

# 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 and Prior period items.  
(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.

### **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.

### **Issues :-**

- ***Whether provisions of Section 56(2)(viiia) or (viiib) applies to Issue of additional Shares ?***

Section 56(2)(viiia) **does not apply** to issue of additional shares if the Additional shares are **offered to Shareholders in proportion of their existing holding.**

If Additional shares **are disproportionately allotted** to a particular Shareholder then there is a scope for any property being received by Shareholders which is in excess of his holding and hence **such excess is taxable as income u/s 56(2)(viiia)** of the Act.

It is illustrated with the help of case study.

**Facts :-**

Book Value in the hands of **Unlisted Company A** before issue of Additional Shares:-

	No. of Shares	Face Value	Total Amount
Share Capital (Equity)	10,000	10	100,000
Reserves & Surplus			14,00,000
<b>Total</b>	<b>10,000</b>		<b>15,00,000</b>
<b>Book Value per share</b>			<b>150/-</b>

Additional Issue = 1:1 i.e. **10,000 shares @ 100/- per share.**

Book Value of Company A after Additional Issue of shares :-

	No. of Shares	Face Value	Total Amount
Original Share Capital	10,000	10	100,000
Additional Issue of Shares	10,000	10	1,00,000
<b>Total Share Capital (A)</b>	<b>20,000</b>		<b>2,00,000</b>
Reserves & Surplus (R&S)			14,00,000
Share Premium on Additional Issue of Shares			9,00,000
<b>Total R &amp; S (B)</b>			<b>23,00,000</b>
<b>Grand Total (A + B)</b>	<b>20,000</b>		<b>25,00,000</b>
<b>Book Value per share</b>			<b>125/-</b>

### **Case Study I :-**

Company B holding 20% stake in Company A has been allotted 2000 Additional Shares { 20% of 10,000 Additional issue}, **being in proportion to his existing holding.**

#### **EFFECT IN THE HANDS OF SHAREHOLDER :-**

	<b>Quantity</b>	<b>Cost/Book Value</b>	<b>Total</b>
Equity	2,000	150	3,00,000
Additional	2,000	100	2,00,000
<b>Total</b>	<b>4,000</b>		<b>5,00,000</b>

**Book Value = 5,00,000 / 4,000 = Rs 125/- per share**

What is happening is any Gain on Additional issue of shares on account of concessional rate at which additional shares are offered is offset by dilution in the Book value of Original Shares thereby resulting in no Gain to Shareholder.

In this case, book value of Shares in the hands of Company A and its Shareholder is same as Shares are offered and subscribed on same terms to all shareholders in the same proportion as per their existing shareholding. Thus no income is taxable u/s 56(2)(viiia).

### **Case Study II**

Company B holding 20% stake in Company A has been allotted all 10,000 Additional Shares, **being disproportionate to his existing holding.**

#### **EFFECT IN THE HANDS OF SHAREHOLDER.**

	<b>Quantity</b>	<b>Cost</b>	<b>Total</b>
Equity	2,000	150	3,00,000
Additional	10,000	100	10,00,000
<b>Total</b>	<b>12,000</b>		<b>13,00,000</b>

**Book Value = 13,00,000 / 12,000 = Rs 108.33 per share.**

In this case, Company B has subscribed for an additional 8000 shares(over and above 20%) at a price of Rs 100/-.This Price being less than Book Value of Share in the books of Company post additional issue of shares, which is 125/-. Thus, additional benefit received by Company B is Rs 2,00,000/- { 8000 shares \* 25/-} is taxable income u/s 56(2)(viiia).

Above position is pronounced in the decision of ITAT Mumbai in case of **Sudhir Menon HUF vs. Asst. CIT {(2014) 103 DTR 145}**

➤ ***Whether provisions of Section 56(2)(viiia) applies to Issue of Bonus Shares ?***

No, as price (Book Value) of original share gets diluted after Bonus shares are issued and hence provisions of Section 56(2)(viiia) does not apply to Receipt of Shares by Bonus Issue.

Above position is pronounced in the decision of ITAT Mumbai in case of **Sudhir Menon HUF vs. Asst. CIT {(2014) 103 DTR 145}**

➤ ***Whether provisions of Section 56(2)(viiia) applies in case of allotment of Shares of a Company ?***

Yes, Section 56(2)(viiia) applies to Allotment of Shares. The term "receipt" is of widest import and would always include all mode of acquisition whether by transfer or otherwise.

**Clause 30 – Reporting in pursuant to Amount borrowed on Hundi (Corresponding to old clause no. 23)**

This clause requires a Tax Auditor to report any amount borrowed or repaid by the assessee on Hundi in any mode other wise than by an account payee cheque or by account payee bank draft, in contravention of Section 69D of the Act.



Any contravention referred to in section 69D shall be reported by the Tax Auditor.

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

**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.

**Issues in connection with Clause 31 of the form :-**

- ***Is it possible to verify whether the loans/deposits are accepted by an account payee cheque or account payee bank draft from the examination of books of accounts or other relevant documents? And is it possible to verify the same in case of repayment of loans?***

It is not practically possible to verify that all payments or receipts are made by an account payee cheque or account payee bank draft. Thus Tax Auditor may give a suitable note to this effect.

- ***Whether Third Party cheques are allowed U/S 269SS or 269T? If yes, whether is it required to be reported?***

Section 269SS – Third party cheques are allowed.

Section 269T – Third party cheques are NOT allowed.

There is **no requirement** for Tax Auditor to report on loans taken by Third party cheques or repaid through Third Party Cheques.

**Clause 32 – Reporting in pursuant to Brought forward losses, Depreciation allowance & Speculation losses.  
(corresponding to old clause no. 25)**

- 32 (a) Sub clause (a) requires Tax Auditor to report on brought forward losses or unabsorbed depreciation losses as returned and as assessed.**

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

**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 ?*

As per CBDT circular dated 12<sup>th</sup> Sept. 1960, Hedging transaction shall not be treated as Speculative transactions if following conditions are satisfied :-

- a. Assessee holds certain Quantity Shares of Say, Reliance Industries Ltd in its Demat Account either as an investment or as a Stock in trade.
- b. He sells the same Quantity of Shares of Reliance on a particular day.
- c. He squares of the transaction of Sell by buying the same quantity on the same day.
- d. He suffers a loss in this transaction of purchase and sale on the same day which is settled without delivery.
- e. **Total quantity of shares** of hedging transactions does not exceed total quantity of shares lying in stock on transaction date.

However, if Quantity of Forward sales exceed Quantity in stock then loss arising from such excess Quantity transaction shall be loss from speculative transactions & not from hedging transactions

**Script of** hedging transaction should be same as script lying in Stock on transaction date.

This view is supported in the decision of ITAT Delhi in case of **Master Anupam Poddar (minor) vs. ITO (1992) 40 ITD (Del) 569**

**In case of Hedging of Raw Materials or Traded Goods :-**

It is clarified in the above Circular that Hedging Transaction in Raw Material or Traded Goods need not be in the identical commodities. It will be sufficient if Hedging Transactions are in connected commodities.

For Example :- Hedging Transaction in one type of Cotton , when Stock is of another type of Cotton can be considered as Hedging Transaction and can be qualified to be a non speculative transaction.

- ***When Forward Contract entered into by Exporter is settled otherwise than by Delivery of Foreign Currency on the expiry day, whether loss arising from the same, shall be considered as Speculative Transaction?***

**Facts are as under :-**

- a. Assessee has exported goods at a price of say, **\$ 100000/- on 1<sup>st</sup> January 2014**. Credit Period is say, 3 months. Exchange Rate prevailing on the same day is say, Rs.60/-.
- b. He has entered into a Forward Contract with the Bank undertaking to deliver \$ 100000 on 30<sup>th</sup> March 2014 to the Bank. Bank has agreed to purchase the Dollars from Exporter at a price of Rs.61 per Dollar.
- c. On the Due Date, as Export Proceeds could not be realized, the Exporter failed to deliver the agreed quantity of Dollars. Consequently, the Banker had to buy Foreign Currency to the tune of 100000\$ from the open Market on behalf of Exporter at a prevailing price of say, 62 per Dollar.
- d. Bank has debited differential amount of Rs.100000 ( $\$100000 \times 1$ ) to the Exporter.

***Whether the said loss on cancellation of forward contract is Speculation loss ?***

No. Forward Contract is booked to hedge against possible loss on account of fluctuation in exchange rate. Loss suffered by assessee on account of failure to honor Forward contract was not speculation loss in this situation.

This view is taken in following judicial pronouncements :-

- a. CIT Vs. Badridas Gauridu (P) Ltd (2004) 187 CTR 453 ( Bombay)
- b. CIT Vs. Soorajmull Nagarmull (1981) 129 ITR 169 ( Calcutta).

However in the above Example if Quantity in Forward Contract is say , \$ 200000 against Export Receivable of say, \$ 100000 then loss arising on excess Quantity may be treated as Speculation loss

**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 ***Gross Total Income is not mainly from Profits and Gains*** of Business or Profession.

## Issues :-

- *How to interpret the phrase "mainly from Income Chargeable under the heads "Interest on Securities, Income from House Property, Capital Gains and Income from Other Sources ?*

Explanation to Section 73 will apply only **if aggregate Income from above 4 Heads** is less than Income from Business or Profession.

		<b>Case Study</b>			
		<b>(Rs. in lacs)</b>			
		<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
	<b>BUSINESS INCOME</b>				
A	Profit from Trading in Steel	20	18	20	18
B	Loss in Trading in Shares	(18 )	(20)	(18)	(20)
		2	(2)	2	(2)
	<b>INCOME FROM OTHER SOURCES</b>	3	3	1	1
	<b>GROSS TOTAL INCOME</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>(1)</b>
	<i>Whether Explanation to Section 73 will apply ?</i>	No	No	Yes	Yes

## **Above view is supported by following Judgements :-**

1. CIT Vs. Darshan Securities (P) Ltd (2012) 341 ITR 556 (Bombay High Court)
2. ACIT Vs. Concord Commercials (P) Ltd (Mumbai Special Bench) (2005) 94 TTJ 913
3. DC of Income Tax Vs. Savlani Trading & Investments Co. Pvt Ltd (2012) 56 SOT 208(Mumbai Tribunal)



➤ **How to identify Companies having its principal business of granting of loans and advances ?**

		<b>FIGURES IN LACS</b>	
		<b>CASE STUDY</b>	
		I	II
	<b>TOTAL CAPITAL EMPLOYED(NET)</b>		
A	IN PAPER TRADING	200	500
B	SHARE TRADING	100	100
C	LOANS & ADVANCES	500	200
	<b>TOTAL</b>	<b>800</b>	<b>800</b>
	<b>SEGMENTWISE BREAK UP OF INCOME</b>		
A	INTEREST INCOME	50	20
B	SHARE TRADING	20	5
C	PAPER TRADING	40	10
	<b>Whether Company can be said to be having Principal Business of Granting of Loans &amp; Advances ?</b>	Yes	No

For determining, the above type of Company one has to find out money invested in granting of loans and advances vis-a-vis money invested in other businesses.

In other words, Capital Employed criteria is more important than the Income criteria for the purpose of determining whether a Company is having Principal Business of Granting of Loans & Advances or not ?

Above view is supported by the decision of ITAT Delhi in case of ***ITO Vs. Bijay Paper traders & Investment Ltd (2010) 38 SOT 578.***

➤ ***Whether explanation to Section 73 applies even if there is no purchase or sale of shares ?***

Yes. As one has to compute Business Income out of Trading in Shares. In other words, loss arising out of Valuation of Shares will also be covered by fiction of Explanation to Section 73.

This view is supported by judicial pronouncements in case of **PRASAD AGENTS (P) LTD. vs. INCOME TAX OFFICER** (2009) 226 CTR (Bom) 13.

**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 ?***

At Assessee Level.

Once Assessee's business or profession is liable to Tax Audit u/s section 44AB and he is also maintaining Books of accounts for his other personal affair then books of accounts of not only his business or profession but also of his personal affairs are required to be audited. Accordingly reporting under this clause is at Assessee level.

However if Assessee is not maintaining Books of Accounts for his other affairs then reporting under this clause will be restricted only with reference to accounts of Business or Profession which are audited.



**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 :-**

### **➤ *Does Clause 34(a) require reporting on TDS details related to Salary ?***

Plain reading of Clause 34(a) will require Reporting of TDS related information even for TDS deducted on Salaries as reporting is with reference to all payments governed by Chapter XVII-B and XVII-BB of the Act which includes Salaries.

However, one may argue that requirements of reporting under clause 34(a) is to achieve the purpose contained in Section 40(a)(i) and 40(a)(ia) of the Act. These Sections do not apply to payments in the nature of Salaries made to Resident Assessee. Thus, details in connection with Payment in the nature of Salaries paid to Resident Assessee are not included in the clause 34(a).

If Tax Auditor adopts this view, he will write a suitable note to that effect.

### **➤ *Is the amount to be reported in Column 4, Column 5 & Column 6 including various indirect Taxes on which TDS is deducted or excluding the same?***

Column (4) refers to total amount of payment of the nature referred to Column(3). In other words, figures in Column (4) should match with figure as per Profit & Loss Account for relevant Expenditure. Accordingly the figure reported in Column (4) should ideally not include taxes if assessee is availing Cenvat Credit of Tax component included in the relevant Expenditure against output liability of related indirect tax.

Column (5) refers to Total amount on which tax was required to be deducted or collected.

CBDT has come out with a Circular No :-1/2014 dated :-31st January 2014 clarifying that no TDS is required to be deducted on the Service Tax portion included in Expenditure. This Circular has unsettled established practice of deducting TDS followed by all the Assesseees', as till that date, they were

deducting TDS even on Indirect Tax component included in Expenditure till this circular was notified.

After the said date i.e. 31<sup>st</sup> January 2014, all assessees have stopped deducting TDS on indirect Tax component as referred hereinabove.

The net result of the above is that, figure to be reported in Column (5) & (6) till 31<sup>st</sup> January 2014 included indirect Tax and from 1<sup>st</sup> February 2014 excluded indirect Tax. Please note that these figures must come directly from the reports generated by TDS Software and will be compiled from the TDS Returns filed.

Practical difficulty that will arise is that Figures in Column (4) are excluding Indirect Tax .Whereas figure reported in Column(5) and (6) are partly inclusive of indirect Tax and partly not thereby making figures not comparable with each other.

In order to report more comparable & meaningful figures it is suggested to insert a column in the said table as under:-

Nature of payment	Total amount of payment or Receipt of the Nature specified in column (3)	Total amount on which Tax was required to be deducted or collected out of (4)		Total amount on which Tax was deducted or collected at specified rate out of (5)
		(Including Service Tax)	(Excluding Service Tax)	
3	4	5		6
<i>Legal &amp; Professional Fees</i>				
upto 31.01.2014	800000	898800	800000	898800
01.02.2014 to 31.03.2014	200000	200000	200000	200000
Total	1000000	1098800	1000000	1098800

➤ ***Whether tax deducted as per lower deduction certificate issued U/S 197 shall be considered as specified rate for reporting in column 6?***

In view of provisions of section 197(2) of the Act, tax deducted as per rate mentioned in lower deduction certificate shall be the rate applicable for TDS and hence considered as specified rate.

- ***Whether details of Original and Revised returns to be given in Clause 34(b) ?***

Details of only Original TDS Return is to be given since due date of filing TDS Return as stated in this clause is in context with Original Return only.

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

Software has to generate report giving working of interest u/s 201(1A) of the Act and Tax Auditor shall verify the working on test check basis as it is practically not possible to verify entire working of interest in case of voluminous details.

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

Reply to this issue is covered above. Tax Auditor may give a suitable note that transactions are verified on test check basis.

### **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 referred in 115-O(1A)(ii)	xxx
<b>Net Dividend on which DDT is payable u/s 115-O</b>	xxxx

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)**

Clause 40 of Revised Form 3CD is reproduced herein below :-

**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 all the accounting ratios?**

In the context of old Form 3CD, ICAI in its Guidance Note had given an opinion that Accounting Ratios were not required to be given in case of Professionals or Assessee engaged in Service sector.

As per Revised Form 3CD, reporting under Clause 40 is to be furnished for Assessee engaged in rendering services or Profession. It is not practically

possible to provide Accounting Ratios of Gross Profit / Turnover, Stock / Turnover and Material Consumed / Finished goods produced in such Assessee's.

Thus Tax Auditor may report on Turnover of Assessee and NP ratio with suitable note that other accounting ratios are not applicable to Assessee since engaged in rendering service or Profession.

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

Yes, however Tax Auditor may give a suitable note that accounting ratios of preceding previous year are furnished on the basis of Unaudited books of Accounts of Assessee as certified by Management.

### **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 ?***

This clause is applicable only for demand paid / refund issued in pursuant to order passed under Tax law.

If demand is **paid under protest** then Tax Auditor may give a suitable note in Tax Audit Report.

- ***Whether demand paid for any year or demand paid in relation to relevant previous year is required to be reported ?***

Demand paid / refund received in the relevant previous year is required to be reported by Tax Auditor irrespective of the year for which demand is paid / refund is received.

### **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.