

# Reporting under Revised Tax Audit Forms (Clause 26 to 41 of Form 3CD)

**Date :- 9<sup>th</sup> August 2014**

**CA. Sanjay C. Shah**

**Clause 26 – Reporting in pursuant to Section 43B of the Act.  
(Corresponding to old clause no. 21)**

*There is no change* in reporting requirement in revised Form 3CD when compared with old Form 3CD with regards to this clause.

**Clause 27 – Reporting in connection with Central Value Added Tax (CENVAT) related Transactions.  
(Corresponding to old clause no. 22)**

Clause 27 of Revised Form 3CD is reproduced herein below :-

***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.***

- Old form 3CD required the Tax Auditor to verify the MODVAT credit availed and utilized.
- The word MODVAT has been substituted by the word CENVAT in line with the statutory provisions in the Cenvat Credit Rules, 2004 as the word MODVAT has been substituted by CENVAT from 1<sup>st</sup> April, 2000 in relevant statute.
- The same was not changed in the old form which is now rectified in line with change in relevant statute after 14 Years.

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

*There is no change* in reporting requirement in revised Form 3CD when compared with old Form 3CD with regards to this clause.

## **Insertion of New Clause 28 & 29 – Reporting in pursuant to Section 56(2)(viiia) & (viiib) of the Act.**

New Clauses 28 & 29 are reproduced herein below:-

***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)(viiia), if yes, please furnish the details of the same.***

***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)(viiib), if yes, please furnish the details of the same .***

### **Clause 28 – Section 56(2)(viiia) of the Act**

Section 56(2)(viiia) is applicable if following conditions are satisfied :-

- Assessee is a Firm or a Company.
- Assessee receives Shares of another unlisted Company from any Person.
- The Shares are received ***without consideration or for a consideration less than Fair market value of shares, so received.***
- Aggregate FMV of shares so received is > Rs. 50,000/- in case of without consideration or difference is > Rs. 50,000/- in case consideration is less than FMV.

FMV shall be calculated by Net Assets Method as explained in sub-clause (b) to Rule 11UA(1)(c) of the Income Tax Rules 1962. Said method is illustrated with an example.

**VALUATION OF EQUITY SHARES AS ON 31ST MARCH 2013**

**Name of Company:-M/S. XYZ Pvt. Ltd.**

**Name of Method:- Book Value Method {As per Income Tax Notification No.23/2010, dated 8th April 2010}**

**Value per Share is Rs. 42.00**

<b>Particulars</b>		<b>Rs.</b>	<b>Rs.</b>
<b>A</b>	Book value of the Assets in Balance Sheet	27,888,560	
	<b>Less :</b>		
	Advance Tax - A.Y 2011-12	100,000	
	TDS Receivable- A.Y.2011-12	360,493	
	TDS Receivable- A.Y.2012-13	3,963,568	
	TDS Receivable- A.Y.2013-14	5,462,547	
		9,886,608	18,001,952
<b>B</b>	Book Value of the Liabilities in Balance Sheet	27,888,560	
	<b>Less :</b>		
	Provision for Tax	5,501,621	
	Paid up Share Capital	2,500,000	
	Reserves & Surplus	12,363,189	
		20,364,810	7,523,750
<b>C</b>	<b>NET WORTH (A-B)</b>		10,478,202
<b>PV</b>	The Paid up value of such Equity Shares (Rs. Per Share )		10
<b>PE</b>	Total amount of Paid - up Equity Share Capital as shown in Balance Sheet		2,500,000
	<b>Value of Each Equity Share</b> <b>{{(C)/PE *PV}</b>		<b>42</b>

### Reporting Requirement :-

In this clause, Tax Auditor is required to report the details of transactions referred to in Section 56(2)(viiia) & 56(2)(viiib) such as no. of shares received, date of receipt of shares, mode of receipt, consideration paid etc.

Basic exemption limit of Rs 50,000/- is not mentioned in Revised Form 3CD though same is provided in section 56(2)(viiia). Thus even if consideration does not exceed basic exemption limit of Rs 50,000/- in aggregate, such transaction of receipt of shares shall be reported in Revised Form 3CD.

However Tax Auditor may write a suitable Note that since the aggregate of FMV or difference between consideration and FMV does not exceed Rs 50,000/-, it is not reported in Form 3CD as it does not have an impact on Computation of Total Income.

### **Clause 29 – Section 56(2)(viiib) of the Act**

Section 56(2)(viiib) is applicable if following conditions are satisfied :-

- Assessee is a Company.
- Assessee receives consideration for the issue of its Shares from resident person.
- Shares are issued at a price which is higher than the Face value.
- ***Aggregate consideration received exceeds the FMV of shares issued.***

FMV shall be calculated by Net Assets Method or Discounted Cash Flow method as explained in Rule 11UA(2) of the Income Tax Rules 1962.

### Reporting Requirement:-

In this clause, Tax Auditor is required to report the details of transactions such as no. of shares received, date of receipt of shares, mode of receipt, consideration paid etc.



**Clause 31 – Reporting in pursuant to Sections 269SS & 269T of the Act.**

**(Corresponding to old clause no. 24)**

**31 (a) Sub clause (a) to Clause 31:** This sub-clause requires a Tax Auditor to furnish details of all loans taken during the year exceeding the specified limit. The requirement of this clause is with reference to section 269SS of the Act.

**31 (b) Sub clause (b) to Clause 31:** This sub-clause requires a Tax Auditor to furnish details of all loans repaid during the year exceeding the specified limit. The requirement of this clause is with reference to section 269T of the Act.

*There is no change* in reporting requirement in revised Form 3CD when compared with old Form 3CD with regards to these 2 sub-clauses.

**31 (c) Sub clause (c) to Clause 31:** Clause 31(c) of Revised Form 3CD is reproduced herein below:-

***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.***

As per the old Form, the Tax Auditor had to obtain a certificate that all the loans/deposits accepted and repaid by the assessee were made by account payee cheque or account payee bank draft.

Now the Tax Auditor has to examine whether all the transactions of accepting loans/deposits & their repayment are made via account payee cheque or account payee bank draft from the books of accounts and other relevant documents. Based on his examination he has to report the results of his examination.





**32 (b) Sub clause (b) requires Tax Auditor to report on brought forward losses of the Company in case there is change in minimum 51% shareholding of the Company in the previous year as covered in Section 79 of the Act.**

*There is no change* in above sub clause of Clause 31 when compared with old Tax Audit Report with regards to this clause.

**32 (c) Insertion of new sub-clause (c) – Reporting in pursuant to Speculation Loss referred in Section 73 of the Act.**

New sub-clause (c) to Clause 32 is reproduced herein below:-

***(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.***

Section 43(5) - Speculative transaction means transaction in which contract for purchase or sale of any commodity is settled otherwise than by actual delivery.

Following transactions are not considered as Speculative Transaction:-

- a contract for raw material / merchandise to safeguard against loss through future price fluctuations in case of actual delivery of goods.
- a contract for stocks and shares to safeguard against loss through future price fluctuations in its holding of stocks and shares.
- a contract by a member of Forward market or Stock exchange in nature of jobbing or arbitrage to safeguard against loss arising in its ordinary business as member.
- Futures and Options transactions
- Commodity derivatives Transactions

### Reporting Requirement:-

Tax Auditor is required to report on details of Speculation loss incurred during previous year. Purpose of reporting on this clause is to segregate speculative loss from other Business Income.

### **Issues :-**

If an Assessee sells any Shares and thereafter squares it off on the same day by purchasing the same, whether the loss arising from this activity is a speculation loss, if Assessee holds same quantity of shares in Demat account as an Investment prior to Sales ?

### **32 (d) Insertion of new sub-clause (d) – Reporting in pursuant to Loss under section 73A of specified business as referred in section 35AD of the Act.**

New sub-clause (d) to Clause 32 is reproduced herein below:-

***(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.***

Specified business covered in Section 35AD are listed below :-

- Cold Chain Facility
- Warehousing Facility for Storage of Agriculture Produce
- New Hospital with minimum 100 beds
- Developing and building a housing project under a scheme for affordable housing framed by the Central or State Government and notified by Board

- In a new plant or in a newly installed capacity in an existing plant for production of fertilizer
- Laying & operating cross country natural Gas, Crude etc
- New Hotels of 2 Star and above
- Housing Project under SRA
- Setting up and operating an inland container depot or container freight station
- Bee –keeping and production of honey and beeswax
- Operating a warehousing facility for storage of sugar
- Laying and operating a slurry pipeline for the transportation of iron ore
- Semiconductor water fabrication manufacturing unit as notified by CBDT

Section 73A allows Assessee to setoff loss of any specified business against profit of ***another specified business*** only. There is no limit prescribed under Section 73A for carry forward of losses of specified business.

Reporting Requirement:-

Tax Auditor is required to report on details of loss incurred of specified business during the previous year. Purpose of reporting on this clause is to segregate loss of specified business from other Business Income.

**32 (e) Insertion of new sub-clause (e) – Reporting on deemed Speculation business in case of Company as referred in Explanation to Section 73 of the Act.**

New sub-clause (e) to Clause 32 is reproduced herein below:-

***(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.***

Explanation to Section 73 provides that in case, any part of the Business of Assessee, being a Company, comprises of purchase and sale of shares then the said part of the business shall be deemed to be Speculation Business

At Present Explanation to section 73 does not apply to :-

- Companies having its Principal business in Banking or Granting of loans and advance.
- Companies whose ***Income is not mainly from Profits and Gains*** of Business or Profession.

**Issues :-**

- How to interpret the phrase “mainly from Profits and Gains of Business or Profession” ?
  
- How to identify Companies having its principal business of granting of loans and advances ?
  
- Whether explanation to Section 73 applies even if there is no purchase or sale of shares ?

**Clause 33 – Reporting in pursuant to admissibility of deductions under Chapter VIA or Chapter III. (corresponding to old clause no. 26)**

Clause 33 of Revised Form 3CD is reproduced herein below:-

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

<i>Section under which deduction is claimed</i>	<i>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.</i>

Comparison of reporting requirement as per Old and Revised Form 3CD :-

<b>Particulars</b>	<b>Old Form 3CD</b>	<b>New Form 3CD</b>
Deduction referred under Chapter heading	Chapter VI-A	Chapter VI-A or III. Chapter III covers deduction under section 10, 10AA etc
Clarification on admissibility of deduction	Not clarified in old Form	It is now clarified that admissibility of deduction allowed under Chapter VI-A or III is in pursuant to statutory provisions contained in relevant provisions of the Act or Rules or any other guidelines issued.

**Issues :-**

Whether reporting under this clause is at Assessee level or at Business level ?



**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:**

<b><i>Tax deduction and collection Account Number (TAN)</i></b>	<b><i>Type of Form</i></b>	<b><i>Due date for furnishing</i></b>	<b><i>Date of furnishing, if furnished</i></b>	<b><i>Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported</i></b>
(1)	(2)	(3)	(4)	(5)

**34(c) : whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:**

<b><i>Tax deduction and collection Account Number (TAN)</i></b>	<b><i>Amount of interest under section 201(1A)/206C(7) is payable</i></b>	<b><i>Amount paid out of column (2) along with date of payment.</i></b>
(1)	(2)	(3)

**Issues in connection with Clause 34 of the form :-**

- Does clause 34(a) require reporting on TDS details relating to Salary?
- Is the amount shown in column in 4 & column 5 including various indirect taxes on which TDS is deducted?
- Whether tax deducted as per lower deduction certificate issued U/S 197 shall be considered as specified rate for reporting in column 6?



➤ Whether details of original and revised returns to be given in Clause 34(b) ?

➤ How to calculate interest U/S 201(1A) ?

➤ Whether the Tax Auditor is required to verify all transactions which has lead to default in deduction or payment for the purpose of computing interest U/S 201(1A) of the Act ?

**Clause 35 – Reporting in connection with Principal items of Goods traded or manufactured.**

**(Corresponding to old clause no. 28)**

*There is no change* in reporting requirement in revised Form 3CD when compared with old Form 3CD with regards to this clause.

**Clause 36 – Reporting in pursuant to DDT paid by Domestic Company under section 115-O.**

**(corresponding to old clause no. 29)**

Clause 36 of Revised Form 3CD is reproduced herein below :-

***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***

Tax Auditor is required to report on following amounts with respect to distributed profits :-

Total amount of dividend distributed by Domestic Company	xxx
Less :- Dividend received from Subsidiary Domestic Company as referred in 115-O(1A)(i)	xxx
Less :- Dividend received from Subsidiary Foreign Company as referred in 115-O(1A)(i)	xxx
Less :- Dividend paid to any person, on behalf of New Pension System Trust as as referred in 115-O(1A)(ii)	xxx
<b>Net Dividend on which DDT is payable u/s 115-O</b>	<b>xxxx</b>

In the old Form 3CD, Tax Auditor was not required to report on the amount of Dividend received as referred in Section 115-O(1A) of the Act, which is now required to be reported under this clause.

**Clause 37 - Reporting in pursuant with Audit carried out by Cost Auditor.  
(Corresponding to old clause no. 30)**

Clause 37 of Revised Form 3CD is reproduced herein below :-

***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.***

Reporting Requirement:

In the old Form 3CD, the Tax Auditor was required to enclose the Cost Audit report conducted which has now been dispensed with.

Now the Tax Auditor has to only give his comments on the qualifications and disagreement in any matter / item / value / quantity / as may be reported / identified by the Cost Auditor.

**Clause 38 - Reporting in connection with the Audit under the Central Excise Act, 1944.  
(Corresponding to old clause no. 31)**

Clause 38 of Revised Form 3CD is reproduced herein below :-

***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.***

### Reporting Requirement:

In the old Form 3CD the Tax Auditor was required to enclose the audit report conducted under the Central Excise Act, 1944 which has now been dispensed with.

Now the Tax Auditor has to only give his comments on the qualifications and disagreement in any matter / item / value / quantity / as may be reported / identified by the Auditor conducting the said audit.

Following Audits are covered by Central Excise Act, 1944:-

- Valuation Audit U/S 14A of the Act
- CENVAT Credit Audit U/S 14AA of the Act
- Excise Audit 2000 (EA 2000)
- Central Excise Receipt Audit (CERA)

### **Insertion of New Clause 39 - Reporting in connection with the Audit under the Finance Act, 1994.**

Revised Form 3CD has introduced new clause 39 which is reproduced herein below:

***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.***

Finance Act, 2012 has inserted section 72A in the Finance Act, 1994 empowering the Commissioner of Central Excise/Service Tax to appoint a Chartered Accountant for carrying out Special Audit of the records of certain categories of assessee

### Reporting Requirement :-

The Tax Auditor is required to report the disqualifications / disagreements based on the audit report of such auditor appointed by the Commissioner of Central Excise.

**Clause 40 – Reporting in connection with Accounting Ratios  
(Corresponding to old clause no. 32)**

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

<b>Serial number</b>	<b>Particulars</b>	<b>Previous year</b>	<b>Preceding previous year</b>
<b>1</b>	<b>Total turnover of the assessee</b>		
<b>2</b>	<b>Gross profit/turnover</b>		
<b>3</b>	<b>Net profit/turnover</b>		
<b>4</b>	<b>Stock-in-trade/turnover</b>		
<b>5</b>	<b>Material consumed/finished goods produced</b>		

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

Reporting Requirement:-

As per the old Form 3CD the Tax Auditor was required to give the accounting ratios only for one year, i.e. the year covered under audit, but with the new Form 3CD, the Tax Auditor is required to furnish the accounting ratios for two years, i.e. the year under audit and the year prior to it.

**Issues in connection with Clause 40:-**

- Whether an assessee in the service sector has to furnish the all the accounting ratios?

- If accounts of the immediately preceding previous year are unaudited whether the ratios pertaining to such prior year is required to be furnished?

### **Insertion of New Clause 41 – Reporting in connection with demands raised by various Government departments.**

Revised Form 3CD has introduced new clause 41 which is reproduced herein below:

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

#### **Issues in connection with Clause 41 :-**

- Whether only demand paid in pursuant to an order passed by the relevant tax authority is required to be reported under clause 41 ?
  
  
  
  
  
  
  
  
  
  
- Whether demand paid for any year or demand paid in relation to relevant previous year is required to be reported ?

## **Last para of Revised Form 3CD - Signatory Para**

Signatory para as per Revised Form 3CD is reproduced herein below :-

.....  
***\*(Signature and stamp/Seal of the signatory)***

***Place:***\_\_\_\_\_

***Name of the signatory***

***Date:***\_\_\_\_\_

***Full address***

### ***Notes :***

***1. \*This Form has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB, as the case may be.***

## **Annexure I to old Form 3CD – Reporting in pursuant to certain amounts reflected in Balance Sheet and Profit and Loss Account.**

Annexure I as per old Form 3CD is deleted and hence now as per Revised Form 3CD, Tax Auditor is not required to report on certain amounts reflected in Balance Sheet and Profit and Loss Account.