

IMPORTANT CHANGES FOR A.Y 2025-26 **AND OTHER SIGNIFICANT ISSUES**



Clause 22: Micro, Small & Medium Enterprises

- Prior to amendment, clause 22 required reporting the amount of interest inadmissible under section 23 of Micro, small and Medium Enterprises Development Act, 2006 or any other amount not allowable under clause (h) of section 43B of the Income tax Act, 1961
- Substituted Clause 22 w.e.f, 01-04-2025
 - (i) Amount of interest inadmissible under section 23 of the MSMED Act, 2006; or
 - (ii) Total amount required to be paid to a Micro or Small or Medium Enterprises, as referred to in S. 15 of the MSMED Act, during the previous year
 - (iii) of amount referred to in (ii) above, amount-
 - (a) Paid up to time given u/s. 15 of the MSMED Act;
 - (b) not paid up to time given u/s 15 of the MSMED Act and inadmissible for the previous year.

ENCHANCED MSME PAYMENT REPORTING (CLAUSE 22)

- (I) Amount of interest inadmissible under section 23 of the Micro, small and Medium Enterprises Development Act, 2006 (MSMED Act); or
- (ii) Total amount required to be paid to a micro or small enterprises, as referred to in section 45 of the MSMED Act during the previous year;
- (iii) or amount referred to in (ii) above, amount –
 - (a) paid up to time given under section 15 of the MSMED Act:
 - (b) not paid up to time given under section 15 of the MSMED Act and inadmissible for the previous year.

Cond.....

- In the new Clauses 22, it is required to report both sub clauses (i) and (ii) / (iii) , or is reporting either of the two sufficient, given that OR is mentioned after sub clause (i) to be read “and”
- Is capital expenditure (capex) required to be reported under the MSME clause?
- If the supplier of services is registered as an MSME, is the delay payment to such supplier required to be disallowed under the applicable provisions?
- Under clause 22(b), are payment details required to be reported for the entire year, or is it sufficient to report the payment status as of 31st March? Kindly clarify.

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- *Clause 22, full disclosure is required to be made as required in sub-clauses (ii) & (iii) -*
 - *Cl. 22(ii) requires reporting of “total amount required to be paid to a micro or small enterprise, as referred to in section 15 of the MSMED Act, during the previous year”, the total amount required to be paid during the year needs to be stated even if the said amount has been actually paid during the year.*
 - **Under Clause 22(iii) –**
 - *Under (a), all payments out of that included under 22(ii), which have been settled within the time limit laid down in Section 15 of MSMED Act need to be stated.*
 - *Under (b), only such amounts which will attract disallowance under Section 43B(h) should be reported. This will include only amounts which –*

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- *(i) are outstanding on the last day of the previous year.*
- *(ii) have not been paid within the time limit specified in section 15 of the MSMED Act.*

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► **Section 15 of MSMED Act-Liability of buyer to make payment**

Where any **supplier** supplies any goods or renders any services to any **buyer**, the buyer shall make payment thereof on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the **appointed day**

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance

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- S. 15 of the MSMED Act, requires the buyer to make payment to the supplier of the goods or services on or before date agreed upon (subject to max 45 days from the date of acceptance or deemed acceptance) or where there is no agreement in this behalf, before the appointed date

(A) **Where the agreement is in writing**

The amount remaining outstanding as on 31st March of the FY but payment whereof has made duly be been made in the next FY but within the time limit. (agreed period or 45 days whichever is earlier) will not attract disallowance u/s 43B(h)

(B) **Where there is no agreement in writing:**

The amount remaining outstanding as on 31st March of the FY but payment whereof has duly been made in the next FY but within the time limit of 15 days will not attract disallowance u/s. 43B(h).

Section 43B

► Proviso to Sec 43B

Provided that nothing contained in this section [**except the provisions of clause (h)**] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee alongwith such return.

Explanation 4 of section 43B

(e) “micro enterprises” shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);

Contd....

(g) “small enterprise” shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

Cl (h) has been inserted in section 43B w.e.f. 1-4-2024 (applicable from A.Y.2024-25)

“43B **Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of**

Following clause (h) shall be inserted after clause (g) of section 43B by the Finance Act, 2023 w.e.f 1-4-2024

(h) Any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

Contd...

Shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Checklist for Tax Auditors

The following is the checklist for the tax auditor while reporting on section 43B(h):

- (i) The tax auditor should take note of the following
 - (a)** C. (h) of S. 43B is attracted when any sum payable by the assessee to a micro enterprises or small enterprise is paid beyond the time limit specified in S. 15 of the MSMED Act, 2006.
 - (b)** The provisions of section 43B(h) are applicable only in respect of sum payable by the assessee to a micro or small enterprise and not to a medium enterprise.
 - (c)** S. 43B(h) is applicable only in respect of **a deduction otherwise allowable under this Act.**

Contd.

- (d) Traders are allowed to be registered under MSME only for a limited purpose of Priority sector Lending and not for any other benefit. According, if the supplier to the audited is a retail or wholesale trader, the provisions of section 43B(h) of the Income tax Act, 1961 would not be attracted
- (e) For the purpose of disallowance under section 43B(h) of the Income tax Act, 1961 the tax auditor should consider only the amount remaining outstanding as on 31st March of the financial year for the supply of goods or services

Unpaid interest payable under section 16 of MSMED Act, 2006 need not again be considered for disallowance under section 43B(h) of the Income tax Act, 1961, since as per section 23 of the MSMED Act, 2006, the entire interest payable under section 16 of the said Act is inadmissible as deduction while computing income under section 28 of the Income tax Act, 1961

Clause 22: Micro, Small & Medium Enterprises

Points to be considered by Tax Auditor

- (a) Whether the enterprise is registered under the MSMED Act, 2006, since registration of MSME is a pre-requisite for attracting the provision of section 43B(h) of the IT Act,
- (b) If an entity is registered at any time during the current previous year, then, such registration will be applicable prospectively. Accordingly, any transactions carried out before the date of registration will not attract disallowance under section 43B(h).
- (c) If registration of the supplier is cancelled at any time during the previous year then it will be effective prospectively. Therefore, payment made for any purchases or services received before the date of cancellation shall be covered under section 43B(h)

Contd....

(d) The proviso to section 43B which provides relaxation (from applicability of section 43B for payment made in respect of “any sum payable referred to in clauses (a) to (g) of section 43B on or before the due date of filing of income tax return is not available for the newly inserted clause (h) of section 43B, where the payment has to be made with the time limit specified in terms of section 15 of MSMED Act 2006.

Example

Some examples for Applicability of S. 43B(h) in different cases (A) Where the agreement is in writing

Sl. No.	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Due Date of payment as per S.15 of MSMED Act	Actual Date of Payment	Status in terms of S. 43B(h)		
					AY 25-26	AY 26-27	AY 27-28
1	20-03-2025	19-04-2025	19-04-2025	19-04-2025	Allowed	-	-
2	20-03-2025	19-04-2025	19-04-2025	10-05-2025	Disallowed	Allowed	-
3	20-03-2025	19-04-2025	19-04-2025	10-06-2026	Disallowed	-	Allowed
4	20-03-2025	20-06-2025	04-05-2025	02-05-2025	Allowed	-	-
5	20-03-2025	20-06-2025	04-05-2025	08-05-2025	Disallowed	Allowed	-

Contd...

► Where there is no agreement

Sr No.	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Appointed Day	Due Date of payment as per S.15 of MSMED Act	Actual Date of Payment	Status in terms of S. 43B(h)	
						AY 25-26	AY 26-27
1	20-03-2025	NA	05-04-2025	04-04-2025	29-03-2025	Allowed	-
2	20-03-2025	NA	05-04-2025	04-04-2025	04-04-2025	Allowed	-
3	20-03-2025	NA	05-04-2025	04-04-2025	10-04-2025	Disallowed	Allowed

Clause 26

► **In respect of sum referred to in section 43B, the liability for which**

- (A) pre-existed on the first day of the previous year but was not allowable in the assessment of any preceding previous year and was
 - (a) paid during the previous year:
 - (b) not paid during the previous year
- (B) Was incurred in the previous year and (for clauses other than clause (h) of section 43B was
 - (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1)
 - (b) not paid on or before the aforesaid date

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▀ Clause 26A

- Pre-existed on the First day i.e. on April 01,2024
- Paid during the year

• Clause 26B

- Was incurred in the previous year
- Other than clause (h) of section 43B
- Paid
- Not paid

Criteria for Micro, Small & Medium

Criterion	Applicable Period	Micro Enterprise	Small Enterprise	Medium Enterpris
Investment in Plant and machinery or equipment does not exceeds	01.7.2020			
	31.3.2025	1 crore	10 crore	50 crore
	relevant upto A.Y. 2025-26			
	w.e.f 1.4.2025			
Annual Turnover does not exceed	relevant from A.Y. 2026-27	2.50 crore	25 crore	125 crore
	1.7.2020 to 31.3.2025 (relevant utp A.Y 2025-26)	5 crore	50 crore	125 crore
	w.e.f. 1.4.2025			
	relevant from A.Y. 2026-27	10 crore	100 crore	500 crore

Special Provisions Relating to Tax on Distributed Income of Domestic Company for Buy Back of Shares (S. 115QA)

- Pre-cursor to section 2(22F) – 36B
- This section was applicable only upto Sept. 30, 2024
- Applied to Domestic Company
- It provided that in addition to tax payable on total income the company will pay additional tax @ 20% on any income distributed by a company on buy back shares from the shareholders.
- Even if no tax was payable by company on its total income tax was payable on distributed amount and principal officer was liable to pay tax within 14 day to the Govt.
- No credit was available to the shareholder
- Income was exempt in the hands of shareholders u/s. 10(34A) of the Act.

Clause 36B

- Applicable from October 01, 2024
- **Applicability and definition:**
- “Buy back” means purchase by a company of its own shares.
- “Distributed Income” means the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of shares.
- Tax in the hands of shareholders at normal rate
- TDS is to be deducted u/s. 193 of the Act @ 10%

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- New clause 36B inserted w.e.f. 01-04-2025 i.e. assessment year 2025-26 which is as below:
 - (a) Whether the assessee has received any amount for Buyback of shares as referred to in sub-clause (f) of clause (22) of section 2.
 - (b) If yes, furnish amount received and cost of acquisition of shares brought back

Particulars	Current Regime (Till Sept 30, 24)	Revised Regime (From Oct 1, 24)
Applicable Law	Section 115QA & Section 10(34A)	Section 2(22)(f), Dividend Tax Provisions
Taxability of Buy-back	Taxed in the hands of the company	Taxed in the hands of the shareholder
Tax Rate	23.30% (including surcharge and cess) on distributed income	As per applicable slab rate / tax rate for shareholder
TDS	Not applicable	10% for residents; RIF / DTAA for non-residents
Shareholder Tax Liability	Exempt under Section 10(34A)	Taxable as dividend income (IFOS)
Deduction of Expenses	Not applicable	Not allowed
Capital Gains Treatment	Not applicable	Consideration deemed NIL → full capital loss
Capital Loss Set-off / Carry Forward	Not applicable	Allowed; can be carried forward for 8 years
Tax Credit to Shareholder	Not allowed	Not applicable as tax paid by shareholder directly
Administrative Burden	On company (calculate and pay buy-back tax)	On company (TDS) + shareholder (report and pay tax)

OTHER SIGNIFICANT ISSUES

Issue - Audit Applicability

■ **Q – Is tax audit applicable when income is exempt u/s. 10 or 11?**

A – Section 44AB does not stipulate exemption from tax audit in case of exempt income.

- Trust carrying on business enjoying exemption under sections 10(21), 10(23A), 10(23B), 10(23C) or section 11.
- Co-operative Society carrying on business enjoying deduction under 80P
- Such institutions shall be governed by section 44AB if their turnover / gross receipts in business exceeds the prescribed limit
- Agricultural receipt is exempt u/s. 10(2A) but agricultural business – Tax Audit is applicable

Issue – Tax Audit Applicability

Q. Whether the provisions of tax audit applicable to business u/s. 11(4A)?

A There is nothing in the statute to suggest that Tax Audit under section 44AB shall apply to business under section 11(4A) (Incidental Business).

Section 11 to 13 are independent of the five heads of income. As long as the registration under section 12AA/12AB is in force the income can not be computed under the five heads of income.

Tax Audit is a specific requirement of the assessee having income under the head “Business and Profession”

Sales Turnover – Case Laws

➤ **Sanjay Marotrao Modak 147 taxmann.com 221 (Mumbai –Trib)**

Where assessee was trading in future and option transactions and Assessing Officer determined turnover from the said transactions at Rs. 30.94 crores and levied penalty under section 271B on the ground that assessee's turnover was beyond limit prescribed under section 44AB and he failed to submit Audit report, **since as per ICAI 'Guidance Note on Tax Audit assessee's case did not fall under section 44AB, impugned penalty deserved was deleted.**

➤ **Ghai Construction, [184 Taxman 52 (Bom)]**

Tax audit is only in respect of business carried on by the assessee and not in respect of his income from other sources

Calculation of Turnover/ Gross Receipts for Partners

- Share of Profit – Not includible, para 5.14(x) of ICAI GN 2025 – share of profit exempt u/s. 10(2A) so not “gross receipts of business”
- Interest and remuneration from firm not includible in gross receipt (Perized Zorabian Irani 139 taxmann.com 164 (Bombay))
- Section 44ADA is a special provision for computing profits and gains of profession on presumptive basis uses the expression “Total gross receipts”. As already seen in Section 44AD, the words used are ‘total turnover’ or ‘gross receipts’ and it presupposes that it pertains to a sales turnover and no other meaning can be given to the said words and if done so, the purpose of introducing Section 44AD would stand defeated (Anandkuamar, Madras High Court [430 ITR 391])

Turnover – Advance received for services

Q, Advance received for services to be rendered, to be included in gross receipts”

A – ICAI's view Para 5.16 of GN 2025:

Such receipts are liabilities and not a part of gross receipts until services are rendered.

CIT Vs. Shankar Narayan Construction Vo. [197 ITR 688 (Karn)] Advanc Fund or Deposit is not liable to tax – even in cash system of accouting

Applicability of Tax Audit

- In case of salaried employee who has done huge transactions of intraday speculation trading but not gain for the year is a few thousand rupees – No – Net income is to be taken
- In case of multiple businesses, how should aggregate turnover for deciding tax audit applicability

As per para 5.18 GN 2025 – “the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and / or gross receipts of all business carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore and Rs. 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not

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- In case of LLP – Cash withdrawals done by Designated Partner for its personal use to be considered for cash payment 5% limit for Tax Audit applicability.
- If futures and options turnover is between 3 to 10 crores and having loss - whether tax audit applicable or not ? As per ICAI GN – Net balance is to be taken as turnover,

Issues – Tax Audit report can be revised?

Q. Whether a tax audit report can be revised

A.-

- A Tax Audit Report which has not been approved by assessee can be revised
- However, after it has been approved by the assessee, it should not be revised
- However, there is no restriction by the utility, as of now, to upload revised SON File
- So, we should take due care, so that correct data is uploaded in the first instance itself

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Guidance Note on Tax Audit – Para 15-12 under section 44AB issued by the ICAI provides that the audit report under section 44AB should not normally be revised. However, sometime a member may be required to revise his tax audit report on grounds such as:

- (a) Revision of accounts of a company after its adoption in annual general meeting
- (b) Change of law e.g. retrospective amendments
- (c) Change in interpretation e.g. CBDT circular, judgement etc.

Thus, a tax audit report once filed can be revised on the above mentioned grounds.

Issues: Revision of tax audit report is mandatory in the circumstance mentioned in Rule 6G(3)

Q Whether Tax Audit report need to be revised if payment of expenditure u/s. 43B & TDS u/s. 40(a) are paid after filing of Tax Audit report but before the due date of filing Income tax Return u/s/ 139(1)

A. Rule 6G(3) provides that the tax audit report furnished may be revised by accountant and furnished it before the end of the relevant AY for which the report pertains if there is payment after furnishing of report which necessitates recalculation of disallowance u/s 40 or sec. 43B

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Therefore, in the circumstances covered by Rule 6G(3)m, issuing a revised tax audit report is mandatory, and a revised tax audit report is to be issued regardless of prescription of the Guidance Note on Revision of the Audit Report.

Issues – Clause 8A: Options for Taxation

Q. Compliance in case of the assessee has opted for taxation under section 115BA/ 115BAB / 111BAC / 115BAD/ 115BAE ?

A – The tax Auditor should verify whether the relevant form being 10-IB, 10-IC, 10-ID, 10IE, 10IF and **10IFA** furnished u/s. 115BA/ 115BAB / 111BAC / 115BAD/ 115BAE **(included by revision in form 3CD)** respectively for availing new tax regime is already filed by the assessee.

In case, the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the new regime or otherwise and based on written representation, the reporting under this clause should be made

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- Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.
- However the Calcutta High Court in PCIT Vs. Fastner Commodel Pvt. Ltd. [479 ITR 121] held that it is only procedural delay.

Issues - Clause 12 : Profits and gains assessable on presumptive basis u/s. 44AD/44 ADA

Q, Mr, A has opted for the presumptive scheme u/s. 44AD/44 ADA in respect of one of his business / profession. Whether auditor is required to mention details of such business in the audit report.

A, In case profit and loss account of the assessee includes any profit declared under the presumptive scheme {section 44AD, 44ADA, 44AE, 44AF 44B, 44BB, 44BBA, 44BBB **44BBC**) then it is mandatory to **mention the amount of such profit** and the section under which the same is declared.

The tax auditor is not required to indicate as to whether the amount of presumptive income has been **correctly computed** under the relevant section relating to presumptive taxation. The reporting requirement get satisfied **if the amount as per profit and loss account is reported**

Issues - Clause 12 : Profits and gains assessable on presumptive basis

Q. How to ensure that the profit has been computed correctly in the profit and loss account also includes the profit computed on a presumptive basis?

A. If the profit and loss account of the assessee also includes the presumptive income, the **common business expenditure** has to be apportioned to arrive at the correct amount of profit credited to profit and loss account and assessable on a presumptive basis.

The tax auditor, in such situation **should arrive at a fair and reasonable estimate of such expenditure** on basis of evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked by him

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It is also necessary to mentioned the basis of apportionment of common expenditure. However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate such fact under this clause by suitable note.

Issus – Clause 17: Section 43CA / 50C

Q, What should be the manner in which provisions of section 43CA is to be applied in case of builder adopting Percentage Completion method for recognition of revenue?

- According to the cardinal rules of interpretation of tax statute is that a **deeming** provision has to be interpreted strictly in terms of the words / language used to create the deeming fiction. As per the relevant section, it is imperative that there should be “**actual transfer**” of **land or building of both – freehold and leasehold**

Issues – Clause 17 : Section 43C/ 50C

Q Whether leasehold right / development rights /TDS/FSI etc. would be covered under this clause ?

➤ **Shivdeep Tyagi 163 taxmann.com 614 (Delhi Trib)**

Section 50C being a deeming provision is not applicable in case of transfer of leasehold rights

➤ **Vidarbha Veera Industries Ltd. 175 taxmann.com 223 (Bombay)**

Manner in which property was held would be immaterial for purpose of applicability of section 50C and, thus, section 50C is applicable to a property held in leasehold right

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➤ **Greenfield Hotels & Estates (P) Ltd 389 ITR 68 (Bombay HC)**

Section 50C of the Act would not be applicable while computing capital gain on transfer of lease hold rights in Land and buildings

Clause 21(a) Amounts debited to the profit and loss

Item (vii) – Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India

- Compounding of offence is a settlement mechanism, by which, the person is given an option to pay a fee in lieu of penal action or prosecution, thereby avoiding a prolonged litigation. **Cases in which this is permissible are called compoundable offences**
- Examples of such offences may be under various laws. The common laws where compounding is generally done is Income tax laws, company aw, Labour laws, some sections of Indian Penal Code, FEMA etc.

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- If in the opinion of the assessee, any penalty or fine or part of it is compensatory in nature, the tax auditor should, in addition to reporting in this clause , **report the assessee's stand in para 3 of Form No. 3CA or para 5 of Form No. 3CV, as the case may be**

Item (viii) - Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person

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The condition for reporting under this clause is as under:

- (a) There has to be any benefit or perquisite to be given either in cash or in kind, in whatever form. The value of benefit or perquisite should be debited to the profit and loss account / income and expenditure account;
- (b) Such benefit or perquisite to be given to a person, whether or not carrying on business or exercising profession
- (c) Acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be for the time being in force.

Clause 21(a) Amounts debited to the profit and loss

Whether Entrance Fees (life membership) paid to the club is a disallowable expenditure?

- Tax Auditor to only report payment of Entrance fees and not to report on its allowability.
- Even if the expenses brings enduring benefit, if the benefit is on revenue field i.e. to carrying on the business more efficiently and effectively, it is revenue expenses

Empire Jute Co. [124 ITR 1 (SC)]

CIT Vs. Engineering India Ltd [239 ITR 237 (Del)]

Otis Elevator Co. (I) Ltd [195 ITR 482 (Bom)]

Clause 21(b) Amounts debited to the profit and loss

Q Weather capital expenditure shall be reduced from the actual cost of capital asset if tax was not deducted from such expenditure?

A. As per section 40(a)(ia), 30% of an expenses is disallowed if tax is not deducted or after deduction not paid to government. Whether this provision shall be **applicable only in case of revenue expenditure or in respect of capital expenditure** as well has been a matter of dispute between taxpayer and revenue. The revenue always argue to reduce the actual cost of a fixed asset if the tax has not been deducted for an expenses which is capitalized as per the provisions of section 43(1)

Plasmac Machine Mfg Co Ltd [201 ITR 650]

It was held that disallowance under this section can be made only from the expenses which is claimed in the profit and loss account. Since in the capital expenditure no deduction is claimed under the P/L account, there should not be any disallowance u/s. 40(a)(ia) in respect of such payment.

Clause 21(b) Amounts debited to the profit and loss

Q. Whether TDS amount will be allowed if assessee has not deducted TDS and obtained a CA certificate in Form No. 26A

A. ICAI GN 2025 provides that where assessee has not deducted TDS and obtained CA certificate in Form No. 26A to the effect that deductee / payee has declared the payment in his ITR and paid tax on the actual income, including such payment and relies on the same. **So non-deduction of TDS does not attract disallowance**, tax auditor should verify the certificate in Form 26A and how it has been reflected in the statement of TDS file vide form 4Q / Form 26Q / Form 27Q

Clause 21(c) Amounts debited to the profit and loss

Upto A. Y. 2024-25, the time limits laid down under section 40(b) were as under:

(a) On the first Rs. 3,00,000 of the book profit or in case of loss:

Rs. 1,50,000, or at the rate of 90 per cent of the book-profit, whichever is more;

(b) on the balance of the book profit; at the rate of 60%

From A.Y. 2025-26 and onwards, the limit has been laid down u/s 40(b) are as under:

On the first Rs. 6,00,000 of the book profit, profit or in case of loss Rs. 3,00,000 or at the rate of 90 per cent of the book profit, whichever is more (b) on the balance of book profit: at the rate of 60%

Issues – Clause 26: GST in Electronic Cash Ledger – S. 43B

■ Excess amount of GST lying in Electronic Cash Ledger

➤ Whether can be claimed as deductible u/s. 43B

Amount deposited in the ECL although not adjusted against the tax liability and laying as a balance as at 31-03-2023

Whether it can be claimed as deduction u/s. 43B

Whether the assessee is entitled to claim deduction under section 43B of the Income tax Act 1961 in respect of the excise duty paid in advance in the personal ledger account. The above issue arose during the excise regime.

Hon'ble SC in case o M/s. Modion Ltd [400 ITR 1 (SC)]

Issues – Clause 27(b) : Prior Period Items

- Q.** If the statutory auditor does not consider an item as a prior period expenses whereas tax auditor feels that such item should be considered as prior period should that expense be disclosed in clause 27(b) of Form 3CD?
- A.** In case of any conflict in the opinion of the statutory auditor and tax auditor ,the opinion of tax auditor shall prevail, and the information thereof shall be reported in Form 3CD

Issues – Clause 29A : Section 56(2)(ix)

Q – Mr, a sole proprietor, agreed to transfer his personal property to Mr. X and received some non-refundable advance against such deal. The sale could not materialize as Mr. X could not pay the whole amount and the advance money was forfeited by Mr. A. What are the disclosure requirements ?

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issues – clause 29A : Section 56(2)(ix)

- Q.** Any advances received and **forfeited towards the sale of stock-in-trade** would be taxable under section 28(i) and would not be required to be reported since the amount would be credited to profit & loss account.
- A.** The requirement of reporting arises only on forfeiture of advance. If an advance has been received and has been outstanding for a considerable time, **there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.**

Issues – Clause 31 : Section 269SS, 269 ST & 269T

- Company B purchased goods from company A worth Rs. 3,00,000 on credit basis. Company A has dues payable to Company C. Company B has dues receivable from Company C. On the basis of internal arrangement between the 3 companies, company A receives payment from company B by set-off of inter company balances.

Earlier the following Questions used to arise

- **Section 269ST restricts otherwise than through specified modes. Whether settlement of debt by book entry are also restricted?**
- **How should such transactions be reported in Form 3CD?**
- **A similar provisions regarding loans and deposits exists in section 269SS and 269T**

S.No.	Nature of amount or receipt or payment	Code
1	Cash payment	A
2	Cash receipt	B
3	Payment through non account payee cheque	C
4	Receipt through non account payee cheque	D
5	Transfer of asset	E
6	Transfer of liability	F
7	Conversion of assets	G
8	Conversion of liability	H
9	Journal entry (Debit)	I
10	Journal entry (credit	J
11	Any other mode (Debit)	K
12	Any other mode (credit)	L

Issues – Clause 31 : Section 269SS & 269T

Q. Whether advance received from a person for sale of goods shall also be disclosed under clause 31?

A – Loans or deposits are generally squared off by the repayment of the sum to the lender. While as in the case of advance for the sale of goods, the party's ledger is squared off by the delivery of goods or services

Thus, advance received against the agreement of sale of goods could not be deemed as loan or deposit. Accordingly, details of advances shall not be reported in Clause 31. Further, the ICAI, in the guidance note, has clarified that **Advance received against the arrangement of sale of goods is not a loan or deposit**

Issues – Clause 31 : Section 269SS & 269T

Q, Mr. A, received cash gift in following manner –

- Rs. 2,50,000 each from his father and brother on a single day
- Rs. 1,80,000 each from his 10 friends or occasion of his marriage

Section 269T Apply?

A. Section 269ST, inter alia states that –

“No person shall receive an amount of two lakh rupees or more

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

Issues – Clause 31 : Section 269SS & 269T

Gift from father and brother – Rs. 2,50,000 each

- Any sum received from relatives shall not be taxable u/s 56(2)(x)
- Section 269ST provides that no amount shall be received in excess of Rs. 2 lakhs from a person on a single day otherwise than specified mode.
- Hence, cash gift from father and brother, though exempt u/s 56(2)(x) shall be liable for penalty u/s. 271DA.

Gift from friends – Rs. 1,80,000 each

- Any sum received on occasion of marriage shall not be taxable u/s. 56(2)(x).
- Section 269T provides that no amount shall be received in excess of Rs. 2 lakhs on an occasion from a person otherwise than specified mode

Contd...

- Since cash gift from each friends is less than Rs. 2 lakhs through on a single occasion, should not be liable for penalty u/s. 271DA

Issues – Clause 36A: Deemed Dividend u/s. 2(22)(e)

Q. Who is to be taxed – Registered share holder or beneficial share holder

- The **Supreme Court of India** in the case of **Gopal and Sons [77 taxmann.com7]** held that although, HUF is a beneficial shareholder but cannot be a Registered Shareholder. The share certificate are issued in the name of Karta. The Loans / advances received by HUF and shareholder is a member of HUF and he has a substantial interest. **Therefore, it shall constitute Deemed Dividend in the hands of HUF as per Explanation 3 to section 2(22)(e).**
- **National Travel Service (Supreme Court) 2068-2071 of 2021** – The argument that as the shares are issued in the name of Karta, the HUF is not the “registered shareholder” and section 2(22)(e) will not apply to loan paid to HUF is not correct because in the annual return filed with the ROC the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder

Contd....

Even if it is assumed that the Karta is the registered shareholder and not the HUF, as per Explanation 3 to S. 2(22), any payment to a concern (i.e. the HUF) in which the shareholder (i.e. Karta) has a substantial interest is also covered.

Issues – Clause 44 : Break up of expenditure under GST

Q. Whether the above information is to be given in respect of each and every head of expenditure or only the total expenditure is to be given.

A. The Guidance may be taken from the heading of the table which starts with words **Breakup of total expenditure** and hence the total expenditure including purchases as per the above format be given. It appears that head-wise / nature wise expenditure details are not envisaged in this clause

Note: Depreciation under section 32, deduction for bad debts u/s. 36(1)(vii) etc. which are accounting expenses in the nature of non-cash charges on the profit and loss account should not be reported under this clause in any of the columns 3 to 7

Issues – Clause 44 : Break up of expenditure under GST

Q. What is after purchasing goods / availing services from Registered supplier, the registration of supplier got cancelled.

A. It is important to differentiate the current status of a supplier's registration from their status as it was at the time of supply.

Events occurring after the balance sheet date that alter the data relating to the year under audit do not alter the nature of expenditure, that it is from registered suppliers.

Issues – Clause 44 : Break up of expenditure under GST

Q, What if the assessee is not in a position to give the details as required in clause 44?

A. An appropriate disclosure / disclaimer may be made by the auditor in Form 3CA / 3CB. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate

THANK YOU



