

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 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

ry person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, 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 a 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 2](#)
- (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

Different Tax Payers

A person carrying on profession

A person carrying on Business

If his Gross Receipts exceed Rs. 25 Lakhs in any previous year

A person covered U/s. 44AD, 44AE, 44AF, 44BB or 44BBB

If his Total sales Turnover or Gross Receipts, as the case may be in business exceed or exceeds Rs. 1 Crore in any previous year

If his income exceeds the maximum amount which is not chargeable to Income Tax

If such person claims that the profits and gains from the business is lower than as computed under above sections irrespective of his turnover

If his income exceeds the maximum amount which is not chargeable to Income Tax

Business and Profession defined

- Section 2(13) : “Business includes any trade, commerce or manufacture or any activity 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 arrangement for production or sale of commodities.
- Notified Professions:
 - Accountancy, Architectural, Company Secretary, Engineering, Film Artist, cameraman, Interior decorator, legal, medical, Technical. I. Technology

CIT Vs. Manmohan Das

Rendered in the context of IT Act, 1922

Relates to A.Y. 1950-51

The decision mainly distinguishes “Business/ profession” from “salary”

The income of a personal nature was offered in the hands of HUF on the basis of certain factors.

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 No. 4/2007 dated 15/06/2007
 - CBDT Circular No. 6/2016 dated 29.02.2016

Gross Receipt in case of Business (contd.)

Some typical examples:

➤ Sales found in case of search

- Brijlal Goyal Vs Asst CIT 88ITD 413 (2004) Mum ITAT
- Sales out of books not considered as turnover

➤ In case of Share Broker

- For Client
- On own account

➤ In case of FIIs dealing in shares/ securities: Any securities held by a FII which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992 is mandatorily a capital asset.

➤ 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) **310 ITR 366 (2009) KAR** (in case of Business)
 - ICAI view : **5.11.v of Guidance Note says price of goods returned to be deducted from turnover even if sales were made in a preceding year.**
- 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 **Delhi**
- 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	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

5.20 of Guidance Note says tax audit not required if prof income =21 lakhs and business turnover = 86 lakhs

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

**Clarification regarding authority
attached to the documents Issued by
the Institute**

"Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary".

(Volume I.A of the Compendium of Engagement and Quality Control Standards (9th Edition, 2012), page 3, Para 5)

Applicability of S. 44AB in typical cases

Assessees enjoying exemption u/s. 10/11

- ICAI's view: **GN 6.1 : page 30: Required**
- Mumbai Tribunal's view in case of India Magnum Fund: **Not required**

Assessees enjoying deduction u/s. 80P etc.: **GN 6.1 : page 30: Required**

Agricultural Business

- Having no Business income but sales more than a crore : **Not required**

Incase of Non Resident assessee: **No difference but only India operation**

Ultimate income below taxable limit : **No difference**

Two Partnership 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: (Signed in a financial year)

- 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/

Accountant: ICAI Code

Upto 31.03.15, CAs holding part time COP were allowed to carry out tax audit.

NOC from previous tax auditor not required where accounts are audited under any other laws.

Limit prescribed is per partner.

Joint tax audit: all the auditors will be presumed to do one audit.

Head office and branches to be considered one audit only.

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

The term “before” specified date in section 44AB means “on or before” the specified date. Therefore, though audit report is signed on 30th September 2008 and the requirement of law is to be construed as tax audit report required to be obtained on or before 30th September 2008. Hence, the assessee has obtained tax audit report in time and there is no default u/s 271B. In Prem Chand Nathmal Kothari vs. Kishanlal Bachharaj Vyas & Ors dated 5th April 1975 reported in AIR 1976 Bombay 82 the Bombay High Court, relying on the Chambers Dictionary, held that word ‘before’ means ‘previous to the expiration of’. Therefore, before 30th September, 2008 means before the end of 30th September 2008 Chopra Properties vs. ACIT (ITAT Delhi)[20-11-15]

Clauses of Form 3CD

Clause 1 to 3 and 5 to 8

Name of the assessee

Address

PAN

Status

Previous Year

Assessment Year

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

) If firm or Association of Persons, indicate names of partner members and their profit sharing ratios.

) If there is any change in the partners or members or in the 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 Remuneration/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~~ LLP

Clause 10

) 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).

) 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

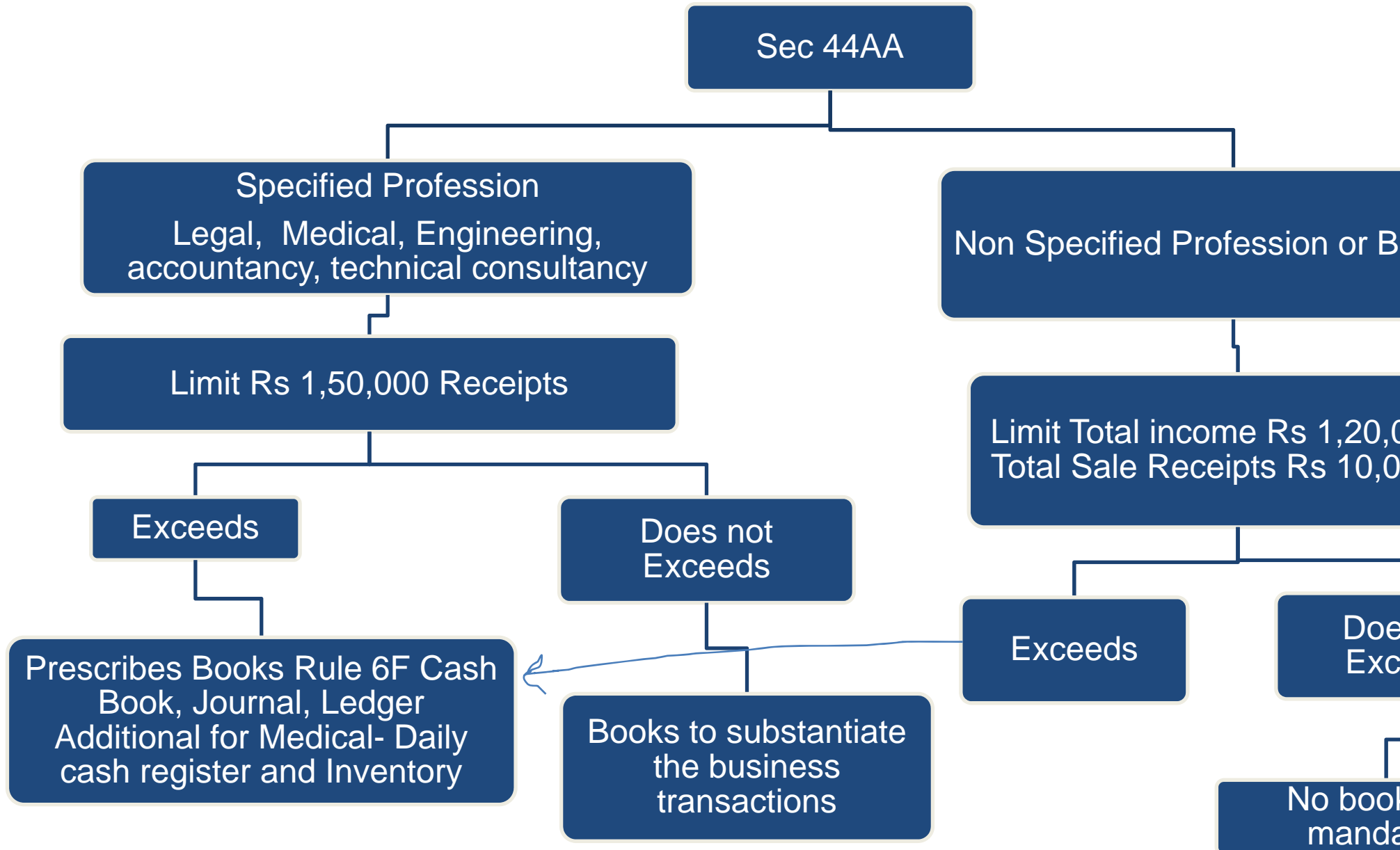
) Whether books of account are prescribed under section 44AA, if so, list of books so prescribed.

) 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.)

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

Clause 11(a) - Section 44AA



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 Electronic 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

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 to be 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 his 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..)

No.	Situation	Action to be taken by Tax Auditor
	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 respective businesses, it poses no problem for tax auditor in ascertaining the amount of profit to be disclosed.

Clause 12 (contd..)

	Situation	Action to be taken by Tax Auditor
	<p>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.</p>	<p>Here, the tax auditor is unable to satisfy himself about 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 remark expressing his inability to verify the said figure. In absence of books of accounts the tax auditor would be unable to form an opinion about 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</p>

Clause 13

Method of accounting employed in the previous year.

Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.

If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.

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 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 change 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

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

) 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

Case 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?

Debit Credit on Closing stock of Raw Material - Whether to be included when assessee follows Net Method?

Case 14 Vs. Indo Nippon Chemical Co. Ltd. (2000) 245 ITR 384 (Bom) approved in 261 ITR 275 (SC)

Case 14 Vs. Shri Ram Honda Power Equipment Ltd. (2013) 352 ITR 481(SC)

It is noted that the above 2 judgments were rendered in respect of assessment years before A.Y. 1999-2000 from which sec. 145A came into force.

It is sought to change the valuation of closing stock, value of opening stock is also to be changed accordingly. What about the opening stock of the preceding year ?

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.*

Case 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

Section 55(2)(b) 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,-
the items falling within the scope of section 28;*

*the pro forma credits, drawbacks, refund of duty of customs
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;*

escalation claims accepted during the previous year;

any other item of income;

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 ? : **difference: GN 25.7**
- ✓ 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?

Does it extend to section 50C – Scope of section 44AB extended to capital transactions.

What if the property is situated in a Union Territory and not a state ?

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 :-

Description of asset/block of assets

Rate of depreciation.

Actual cost or written down value, as the case may be.

Additions/deductions during the year with dates; in the case of any addition of an asset, the 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.*

Depreciation allowable.

Written down value at the end of the year.

Clause 18 (contd..)

Depreciation

mandatory to claim depreciation – Is it mandatory to claim at rates prescribed.
Expl. 5 in sec. 32(1)– Lesser rate whether permissible? **NO.**

Foreign Exchange Fluctuation Loss on borrowings against Fixed Assets – Section 43A
of asset put to use – How to confirm

registered in Partner's name – Reflected in Firm's Balance Sheet – What about
depreciation : **Allowable**

depreciation incase of capital expense in lease premises

if some of the assets of the Block is not used: **Allowable : CITv. Sonal Gum
Industries (2010)322 ITR 542(Guj)**

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)(iii), (g) 35(1)(iii), (h) 35(1)(iv), (i) 35(2AA), (j) 35(2AB), (k) 35ABB, 35AC, (m)35AD, (n)35CCA, (o)35CCB, (p)35CCC, (q) 35CCD, (r) 35(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 the behalf.

Clause 19 (contd...)

What if separate auditor is appointed to conduct the audit under the relevant provisions?

Can Tax Auditor rely on his certificate under the relevant section

on availability of his report at the time of finalisation of the Tax Audit – How to address

provisions 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 out of profits or dividend. [Section 36(1)(ii)]

Shahzada Nand & Sons v. CIT [1977] 108 ITR 358 (SC)

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: **Journal entry only, normally !!***
- 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 **with effect from January 2016**
- Decisions:
 - ITO Vs. LKP Securities Ltd. 36 CCH 93 (Mum.) - Employee's contribution is not covered by section 2(24)(x) if not paid by due 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 **which reverses the decision in CIT Vs. LKP Securities Ltd.**

However, the tax auditor under this clause is expected to give details only and not to work out any all disallowance.

Clause 21 (a)

Please furnish the details of amounts debited to the profit and loss account, being of 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):-

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)
 - o 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
 - Serum 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..

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 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..

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

(ii) under sub-clause (iia)

(iii) under sub-clause (iib)

(iv) under sub-clause (iii)

A. date of payment

B. amount of payment

C. name and address of the payee

(v) under sub-clause (iv)

(vi) 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 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)

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

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)

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

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

) 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)

Inter-set effect as per AS 16 and Income Tax Act

Clause 22 to 24

2 *Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.*

3 *Particulars of payments made to persons specified under section 40A (2)(b).*

4 *Amounts deemed to be profits and gains under section 32A 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(I)(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

respect of any sum referred to in clauses (a), (b), (c), (d), (e) or (f) of section 139B, the liability for which:-

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.*

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 or 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 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

) Amount of Central Value Added Tax credits availed of 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.

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

Clause 28

Whether during the previous year the assessee has received a 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, no Gift - Khoday Distilleries (SC)
- Bonus Shares

Clause 29

Whether during the previous year the assessee received a 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 a 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 Surtax 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

name, address and permanent account number (if available with the assessor) of the lender or depositor;

amount of loan or deposit taken or accepted;

whether the loan or deposit was squared up during the previous year;

maximum amount outstanding in the account at any time during the previous year;

whether the loan or deposit was taken or accepted otherwise than by account payee cheque or an account payee bank draft.

These particulars need not be given in the case of a Government company, 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 not 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 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 assessees 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

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*

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...)

) 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.

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

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

Clause 33

ction-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 XV 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 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)

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

opening Stock;

purchases during the previous year;

sales during the previous year;

closing Stock;

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...)

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

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, 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, whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if any, 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