

# **J. B. NAGAR CPE STUDY CIRCLE**

## **ISSUES IN TAX AUDIT**

*Presentation by*

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# NEW CLAUSES



**CLAUSE 29A – REPORTING FOR  
AMOUNT OF FORFEITURE u/s. 56(2)(ix)**

## REPORTING...

- ❑ **...Clause 29A** – *“Whether any amount is to be included as income chargeable under the head ‘income from other sources’ as referred to in section 56(2)(ix)?.”*
  - *If yes...*
    - *Nature of income*
    - *Amount thereof*

### **ANALYSIS:**

- ❑ Consequential to insertion of section 56(2)(ix) from AY 2015-16.
- ❑ Twin conditions are to be satisfied –
  - Sum is forfeited **and**
  - Negotiations does no result in transfer of capital asset

## ...REPORTING

### □ Audit Procedures :

- See items on liabilities side – whether advance for transfer of capital asset
- Peruse the agreement – it contains forfeiture clause and in case of waiver, does it have waiver clause
- Assets held for disposal
- Notes to accounts
- Check communications in relation to forfeiture and also the minutes of the meeting
- Obtain confirmations from the party that the advances are still outstanding
- Check with clients – subsequent developments
- Obtain Management Representation (where not possible to verify or obtain confirmations)
- Also see any amount reported under Clause 16 – if not credited to Profit and Loss

# PROVISIONS

- ❑ Section 44AB reads as :
  - ‘Every person carrying on business...’
  - Carrying on business shall, if the profits and gains from business are deemed to be the profit and gains of such person u/s. 44AE / 44BB / 44BBB
  - Carrying on profession shall, if the profits and gains from profession are deemed to be the profit and gains of such person u/s. 44ADA
  - Carrying on the business, shall if the provisions of sub-section (4) of s. 44AD are applicable
  
- ❑ Accountant’s report (and not audit report) – see third proviso to s. 44AB

## ISSUES

- Whether books are required to be maintained for non-business income? - **No**
  - *{See para 15.8 of the Guidance Note and also the decision of the Hon'ble Bombay High Court in case of Ghai Constructions v. State of Maharashtra [(2009) 184 Taxman 52]}*
- Whether it is required to report if the forfeited amount is in respect of personal capital asset ? - **No**
  - *See Implementation Guide w.r.t. Notification No. 33/2018 dated 20.7.2018*
- If advances received and forfeited towards sale of stock-in-trade ?
  - *See Implementation Guide w.r.t. Notification No. 33/2018 dated 20.7.2018*
- Whether is it possible to verify exhaustively the non-business receipts of the Assessee?
  - *For instance what if the entry is not recorded in the books or a gift is received*





**CLAUSE 29B – REPORTING OF  
AMOUNT RECEIVED u/s. 56(2)(x)**

## REPORTING...

- ❑ **...Clause 29B** – “*Whether any amount is to be included as income chargeable under the head ‘income from other sources’ as referred in section 56(2)(x) of the Act?.*”
  - *If yes,.....*
    - *Nature of income*
    - *Amount thereof*
- ❑ **Effect of Change:**
  - Scope of section is now widened to include companies (widely held), Firms, AOP and BOI.
- ❑ **Trust**
  - Section 56(2)(x) not to apply to any sum of money or property received, *inter alia*:
    - From / by any trust or institution registered u/s. 12A or 12AA;
    - From an individual by a trust created or established solely for the benefit of relative of the individual

## ...REPORTING

- ❑ Tolerance limit of 5% is introduced w.e.f. April 1, 2019 – Applicable from A.Y. 2019-20
- ❑ Expanded the scope of exemption [Inserted in Clause IX of fourth proviso to s. 56(2)(x)] w.e.f. April 1, 2018 :
  - Transactions not regarded as transfer under Clause (iv) and Clause (v) of s. 47

### Effect of change

- Holding – subsidiary
  - S. 56(2)(x) not to apply to receipt of any sum of money or property received, *inter alia*:
    - By a wholly owned subsidiary from its holding company
    - By a holding company from its wholly owned subsidiary
    - In both the cases, the recipient must be an Indian Company
  - No 8 years criteria like s. 47A for capital gains here

# PROVISIONS...

## Receipts from “any person”

- Government does not constitute a person –
  - CIT v. Dredging Corporation of India [1988] 39 Taxman 301 (AP)
  
- Government constitutes a person -
  - CIT v. Warner Hindustan Limited (1986) 158 ITR 51 (AP) – Companies (Profits) Surtax Act, 1964
  - State of Punjab v. Okara Grain Buyers Syndicate Ltd. [AIR 1964 SC 669] – Displaced Persons’ (Debts Adjustment) Act, 1954
  - Commentary by Kanga and Palkhiwala (10<sup>th</sup> Edition) – Based on judgments of House of Lord and Privy Council
  
- Possible views :-
  - Receipts anyway could qualify as “income” u/s. 2(24)(xviii)

## ...PROVISIONS...

### Receipts from “any person” (contd...)

- Receipts from relative is excluded from scope of section 56(2)(x)
    - Definition of relative is unchanged – Controversies under the old provisions still persist
    - Example:
      1. Receipt by HUF from member → Covered in definition of “relative” – Hence, exempt
- Receipt by HUF from relative → **Harshadbhai Dahyalal Vaidhya (HUF) v ITO (144 ITD 605)**  
of Karta (Ahmedabad - Trib.)  
**Subodh Gupta (HUF) v PCIT (169 ITD 60) (Delhi - Trib.)**
- Receipt by member from HUF → Not explicitly covered by definition;  
However, relative includes group of relatives - HUF =  
Group of relatives – **Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] 46 SOT 97 (Rajkot)**  
**DCIT v. Ateev Gala [ITA No.1906 of 2014 (Mumbai Tribunal)]**  
**Gyanchand M. Bardia v. ITO [(2018) 83 taxmann.com (Ahmedabad Tribunal) - Against**

## ...PROVISIONS

### Receipts from “any person” (contd...)

- Example (contd....) :
  2. Receipt from nephew/ niece shall apply → Not covered under definition of relative – Sec. 56(2)(x)  
Receipt by nephew/ niece not apply → Covered under definition of relative – Sec. 56(2)(x) shall

# AUDIT PROCEDURES

- ❑ Receipt from any person without consideration or inadequate consideration:
- ❑ Documents to be vouched / verified:
  - Scrutinise Fixed Assets, Investments and Current Assets
  - Obtain movement sheet of the above ledgers – Purchase, additions, etc.
  - Focus on additions during the year – whether for adequate consideration?
    - Take valuation reports and other documents like gift deeds, etc.
  - Obtain MR there is no addition or disposal beyond the list

## ISSUES

- Tolerance applicable from April 1, 2019, so what about the intervening period?
- Tolerance limit – can it have retrospective effect? – Declaratory provision
- Interest in partnership firm/LLP's will be covered under the provisions of section 56(2)(x)?
- Transfer of Undertaking

*Note: Tolerance limit of 5%, similar amendment is also brought in the provisions of section 50C and section 43CA.*





**CLAUSE 36A – DEEMED DIVIDEND u/s.  
2(22)(e)**

# REPORTING

## ...Clause 36A

*“(a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause 22 of section 2? (Yes/No)*

*(b) If yes, please furnish the following details :*

*(i) Amount received*

*(ii) Date of receipt*

Reporting is only if received by the assessee and not by the payer

Trade advances/commercial transactions would not be covered – Circular No. 19/2017 of 12.6.2017

# AUDIT PROCEDURES...

- ❑ To examine
  - Events occurring after the Balance Sheet date
  - Financial statements of the payer company for the accumulated profits on the date on which the advance or loan is given
    - What if those books or information are not available ?
  - Registered Shareholder vs. Beneficial shareholder



**CLAUSE 42 – FORM NOS. 61 OR 61A  
OR 61B**

# REPORTING and PROVISIONS...

## ...Clause 42

“(a) Whether the assessee is required to furnish statement in Form No. 61 or Form No. 61 A or Form No. 61B ? (Yes/No)

(b) If yes, please furnish the following .....

- ❑ **Form 60** - As per second proviso to Rule 114B of the Income Tax Rules, an individual or a person (not being a company or firm) who does not have a permanent account number and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction
- ❑ **Form 61** – Rule 114D - The persons who are required to file Form 61 includes person referred in:
  - (i) clauses (a) to (k) of sub-rule (1) of rule 114C; and
  - (ii) sub-rule (2) of rule 114C and who is required to get his accounts audited u/s. 44AB of the Act, who has received any declaration in Form No. 60, on or after the 1st day of January, 2016, in relation to a transaction specified in rule 114B [**prescribes 18 transactions**]

Declaration received till 30 <sup>th</sup> September	31 <sup>st</sup> October
Declarations received till 31 <sup>st</sup> March	30 <sup>th</sup> April

## ...PROVISIONS...

- ❑ **Retention of the above data** - The above persons shall retain Form No. 60 for a period of 6 years from the end of the financial year in which the transaction was undertaken
  
- ❑ **Form 61A**
  - S. 285BA requires specified reporting persons containing a record of any *specified financial transaction* or any *reportable account* to furnish statement of financial transaction. Rule 114E specifies that the statement of financial transaction required to be furnished u/s. 285BA(1) shall be furnished in Form No. 61A. Specified persons includes the class of persons mentioned in Rule 114E
  - For the purpose of s. 285BA(1), the transactions included under the definition of “specified financial transaction” are listed in s. 285BA(3)
  - “Reportable Account” has been defined in sub-rule 6 of Rule 114F

## ...PROVISIONS...

- ❑ **Retention of the above data** - The above persons shall retain Form No. 60 for a period of 6 years from the end of the financial year in which the transaction was undertaken
  
- ❑ **Form 61A**
  - S. 285BA requires specified reporting persons containing a record of any *specified financial transaction* or any *reportable account* to furnish statement of financial transaction. Rule 114E specifies that the statement of financial transaction required to be furnished u/s. 285BA(1) shall be furnished in Form No. 61A. Specified persons includes the class of persons mentioned in Rule 114E
  - For the purpose of s. 285BA(1), the transactions included under the definition of “specified financial transaction” are listed in s. 285BA(3)
  - “Reportable Account” has been defined in sub-rule 6 of Rule 114F

## ...PROVISIONS...

### ❑ Time Limit for Form 61A

- The statement of financial transactions shall be furnished on or before May 31, immediately following the financial year in which the transaction is registered or recorded

### ❑ Form 61B – S. 285BA requires prescribed *reporting financial institution* to furnish Statement of Reportable Account. Rule 114G of the Rules specifies that the Statement of Reportable Account required to be furnished u/s. 285BA(1)(k) by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account in Form No. 61B – For eigh Account Tax Compliance Act (FATCA)

“Reporting Financial Institution has been defined in sub-rule 7 of Rule 114F of the Rules  
“Reportable Account” has been defined in sub-rule 6 of Rule 114F of the Rules

### ❑ Time Limit for Form 61B

Furnish on or before May 31, immediately following the calendar year in which the transaction is registered or recorded





# AMENDED CLAUSES



# CLAUSE 4 – REGISTRATION UNDER INDIRECT TAXES

## REPORTING...

**Clause 4...** "Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, **goods and service tax**, customs duty, etc. if yes, please furnish the registration number or GST number or any other identification number allotted for the same."

## ANALYSIS...

- Mention all Registration number or **GST number** or Identification number allotted to assessee, if he is liable to pay indirect taxes
- Goods and Service Tax ("GST")** is now added
- Assessee having multiple registrations, being registered under different States and Central GST – To report all GSTIN
- If the liability to pay **GST under reverse charge mechanism** – Disclose GST Registration number **alongwith appropriate note** to that effect



# CLAUSE 19 – AMOUNTS ADMISSIBLE UNDER VARIOUS SECTIONS

## TEXT OF CLAUSE 19

Amounts admissible under sections:

- |  |                                |
|--|--------------------------------|
| <input type="checkbox"/> 32AC            | <input type="checkbox"/> 35ABB |
| <input checked="" type="checkbox"/> 32AD | <input type="checkbox"/> 35AC  |
| <input type="checkbox"/> 33AB            | <input type="checkbox"/> 35AD  |
| <input type="checkbox"/> 33ABA           | <input type="checkbox"/> 35CCA |
| <input type="checkbox"/> 35(1)(i)        | <input type="checkbox"/> 35CCB |
| <input type="checkbox"/> 35(1)(ii)       | <input type="checkbox"/> 35CCC |
| <input type="checkbox"/> 35(1)(ia)       | <input type="checkbox"/> 35CCD |
| <input type="checkbox"/> 35(1)(iii)      | <input type="checkbox"/> 35D   |
| <input type="checkbox"/> 35(1)(iv)       | <input type="checkbox"/> 35DD  |
| <input type="checkbox"/> 35(2AA)         | <input type="checkbox"/> 35DDA |
| <input type="checkbox"/> 35(2AB)         | <input type="checkbox"/> 35E   |

## PROVISIONS...

- ❑ Section 32AD - Allowance similar to that in Section 32AC - All assesseees (who has set up undertaking or enterprise in notified backward area) for investment in ‘new assets’ – Deduction is allowable in respect of ‘new assets’ acquired and installed on or before March 31, 2020 (AY 2016-17 to 2020-21)
  - Ensure that the assets are purchased for undertakings set-up after April 1, 2015 in the Notified areas
  - Ensure that the asset does not fall with the exception (already used asset, computer software etc) of ‘new asset’
  - Verify the cost of the ‘new asset’ with purchase invoice – Cost will not include Input Tax Credit of GST, etc.



## ...PROVISIONS

- ❑ Ensure that the 'new asset' is acquired and installed within the eligible period – Installation certificates should be examined wherever available otherwise specific MRL should be obtained in respect of the date of installation – deduction is available in the year of installation
- ❑ The amount allowed is an allowance and not a deduction and therefore will be allowed over and above the depreciation allowable u/s. 32



## ...AUDIT PROCEDURES

- Verify the list of plant and machinery installed – whether in backward area and for the manufacture of article or thing
- Ascertain whether within the meaning of ‘new asset’
- To ensure that not disclosed as the amount debited to Profit and Loss – it is not an expenditure as it is an asset





# CLAUSE 24 – DEEMED PROFITS

## REPORTING

*“Amounts deemed to be profits and gains under section 32AC or 32AD or 33AB or 33ABA or 33AC”*

- ❑ Deals with reporting of the amounts “deemed to be profits u/s. 32AC, 32AD, 33AB, 33ABA, 33AC”
- ❑ The said “deemed profits” are deductions allowed under those sections in preceding assessment years, which are now taxable due to non-fulfilment of conditions laid out therein

## PROVISIONS – S. 32AC

- Deduction u/s. 32AC is allowable if a ‘Company’, in business of manufacture or production, acquires and installs “new asset”, as under:

<b>Actual Cost</b>	<b>Acquired and installed during Period</b>	<b>Deduction</b>
<b>More than 100 crores</b>	April 1, 2013 to March 31, 2015	15% of cost in year of installation
<b>More than 25 crores</b>	April 1, 2015 to March 31, 2017	15% of cost in year of installation

demerger) within a period of five years from the date of installation, in the year in which the asset is transferred

## ANALYSIS – S. 32AC


- Check ITR and Form 3CD for A.Y. 2014-15 to AY 2017-18 to see if any deduction u/s. 32AC was claimed
- Identify the Asset for which deduction was claimed
- Check if the Asset for which deduction was claimed in earlier years is transferred by the Assessee during subject financial year
- If No, is it due to amalgamation or demerger?
- If No, qualify the amount of deduction claimed in earlier years as “deemed profits” and report the same in the Form 3CD

## PROVISIONS – S. 32AD

- ❑ Deduction u/s. 32AC is allowable to any assessee who sets up undertaking or enterprise for manufacture or production in any notified backward area; and acquires and installs any “new asset”, during April 1, 2015 and April 1, 2020, at the rate of 15% of the Actual cost of such “new asset”
  
- ❑ Sub-section (2) to s. 35AD:
  - Deems the deduction allowed under this section as income
  - If “new asset” (for which deduction was claimed) is transferred
  - Except in amalgamation, demerger, conversion of Firm to Company or Company to LLP or Sole Proprietary to Company
  - Within a period of five years from the date of installation
  - (deemed income taxable) in the year in which the asset is transferred

## ANALYSIS – S. 32AD

- Check ITR and Form 3CD for A.Y. 2015-16 to AY 2017-18 to see if any deduction u/s. 32AD was claimed
- Identify the Asset for which deduction was claimed
- Check if the Asset for which deduction was claimed in earlier years is transferred by the Assessee during subject financial year
- If No, is it due to amalgamation, demerger, conversion of Firm to Company or Company to LLP or Sole Proprietary to Company?
- If No, qualify the amount of deduction claimed in earlier years as “deemed profits” and report the same in the Form 3CD



CLAUSE 26 – SUMS REFERRED u/s.  
43B

## PROVISIONS...


- ❑ S. 43B - Deductions on expenditure to be only on actual payment :
  - Any tax, duty, cess or fee, by whatever name called, payable under any law for the time being in force, or
  - Employer's contribution to provident fund, superannuation fund, gratuity fund or any other fund for the welfare of the employees, or
  - Any bonus or commission payable to the employees, or
  - Interest payable on any loan or borrowing from any public financial institution or a State Financial Corporation or State Industrial Investment Corporation, or
  - Interest payable on any loan or advance from a scheduled bank or *a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank)*
  - Leave encashment payable to employees, or
  - *Any sum payable to the Indian Railways for use of railway assets*





## ...ANALYSIS...

- Payments for the use of railway assets - **excludes basic rail freight** as its is for service of transport and not for use of railway asset
  
- Examples for use of railway assets –
  - amounts payable for hire of railway wagons
  - hire of rail sidings
  - lease rent for use of railway land or buildings
  
- Payments for use of hoardings/display panels on railway premises – Whether payment for use of railway assets?



CLAUSE 31 – S. 269SS, S. 269T and S.  
269ST

## PROVISIONS AND ANALYSIS...

### □ Section 269SS -

Clause	Disclosure inserted	Points
31(a)	Particulars of each loan or deposit in an amount exceeding the limit specified ( <u>at present</u> □ 20,000) in section 269SS taken or accepted during the previous year – to provide information as given	<ul style="list-style-type: none"> <li>▪ Information is to be given even if each individual item is less than □ 20,000 but the aggregate amount from a person exceeds such sum</li> <li>▪ Whether by account payee cheque or an account payee bank draft, have evidence as possible, else, an to make an appropriate comment to the effect that the evidence is not in possession of the assessee</li> <li>▪ Sales proceeds collected by selling agent is not a deposit</li> <li>▪ Transactions in current account also to be given, even if interest-free</li> <li>▪ Opening Balance in loan also to be considered as maximum balance is to given</li> </ul>

# ANALYSIS...

## ☐ Section 269SS -

Clause	Disclosure inserted	Points
...31(a) ...	Section 269 SS does not apply to Government, Government Company, Banking Company, etc.	<ul style="list-style-type: none"> <li>▪ Security Deposits under contracts are covered</li> <li>▪ Retention money for performance is not considered as loan/deposit</li> <li>▪ Transfer entries also have to be reported</li> </ul>
31(b)...	Particulars of each specified sum in an amount exceeding the limit specified (at present ☐ <u>20,000</u> ) in section 269SS taken or accepted during the previous year – to provide information as given	

## ANALYSIS...

- ❑ Section 269ST inserted w.e.f AY 2017-18 prohibits receipt of Rs. 2 lakh or more otherwise than through an account payee cheque or account payee bank draft or use of electronic clearing system or through bank account in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person

Clause	Disclosure inserted	Remarks
31(ba)	Disclosure with respect to <u>receipt otherwise</u> than by modes specified u/s 269ST exceeding Rs. 2 lakhs or more	<ul style="list-style-type: none"> <li>▪ Consequential to insertion of section w.e.f. A.Y. 2017-18</li> <li>▪ Receipt will have to be reported whether the same is in the nature of income or not, even if it is <u>exempt income</u></li> <li>▪ Does not apply to any receipt from sale of agriculture produce by an individual or HUF as agricultural income</li> <li>▪ Would apply to journal entries</li> </ul>
31(bb)	Disclosure with respect to receipt exceeding Rs. 2 lakhs or more by a cheque or bank draft otherwise than an account payee cheque/bank draft	

## ANALYSIS...

- ❑ Particulars of each payment made exceeding sum of Rs. 2 lakh or more otherwise than through an account payee cheque or account payee bank draft or use of electronic clearing system or through bank account in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person

Clause	Disclosure inserted	Remarks
31(bc)	Disclosure with respect to payment otherwise than by modes specified u/s 269ST exceeding Rs. 2 lakhs or more	
31(bd)	Disclosure with respect to payment exceeding Rs. 2 lakhs or more by a cheque or bank draft otherwise than an account payee cheque/bank draft	



# CLAUSE 34 – TDS REPORTING

# REPORTING...

Clause applies to all assessees who are liable to deduct tax at source or are liable to collect tax

Clause	Description	Remarks
34(a)	Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB	<ul style="list-style-type: none"> <li>▪ Details of payments and the section under which TDS is deductible along with whether TDS has been deducted at appropriate rate needs to be reported</li> </ul>
34(b)	Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time <b>Whether the statement of TDS/TCS contains information about all details/ transactions which are required to be reported. If not, to furnish list of details/transactions which are not reported</b>	<ul style="list-style-type: none"> <li>▪ The type of form and the date of furnishing the return is required to be reported</li> <li>▪ <b>Earlier, the Tax Auditor was only required to report whether the statement of TDS/TCS contained information about all the transactions which were required to be reported</b></li> </ul>



## ...REPORTING...

Clause	Description	Remarks
		<ul style="list-style-type: none"><li>▪ Thus, the tax auditor to identify and prepare list of transactions on which TDS/TCS ought to have been deducted and reported and were not reported</li><li>▪ This will require a full fledged review by the Tax Auditor of TDS compliances and may be difficult to implement practically in large organizations.</li><li>▪ Also will involve additional time cost and compliance burden on the assessee</li></ul>

Highly onerous for the Tax Auditor from this year

Issue: After due diligence, can a disclaimer be made?

## ...REPORTING

Clause	Description	Remarks
34(c)	Whether the assessee is liable to pay interest u/s. 201(1A) or s. 206C(7)	▪ Details of interest liable to be paid during the year along with the details of payment thereof to be reported.

### Analysis

- Understand the system of booking TDS/TCS entries for each of the clients
- Obtain a consolidated yearly return, downloaded from the e-traces website, for each type of return from the client
- Scrutinise ledger accounts for TDS/TCS liabilities
- Lower deduction certificates (LDC) to be verified
- Cases of NIL TDS where aggregate payment/credit is less than threshold limits should be examined

## ANALYSIS

- Ask for reconciliation of differences, for Clause 34(a), if any**
- Ledgers for all major expenses to be scrutinised to verify whether any expense on which TDS was deductible has been deducted
- Check for details of all the foreign payments and whether TDS has been deducted at appropriate rate
- Form 15CA/CB should be verified where no TDS has been deducted
- Considering the voluminous nature of data in case of most clients, test check may be applied
- Appropriate disclosures must be made in the Notes to Form 3CD



## ...AUDIT PROCEDURES...

- To obtain a list of amounts payable to the railways and verify its correctness
- To analyse such amounts, bifurcating them between payments for the use of railway assets and other payments
- To check the dates of payment and report accordingly



THANK YOU!!!