

**J. B. Nagar CPE Study Circle of WIRC**

# Issues in Tax Audit

**By CA Aditya Maheshwari  
B. Com., A. C. A., DISA (ICAI)  
R. R. Falod & Co., Chartered Accountants  
Email: [aditya@rrfalod.com](mailto:aditya@rrfalod.com)  
M: +91 9819239759**

Presented on 20<sup>th</sup> August, 2016

# Background

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- Tax Audit was introduced by the Finance Act, 1984 and has been applicable from A. Y. 1985 – 86.
- Objective of tax audit as laid down in the Memorandum to Finance Bill, 1984 explaining the purpose of its introduction is inter alia to facilitate the income tax administration to properly assess the income of the concerned assesseees.

# Applicability

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## ➤ Business

- Sales/turnover/gross receipts > Rs. 1 crore w.e.f. A.Y.13-14

## ➤ Profession

- Gross receipts >Rs.25 lakhs w.e.f. A.Y. 13 – 14

## ➤ Others

- Lower presumptive income than computed under
  - Section 44AD (Retail business)
  - Section 44ADA (Professionals),
  - Section 44BB (Oil exploration by non-residents)
  - Section 44BBB (Project execution by foreign companies)

# Penalty

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- Penalty for failure to get accounts audited **without reasonable cause** is  $\frac{1}{2}$  % of turnover or Rs. 1 lakh upto A. Y. 2010 – 11 and Rs. 1.50 lakhs w. e. f. A. Y. 2011 – 12, whichever is less u/s. 271B.
- Levy of penalty does not obviate audit requirement. Return of income without tax audit report is defective and can become invalid and other consequences will follow.
- Reasonable cause could be resignation of auditor, death or physical disability of assessee, labour problems like strike, lock outs, etc., loss of accounts by fire or theft or natural calamities.



# Turnover

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- Turnover means aggregate amount for which sales (including sale of scrap) are effected or services rendered by an organisation. It should be interpreted in accordance with method of accounting regularly employed.
- Sales may be reduced by Trade discounts given.
- Sales from all businesses held together to be consolidated to determine the prescribed limits, in case more than one business is carried out.
- If the turnover is inclusive of sales tax and excise duty, no adjustment is required to be made for considering the quantum of turnover.
- If, however, the Excise duty and / or sales tax recovered are credited separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover.

# Turnover (contd.)

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- Scrap sales, Duty draw back, Cash assistance, Exchange gain, Customer Advance received & forfeited will form part of turnover.
- Cash discount otherwise than that allowed in a cash memo / sales invoice is in the nature of a financing charge and is not related to turnover and the same should not be deducted from the figure of turnover.
- Sale proceeds of any shares, securities, property, etc. held as investment
- Sale proceeds of fixed assets.
- In case of a professional gross receipts in profession would include all receipts other than re-imburements recovered separately and being credited to separate account in the books only net surplus, if any to be added.
- In case of both business and professional being carried out, Tax Audit needs to be carried out if the turnover limit exceeds in either of the two.

# Issues on Turnover

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Brokerage Income of BSE broker is 96 lakhs. Interest income is 8 lakhs. Whether Tax Audit applicable?

**Pondichery Destillaries Ltd Vs ITO 1984, 8 ITD 39 Mad.**

If Purchases exceed Rs.1 Crores & Sales below Rs.1 Crores

**CCIT v/s Vijay Maheshwari HUF 228 ITR 157 SC 1997**

## **Turnover in the case of Builders & Developers**

Whether Advance received from Customers is 'Gross Receipts' for Turnover purpose?

**DCIT vs Gopal Krishna Builders ITAT Lucknow 2005 272 ITR 1 Luck YES**

**Siroya developers vs DCIT 2011, ITAT Mumbai NO**

**ACIT vs B. K. Jha & Associates 691 ITD 14 NO**



# Issues on Turnover (contd.)

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Share of Profit from partnership firm exempt u/s 10(2A) is not to be included in computing turnover.

What about interest on capital received from firm and remuneration to working partner?

Whether unaccounted sales found during search to be included?

**Brijlal Goyal Vs Asst CIT(2004) 88 ITD 413(Delhi) "Accounts" not defined. U/s 34 of Evidence Act, Accounts should be understood to be Accounts maintained in the regular course of business. Accordingly unaccounted Sales are not to be included for limit of Turnover.**



# Issues on Turnover (contd.)

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## **Speculative Transactions / Derivatives / Futures & Options:**

- Speculative transaction is a transaction in which contract for the purchase or sale of any commodity including stock and shares is periodically or ultimately settled otherwise than actual delivery of commodity or scrip's.
- However exception given to F & O transactions in recognised stock exchanges in shares, securities & commodities.
- Difference of each transaction shall form part of Turnover. Both Negative & Positive Differences shall be added to arrive at the "Turnover".
- Premium received on sale of options is to be included in turnover.
- In case of any reverse trade entered, the difference thereon form part of turnover.

## **Delivery based Transactions:**

Total value of sales shall be "Turnover".

# General Points

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- Appointment of tax auditor need not be by general body. It can be by board or under delegated powers of board.
- Communication with previous tax auditor is necessary.
- Prohibitions on accepting tax audit assignment to be taken care of .
- Ceiling on No of Tax Audits per member to be taken care of.
- Form 3CD is only disclosure & verification of particulars Certifying particulars in Form 3CD means certifying correctness of requisite information and details and does not amount to certifying computation of income.
- Even when a tax auditor is reporting in Forms 3CA / 3CB and 3CD compliance with AS and SA should be ensured in respect of details and information being given in Form 3CD.
- When there is genuine difference in view points between the tax auditor and the assessee, it is advisable to state view points of both and also the relevant information to enable the tax authorities to take decision in the matter.

# General Points [Cont'd]

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- Auditor can rely on judicial pronouncements while taking any view on inclusion or exclusion of any item to be furnished under any clause.
- If particular expenditure falls under more than one clause, suitable disclosures to that effect be made.
- Latest updated legal provisions to be considered.
- Any difference between the figures given in the audited financial statements and those in form 3CD should be explained by giving appropriate notes.
- Views of tax auditor are neither binding on assessee nor on the department, Information given should be based on what is appearing in books of account and what is made available to auditor. (e. g. ‘any other item of income not credited to profit and loss account’).
- Responsibility of furnishing true and correct particulars in form 3CD is that of the assessee. The tax auditor has the primary responsibility to verify such particulars and to ensure that such particulars are in conformity with relevant provisions of the Income-Tax Act





# Recent Amendment

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➤ Notification 33, dated 25/07/2014 has amended the forms for reporting under section 44AB of the Income Tax Act, 1961.

➤ New Form 3CA / 3CB (Audit Reports)

- Form 3CA – in case accounts audited under any other law
- Form 3CB – in case accounts not audited under any

**Form of audit report for a LLP?**

➤ New Form 3CD (Statement of Particulars)

# Form 3CA

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Point 1(a) the audited \*profit and loss account / income and expenditure account for the **period *beginning from -----to ending on -----***  
**-----.**

Point No. 3 In \*my / our opinion and to the best of \*my / our information and according to ***examination of books of account including other relevant documents*** and explanations given to \*me / us, the particulars given in the said Form No.3 CD are true and correct ***subject to the following observations / qualifications, if any:***

**This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.**

**SA 700 (Revised) Forming an Opinion and Reporting on Financial Statements, to be considered**

# Form 3CB

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Point 1 the \*profit and loss account / income and expenditure account for **the period beginning from -----to ending on -----.**

Point No. 5 In \*my / our opinion and to the best of \*my / our information and according to explanations given to \*me / us, the particulars given in the said Form No.3 CD are true and correct *subject to the following observations/qualifications, if any:*

**This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.**

**SA 700 (Revised) Forming an Opinion and Reporting on Financial Statements, to be considered**



# Form 3CD

Clause	Particulars	Issues/Remarks
4	<i>Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. If yes, please furnish the registration number or any other identification number allotted for the same</i>	List of all indirect tax registrations to be obtained If the assessee is liable but is not registered, what will be the auditors' duty in such an event?
8	<i>Indicate the relevant clause of section 44AB under which the audit has been conducted</i>	44AB(a) Total sales / Turnover 44AB(b) Professional receipts 44AB(c) if business is u/s 44AE, 44BB (Exploration of Mineral oil), 44BBB (Foreign companies in Turnkey Power Projects) 44AB(d) Under 44AD and Income is less than 8% of turnover

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
11(b)	<p><i>List of books of account maintained and the address at which the books of accounts are kept.</i></p> <p>(In case book of account are maintained in a Computer system, mention the books of Account generated by such computer system. <i>If the books of accounts are not kept at one location, please furnish the addresses of Locations along with the details of books of Accounts maintained at each location.</i>)</p>	<p>Detail addresses and books of account maintained at various places including Warehouse / Plant / branches needs to be given. (As relevant Excise / Sales Tax regn. requires specified books of account to be maintained)</p> <p>Books of accounts includes ledgers, statutory registers, cash books, and other books whether kept in written form or stored in on any electro magnetic data storage device. Use of excel worksheets is not computer generated record.</p> <p>What about data maintained on centralised software?</p>
11(c)	<p>List of books of account <i>and nature of relevant documents examined</i></p>	<p>Details of documents maintained needs to be obtained.</p>

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
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, <i>Chapter XII-G, First Schedule</i> or any other relevant section).	Chapter XII-G–Shipping Business First Schedule–Insurance.
13(a)	Method of accounting employed in the previous year	Can be cash / mercantile but not hybrid for same business and must be consistently followed. Companies act mandates books to be kept on mercantile basis.
13(b)	Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.	Ensure that any change in the method of accounting employed is appropriately disclosed and the effect thereof on the profit / loss is also disclosed. In case change is not quantifiable, appropriate facts need to be disclosed.
13(c)	If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss	Now format prescribed to report. Details to be given in the form itself and not as in Annexure



# Stock in trade & Valuation (14)

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- AS 2 requires cost formulae FIFO and weighted average for the purpose of valuation of inventories. It also emphasizes absorption costing for inclusion of production overheads.
- Even an assessee following cash system of accounting needs to follow AS 2 for valuation of inventories. Source: ICAI publication on Issues on Tax Audit and SC decision in case of CIT vs. A. Krishanaswami Mudaliar 53 ITR 122.
- New Guidance Note on Accounting for Modvat makes the 'exclusive method' compulsory from 01.04.99. Adoption of inclusive method will call for a qualification in audit report. Although in the long run, both the methods are claimed to be tax neutral, there may be some divergence in profit figures on year to year basis.



# Stock in trade & Valuation

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- In cases of stock details submitted to bank are different than those appearing in the stock records / books of account / financial statements, auditor should obtain suitable explanation from the assessee. In case of material discrepancy, auditor may write a suitable note or qualification.
- State level VAT also needs to be adjusted in the manner prescribed.
- However, VAT on Closing Stock should not be considered as VAT is a liability arising only on sale.

# Form 3CD [Cont'd]

Clause	Particulars	Issues / Remarks
14(b)	In case of deviation from the method of valuation prescribed under section 145 and the effect there of on the profit or loss, please furnish	<p>To report effect of changes in profit &amp; loss due to tax &amp; duty paid.</p> <p>Format Prescribed</p> <p>Details to be given in the form itself and not in Annexure</p>
17	<p>Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C.</p> <p>Furnish</p> <ul style="list-style-type: none"> <li>❖ Detail of Property</li> <li>❖ Consideration received or accrued</li> <li>❖ Value adopted or assessed</li> </ul>	<p>All agreements / documents executed and registered need to be checked.</p> <p>In case of Section 43CA to offer for tax in which year for builder following project completion or percentage completion method.</p>



# Depreciation (18)

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- The key words for reporting in clause 14 are ‘depreciation allowable’ and would require exercise of judgment on the part of the tax auditor. Basis of view may be cited in appropriate cases. Details of past litigations need to be stated for e. g. depreciation on leased assets, classification, rate, effect of subsidy, exchange rate fluctuation. etc.. In case of difficulty in classification of assets tax auditor may rely upon opinion of technical expert and state the fact of such reliance.
- In calculating depreciation allowable under the Income Tax Act, basis would be actual cost as defined in section 43(1). Thus even in case of an assessee following cash system of accounting depreciation will have to be provided on full actual cost i. e. whether paid during the previous year or not.





# Depreciation

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- Unlike AS 16 on borrowing costs, Income Tax Act recognizes only the date on which asset was first put to use and it disregards the factors like length of period of acquiring an asset, suspension of work in construction of an asset etc. This conceptual difference between AS 16 and section 32 will result into difference in amount of depreciation as per books of account / financial statements and depreciation allowable under income tax provisions. Clause 14 specifically requires to state depreciation as per Income Tax provisions. Difference between the depreciation as per books of account and as in Form 3CD should be reconciled by the tax auditor.
- W. e. f. A.Y. 2003-04 in view of amendment the section 43A, exchange difference arising in respect of liabilities incurred for acquiring fixed assets can be adjusted to cost of such assets only to the extent of payment, irrespective of method accounting followed by the assessee.

# Depreciation

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- Tax auditor will have to inter alia consider schedule II to the Companies Act 2013, the concept of block of assets and provisions of section 50 of the Act. Explanation (8) to section 43(1) and proviso to section 36(1)(iii) will also have a bearing on cost of acquisition.
- In terms of AS6 (Para 28) non-corporate entities are also required to disclose the historical cost and accumulated depreciation of each class of assets.
- Sales Tax set off and Modvat credit, have similar characteristics and both would go to reduce cost of fixed assets.
- Section 32 has been amended to provide for additional depreciation on new machinery or plant acquired and installed by assessee engaged in the business of generation of power w. e. f. A. Y. 2013-14.
- Further additional depreciation @ 10% allowable in case of asset put to use for less than 180 days in the previous year and balance additional depreciation of 10% can be claimed in the following year.

# Depreciation

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- **In case of Disputes with Income Tax Department**
- **ICAI has recommended at Paragraph No. 26.7 of the Revised Guidance Note Recommended Note in the ICAI Guidance Note vis-à-vis “Disputes with tax authorities”:**
- **NOTE:** Certain disputes about (a) the rate of depreciation on \_\_\_\_\_ (b) determination of WDV of block of assets relating to \_\_\_\_\_ and (c) ownership of \_\_\_\_\_ have arisen in the assessment years \_\_\_\_\_ for which assessments are pending/appeals are pending. The figures of WDV and/or rate of depreciation mentioned in the above statement may require modification when these disputes are resolved. Therefore, the amount of depreciation allowable as stated in the above statement will have to be accordingly modified.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
19	Amounts admissible under sections 32AC, 33AB, 33ABA, 33AC, 35, 35ABB, 35AC, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E.	Format Prescribed Details to be given in the form itself and not in Annexure
20(b)	<p>Details of contribution received from employees for various funds as referred to in section 36(1)(va)</p> <ul style="list-style-type: none"> <li>❖ Serial No.</li> <li>❖ Nature of Fund</li> <li>❖ Sum received from employees</li> <li>❖ Due Date for Payment</li> <li>❖ Actual Amount Paid</li> <li>❖ Actual date of payment to the concerned Authorities</li> </ul>	<p>Format Prescribed</p> <p>Details to be given in the form itself and not in Annexure</p> <p>Grace period of 5 days has been removed in case of Provident Fund from February, 2016</p>



# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
21(a)	<p>Please furnish the details of amounts Debited to the profit and loss account, being In the nature of capital, personal, <i>Advertisement expenditure</i> etc.</p> <ul style="list-style-type: none"> <li>·</li> <li>·</li> </ul> <p>Expenditure incurred at clubs being cost for Club services and facilities used.            Expenditure by way of penalty or fine for violation of any law for the time being force            Expenditure by way of any other penalty or fine not covered above            Expenditure incurred for any purpose which is an offence or which is prohibited by law</p>	<p>Format Prescribed and Clause 17 (a) to 17(e) merged.</p> <p>All advertisements was to be considered as per new 3CD format. Earlier old clause 17(c) asked only for Political advertisements. However the e-filing utility and guidance note considers to report advertisement of political parties only.</p> <p>Reporting of entrance fees and Subscriptions to clubs omitted.</p> <p>Tax auditor to report details of payment made and not to report on its allowability of expenses</p>

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
21(b)	<p>Amounts inadmissible under section 40(a):-</p> <p><b>(i) As payment to non-resident</b> referred to in sub-clause(i)</p> <p>(A) Details of payment on which tax is not deducted.</p> <p>(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)</p>	<p><b>Details asked:</b></p> <ul style="list-style-type: none"><li>❖ Date of payment</li><li>❖ Amount of payment</li><li>❖ Nature of payment</li><li>❖ Name and address of payee</li><li>❖ Amount of Tax deducted, if any</li></ul>

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
21(b)	<p>(ii) As payment referred to in sub-clause (ia)</p> <p>(A) Details of payment on which tax is not deducted.</p> <p>(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.</p>	<p>Details asked:</p> <ul style="list-style-type: none"> <li>❖ Date of payment</li> <li>❖ Amount of payment</li> <li>❖ Nature of payment</li> <li>❖ Name and address of payee</li> <li>❖ Amount of Tax deducted, if any</li> </ul>
	<p>(iii) Under sub-clause (ic) [Wherever applicable]</p> <p>(iv) Under sub-clause (iia)</p> <p>(v) Under sub-clause (iib)</p> <p>(vi) Under sub-clause (iii)</p> <p>(vii) Under sub-clause (iv)</p> <p>(viii) Under sub-clause (v)</p>	<p>(ic) Fringe Benefit Tax</p> <p>(iia) Wealth Tax</p> <p>(iib) Royalty, License Fees etc.</p> <p>(iii) Salaries to NR on which Tax not deducted nor paid.</p> <p>(iv) Payment to PF</p> <p>(v) Tax by employer referred in 10(10CC)</p>

# TDS

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- S. 40(a) (ia) has been amended by Finance Act 2010, w. e. f. A. Y. 2010 – 11 stating that deduction on account of rent, brokerage, commission, fees for technical service, fees for professional fees, royalty or work, shall be allowed only if TDS has been deducted and paid on or before the due date of filing return.
- The section has been amended w. e. f. A. Y. 2013-14 stating that no disallowance u/s. 40(a)(ia) shall be made if, the recipient has:
  - Furnished his return;
  - Taken into account such sum for computing income in such return of income; and
  - Paid the tax due on the income declared by him in such return of income, and furnishes a certificate to this effect from an accountant in such form as may be prescribed.
- Rule 31ACB has prescribed Form 26A for the above purpose.



# TDS

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- Further w. e. f. 01st April, 2015 Section 40(a)(ia) has been amended to include all payment liable for deduction under Chapter XVII – B for disallowance in case of non deduction or non payment of TDS under the said section. However the disallowance has been restricted to 30% of the sum payable.
- Obtaining of Tax Residency Certificate from tax authorities of the overseas jurisdiction made mandatory for non-residents to claim benefits under the DTAA's u/s 90(4) & 90 (5).
- S. 193 has been amended wef 01/07/2012, stating that
  - ❖ No deduction of tax on payment of interest on any debenture, (whether listed or not), if the aggregate amount of interest on such debenture paid by an account payee cheque during the financial year does not exceed Rs. 5,000.

# TDS

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- S. 194E has been amended wef 01/07/2012, stating that
  - ❖ Payments made to non-resident sportsmen or an entertainer who is not an Indian citizen or non-resident sports association/institution are now subject to TDS at the rate of 20% as against the earlier rate of 10%.
- S. 194J has been amended wef 01/07/2012, stating that
  - ❖ Any remuneration/fees/ commission by whatever name called other than those mentioned under section 192, paid to directors - covered under the purview of fees for professional or technical services.
- S. 194C has been amended wef 01/06/2015, stating that
  - ❖ TDS not deductible in case of a transporter only who are not owning more than 10 goods carriage at any time during the previous year. Further the transporter should furnish declaration with regards to same.
  - ❖ Further the same should be mentioned in eTDS return also.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
21(d)	<p>Disallowance / deemed income under section 40A(3):</p> <p>(A) On the basis of the examination of books of account and other relevant documents / evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft.</p>	<p>Requirement of obtaining Certificate omitted.</p> <p>Sufficient representations be obtained from Management.</p> <p>Format Prescribed</p> <p>❖ Details to be given in the form itself and not in Annexure</p>

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
21(d)	(B)On the basis of the examination of books of account and other relevant documents / evidence, whether the payment referred to in section 40A(3A)read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft if not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A);	Payments made in current year in respect of liabilities incurred in the previous year.
24	Amounts deemed to be profits and gains under Section <b>32AC</b> or <b>33AB</b> or <b>33ABA</b> or <b>33AC</b> .	Withdrawal of Investment Allowance u/s 32AC also to be reported.



# S. 14A (21 (h))

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- Clause 17(l) (now 21(h)) introduced, vide Notification No. 208/2006, dated 10/08/2006.
- Deductions inadmissible in respect of expenditure incurred in relation to income which does not form part of total income is to be mentioned.
- Sub sections (2) and (3) inserted in Section 14A vide Finance Act, 2006 w. e. f. A. Y. 2007 – 08.
- Rule 8D wef 24.03.2008 inserted vide Income Tax(Fifth Amendment) Rules, 2008.
- New Rule 8D wef 02<sup>nd</sup> June, 2016 inserted vide notification no. 43/2016. **Whether applicable for A. Y. 2016 – 17?**
- Calculation of amounts in admissible is the obligation of the Assessee and the Auditor is only supposed to verify.
- The auditor may give a qualified opinion if he is of the opinion that the effect of any disagreement with the assessee is material. Alternatively he can either give an adverse opinion or a disclaimer of opinion, depending on the circumstances of the case.

# S. 14A (21 (h)) (Contd.)

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Presumption of own funds versus Borrowed Funds

Reliance Utilities & Power Ltd (2009)(313 ITR 340)(Bom HC)

HDFC Bank Ltd. (2016)(67 taxmann.com 42)(Bom HC)

Whether Interest on funds borrowed for business of trading in shares disallowable  
Rule 8D?

Vivek Mehrotra VS ACIT (ITA 6332 dt 11.1.2013)

Can disallowance under Rule 8D exceed exempt income?

Daga Global Chemicals P. Ltd. (2015)(ITA No. 5592/Mum/2012)(Mum ITAT)

Joint Investments Pvt. Ltd. (2015)(372 ITR 694)(Del. HC)

A contrary view has however been expressed in:

Sanchayita Mercantile P. Ltd. [2008](25 SOT 57) (Mum. Trib.)

# S. 14A (21 (h)) (Contd.)

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Disallowance in excess of expenditure claimed

**Gillette Group India (P) Ltd (2012)(51 SOT 221)(Del ITAT)**

**Manugraph India Ltd (2015)(ITA No.4761/Mum/2013)(Mum. ITAT)**

Further new rule 8D provides that disallowance under section 14A shall not exceed the total expenditure claimed by the assessee

Disallowance in the absence of exempt income

**Delite Enterprises (ITA No. 110/2009)(Bom HC)**

**Cheminvest Ltd (2015)(378 ITR 33)(Del. HC) – Special Bench reversed**

Further, CBDT Circular No. 5/2014 dated 11 February 2014 clarifies that for disallowance under section 14A, it is not material that exempt income should have been earned during the year under consideration



# MSMED Act (22)

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- Clause 17A introduced vide Notification No. 36/2009, dated 13/04/2009. Amended to Clause 22.
- Auditor to report only if interest debited to Profit and Loss Account.
- Responsibility of auditee to classify and identify parties who are covered under the Act. Auditor is not to certify whether provision made in accounts or not.
- MSMED Act, 2006 came into effect from October, 2006.
- *S. 23 of the MSMED Act states “Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.*

# Related Parties (23)

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- S. 40A(2)(a) has been amended to
  - ❖ provides that the transactions referred to in Section 92BA (called Specified Domestic Transactions) with persons referred to in 40A(2)(b) shall be at Arm's Length Price as defined u/s 92F.
- S. 40A(2)(b) has been amended to include
  - ❖ Any other company carrying on business in which the first mentioned company has substantial interest will also be covered.



# S. 43B (26)

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- Payments covered are Tax, Duty, Cess or fees, Employers contribution to PF, SA Fund, Gratuity Fund, Bonus & Leave Salary payable to employees, Interest on loan from Public Financial Institution or Schedule Bank,
- Explanation 3C and 3D inserted vide Finance Act, 2006 to include any interest which has been converted into a loan or borrowing or advance but has not been actually paid shall not be allowed as deduction in the computation of income.

# S. 43B (26)

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Service Tax/Sales tax

CIT v/s Noble & Hewitt (I) Pvt. Ltd. (2008) 166

Taxman 48 (Delhi)

Service Tax not routed through P/L account in an exclusive method, whether covered u/s 43B ?

CIT v/s Associated Pigments Ltd. 71 Taxman 244 (Cal)

“Where the Assessee has credited Sales Tax collection & debited Sales Tax payment in a separate Sales Tax account, the provisions of Sec. 43B are applicable?”

Leave salary: Bharat Earth Movers 245ITR428 (2000) SC

Exide Industries Ltd v/s UOI

(2007)292ITR 470 Calcutta

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
27(a)	Amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value added Tax credits in the accounts.	MODVAT replaced with CENVAT
28	Whether during the previous year the assessee has received any property ,being share of a company not being a company in which the Public are substantially interested, without Consideration or for inadequate consideration As referred to in section56(2)(viiia),if yes, Please furnish the details of the same.	Valuation report of the shares be verified. Whether Section 56(2)(viiia) applicable to bonus shares.



# MODVAT / CENVAT

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- To include Cenvat availed on both raw material and fixed assets.
- ICAI suggests giving details of Opening and Closing balances to avoid confusion.
- RG register figures may not tally with book figures if credit written off in books in view of perceived inability to utilise the same.
- Treatment of Cenvat credits during financial year in P & L A/c & outstanding credits in balance sheet to properly assess the income of the concerned assessee.



# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
29	Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish the details of the same.	Valuation report of the shares be verified. Rules 11U and 11UA provide the Valuation rules. Auditor should have Valuation of Shares of company which he is not an auditor?
31(c)	Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on bank or account payee bank draft based on the examination of books of account and other relevant documents.	Requirement to obtain certificate omitted and direct responsibility shifted on auditor. Adequate representation to be obtained.

## B/F Depreciation Allowances(32(a))

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- If the figures are likely to change due to assessment, reassessment, rectification or appeal proceedings fact to be mentioned.
- Data should be verified from past returns filed, Assessment / Appeal Orders, if any.
- Need not opine on admissibility Notification No. 21/2012.
- Check that the returns were filed within time limits prescribed u/s. 139(1). Intimation to be considered as assessed on expiry of time limit u/s. 143(2). For late filing of returns unabsorbed depreciation can be c/ f but not losses under various heads. Under this clause only b/ f to be reported and not c/f. Explaining the purpose of its introduction is inter alia to facilitate the income tax department.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
32(c)	Whether the assessee has incurred any Speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same	Proper securities records need to be obtained.
32(d)	Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, If yes, please furnish details of the same.	Looses incurred on specified businesses eg. u/s35AD.
32(e)	In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.	Details of loss incurred in trading in shares of other companies by a company.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
33	Section-wise details of deductions, if any, admissible under Chapter VIA <i>or Chapter III (Section 10A, Section 10AA)</i>	Format Prescribed Details to be given in the form Itself and not in Annexure
34(a)	Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish	Details to be provided based on Section and nature of transaction of more than one TAX obtained. Separate information needs to be given TAN wise.
34(b)	Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time.	Reporting to be done only when TDS / TCS returns not filed within due date. (S.234E) All transactions liable for TDS to be reported.
34(c)	Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).	Interest Liability needs to be worked out on each late payments



# Verification of TDS compliance

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Details to be furnished as per provisions of Chapter XVII-B and XVII-BB:

- Obtain a copy of TDS/TCS return filed and check whether filed till due date and completeness with regards to TDS deducted and paid as per books.
- Scrutinize the Creditors and Expenses to determine the TDS liability on the transaction.
- Verify the tax deduction in relation to relevant provisions of the Act and verify challan to ascertain the amount of short deposit of tax.
- The auditor shall provide further details in Clause 34(b) only with regard to the statement filed after prescribed time or not filed.
- The information given in clause 34 should tally with the disallowances reported u/s 40(a) in clause 21(b) to the extent applicable.
- Verify the interest paid/payable as per the provisions of section 201(1A) and 206C(7). Also justification report from traces website can be downloaded for verification of defaults in tax deduction / payment and Part E of Form 26AS.

# Quantitative Details of Stock (35)

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- Principal items means more than 10% in value of purchases, consumption or sales.
- Quantitative details as per stock records should be reconciled with financial records and also with excise records and cost records, where applicable. In case of company assessee also reconcile with notes forming part of audited accounts.
- Raw materials would include anything that enters finished goods. So components will be included in raw materials.
- Details of scrap not required to be stated.
- A job worker need not report in this clause
- Where quantitative denominations of inputs and outputs are different for e.g. input in meters and output in numbers, tax auditor can state that it is not possible to ascertain yield / shortage unless there is an alternate method of conversion of the finished goods into the same unit of raw materials.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
36	<p>In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form:-</p> <p>(a) Total amount of distributed profits;</p> <p>(b) <b>Amount of reduction as referred to in Section 115-O(1A)(i);</b></p> <p>(c) <b>Amount of reduction as referred to in Section 115-O(1A)(ii);</b></p> <p>(d) Total tax paid thereon;</p> <p>(e) Dates of payment with amounts.</p>	<p>15-O(1A)(i)-Dividend received from subsidiary company on which DDT has been paid</p> <p>15-O(1A)(ii)-Dividend paid to any person for or on behalf of New Pension system trust referred to in clause 10(44).</p>

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
37	Whether any cost audit was carried out if yes, give the details, if any, of disqualification or disagreement on any matter / item / value / quantity as may be reported / identified by the cost auditor.	Cost Audit Report needs to be studied and analysed. Requirement to attach copy omitted
38	Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter / item / value / quantity as may be reported / identified by the auditor.	Central Excise Audit Report needs to be studied and analysed. Requirement to attach copy omitted



# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
39	Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, Finance Act, 1994 in relation to valuation of taxable services, if yes give the details, if any, of Disqualification or disagreement on any matter / item / value / quantity as may be reported / identified by the auditor.	Service Tax Audit Report needs to be studied and analysed.
40	Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:	Total Turnover to be additionally reported Previous Year figures to be given.

# Ratios (40)

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- Gross Profit according to ICAI Guidance Note is “The excess of the proceeds of goods sold and services rendered during the period over their cost, before taking into account administration, selling, distribution and financial expenses. When the result of this computation is negative, it is referred to as Gross Loss.”
- Turnover according to ICAI Guidance Note is “The aggregate amount for which sales are affected or services rendered by an enterprise. The Terms Gross Turnover and Net Turnover (or Gross Sales and Net Sales) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts.”

# Ratios (40)

- Net Profit according to ICAI Guidance Note is “The excess of revenue over expenses during a particular accounting period. When the result of this computation is negative, it is referred to as Net Loss”.
- The Net profit to be shown here is Net profit before tax.
- Stock in trade according to ICAI would include only closing stock of Finished Goods.
- Value of finished goods produced may be arrived at after considering Raw Material Consumption, Stores Consumption, Wages and Other Manufacturing Expenses excluding Depreciation and the net increase or decrease in WIP.

# Form 3CD [Cont'd]

Clause	Particulars	Issues/Remarks
41	Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act,1961 and Wealth tax Act,1957 along with details of relevant proceedings.	<b>Obtain proper representation. Details of proceedings to be given.</b>



# Disclaimer

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# Thank You