /members and changes in profit sharing ratio during the FY

- Changes
- Addition of new partner
- Deletion –
- Change in profit sharing ratio
- Reconstitution of firm –explanation(i) to section 9B
- Whether dissolution due to death of a partner is within reconstitution – as per explanation not expressly excluded but in section 187(2) specifically excluded.

**New taxation system by F A 2021  
on TRF of capital assets/stock in trade  
by firm to partner**

# Amendment to answer certain Questions

*(a)* Whether the expression “dissolution of the firm or otherwise” in section 45(4) includes reconstitution of the firm?

*(b)* Whether money or other property received by a retiring partner from the firm could be said to chargeable to tax in his hands?

*(c)* Whether money paid to a partner could be taxable in the hands of the firm under section 45(4)?

*(d)* Whether transfer of property (stock-in-trade and capital asset) by a firm to its partners is chargeable to tax in the hands of firm?

*(e)* What is the mechanism to compute income in such cases?

*(f)* Where a firm does the revaluation of the property or record self-generated asset in the books of account and credits the corresponding gain to the capital accounts of the partners, what should be the tax treatment of the amount received by partner in excess of his capital contribution made on account of such revaluation or self-generated asset?

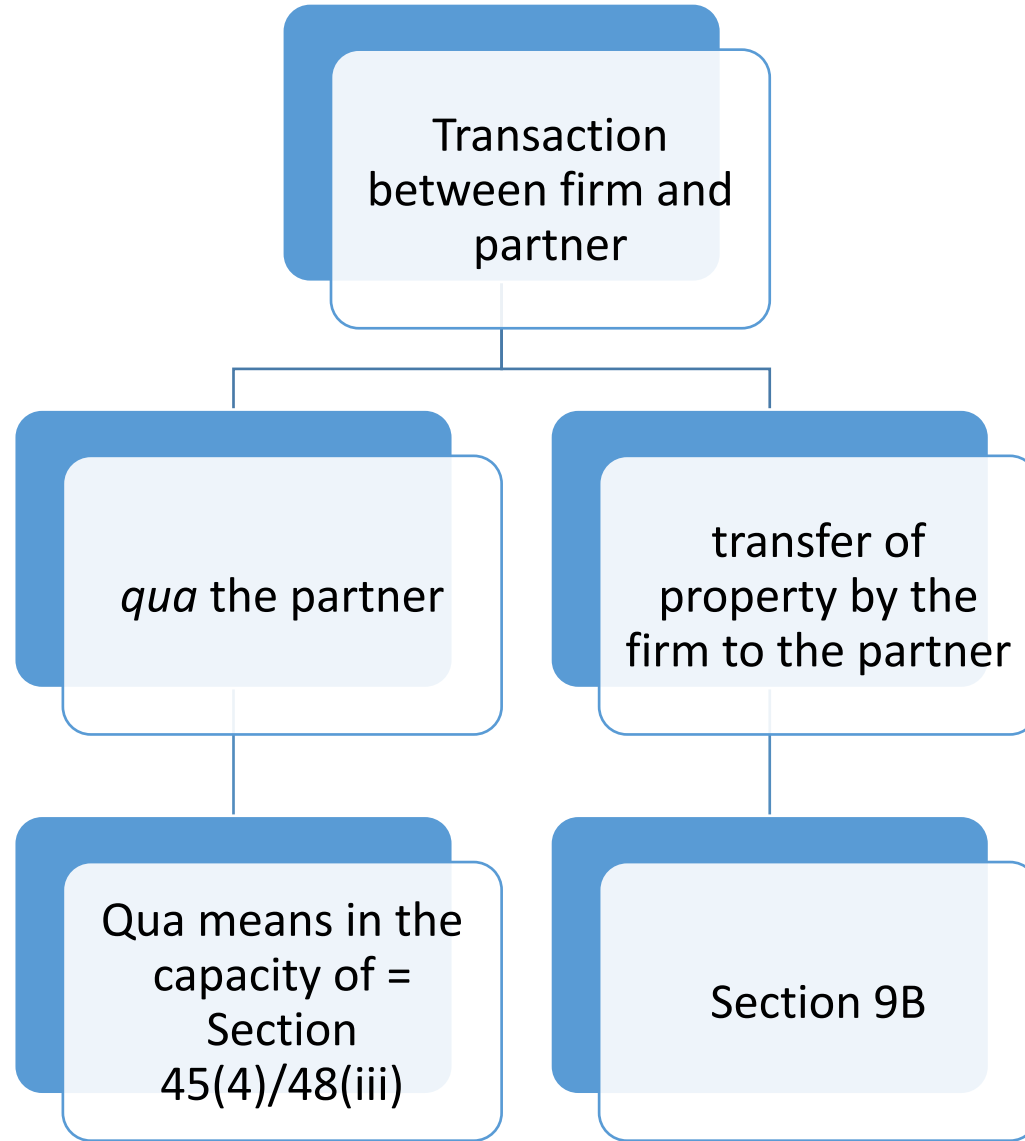
**Section -9B**

**Section 45(4)**

**Section 48(iii)**

**Rule 8AB**

**Circular no 14 dt 2-7-2021**



## Reconstitution –change in partners/members of partnership is within preview- explanation (i) section 9B

Explanation.—*For the purposes of this section,—*

- (i) *"reconstitution of the specified entity" means, where—*
  - (a) *one or more of its partners or members, as the case may be, of such specified entity ceases to be partners or members; or*
  - (b) *one or more new partners or members, as the case may be, are admitted in such specified entity in such circumstances that one or more of the persons who were partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or*
  - (c) *all the partners or members, as the case may be, of such specified entity continue with a change in their respective share or in the shares of some of them;*
- (ii) *"specified entity" means a firm or other association of persons or body of individuals (not being a company or a co-operative society);*
- (iii) *"specified person" means a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a co-operative society) in any previous year. ]*

# transfer of capital assets/stock in trade-section 9B

- ❑ Partner /member receive capital assets or stock in trade on dissolution *or reconstitution of firm or other association of persons or body of individual.*
- ❑ *Only receipt of money section 9B not applicable.* However it is covered by section 45(4).
- ❑ agricultural land which is not a capital asset under section 2(14) cannot be regarded as a capital asset for the purposes of section 9B and the transfer of such an asset will not result in any tax implication under section 9B.
- ❑ ***Deemed Transfer*** by firm to partner in the year in which such capital asset or stock in trade or both are received by partner. This is done to overrule various judicial rulings including the following, which held that the distribution, division or allotment of assets by a partnership firm upon dissolution or reconstitution is nothing but a mutual adjustment of rights between the partners:
  - (a) ***CIT v. Dewas Cine Corporation, [1968] 68 ITR 240 (SC)*** (adjustment of the rights of the partners in a dissolved firm is not a transfer).
  - (b) ***Malabar Fisheries Co. v. CIT, [1979] 120 ITR 49/2 Taxman 409 (SC)***

# transfer of capital assets/stock in trade-section 9B

- ❑ *profits and gains arising from such deemed transfer of capital asset or stock in trade or both shall be **deemed to be the income of such firm***
- ❑ *chargeable to income-tax as **income of such firm** under the head "**Profits and gains of business or profession**" or under the head "**Capital gains**",*
- ❑ ***FMV** of the capital asset or stock in trade on the date of its receipt by the partner **shall be deemed to be the full value of the consideration** received or accruing as a result of such deemed transfer . "fair market value" has been defined in section 2(22B).*
- ❑ Section 9B is a **deeming provision**, enabling taxation of certain income in the hands of specified entity. It is not a computation provision.
- ❑ **For computation, the provisions of profits and gains of business or profession or capital gains will apply.**
- ❑ ***Year of Taxation of Income- year of receipt by partner/member.***



# **FMV of a capital assets. [section 2(22B)]**

[(22B)] "fair market value" in relation to a capital asset, means—

- (i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date ; and
- (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act ;

Note: for section 9B Full value of consideration =FMV.

# Computation of capital gain- section 45(4)

Capital gains" shall be **deemed to be the income of such firm** of the previous year in which such money or capital asset or both were received by the specified person, and notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the following formula, namely:—

$$A = B + C - D$$

Where,

A = income chargeable to income-tax under this sub section as income of the specified entity under the head "Capital gains";

B = value of any **money received** by the specified person from the specified entity on the date of such receipt;

C = the amount of **FMV of the capital asset received** by the specified person from the specified entity on the date of such receipt; and

D = the amount of **balance in the capital account** (represented in any manner) of the specified person in the books of account of the specified entity at the time of its reconstitution:

Provided that if the value of "A" in the above formula is negative, its value shall be deemed to be zero :

Provided further that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated **without taking into account the increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.**

**Note: section 45(4)override section 45(1).**

# Mode of computation of capital gain –section 48-new clause (iii)

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto;

*[(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner: as per rules 8AB*

Note: (iii) newly inserted .

The computation of capital gain under section 9B read with section 48(iii) shall be as follows:

Particulars	Amount
Full value of consideration received or accrued (FMV of capital asset)	xxx
Less:	
(a) Expenditure incurred wholly and exclusively in connection with transfer;	(xxx)
(b) Cost of acquisition/indexed cost of acquisition;	(xxx)
(c) Cost of improvement/indexed cost of improvement; and	(xxx)
(d) The amount chargeable to tax as income of specified entity under section 45(4) which is attributable to capital asset being transferred by the said entity [section 48(iii)].	(xxx)

## Computation of deduction under Section 48(iii)

in case of reconstitution, these provisions shall apply in the following sequence:

Step 1: Determine the capital gains or business income under Section 9B.

Step 2: Compute the partnership firm's total income, including income computed in the above step on the date of reconstitution.

Step 3: Compute tax on total income computed in the above step.

Step 4: Compute net income (Step 2 – Step 3)

Step 5: Credit the net income computed in the above step to the partner's capital account in their profit sharing ratio.

Step 6: Compute the amount of capital gains taxable under Section 45(4).

Step 7: Attribute the amount taxable under Section 45(4) to the assets remaining with the firm.

Step 8: The attribution of capital gain computed in the above step shall be made as per the following formula:

Asset remaining with partnership firm = Revaluation gain in concerned asset / Revaluation gain in all assets remaining with the firm ( Rule 8AB)

## Nature of capital gain- rule 8AA(5)

In case of the amount which is chargeable to income-tax as income of specified entity under sub-section (4) of section 45 under the head - "Capital gains",-

(i) the amount or a part of it shall be deemed to be from transfer of short term capital asset, if it is attributed to,-

(a) capital asset which is short term capital asset at the time of taxation of amount under sub-section (4) of section 45; or

(b) capital asset forming part of block of asset; or

(c) capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of Explanation 1 to sub-section (4) of section 45; and

(ii) the amount or a part of it shall be deemed to be from transfer of long term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45.]

# ***Rate of Tax***

- The rate at which such capital gain shall be charged to tax will depend on the nature of capital asset transferred and period for which such asset is held by the specified entity. Hence, the capital gains may be liable to concessional tax rate as provided in section 111A or section 112 or section 112A, as the case may be, subject to fulfilment of conditions specified therein.

## Section 9B Vs. 45(4)

It is clarified that the provisions of section 45(4) shall operate in addition to the provisions of section 9B and when a capital asset is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, the provisions of both the sections may operate independently (*Explanation 2*).



### Example 1

A, B, C, and D are equal partners in a partnership firm. Each having a capital balance of Rs. 10 lakhs. A decides to retire from the firm on 1st April. At the time of his retirement, Firm had the following assets:

Nature of Asset	Book Value/Written Down Value (in lakhs)
Land	40
Building	25
Cash	140

#### Situation A:

Firm revalued its land and building at Rs. 50 lakhs and Rs. 35 lakhs respectively. The firm gives Rs. 10 lakhs and land to Mr. A. Such land was acquired by the firm 3 years ago.

#### **Taxability under Section 9B**

Particulars	Amount (in lakhs)
FMV of land [A]	50
Book value of land (ignoring indexation of cost of acquisition) [B]	40
Long-term capital gains in the hands of Firm [C = A – B]	10
Tax rate [D]	20%
Tax on capital gains [E = C * D]	2
Amount to be attributed to partners account [F = C – E]	8

## Taxability under Section 45(4)

Particulars	Amount (in lakhs)
FMV of land [A]	50
Money [B]	10
Total consideration received [C = A + B]	60
Opening balance in capital account [D]	10
Attribution due to transfer of land [E = $8 * \frac{1}{4}$ ]	2
Capital balance at the time of reconstitution [F = D + E]	12
<b>Deemed Capital Gains</b> in the hands of Firm [G = C – F]	48
Tax rate* 20%	
Tax on deemed capital gains	9.6

\* Since the capital gains are attributable to the land, which is a long-term capital asset, the nature of capital gains would be long-term by virtue of Rule 8AA(5).

Since the firm has revalued building in addition to land, Sub-rule (2) of Rule 8AB would be applicable, and entire capital gains of Rs. 48 lakhs would be attributable to the building. The firm shall furnish the details of such attribution electronically in Form No. 5C on or before due date of filing return u/s 139(1).

**Clause of 3CD applicable  
to company only**

Clause no 8A	Optional tax rate	Section 115BA/BAA/BAB
Clause 29	Share Premium received by closely-held companies in excess of FMV	Excess amount taxable income u/s 56(2)(x)
Clause 36A	Deemed dividend	Section 2(22) ( e )
Clause No 36	Pertaining reporting of DDT	omitted by notification no. 28/2021 dated 01.04.2021

# Clause 36A: Detail of Dividend received

(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*

*Applicable only in the case of closely held company paid loan or advance to share holder of 10% or more voting power or to a concern in which shareholder is a partner or member having substantial interest*

*Not applicable if company has accumulated losses or money lending is ordinary business of company*

*CBDT circular no 19/2017 dated 12 June 2017, business advance or trade advance from closely held company is out of purview of deemed dividend*

# Audit – deemed dividend

- MRL having list of concern in which shareholder has substantial interest
- Nature of business of assessee whether money lending , if so this clause not applicable
- Various exemptions from applicability of deemed dividend provisions
- Nature of payments whether contractual and applicable to other person on similar terms and condition – not a deemed dividend
- Verification of transaction with reference to agreement / contract .
-

**Thank You**

**CA PP SINGH**

**LLM(P) LLB, FCA, CS, GSTCC(ICAI) B.Sc (H)**

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