

**SICASA(SOUTHERN INDIA CHARTERED ACCOUNTANTS STUDENTS'
ASSOCIATION), kottayam**

TAX AUDIT SEMINAR MATERIAL

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Part 2

Audit Reports U/S 44AB

Reports U/S 44AB can be classified as under:

- Audit Report which can be in Form No. 3CA or Form No.3CB
- And a Statement of Particulars in Form No.3CD

i. Form No. 3CA

- Audit report in cases where the accounts of the assessee are audited under any other law. For example, in case of Companies, Statutory Audit is conducted under the Companies Act, 1956. Hence, the tax auditor of the Company is required to give his report in Form No. 3CA.

-In Form 3CA, the tax auditor refers to the fact that the statutory audit of the assessee was conducted under some other law and annexes a copy of the report of the aforesaid audit along with the audited financial statements.

-The tax auditor certify whether the particulars in Form No. 3CD are true and correct

ii. Form No. 3CB

-Audit report in cases where the accounts of the assessee are not audited under any other law.

-The tax auditor certifies whether the financial statements show a true and fair view.

-The tax auditor also certifies whether the particulars in Form No. 3CD are true and correct.

ICAI has recommended that in such a situation, where the statutory auditor has not been appointed, the tax auditor may conduct the financial audit also and give his report in Form 3CB with the relevant particulars being certified in Form 3CD. Similarly in case of companies whose accounting year for company law purposes ends on any date other than March 31, the accounts for the purpose of tax audit should be prepared as on March 31 and the audit report should be in Form 3CB.

Statement of particulars

Form No. 3CD

This inter alia contains details like

- Basic details of the assessee
- Accounting methods
- Correctness of claims made by the assessee
- Compliance aspects like TDS, loans etc.
- Stock particulars
- Loss Carried Forward
- Accounting ratios
- Comparative figures
- Fringe Benefit Tax details

While furnishing the particulars in Form 3CD, the tax auditor may follow the following approach:

- a. If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information, the tax auditor should state both the views and also the relevant information in order to enable the tax authorities to take a decision in the matter.
- b. If a particular item is covered in more than one of the specified clauses, a suitable cross reference should be made at appropriate places.
- c. In computing an allowance or disallowance, the law applicable in the relevant year should be kept in view, even though the form of audit report may not have been amended to bring it in conformity with the amended law.
- d. In case the assessee does not give the information in respect of a particular clause, the auditor should not withhold the entire audit report. In such a case, he should qualify his report on matters in respect of which information is not furnished to him.

Clause-wise Discussion

Clause 1

Correct and full name of the assessee should be mentioned against this clause. In case of companies and firms, to the extent possible, acronyms should be avoided and name in full should be given.

In case of proprietorship firm, it is advisable to furnish the name of proprietorship firm with the name of the proprietor.

In case of branch audit, name of such branch should be mentioned along with the name.

If there is a change in the name of a company, the name of such company as on the date of signing of the audit report has to be mentioned along with the original name of

the assessee. A photocopy of the certificate relating to the change of name of the assessee should be attached with the income tax return.

Clause 2

Correct and full address of the assessee should be given. The address that is given should be one from where the assessee carries on business. In the case of a company, the address of the registered office should also be stated. In case of audit of a branch or a unit, the address of the branch or the unit should be given.

The address should be the same as has been communicated by the assessee to the Income Tax Department for assessment purposes as on the date of signing the audit report.

Clause 3

The Permanent Account Number (PAN) of the assessee as on the date of signing the Tax Audit Report has to be mentioned.

If the assessee has not been allotted the PAN as on the date of signing of the report, this fact should be indicated.

Clause 4

Correct status of the assessee should be mentioned against this clause. Obviously this refers to the different classes of assessee included in the definition of “person” in Section 2(31) of the Act, namely, individual, HUF, company, firm, etc. In case of dispute regarding the status the full facts should be mentioned.

Clause 5

Under this clause the date on which the previous year ended has to be stated. Since the previous year under the Act now uniformly ends on 31st March, the relevant previous year should be mentioned.

In case of a business or profession newly set up in the said financial year, the previous year will begin with the date of setting up of business but will end on 31st March only. Such previous year may not be of 12 months duration.

Clause 6

Against this clause, the assessment year relevant to the previous year for which the audit has been done should be mentioned.

Assessment year is defined u/s 2(9) of the Income-Tax Act as:

“‘Assessment year’ means, the period of twelve months commencing on the 1st day of April every year”.

Clause 7

Clause 7(a)

Against this clause, the name of the partners and their profit (loss) sharing ratios has to be mentioned.

In case a partner is a partner in a representative capacity, such fact should be stated. This clause does not cover remuneration and interest to partners, hence there is no need to mention the same.

Clause 7(b)

If any change is effected in the constitution of the Firm/AOP, the same has to be reported. All the changes occurring during the entire previous year must be stated. These particulars should be verified from the partnership deed or agreement or minutes or any other document evidencing partnership or association of persons. The auditor may also verify whether the relevant documents including notice of changes, if required, have been filed with the authorities concerned including registrar of firms.

Clause 8

Clause 8(a)

The principal line of business and mode of carrying on business should be stated. The relevant code pertaining to the main area of business/profession activity has to be entered.

If the assessee has two different businesses, then particulars in respect of both the business are to be given.

Business as defined in Section 2(13) of the Income-Tax Act, 'business' includes any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Profession as defined under Section 2(36) of the Income-Tax Act, 'profession' includes vocation. The word 'profession' implies special knowledge acquired only after patent study and application. Vocations like doctors, lawyers, tax experts, chartered accountants, architects, engineers, journalists, singers etc., are covered in the category of profession. Share-broker does not come within the definition of profession.

Clause 8(b)

Any material change in the nature of the business should be precisely set out such as:

- From manufacturer to trader
- From wholesaler to retailer

should be reported.

A review of business report or minutes of meetings would enable the tax auditor to note the changes, if any.

In case of amalgamation if there is a similar line of activity, no reference needs to be made, however, if a new line of activity emerges the same may be stated.

Clause 9

Clause 9(a)

This clause is applicable to “some specified professionals”. In rule 6F r.w. Section 44AA books of accounts to be maintained are prescribed in respect of certain professionals.

According to Sec.44AA,

- persons carrying on “specified professions” if their gross receipt in the profession exceed Rs.1,50,000 in all the three years immediately preceding the previous year are required to maintain such books of accounts as are prescribed by rule 6F.
- If the gross receipt in the profession does not exceed Rs.1,50,000 in the said previous years, the assesses are required to maintain books of accounts and other documents as may enable the Assessing Officer to compute their taxable income under the Income Tax Act.

Therefore in case the gross receipt exceed Rs. 1,50,000 in the said previous years, in case of “specified professions” specific books of accounts are prescribed.

“Specified professions” are:

- | | |
|-----------------------------|--------------------------|
| ▪ Accountancy | ▪ Information Technology |
| ▪ Architecture | ▪ Interior decoration |
| ▪ Authorized representative | ▪ Legal |
| ▪ Company secretary | ▪ Medical |
| ▪ Engineering | ▪ Technical consultancy |
| ▪ Film artist | |

It should be noted that a company cannot be a professional

Books prescribed are:-

- i. Cash Book
- ii. Journal (if the accounts are kept on mercantile basis)
- iii. Ledger

- iv. Carbon copies of machine-numbered bills, exceeding Rs.25, issued by the person
- v. original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person (the requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.)

In addition to the above, a person carrying on medical profession shall maintain following:

- i. A daily case register in Form No. 3C
- ii. An inventory of drugs and medicines on first and last day of previous year.

Specific books of accounts are not prescribed in respect of other assessee.

In case of persons carrying on “non specified profession” or any business, if their income from such profession or business exceeds Rs. 1,20,000 or the total sales, turnover or gross receipt exceeds Rs. 10,00,000 in any of the three years immediately preceding the previous year, the assesses are required to maintain books of accounts and other documents as may enable the Assessing Officer to compute their taxable income under the Income Tax Act.

Under this clause, list of prescribed books should be given in case of specified professionals.

Clause 9(b)

In case books of accounts are maintained in a computer system, mention the books of accounts generated by such computer system.

In case of other assesseees, normal books of accounts to be maintained will be cash book/bank book/sales-purchase journal or register and ledgers.

Assessee engaged in trading/manufacturing activities should also maintain quantitative details of principal items or stores, raw materials and finished goods.

Clause 9(c)

The list of books of accounts examined has to be given. Where the books of accounts are seized by Government authorities and are not available for audit, the fact should be precisely stated.

Clause 10

Where the profits and gains of the business are assessable to tax under presumptive basis (i.e., income tax is charged at the prescribed percentage of the total turnover or similar amounts) under any of the sections mentioned below, the amount of such profits

and gains credited/debited to the profit and loss account should be indicated under this clause.

- 44AD- Civil construction business
- 44AE - Transport business
- 44AF - Retail trade
- 44B - Shipping business of a non-resident
- 44BB - Providing service or facilities in connection with supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils
- 44BBA – Operation of aircraft by non-resident
- Any other relevant section

The amount to be disclosed under this clause is the amount included in the profit and loss account, i. e, actual profit from relevant business. The tax auditor should clarify this point and state that the amounts mentioned are those of actual profits and not the presumptive amounts chargeable to tax.

Some typical situations

1. Separate books of accounts- An assessee may be having more than one business including business of the nature assessable on presumptive basis. In such a case, where the assessee maintains separate sets of accounts for each such business and opts for getting the accounts of all such businesses audited under section 44AB, the tax auditor faces no problem in ascertaining the amount of profit to be disclosed.
2. Composite books of accounts- Here, the assessee may be maintaining accounts of all the businesses in one set of accounts. This situation may give rise to the problem of apportionment of common expenses in order to arrive at the correct amount of profit of business taxable on presumptive basis included in the profit and loss account. The tax auditor should examine whether the apportionment is fair and reasonable and mention the basis of apportionment of common expenses.
3. The third situation can be an assessee who has regular books for his main business, but does not maintain any books of account for his additional business which is of the nature described in this clause and credits the net income of such additional business to the main profit and loss a/c. In such a case, the tax auditor should state the amount of income from the business covered under the relevant sections but express his inability to verify the figure. He should also qualify his opinion on the financial statements in Form 3CB.

Clause 11(a) to (d)

This clause deals with method of accounting.

Method of accounting can be cash or mercantile system.

1) Income chargeable under PGBP or IOS must be computed with either cash or mercantile system. (Sec.145)

(Assesses may adopt different system for different businesses carried by him)

Sec.209 of Companies Act- Every Company is required to keep books under accrual basis.

Therefore only non-corporate assesses can change their method of accounting from cash to mercantile or vice-versa. Once the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed.

Under sub clause (b), whether there has been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year is to be stated.

If there is any change, the effect thereof has to be stated under this clause. Insofar as the question of such change on the profit or loss is concerned, the concept of materiality is the governing factor. If it is not possible to quantify the change in the method of accounting, appropriate disclosure should be made under this clause.

A change in accounting policy will not amount to a change in the method of accounting and hence such change need not be mentioned under sub clause (b). This is due to the fact that as per AS-1 and AS(IT)-1 such change and the impact of such change will be disclosed in the Financial Statement.

Sec.145 -CG may notify accounting standards to be followed by the assessee or a class of assesses.

Two AS has been notified.

1. NAS (IT)- I - Disclosure of Accounting Policies and
2. NAS (IT)-II - Disclosure of prior period items and extraordinary items and changes in accounting policies.

Any deviation from these accounting standards should be disclosed here.

Clause 12

This clause deals with valuation of closing stock.

Valuation of stock is a vital factor in determining taxable income of the assessee from business, as correct profit cannot be ascertained unless the opening and closing stocks are valued correctly. Though the valuation does not generate funds, it does affect taxable income of the business.

Neither Income tax Act nor Income tax Rules prescribes any particular method of valuation of stock. The auditor should satisfy himself that, the valuation of inventories is in accordance with the normally accepted accounting principles. As per AS-2, subject to

a certain exceptions the inventory should be valued at lower of cost or Net Realisable value(NRV). As per the standard Cost means appropriate combination of

- a. Cost of purchase
- b. Cost of conversion
- c. Other costs incurred in the normal course of business in bringing the inventories up to their present location and condition.

NRV means the actual estimated, selling price in ordinary course of business less cost of completion and cost to be incurred in order to make the sale.

Once particular method of valuation is adopted, the same should be continued in subsequent year.

If valuation of closing stock is made on the basis of the lower of cost or market price, it can be done on the basis of individual method or global method. Under the individual method, one has to take cost or market price, whichever is less, in respect of each item of the stock, on the closing day of the previous year: whereas in the case of global method, value of stock is taken as the total cost of all items of stock or market price of all items of stock, whichever is less.

For instance, in the following case, Rs. 48,562 is the stock valuation on the basis of individual method, while Rs 49,602 is the valuation of stock on the basis of global method.

Stock item	Cost price(Rs.)	Market price (Rs.)	Cost or market price, whichever is less(Rs.)
A	600.00	550.00	550.00
B	1,800.00	2,000.00	1,800.00
C	28,700.00	29,540.00	28,700.00
D	52,840.00	17,512.00	17,512.00
Total	83,940.00	49,602.00	48,562.00

(Source: Students guide to income tax By Dr. Vinod K Singhania and Dr. Monica Singhania)

Though in the above case, value of stock is higher under the global method, as compared to the individual method, it does not mean that the result will be same in all cases. However both the closing stock and the opening stock should be valued on the same basis.

Further, AS-2 states that the inventory costs should be assigned by using FIFO or weighted average or specific identification cost formula.

Another issue relating to valuation of closing stock is whether the value must necessarily include the element for which MODVAT credit is available. By virtue of Sec.145A, the valuation of purchase and sale of goods and inventory for the purposes

of determining the income chargeable under the head Profits and gains of business or profession shall be

- a. in accordance with the method of accounting regularly employed by the assessee; and
- b. further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

For this purpose any tax, duty, cess or fee under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

Thus the value of stock should include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Clause 12(b) requires the tax auditor to report the details of any deviation from the method of valuation prescribed under section 145A.

Clause 12A

It is the clause which requires the particulars of conversion of capital asset into stock-in-trade. Sub-section 47 of section 2 provides that the conversion by an owner of an asset or treatment of such asset as stock-in-trade of a business carried on by him is treated as a transfer. As per sub-section 2 of Section 45 such a conversion or treatment of capital asset into stock in trade is deemed to be a transfer in the year in which the asset is so converted or treated as stock-in-trade. However, the taxability of such capital gains is deferred to the previous year in which such an asset is sold or otherwise transferred.

The particulars to be stated under the clause 12A are required to be furnished with reference to the previous year in which the conversion has taken place. It may be noted that the taxability of capital gains or business income arising from such transfer is not required to be reported.

He has to disclose the date of acquisition of asset and cost acquisition. He has to report the amount at which the asset is converted into stock-in-trade (as per books of account). If the conversion value is at the book value of asset, he has to report the fact under this clause.

Clause 13(a) to (e)

Sec.28 lists various incomes which are chargeable under the head PGBP. Under Clause 13(a) various amounts falling within the scope of Sec.28 which are not credited to the profit and loss account are to be stated.

The details of the following claims, if admitted due by the concerned authorities but not credited to the profit and loss account are to be stated under clause 13(b).

1. Pro forma credits
2. Drawbacks
3. Refund of duty of custom
4. Refund of excise duty
5. Refund of sales tax

In respect of these items the tax auditor should examine all the relevant correspondence, record and evidence in order to determine whether any particular refund/claim has been admitted as due and accepted during relevant FY.

There may be practical difficulties in verifying the information in regard to such refunds and credits. It may, therefore, be necessary for the tax auditor to scrutinise the relevant files or subsequent records relating to such refunds while verifying the particulars and also obtain an appropriate management representation.

The system of accounting followed in respect to these items may also be brought out in appropriate cases.

Where such amount have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be clearly brought out.

Clause 13(c) – Contracts, usually construction contracts may contain escalation clauses. The purpose of this is to provide for escalation in cost in case of increase in material or labour cost beyond the prefixed rate during the period of construction. When should this revenue be recognised? Only those claims to which the other party has signified unconditional acceptance could constitute accepted claims. If such accepted claims have not been credited to the profit and loss account the fact should be brought out.

Note that sub-clause (b) and (c) will not apply to an assessee following the cash basis of accounting

Clause 13(d) covers any other items which the tax auditor considers as an income of the assessee based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account.

In giving details under sub-clause (c) and (d) due regard should be given to AS-9 Revenue Recognition. The standard explains as to when the revenue should be recognized in profit and loss account and also states the circumstances in which revenue recognition can be postponed. Revenue from sale or rendering of services should be recognised at the time of the sale or rendering of service. However, if at the time of rendering of service or sale there is significant uncertainty in ultimate collection of the revenue, then the revenue recognition is postponed and in such cases revenue should be recognised only when it becomes reasonably certain that ultimate collection will be made. It also applies to the revenue arising out of escalation of price, export incentive, interest, etc.

Clause 13(e)

Capital Receipt.

Receipts are of two types-capital and revenue receipt.

Act does not define these two terms.

The distinction between these two terms is vital because capital receipts are exempt from tax unless they are expressly taxable.

- Receipt on account of fixed capital is a capital receipt.
- A receipt in lieu of a source of income is a capital receipt. (For instance, compensation for loss of employment is a capital receipt, whereas, compensation for temporary disablement is a revenue receipt.)
- It is not necessary that a revenue receipt should be recurring or capital receipt should be a single receipt.
- A receipt under a general insurance policy may be a capital receipt, if the policy relates to capital asset.
- If by virtue of change in exchange rate of currency, excess amount is realized by an assessee engaged in the business of exporting goods, the excess amount is treated as revenue receipt. On the other hand, if foreign currency is kept as investment or to acquire a capital asset, the profit made due to change in the rate of exchange of currency is capital receipt.
- In case of subsidies, if its purpose is to help the assessee to set up a business or complete a project the money must be treated as having been received for capital purpose. But if money is given to the assessee for assisting him in carrying out the business operation and the money is given only after commencement of production, such subsidy must be treated as assistance for the purpose of the trade and is a revenue receipt.

These are one of the few principles which one has to follow while deciding the nature of a receipt.

Under sub-clause (e), capital receipt, if any, which has not been credited to profit and loss account has to be stated.

Clause 14 (a) to (f)

This clause deals with depreciation of fixed assets.

For the purpose of this clause, it may be necessary for the tax auditor to examine:

- a. Classification of assets
- b. Classification thereof to a block
- c. The working of actual cost or written down value
- d. The date of acquisition and the date on which it is put to use
- e. The applicable rate of depreciation
- f. The additions/deductions and the dates thereof
- g. Adjustments required.

For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. For example, a particular asset may be classified as plant or machinery from the view point of one class of assessee, yet may not be plant or machinery from the view point of another class of assessee. Thus the purpose for which the asset is used is very material in this regard. For example, take the case of books. Usually it is classified as plant. But in case of books used in a CA coaching institution the benefit derived from the books may not extend beyond a year due to various amendments taking place in various laws. Therefore it may be prudent to charge it directly into profit and loss account.

So if there is any dispute with regard to the classification of an asset in a particular block or the rate of depreciation applied or whether to consider it as a fixed asset, the tax auditor must give his working with suitable reason.

The additions/ deductions during the year have to be reported with dates. The tax auditor is advised to get the details of each asset added during the year or disposed of during the year along with the relevant dates. Where any addition was made, the date on which the asset was put to use is to be reported. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.

Tax auditor should check the working regarding the calculation of depreciation allowable under the act. Depreciation is calculated on block of assets. Method of computation of depreciation shall be written down value method. However, depreciation is available in the case of tangible assets according to "straight-line" method. In the case of undertaking engaged in generation and distribution of power in some cases.

Tax auditor should examine whether the apportionment of depreciation in cases like succession, amalgamation, demerger etc. has been properly made.

Change in rate of exchange of currency

This has to be treated according to the provisions of Sec.43A.

- An assessee has acquired any asset in any previous year from a country outside India.
- In consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment.
- The amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment shall be added to, or, as the case may be, deducted from the actual cost of the asset.

In other words the extent of addition or reduction will be limited to exchange difference actually paid during the previous year. Since this provision is at variance with AS-11, the tax auditor would be required to verify that the adjustments in the cost of fixed assets on account of changes in the rate of exchange of currency in the schedule of fixed assets prepared for the computation of depreciation as per Income Tax Rules are in accordance with the provisions of sec.43A.

Subsidy or grant or reimbursement

Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

The claim for depreciation is mandatory. The assessee cannot opt not to claim depreciation.

In the case of assesses who manufacture or produce articles/things, additional depreciation is available for new plant and machinery (certain exceptions are their). Tax auditor need to verify the claim for additional depreciation under this clause as well.

Clause 15(a) and (b)

First let us go through the provisions on Income Tax Act relevant for this clause.

According to *Sec.33AB* deduction is available for assessee engaged in tea, coffee or rubber plantation in respect of deposits made to a “special account”.

Similar deduction is available for assessee engaged in production of petroleum/natural gas in India u/s *33ABA*.

Sec.35 deals with expenditure on scientific research. Under this section weighted deduction is available to assessee in respect of revenue expenditure for scientific research and expenditure on approved in-house R&D. Under this section capital expenditure for scientific research is wholly deductible in the year of incurrence. Contributions to certain approved research associations are also deductible.

Sec.35 ABB deals with deduction in respect of amortisation of telecom license fees.

Deduction is available u/s *35AC* on expenditure for promoting social and economic welfare or uplift of public.

Sec.35CCA provides deduction of sums paid by an assessee to certain associations and institutions for carrying out rural development programs.

Sec.35D is about deduction of amortisation of preliminary expenses.

And *Sec.35DD* is about deduction in respect of amortisation of expenditure in case of amalgamation or demerger.

Sec.35DDA deals with deduction of amortisation of expenditure under voluntary retirement scheme.

Sec.35E covers deduction of amortisation of expenditure on prospecting for development of certain minerals.

Tax auditor should indicate the amount debited in the profit and loss account and the amount actually admissible in accordance with the concerned provisions of the law.

The amount not debited to the profit and loss account but admissible under any of the sections mentioned in the clause have to be stated. *Sec.33AB* and *Sec.ABA* allow deduction in respect of amount deposited in designated account for specified purposes which, as per accounting principles, are not to be debited to the profit and loss account. In this connection, the tax auditor has to work out, on the basis of the conditions

prescribed in the concerned section, the amount admissible there under and report the same.

In many cases, capital expenditure may have been incurred which is allowable as deduction while computing the profits and gains of the assessee under these heads and such expenditure may have been capitalised and shown as fixed assets in the books. The tax auditor should ascertain such expenditure and state the same.

In case the assessee has obtained a separate audit report for claiming deduction under any of these sections, he must make reference to that report while giving the details under this clause.

Clause 16 (a) and (b)

Sec.36(1) provides for deduction of Any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission.

In other words, if bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction.

Under this clause tax auditor is only required to make the relevant disclosure, and he is not expected to express his opinion about its allowability or otherwise.

Tax auditor should verify the contract with the employees so as to ascertain the nature of payments.

Sec.2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contribution to any PF or any other Welfare Fund.

Sec36(1)(va) of the act permits deduction of such sum if such sum is credited by the assessee to the employee's account in the relevant fund on or before the due date.

The tax auditor should get a list of various contributions recovered from the employees which come within the scope of this clause. He should also verify the documents relating to PF or other Welfare Funds. He should verify the agreement under which the employees have to make contributions to these funds. Ledger accounts of contributions from employees should be reviewed; the due dates of payments and the actual dates of payment should be verified with the evidence available.

In view of the voluminous nature of the information, the tax auditor can apply test checks and compliance tests to satisfy himself that the system of recovery and remittance is proper.

Clause 17

In this clause the tax auditor is required to state the amount of expenditure incurred by the assessee in respect of various items listed therein. These expenditure may or may not be allowable or allowable subject to certain limits. It is important to note that amount of expenditure in respect of each of the items is required to be stated. For this, tax auditor will have to obtain information and make enquiries in that behalf.

Clause 17(a)

Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act. The Act does not define the terms “capital expenditure” and “revenue expenditure”. One has to depend upon its natural meanings as well as decided cases.

- Capital expenditure is incurred in acquiring, extending or improving a fixed asset, whereas revenue expenditure is incurred in normal course of business as routine business expenditure.
- Capital expenditure produces benefits for several previous years, whereas revenue expenditure is consumed within a previous year.
- Capital expenditure makes improvement in the earning capacity of the business

- Usually capital expenditure is a non-recurring outlay
- In order to determine whether an expenditure is capital or revenue in nature, the fact that it's a lump sum payment or periodic payment is not important.

Capital expenditure of certain type is deductible in computing the income, e.g., expenditure on scientific research referred to in sec.35. Similarly 100% depreciation is allowable in respect of capital expenditure on certain assets like energy saving devices. Similarly, capital expenditure on preliminary expenses is deductible over a period of years.

In this way if any capital expenditure is debited to profit and loss account it should be disclosed in a classified manner stating the amount on various heads separately. It is necessary to specify the nature of expenditure, the amount of expenditure incurred, and the relevant provision under which the expenditure is admissible.

Clause 17(b)

Sec.37 (1) expressly prohibits deduction on account of **personal expenses**. Personal expenses mean expenses satisfying personal needs such as food, cloth, shelter, etc., which are not related to business. In other words, money expended for domestic or private purposes, as distinct from proposes of the trade or profession, are not deductible.

If any such expenses has been debited to the profit and loss account it has to be reported here.

Clause 17(c)

Sec.37(2B) states that no allowance shall be made in respect of expenditure incurred by an assessee on **advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.**

So any such expenditure debited to the profit and loss account should be reported.

Clause 17(d)

The amount of **payment made to clubs** by the assessee during the year should be indicated under this clause.

Payments in respect of both employees as well as directors/partners/proprietors should be reported under this clause.

If any portion of expenditure incurred on clubs is of a personal nature, the same should be shown separately under clause 17(b).

Clause 17(e)

In sub clause (i) penalty or fine for violation of any law is covered and sub clause (ii) covers any other penalty or fine.

The courts have laid down that any penalty or fine for violation of law is not admissible as expenditure. It is in this context the requirement stipulated by clause 17(e)(i) is to be answered.

Sub clause (iii) covers unlawful expenditure. Such expenditure is not allowable as deduction.

The tax auditor may not be aware of the intricacies of all the laws of the land. It must be borne in mind that the tax auditor's opinion on deductibility or non-deductibility of penalty or fine or expenditure incurred for offence or purpose prohibited by law is not required. He only has to state the details of such items charged to the profit and loss account.

Payments for breach of contract or payments for redressal of contractual wrongs are not required to be reported under this clause

If the impost is purely compensatory in nature, the same is not required to be reported under clause 17(e).

Clause 17(f)

Amount inadmissible under Sec.40 (a):

Sec. 40(a) disallows the following:

- Sec.40(a)(i)-Interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable
 - a. outside India; or
 - b. In India to a non-resident or to a foreign company
and if in respect of the aforesaid, tax is deductible but tax has not been deducted: or tax has been deducted but after deduction it has not been paid to the Government.
- Sec.40(a)(ia)-
In this payment to a resident in respect of the following are covered -Interest, commission or brokerage, rent, fees for technical or professional services, royalty, and payment to contractors or subcontractors.

In the above cases if assessee fails to deduct tax at source or fails to pay the deducted tax to the government within the prescribed time limit.

- FBT
- Income Tax
- Wealth Tax
- Any payment which is chargeable under the head Salaries, if it is payable
 - a. outside India; or
 - b. in India to a non-resident,and if the tax has not been paid to the Government nor deducted at source.
- Payment to a PF or other fund established for employees benefit, unless proper arrangements of TDS on any taxable payment out of such fund are made
- Tax on perquisite paid by the employer

Where an actual remittance overseas has been made by the assessee during the relevant previous year without deducting any tax at source, the tax auditor may rely upon the legal opinion or certificates from chartered accountants based upon which remittance have been made without the deduction of tax at source. The tax auditor has to report under this clause only if he has different opinion on this issue. In this connection the tax auditor is advised to refer applicable Double Taxation Avoidance Agreement.

Clause 17(g)

Sec.40(b) spells out the conditions for claiming deduction of remuneration of partners. These are:

1. It should be paid only to working partners
2. It must be authorised by the partnership deed
3. It should not pertain to a period prior to partnership deed
4. It should not exceed the prescribed limit

There are also conditions for claiming deduction of interest to partners. These are:

1. The payment should be authorised by the partnership deed

2. The payment should pertain to a period after the partnership deed
3. Rate of interest should not exceed 12 per cent

Tax auditor may obtain from the assessee a detailed working of the inadmissible remuneration, salary, bonus or commission. He has to verify this computation with the partnership deed. He has to report these inadmissible amounts.

Interest paid by an AOP/BOI to its members is not allowed as deduction by virtue of sec.40 (ba). If any such amount has been debited to profit and loss account it has to be reported.

Clause 17(h)

Provisions of section 40A (3) have three limbs.

1. The assessee incurs an expenditure which is otherwise deductible. The amount of the expenditure exceeds Rs. 20,000. The payment in respect of the above expenditure (or part thereof) exceeds Rs. 20,000. The payment is made otherwise than by an account payee cheque or an account payee demand draft. In this case the no deduction would be allowed in respect of such expenditure.
2. Where the assessee claims the expenditure on the basis of the principle of accrual and in the subsequent year he makes payment of such expenditure otherwise than by account payee cheque or account payee demand draft, such payment shall be deemed to be the profits and gains chargeable to tax if the payment exceed Rs. 20,000.
3. No disallowance would be made in the said cases in respect of cases prescribed under rule 6DD.

Any amount not deductible under this section if debited to profit and loss account it has to be reported.

Clause 17(i)

According to Sec.40A(7) provision for gratuity fund is deductible only if such gratuity fund is approved.

But if an employee retires during current year and gratuity is payable to him such gratuity is deductible even if the whole amount has not been paid during that year.

If provision for gratuity is not made in accordance with GAAP, tax auditor will have to qualify his report in Form NO.3CB. Non-allowability under S. 40A(7) is no excuse for not making a provision in accordance with GAAP.

Clause 17(j)

According to Sec.40A(9) any sum paid by an assessee as an employer by way of contribution towards recognised provident fund, or approved superannuation fund or an approved gratuity fund is deductible to the extent required by any law.

Therefore if such payment is not required by law it is not deductible. Tax auditor should furnish the details of payments which are not allowable under this section.

Clause 17(k)

The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account. Tax auditor is required to scrutinise various account heads and records in this respect. If any particulars relating to the contingent liability is not available he should give a suitable note.

AS-29 may be referred to determine the treatment of contingent liabilities.

As per the AS-29, a contingent liability is a possible obligation that arises from past event and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise.

An obligation is a possible obligation if based on the evidence available, its existence at the balance sheet date is *considered not probable*.

It must be noted that for contingent liability the existence of possible obligation should be '*Not Probable*' whereas for 'Provisions' it should be '*probable*'

Clause 17(l)

According to Sec.14A no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

Any such expenditure charged to profit and loss account should be reported.

Clause 17(m)

As per Sec.36(1)(iii) interest on capital borrowed is allowable as deduction if the borrowed money is used for the purpose of business.

In case capital is borrowed for acquiring capital asset, interest till the date on which it is first put to use is not deductible whether or not the interest is capitalized in the books.

Clause 17A

The Micro, Small and Medium Enterprises Development Act, 2006 (MSMEDA, 2006) which provides for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises has come into force from October 2, 2006. The provisions of section 22 and 23 of the said Act have a bearing on the Income tax assessment of persons who buy any goods or receive any service from a micro or small enterprise, which has filed a memorandum with the prescribed authority.

Such a person is named 'Buyer' under this Act.

Sec. 23 of MSMEDA, 2006 lays down that the amount of interest payable or paid by any buyer under or in accordance with the provisions of this Act shall not be allowable as deduction in the computation of income.

Sec. 22 of the MSMEDA, 2006, *inter alia*, requires disclosure of the principal and interest due thereon separately in the annual statement of accounts.

Under Clause 17A, amount of interest inadmissible under section 23 of Micro, Small and Medium Enterprises Development Act, 2006 should be reported.

Clause 18

Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in Sec 40A(2) (b), and the Assessing Officer is of opinion that such expenditure is *excessive* or *unreasonable* having regard to

1. the fair market value of the goods, services or facilities for which the payment is made or
2. the legitimate needs of the business or profession of the assessee or
3. the benefit derived by or accruing to him therefrom,

So much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

person referred to in Sec 40A(2) (b) ??

Under this clause particulars of payments coming under this subsection are to be stated.

The following steps may be taken by the tax auditor in this connection:

1. Obtain full list of specified persons as contemplated in this section.
2. Obtain details of expenditure made to them.
3. Scrutinise the expenditures
4. Examine the contracts entered into with specified persons.
5. In case of payment for purchase and expenses on credit basis, scrutinise ledger account to identify the dealings with specified persons.

Clause 19

We have already gone through the scheme of deduction under sections 33AB and 33ABA.

According to Sec.33AB deduction is available for assessees engaged in tea, coffee or rubber plantation in respect of deposits made to a “special account”.

Similar deduction is available for assessees engaged in production of petroleum/natural gas in India u/s 33ABA.

Amount withdrawn from such special accounts and used purposes other than for the purpose specified in the scheme such amount is deemed to be the profits and gains in such year. Such amount withdrawn has to be reported under this clause.

Clause 20

Sec.41 deals with deemed profits.

Sec.41 (1) -Following receipts are chargeable to tax as business income:

- In any of the earlier years a deduction was allowed to a taxpayer in respect of loss, expenditure or trading liability incurred by the assessee.
- During the current previous year, the tax payer
- Has obtained a refund of such trading liability or
- Has obtained some benefit in respect of such trading liability by way of remission or cessation thereof.

This will be taxable in the current year.

For example:

An assessee is allowed deduction for the AY 2004-05 in respect of Rs.50,000 misappropriated by his cashier, and later on in the PY 2008-09 Rs.10,000 is recovered by the assessee out of the sum misappropriated. Here Rs.10,000 is chargeable to tax as business profit for the AY 2009-10.

Sec.41 (2) - In the case of an undertaking engaged in the generation or generation and distribution of power, option is available to claim depreciation on a straight line method with reference to each individual asset. If such option is exercised by the assessee, where any building, machinery, plant or furniture is transferred for a consideration which is more than the depreciated value, the surplus to the extent of depreciation already allowed shall be assessed as business income. In other words, if consideration is more than WDV, such amount will be chargeable under the head PGBP by virtue of Sec.41(2). In case the consideration is more than the actual cost of such asset, then excess consideration over the actual cost shall be chargeable to tax as capital gain.

Sec.41 (3)-

As we have already seen, under section 35, capital expenditure for scientific research is wholly deductible in the year of incurrence. Where any such capital asset is sold without having been used for other purpose and the sale proceeds together with the amount of deduction allowed under section 35, exceeds the amount of capital expenditure incurred on purchase of such asset, such surplus or amount of deduction allowed, whichever is less, is chargeable to tax in the year of sale.

For instance, a company purchase scientific equipments for Rs. 95,000 during PY 1997-98 and claims Rs 86,000 as deduction under Sec.35 for the AY 1998-99. If the company sells the equipment (without using it for a purpose other than for scientific research) in the PY 2008-09 for Rs. 51,000, Rs. 51,000 is chargeable to tax for AY 2009-10.

Sec.41(4)- Where any bad debt has been allowed as deduction u/s 36(1) and the amount subsequently recovered on such debt is greater than the difference between the debt and the deduction so allowed, the excess realization is chargeable to tax as business income of the year in which the debt is recovered.

For instance, an assessee sells goods worth Rs.40,000 on credit on September 1, 2002. By writing off Rs 15,000 out of Rs. 40,000, he claims deduction of Rs. 15,000 for PY 2001-02 under section 36(1) as bad debts. On June 10,2008, he recovers Rs.28,000 from the defaulting debtor. In this case Rs.3,000 [i.e., Rs.28,000 minus (Rs. 40,000 – Rs 15,000)] is chargeable to tax for the PY 2008-09 under section 41(4).

Sec.41 (4A)- where any deduction has been allowed with respect to any special reserve created by a financial corporation or public company, any amount subsequently withdrawn shall be deemed to be the profits of that year.

Sec.41 (5) - This deals with adjustment of loss.

Generally, loss cannot be carried forward after 8 years. An exception is, however, provided by sec.41 (5). This is applicable if following conditions are satisfied:

1. The business or profession is discontinued.
2. Loss of such business or profession pertaining to the year in which it is discontinued could not be set off against any other income of that year.
3. Such business is not a speculation business.
4. After discontinuation of such business or profession, there is a receipt which is deemed as business income under section 41(1), (3), (4) or (5).

In this case unabsorbed loss can be set off even after 8 years.

In this respect tax auditor should obtain a list of all amounts chargeable under this section with accompanying evidence and he should report it irrespective of the fact whether the relevant amount has been credited to profit and loss account.

Clause 21

Sec 43B states that deduction in respect of the following sums payable shall be allowed only in the previous year in which such sum is actually paid by the assessee irrespective of the method of accounting employed by the assessee.

- a. Tax, duty, cess or fee payable under any law for the time being in force.
- b. Employer's contribution to any PF or Superannuation fund or Gratuity fund or any other employer's welfare fund.
- c. Bonus/Commission paid to employee
- d. Interest on any loan or borrowing from any public financial institution or state industrial investment corporation in accordance with the terms and condition of the loan agreement.
- e. Interest on any term loan or any loan or advance from a scheduled bank in accordance with the terms and conditions of the loan agreement.
- f. Leave salary to employees

The above expenses would be allowed to the assessee, if paid by the assessee on or before due date of furnishing the return of income U/S 139(1). If not paid before due date for filing the return, it will not be allowed in that particular year, but will be allowed in the previous year in which it is paid.

In other words, if a provision has been provided in the accounts as on 31 March 2009 against any of these expenses, such expenses will be allowed as an expense in the computation of taxable income, only if they are actually paid before the due date for filing return of income, i.e., on or before 30th Sep 2009.

Clause 22

Clause 22(a)

This clause requires factual reporting about the amount of CENVAT credit availed of and utilised during the year as well as its treatment in the P&L a/c and treatment of outstanding CENVAT credit in the accounts. To avoid any misleading conclusion, opening and closing balances of CENVAT should also be given. Where the assessee follows exclusive method of accounting, such fact should be stated by the auditor. The information furnished under this sub - clause should be compatible with the information furnished under clause 12(b)(Method of valuation of closing stock U/S 145A). The

information required should be checked with the relevant statutory records i.e. RG-23 Register maintained under the Central Excise Rules 1944.

The CENVAT credit on Fixed Assets would be credited to the respective asset account. CENVAT credit availed on capital goods would reduce their actual cost and to that extent depreciation will not be available.

Clause 22(b)

According to AS-5(which is notified by Govt: under section 145) Prior period items are items of income and expenditure, which arise in the current period as a result of error or omission in the preparation of financial statements of one or more prior periods. The term does not include other adjustments necessitated by circumstances, which though relating to prior periods, are determined in the current period. E.g. Arrears payable to workers.

Tax auditor should obtain the particulars of these expenditures.

In case of assessee audited under any other law, the information may be available from the annual accounts. In other cases close scrutiny of ledger may be necessary.

Clause 23

According to Sec.69D-

Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be:

Details of the amount borrowed on hundi and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause.

Clause 24

Clause 24(a)

According to Sec.269.SS

No person shall take or accept from any other person (Depositor) any loan or deposit otherwise than by an account payee cheque or bank draft if:

- a. The amount of such loan or deposit or aggregate amount $\geq$ Rs.20,000 or
- b. On the date of taking such loan or deposit, any loan or deposit taken earlier by such person from the depositor is remaining unpaid (whether repayment has

become due or not), the amount or aggregate amount remaining unpaid $\geq$ Rs.20,000 or

- c. Aggregate of amounts referred to above $\geq$ Rs.20,000

This section does not apply to any loan or deposit taken from or taken by the following:

1. Government
2. Any banking company, post office savings bank or co-operative bank
3. Any corporation established by Central, State, or Provincial Act
4. Government company under section 617 of the Companies Act
5. Other bodies notified by Central Government

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Particulars required to be reported from (i) to (v) should be reported.

Important points:

- Sale proceeds collected by the selling agent (on behalf of his principal) are not a loan or deposit.
- Advance received against sale is not a loan or deposit.
- Security deposits against contracts, etc. are 'deposits'.
- The entries that relate to transactions with a supplier and customer are not loan or deposits accepted.
- If the aggregate loans/deposits in a year (from a singly party) exceed Rs.20,000 but each individual item is less than Rs.20,000 the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches Rs.20,000 or more and until the balance goes down below Rs.20,000.

These particulars needs not be given in the case of a Government company, a banking company a corporation established by a Central, State or Provincial Act

Clause 24(b)

As per Sec.269T-No person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if

(a) the amount of the loan or deposit together with the interest, if any, payable thereon $\geq$ Rs.20,000, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits $\geq$ Rs.20,000

Provided that where the repayment is by a

- branch of a banking company or
- co-operative bank,

such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from :

1. Government
2. Any banking company, post office savings bank or co-operative bank
3. Any corporation established by Central, State, or Provincial Act
4. Government company under section 617 of the Companies Act
5. Other bodies notified by Central Government

Particulars required to be reported from (i) to (iv) should be reported.

[Refer page 112 GN]

Clause 24(c)

Here Tax auditor has to report whether a certificate has been obtained from the assessee regarding taking or accepting loan or deposit, or repayment of the same through an account payee cheque or an account payee bank draft.

The particulars (i) to (iv) at (b) and the Certificate at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act

Clause 25

Clause 25(a)

In this clause details of brought forward loss or depreciation allowance should be reported.

Brought forward loss may relate to different heads of income such as property income, PGBP, speculation business or capital gains. Information should be separately given under each head of income under which the loss or depreciation has remained unabsorbed. In the remarks column information about pending assessment or appellate proceedings or about the delay in filing loss return should be given. For giving these information, the auditors should study the assessment records i.e. income-tax returns filed, assessment orders, appellate orders and rectification orders for the earlier years and ascertain the figures given in the above clause are correct.

Clause 25(b)

Sec.79 – Unabsorbed loss of closely-held companies relating to earlier previous years will not be set off in a previous year where a change in shareholding has taken place unless in the said previous year, shares carrying at least 51% of voting power are beneficially held on the last day thereof by the persons who held shares to the same extent in the previous year in which the unabsorbed loss was incurred. However, changes in shareholding in a previous year consequent upon death of a shareholder or transfer of shares by way of gift by a shareholder to his relative will not be taken into account for this purpose.

Its in the light of these provisions this clause is to be answered.

Clause 26

Chapter VIA consists of Section 80A to Section 80 U, which pertains to deduction to be made in computing the total income. Under this clause particulars of only those deductions should be given which relate to business/profession which are subject to audit U/S 44AB. It may be noted that U/S 80A(2), the aggregate amount of deductions under Chapter VIA cannot exceed the gross total income of the assessee. Deduction admissible, section wise under Chapter VIA will have to be given. The emphasis is in “amount admissible” and not merely on “amount of deduction claimed. If the tax auditor is not aware about the gross total income of the assessee, e.g., where the income-tax return has not been prepared, he should give a note that the figure of deductions is subject to the determination of the gross total income of the assessee. Further, while computing the amount of admissible deductions, the auditor has to ascertain whether the relevant conditions stand fulfilled or not. Where there is a difference between the amount claimed by the assessee and the amount worked out by the tax auditor, the tax auditor may report both and state the basis of the claim of the assessee, e.g., judicial decision.

Clause 27

This clause deals with deduction of tax at source.

To avoid tax evasion, the Income-tax Act has made provisions to collect tax at source on accrual of income. Cases included in the scheme are, generally, those where income can be computed at the time of accrual of income. Under this scheme, persons responsible for making payment of income covered by the scheme are responsible to deduct tax at source and deposit the same to the government's treasury within the stipulated time. The recipient of income, though he gets only the net amount (after deduction of tax at source), is liable to tax on the gross amount and the amount deducted at source is adjusted against his final tax liability.

Sec.192 to Sec.194LA spells out various payments like salary, interest on securities, insurance commission on which tax has to be deducted at source.

In most cases tax has to be deducted at the time of payment or credit whichever is earlier.

Except for a few cases in which tax deducted has to be deposited in government account on the day of deduction itself, tax deducted has to be deposited within 1 week from the last day of the month in which deduction is made.

The payer who deducts tax at source is bound to give TDS Certificate in the prescribed form to the payee.

In the case of salary it is Form No. 16 or 16AA as the case may be.

In other cases it is Form No. 16A.

Clause 27(a) - It requires reporting whether the assessee has complied with the provisions regarding deduction of tax at source and regarding the payment thereof as laid down in Chapter XVII-B. If the answer to this question is a negative then only the reporting under clause (b) arises. The scope of clause (a) is to be read with the specific non-compliances stated under clause (b).

Clause 27(b) -

The reporting under clause (b) is with reference to the following:

- a. Tax deductible and not deducted at all.
- b. The shortfall on account of lesser deduction than what is required to be deducted is to be reported in clause (ii). This includes deduction at a lower rate than what is prescribed, application of wrong rate of deduction of tax at source, non-inclusion of surcharge and education cess etc.
- c. Sub-clause (iii) requires the auditor to verify and report on tax deducted late. The due dates for deduction have been prescribed in the Act and the Rules. The actual date will be with reference to the date on which the transaction has been recorded in the books of account.

- d. The sub-clause (iv) requires the details of tax deducted but not paid to the credit of the Central Government. The Guidance Note issued by the Institute suggests that the tax auditor should verify the cases where the tax has been deducted at source but not paid before the last date of the previous year under audit. For the year ending 31st of March, 2009, the tax deducted at source on 31st of March 2008 and due to be deposited on 7th April 2008 or by 31st May 2008 but not deposited till 31st of March 2009 will be required to be reported. Any tax deducted at source on or after 1st April 2008 but not deposited up to 31st March 2009 will also be required to be reported here.

Clause 28

This clause requires that quantitative details of “principal items” of raw materials and finished goods should be given. Therefore, information about petty items need not be given. What would constitute principal items will depend on the facts of each case. Normally, items which constitute more than 10% of the aggregate value of purchases, consumption or turnover may be classified as principal items.

This information should be given only in respect of those items where it is practicable to do so, having regard to the records maintained by the assessee. In other cases, the tax auditor may indicate in his report that the relevant records were either not maintained or were inadequate for the purpose of furnishing the requisite information.

In a large concern it may be difficult for tax auditor to verify each and every item of purchase, consumption and production. In such cases, he may verify the figures on a sampling method and satisfy himself as to the correctness of the figures furnished.

The information about ‘yield’, ‘percentage of yield’, and ‘shortages/excess’ is required to be given only to the extent such information is available in the records of the business.

In respect of assessees other than companies and those whose accounts have not been audited under any other law, the tax auditor should obtain the following certified documents for the principal items of raw materials, finished goods and by-products:

- Certificate from the assessee certifying the balance of the opening stock, purchases, sales and closing stock.
- Certificate to the extent of shortage/excess/damage and the reasons thereof.

By-products represent products whose manufacture results incidentally from the manufacture of the main product or where the waste arising in the manufacture of main product is further processed to create a byproduct. Where the by product so produced or is continuously generated it should be treated for the purpose of sale and disposal at

par with at any other product produced by the company and similar records should be maintained. The quantitative details on the above lines are to be given in respect of by-product also.

Clause 29

Sect.115-O provides for a special levy to the extent of 15, on the amount of dividend declared, distributed or paid by such company whether such dividend is out of current profit or accumulated profits.

In this clause, the total amount of profits distributed in the previous year, tax paid thereon and the date of payment is required to be given. Information about the date of declaration/distribution of dividend or payment of dividend is not required to be given. However, it will be advisable to give the above information of distribution because the Company is required to deposit the tax due under sec.115-O within 14 days of the date of declaration/distribution or payment whichever is earlier.

Clause 30

Under this clause the tax auditor should ascertain from the management whether cost audit was carried out and if yes enclose the copy of the report of such audit.

Clause 31

Requirement of this clause is similar to the above clause. Here instead of cost audit, its audit under Central Excise Act, 1944.

Clause 32

Under this clause following accounting ratios should be provided:

- a. Gross profit /Turnover;
- b. Net profit/Turnover;
- c. Stock-in-trade /Turnover;
- d. Material consumed /Finished goods produced.

These ratios have to be calculated only for assesseees who are engaged in manufacturing or trading activities. This clause is not applicable to assesseees carrying on profession. Moreover, the ratios have to be given for the business as a whole and

need not be given product wise. Further, the ratio mentioned in sub-clause (d) need not be given for trading concern.

Form 3CD has to be signed by the person competent to sign Form No. 3CA or Form No.3CB as the case may be. He has also to give his full name, address, membership number, place and date.

References:

1. Students guide to income tax By Dr. Vinod K Singhania and Dr. Monica Sighania
2. Guidance Note on Tax Audit Under Section 44AB issued by ICAI