



J.B.Nagar CPE Study Circle of WIRC

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Issues relating to Tax Audit for SME & Documentation



Contents

- Bird eye view
- Challenges, Audit process and Checklist
- Recent developments
- Issues and thoughts to ponder



Bird eye view

Background

- As observed by the Finance Minister, while presenting the Union Budget for 1984-85 and as stated in the Memorandum explaining the provisions of the Finance Bill, 1984

The compulsory audit is intended to ensure proper maintenance of books of account and other records, in order to reflect the true income of the tax payer and to facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities. This would also save the time of the Assessing Officers considerably in carrying out the verification.

- Tax audit does not give the assessee any immunity from scrutiny assessment or disallowance of expenses (***Goodyear India Ltd. v. CIT [2009] 112 Taxman 419 (Delhi)***)

Amendments in section 44AB

- Section 44AB. –
Every person,
(a) carrying on **business** shall, if his **total sales, turnover or gross receipts**, as the case may be, **in business** exceed or exceeds one crore rupees in any previous year
- Increase in monetary limit

As per amendment made by Finance Act, 2020 (applicable from AY 2020-21)

In order to reduce the compliance burden on small and medium enterprises, the threshold limit increased for a person carrying on business from INR 1 crore to INR 5 crore in cases where:

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

Budget speech 2020 – By Hon'ble Finance Minister

*Currently, businesses having turnover of more than one crore rupees are required to get their books of accounts audited by an accountant. In order to reduce the compliance burden on small retailers, traders, shopkeepers who comprise the MSME sector, I propose to raise by five times the turnover threshold for audit from the existing INR 1 crore to INR 5 crore. **Further, in order to boost less cash economy, I propose that the increased limit shall apply only to those businesses which carry out less than 5% of their business transactions in cash.***

Amendments in section 44AB

Ambiguity in term Payments and Receipt referred in proviso

- ITR Forms – ITR 3, 5 and 6

	4	Whether declaration in Form-2 in accordance with para 5 of DPIIT notification dated 19/02/2019 has been filed before filing of the return?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	5	If yes, provide date of filing Form-2	
AUDIT INFORMATION	(a1)	Whether liable to maintain accounts as per section 44AA? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a2)	Whether assessee is declaring income only under section 44AE/ 44B/ 44BB/ 44BBA/ 44BBB? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a2i)	If No, Whether during the year total sales/turnover/gross receipts of business exceeds 1 Crore Rupees but does not exceed 5 Crore Rupees? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a2ii)	If (a2i) is Yes, whether aggregate of all amounts received, including amount received for sales, turnover or gross receipts or on capital account such as capital contribution, loans etc. during the previous year, in cash, does not exceed five per cent of said amount? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a2iii)	If (a2i) is Yes, whether aggregate of all payments made including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loan etc., in cash, during the previous year does not exceed five per cent of the said payment (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(b)	Whether liable for audit under section 44AB? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(c)	If (b) is Yes, whether the accounts have been audited by an accountant? (Tick) <input checked="" type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, furnish the following information below	
		(1)	Mention the date of furnishing of audit report (DD/MM/YYYY)
	(2)	Name of the auditor signing the tax audit report	
	(3)	Membership No. of the auditor	

The onus would be on the assessee to prove that he is eligible for increased threshold limit for not getting his accounts audited. He needs to ensure that his aggregate cash receipts and payments are within the limit of 5%. If he fails to do so, consequences would be a penalty under section 271B for failure to get accounts audited.

Applicability of Audit under section 44AB

Presumptive Income

Section	Particulars
44AD	<ul style="list-style-type: none">• Businesses, whose annual gross turnover/receipt does not exceeds Rs. 2 Crore are eligible for this scheme.• Not to maintain books of Accounts.• Net income is estimated to be @ 8% of your gross receipt/turnover.• If Gross receipts are received through digital mode of payments, net income can be calculated as @ 6% and @ 8% of gross receipts are received through cash.• When assessee declares profit lower than the limit prescribed u/s.44AD (8%/6% for business), then tax audit will be applicable• If Assessee opt for Presumptive taxation u/s 44AD, then he should be follow same section for next 5 Financial years.
44ADA	<ul style="list-style-type: none">• Professions, whose annual gross receipt does not exceeds Rs. 50 Lakhs are eligible for this scheme.• Not to maintain books of Accounts.• Net income is estimated to be @ 50% of your gross receipt, but exceeding the basic limit (applicable from AY 2017-18)• If Assessee opt for Presumptive taxation u/s 44ADA, then he should be follow same section for next 5 Financial years.
44AE, 44BB, 44BBB	<ul style="list-style-type: none">• Income declared is lower than those prescribed under those sections

Non - applicability of Audit under section 44AB

- Tax Audit is Not Applicable in following cases:
 - Non resident assessee engaged in the business of operations of ships (as covered under section 44B)
 - Non resident assessee engaged in the business of operation of aircrafts (as covered under section 44BBA)
 - Agricultural income even if the total amount of sale from agricultural products exceed Rs.1 Crores.

What is "Business" and "Profession" ?

- **Section 2(13) - Business** : includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- **SC has in Barendra Prasad Roy v ITO [1981] 129 ITR 295 (SC)** held that 'business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only.
- **Section 2(36) – Profession** : includes vocation
- Whether a particular activity can be classified as 'business' or 'profession' will depend on the facts and circumstances of the each case – **CIT v. Manmohan Das (Deceased) (1966) (59 ITR 699)(SC)**
- All profession are businesses, but all businesses are not professions. Only those businesses are professions the profit of which are dependent mainly upon the personal qualification and in which no capital expenditure is required or only capital expenditure of comparatively small amount – **P.Stanwill & Co. v/s CIT, (1952) 22 ITR 316, 320-21 (All).**

What is Turnover ?

As per ICAI's GN on Tax Audit (2014)

- Aggregate amount for which sales are effected or services rendered
- Para 5.8 of GN – considering that the words “Sales”, “Turnover” and “Gross receipts” are commercial terms – construed in accordance with the method of accounting regularly employed
- Also to consider whether the transaction is made on ‘principal to principal’ basis or ‘principal to agent’ basis.
- Excise Duty or State Cess, if any, will be included in Turnover depending on the regular method accounting employed
- GST is not to be included since it is collected on behalf of government and is credited to a separate account

Turnover in Special Cases

Cases	Remarks
In case of speculative transaction	Aggregate of both positive and negative differences – considered as turnover
In case of derivatives, F&O	Total of favourable and unfavourable differences is taken as turnover. Premium received on sale of options is also to be included in Turnover
In case of Delivery based transactions	Depends on whether transaction undertaken in the course of business or as investment. Also depends on facts and circumstances of each case considering nature of transaction, frequency and volume of transaction, etc.

Challenges

Challenges

- Amendments in Law
- Case law updates
- Circulars/Notifications
- Lack of data
- Time constraints
- E-filing
- Substantial increase in number of clauses (44 clauses) required detailed and in-depth reporting
- Documentation – SA 500

Audit process



- 1 Scrutiny of professional fees to understand issues dealt with by consultant
- 2 Reason for reduction in ETR vis-à-vis past years
- 3 New transaction with related parties and understand impact on tax
- 4 Deeper scrutiny of caveated tax opinions
- 5 Court scheme, annual reports and public disclosure
- 6 Management representation and based on facts confirmatory opinion

Checklist

- Engagement letter and acceptance of the same by the Client.
- NOC from previous auditor, if applicable.
- Ensure both the Client and the Auditor have valid digital signatures -
update the same on website
- Check that the Client is able to login to website to avoid last minute
hitches -no password issues.
- Comparison with the last year's Audit Report, if available and audit
observations of earlier year.
- List of inadmissible expenses.
- Stock statement –obtain from the Client
- Certificate from the auditee for loans and repayment in compliance with
sections 269SS and 269T.
- Balance Sheet and P&L A/c. signed both by the Auditor and Auditee and
scanned & converted into PDF.
- Bill for professional fees

Recent Developments

Recent Developments – Notifications etc

- CBDT issued Notification No. 82/2020 on 1 October 2020 publishing Income-tax (22nd Amendment) Rules, 2020 pursuant to the newly notified concessional tax regime
 - Rule 5 related to Depreciation
 - New Rule 21AG related to exercise of option under sub-section (5) of section 115BAC (Form No. 10-IE)(tax on income of individuals and HUF)
 - New Rule 21AH related to exercise of option under sub-section (5) of section 115BAD (Form No. 10IF) (tax on income of certain resident co-operative societies)
 - Amendment to Form 3CD related to Tax Audit u/s 44AB - Amendment in clause 8, 18 and 32 (with effect from 1-10-2020) pursuant to applicability of lower tax regime for corporates as per section 115BAA
 - Amendment to ITR 6
 - Amendment to TP Audit report in Form 3CEB
- Clause 30(c) – GAAR reporting and clause 44 (Expenditure breakup-GST related) postponed to AY 2021-22

Changes in Form 3CD – w.e.f 1/10/2020

(a) in Form No 3CD,-

(i) in Part A, after serial number 8 and the entries relating thereto, the following shall be inserted, namely: -

“8a. Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB?”;

(ii) in Part B, -

(I) in serial number 18, after clause (c), the following clauses shall be inserted, namely: -

“(ca) Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)

(cb) Adjusted written down value”;

(II) in serial number 32, for clause (a), the following clause shall be substituted, namely: -

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

Sl No	Assessment Year	Nature of loss/ allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA [^]	Amounts as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

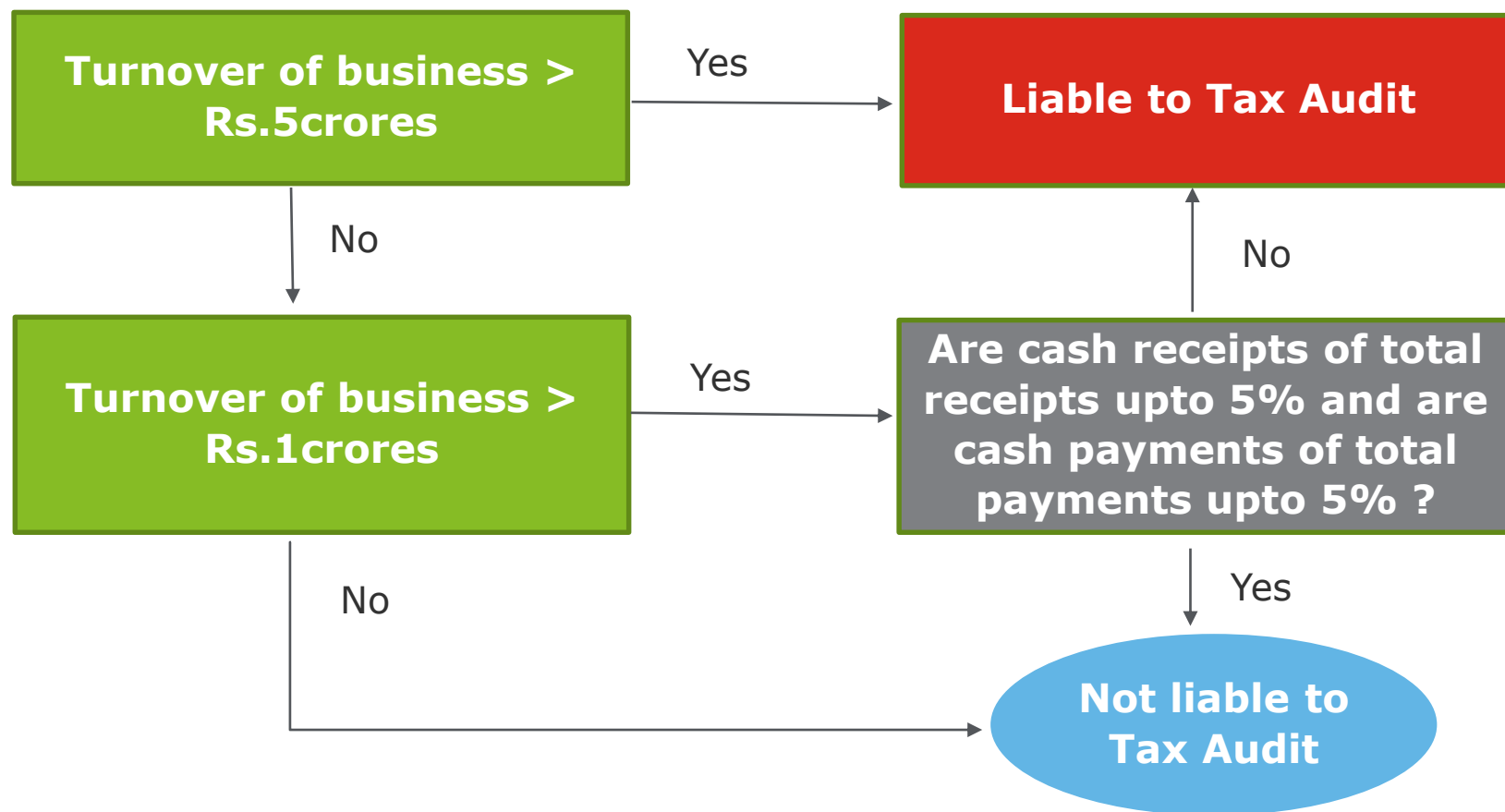
*If the assessed depreciation is less and no appeal pending than take assessed.

[^] To be filled in for assessment year 2020-21 only.”;

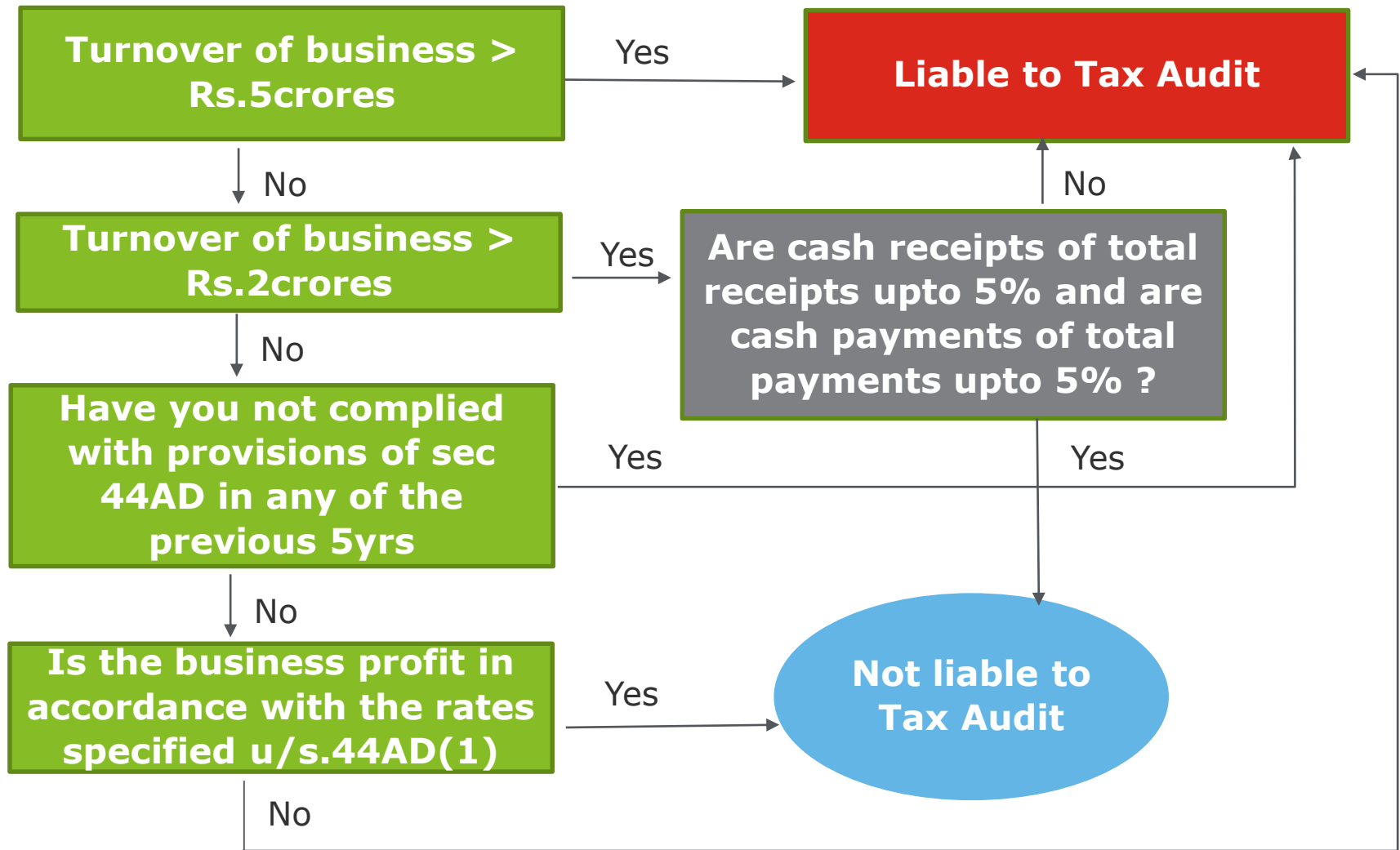
Issues and thoughts to ponder

Issues in Audit Criteria

Audit Criteria – Business of agency, brokerage or commission Companies, LLPs and Individuals, HUFs & Firms



Audit Criteria – Not engaged in business of agency, brokerage or commission
Individuals, HUFs & Firms



Issue 1

Criteria of Audit

Mr X, is into clothing business and has turnover of less than Rs. 5 crores during the financial year 2019-20. The following transactions in FY 2019-20 is hereunder:

Particulars	Mode of transaction	
	Cash (Rs. in lacs)	Bank (Rs. in lacs)
Receipts		
- Sales	20	480
- Advances from customers	10	20
- Unsecured loan	10	100
Total receipts	40	600
Payments		
- Purchase	15	400
- Rent	Nil	50
- Loan repayment	5	50
Total Payments	20	500

The turnover of Mr X during the financial year 2019-20 is up to Rs. 5 crores. He shall not be liable for tax audit if his cash receipt and payment during the year does not exceed 5% of total receipt or payment, as the case may be.

Issue 1

Criteria of Audit

Computation of percentage of cash receipts & payments

Particulars	Total (A)	Cash (B)	% in cash (B/A *100)
Receipts	640	40	6.25%
Payments	520	20	3.85%

Whether Mr. X is entitle to get benefit of threshold ?

Though the payment made in cash during the year does not exceed 5% of total payments, the percentage of cash receipts exceeds the limit of 5%. Thus, Mr X isn't entitled to the benefit of the increased threshold limit of Rs. 5 crores for the tax audit.

Whether Mr. X is entitle to get benefit of threshold, if he into the profession ?

Clause (a) of Section 44AB talks about a person carrying on business whereas clause (b) talks about a person carrying on a profession. The new *proviso* to section 44AB providing the enhanced turnover limit of Rs. 5 crores for the tax audit is inserted to clause (a) to section 44AB. Thus, the persons engaged in the profession aren't entitled to claim enhanced turnover limit of Rs. 5 crore for the tax audit.

Issue 2

Criteria of Audit – Computation of percentage of Cash receipts & Payments

Article 117 taxmann.com 24

Facts

There is an individual engaged in distribution and wholesale business. During the year, his business turnover is INR 3 crores out of which INR 10 lakhs is in cash. His annual business expenditure is INR 2.5 crores out of which INR 15 lakhs are in cash. During the year, he has purchased equity shares for INR 55 lakhs which is paid through bank transaction

Analysis

Individual is engaged in business. Since his turnover is more than INR 1 crore, applicability of tax audit provisions will be subject to compliance with **cash receipt and cash payment condition**.

Cash Receipt condition – $10L / 3Cr. \times 100 = 3.33\%$ of total receipts.

Cash Payment condition – $15L / (2.5Cr. + 55L) \times 100 = 4.92\%$ of total payments.

(Investment in equity shares of INR 55L is also included in total payments.)

Since **cash receipt and cash payment condition** satisfied, tax audit will not be required.

Let us check, cash expenditure to total expenditure **only related to business expenses**. Cash payment ratio will be – $15L / 2.5Cr. \times 100 = 6\%$ of total business expenditures. In this case, cash payment condition is not satisfied and hence, tax audit will be required.

Hence, it is evident that non-business or personal transactions impact the applicability of auditing of accounts of business. This does not seem to be the intention of the lawmakers. Does this mean that we should invoke the Law of Harmonious Construction and consider only business transactions for evaluating the condition?

Issue 3

Criteria of Audit – Presumptive Taxation

Section 44AB of the Income-tax Act

- prescribes the conditions under which an assessee is required to get his accounts audited. It excludes a person from getting books of account audited if he opts for presumptive taxation scheme under Section 44AD provided turnover of business does not exceed Rs. 2 crores.

Section 44AB – Clause (e)

- states that a person, who has opted for the presumptive taxation scheme under Section 44AD in any of the last 5 previous years but does not opt for the same in the current previous year, shall be liable to get his accounts audited if his total income exceeds the maximum amount not chargeable to tax.

Section 44AB - Clause (a)

- provides for an audit of books of account if a person is engaged in a business and the turnover of such business exceeds Rs. 1 crore. The Finance Act, 2020 has extended the threshold of turnover to Rs. 5 crores if cash receipt and cash payment does not exceed 5% of total receipt and payment respectively.

Issue 3

Criteria of Audit – Presumptive Taxation

Whether a person opting for presumptive taxation scheme under section 44AD is required to get his accounts audited?

If an assessee is covered under both the clauses, *that is*, Clause (a) and Clause (e) of Section 44AB, whether he will be liable to get the books of account audited?

Example, if the turnover of an assessee is more than Rs. 1 crore and his cash payment and receipt is less than 5%, whether he is liable to tax audit?

Particulars (assuming cash payment/receipt criteria is met)	Turnover (Rs.)	Whether liable for a tax audit
Opted for sec. 44AD in last 5yrs but not opting for same in the current year	Upto 1 crore & Upto 2 crore	Yes, if income is more than the maximum amount not chargeable to tax [sec. 44AB(e)]
	More than 2 crore but upto 5 crore	No [proviso to section 44AB(a)]
	More than 5 crore	Yes
Not opted for sec. 44AD in any of last 5yrs and not opting for same during the current year as well	Upto 5 crore	No [proviso to sec 44AB(a)]
	More than 5crore	Yes

Issue 4

Presumptive Taxation

- Whether assessee can file return under section 44AD declaring income @8% of turnover even though he has earned more than 8% profit, in other words does assessee has absolute choice to declare income at 8% or at higher rate at his own as he wishes to ?
- Answer is No:

It is pertinent to rely on the judgement of Hon'ble **Ahmedabad Tribunal in case of Shivani Builders (108 ITD 520)**

Facts

- The assessee-firm entered into a construction agreement with two associations for certain price.
- In addition, the assessee was entitled to recover cost in respect of any extra work in the constructed flat(s). Consequent upon a survey action conducted at the assessee's premises, one of its partners admitted to have collected on-money of Rs. 9,04,380 outside the regular books of account and assured that the same would be shown as clear income in the books of the assessee.
- For the assessment year 1995-96, while the assessee did include the said amount as a part of its gross receipts, **it returned its income on the basis of presumptive rate of 8 per cent on the enhanced turnover of Rs. 38,29,380 i.e., at Rs. 3,06,350 as against its net profit of Rs. 4,54,195 as per its profit and loss account.** The Assessing Officer, however, framed the assessment on the basis of the assessee's books of account in preference to its claim of being assessed under the presumptive regime of section 44AD.

Issue 4

Presumptive Taxation

• **Hon'ble Ahmedabad Tribunal in case of Shivani Builders (108 ITD 520)**

Held – relevant para

- *It is, thus, clear that the law envisages all the three situations by laying down appropriate procedure for all of them, i.e., the assessee disclosing a higher, lower, or an amount equal to the presumptive income (reckoned at the rate of 8 per cent of the turnover).*
- *In the instant case, the assessee contended to have declared its income at the presumptive rate, being covered by the provisions of section 44AD, of which, clearly, there was no doubt, it being engaged in the civil construction of residential flats. The provision of section 44AA i.e., with regard to mandatory maintenance of books of account, would apply to an assessee engaged in such business, only, if the assessee chooses to be taxed at lower than the presumptive rate of 8 per cent, which is clearly in the nature of a, and the only, concession accorded by the statute to the relevant class of assesseees, to which assertion of the assessee, there could be no doubt, it being statutorily recognized/ enacted. **However, where the assessee, despite the said concession, chooses to maintain the books of account, preferring to rely thereon for various other purposes, both apart from and under the Act, it cannot ignore the book results and claim to be entitled to a lower presumptive rate of income than that revealed by such books. The law does not accord a privileged status to the assessee engaged in this line of business but only, considering the vagaries that attend thereto, draws a higher bar for the purpose of maintenance of books, i.e., than that normally obtains under section 44AA.** As such, it cannot be said that though the assessee, admittedly, earns more, he would still be liable to be assessed to income-tax at a lower income by virtue of the said concession. **Section 44AD would not operate to curtail the scope of income as defined under section 2(24), read with section 5, so that where the assessee admittedly earns a higher income, the character of which as income is undoubted, it would be liable to tax on that basis, that is, on the basis of real income, even as held by the Commissioner (Appeals).** The assessee's plea of the said interpretation as amounting to be penalizing it for the maintenance of its books, was wholly misconceived; the act of paying tax on the basis of income earned cannot, by any stretch of imagination, be considered as amounting to being penalized; the law is not creating a privileged class out of such assesseees, but thereby only is providing a window of concession for a limited purpose. [Para 9.1]*

Other relevant Issues

Issue 1

Reconciliation of Income with GST turnover

- CBDT issued order dated 30 April 2019 whereby the income tax details like GTI, Turnover, Turnover Ratio etc. are to be shared with GSTN officers
- Mismatch between the GST and Income-tax filings have lead to issuance of notices under GST from this year
- Tax auditor needs to verify the differences between the GST turnover and turnover to be reported under Income-tax
- Various reasons because of which there can be mismatch, reasons should be documented.
- **Whether GST registration no. of the assessee has to be furnished in Form 3CD if the assessee is liable to pay tax under reverse charge?**

The ICAI, *vide* Implementation Guide dated August 22, 2018, has clarified that even if liability to pay GST is only under the reverse charge mechanism, the fact of being liable to GST needs to be answered in the affirmative, with the clarification that such liability is only under the reverse charge mechanism.

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Issue 2

Whether a tax audit report can be revised ?

- 'Guidance Note on Tax Audit under Section 44AB' issued by the ICAI provides that the audit report under section 44AB should not normally be revised. However, sometimes a member may be required to revise his tax audit report on grounds such as:

Revision of accounts of a company after its adoption in annual general meeting.

Change of law e.g., retrospective amendment.

Change in interpretation, e.g., CBDT Circular, Judgments, etc.

- Thus, a tax audit report once filed can be revised on the above-mentioned grounds.

Issues in various Clauses of TAR

Tax Audit Report

Clause 11 – Books of accounts

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

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

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

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

If books of accounts are maintained at more than one location. Whether the address of all the locations is to be mentioned in the audit report?

For the purpose of reporting in 11(b) –

If such books of accounts are kept at multiples locations then the auditor is required to mention the address of all the locations along with the details of books of accounts maintained at each location.

In case of a company assessee, the auditor should verify as to whether Form AOC-5 has been filed with Registrar of Companies under the Companies Act for maintenance of books of accounts at a place other than the registered office.

The auditor's duties regarding 'books of account maintained' is not limited to merely giving a list of books of account against clause 11(b). He is required to examine the books of account maintained. Based on such examination, he is required to state in Form No. 3CB whether books of account kept are 'proper books of account'.

Tax Audit Report

Clause 12 – Presumptive

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

The tax auditor is not required to indicate as to whether the amount of presumptive income has been correctly computed under the relevant section relating to presumptive taxation. The reporting requirement gets satisfied if the amount as per profit and loss account is reported.

**More than one business including presumptive business,
ascertainment of profit**

**No separate
books
maintained**

Expenses to be appropriately apportioned and suitable note if not satisfy with the reasonableness of apportionment

**Separate
books
maintained**

**Profit can be easily
ascertained**

**No books maintained
for presumptive
income**

**Qualification in
report regarding
inability to verify**

Tax Audit Report

Clause 13 - ICDS

- Method of accounting employed in the previous year
- Any change in the method of accounting as compared to previous year and its impact on the profits
- Adjustment on account of ICDS I to ICDS X with details of impact on profit
- Disclosure as per ICDS except ICDS VI and VIII

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

		<i>Increase in profit (Rs.)</i>	<i>Decrease in profit (Rs.)</i>	<i>Net Effect (Rs.)</i>
<i>ICDS I</i>	<i>Accounting Policies</i>			
<i>ICDS II</i>	<i>Valuation of Inventories</i>			
<i>ICDS III</i>	<i>Construction Contracts</i>			
<i>ICDS IV</i>	<i>Revenue Recognition</i>			
<i>ICDS V</i>	<i>Tangible Fixed Assets</i>			
<i>ICDS VI</i>	<i>Changes in Foreign Exchange Rates</i>			
<i>ICDS VII</i>	<i>Governments Grants</i>			
<i>ICDS VIII</i>	<i>Securities Borrowing Costs</i>			
<i>ICDS IX</i>				
<i>ICDS X</i>	<i>Provisions, Contingent Liabilities and Contingent Assets</i>			
	<i>Total</i>			

(f) Disclosure as per ICDS :

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

Tax Audit Report

Clause 13 - ICDS

- The Indian Accounting standards (Ind AS) reconciliation

Particulars		Amount
Profit before tax as per Ind AS financials		xxx
Add: Income taxable (if not credit to P&L account)		
1.	Dividend income (As per Section 115BBDA)	xxx
2.	Amount of revenue not recognized in current year as assessee followed revenue recognition principles as per Ind AS 115	xxx
3.	Interest on income-tax refund accrued in previous year but received in current year*	xxx
4.	Difference in ICDS and Ind AS revenue due to time value of money	xxx
5.	Interest income as per this ICDS	xxx
6.	Discount on debt securities as per this ICDS	xxx
7.	Interest on compensation or enhanced compensation taxable in accordance with Section 145A(1)*	xxx
Less: Income not taxable (if already credited to P&L account)		
1.	Dividend Income	(xxx)
2.	Excess revenue recognized in current year as assessee followed revenue recognition principles as per Ind AS 115	(xxx)
3.	Interest on income-tax refund accrued in current year but received in subsequent year*	(xxx)
4.	Interest amount when the payment is deferred for significant period of time (generally 1 year or more), if any	(xxx)
5.	Interest income recognised on the basis of effective interest rate method	(xxx)
6.	Interest on compensation or enhanced compensation included in taxable income on accrual basis*	(xxx)
Net profit/ loss before tax as per ICDS		xxx

Tax Audit Report

Clause 13 - ICDS

- The tax auditor needs to enter a consolidated amount by which the profit has been increased or decreased. Such increase or decrease is not required to be bifurcated between the different heads of income.
- The Accounting standards (AS) reconciliation

Particulars		Amount
Profit before tax as per AS financials		xxx
Add: Income taxable (if not credit to P&L account)		
1.	Dividend income (As per Section 115BBDA)	xxx
2.	Amount of revenue not recognized in current year as assessee followed service completion method for his books of account	xxx
3.	Interest on income-tax refund accrued in earlier year but received in current year*	xxx
4.	Interest on compensation or enhanced compensation taxable in accordance with Section 145A(1)*	xxx
Less: Income not taxable (if already credited to P&L account)		
1.	Dividend Income	(xxx)
2.	Excess revenue recognized in current year as assessee followed service completion method for his books of account	(xxx)
3.	Interest on income-tax refund accrued in current year but received in subsequent year*	(xxx)
4.	Interest on compensation or enhanced compensation included in taxable income on accrual basis*	(xxx)
Net profit/ loss before tax as per ICDS		xxx

Tax Audit Report

Clause 16 – Item not credited to P&L account

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

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

- **An assessee has applied for a refund of Special Additional Duty (SAD) but same wasn't credited in profit & loss account. Whether the disclosure is required in Form 3CD?**

- If a claim for refund of SAD has been admitted as due and accepted during the relevant financial year, it shall be reported under Clause 16.
- If the claim has been lodged during the previous year but it has been admitted as due after the relevant previous year, it need not be reported here. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be brought out.

- Whether deemed rent in case of real estate developers to be disclosed under this clause?
- Whether any form of loans/advances/deposits/any type of borrowings would be covered in this clause ?

Tax Audit Report

Clause 20

- Clause 20(b) – Contributions received from employees
- Details of contributions received from employees for various funds referred to in section 36(1)(va).

Section 36(1)(va) allowed deduction if paid within the due date as per relevant Act – only reporting to be done, not to show view

- Payments which is not made within due dates but paid within grace period or before due date filing of return of income are allowable (319 ITR 306 – Alom Extrusions SC, Bombay HC decision in case of Hindustan Organic Chemicals Ltd – ITA No. 399 of 2012)
- Intimations under section 143(1) are issued disallowing the amount

Tax Audit Report

Clause 21

- Clause 21(a) – Details of amount in nature of capital, personal, advertisement etc
 - Ambiguity regarding disclosure under the given clause and disallowance of the amount in Computation of Income – Disclosure under this doesn't require a mandatory disallowance in computation. However, notices are received under section 143(1)(a)(i) for rectifying the returns.
 - Tax auditor needs to examine the business expenses and **personal expenses** if routed through P&L including common expenses, however, it is advisable to have separate set of books
 - Tax auditor need to apply various test to examine **capital expenses** – purpose of lumpsum or regular payments and expenses in the nature of enduring benefit.
 - **Club expenses** – No provision under the act provide disallowable of club expenses incurred for the purpose of business. However, CPC processes and adds the same in the income
 - In this regard, relevant note to be provided in the annexures.
 - **Penalties**
 - The clause covers reporting of penalty or fine or violation of law and not the payment for contractual breach or liquidator damages.
 - Details are to be given even if the assessee is contesting before the higher authorities (provided penalty is debited to P&L account)
 - GST late fees being compensatory payments not to be reported

Tax Audit Report

Clause 21

- Clause 21(b) – Amounts inadmissible under section 40(a)(i) and 40(a)(ia)
Details of payments on which TDS not deducted or deducted but not paid within due date of filing return.
 - **Ensure that the disclosure corresponds to clause 34(a)**
- Clause 21(h) – Amounts inadmissible under section 14A
 - Expenditure related to exempt income u/s. 14A
 - Whether disallowance to be made in case of no exempt income in the relevant year
[Mylan Laboratories Ltd – ITA No. 626/Hyd/16]
 - If Rule 8D not followed, provide reference to case law and reason thereof in the report.

Tax Audit Report

Clause 26

- Clause 26 – Disallowances or Allowance u/s. 43B

- **As Section 43B specifically disallows the interest expense which is converted into a loan, whether such disallowance shall be of permanent in nature?**

The Circular No.7/2006 dated July 17, 2006 clarifies that the unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, the converted interest, by whatever name called, in the wake of its conversion into a loan or borrowing or advance, will be eligible for deduction in the computation of income of the previous year in which the converted interest is 'actually paid'.

In other words, the nomenclature of the sum of converted interest will make no difference as the payment of converted interest will not represent the repayment of the principal. The circular clarifies that the fundamental principle remains that once an amount has been determined as interest payable to the banks or financial institutions, any subsequent change of nomenclature of interest will not affect its allowability and deduction in terms of section 43B will have to be allowed on its actual payment. The Assessing Officer, however, can ask for a certificate from the assessee to be obtained from the lender bank or financial institution etc. as evidence of 'actual payment' of interest to banks or financial institutions.

- Where taxes, duties etc. referred to in section 43B are paid after tax audit is completed but before due date of filing returns, how should the same be dealt with by a Tax Auditor ? Vis-à-vis reporting by assessee in ITR ?

Tax Audit Report

Clause 27

- Clause 27(b) – Income or expenditure of prior period items
 - The amount needs to be only disclosed in TAR & ITR
 - There is no automatic disallowance in ITR
 - In case of cash system of accounting, there will not be any item appearing under this clause
- **If the statutory auditor does not consider an item as a prior period expense, whereas tax auditor feels that such item should be considered as a prior period, should that expense be disclosed in Clause 27(b) of Form 3CD?**

It may be noted that there is a difference between the expenditure of any earlier year debited to the profit and loss account and the expenditure relating to an earlier year, which has crystallized during the relevant year. An expense, though related to previous periods, which has been determined in the current period, would not be considered as prior period items.

In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the year on the basis that the liability materialized or crystallized during the year and such cases will not be reported under this clause. **(provided appropriate back up document is in place)**

Tax Audit Report

Clause 29A – Reporting of amount chargeable as IFOS -56(2)(ix)

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,—
 - (a) such sum is forfeited; and*
 - (b) the negotiations do not result in transfer of such capital asset;*
- Forfeiture of advance received towards transfer of capital asset
- Year end advances to be examined
- Advances not related to transfer of capital asset not covered
- **Mr A, a sole proprietor, agreed to transfer his personal property to Mr X and received some non-refundable advance against such deal. The sale could not materialize as Mr X could not pay the whole amount and the advance money was forfeited by Mr A. What are the disclosure requirements?**

Tax Audit Report

Clause 29A

- **Mr A, a sole proprietor, agreed to transfer his personal property to Mr X and received some non-refundable advance against such deal. The sale could not materialize as Mr X could not pay the whole amount and the advance money was forfeited by Mr A. What are the disclosure requirements?**
 - Section 56(2)(ix) of the Income-tax Act, provides for taxability of any sum received as an advance in course of negotiations for the transfer of capital asset and such sum was forfeited due to non-transfer of such capital asset. A new Clause 29A to Form 3CD has been inserted to report any advance received from the buyer but forfeited due to non-materialization of a deal to sale of the capital asset.
 - The auditor is not required to report any such forfeited amount if it is in respect of a personal capital asset or stock-in-trade. Any advances received and forfeited towards the sale of stock-in-trade would be taxable under section 28(i), and would not be required to be reported since the amount would be credited to profit & loss account.
 - The requirement of reporting arises only on forfeiture of advance. If an advance has been received and has been outstanding for a considerable time, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

Tax Audit Report

Clause 29B – Reporting of amount chargeable as IFOS -56(2)(x)

- .Reporting of income chargeable under Section 56(2)(x)
- Old clauses of Sec. 56(2) had limited applicability
 - (vii) was applicable only to individual & HUF
 - (viia) was applicable only to firm or closely held company and only upon receipt of shares of closely held company
- New clause (x) is inserted in Sec. 56(2)
 - Applicable for receipts after 31-3-2017
- Clauses (vii) & (viia) shall not apply to such receipts
- No reporting is required in Clause 28 which deals with receipts falling under the old clause (viia)

Tax Audit Report

Clause 29B – Reporting of amount chargeable as IFOS -56(2)(x)

	Old Clauses		New Clause
	Clause (vii)	Clause (viia)	Clause (x)
Assesses covered	Individual & HUF	Firm & Closely held Company	Any Person
Receipts covered	Money	Share of closely held company	Money
	Immovable Property		Immovable Property
	Specified Movable Property		Specified Movable Property

Tax Audit Report

Clause 29B – Reporting of amount chargeable as IFOS -56(2)(x)

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 :

- *Identify gratuitous receipt – check whether covered by any exceptions*
- *Cross check agreement value of immovable property with stamp duty value*
- *Shares and securities acquired – check FMV as per Rule 11UA*
- *Any other assets purchased as lower than FMV*

Whether subvention money is taxable, if yes under which section and shall be required to be reported?

Tax Audit Report

Clause 29B – Reporting of amount chargeable as IFOS -56(2)(x)

- . Whether subvention money is taxable, if yes under which section and shall be required to be reported?
 - The decision of the Supreme Court (SC) in the case of **Siemens Public Communication Networks Pvt. Ltd. [2017] 390 ITR 1 (SC)**, wherein it has been held that the voluntary payments made by the parent company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the assessee-company. If that is so, the payments made to the assessee-company by the parent company cannot be held to be revenue receipt.

Not taxable – under section 28.

- Moot question arises whether subvention money received to recoup the losses, shall be taxable u/s. 56(2)(x)
 - Sub-clause (xviiia) is inserted in clause (24) of section 2 so as to include income referred in clause (x) of sub-section (2) of section 56, in the definition of income.
 - In case of CIT v. Deutsche Post Bank Home Finance Ltd [2012] 24 taxmann.com 341, the High Court has held that Subvention assistance received by assessee from its holding company to recoup losses likely to be suffered by it, was a capital receipt not liable to tax.

However, the court agreed with revenue's contention that the income under Section 2(24) makes no difference between the nature and character of receipt. It is, however, the individual facts of each case which are decisive. The question of taxability of subvention money is based upon whether the receipt is to be considered as capital or revenue receipt? This can only be decided on the facts of individual cases. If the assessee is unable to prove that the amount was received for the purpose of recoupment of losses, then it can be characterized as revenue receipt and, therefore, becomes taxable.

Tax Audit Report

Clause 31 – Reporting details of each cash receipt or payment in excess of the limit specified u/s. 269ST

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

- (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
- (ii) Nature of transaction;
- (iii) Amount of receipt (in Rs.);
- (iv) Date of receipt;

(bb) Particulars of **each receipt** in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, **received by a cheque** or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

- (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
- (ii) Amount of receipt (in Rs.);

Tax Audit Report

Clause 31 – Reporting details of each cash receipt or payment in excess of the limit specified u/s. 269ST

(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 (if available with the assessee) of the payee;
- (ii) Nature of transaction;
- (iii) Amount of payment (in Rs.);
- (iv) Date of payment;

(bd) Particulars of **each payment** in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, **made by a cheque** or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

- (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
- (ii) Amount of payment (in Rs.)

Tax Audit Report

Analysis of clauses – section 269ST

No **person** shall receive an amount of Rs.2,00,000 or more

Clause	Qua	Irrespective of
(a) in aggregate from a person in a day	No. of persons – 1 No. of days – 1	Number of transactions
(b) in respect of a single transaction,	No. of transactions - 1	Number of persons Number of days
(c) in respect of transactions relating to one event or occasion from a person	No. of persons – 1 No. of event / occasion - 1	Number of days Number of transactions

Tax Audit Report

Restrictions on cash transactions

- .The Notes on Clauses mention that the restriction under section 269ST shall not apply to *"any receipt from sale of agricultural produce by any person being an individual or HUF in whose hands such receipts constitute agricultural income"*. No such exception is found in the text of the provision.
- Section 269ST as also these clauses refer to receipts otherwise than by a specified form. On a literal reading, it would cover receipts pursuant to -
 - (a) takeover of business;
 - (b) demergers;
 - (c) amalgamations;
 - (d) conversion of sole proprietor firms into partnership firm;
 - (e) conversion of loans into equity shares.
- This is because in all the above transactions, the transferee does not receive money by way of specified instruments. It appears that such literal reading is not warranted. However, it would be advisable for the auditor to clarify the position taken by him.

Tax Audit Report

Meaning of term 'Receive'

- **Receive**

- The clause applies if a person "receives" an amount. The term receipt has been judicially explained as follows:

- "To receive means to get by a transfer, as to receive a gift, to receive a letter, to receive money."

Ballentine's Law Dictionary, 1093.

- *Webster's New International Dictionary (2d ed.), 2076,* gives the following definition:

"To come into possession of, get, acquire, or the like, from any source outside of oneself."

- In other words, to "receive" seems to imply the taking into actual possession of some object which may be real or personal property.
- As a matter of fact, the results obtained in the statutes, using the words "received" and "transferred," are identical."
- [In re *McCullough's Estate*, 193 Wash. 145, 74 P.2d 877 (1928)]

Tax Audit Report

Meaning of term 'Receive'

- (b) "To receive means to get by a transfer, as, to receive a gift, to receive a letter, or to receive money and involves an actual receipt."

(The *Major Law Lexicon* by P. Ramanatha Aiyar, 4th Edn., Vol. 5; *College Law Dictionaries* by Dr. Avtar Singh, 2nd Edn.)

- (d) "Property is "received" when it is within the power of its receiver to appropriate it, even though some definitive understood and determined act is still to be done.

Taxon Oil & Land Co. of Texas v. U. S., C.C.A.Tex., 115 F.2d 647, 650."

(Permanent Edition of *Words & Phrases*)

- (e) "The 'receipt' of income refers to the first occasion when the recipient gets the money under his own control."

[*Keshav Mills Ltd. v. CIT* [1953] 23 ITR 230 (SC)]

Tax Audit Report

Meaning of term 'Amount'

Amount

- (a) The restriction is on receipt of amount. The term "amount" has been explained as follows:
"1. Aggregate sum; 2. Quantity; 3. To come up to, resulting; 4. Equalling in effect."
[*Legal Glossary* published by the Government of India (1992 Edition)]
- (b) "Aggregate sum; quantity; to come up to; resulting; equalling in effect."
(*College Law Dictionary* by Dr. Avtar Singh, 22nd Edn.)
- (c) "The substance, or result of a thing; the total or aggregate sum. Quantity; to come up to, resulting; equalling in effect."
(*P. Ramanatha Aiyar's The Law Lexicon*, 3rd Edn., 2012)
- (d) "1. The sum, total of two or more quantities or sums; aggregate.
2. the sum of the principal and interest of a loan.
3. quantity; measure a great amount of resistance."
(*Random House Compact Unabridged Dictionary*, 2nd Edn.)

Tax Audit Report

Meaning of term 'Amount'

- **Sum v. Amount**

H H Sri Rama Verma v. CIT [(1991) 187 ITR 308 (SC)] - “Any sums paid” contemplates payment of an amount of money

- No TDS on payments in kind –

(a) Chief Accounts Officer BBMP [TS-596-HC-2015(Kar)]

(b) Red Chillies Entertainment Pvt. Ltd. [TS-336-ITAT-2016(Mum)]

(c) CIT v. Hindustan Lever Ltd. [2013 – TIOL – 878 – HC – Kar – IT]

(d) Contra : Kanchanganga Sea Foods Ltd. v. CIT [325 ITR 540 (SC)]

Tax Audit Report

Receipt by journal entries

- **Receipt by journal entries**
- Whether receipts through journal entries are restricted by section 269ST?
- Section 269ST restricts receipts otherwise than through specified modes. Does this mean that receipts through journal entries say, settlement of debt by book entry are also restricted?
- A similar provision regarding loans and deposits exists in section 269SS/section 269T. In this connection, Courts are divided as to whether receiving loans and repayments through journal entry is hit by section 269SS/section 269T.
- In *CIT v. Triumph International Finance (I) Ltd.* [2012] 22 taxmann.com 138 (Bom.) (followed in *Lodha Builders (P.) Ltd. v. Asstt. CIT* [2014] 163 TTJ 778 (Mum. - Trib.)), it was held that where loan/deposit has been repaid by merely debiting account through journal entries, it must be held that assessee has contravened provisions of section 269T.

Tax Audit Report

Receipt by journal entries

- On the other hand, the High Court/Tribunal has held as follows:
 - (a) ***CIT v. Worldwide Township Projects Ltd.* [2014] 48 taxmann.com 118 (Delhi)**
- Object of section 269SS is to prevent transaction in currency; it is not intended to affect cases where a debt or a liability arises on account of book entries.
 - (b) ***Asstt. CIT v. Vardaan Fashion* [2015] 60 taxmann.com 407 (Delhi - Trib.)**
- Where there was no monetary transaction between assessee and creditor, rather by mere journal entry liability was created, it could not be said that loan or deposit accepted by assessee from creditor was in violation of section 269SS.
 - (c) ***Asstt. CIT v. Gujarat Ambuja Proteins Ltd.* [2004] 3 SOT 811 (Ahd. - Trib.)**
- Further, as mentioned above the objective of the section is to discourage "cash receipts" and not "journal entries". Hence, it may be argued that receipts through journal entries are not covered by section 269ST. However, such receipts may result in protracted litigation.

Tax Audit Report

Receipt by journal entries

- On the other hand, in the following cases journal entry has been held to be not acceptable mode –
 - Triumph International Finance 22 Taxmann.com 138 (Bom)
 - Lodha Builders 163 TTJ 778 (Mum-Trib)

Tax Audit Report

Meaning of Transaction

- As per Oxford dictionary – <https://en.oxforddictionaries.com>
- "1. *An instance of buying or selling something: a business deal.*"
 - As per Cambridge dictionary – <http://dictionary.cambridge.org>:
 - *"an occasion when somebody buys or sells something, or when money is exchanged or the activity of buying or selling something: a business transaction each transaction at the foreign exchange counter seems to take forever. We need to monitor the transaction of smaller deals.*
- As per Black's Law Dictionary – 6th Edition
 - "Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair: An act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. *Miles v. Starks, tex. Civ. App., 590 S. W.2d 223, 227.* It may involve selling, leasing, borrowing, mortgaging or lending. Something which has taken place whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other; in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than "contract" *Hoffman Machinery Corporation v. Ebenstein, 150 Kan. 790, 96 P. 2d 661, 663*

Tax Audit Report

Meaning of Transaction

- As per P. Ramanatha Aiyar's – Advanced Law Lexicon 3rd Edition
 - "A `transaction', in the ordinary sense of the word, is some business or dealing which is carried on, or transacted between two or more persons. Chamnoo Mahto v. Jang Bahadur Singh, AIR 1957 Pat 293, 297. [Indian Evidence Act (1 of 1872), S. 13(a)].
 - The word `transaction' cannot be read narrowly to mean as synonymous to the word `contract'. In one contract there may be many business transactions. Baldeo Kumar v. Managing Director, AIR 1997 MP 147, 153, para 15.
 - Transaction includes any agreement, arrangement or understanding whether or not legally enforceable, and a series of transactions - Finance Act, 1996 (c. 36), Shed. 20 para 25(1) (Stroud, 6th Edition, 2000)

Tax Audit Report

Restriction in respect of transaction relating to one event or occasion from a person

- To illustrate, suppose, "A" is the event manager in respect of a marriage in "B" family. Suppose, "B" has agreed to hold multiple functions on the occasion of marriage. It may be argued that each function is a separate event or occasion.
- However, if in respect of the same function, suppose "B" has to make payment to say, decorator, caterer and music party, and if all payments are routed through "A", the aggregate should not exceed Rs. 2 lakh otherwise than by permissible modes.

Tax Audit Report

Clause 32 – Brought forward losses and Unabsorbed Depreciation

- Details of Brought forward loss or depreciation allowance, if available
- In case of change in shareholding, provide details for the same
- Whether the assessee has incurred any speculation loss referred to in section 73 or any loss referred to in section 73A in respect of any specified business during the previous year
- Amount should be matching with previous ITR and TAR
- Adjust amounts as per latest amendments/appeal effect orders.

Tax Audit Report

Clause 32 – As per CBDT notification dated 1 October 2020

- In serial number 32, for clause (a), details of brought forward loss or depreciation allowance, to the extent available would include information losses/allowances not allowed u/s. 115BAA and amount adjusted by withdrawal of additional depreciation on account of opting for taxation u/s.115BAA (applicable for AY 2020-21 only) as per the table mentioned below

(II) in serial number 32, for clause (a), the following clause shall be substituted, namely: -

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

Sl No	Assessment Year	Nature of loss/ allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA [^]	Amounts as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

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

[^] To be filled in for assessment year 2020-21 only.”;

Tax Audit Report

Clause 33 – Deductions under Chapter VI-A or Chapter III (Section 10A, 10AA)

- Section wise details of deductions, if any
- Obtain/verify certificates – for deductions u/s. 80IA, IB, IC , 80JJAA etc
- Deduction u/s. 80G (as well as investment linked deductions for individuals & HUFs) can be claimed in FY 2019-20 even for the donation made after 31 March 2020 but upto 31 July 2020. The time frame has been extended due to Covid – 19
- Individuals - personal books , technically should not be reported but to be claimed while filing the ITR. Further, if such transactions reported on conservative basis then to mention in observations that reported out of abundant caution

Tax Audit Report

Clause 34(a) – Whether the assessee is required to deduct or collect tax as per the provision of chapter XVII-B or chapter XVII – BB, if yes please furnish.

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Govt. out of (6) and (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

- TDS/TCS reconciliation with books and return
- Transaction below specified limits to disclose as specified in column 3
- In case of lower deduction certificates, if limit exceeded, TDS deducted at normal rates. Also check if lower rate is applied only from date of certificate

Tax Audit Report

Clause 34(b) – Whether the assessee is furnish the statement of tax deducted or collected. If yes

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

- Date of original return or revised ?
- To provide confirmation whether all transactions are included – if not included, appropriate disclosure/qualification to be provided
- Details of transactions not reported to be provided

Tax Audit Report

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

Tax Audit Report

Clause 36A - Reporting details of any dividend receipts u/s 2(22)(e)

- (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?

- (b) If yes, please furnish the following details:-
 - (i) Amount received (in Rs.):
 - (ii) Date of receipt:";

Tax Audit Report

Clause 36A - Reporting details of any dividend receipts u/s 2(22)(e)

- Reporting of receipt of dividend –
 - Only of the nature specified in clause (e) of Sec. 2(22)
- Only if received by the assessee
 - No reporting for the payer company
- Advance or loan to a 'concern' in which the shareholder has a substantial interest
 - Reporting should be made in whose case? Concern or shareholder?
 - CIT vs. Ankitech Private Limited (2012) 340 ITR 14 (Del)
 - CIT vs. Madhur Housing and Development Company (SC)
 - National Travel Services vs. CIT (2018) 401 ITR 154 (SC)
- Trade advances – commercial transactions would not be covered
 - Circular No. 19/2017 dated 12.6.2017
 - Events occurring after the Balance Sheet date should be examined
- Access the financial statements of the payer company –
 - Existence of accumulated profits as on the date on which the advance or loan was given
 - Disclaimer – if not accessible

Tax Audit Report

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).

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date For furnishing	Date of furnishing If	Whether the Form contains information about all details/furnished transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported

Details with respect to following form is to be furnished here:

- Form No. 61 - details of no PAN, form 60 received
- Form No. 61A - Specified Financial Transactions
- Form No. 61B – Statement of Reportable Accountant
- Rely on management representation and make appropriate disclosure in TAR
- List of transactions not reported also to be provided, hence to rely on management representation and books of accounts

Questions



“The only place where success comes before work is in the dictionary”.

Thank You



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