

JB Nagar CPE Study Circle

Provisions relating to Tax Audit

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History of Section 44AB

- Introduced by Finance Act, 1984 w. e. f. AY 1985-86
 - Proper maintenance of books of accounts and other records to reflect the income of the tax payer and to facilitate the administration of tax laws by a presentation of the accounts.
- Significant events:
 - Omitted form 3CC & 3CE, new forms 3CA, 3CB & 3CD substituted in 1999
 - Revised 3CA, 3CB & 3CD in 2004.
 - Revised 3CD in 2006
 - Revised 3CD in 2014

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; or
- (b) carrying on profession shall, if his gross receipts in profession exceed twenty-five lakh rupees in any [previous year; or
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [section 44AE](#) or [section 44BB](#) or [section 44BBB](#), as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or]
- (d) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [section 44AD4](#) and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,]

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

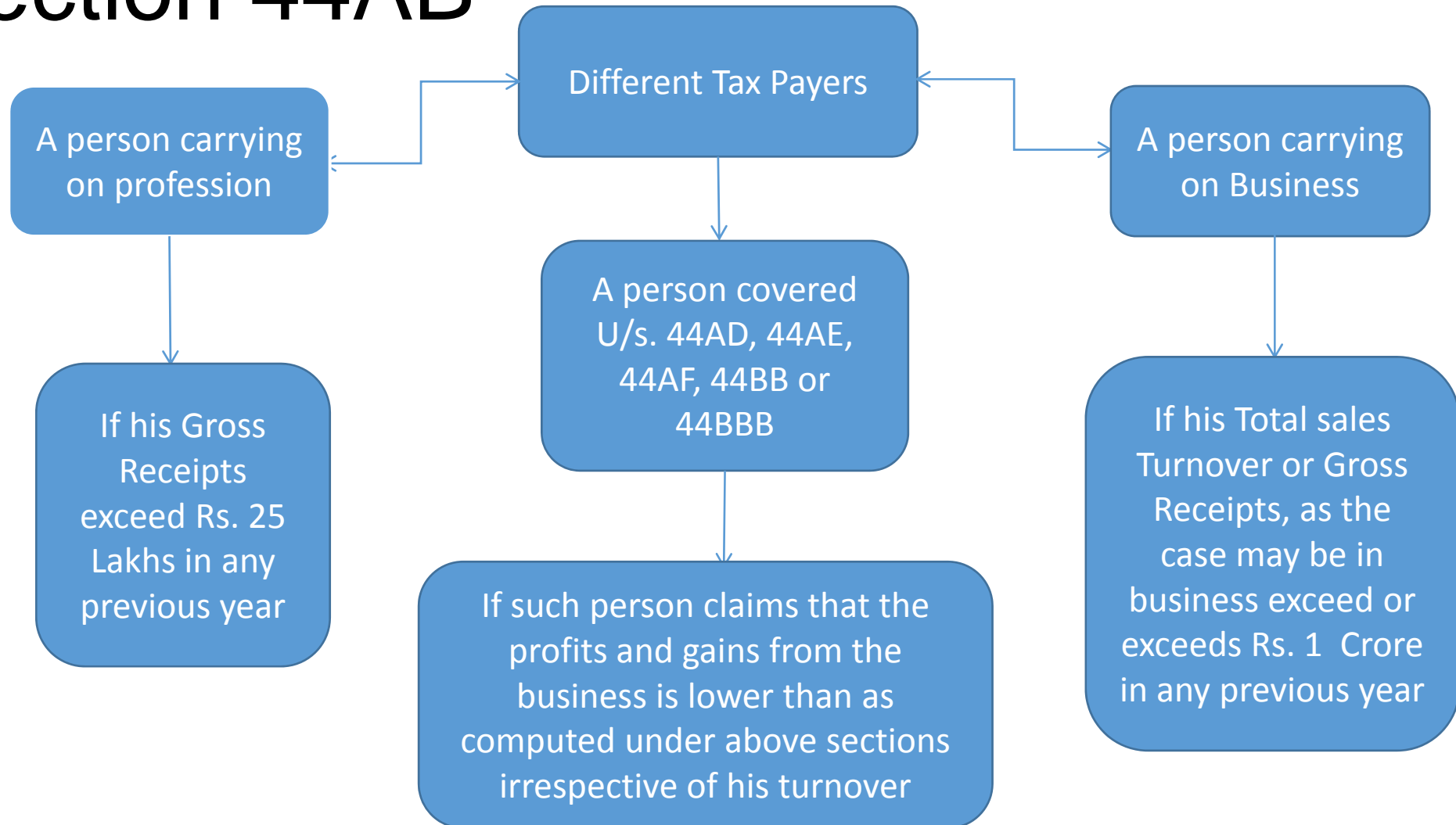
Section 44AB (contd...)

- **Provided** that this section shall not apply to the person, who derives income of the nature referred to in [section 44B](#) or [section 44BBA](#), on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :
- **Provided further** that] in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.
- *Explanation.*—For the purposes of this section,—
- (i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of [section 288](#);
(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of [section 139](#)].

Every Person

- Every person means all types of assessee who satisfies other conditions

Section 44AB



Business and Profession defined

- Section 2(13) : “Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture”
- Section 2(36) : “Profession includes vocation”
- CIT Vs. Manmohan Das (1966) 59 ITR 699 (SC) : Profession involves
 - Intellectual skill or
 - Manual skill controlled by intellectual skill
 - Different than an operation which is substantially the production or sale or arrangement for production or sale of commodities.
- Notified Professions:
 - Accountancy, Architectural, Company Secretary, Engineering, Film Artists/actors, cameraman, Interior decorator, legal, medical, Technical. I. Technology

Gross Receipt in case of Business

- Sales, Turnover and Gross Receipts are commercial terms in accordance with the method of accounting followed
- Gross receipt include:
 - Profit on sale of Import Licence
 - Cash Assistance / Duty Drawback for Excise or customs duty
 - Exchange Difference Gain / Loss for exports of goods
 - Liquidated Damages
 - Insurance Claim if it is on revenue account
 - Advance Received from customers and forfeited
- Some issues
 - In case of builders, rent received on vacant flats/shops
 - In case of Stock and security traders, dividend/interest received
 - In case of buying and selling of shares, Capital gains v Business income
 - CBDT Circular dated 31/8/1989
 - CBDT Circular dated 15/06/2007
 - CBDT Circular dated
 - CBDT Circular dated

Gross Receipt in case of Business (contd.)

- Some typical examples:
 - Sales found in case of search
 - Brijlal Goyal Vs Asst CIT 88
 - Sales out of books not considered as turnover
 - In case of Share Broker
 - For Client
 - On own account
 - In case of FII's dealing in shares/ securities
 - Finance Act 2014 included securities as capital assets
 - In case of Speculative transactions
 - In case of Derivatives, Futures & Options

Gross Receipt in case of Profession

- In case of more than two separate and distinct professions
 - Asst. CIT vs. K Satish Shetty (Karnataka) (in case of Business)
 - ICAI view
- All receipts from profession
- Whether reimbursement of expense included in Gross Receipts?
- Whether a company can carry on profession?
 - ITO v. Ashalok Nursing Home P. Ltd. 156 Taxman 86
- Whether an LLP can carry on a profession?
 - An LLP may practice as a CA w. e. f. 1/2/2012 as per ICAI

Gross Receipt incase of carrying Business & Profession combined

- Carrying on B & P

Carrying on	Gross Receipts of Business	Gross Receipts of Profession	Gross Receipts of Business & Profession	Applicability
B & P	< 1 Crore	< 25 Lakhs	< 1 Crore	44AB not applicable
B & P	> 1 Crore	< 25 Lakhs	> 1 Crore	44AB applicable to both
B & P	< 1 Crore	> 25 Lakhs	< 1 Crore	44AB applicable to both
B & P	< 1 Crore	< 25 Lakhs	> 1 Crore	44AB applicable to both

Gross Receipt incase two businesses are carried out

- Carrying on B & B:

Carrying on more than 1 Business	Gross Receipt of Business 1	Gross Receipt of Business 2	Gross Receipt of Business 1 & 2	Applicability
B & B	< 1 Crore	< 1 Crore	< 1 Crore	44AB not applicable
B & B	> 1 Crore	< 1 Crore	> 1 Crore	44AB applicable

- Note:

- 1. Business where Presumptive taxation is applicable, not to be included
- 2. Partnership not included

Applicability of S. 44AB in typical cases

- Assessee enjoying exemption u/s. 10/11
 - ICAI's view
 - Mumbai Tribunal's view in case of India Magnum Fund
- Assessee enjoying deduction u/s. 80P etc.
- Agricultural Business
 - Having no Business income but sales more than a crore
- In case of Non Resident assessee
- Ultimate income below taxable limit
- Two Partnerships having same business & identical ownership

Accountant

- Sec 2(17) of Companies Act, Accountant is CA
- CA in fulltime practice can do attest function – Council’s meeting #242
- Amendment in Sec. 288 w.e.f. 1/6/15
- Due to New Companies Act, all disqualifications u/s. 141 of Cos Act will be applicable to a company assessee
- Tax audit assignment per CA in full time practice is 60
 - Increased from 45 w.e.f. 1/4/14
 - Audit u/s. 44AD, 44AE, 44AF or other statute not counted
- CA to maintain record of Tax Audit assignments
- Action on incomplete report by an accountant – Press Release dt. 10/12/99

Penalty

- S. 271B - Failure to get accounts audited u/s. 44AB without reasonable cause
 - 0.5% of the sales/gross receipts or Rs. 1,50,000/- whichever is less.
- Reasonable Cause
 - Resignation of Tax Auditor
 - Strike, Lock-out for a long time
 - Death/Physical inability of a partner in charge
 - Natural calamities
 - Seizure of accounts
 - Interpretation of Turnover/ Gross Receipts

Clauses of Form 3CD

Clause 1 to 3 and 5 to 8

1. Name of the assessee

2. Address

3. PAN

5. Status

6. Previous Year

7. Assessment Year

8. Indicate the relevant clause of section 44AB under which the audit has been conducted

Clause 4

- *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*

Clause 4

- Whether Auditor is suppose to know applicability of Indirect Taxes?
(GN 2014)
- Indirect Taxes where Registration number is not required, e. g.
Customs/IEC
- Relevance incase of Scrutiny.

Clause 9

- (a) If firm or Association of Persons, indicate names of partners/ members and their profit sharing ratios.*
- (b) If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.*

Clause 9 (contd...)

- Whether following amounts to change in constitution?
 - Change in Remmuneration/interest to partners without change in Profit sharing ratio?
 - Partner in representative capacity retires and individual partner is admitted, or vice versa?
 - Minor admitted on attaining majority?
- Recent clarification **dated 15th January, 2016 vide General Circular No. 2/2016 by MCA**, stating HUF can not be a partner in a firm

Clause 10

(a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).

(b) If there is any change in the nature of business or profession, the particulars of such change.

Clause 10 (contd...)

- Change during the year and not after Balance Sheet date
- Whether the following amounts to change in nature of business?
 - New business with immaterial revenue?
 - Manufacturer also started selling few RM?
 - Discontinuance of business for temporary period?
 - Discontinuance of business for longer period?
 - Reconstruction of entity but no change in activity?

Clause 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 accounts 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 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.)

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

Clause 11(a) - Section 44AA

Sec 44AA

Specified Profession

Legal, Medical, Engineering,
accountancy, technical consultancy

Limit Rs 1,50,000 Receipts

Exceeds

Prescribes Books Rule 6F Cash
Book, Journal, Ledger
Additional for Medical- Daily
cash register and Inventory

Does not
Exceeds

Books to substantiate
the business
transactions

Non Specified Profession or Business

Limit Total income Rs 1,20,000 or
Total Sale Receipts Rs 10,00,000

Exceeds

Does not
Exceeds

No books are
mandatory

Clause 11 (contd...)

- Clause (b) and (c)
 - applicable to all assesseees other than Rule 6F is applicable
 - Books of accounts maintained and place of keeping to be mentioned
 - Books of accounts and documents verified, documents includes bills, vouchers, supplementary books, agreements etc.
- Assessee having both business and profession
- Whether printouts of books are necessary?
 - Section 4 of Information Technology Act, 2000.
'available in an Electric form and usable for subsequent reference'

Clause 11 (contd...)

- Accounts v. Books of Accounts
 - Books of Accounts defined u/s 2(12A)...includes ledgers, day books, cashbooks other books maintained on written or print-outs of data stored on.... Electro magnetic devices.
 - Accounts are not defined. Real, Personal and Nominal
 - S. 44AB requires accounts to be audited and not books of accounts
 - Form 3CB wants Auditor to certify... are in agreement with books of accounts

Clause 12

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

Note: From A. Y. 2017/18 the Finance Act 2016 has introduced Sec. 44ADA

Clause 12

o.	Section	Business Covered
44AD		Special Provision for Comp P&L of business on presumptive basis
44AE		Plying, hiring or leasing goods carriages.
44AF		Retail trade.-upto 2010-11 (then sec 44 AD applicable)
44B		Shipping business in case of non-residents.
44BB		Providing service or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils
44BBA		Operation of aircraft in case of non-residents
44BBB		Civil construction etc. in certain turnkey power project of foreign companies.
Chapter XII-G		Provisions Relating to Income of Shipping Companies
First Schedule		Insurance Business
Any other relevant section		This refers to the sections not listed above presumption basis like Sec 44D and sec115A(I)(b) and will include any other section that may be enacted in future.

Clause 12

- The Tax Auditor may come across three different situations as follows:

Sr. No.	Situation	Action to be taken by Tax Auditor
(a)	Assessee maintains regular books of accounts and has more than one business which includes business assessable on presumptive basis and P&L prepared from such BOA , includes income of business assessable under presumptive taxation	This may give rise to the problem of apportionment of common expenditure in order to arrive at the correct amount of profit credited to P&L account and assessable on presumptive basis. The endeavor of the Tax Auditor should be to arrive at a fair and reasonable estimate of such expenditure on the basis of evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked by him. It is also necessary to mention the basis of apportionment of common expenditure. However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate such fact under this clause by a suitable note.

Clause 12 (contd..)

Sr. No.	Situation	Action to be taken by Tax Auditor
(b)	Where the assessee has more than one business including some business(es) falling under any of the aforesaid sections, but maintains separate sets of accounts for each such business and opts for getting the accounts of all such businesses audited under section 44AB	In this case, since separate set of accounts are maintained for respective businesses, it poses no problem for tax auditor in ascertaining the amount of profit to be disclosed.

Clause 12 (contd..)

Sr. No.	Situation	Action to be taken by Tax Auditor
(c)	Where the assessee, having regular books of accounts for his main business, has some additional business of the nature described in any of the aforesaid sections and no books of accounts whatsoever is maintained for such additional business but the net income is credited to the main P&L account of the assessee.	Here, the tax auditor is unable to satisfy himself about the correctness of the net income from presumptive business credited to P&L account. He should, therefore state the amount of income as appearing the P&L account, with a suitable note expressing his inability to verify the said figure. In absence of BOA the tax auditor would be unable to form an opinion about the true and fair view of the P&L account or Balance Sheet of the assessee and therefore, it would become necessary for him to qualify in Form No. 3CB

Clause 13

- a) *Method of accounting employed in the previous year.*
- b) *Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.*
- c) *If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.*
- d) *Details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145 and the effect thereof on the profit or loss.*

Clause 13 (contd...)

- Section 145 from A. Y. 1997/98 prescribes method of accounting for Business Income and other sources.
 - Cash System
 - Mercantile System
- Companies, LLP bound to follow Mercantile System under respective Act
- Other Assesseees may follow cash system

Clause 13 (b) (contd...)

Method of Accounting

- A change in method of accounting need not have the approval of I.T. authorities
 - *CIT v. Carborandum Universal Limited 149 ITR 759 (Mad.)*
- If a regular method is changed for a permanent period and which is to be followed consistently, it has to be accepted by the department, even if it results in a reduction of tax liability
 - *Snow white Food Products Limited 141 ITR 861 (Cal.)*
 - *CIT v. Carborandum Universal Limited 149 ITR 759 (Mad)*

Clause 13 (c) (contd...)

Method of Accounting

- Change in method of accounting is to be reported
 - What if the earlier year's accounts were not under audit – How would TA certify that there is no change in the method of accounting.
- Change in accounting policies is not change in method of accounting

Clause 13 (contd...)

Clause (c)

- Details in respect of change and effect thereof
 - Effect on P & L and not on Taxable income
 - Effect to be disclosed only if material
 - Effect can not be quantified, proper disclosure to be made

Clause (d)

- Details of deviation in method employed from accounting standards prescribed u/s. 145 & its effect on profit / loss is to be reported. Two Accounting Standards prescribed till now
 - AS IT (I) - Disclosure of Accounting Policies
 - AS IT (II) – Disclosure of prior period and extra ordinary items and changes in accounting policies
- Section 145 amended by Finance Act 2014 – Now it is Income Disclosure and Computation Standards – deferred till A. Y. 2017/18

Clause 14

(a) Method of valuation of closing stock employed in the previous year.

(b) In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

- *Particulars*
- *Increase in profit (Rs.)*
- *Decrease in profit (Rs.)*

Clause 14

- S. 145A requires to follow the method of accounting regularly for valuation of stock and to be adjusted for duty, cess actually paid.
- Method of valuation not defined in the GN
- Method covers, accounting principles- cost or market value whichever is less and application – FIFO, LIFO etc.
- AS 2 Valuation of Inventories – two methods
 - Exclusive
 - Inclusive
- Inclusive method violates AS 2
- Guidance Note on accounting of CENVAT, inclusive method is withdrawn w. e. f. 1/4/99
- Exclusive Method
 - Reporting under clause 16(a) and disallowance u/s 43B clause 23

Clause 14 (contd...) Valuation of Inventory – Section 145A

- Section 145A - What if closing inventory is valued at market price – Whether taxes to be included for valuation?
- Modvat Credit on Closing stock of Raw Material - Whether to be included when assessee follows Net Method
 - CIT Vs. Indo Nippon Chemical Co. Ltd. (2000) 245 ITR 384 (Bom) approved in 261 ITR 275 (SC)
 - CIT Vs. Shri Ram Honda Power Equipment Ltd. (2013) 352 ITR 481(SC)

Clause 15

- *Give the following particulars of the capital asset converted into stock-in-trade: -*
 - *Description of capital asset;*
 - *Date of acquisition;*
 - *Cost of acquisition;*
 - *Amount at which the asset is converted into stock-in-trade.*

Clause 15 (contd...) Conversion of Capital Asset into Stock in Trade

- Capital assets as per Section 2(14)
 - Recent Amendments
 - Right in or in relation to an Indian Company with retrospective effect
 - Securities held by FII, **capital assets FA 2014**
 - Securities as stock in trade or capital assets
- Form requires to mention the cost of acquisition of Capital Asset
- Section 55(2)(b)
 - FMV as on 1-4-1981
 - Cost of previous owner – section 49
 - FMV at the time of distribution of CA by limited company
 - Consolidation of shares or split up etc.

Clause 16

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

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

Clause 16 (contd...)

- Amounts not Credited to Profit & Loss A/c.
 - ✓ Company / Firm eligible to Free Vacation due to achieving target sales – utilised by Director / Partner – Section 28
 - ✓ Escalation claims accepted – what if Cash system is followed ?
 - ✓ Whether LIC Maturity etc. to be reported as Capital Receipts
 - ✓ Incomes credited directly to capital account of proprietor
 - Exempt Incomes
 - Taxable Incomes
 - ✓ Does capital receipts cover – items like Share capital, gift etc.

Clause 17

Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:

- *Details of property*
- *Consideration received or accrued*
- *Value adopted or assessed or assessable*

Clause 17 (contd...)

Section 43CA or 50C

- Reference to valuation officer – Each flat can have different value depending on various factors - How many valuations for the same project ?
- Does this cover (a) TDR (b) Tenancy Right?
- Also extends to section 50C – Scope of section 44AB extended to capital gain transactions.

Clause 18

Particulars of depreciation allowable as per the Income-tax Act, 1961 in respect of each asset or block of assets, as the case may be, in the following form :-

- a) Description of asset/block of assets*
- b) Rate of depreciation.*
- c) Actual cost or written down value, as the case may be.*
- d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of—*
 - i. Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,*
 - ii. change in rate of exchange of currency, and*
 - iii. subsidy or grant or reimbursement, by whatever name called.*
- e) Depreciation allowable.*
- f) Written down value at the end of the year.*

Clause 18 (contd..)

Depreciation

- Is it mandatory to claim depreciation – Is it mandatory to claim at rates prescribed. – Lesser rate whether permissible?
- Foreign Exchange Fluctuation Loss on borrowings against Fixed Assets – Section 43A
- Date of asset put to use – How to confirm
- Car Registered in Partner's name – Reflected in Firm's Balance Sheet – What about Depreciation
- Depreciation incase of capital expense in lease premises
- When some of the assets of the Block is not used
- Interest on borrowed capital for acquiring fixed assets
 - Capitalised till asset put to use Sec. 36(1)(iii)

Clause 19

- *Amounts admissible under sections-*
- *(a) 32AC, (b) 33AB, (c) 33ABA, (d) 35(1)(i), (e) 35(1)(ii), (f) 35(1)(iia), (g) 35(1)(iii), (h) 35(1)(iv), (i) 35(2AA), (j) 35(2AB), (k) 35ABB, (l) 35AC, (m)35AD, (n)35CCA, (o)35CCB, (p)35CCC, (q) 35CCD, (r) 35D, (s) 35DD, (t)35DDA, (u)35E:*
- *Amount debited to profit and loss account*
- *Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf.*

Clause 19 (contd...)

- What if separate auditor is appointed to conduct the audit under the relevant sections ?
 - Can Tax Auditor rely on his certificate under the relevant section
 - Non availability of his report at the time of finalisation of the Tax Audit – How to address
- Section 35D, 35DD, 35DDA etc – If this is not the first year of audit and earlier year audit was done by a different auditor – Does the auditor need to verify the expenses incurred in the earlier year or he can rely on the earlier year's audit for computation of eligible deduction

Clause 20 (a)

Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)]

Clause 20 (b)

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

- *Serial number*
- *Nature of fund*
- *Sum received from employees*
- *Due date for payment*
- *The actual Amount paid*
- *The actual date of payment to the concerned authorities*

Clause 20 (b) (contd...)

- Section 2(24)(x) – Employees' contribution is Income
- Section 36(1)(va) – Deduction allowable if paid within Due date under relevant law
- Days of Grace under the relevant Law ?
 - Days of grace removed by PF
- Decisions:
 - ITO Vs. LKP Securities Ltd. 36 CCH 93 (Mum.) - Employee's contribution is not covered by section 43B - D date as per the relevant law – Days of Grace allowed
 - CIT Vs. Sabari Enterprises 298 ITR 141 (Kar)
 - CIT Vs. Vijay Shree Ltd. – Cal HC- ITA No. 245/2011 – itatonline.org
 - CIT Vs. Mark Auto Industries Ltd. 358 ITR 43 (P & H)
 - CIT Vs. Hindustan Organics Chemicals Ltd. (Bom HC) – ITA No. 399 of 2012 dated 22-6-2014 – itatonline.org

Clause 21 (a)

Please furnish the details of amounts debited to the profit and loss account, being in the nature of

- *Capital expenditure*
- *Personal expenditure*
- *Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party*
- *Expenditure incurred at clubs being entrance fees and subscriptions*
- *Expenditure incurred at clubs being cost for club services and facilities used*
- *Expenditure by way of penalty or fine for violation of any law for the time being force*
- *Expenditure by way of any other penalty or fine not covered above*
- *Expenditure incurred for any purpose which is an offence or which is prohibited by law*

Clause 21(a) (contd...)

- Expenditure in nature of Capital, Personal and Advertisement Expenses
 - Capital expenses not defined
 - Except certain capital expenses such as scientific research etc., not allowed
 - Personal confined to the assessee itself
 - In case of a company, no disallowance of vehicle expenses on the ground of personal expense.
 - Dinesh Mills 122 Taxmann 384(Guj)
 - S. 143(1)(e) of the Co. Act also requires to state personal expenses debited to P & L a/c
 - Advertisement to Political Parties

Clause 21(a) (contd...)

- Penalties
 - Fines and Penalties for violation of law
 - Penalty and Damages/compensatory interest
 - Payment in respect of offence under Law
 - Payment of dual character - Swadeshi Cotton Mills 233 ITR 199
- Scheme of the Law is to be examined

Clause 21 (b)

Amounts inadmissible under section 40(a):-

i. as payment to non-resident referred to in sub-clause (i)

A. Details of payment on which tax is not deducted:

- I. date of payment*
- II. amount of payment*
- III. nature of payment*
- IV. name and address of the payee*

B. Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

- I. date of payment*
- II. amount of payment*
- III. nature of payment*
- IV. name and address of the payee*
- V. amount of tax deducted*

Clause 21(b)(i)

- Reporting for:
 - Non Deduction
 - After deduction, Non payment with in S. 200(1)
 - Finance Act 2014 has amended to pay with in the time limit u/s. 139(1). No corresponding change in the 3CD.
- S. 206AA vs. DTAA
 - S. 206AA is applicable to NR
 - Press Release 402/92/2006 dated 20/1/2010
 - Provisions of s. 90(2) if more beneficial, assessee has right to choose
 - Azadi Bachao Andolan (SC)

- 206AA is with non-obstante clause and therefore overrides other provisions
 - Bangalore tribunal in Bosch's case
- Even in absence of PAN, tax is to be deducted as per DTAA
 - Serun Institute of India 68 SOT 254 (Pune)
 - Infosys BPO Ltd 154 ITD 816 (Bangalore)
- Applicability of S. 206AA and whether new Rule 37BC applicable from 24/6/2016, retrospective?
 - Deductee to provide:-
 - Name, email, contact no.,
 - Address outside India
 - A certificate of residency (if applicable)
 - Tax Identification No./ Unique No.

Clause 21 (b) contd..

(ii) as payment referred to in sub-clause (ia)

- *Details of payment on which tax is not deducted:*
 - *date of payment*
 - *amount of payment*
 - *nature of payment*
 - *name and address of the payee*
- *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.*
 - *date of payment*
 - *amount of payment*
 - *nature of payment*
 - *name and address of the payer*
 - *amount of tax deducted*
 - *amount out of (V) deposited, if any*

Clause 21 (b) contd..

(iii) under sub-clause (ic) [Wherever applicable]

(iv) under sub-clause (iia)

(v) under sub-clause (iib)

(vi) under sub-clause (iii)

A. date of payment

B. amount of payment

C. name and address of the payee

(vii) under sub-clause (iv)

(viii) under sub-clause (v)

Clause 21 (a) contd.

- S. 40(i)(ia)
 - Recent amendments
 - Amendment in the initial wording i. e. 'interest, commission, to on which tax is deductible U/c VIIB'
 - Disallowance is restricted to 30%, subsequent allowance is also 30%.
Issue: when disallowed 100% in say A. Y. 13/14, allowance will be 30% only
Clarification by Circular No. 1 of 2015 dated 20/1/2015
 - Other points
 - Applicability on Capital expenditure
 - Certificate in form 26A – procedural, assessee to be given opportunity to file 26A
 - Deduction under wrong section
 - Deduction under wrong rate
 - 15G-15H to be filed online

Clause 21(c)

Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;

Clause 21(c) (contd...)

- Interest on Capital – calculation
- Interest on revalued assets – where it is not a colourable device, Amar Garage 1 SOT 331 (Kol.)
- Working partner
- Remuneration to Karta – Rashik Lal & Co. (SC) 229 ITR 458
- 40(b) and 14A
 - Rajasthan State Warehousing Corp Vs. CIT 242 ITR 450 (SC)

Clause 21(d)

Disallowance/deemed income under section 40A(3)

A. *On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:*

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

B. *On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A);*

- *Serial number*
- *Date of payment*
- *Nature of payment*
- *Amount*
- *Name and Permanent Account Number of the payee, if available*

Clause 21(d) (contd...)

- Aggregate of payment should not exceed Rs. 20,000/- in a day
- Payment is in relation to expenditure if expense is < Rs. 20000/- each S. 40A(3) is not applicable
- Part payment by cheque and part by cash
- If the payment is not for expenditure 40A(3) is not applicable

Clause 21(e) to (g)

(e) provision for payment of gratuity not allowable under section 40A(7);

(f) any sum paid by the assessee as an employer not allowable under section 40A(9);

(g) particulars of any liability of a contingent nature;

Clause 21(h)

Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income;

Clause 21(i)

Amount inadmissible under the proviso to section 36(1)(iii)

- Interest effect as per AS 16 and Income Tax Act

Clause 22 to 24

- 22 Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.*
- 23 Particulars of payments made to persons specified under section 40A (2)(b).*
- 24 Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.*

Clause 25

- **Any amount of profit chargeable to tax under section 41 and computation thereof.**
 - Sec 41 (1) Recovery of expenditure & remission and cessation of trading liability.
 - Sec 41(2) Building, Machinery, Plant or furniture is sold/discarded – Balancing charge
 - Sec 41 (3) Sale of Capital Asset used for Scientific research
 - Sec 41 (4) - Bad debt recovery
 - Sec 41 (4A) Amount withdrawn from Special Reserve created & maintained u/s 36(l)(viii).
 - Sec 41 (5) Adjustment of loss (in case of discontinued business)
 - Cessation/remission of Trading Liability/expenses S. 41(1)
 - Continuance of business not necessary
 - Adjustment of loss S. 41(5)
 - Recovery after discontinuance of business can be adjusted even after 8 years
 - Filing of return u/s. 80 is not necessary

Clause 26

In respect of any sum referred to in clauses (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which:-

- A. pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was*
 - a) paid during the previous year;*
 - b) not paid during the previous year.*

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

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

Clause 26 (contd...)

- Any sum payable by way of:
 - Tax, duty, cess or fee, by whatever name called
 - Contribution by an employer to Provident/superannuation/other funds
 - Bonus or commission to employees
 - Interest to PFI or SFI or SIIC
 - Interest to schedule bank on loans/advances
 - Leave salary

are deductible in the year of payment

- Finance Act 2016 extends to payment to Indian Railways for use of its assets

Clause 26 (contd...)

Whether the following are considered as payment?

- Sales Tax deferred scheme/Sales Tax liability converted into loan
- Conversion of outstanding interest into fresh loans
 - Circular no 7/2006 dated 17/7/2006
- Duty/tax in a separate account
- Adjustment for CENVAT credit – payment vis-à-vis due
- Providing Bank Guarantee is not an actual payment

Clause 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.

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

Clause 28

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

Clause 28 (contd...)

- Applicable to only firms/closely held companies
- Receives shares of closely held company
- Without consideration/ adequate consideration
- Valuation of shares prescribed u/r 11UA
- Exempted transactions u/s 47 are not covered
- Issues:
 - Right Issue – Sri Gopal Jalan & Co.'s case relied on, under Gift Tax Act, not a Gift - Khoday Distilleries (SC)
 - Bonus Shares

Clause 29

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

- Applies only to closely held companies which have issued shares at premium
- FMV to be collected as per Rule 11UA which allows Discounted Free Cash Flow Method

Clause 30

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

- From A. Y. 2013-14, the above income is taxed 30% (plus Surcharge plus Education cess plus secondary and higher education cess)

Clause 31(a)

** (Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year*

- i. name, address and permanent account number (if available with the assessee) of the lender or depositor;*
- ii. amount of loan or deposit taken or accepted;*
- iii. whether the loan or deposit was squared up during the previous year;*
- iv. maximum amount outstanding in the account at any time during the previous year;*
- v. whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.*

**(These particulars needs not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)*

Clause 31(b)

Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :—

- i. name, address and permanent account number (if available with the assessee) of the payee;*
- ii. amount of the repayment;*
- iii. maximum amount outstanding in the account at any time during the previous year;*
- iv. whether the repayment was made otherwise than by account payee cheque or account payee bank draft.*

Clause 31(c)

- *Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents*

(The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act)

- *Sec 269SS & Sec 269T is applicable to all assesseees irrespective of business income*
- *Exceptions, loan/deposit accepted/ repaid to:*
 - *Government*
 - *Banking Company*
 - *Corporation established under Central/State/Provincial Act*
 - *Government Company*
 - *Any other notified institution*

Clause 32

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

- *Serial Number*
- *Assessment*
- *Year*
- *Nature of loss/allowance (in rupees)*
- *Amount as returned (in rupees)*
- *Amount as assessed (give reference to relevant order)*
- *Remarks*

(b) Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79

Clause 32 (contd...)

(c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same.

(d) Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.

(e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.

Clause 33

Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

- *Section under which deduction is claimed*
- *Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.*

Clause 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:

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

Clause 34 (b)

Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

- *Tax deduction and collection Account Number (TAN)*
- *Type of Form*
- *Due date for furnishing*
- *Date of furnishing, if furnished*
- *Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported*

To be provided only if the answer is in negative

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.*

Clause 35(a)

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

- i. opening Stock;*
- ii. purchases during the previous year;*
- iii. sales during the previous year;*
- iv. closing Stock;*
- v. shortage/excess, if any.*

Clause 35(b)

In the case of manufacturing concern, give quantitative details of the principal

A. Raw materials :

- i. opening stock;*
- ii. Purchases during the previous year;*
- iii. consumption during the previous year;*
- iv. sales during the previous year;*
- v. closing stock;*
- vi. yield of finished products;*
- vii. percentage of yield;*
- viii. shortage/excess, if any.*

Clause 35(b) (contd...)

B. Finished products/By-products :

- i. opening stock;*
- ii. purchases during the previous year;*
- iii. quantity manufactured during the previous year;*
- iv. sales during the previous year;*
- v. closing stock;*
- vi. shortage/excess, if any.*

Clause 36

In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form: -

- a) total amount of distributed profits;*
- b) amount of reduction as referred to in section 115-O(1A)(i);*
- c) amount of reduction as referred to in section 115-O(1A)(ii);*
- d) total tax paid thereon;*
- e) dates of payment with amounts.*

Clause 37

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

Clause 38

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

Clause 39

Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

Clause 40

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

- 1. Total turnover of the assessee*
- 2. Gross profit/turnover*
- 3. Net profit/turnover*
- 4. Stock-in-trade/turnover*
- 5. Material Consumed/finished goods produced*

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

Clause 41

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

Thank You

Acknowledgement:

Guidance Note and other publications of the Institute
Publications of BCAS
Publications of Taxmann
And other Reference material