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**CENTRAL INDIA REGIONAL COUNCIL OF ICAI**

**ISSUES IN TAX AUDIT U/s.  
44AB of I.T. Act**

**By CA. Rajesh Mehta, Indore**

**30<sup>th</sup> August, 2022**

**98270 36956**

## Tax Audit 44AB (a) to (e)

- ▶ (a) business - sales, turnover or gross receipts exceeds Rs. 1 Cr.
- ▶ (b) profession - gross receipts exceeds Rs. 50 Lakh
- ▶ (c) 44AE ( 1000 p.m. per ton, 7500 p.m., 44BB (exploration etc. of mineral oils-10%), 44BBB (foreign cos. engaged in construction etc. of turnkey power projects-10% )
- ▶ (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;
- ▶ (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

## 194J : 44AD or 44ADA - Defective Return

- ▶ **If TDS is wrongly deducted U/s 194J whether the assessee is bound to offer income U/s 44ADA or can CPC make prima facie adjustment U/s 143(1)(a) by converting Section 44AD to Section 44ADA ?**
- ▶ **ITAT Chennai** in the case of **PVN Associates V. ITO** vide I.T.A. No.3280/CHNY/2019 A.Y. 2017-18 order dated 30-1-2020 held that, “The action of the lower authorities is against the very spirit of provisions of Section 143(1) (a) of the Act as clarified by the CBDT Circular No.689, dated 24.08.1994.
- ▶ **If the assessee has wrongly opted for Sec. 44AD in place of 44ADA whether CPC can issue notice U/s 139(9) of the act ?**
- ▶ CPC has no authority to issue notice U/s 139(9) of the act. Only jurisdictional AO can issue such notice.

# Company : 44AA(1), Nursing Home : Business

**Whether a private limited company providing medical Services or running hospital is a profession specified U/s 44AA(1) ?**

- ▶ ITAT Delhi bench in the case of ITO Vs. Ashalok Nursing Home P. Ltd. (2006) 103 TTJ 820 order dated 19-5-2006 held that, “A company being an artificial person does not have a mind or a body therefore cannot be engaged in a profession. It can neither have an intellectual skill or manual skill”
- ▶ **A doctor running nursing home also engages other doctors, whether this nursing home activity be treated as business or as profession ?**
- ▶ ITAT Jodhpur in the case of Sunil Chandak V. ITO A.Y. 2007-08 vide I.T.A No. 344/JU/2010 on 12-4-2012 held that, “To restate, no doubt physicians/doctors have been hired, but as explained earlier, what is relevant and crucial is the nature of the services rendered by them, whether facilitative or substantially so, or on independent, stand alone basis, or substantially so. It is only in the latter case that the assessee’s nursing home acquires the character of a business enterprise”.

## Whether business includes profession or vocation ?

- ▶ In the case of Gera Development P. Ltd. V. DDIT (Intl.T.) vide Income Tax Appeal No. 62/Pun/2015 | 29-07-2016 – Business includes profession. In this case reliance was placed on the decision of **Barendra Prasad Ray Vs. ITO 129 ITR 295 (SC)**. The Hon'ble Apex Court in the said case while explaining the meaning of expression 'business connection' as used under section 9 of the Act has also in an explicit manner held that Business' does not necessarily mean trade or manufacturing only. It includes within its scope professions, vocations and callings.
- ▶ Therefore Unless otherwise specifically excluded, business includes profession and vocation.



## **Sport person : 194J, 44AA(1), 44AD or 44ADA**

- ▶ **Whether sports person are liable U/s 194J, 44AA(1) or 44AA(2)/ 44AD or 44ADA or rule 6F ?**
- ▶ Sports is not specified for the purpose of Sec. 44ADA or 44AA(1). But for the purpose of Sec. 194J CBDT notified the services in relation to the sports activities as Professional Services rendered by Sports Persons, Umpires and Referees, Coaches and Trainers, Team Physicians and Physiotherapists, Event Managers, Commentators, Anchors and Sports Columnists. Therefore such sports persons are not liable U/s 44ADA and therefore it may be covered U/s 44AD.

## Turnover in case of shares etc. for the purpose of Tax Audit

- ▶ As per the guidance note on Tax audit issued by ICAI :- in case of speculative share transactions, turnover is to be calculated by adding the profit and losses arising on each transaction of the whole year by ignoring the minus sign for losses, the sum of these, if exceeds Rs. 1 crore then the assessee will be liable to tax audit U/s 44AB(a) or opt 44AD upto 2 cr. turnover.
- ▶ And from the A.Y. 2020-21 if the turnover is upto Rs. 5 crores (Rs. 10 crores from AY 21-22) and not more than 5% of the receipts and payments are in cash then there will be no need of tax audit U/s 44AB(a).
- ▶ In case of delivery based transactions of shares/securities the aggregate of sale price of the whole year will be the turnover to determine the applicability of tax audit or 44AD.



# Derivatives and F & O transactions

- While calculating the turnover of Futures, the total of positive and negative differences are to be added ignoring the minus sign.
- Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, the same should not be separately included.
- In case of reverse trades entered by the trader, the difference thereafter will also be a part of the turnover

# Speculative Transaction - Section 43(5)

- “Speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips

Some transactions which shall not be deemed to be Speculative Transaction:

- An eligible transaction in respect of trading in **derivatives** carried out in a **recognised stock exchange**
- An eligible transaction in respect of trading in **commodity derivatives** carried out in a recognised stock exchange, which is chargeable to CTT. (for **agricultural commodity derivatives** - requirement for CTT shall not be applicable)

## Clause 12 of 3CD : 44ADA not in 3CD but is in utility, Why 44AD, 44AF, 44ADA here ?

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

Yes

Sl. No.	Section	Amount
1	44AD	₹ 55,000

Sec. 44AF was applicable upto AY 10-11, scope of Sec. 44AD expanded w.e.f. AY 11-12. 44ADA from AY 17-18

## Turnover for 44AB : ICAI Guidance note

- ▶ **Para 5.20** A question may arise in the case of an assessee carrying on **business** and at the same time engaged in a **profession** as to what are the limits applicable to him under section 44AB for getting the accounts audited. In such a case, if his professional receipts are, say, rupees **fifty four lakhs** but his total sales, turnover or gross receipts in business are, say, rupees **seventy two lakhs**, it will be necessary for him to get his accounts of the profession and also the accounts of the business audited because the gross receipts from the profession exceed the limit of rupees fifty lakhs. **If however, the professional receipts are, say, rupees forty two lakhs and total sales turnover or gross receipts from business are, say, rupees eighty six lakhs, in these circumstances, gross receipts, turnover etc. from profession or business is not in excess of the limits specified in section 44AB for mandate of audit**

## Turnover for 44AB : ICAI Guidance note

- ▶ **Para 5.21** It may, however, be noted that in cases where the assessee carries on **more than one business** activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore & Rs 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not. However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. **Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded.**

## Audit U/s 44AB ? : Exempt income

- ▶ ICAI GN para 6.1 **an assessee whose income is not chargeable to income-tax** by reason of a specific exemption contained in the law or otherwise, as to whether he is required to get his accounts audited and to furnish such report under section 44AB. Such cases may cover those assesseees who are wholly outside the purview of income-tax law as well as those whose income is otherwise exempt under the Act. It is felt that neither section 44AB nor any other provisions of the Act stipulate exemption from the compulsory tax audit to any person whose income is exempt from tax. A trust/association/institution carrying on business may enjoy exemptions as the case may be under sections 10(21) or 10(23A) or 10(23B) or section 10(23BB) or section 10(23C) or section 11. A co-operative society carrying on business may enjoy deduction under section 80P. Such institutions/associations of persons will have to get their accounts audited and to furnish such audit report for purposes of section **44AB if their turnover in business exceeds the prescribed limit** (Presently Rs. 1 crore and Rs 10 crore in certain specified cases).

## Audit U/s 44AB ? : Sec. 288 of I.T.Act

- ▶ Every person covered U/s 44AB(a)/(b)/(c)/(d)/(e) shall 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 :
- ▶ Section **44AB** of the act nowhere uses the word ‘in the manner prescribed’, to furnish the audit report, whereas As per Income tax Rule 12(2) audit report shall be furnished electronically, one can argue that since the section doesn’t prescribe the manner therefore rule 12(2) may not be binding if failed to furnish electronically.
- ▶ Explanation to Sec. 44AB :- **(i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;**
- ▶



## Audit U/s 44AB ? : Sec. 288 of I.T.Act

- ▶ ***Explanation to Sec. 288(2)*** .—In this section, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, **but does not include [except for the purposes of representing the assessee under sub-section (1)]—**
- ▶ (a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or
- ▶ (b) in any other case,—
- ▶ (i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;
- ▶ (ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;
- ▶ (iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;
- ▶ (iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);



## Sec. 288

- ▶ **(v) an officer or employee of the assessee;**
- ▶ **(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;**
- ▶ **(vii) an individual who, or his relative or partner—**
  - ▶ **(I) is holding any security of, or interest in, the assessee:**
  - ▶ **Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;**
  - ▶ **(II) is indebted to the assessee:**
  - ▶ **Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;**
- ▶ **Note :- Upper limit of relaxation Rs. 1 Lakh herein above is for relative and there is no relaxation in case of individual auditor himself.**

## Sec. 288

- ▶ **(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:**
- ▶ **Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;**
- ▶ **(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;**
- ▶ **(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.**

## Sec. 288

- ▶ ***Explanation.***—For the purposes of this section, "relative" in relation to an individual, means—
- ▶ **(a) spouse of the individual;**
- ▶ **(b) brother or sister of the individual;**
- ▶ **(c) brother or sister of the spouse of the individual;**
- ▶ **(d) any lineal ascendant or descendant of the individual;**
- ▶ **(e) any lineal ascendant or descendant of the spouse of the individual;**
- ▶ **(f) spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);**
- ▶ **(g) any lineal descendant of a brother or sister of either the individual or the spouse of the individual.**



## Sec. 288 : Charitable & religious trust etc.

- ▶ **Sec. 13(3) :- The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—**
- ▶ **(a) the author of the trust or the founder of the institution;**
- ▶ **(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;**
- ▶ **(c) where such author, founder or person is a Hindu undivided family, a member of the family;**
- ▶ **(cc) any trustee of the trust or manager (by whatever name called) of the institution;**
- ▶ ~~**(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;**~~
- ▶ ~~**(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.**~~
- ▶

## True & fair view : if audited under other law

- ▶ **Para 15.7 ICAI GN :-** In the case of a person whose accounts of the business or profession have been audited under any other law, **it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view as indicated herein above.** It would only be necessary for him to **annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor with his report in Form No. 3CA along with Form No. 3CD**

## Form 3CD

- ▶ **Para 19.2 ICAI GN :- The tax auditor should obtain from the assessee, the statement of particulars in Form No. 3CD duly authenticated by him.** It would be advisable for the assessee to take into consideration the various general principles and judicial precedents etc. while preparing the statement of particulars:

## Form 3CD - If 3CA - then Clause 8 ---

- ▶ Where a person is required by or under any other law to get his accounts audited, say a company, a society etc. then third proviso to section 44AB also to be mentioned
- ▶ Clause 8

Third Proviso to sec 44AB : Audited under any other law

Clause 44AB(c) - Profits and gains lower than deemed profit u/s 44BB

Clause 44AB(c)-iii- Profits and gains lower than deemed profit u/s 44BBB

Clause 44AB(d)- Profits and gains lower than deemed profit u/s 44ADA

Clause 44AB(e)- When provisions of section 44AD(4) are applicable

Third Proviso to sec 44AB : Audited under any other law



## Penalty U/s 271B

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

## 3CD clause 16 (d)

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

- (a) the items falling within the scope of section 28;**
- (b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;**
- (c) escalation claims accepted during the previous year;**
- (d) any other item of income;**
- (e) capital receipt, if any.**

**[Clause 16 (a) to (e)]**

## Sec. 143(1)(a) : (iv) scope widened w.e.f. 1-4-21

- ▶ 143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—
- ▶ (a) the total income or loss shall be computed after making the following adjustments, namely:—
- ▶ (i) any arithmetical error in the return;
- ▶ (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- ▶ (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- ▶ (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;
- ▶

## Sec. 143(1)(a)

- ▶ (v) disallowance of deduction claimed under <sup>69</sup>[section 10AA or under any of the provisions of Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes*", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or
- ▶ (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:
- ▶ Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:
- ▶ Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:
- ▶ Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;



# Clause 20(b) 3CD PF ESI

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

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<input type="checkbox"/>	Sl. No.	Nature of fund <sup>i</sup>	Sum received from employees	Due date for payment <sup>i</sup>	The actual amount paid	The actual date of payment to the concerned authorities <sup>i</sup>
<input type="checkbox"/>	1	Provident Fund	₹ 5,600	15-Sep-2021	₹ 5,200	23-Sep-2021

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# Finance Act 2021 introduced Expln. 2 w.e.f. 1-4-2021 U/s 36(1)(va) AY 21-22

- ▶ (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;]
- ▶

# Income Computation and Disclosure Standards

- **Valuation of inventories as per ICDS - II:** Inventories to be valued at cost or NRV, whichever is lower. Sec. 145A FA 2018

## ICDS - III Construction contracts : Sec. 43CB

- ▶ Computation of income from construction and service contracts.
- ▶ 43CB. (1) **POCM** in accordance with ICDS notified U/s 145(2).
- ▶ **Provided** that profits and gains arising from a contract for providing **services**,—
  - ▶ (i) with duration of **not more than 90 days** shall be determined on the basis of **PCM - project completion method**;
  - ▶ (ii) involving **indeterminate number of acts** over a specific period of time shall be determined on the basis of **SLM - straight line method**.
- ▶ (2) For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1)—
  - ▶ (i) the contract revenue shall include retention money;
  - ▶ (ii) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.



## ICDS - III - Para 2(1)(a)

- ▶ (a) “Construction contract” is a contract specifically negotiated for the
- ▶ construction of an asset or a combination of assets that are closely interrelated or
- ▶ interdependent in terms of their design, technology and function or their ultimate purpose or use and includes :
- ▶ (i) **contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects;**
- ▶ (ii) contract for destruction or restoration of assets, and the restoration of
- ▶ the environment following the demolition of assets

## **ICDS : Valuation of Securities :** comparison of actual cost and net realisable value of securities shall be made category-wise.

**Question 19:** Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?

**Answer:** For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below –

# Compare aggregate of cost or NRV

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	<b>Total</b>	<b>560</b>	<b>535</b>	<b>505</b>	<b>535</b>
E	Debt Security	150	160	150	
F	Debt Security	105	90	90	
G	Debt Security	125	135	125	
H	Debt Security	220	230	220	
	<b>Total</b>	<b>600</b>	<b>615</b>	<b>585</b>	<b>600</b>
<b>Securities Total</b>		<b>1160</b>	<b>1150</b>	<b>1090</b>	<b>1135</b>

## Impact of Income Computation and Disclosure Standards

- **Revenue Recognition as per ICDS - IV:** Revenue recognition for contract of services as per **Percentage of Completion method** or where such contract is for not more than 90 days - as per **project completion method**. Sec. 43CB
- **Government Grants - ICDS VII:** Any grant or subsidy should be deemed to be **income of the previous year in which it is received**. Any grant relating to fixed asset shall be reduced from cost of asset or WDV [Expln. 10 to Sec. 43(1)], Sec. 145B(3), 2(24)(xviii)

## Impact of Income Computation and Disclosure Standards

- **Borrowing Costs - ICDS IX:** Borrowing Costs attributable to an assets (land, building, Plant & Machinery, etc. both Tangible / Intangible Assets and Inventories that require more than 12 months to bring them to saleable condition) should be included in its cost.
- ▶ *Sec. 36(1) (iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :*

*Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.*

## Impact of Income Computation and Disclosure Standards

- *Sec. 43(1) Explanation 8.—For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.*
- **Provisions, Contingent Liabilities, etc. ICDS X:** It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions. Provision should not be made to meet future costs.

# Impact of Income Computation and Disclosure Standards

- **As the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of book profit under section 115JB of the Act.**
- **However, as AMT under section 115JC of the Act is computed on adjusted total income derived by making specified adjustment to total income computed under regular provisions of the Act, the provisions of ICDS will apply for computation of AMT.**

## ICDS : Sec. 145B

- ▶ **Taxability of certain income.**
- ▶ **145B. (1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.**
- ▶ **(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.**
- ▶ **(3) The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.**



## ICDS : Sec. 43CB

- ▶ **Computation of income from construction and service contracts.**
- ▶ **43CB.** (1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:
- ▶ **Provided** that profits and gains arising from a contract for providing services,—
  - ▶ (i) with duration of not more than ninety days shall be determined on the basis of project completion method;
  - ▶ (ii) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.
- ▶ (2) For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1)—
  - ▶ (i) the contract revenue shall include retention money;
  - ▶ (ii) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

# Column 8a in form 3CD Part A - to inform if Sec. 115BA/115BAA/115BAB opted

- W.e.f. 1-10-2020 in 3CD :- [8a. Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB?]
- Sec. 115BA :- For Mfg. domestic companies set up after 1-3-2016 (other than 115BAA and 115BAB) to opt for tax@ 25% in form 10-IB before furnishing first ITR under this section within due date of 139(1) for that year. This option cannot be withdrawn in any subsequent year except for opting to Sec. 115BAA.
- If company opts for Sec. 115BA then no deduction available u/s 32(1)(iia), 10AA, 32AC, 32AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii)/(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD or Sec. 80HH to 80RRB (except 80JJAA). And no set off of carried forward loss in respect of these sections.

# Section 115BAA - Domestic Companies

- ▶ W.e.f A.Y. 2020-21 for Companies Income tax shall be **payable @ 22%**, no deduction available u/s 32(1)(ia), 10AA, 32AC, 32AD, 33AB, 33ABA, 35(1)(ii)/(ia)/(iii)/(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD or Sec. 80HH to 80RRB (except 80JJAA). And no set off of carried forward loss in respect of these sections. If any deduction under these sections taken then option under this Section become invalid for that assessment year and subsequent AYs and other provisions of the act will apply.
- ▶ Option to be exercised in **form 10-IC before furnishing first ITR** under this section within due date of 139(1) for that year. This option will apply to subsequent years also. This option cannot be withdrawn in any subsequent year.
- ▶ If company exercises option U/s 115BAA then option U/s 115BA can be withdrawn.

# Section 115BAB : New Mfg. Domestic Companies

- ▶ If any **new manufacturing Company** has been setup and **registered on or after 01.10.2019** and commenced manufacturing on or before **31.03.2023**, then Income tax shall be **payable @ 15%**.
- ▶ No deduction available u/s 32(1)(ia), 10AA, 32AC, 32AD, 33AB, 33ABA, 35(1)(ii)/(ia)/(iii)/(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD or Sec. 80HH to 80RRB (except 80JJAA). And no set off of carried forward loss in respect of these sections. If any deduction under these sections taken then option under this Section become invalid for that assessment year and subsequent AYs and other provisions of the act will apply.
- ▶ Tax will be @ 22% on Short term capital gain on asset on which no depreciation is allowable.
- ▶ Sec. 115BAB applicable to companies except co. doing business of development of computer software, mining, conversion of marble blocks into slabs, bottling of gas cylinder, printing of books or production of cinematographic films.
- ▶ Option to be exercised in **form 10-ID** before furnishing first ITR under this section within due date of 139(1) for that year. This option will apply to subsequent years also. This option cannot be withdrawn in any subsequent year.



# TDS clause 34(a)

34.(a). Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, please furnish ?

Yes

Sl. No.	Tax deduction and collection Account Number (TAN) (1)	Section (2)	Nature of payment (3)	Total amount of payment or receipt of the nature specified in column (3) (4)	Total amount on which tax was required to be deducted or collected out of (4) (5)	Total amount on which tax was deducted or collected at specified rate out of (5) (6)	Amount of tax deducted or collected out of (6) (7)	Total amount on which tax was deducted or collected at less than specified rate out of (7) (8)	Amount of tax deducted or collected on (8) (9)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8) (10)
1	BPLM08971D	194A	Interest other than Interest on securities	₹ 5,600	₹ 5,600	₹ 5,600	₹ 560	₹ 0	₹ 560	₹ 0







# Notes - column 424 of 26Q

## *Notes:*

1. Write "A" if "lower deduction" or "no deduction" is on account of a certificate under section 197.
2. Write "B" if no deduction is on account of declaration under section 197A other than the cases mentioned in sub-section (1F) of section 197A.
3. Write "C" if deduction is on higher rate under section 206AA on account of non-furnishing of PAN.
4. Write "D" if no deduction or lower deduction is on account of payment made to a person or class of person on account of notification issued under sub-section (5) of section 194A.
5. Write "E" if no deduction is on account of payment being made to a person referred to in Board Circular No. 3 of 2002 dated 28<sup>th</sup> June 2002 or Board Circular No. 11 of 2002 dated 22<sup>nd</sup> November 2002 or Board Circular No. 18/2017 dated 29<sup>th</sup> May 2017.
6. Write "Y" if no deduction is on account of payment below threshold limit specified in the Income-tax Act, 1961.
7. Write "T" if no deduction is on account of deductee or payee being transporter. PAN of deductee or payee is mandatory [section 194C(6)].
8. Write "Z" if no deduction or lower deduction is on account of payment being notified under section 197A(1F).

# Notes column 424 of form 26Q

9. Write "M" if no deduction or lower deduction is on account of notification issued under second proviso to section 194N.
10. Write "N" if no deduction or lower deduction is on account of payment made to a person referred to in the third proviso to section 194N or on account of notification issued under fourth proviso to section 194N.
11. Write "O" if no deduction is as per the provisions of sub-section (2A) of section 194LBA.
12. Write "P" if no deduction is on account of payment of dividend made to a business trust referred to in clause (d) of second proviso to section 194 or in view of any notification issued under clause (e) of the second proviso to section 194.
13. Write "Q" if no deduction in view of payment made to an entity referred to in clause (x) of sub-section (3) of section 194A.
14. Write "S" if no deduction is in view of the provisions of sub-section (5) of section 194Q.
15. Write "T" if the deduction is on higher rate in view of section 206AB for non-filing of return of income.

## ICAI GN para 68.6 on clause 34(a) TDS

68.6 Column (4) requires to furnish the details of the total amount of payment or receipt of the nature specified in column (3). The details in the said column may be drawn from the books of account and other relevant documents which include aggregate of payments on which tax is liable to be deducted as well as not liable to be deducted. Auditor may maintain working paper giving reconciliation of amount as per books of accounts and amount on which TDS/TCS is required to be deducted/collected.

# 3CD clause 34(b)

(b). Whether the assessee is required to furnish the statement of tax deducted or tax collected ?

Yes

Please furnish the details:

Sl. No.	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	Please furnish list of details/transactions which are not reported.
1	BPLM08971D	26Q	31-Jan-2022	09-Aug-2022	No	ASDF

# 3CD clause 34(c)

(c). Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7) ?

Yes

Please furnish:

Sl. No.	Tax deduction and collection Account Number (TAN) (1)	Amount of interest under section 201(1A)/206C(7) is payable (2)	Amount paid out of column (2) along with date of payment. (3)	
			Amount	Date of payment
1	BPLM08971D	₹ 223	₹ 210	09-Aug-2022

# TDS and TCS - Reporting under Tax Audit

**Transactions to be reported in TDS Statement even when no TDS deducted:**

- Purchase of software because of declaration u/s. 197A(1F)
- Payments to transporters / goods carriage where TDS has not been deducted due to declaration u/s. 194C(6).

**Transactions to be reported in TCS Statement even when no TCS collected:**

- TCS not collected u/s. 206C(1H) because of buyer being Central/State Govt. or Local Authority (Applicable from AY 2021-22)
- TCS not collected because buyer has furnished declaration in Form No. 27C.
- TCS not collected because TDS deducted by the buyer - 2<sup>nd</sup> Proviso u/s. 206C(1H). (Applicable from AY 2021-22)

**If such transactions are not reported - Auditor to Report in Clause 34(b) of the Tax Audit Report.**

# TDS and TCS - Reporting under Tax Audit

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

<i>Tax deduction and collection Account Number (TAN)</i>	<i>Type of Form</i>	<i>Due date for furnishing</i>	<i>Date of furnishing, if furnished</i>	<i>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 details/transactions which are not reported.</i>

## **TCS u/s. 206C(1H)/194Q - Scope in Tax Audit**

**To Check Debtors/Creditors ledgers** for the purpose of verification of collection of tax at source on receipt of payments above Rs. 50 Lakhs in a financial year on in case of 194Q on purchase or advance payment to suppliers.

If TCS not collected or TDS not deducted then Report under Clause 34(a) of the Tax Audit Report.



## **Form No. 61 and Form No. 61A - Clause 42 of Tax Audit Report**

As per the provisions of Section 139A(5)(c), Every person shall quote his PAN in all the transactions prescribed under Rule 114B.

The Table prescribed u/r. 114B includes:

Payment to Hotel /Restaurant at one time - Payment in Cash exceeding Rs. 50,000

Payment for travel to any foreign country or for purchase of foreign currency at one time - Payment in cash exceedings Rs. 50,000

# Form No. 61 and Form No. 61A - Clause 42 of Tax Audit Report

Sale or purchase of any goods or services for an amount exceeding Rs. 2 Lakhs per transaction. Thus, any person who sells or purchases goods or services of an amount exceeding Rs. 2 Lakhs per transaction shall obtain PAN of the other party.

**Thus, a Sale Invoice of amount exceeding Rs. 2 Lakhs should contain the PAN of the Seller and buyer.**

Any person who does not quotes his PAN, or quotes incorrect PAN or does not obtains PAN of other person, then such person shall be liable for Penalty of Rs. 10,000 per default (per transaction) u/s. 272B,

# Form No. 61 and Form No. 61A - Clause 42 of Tax Audit Report

[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:*

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.
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## Disallowance u/s. 40(a)(ia) if the Payee has offered Income in his Return of Income

- If the assessee fails to deduct TDS on any sum; or after deducting, fails to deposit the same upto due date of filing of return, then **30% of such sum will be disallowed u/s. 40(a)(ia)**. In case the payee is Non-Resident / Foreign Co., 100% of such sum will be disallowed u/s. 40(a)(i).
- Such sum will be allowed in the year in which tax has been deducted subsequently.
- However, no disallowance u/s. 40(a)(ia) and Section 40(a)(i) shall be made if the recipient of such income has filed his return of income within the time prescribed u/s. 139(1) after including the said income and has paid the tax due thereon.
- The recipient has to furnish CA Certificate in **Form No. 26A** electronically.

# 3CD Clause 44 GST reporting

44. Break-up of total expenditure of entities registered or not registered under the GST: (This Clause is kept in abeyance till 31st March, 2022)

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
1	₹ 20,07,555	₹ 56,365	₹ 1,56,336	₹ 56,33,666	₹ 58,46,367	₹ 5,63,333

# Tax audit GN - ICAI

- ▶ Para 82.2 **Depreciation U/s. 32**, **bad debts** u/s 36(1)(vii) etc. which are not expenses should not be reported under this clause in any of the Columns from 3 to 7.
- ▶ 82.3 **Schedule III to the CGST Act**, 2017 : activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities **need not be reported under this clause in any of the columns from 3 to 7.**
- ▶ Schedule III covers - **Salary** - employer employee relation.

# GST reporting

- ▶ **Sale of land and completed building is neither supply of goods nor supply of services as per Sch. III of CGST Act.**
- ▶ As per Clause 5(b) of Sch. II of CGST Act :- of the said schedule stipulated that “Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly” shall be treated as supply of service except where the entire consideration was received after issuance of completion certificate, where required, by the competent authority or after its first occupation whichever is earlier.

## Clause 44 ICAI GN

- ▶ Para 82.9 As per section 9 of the CGST Act, 2017 / 5 of the IGST Act, 2017, the following supplies are not leviable to GST: (i) supply of **alcoholic liquor** for human consumption (ii) supply of **petroleum crude**, high speed **diesel oil**, **motor spirit**, natural gas and aviation turbine fuel Hence, the above supplies, being **not leviable to GST**, are **exempt supplies**
- ▶ Para 82.11 :- **Composition dealer** :- In case of ineligible input tax credits which are blocked under section 17(5) of the CGST Act, 2017 or in case of purchases from persons registered under composition levy, it is a normal practice of the small and medium taxpayers not to mention the GSTIN of the said suppliers in their accounting software. Hence, a **suitable remark / reference in this regard by the tax auditor may be included in the report**
- ▶ 82.12 Expenditure relating to **other registered entities** is furnished in Column 5. Value of all inward supplies from registered dealers, **other than supplies from composition dealers and exempt supply from registered dealers**, are to be mentioned here.



## Disallowance u/s. 40(a)(ia) if the Payee has offered Income in his Return of Income

- If the payee has not filed his Income tax return for the relevant assessment year, or has filed after the due date of filing return of income of the payer, or has not included such sum in his total income, then such sum will be **disallowed** the current assessment year.
- Although, if recipient has offered income in his return of income, no disallowance u/s. 40(a)(ia) would be made. But the **Payer shall be liable for interest u/s. 201(1A) @ 1% p.m. or part thereof.**

## **3CD Clause 30(c) :**

- (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)**
- (b) If yes, please specify:-**
  - (i) Nature of the impermissible avoidance arrangement:**
  - (ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement**

**[Clause 30C]**

**Q. Assessee was regularly getting his books of accounts audited u/s. 44AB(a).**

**Turnover of the current previous year is Rs. 80 Lakhs. Whether liable for Tax Audit?**

**Ans. No**, if the Turnover of an assessee, who was regularly getting his books of accounts audited, reduces to Rs. 80 Lakhs (i.e. it does not exceeds Rs. 1 Crore), then such assessee shall not be required to get his books of accounts audited u/s. 44AB. He has **2 Options**:

- 1. Either opt for presumptive taxation u/s. 44AD**
- 2. File his Income Tax Return by filling up Balance Sheet and Profit and Loss Account and can also offer income less than 8% or 6%.**

**Q.** Assessee was regularly getting his books of accounts audited u/s. 44AB(a).

**Turnover of the current previous year is Rs. 1.5Crores. Whether liable for Tax Audit?**

**Ans.** Yes, as the Turnover exceeds the limit specified u/s. 44AB(a), the assessee shall be liable to get his books of accounts audited u/s. 44AB **(and deduct TDS and collect TCS)**. However, as per 1<sup>st</sup> Proviso to Section 44AB, the assessee can opt for presumptive taxation u/s. 44AD.

**Further, in the above case, even if the assessee opts for presumptive taxation u/s. 44AD, he shall be liable to deduct TDS and collect TCS.**

# Reporting on Section 269SS/ 269T/ 269ST - Clause 31

As per Section 269ST, a person cannot accept amount of **Rs. 2 Lakhs or more** 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 otherwise than by A/c. Payee Cheque or A/c. Payee Bank Draft, ECS, etc.

Eg. A person cannot adjust the amount of unsecured loan accepted from the amount of sales made to that person. The Tax Auditor is required to check compliance with such transactions and accordingly report in Clause 31 of the Tax Audit Report.

## Payment of Rs. 2 Lakhs or more - otherwise than by A/c. Payee Cheque/Bank draft - Clause 31(bc)

*(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:—*

- (i) Name, address and [Permanent Account Number or Aadhaar Number] (if available with the assessee) of the payee;*
- (ii) Nature of transaction;*
- (iii) Amount of payment (in Rs.);*
- (iv) Date of payment;*

# Section 56(2)(ix) and Section 56(2)(x) - Clause 29A and 29B of Tax Audit Report

- [29A.]** (a) *Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)*
- (b) *If yes, please furnish the following details:*
- (i) *Nature of income:*
  - (ii) *Amount thereof:*
- 29B.** (a) *Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)*
- (b) *If yes, please furnish the following details:*
- (i) *Nature of income:*
  - (ii) *Amount (in Rs.) thereof:]*

# THANK YOU!

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