

Audit under Section  
44AB of Income Tax Act,  
1961

Clauses 25-44

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***Clause 25: Any amount of profit chargeable to tax under section 41 and computation thereof***

Understanding-

❖ Sec 41 – following amounts are chargeable to tax

41(1): amounts allowed/deductions claimed in earlier years on account of loss, expenditure or trading liability and subsequently assessee receives any benefit on account of remission or cessation thereof, it is to be offered as income in such year – e.g., Trade creditors no longer payable written back in books of accounts would be chargeable to tax under Section 41

41(2) Moneys payable in case of assets of an undertaking which is engaged in generation and distribution of electricity, and which is demolished, discarded, sold or destroyed. If Moneys payable exceeds WDV of the asset, the so much of excess, which does not exceed the depreciation claimed on such assets is chargeable as income in the year in which such money becomes due

41(3) Assets used for scientific research are discarded without being used for other purposes and the sale proceeds together with the deduction under section 35 exceeds the capital expenditure, then such surplus or the amount of deduction allowed which is less is treated as business income in the year of such sale.

41(4) Bad Debts Recovery – Amounts written off as bad debts and received subsequently

41(4a) Withdrawal of any special reserve created under 36(1) (viii)

## Audit Procedures and Documentation

- ❖ Scrutinize Miscellaneous Receipts, for items which were expensed out in any of the earlier years has been refunded and Check whether such expense was earlier allowed as deduction
- ❖ Inquire from the client, whether there has been any write back of expenses in the previous year that were claimed as an allowable expenditure (for income tax purposes) in the earlier years. If yes, obtain and verify the schedule of such write backs.
- ❖ Obtain a statement of recovery of debts earlier written off under section 36(1)(vii). Report to the extent amount allowed as deduction in the past assessments.
- ❖ Any provisions no longer required written back would not be offered for tax – if such provisions have been disallowed earlier. Care to be taken to ensure that these provisions were indeed disallowed in the prior years by referring to memo of earlier years

## Reporting

Sr. No.	Name of person	Amount of Income (Rs.)	Section	Description of Transaction	Computation if any
1	2	3	4	5	6

**Clause 26: (i) In respect of any sum referred to in clause (a), (b), (c), (d) (e) (f) or (g) of section 43B, the liability for which:—**

**(A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was**

- a) paid during the previous year;**
- b) not paid during the previous year.**

**(B) was incurred in the previous year and was**

- a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);**
- b) not paid on or before the aforesaid date.**

**(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account.)**

❖ Sec 43B

Following are the items covered under Section 43B

- i. Any tax, duty, cess, or fee by whatever name called- eg GST, Excise duty, Duty of customs etc
- ii. Any sum payable by employer by way of contribution to PF, superannuation fund, gratuity fund or any other welfare fund of employees
- iii. Bonus/commission payable/sum payable in lieu of any leave by assessee to its employees
- iv. Interest on borrowings from any public financial institution, state financial corporation, state industrial investment corporation, scheduled bank, co-operative bank.
- v. Sum payable to Indian railways for use of railway assets

**Format of reporting**

**Clause 26(i) (A)**

<b>S. No</b>	<b>Nature of liability</b>	<b>Outstanding balance not allowed in Previous year</b>	<b>opening in</b>	<b>Paid /set off during the year</b>	<b>Unpaid as at end of year</b>	<b>Whether passed thro PL</b>
(1)	(2)	(3)		(4)	(5)	(6)

**Clause 26(i) (B)**

<b>S. No</b>	<b>Nature of liability</b>	<b>Amount incurred during the year and outstanding as at last day of the year</b>	<b>Paid before due date of filing return</b>	<b>Balance unpaid</b>	<b>Whether passed through PL</b>
(1)	(2)	(3)	(4)	(5)	(6)

## **Audit Procedures and Documentation**

### **26(i)(A)- relating to amounts disallowed in the earlier previous years**

- ❖ Scrutinize previous years tax audit report and Return of Income, current liabilities & secured/ unsecured loans (for interest accrued and due) to identify any of the amounts specified u/s 43B pertaining to earlier years:
- ❖ Verify payments relating to above (not allowed as a deduction in the earlier assessment years) with relevant supporting
- ❖ Amount paid during the previous year can be claimed as a deduction and the unpaid amounts to be carried forward and disclosed. They can be claimed in the year of payment.
- ❖ Verify report under CARO for any statutory dues remaining unpaid.

### **26(i)(B)- relating to amounts incurred and outstanding in the previous year**

- ❖ Scrutinize the closing outstanding liability on account of the amount specified under section 43B as on 31st March of the previous year.- This clause relates to amounts incurred during the previous year and remaining unpaid as on the last day of the previous year
- ❖ Verify subsequent payments relating to above with relevant supports [payments made before the due date of filing the return u/s 139(1)]- This will be allowed as a deduction in the previous year.
- ❖ Identify & disclose unpaid amount out of the above – this will be disallowed in the current year and carried forward to clause 26(i) (a) in the next year

***Clause 27(a) Amount of Central Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.***

**Audit Procedures and Documentation**

- ❖ Verify opening balances of CENVAT/ ITC with previous year's 3CD
- ❖ Verify the GSTR 2A from GST Portal
- ❖ Verify CENVAT credits/ITC availed during the financial year with reference to purchases of inputs, capital goods, etc.
- ❖ Verify credits utilized during the year with reference to GST payments as reflected in the GSTR 3B.
- ❖ Verify closing balances with reference to ITC Ledger/Books of accounts.
- ❖ Verify the reconciliation between ITC as per accounts and ITC as per ITC ledger in GST Portal

**Reporting**

CENVAT	Amount	Treatment in Profit and Loss
Opening Balance		
CENVAT Availed		
CENVAT Utilised		
Closing Balance		



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

**Audit Procedures and Documentation**

- ❖ Only applicable in case of mercantile system of accounting
- ❖ Definition of prior period is as per relevant accounting standards- errors or omissions in the earlier period and now accounted would be considered as prior period
- ❖ Under accruals/over accruals and subsequent reversals do not qualify as prior period items

**Reporting**

S No	Type	Particulars	Amount	Prior Period to which it relates
1	2	3	4	5

***Clause 28: Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia), if yes, please furnish the details of the same.***

**❖ Section 56(2)(viia)**

Clause 28 Not applicable as Section 56(2)(viia) is not applicable for AY 2022-23. this section was applicable for transactions on or after -1/06/2010 but before 1/4/2017, and replaced by 56(2)(x) - clause 29B

**Clause 29: Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish the details of the same.**

❖ **Section 56(2)(viib)**

Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head “Income from other sources”.

**Audit Procedures and Documentation**

- ❖ Obtain from the company , a list containing the details of shares issued, if any, to any person being resident.
- ❖ Verify the same from the books of account, ROC filings, Balance Sheet - whether there has been any increase in share capital by issue of shares.
- ❖ For reporting under this clause, the auditor has to consider the provisions of Rule 11UA as may be applicable for determining fair value of shares.
- ❖ Not applicable when consideration is received by a venture capital undertaking from a venture capital fund or a specified fund or a venture capital company and by a company from a class or classes of persons as may be notified by the Central Government in this behalf

**Reporting**

Sr. No.	Name and status of the person to whom share have been issued.	PAN of the person, if available	Number of shares issued	Amount of consideration received	Fair Market value of the shares
1	2	3	4	5	6

**Clause 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**

**❖ Section 56(2)(ix)**

Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.

### **Audit Procedures and Documentation**

- ❖ Refer to terms of agreement and if it contains a right to forfeit on certain conditions and such conditions have occurred, then verify with the auditee as to whether the amount has been forfeited.
- ❖ Obtain a certificate from the assessee regarding all such advances received towards transfer of capital assets which have forfeited during the year.
- ❖ Examine whether any amount of such advances has been written back during the year and examine the basis of such write back to determine whether such write back was on account of an act of forfeiture.
- ❖ If an advance has been received and has been outstanding for a considerable period of time or has become time barred, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

**Clause 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 thereof**

**❖ Section 56(2)(x)**

Where any person receives in any previous year, from any person(s) money, immovable property, or other property and conditions stated in the clause are satisfied, then, it is treated as income of the recipient. The conditions for any such receipt for being treated as income are as follows: --

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees. Income = the whole of the aggregate value of such sum.

(b) Immoveable Property

(i) without consideration and the stamp duty value exceeds Rs. 50,000. Income = stamp duty value of the property

(ii) For inadequate consideration, if

>> the stamp duty value exceeds the consideration by higher of (a) Rs. 50,000 and (b) the amount equal to 10% of consideration. Income = the difference between stamp duty value and consideration of the property

(c) Property other than immoveable property

(i) any property other than immoveable property without consideration and the fair market value exceeds Rs. 50,000.  
Income = fair market value of the property

(ii) any property other than immoveable property for consideration

>> the fair market value exceeds the consideration and

>> if such excess is more than Rs. 50,000, Income = the difference between fair market value and consideration of the property

### **Audit Procedures and Documentation**

- ❖ Obtain a certificate from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession.
- ❖ Scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein.
- ❖ Inquire the assessee as to receipt of any property (immoveable and moveable) without/inadequate consideration
- ❖ In case of nature of income, state whether the income is by way of receipt of any sum of money or from acquisition of any immovable property like land, building etc. or other than immovable property like shares and securities, jewellery, drawings, paintings etc.

***Clause 30: Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque [Section 69D].***

❖ **Section 69D**

Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be

**Audit Procedures and Documentation**

- ❖ Obtain a statement of hundis borrowed and repaid during the year with the mode and amount of each individual payment. Such statement should specify all borrowings and repayments of hundi loans otherwise than by account payee cheques
- ❖ Verify the above statement with the books of account
- ❖ Verify the mode of payment of interest due on hundi during the year.
- ❖ Scrutinize cash and petty cash book
- ❖ Obtain loan confirmations and in absence of conclusive or satisfactory evidence obtain certificate/ management representation in this regard.

## Reporting

Sr. No.	Name of the person from whom amount borrowed or repaid on hundi	PAN of the person, if available	Address of the person, if available	Amount Borrowed	Date of Borrowing	Amount due including interest	Amount repaid	Date of repayment
1	2	3	4	5	6	7	8	9



**Clause 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**
- vi. Expected date of repatriation.**

#### **Points for consideration**

Primary adjustment refers to amount of income /loss based on arms length principle (the difference between the Arms Length price and the transaction price)

Secondary adjustment refers to adjustments in the books of the assessee and the Associated Enterprise.

## Points to be noted - contd

Disclosure in respect of each and every type of Primary adjustment should be made, irrespective of the amount and also previous year to which adjustment pertains to. Excess money should be repatriated to India only if the primary adjustment exceeds one crore and the adjustment relates to AY 2017-18 or later. Interest on such money to be repatriated to be charged beyond the due date of repatriation. No secondary adjustment is required to be made if the amount of primary adjustment is less than INR 1 crore or it relates to AY 2016-17 or earlier

If primary adjustments are	Due date of repatriation if the adjustments are made
Made by the taxpayer in the ROI	90 days from the due date of filing the return
Made by AO and accepted by the taxpayer	90 days from the date of AO or the Appellate authority
Determined under Advance pricing agreement	if entered before due date of filing ROI- 90 days from due date of filing ROI, If entered after filing ROI, 90 days from end of the month in which APA has been entered
Made under safe harbour rules framed under 92CB	90 days from the due date of filing the return
Made as a result of resolution of assessment under Mutual Agreement procedure	90 days from the date of giving effect by AO

***Clause 30B: (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)***

***(b) If yes, please furnish the following details:—***

- i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:***
- ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):***
- iii. Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :***
- iv. Details of interest expenditure brought forward as per sub-section (4) of section 94B***
- v. Details of interest expenditure carried forward as per sub-section (4) of section 94B***

#### **❖ Section 94B**

Where an Indian company or a permanent establishment of a foreign company in India, incurs any expenditure by way of interest or of similar nature exceeding Rs. 1 crore which is deductible in computation of income under the head “Profits & Gains of Business or Profession” in respect of a debt issued by a non-resident AE, such interest, to the extent of excess of 30% of EDIDTA shall not be deductible. This shall be carried forward for a period of 8 years to be allowed as a deduction against profits and gains of business or profession



**Clause 30C: (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No) -Applicable from AY 22-23**

**(b) If yes, please specify:-**

- i. Nature of the impermissible avoidance arrangement:**
- ii. Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:";**

#### **❖ Section 96**

An arrangement is to be treated as an IAA, if its main purpose is to obtain tax benefit and it satisfies any one or more of the four tests specified in Section 96.

The four tests specified in Section 96 are:

- ❖ Arrangement creates rights/ obligations which are not ordinarily created between persons dealing at arm's length,**
- ❖ Arrangement results, directly or indirectly, in misuse or abuse of the provisions of the Act,**
- ❖ Arrangement lacks commercial substance or is deemed to lack commercial substance, by virtue of fiction created by section 97, or**
- ❖ Arrangement is entered into or is carried out, by means, or in a manner, which are not ordinarily employed for bonafide purposes.**

**Clause 31** deals with the following sections /clauses the synopsis of which is captured as under

clause	Section	Key points	disclosure requirements	Other remarks
31(a)	269SS	<p>Particulars of each loan or deposit taken or accepted exceeding the limit specified (20,000)</p> <p>Deposits taken from Government , banks, a Government company, a corporation established under state, central or provincial act excluded</p>	<p>Name, address PAN and Aadhar of the lender, amount of deposit, whether squared up during the year, maximum amount outstanding, whether the amount was taken by cheque, DD or any other electronic mode and if taken by cheque or DD whether it is an account payee cheque or draft</p>	<p><b>Inclusions</b> – security deposits, interest free loans, loans or deposits taken or accepted by means of transfer entries in books.</p> <p><b>Exclusions</b> – retention money, sale proceeds collected by selling agent, entries that relate to transactions with a supplier and customer on account of purchase or sale of goods/services will not be treated as loans or deposits accepted.</p>
31(b)	269SS	<p>Particulars of specified amounts taken or accepted exceeding the limit specified (20,000) – sum received in transfer of capital asset- whether transferred or not</p>	<p>Same as above, except that whether squared up during the year need not be given in this case as this is a specified amount.</p>	<p>None</p>

**Clause 31** deals with the following sections /clauses the synopsis of which is captured as under

clause	Section	Key points	disclosure requirements	Other remarks
31(ba)	269ST	<p>each receipt in excess of INR 2 lakhs in aggregate</p> <ul style="list-style-type: none"> <li>-from a person in a day</li> <li>-in respect of a single transaction</li> <li>-in respect of transactions relating to a one event or an occasion from a person (e.g catering contractor and flower décor for a marriage given to single person - different transactions but single event or occasion)</li> </ul> <p>Other wise than by a cheque or bank draft or use of electronic clearing system thro a bank account or other specified electronic modes</p>	Name, address and PAN and Aadhar number of the payer, Nature of transaction, date of receipt, amount of receipt.	None
31(bb)	269ST	<p>Same as above – except mode of receipt –to be reported – if received by a cheque or bank draft not being a account payee cheque or draft</p>	Same as above	None

**Clause 31** deals with the following sections /clauses the synopsis of which is captured as under

clause	Section	Key points	disclosure requirements	Other remarks
31(bc)	269ST	each payment in excess of INR 2 lakhs in aggregate -to a person in a day -in respect of a single transaction -in respect of transactions relating to a one event or an occasion Other wise than by a cheque or bank draft or use of electronic clearing system thro a bank account or other specified electronic modes	Name, address and PAN and Aadhar number of the payee, Nature of transaction, date of payment, amount of payment	See below
31(bd)	269ST	Same as above – except mode of receipt –to be reported – if paid by a cheque or bank draft not being a account payee cheque or draft	Same as above	See below

Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or 'specified sum' referred to in section 269SS. It also does not apply to such persons or class of persons or receipts, which have been notified by the Central Government. It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party consideration for which exceeds Rs. 2 lakh. In such a case if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, such set off is not a receipt as contemplated under section 269ST. If the amount of such set off exceeds Rs. 2 lakh, the tax auditor may give appropriate note to the effect that such set off not being a receipt or payment has not been included in the particulars given and the relevant sub-clause.



**Clause 31** deals with the following sections /clauses the synopsis of which is captured as under

clause	Section	Key points	disclosure requirements	Other remarks
31(c)	269T	Particulars of repayment of each loan or deposit or any specified advance exceeding the limit specified in section 269 T- whether the payment was made by cheque ,draft or ECS and if made by cheque or bank draft - whether Account payee or not	Name, address, PAN and Aadhar of the payee, amount, maximum amount outstanding, whether the repayment was made by cheque, DD or any other electronic mode and if made by cheque or DD whether it is an account payee cheque or draft	None
31(d)	269T	Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year	Name, address, PAN and Aadhar of the payer and amount of repayment of loan or deposit or 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	None

**Clause 31** deals with the following sections /clauses the synopsis of which is captured as under

clause	Section	Key points	disclosure requirements	Other remarks
31(e)	269T	Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or bank draft during the previous year	Name, address, PAN and Aadhar of the payer and amount of repayment of loan or deposit or specified advance received by a cheque or bank draft not being account payee cheque or bank draft	<b>None</b>

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.

However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown.

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

**Audit Procedures and Documentation**

- ❖ Brought forward losses are to be taken from the return pertaining to preceding previous year, subject to any adjustments on account of assessment / appellate orders, if any. Disclose status of pending assessment, revision, rectification, appeals by way of remark / note. If consequential orders for any revision/appellate order is yet to be passed, the same can be disclosed along with the impact thereof if material. In case order of appeal/revision is passed, the same shall be considered for reporting.
- ❖ Verify whether the assessee is eligible and has opted for taxation under section 115BAA/115BAC/115BAD, If yes Verify whether brought forward losses relating to certain deduction which is not allowed u/s 115BAA/ 115BAC/ 115BAD has been modified to that extent. Also, additional depreciation claimed will not be allowed to be carried forward
- ❖ The details should be collated and collected assessment year wise and reported

**Reporting**

Sr. No.	Assessment year	Nature of loss allowance	Amount as returned	All losses/allowances not allowed under section 115BAA/ 115BAC/ 115BAD	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/ 115BAD	Amount as assessed (give reference to relevant order)	Remarks
1	2	3	4	5	6	7	8

***Clause 32(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***

Section 79 of the Act provides that in the case of a company, not being a company in which the public are substantially interested, where a change in shareholding has taken place in a previous year, then no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of that previous year and on the last day of the previous year in which the loss was incurred, the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons.

**Audit Procedures and Documentation**

- ❖ Check that the assessee is not a company in which the public is substantially interested within the meaning of section 2(18) of the Income Tax Act, 1961.
- ❖ Check the shareholding with the Register of Members maintained by the assessee.
- ❖ Obtain shareholding pattern from the assessee as on:
  - i. The last date of the previous year in which the loss was incurred; and
  - ii. The last date of the previous year .
- ❖ Change in shareholding pattern will impact only carry forward loss and not unabsorbed depreciation

Above clauses not applicable for change in shareholding pattern due to death of shareholder, gift of shares by the shareholder to his relative, a resolution plan under the Insolvency and Bankruptcy Code, change in shareholding of the Company due to resolution plan approved by Tribunal under Section 242 of the Companies Act, (on an application made by CG under Sec 241 of the Companies Act), due to relocation referred to vii(ac) and vii(ad) of Section 47 relating to IFSC **(from AY 22-23)**, to erstwhile public sector company on account of strategic disinvestment, provided the ultimate holding company continues to hold 51% of voting power, directly or indirectly through subsidiary or subsidiaries.

**Clause 32(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.**

**Audit Procedures and Documentation**

- ❖ Discuss with the assessee if there are any losses incurred on speculative transactions. Ensure such losses are not set off against income from other than speculative transactions. Speculation losses can be carried forward for a period of 4 years only following the year in which the loss is incurred . “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.
- ❖ Obtain list of all contracts entered by the assessee for the purchase or sale of commodity including stocks and shares. Check whether the assessee has obtained actual delivery of such commodity or shares.
- ❖ In case the assessee has not obtained delivery of shares or commodity, consider such transactions for reporting under speculative business.
- ❖ above losses will not include – losses on trading in derivative under securities contract and regulation act and losses on commodity trading through recognized exchanges, transactions entered in to by members of stock exchange in nature of arbitrage transactions

Sr. No.	Nature of loss	Amount of loss for the current year	Brought forward loss of earlier year(s)	Total loss to be carried forward to the subsequent year	Break- up of the speculation loss in terms of the number of years for which it has been carried forward	Whether the speculation loss has been set off against any other income other than profit & loss, if any, of speculation business
1	2	3	4	5	6	7



**Clause 32(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.

### **Audit Procedures and Documentation**

- ❖ Verify from the books of account and as per discussion, whether the any part of Company' business consists of the purchase and sale of shares of other companies? Such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.
- ❖ The above excludes companies whose income consists of interest on securities, capital gains, IFHP, or IFOS or companies who principal business is business of trading in shares or banking or granting of loans and advances
- ❖ Obtain a Statement for details of speculation loss from such specified business if any incurred during the previous year.

### **Reporting**

Sr. No.	Applicable section	Nature of loss	AY of incurring loss	Amount of loss	Amount set off during current AY	Amount of loss being carried forward
1	2	3	4	5	6	7

### ***Clause 33: Section-wise details of deductions, if any, admissible under Chapter VIA.***

#### **❖ Chapter VIA**

Deals with various deductions which have to be given effect to by way of allowance from gross total Income of the assessee and they have been categorized under the Act as follows:

- i. Deduction in respect of certain payments.
- ii. Deduction in respect of certain incomes.
- iii. Other Deductions.

The reporting under this clause is also required with respect to exemptions that can be claimed under section 10A/10AA.

#### **Audit Procedures and Documentation**

- ❖ Obtain list of deductions to be claimed by the assessee. Verify the return of income of earlier years to ensure that all the deductions claimed in the previous year, and if applicable in the current year, have been disclosed.
- ❖ Ensure, the assessee has fulfilled all the qualifying conditions under each sections. Verify all the documentary evidence available with the assessee.
- ❖ In respect of sections like 10A, 10 AA, 80-IA, 80-IB, 80-IC, 80-JJA where separate audit report/ certificate is required to be issued, ensure that the copy of such audit report/ certificate is obtained and make suitable reference while reporting.



Section 115BA, 115BAA, 115BAB, 115BAC and 115BAD provide that no deductions under Chapter VI-A or Chapter III can be claimed by the assessee opting for taxation under any of these sections except deductions mentioned under section 80M and 80JJAA, reply to clause 8a shall be considered and accordingly admissibility of deductions should be examined

### Reporting

Sr. No.	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.
1	2	3

**Clause 34(a): Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:**

Sr. No.	Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax as deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
1	2	3	4	5	6	7	8	9	10	11

**Points to note:**

This clause casts a tremendous responsibility on the auditors to report the amounts in the formats specified. The primary onus is on the assessee to prepare the reporting requirements under this clause. Considering the volume and nature of transactions, the auditor needs to apply concepts of test check and materiality while reporting under this clause with necessary caveats.

## ***Clause 34(a): - Contd***

### **Audit Procedures and Documentation/ key points**

The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS return by the assessee for verifying the information required to be provided under this clause.

**Amendment effective from AY 22-23-** under section 194Q, the transaction of purchase of goods requires deduction of tax at source from 01.07.2021 in given circumstances. This mainly relates to deduction of tax by the buyer if the purchases of the goods of value or aggregate of the value exceeds INR 50 Lakhs. (TDS @ 0.1% of the amount exceeding 50 Lakhs and should be deducted at the time of credit of such sum to the seller or payment whichever is earlier

Under Section 206C(1H), tax is required to be collected on receipt of amount as consideration for sale of any goods in given circumstances. (exceeding INR 50 Lakhs)- applicable from October 1, 2020

It may be noted that while determining the amount to be reported in Clause 34(a), the tax Auditor has to check and verify the payments made by the assessee and should not only restrict to verification of expenses debited to Profit & Loss or the TDS/TCS returns filed and provided by the assessee. eg an advance payment made to any contractor may also be liable for deduction of tax.

Auditor should also rely on controls the assessee has in respect of deduction of TDS- for eg vendor master creation controls in an automated environment

❖ Verify the following:

- i. relevant vouchers on which the tax is deducted.
- ii. challans of the tax deducted.
- iii. e-TDS returns submitted of the tax so deducted.

❖ Identify various heads of expenses where there is a likely hood of TDS liability and scrutinize those accounts to ensure that wherever TDS was liable to be deducted, is deducted and deducted correctly. Ensure the correct heads and rate of TDS.

❖ On a test check basis,

- i. verify the residential status of the deductee and verify whether deduction of TDS/TCS is as per the provisions of the Income Tax Act, 1961
- ii. verify the status [eg. individual / company] of the deductee and verify whether deduction of TDS/TCS is as per the provisions of the Income Tax Act, 1961
- iii. verify whether appropriate rates of TDS are applied on those accounts

**Clause 34(b): Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:**

Tax deduction and collection Account Number (TAN)	Type of form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported
1	2	3	4	5

### **Audit Procedures and Documentation**

- ❖ Obtain the Statement of Tax deducted or tax collected (TDS / TCS Returns) for all the Quarters of the previous year
- ❖ Check whether all the transaction on which tax is deducted/collected as per tax ledgers are reported in the TDS/TCS returns.
- ❖ Check the information reported under this clause with the disallowances reported under Section 40(a) in Clause 21(b) to the extent applicable

**Clause 34(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.
1	2	3

### **Audit Procedures and Documentation**

- ❖ Verify from the above, whether there is any delay in deduction or payment of the TDS?-201(1A) provides for payment of interest on non deduction of TDS or non remittance of TDS and 206C(7) provides for payment of interest on non collection /non remittance of TCS.
- ❖ Verify whether interest is paid for delay as per Section 201(1A) or 206C (7)? Check Interest rate, interest amount delay days, tax amount
- ❖ Verify the interest from books of accounts if provided or from Part G of the form 26AS in Traces. In case the assessee has disputed this, the interest should be recalculated till the date of the report for reporting under this clause and mentioned along with the relevant facts under observations column in 3CA or 3CB

**Clause 35:**

**(a) In the case of a trading concern, give quantitative details of principal items of goods traded:**

<i>Opening stock</i>	<i>Purchases during the previous year</i>	<i>Sales during the previous year</i>	<i>Closing Stock</i>	<i>shortage/excess, if any.</i>
1	2	3	4	5

**(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 Material**

<i>Opening stock</i>	<i>Purchases during the previous year</i>	<i>Consumption during the previous year</i>	<i>Closing Stock</i>	<i>Yield of Finished products</i>	<i>% of yield</i>	<i>shortage/excess, if any.</i>
1	2	3	4			5

**B. Finished Goods**

<i>Opening stock</i>	<i>Quantity manufactured during the year</i>	<i>Sales during the year</i>	<i>Closing stock</i>	<i>shortage/excess, if any.</i>
1	3	4		5

Information to the extent practically possible, based on records of assessee, certificates obtained from the assessee to be given and only for major items.

**Clause 36: (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**

**ii. Date of Receipt**

**❖ Section 2(22)(e)**

Understanding:

**Conditions for attracting the provisions of the sub-clause (e) are as under:**

- Payment should be by a company in which public are not substantially interested (referred here as 'closely held company')
- Payment should be by way of advance or loan and the payment should be by the company on behalf, or for the benefit, of any specified shareholder
- specified shareholder means person holding not less than 10% of the beneficial voting power individually by himself
- Payment should be to the shareholder or any concern in which the share holder is a member or partner and holds substantial interest – person is deemed to have substantial interest in a concern (other than a company), if he at any time during the previous year is entitled to not less than 20% of income of such concern and in case of company , the beneficial owner of shares not holding less than 20% of the voting power



### **Clause 36 (contd)**

Not covered under this section /clause

- Payment made by company in the normal course of business , where lending forms a substantial part of business of the Company
- Trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e). (the Central Board of Direct Taxes has issued Circular No. 19/2017 (F.No.279IMisc.1140/2015I1TJ) dated 12 June 2017). [https://www.incometaxindia.gov.in/Communications/Circular/Circular-19\\_2017.pdf](https://www.incometaxindia.gov.in/Communications/Circular/Circular-19_2017.pdf). Considering this, any business advance or trade advances from closely held companies to the assessee or concerns in which the assessee has substantial interest are out of the purview of 2(22)(e) and need not be reported as dividend under this clause of Form No. 3CD.- a few examples are as under-
  - (a) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22) (e) of the Act. (CIT vs. Creative Dyeing & Printing Pvt. Ltd. I , Delhi High Court).
  - (b) Advance was made by a company to its specified shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the Act. (CIT vs Amrik Singh, P&H High Court

## ***Clause 36 (contd)***

### **Audit Procedures and Documentation**

- ❖ Obtain from the assessee a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has a substantial interest.
- ❖ Obtain particulars of any loan or advance ( received by him or any concern in which he has a substantial interest) from any closely held company in which he is a beneficial owner of shares carrying not less than 10% voting power.
- ❖ Obtain suitable representation for completeness of information

### **Challenges**

If the assessee has two sets of accounts of the Company (one for received and other for receivable), the tax auditor should consider whether net off amounts are to be reported

One current account - challenge is to segregate between normal transactions (in the ordinary course of business) and transactions in the nature of loans or advances

Any judicial precedents relied on while reporting under this clause, should be mentioned.

***Clause 37: Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/ value/quantity as may be reported/identified by the cost auditor.***

### **Audit Procedures and Documentation**

- ❖ Discuss with the Management, whether Cost Audit for the Company has been carried out during the year and obtain the report.
- ❖ Detailed examination of the report not required, but should look for any qualifications or adverse comments
- ❖ If cost audit is ordered but not completed before tax audit - the fact should be mentioned
- ❖ Information to be given only in respect of cost audit report the time period of which falls in the relevant previous year.

***Clause 38: Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.***

**Audit Procedures and Documentation**

- ❖ Discuss with the Management, whether Excise Audit for the Company has been carried out during the year and obtain the report.
- ❖ Detailed examination of the report not required, but should look for any qualifications or adverse comments
- ❖ If excise audit is ordered but not completed before tax audit - the fact should be mentioned
- ❖ Information to be given only in respect of cost audit report the time period of which falls in the relevant previous year.

***Clause 39: Whether any audit was conducted under section 72A of the Finance Act,1994 in relation to valuation of taxable services, 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.***

Reporting under this clause is not applicable as service tax is subsumed by GST.

Points to consider

Whether GST audit carried out should be reported under this clause

Views – Since the clause specifically talks about Section 72A of Finance Act, 1994 which is the Service Tax legislation, GST audits would not be covered here.

**Clause 40: Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:**

S No	Particulars	Previous Year	Preceding previous year
1	Total turnover of the assessee		
2	Gross profit/turnover		
3	Net profit/turnover		
4	Stock-in-trade/turnover		
5	Material consumed/finished goods produced		

**Audit Procedures and Documentation**

- ❖ Note that the above ratios are applicable only for trading and manufacturing entities and Ratio 5 – only for manufacturing entities- For service sectors the above information need not be given.
- ❖ Ensure that Stock in trade includes only finished goods and not raw materials and WIP
- ❖ Materials consumed = RM consumed , stores and spares and loose tools
- ❖ Finished goods produced = Materials consumed +Direct wages + Other manufacturing expenses+ Op WIP-Closing WIP
- ❖ Verify the figures used for calculating the ratios from the Audited Financial Statement.
- ❖ formulae for the ratios to be consistent and workings be disclosed under this clause
- ❖ Ensure the preceding previous year numbers are traced to prior year Tax audit report. If that year was not subject to audit, nothing should be mentioned in the relevant column.

***Clause 41: Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.***

**Audit Procedures and Documentation**

- ❖ Obtain a copy of all demands/refunds issued during the year in respect of GST, Central Excise duty, Service Tax, VAT,CST, Customs duty etc. (other than Income Tax and Wealth Tax Act)
- ❖ Demand/ Refund order issued during previous year but pertaining to a period other than the relevant previous year, shall also be disclosed under this clause
- ❖ cross verify the demands /refunds from online portals of the respective departments
- ❖ Check whether any adjustment of refund against any demand, if any report the same.
- ❖ Scrutinize the relevant head of incomes/expenditure to verify entry passed in the books of account for accounting effect of demand refund.
- ❖ Scrutinize the Legal & Professional charges to cross verify that all the cases are well covered. Verify the list of demand raised with contingent liabilities schedule in the financial statement
- ❖ Obtain a representation for completeness of the information provided by the assessee

**Clause 42: (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**

**(b) If yes, please furnish the details as under-**

<i>S No.</i>	<i>Income-tax department reporting entity Identification Number</i>	<i>Type of form</i>	<i>Due date of furnishing</i>	<i>Whether the Form contains information about all details/ transactions which are required to be reported.</i>	<i>If not, please furnish list of the details/transactions which are not reported.</i>
1	2	3	4	5	6

### **Requirements**

Form 61 to be filed by the reporting entity based on Form 60 received ( form 60 to be submitted by individual or a person not having a PAN - other than a company or a firm and entering into Specified financial transactions with the reporting entity)- Due date 31st October for forms received on or before 30th september and 30th April where forms have been received by 31st March- See rule 114B, 114C and 114D

Form 61A to be filed in respect of specified financial transactions entered during the year by specified category of reporting entities like banks, co-operative banks, credit card issuing Institutions, NBFC, Nidhi, A trustee of mutual fund or any person authorised by the trustee, Authorised dealer, Money changer, off shore banking unit or any other person defined under FEMA.- Due date - 31st May of the immediately following financial year



### ***Clause 42- Contd.***

Reporting entity or person is required to furnish a statement of reportable account in accordance with FATCA (Foreign Account Tax Compliance Act) and CRS (Common Reporting Standard) for a calendar year (in Form 61B) with the Income tax Department as per the provisions of section 285BA of the Income-tax Act 1961. (Section 285BA specifies that certain specified entities (i.e., Filers) are required to furnish the details of specified financial transactions or any reportable account registered/recorded/ maintained by them during the financial year) The auditor should be aware of provisions of Rule 114F to 114H for the same.

### **Audit Procedures and Documentation**

- ❖ The tax auditor is required to state whether the Form contains information about all details or furnished transactions which are required to be reported. In case it is not, the tax auditor is required to furnish list of the details transactions which are not reported.
- ❖ If the volume of deficiencies is large, the tax auditor may state certain deficiencies by way of an illustration and make appropriate remark in clause 3 of Form 3CA or clause 5 of Form 3CD.
- ❖ To identify whether such conditions as stated in relevant rules as above exist to ascertain whether the assessee is required to file the above forms.
- ❖ Income tax portal of the assessee to be verified for purpose of reporting.

**Clause 43: (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)**

**(b) if yes, please furnish the following details:**

- i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity**
- ii. Name of parent entity**
- iii. Name of alternate reporting entity (if applicable)**
- iv. Date of furnishing of report**

### **Understanding**

Section 286 deals with Country-by-Country report filing by international group (to be filed by MNC's whose consolidated revenue is more than 750 Million Euros or an equivalent amount in domestic currency)

Following conditions should exist

- If the assessee itself is the parent entity of the international group and is resident in India, it will have the obligation to furnish the report under section 286(2)
- If the assessee is resident in India and has been designated as the alternate reporting entity of the international group, it will have obligation to furnish the report under section 286(2)
- If the assessee is a constituent of the international group with its parent entity resident in India and the group has not designated any other resident constituent entity as the alternate reporting entity, the parent entity will have the obligation to file the report under section 286(2)

### ***Clause 43- Contd***

- If the assessee is neither the parent entity nor has it been designated as the alternate reporting entity, but other constituent entity resident in India of the international group has been designated as the alternate reporting entity by the group, such other constituent entity resident in India will have obligation to file the report under section

In none of the above exists - Nil reporting under this clause

### **Audit procedures and documentation**

Verify the group structure to determine the parent company, other constituent entities of the international group resident in India.

Verify the related party transactions disclosure in the financial statements.

Verify whether the assessee whose parent is a non resident has filed form 3CEAC.

if the assessee has furnished the report the tax auditor should verify the acknowledgment.

if the parent entity or the other constituent entity of the international group has filed the report, tax auditor should ask for a copy of the report

## ***Clause 44: Break-up of total expenditure of entities registered or not registered under the GST***

### **Audit Procedures and Documentation**

The format as per clause 44 of form 3CD requires that the information is to be given as per the following details:

- ❖ Total amount of expenditure incurred during the year
- ❖ Expenditure in respect of entities registered under GST
  - Expenditure relating to goods or services exempt from GST (value of all inward supplies exempt under GST to be given here)- includes nil rate and non -taxable supply (supply of alcoholic liquor for human consumption, petroleum crude, High speed diesel oil, motor spirit, natural gas and Aviation Turbine fuel)
  - Expenditure relating to entities falling under composition scheme
  - Expenditure relating to other registered entities

Total of the above

- ❖ Expenditure related to entities not registered under GST

### **The above reporting clause is applicable for the AY 2022-23 and the following are the key points**

- Total expenditure is to be given including purchases and capital expenditure . Salaries and Depreciation are not required to be given .
- Sources for the above information could be Financial statements/TB/Books of accounts, GSTR -3B – ITC claim register, GSTR 2A and 2B and GSTR 9- Annual return and GSTR 9C – Reconciliation statement

### ***Clause 44: contd***

#### ***Possible challenges since it is a new reporting clause-***

- Import of goods on which IGST is paid - this cannot be reported as unregistered dealers, as this will lead to scrutiny.  
Hence suitable note to be given to exclude imports.
- Import of services or purchase of goods or services on which recipient is required to pay RCM- As above
- Purchase of taxable or exempt supplies from one person - If bifurcation is not available with the assessee, this should be stated in reporting under clause 44
- Details of purchase from Composite dealers- It is possible that assessee may not maintain records of purchase from composite dealers, suitable note should be included stating the fact and excluded from reporting.

If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate.

It should be remembered that it is the onus of the assessee to prepare the above annexure and also reconciling the amounts reported under this annexure to various returns/books. Nevertheless this reporting clause casts a significant responsibility on the tax auditors and care to be taken to ensure that documentation is there in our workpapers/files to substantiate the reporting under this clause



Thank you

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