

TAX AUDIT u/s 44AB CRITICAL ISSUES

August 08, 2021

COMPLIANCE OR COMPILATION OR COMPLICATION

- Till AY 2013-14
 - Compliance of compilation
- W.e.f. AY 2014-15
 - Obviously a compliance
 - Data compilation is there but with perfection
 - Complication – only in terms of comparability of columns in Form 3CD and columns in ITR forms
 - Addition u/s 143(1) on the basis of Tax Audit Forms

COMPLIANCE OR COMPILATION OR COMPLICATION

- W.e.f. AY 2020-21
 - Data compilation is there but with professional competence
 - Pre-filled ITR from Tax Audit report filed
- W.e.f. AY 2021-22
 - No new clause notified till date
 - But not even utility/software available till date for filing Form 3CA/3CB & 3CD
 - New Platform, New Utilities – बढ़िया है।

WHO IS LIABLE - BUSINESSMAN

- Turnover > 1 crore
- By Finance Act, 2021
 - Turnover between 1 crore and 10 crore
 - Receipts in cash upto 5% of total receipts
 - Payments in cash upto 5% of total payments
 - For all type of assessee (from individual to company)

WHO IS LIABLE - BUSINESSMAN

- Receipts include _____
 - Act - aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount
 - ITR Form 3 - Whether aggregate of all amounts received including amount received for sales, turnover or gross receipts or on capital account like capital contributions, loans etc. during the previous year, in cash, does not exceed five per cent of said amount?

WHO IS LIABLE - BUSINESSMAN

- Payments include _____
 - Act - aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment
 - ITR Form 3 - Whether aggregate of all payments made including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loans etc., in cash, during the previous year does not exceed five per cent of the said payment?

WHO IS LIABLE - BUSINESSMAN

- W.e.f. AY 2021-22
 - *Provided further that* for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash
 - Who has to decide and liability thereof?
- Receipts or payments greater than 10 crore, then exemption from Audit????

WHO IS LIABLE - BUSINESSMAN

- Person having turnover between 1 crore to 2 crore
 - May be required to have audit by virtue of 44AD read with 44AB
 - But person having turnover > 2 crore, may not be required to have audit
 - Even though profit margin is same
- Requires clarification

WHO IS LIABLE - BUSINESSMAN

- Turnover/sales/receipts
 - Includes GST?
 - Interest income taxable u/h PGBP?
 - Increase by virtue of applicability of ICDS
 - Either of three fulfilled or need to be seen from nature of accounting (mercantile/cash)
 - Case – huge receipts during the year on account of advances/real estate business with project completion method but no revenue recognition during the year
 - 44AB uses words “as the case may be” – means as applicable and not any of these three

WHO IS LIABLE - BUSINESSMAN

- Section 44AD
 - Basics we know
 - Liable for audit if opt out within 5 years after opting in 1st time
 - Opt out because of increase in turnover and then in next year turnover reduces below 2 crore?
 - Is exact 6% or 8% to be declared or actual margin (if higher) to be declared?
 - 6% or 8% of turnover excluding or including GST?

WHO IS LIABLE - PROFESSIONAL

- Gross Receipts > 50 lakh
 - Includes GST?
 - What if accrual basis of accounting is followed?
- Eligible for 44ADA but profit below 50%

WHO IS LIABLE

- Partner receiving salary, interest and profit share from firm
- Specially we chartered accountants
 - Plethora of judgements
 - Liable for audit
 - Even can claim all expenses against the same
 - Relying upon this view, even 44ADA can be opted
 - Turnover/receipts – should include profit share.
 - Salary, interest and profit share should be seen as per books and not as per Income-tax
 - Even in ITR after selecting code 0001, option to fill balance sheet and P&L is open
 - What about books – required to be maintained or not

CLAUSE 8

- Already audited under any other law
 - No audit but particulars in Form 3CD
 - Columns in Form 3CA and 3CB – clause 8
 - Form 3CA – why it contains reference of clauses of 44AB
 - Form 3CB – why it contains reference of proviso to section 44AB

S.No.	Relevant clause of section 44AB under which the audit has been conducted
1	<input type="text" value="Select"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>	

Select

Clause 44AB(a)- Total sales/turnover/gross receipts of business exceeding specified limits

Clause 44AB(b)- Gross receipts of profession exceeding specified limits

Clause 44AB(c)-i- Profits and gains lower than deemed profit u/s 44AE

Clause 44AB(c)-ii- Profits and gains lower than deemed profit u/s 44BB

Clause 44AB(c)-iii- Profits and gains lower than deemed profit u/s 44BBB

Clause 44AB(d)- Profits and gains lower than deemed profit u/s 44ADA

Clause 44AB(e)- When provisions of section 44AD(4) are applicable

Third Proviso to sec 44AB : Audited under any other law

Clause 44AB(a)- Proviso where aggregate cash receipts and cash payments of business exceeding specified limits

CLAUSE 8(a)

- Assessee opted for taxation u/s 115BA/115BAA/115BAB
 - How can an Auditor make a comment on the same
 - Advisory course of action....
- Will section 115BAC (Individual/HUF) be added to list?

CLAUSE 9(b)

- In case of new partnership firm
 - Whether to report new partner details or not

CLAUSE 20(b)

- Retrospective amendment by FA 2021 w.e.f. AY 2021-22
- To report both ER's contribution and EE's contribution, or to report EE's contribution only
- If deposited after due date (15th of next month) but before due date of ITR (31/10/2021 – extended to 30/11/2021) – benefit allowed or not
- AIMIL Limited + many other judgements – allowed
- Circular – not allowed
- 143(1) adjustments are there
- CIT(A) allowing the claim

CLAUSE 20(b)

- How to report in Form 3CD
- Appeal No. 10/ICAI/2018
 - CA can't rely upon judgements
 - Held guilty
 - Nothing reported in observations also
- Form 3CD – duty of assessee to fill up
- CA is required to make observations
- Advisable course of action!!!!

CLAUSE 31(a) AND 31(e)

- Death of lender
- Loan shifted in name of nominee/legal heir
- How to report alongwith nature of mode of receipt and payment

CLAUSE 14(b) R.W.S. 145A

- Impact of GST on closing stock
- Is it tax neutral?
- If not, then whether to report or not

3CD vs ITR

- Corresponding columns in Schedule OI
- Must match otherwise 143(1) addition or selection u/s 143(2)
- For every column in 3CD, match corresponding column in ITR
- Example - CSR expenses (no column in 3CD but if disclosed in other column in 3CD and in ITR in CSR expenses, difference may arise)
- Gratuity provision generally reflected twice – 40A(7) and 43B but in ITR, at one place only

DISALLOWANCES BY ACT & ICDS BOTH

- Disallowance by a particular section as well as by ICDS
- How to report in 3CD and then in ITR
- If in 3CD, reported double or in ICDS column, but in ITR in respective section only, then problem may arise
- Does Act overrides ICDS and hence to be reported twice?

CLAUSE 21(a)

Expenditure by way of penalty or fine for violation of any law for the time being force

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Expenditure by way of any other penalty or fine not covered above

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Expenditure incurred for any purpose which is an offence or which is prohibited by law

S.No.		Particulars	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

CLAUSE 21(a)

- First 2 seems same
- Last not penalty/fine, but any expense prohibited by law
- Offence not necessarily be yours but may be of other by receiving the same – like freebeas to doctors
- Remember to fill in schedule OI same column as that here

CLAUSE 33 – DEDUCTION u/c VI-A

- Specially in case of individuals
- Audit of books of business or of individual
- If of business, then payments covered up by Chapter VI-A should be reported only if made through bank accounts pertaining to business

CLAUSE 17 – SECTION 50C

- Specially in case of individuals
- If immovable property was not part of business books, then to be reported or not?

DOCUMENTS TO ATTACH

- Balance Sheet and Profit & Loss Account
 - Scanned copy versus PDF converted from Excel/Word without signature
 - Single page or with schedules
 - Notes to accounts

DEEMED DIVIDEND – 2(22)(e)

- 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



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

S.No.		Amount received (in Rs.)	Date of receipt
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

- In case of common shareholder in lender & borrower, who has to report? – common shareholder or borrower.

PRESENTATION BY:

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THANK YOU