

Tax audit u/s 44AB

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CIRC of ICAI



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It is suggested that to avoid any doubt one should cross check the correctness of text, contents and the law with the original documents and to dispel confusion should seek professional help/opinion.



DISCLAIMER

- Nov 1998 batch Chartered Accountant.
- Commerce Graduate from Punjab University.
- Certificates in Indirect taxes, DISA, Valuation, and Blockchain from ICAI.
- Actively pursuing certifications in Ind-AS and Social Audit.
- Member of Taxation Audit Quality Review Board (TAQRB) and special invitee to Tender Monitoring Directorate of ICAI.
- Elected member of Executive Committee of Sales Tax Bar Association (STBA), New Delhi.
- Passionate about the innovative use of technology in the professional sphere.
- YouTuber, leveraging the power of digital platforms to share his knowledge and insights with fellow professionals.



1

- Guidance note of ICAI, 2022 edition

2

- Exposure Draft Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961, AY 2023-24

3

- Study on compliances in reporting in tax audit report (aka TAQRB study)

4

- Technical guide on income computation and disclosure standards (ICDS)

5

- Approach to Tax Audit under section 44AB of the Income tax Act, 1961 (Checklist)

6

- Reporting under the new format in Form 3CD - A Specimen: Bombay Chartered Accountants' Society

Objective of Tax Audit under section 44AB

- Ensure accurate maintenance of books of account and records in compliance with Form No. 3CD to reflect accurate financial information.
- Streamline tax administration by presenting well-maintained accounts to tax authorities, saving Assessing Officers' time for more critical and investigative tasks.

- While giving the tax audit report the tax auditor will have to use his professional skill and expertise and apply such audit tests as the circumstances of the case may require, considering the contents of the audit report.
- The tax Auditor will have to conduct the audit by applying the generally accepted auditing procedures which are applicable for any other audit.

- ICAI has constituted the Taxation Audits Quality Review Board (TAQRB)
- Sole aim to review any report prescribed under the Income-tax Act, 1961 and GST
- **TAQRB, when finds any error or mistake or limitation in tax audit report, appropriate action, including *referring case for disciplinary proceedings*, is initiated.**

Applicability of Section 44AB

Applicability of 44AB - Business

Sl#	Turnover	Eligible for presumptive?	44AB Applicability	Cash Conditions	Remarks
1	> 10 Cr	NA	Yes	NA	44AB(a)
2	2 ~ 10 cr	NA	No	< 5%	1 st Proviso to 44AB(a)
		NA	Yes	> 5%	1 st Proviso to 44AB(a)
3	1 ~ 2 cr	Yes, for section 44AD	No, if 44AD is opted	NA	1 st Proviso to 44AB
			See Sl # 2 if 44AD not opted this year & earlier		
		No*	See Sl# 2		
		No, since 44AD(4) is applicable (opt in-opt out)	Yes	NA	44AB (e)
4	NA	Yes, 44AE/44BB/44BBB	No, if opted	NA	44AB (c)
			Yes, if not opted	NA	44AB (c)

*Either total income is less than threshold, or not an eligible business, or not an eligible assessee, or engaged in specified profession u/s 44AA(1)

Applicability of 44AB - Profession

Sl#	Turnover	Eligible for 44ADA?	44AB Applicability	Remarks
1	> 50 lakhs	NA	Yes	44AB(b)
2	Up to 50 lakhs	NO , since not a specified profession u/s 44AA(1)	No	44AB(b)
		YES , but total income < threshold	No	44AB(d)
		YES , but opted for 44ADA	No	44AB(d)
		YES , but NOT opted for 44ADA	Yes	44AB(d)

Sec 44AB. Every Person -

(a) Carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs. 1 Cr in any previous year.

Provided *that in the case of a person whose--*

*(a) aggregate of **all amounts** received **including** amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed 5% of the said amount; **and***

*(b) aggregate of **all payments** made **including** amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said payment,*

this clause shall have effect as if for the words “1 Cr”, the words “10 Cr” had been substituted:

Since the proviso clause (a) consists the term “aggregate of all amounts received including amount received for sales”, it means received from the previous years receivables shall also be counted while calculating the aggregate of all amount received.

- Whether loan receipt will also be included in this amount?
- Whether capital receipt will also be included in this amount?

- Similarly, the proviso clause (b) consists the term “aggregate of all payments made including amounts incurred for expenditure”, it means amount paid towards the previous years payables shall also be counted while calculating the aggregate of all payment made.
- Whether repayment of loan will also be included in this payment?
- Whether expenses incurred towards purchase of capital assets or making investment will also be included in this payment.

- Turnover of Mr. A in the FY 2022-23 is Rs. 7 Cr. out of which cash receipts is Rs. 70 Lakh and receivable is 1 Cr. He also get a loan of Rs. 10 Cr from bank.
- Whether Mr. A is eligible for proviso clause of sec 44AB(a)?
- Whether your answer would be different if the sales amount is Rs. 12 Cr and the receivable is Rs. 3 Cr. considering the other facts remain same.
- What would be the position if the sales during the year is 9 Cr and he also received Rs. 2 Cr. from the preceding years receivable. Considering the other facts remain same.

- Turnover of Mr. A in the FY 2022-23 is Rs. 7 Cr. out of which cash receipts is Rs. 32 Lakh and receivable is 1 Cr.
- Out of receipt of Rs. 6 Cr, one of the debtors of Rs. 1 Cr is creditor of Rs. 50 Lakh of Mr. A and such account were netted off and Rs. 50 Lakh paid to Mr. A by cheque as the final balance amount.
- Whether Mr. A is eligible for proviso clause of sec 44AB(a)?

Exclusion of TO for 44AB

- Where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded.
- Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded.

Section 44AA

Requirement to maintain books



- Before we jump to scheme of presumptive taxation, it is important to understand requirements of maintenance of books of accounts.

Provisions	Types of persons	Condition for maintenance of books of accounts
S.44AA(1) <i>read with</i> R.6F(1)	Persons engaged in specified profession	<ul style="list-style-type: none"> • TO from specified profession in any 1 out of 3 financial years* > Rs. 1.50 lacs • Newly setup – the TO likely for the year of setup > Rs. 1.5 lacs <p>☞ Maintenance of books of accounts as per r.6F(2) is mandatory</p> <p>☞ For Medical professionals, r.6F(3) also to be followed, in addition to 6F(2)</p>

* Financials years immediately preceding to FY in question

Provisions	Types of persons	Condition for maintenance of books of accounts
44AA(2)(i) & 44AA(2)(ii)	Persons engaged in <i>non-specified professions</i> or businesses	<p><i>For Individual or HUF:</i></p> <ul style="list-style-type: none"> • Income from PGBP > 2.50 Lac; or • TO^{1/2} from business/profession > 25 lacs^a <p><i>For others:</i></p> <ul style="list-style-type: none"> • Income from PGBP > 1.20 Lacs; or • TO^{1/2} from business/profession > 10 lacs^a <p>1. If old setup – TO in any 1 out of 3 financial years^b</p> <p>2. If new setup – the TO likely for the year of setup</p>

- a. The exemption limit of Rs. 1.5 lacs turnover for persons engaged as authorized representatives or film artists, as provided in the proviso to Rule 6F(1), cannot supersede the explicit provisions of the act.
- b. Financial year(s) immediately preceding to FY in question.

Provisions	Types of persons	Books of accounts
44AA(2)(iii)	Assessee has opted for presumptive scheme of taxation for an AY 44AE 44BB 44BBB	No requirement to maintain books of accounts if opted. Else mandatory + audit
44AA(2)(iv)	TO is less than 2 cr / 3cr + Total Income > threshold; and + Assessee had opted 44AD scheme + In any 1 of 5 subsequent year opted out of 44AD. <i>Let's call it "t"</i>	then for next 5 years <i>(call it "t+1" to "t+5"):</i> Mandatory to maintain books of accounts + Audit u/s 44AB (Even if TO is less 10/25 lacs)

Business and Profession

A pandora box

- "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.
- The word `business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only - *Barendra Prasad Ray v ITO [1981] 129 ITR 295 (SC)*.
- Whether a particular activity can be classified as 'business' or 'profession' will depend on the facts and circumstances of each case.

“Profession” includes vocation

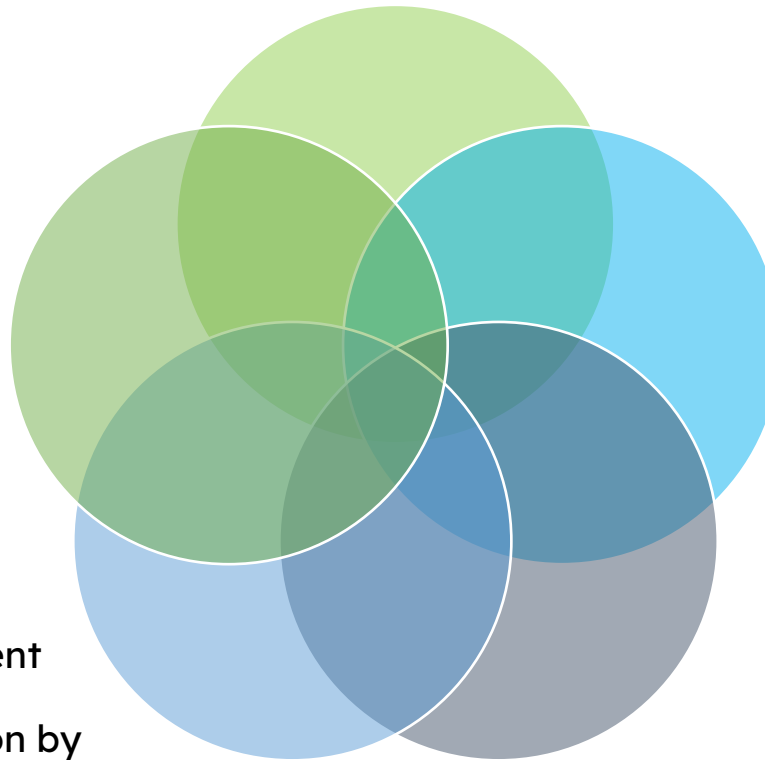
Profession is a word of wide import and includes "vocation" which is only a way of living

{Additional CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All)}

The word “profession” implies professed attainment of **special knowledge** as distinguished from mere skill. It involves labour, skill, education and special knowledge. Despite this distinction, if any, professional activity is carried on tinged with a commercial character, then it may amount to business⁵.

Profits should be dependent mainly upon the **personal qualification** of the person by whom it is carried on⁴.

“Profession” involves occupation requiring **purely intellectual** or manual skill¹.



“Profession” involves the idea of an occupation requiring purely **intellectual skill** or manual skill controlled by the **intellectual skill** of the operator²

The main difference between ordinary commercial business and profession lies in the amount of **knowledge or skill** employed in carrying it on though that may not be the sole criterion³

1. CIT vs. Manmohan Das (1966) 59 ITR 699 (SC)
2. Addl. Commissioner of Income-Tax v. Ram Kripal Tripathi [(1980) 4 Taxman 149(All)]
3. P. Stanwill & Co. Vs. CIT (1952) 22 ITR 316 (All)

4. William Esplen, Son & Swainston, Limited vs. Commissioners of Inland
5. Income Tax Officer vs Ashalok Nursing Home (P) Ltd. (2006) 103 TTJ Delhi 820

- Can be an individual or group of individuals having certified degree of profession e.g. doctor, engineer, Chartered Accountant etc.
- Connected with a job that needs a high level of training and/or education.
- Individual who derives their income from his specific knowledge or experience.
- Individual who is engaged in one of the learned professions.
- Individual who works in a specified professional activity.

Section	Expl. to 194J	44AA(1)
Expression	Professional Services	Specified Professions
Provision	<p>"professional services" means</p> <ul style="list-style-type: none"> • services rendered by a person in the course of carrying on • legal¹, medical², engineering³ or architectural⁴ profession or the profession of accountancy⁵ or technical consultancy⁶ or interior decoration⁷ or <i>advertising</i>⁸ or • such other profession as is notified by the Board <ul style="list-style-type: none"> • for the purposes of section 44AA or • <u>of this section</u> 	<ul style="list-style-type: none"> • Every person carrying on • legal¹, medical², engineering³ or architectural⁴ profession or the profession of accountancy⁵ or technical consultancy⁶ or interior decoration⁷ or • any other profession as is notified by the Board in the Official Gazette



Legal



Medical



Engineering



Architecture

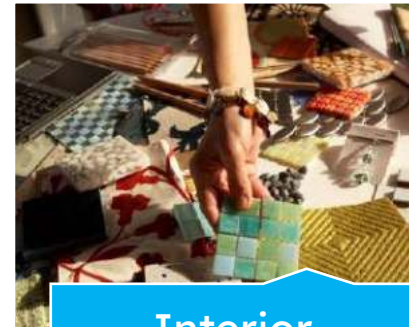


Accountancy



Technical Consultancy*

[*Not technical service]



Interior Decoration

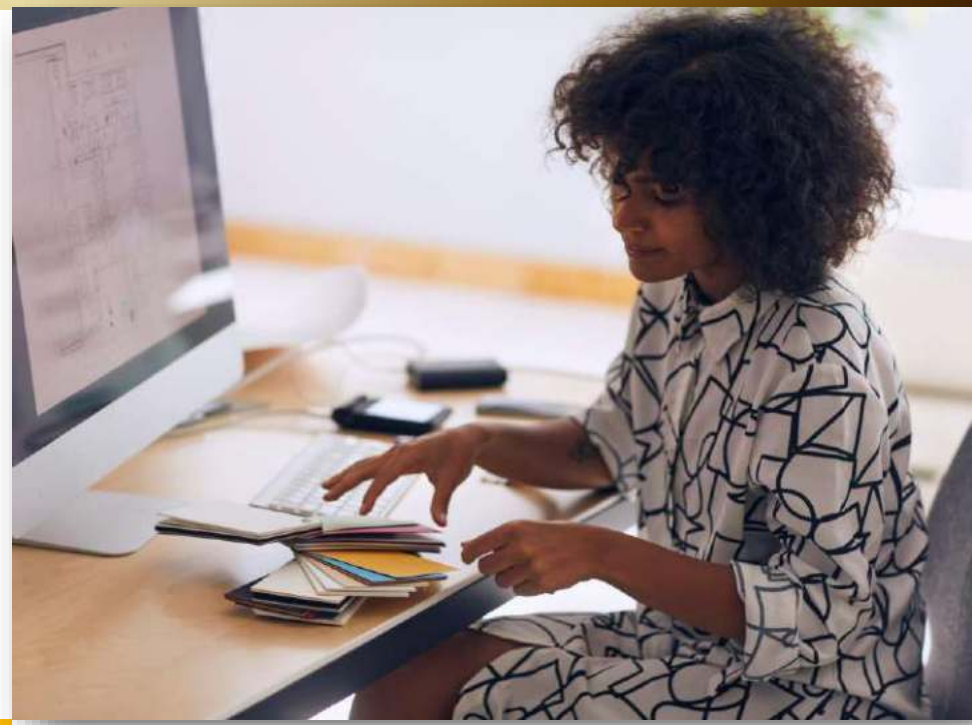


Category of specified profession as of today	Nos.
Specified professions within section 44AA(1)	7
Specified professions through notification u/s 44(1)	2
Total specified professions for section 44AA(1)	9

Notified “professional services” u/s 194J:

- Sports Persons,
- Umpires and Referees,
- Coaches and Trainers,
- Team Physicians and Physiotherapists,
- Event Managers,
- Commentators,
- Anchors and
- Sports Columnists

Consultation

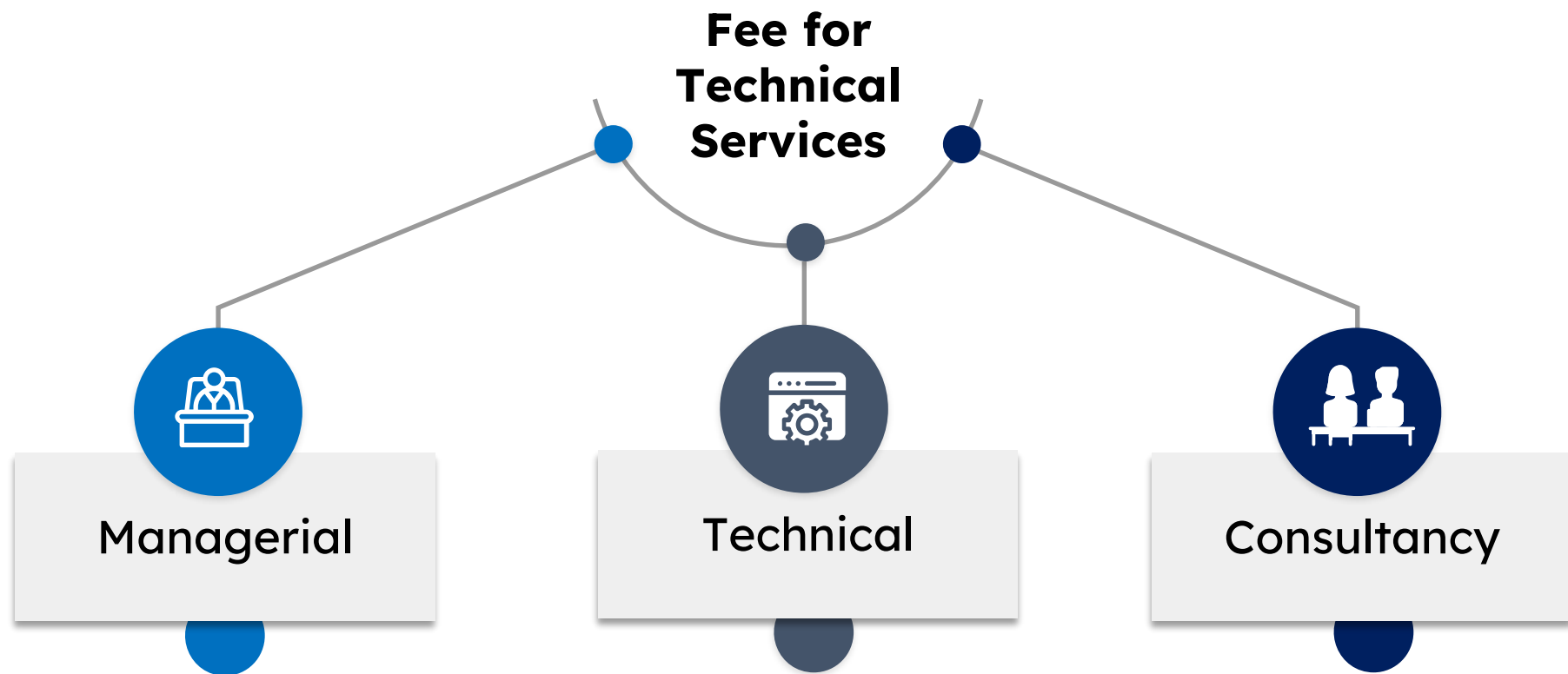


“Consultation” meaning?

Decision by court

Citation

- | | |
|---|--|
| <ul style="list-style-type: none">• Consultation means a meeting in which a party consults or confers and eventually it results in human interaction that leads to rendering of advice | GVK Industries Ltd. [2015] 371 ITR 453 (SC) |
| <ul style="list-style-type: none">• The expression “consultancy involves giving of an advice / opinion / recommendation or counselling or advisory services by a professional.• Expertise in a technology is not essential while providing consultancy services.• However, an <u>element of expertise or special knowledge</u> on part of the advisor is essential.• Advisory services which merely involve discussion and advice of a routine nature cannot be classified as consultancy services. | Intertek Testing Services India (P) Ltd. [2008] 307 ITR 418 (AAR) |
| <ul style="list-style-type: none">• The term consultancy services, in common parlance, means providing advice or advisory services by a professional. Usually, consultancy services are professional services requiring specialized qualification, knowledge, expertise of a professional person, and are more dependent on skill, intellect and individual characteristics of the person rendering it. | Endemol South Africa (Proprietary) Ltd. vs DCIT [2018] 98 taxmann.com 227 (Mum ITAT) |



The terms “management,” “technical” and “consultancy” do not have precise meanings and may overlap. E.g., services of a technical nature may also be services of a consultancy nature and management services may also be considered to be services of a consultancy nature.

Explanation 2 to section 9(1)(vii) defines

“Fee for technical services”, to means –

Any consideration (including lump sum consideration)

- for the rendering of any:

- Managerial

- Technical or

- Consultancy services

(including the provision of services of technical or other personnel)

Decision by court	Citation
<ul style="list-style-type: none">For any consultancy to be treated as technical services, it would be necessary that a technical element is involved in such advisory.The consultancy should be rendered by someone who has special skills and expertise in rendering such advisory.	Le Passage to India Tours & Travel (P) Ltd. [2014] 369 ITR 109
<ul style="list-style-type: none">Services are of technical nature when special skills or knowledge or education related to a technical field are required for the provision of such services.A mere use of a standard facility does not result into availing of technical services although such facility has been developed with the usage of technology	E-bay International AG vs ADIT (2012) 25 taxmann.com 500 (Mum)
<ul style="list-style-type: none">The word "technical" would take colour from the words 'managerial" and "consultancy", between which it is sandwiched,"technical services" would obviously involve services rendered by human efforts.	Bharti Cellular Ltd. (2008) 175 Taxman 573 (Delhi) Bharti Cellular Ltd. (2011) 330 ITR 239 (SC)

Decision by court

Citation

- Management Consultancy cannot be considered as technical consultancy
 - The expression “Management Consultancy” could not be brought within the ambit of “technical consultancy”.
 - Hence, the provisions of Section 44AA(1) of the Act cannot be made applicable to the assessee in the instant case
-
- Consultancy services which are not of a technical nature cannot be treated as technical services

Pramod Lele v/s
ITO
(Mum-Trib)

ITA No.
4306/Mum/2019

Shell Global
Solutions
International BV

[2015] 64
taxmann.com 3
(Ahmedabad - Trib.)

CONSULTANCY

Advice / opinion / recommendation or counselling.



01

TECHNICAL

Technical element must be involved



02

EXPERT KNOWLEDGE

Expertise or special skill, knowledge or education on the part of advisor



03

HUMAN EFFORTS

involve services rendered by human efforts.



04

- Mr. A, a technical person, **gives advice** over call or in person to Mr. B regarding whether the latter shall obtain a feasibility or project report from any technical person, by **explaining benefits** of such report and also **discussing parameters** to be taken care in such process, in respect of Mr. B's project. Accordingly, the consideration which will be paid by Mr. B to Mr. A would be categorised for technical consultancy.
- If Mr. A prepares a feasibility or project report for Mr. B's project then it will involve activity carried out by Mr. A. Thus, the consideration will be for technical service and categorised as FTS.

- Nurse
- Nursing homes
- Hospitals
- Teachers
- Coaching Institute
- Accountants (not CA)
- IRP
- Actuary
- Insurance Surveyor
- a qualified CA who provides services through his consulting firm, without CoP.
- Advertising (*explanation to section 194J*)
- Vastu Consultancy
- Auctioneer

- a person
- who represents any other person,
- on payment of any fee or remuneration
- before any Tribunal or authority constituted or appointed by or under any law for the time being in force,
- but does not include
 - an employee of the person so represented or
 - a person carrying on legal profession or a person carrying on the profession of accountancy

“**film artist**” means any person engaged in his professional capacity in the production of a cinematograph film whether produced by him or by any other person, as-

- an actor,
- cameraman,
- a director, including an assistant director;
- a music director, including an assistant music director;
- an art director; including an assistant art director;
- a dance director, including an assistant dance director,
- editor, singer, lyricist, story-writer, screen-play writer, dialogue writer and dress designer.



What about
Stunt &
Voice over
artists?

Professional Services u/s 194J	Specified Professions u/s 44AA(1)	Rule 6F
<ol style="list-style-type: none"> 1. Legal profession 2. Medical profession 3. Engineering profession 4. Architectural profession 5. Accountancy profession 6. Technical consultancy 7. Interior decoration 8. <i>Company Secretary</i> 9. <i>Information Technology</i> 10. Advertising 11. <i>Sports Persons</i> 12. <i>Umpires and Referees</i> 13. <i>Coaches and Trainers</i> 14. <i>Team Physicians and Physiotherapists</i> 15. <i>Event Managers</i> 16. <i>Commentators</i> 17. <i>Anchors</i> 18. <i>Sports Columnists</i> 	<ol style="list-style-type: none"> 1. Legal profession 2. Medical profession 3. Engineering profession 4. Architectural profession 5. Accountancy profession 6. Technical consultancy 7. Interior decoration 8. <i>Company Secretary</i> 9. <i>Information Technology</i> 	<ol style="list-style-type: none"> 1. Authorised Representative 2. Film Artists <ol style="list-style-type: none"> a) an actor, b) cameraman, c) a director, including an assistant director; d) a music director, including an assistant music director; e) an art director; including an assistant art director; f) a dance director, including an assistant dance director, g) editor, singer, lyricist, story-writer, screen-play writer, dialogue writer and dress designer.

As per ICAI GN, even these are professions

Presumptive taxation and its interplay with section 44AB

Choice	Applicability of 44AB/44AE
Assessee opts for 44AE	No applicability
Assessee opts out of 44AE	Mandatory irrespective of turnover for this business

☞ Option to opt 44AE is on year to year basis

Choice	44AB	44AA
Assessee opts out of 44ADA	Mandatory irrespective of turnover	Applicable
Assessee opts for of 44ADA	Not required	Applicable <i>See 44AA(1)</i>

- ➡ Option to opt 44ADA is on year to year basis
- ➡ If TO > 50 lacs, no applicability of 44ADA
- ➡ Only those assessee who are engaged in specified profession u/s 44AA(1) are eligible
- ➡ **Can LLP avail 44ADA?**

Sl#	Choice	44AB + 44AA
1	Assessee does not opt for 44AD at all	Normal Provisions of 44AA and 44AB shall apply
2	Assessee opts for of 44AD for first time	Not required
3	Once opted, he opts out in any 1 out of 5 years	
	- First year of opting out	Mandatory irrespective of turnover (till 2 or 3 cr*)
	- Next 5 years after opting out	Mandatory irrespective of turnover (till 2 or 3 cr*) + Can not opt 44AD
	- 6 th year onwards	Can again opt for 44AD at his choice

*From AY 2024-25, TO limit is increased to 3cr subject to certain conditions

TO based eligibility (For AY 2023-24) –

Turnover from eligible business	Eligible for 44AD?	44AA applicable?	44AB applicable?
> 2 cr	No	Yes	Depends
1 cr To 2 cr	Yes	No, if 44AD opted Yes, if 44AD(4) is applicable <i>(opt in-opt out scenario)</i>	No, if 44AD opted Yes, if 44AD(4) is applicable
< 1 cr	Yes	Same as above	Same as above

Circular no. 10/2017, dated 23rd March, 2017

Q#3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?

Answer:

*** the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme ***.

For example, for computing presumptive income of a partnership firm under section 44AD of the Act, **the provisions of ICDS on Construction Contract or Revenue recognition** shall apply for determining the receipts or turnover, as the case may be.

Can I claim both 44AD and 44ADA? DAKSM | दक्षमः

Section 44AD (6)

The provisions of this section, notwithstanding anything contained in the foregoing provisions, **shall not apply to—**

(i) a person carrying on profession as referred to in ***sub-section (1) of section 44AA;***

Section 44ADA (1)

Notwithstanding anything contained in sections 28 to 43C, 76 in case of an assessee **** engaged in a profession referred to in **sub-section (1) of section 44AA** ***

- ➡ 44ADA is applicable only to persons carrying on specified profession
- ➡ 44AD is NOT applicable to persons carrying on specified profession.
- ➡ Hence, such person cannot claim both 44AD and 44ADA.
- ➡ Such persons are eligible only for 44ADA

FY Year	Turnover	Total Income	44AD	44AB
2018-19	0.75 cr	3.00 lacs	Not opted	NA
2019-20	2.10 cr	8.00 lacs	NA	No
2020-21	1.80 cr	7.30 lacs	Yes	NA
2021-22	2.60 cr	11.60 lacs	NA	No
2022-23	1.90 cr	2.4 lacs	No	No
2023-24	2.60 cr*	11.70 lacs	??	??

* Cash receipts are less than 5% of TO

Can assessee claim 44AD benefit and file return under presumptive scheme for AY 2023-24?

FY Year	Turnover	Total Income	44AD	44AB
2018-19	0.75 cr	3.00 lacs	Yes	NA
2019-20	2.10 cr	8.00 lacs	NA	No
2020-21	1.80 cr	7.30 lacs	No	NA
2021-22	2.60 cr	11.60 lacs	NA	No
2022-23	1.90 cr	2.4 lacs	No	No
2023-24	2.60 cr*	11.70 lacs	??	??

* Cash receipts are less than 5% of TO

Can assessee claim 44AD benefit and file return under presumptive scheme for AY 2023-24?

FY Year	Turnover	Total Income	44AD	44AB
2016-17	0.50 cr	3.00 lacs	Yes	NA
2017-18	0.60 cr	3.50 lacs	No	NA
2018-19	0.75 cr	3.00 lacs	No	NA
2019-20	2.10 cr	8.00 lacs	NA	No
2020-21	1.80 cr	7.30 lacs	Yes	NA
2021-22	2.60 cr	11.60 lacs	NA	No
2022-23	1.90 cr	2.4 lacs	No	No
2023-24	2.60 cr*	11.70 lacs	??	??

* Cash receipts are less than 5% of TO

Can assessee claim 44AD benefit and file return under presumptive scheme for AY 2023-24?

Person	Turnover from practice	Turnover from selling medicine	Total TO
Doctor	45 lacs	56 lacs	1.01 cr

1. Is entire revenue subjected to sec 44ADA offering 50% as deemed income?
2. Can he avail 44AD and 44ADA for the respective source of income?
3. Does he need to get his books of accounts audited since his total TO > 50 lacs?

Person	Turnover from practice	Turnover from selling medicine	Turnover from diagnostic centre
Doctor	90 lacs	1.50 cr	4.00 cr*

* Cash receipts/payments are less than 5% of TO

1. Can he avail 44AD for his business income?
2. Assuming 44AD is available, does he need to get his books of accounts audited?
3. Can he avail 44AD for diagnostic business only?
4. If yes, does he still need to get his books audited? If yes, how much is auditable TO?

Situation	Business A TO	Business B TO	Profession TO
A	50	43	54
B	50	70	42
C	50	43	42
D	50	120 (44AD)	54
E	75	120	49 (44ADA)

Please read para 5.16/5.17 of exposure draft

What is Turnover?

- **Turnover under Companies Act:**

Sec 2(91) turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during the financial year.

- **Revenue under ICDS:**

Revenue is the gross inflow of cash, receivables, or other consideration arising in the course of ordinary activities of a person from the sale of goods, from the rendering of services or both.....

- Sale of ABC Pvt Ltd during FY 2020-21 is Rs. 90 lakh and GST on such sales is Rs. 16.20 lakh. The total turnover including GST is RS. 106.20 lakh.

What is the turnover?

The “*Guidance Note on Terms Used in Financial Statements*” published by the Institute, the expression “Sales Turnover”:

“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.

- The words '*Sales*', '*Turnover*', '*Gross receipts*' are commercial terms and they should be construed in the commercial sense and in accordance with the normal rules of accountancy.
- Accordingly, 'Turnover' and 'Gross receipts' mean gross in-flow of cash receivables and other considerations arising in the course of ordinary activities of an enterprise from the sale of goods or from the rendering of services to the buyer or client.

- It is well settled that the term sales, turnover and gross receipts have to be interpreted, with reference to the items which go into profit and loss account of a concern and that this has to be ascertained, based on the method of accounting regularly employed by the assessee.
- Items of receipts which are capital in nature do not go into the profit and loss account and are not turnover

- Neither the term 'goods' nor 'turnover' is defined in the Act. In general, turnover is meant to be the sale proceeds of the goods sold. In other words, commercially it would mean the amount of money turned over or drawn in a business, in a given time.
- Since the term 'turnover' is not specifically defined in the Act, nor specifically for the purpose of section 44AB, its meaning should be taken as commercially and commonly understood.

- POCM to be followed (even for service contract)
- Retention money to be included in revenue and cannot be excluded.
- Incidental income like interest income cannot be deducted from borrowing cost.
- **43CB.** *(1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145*

Are these part of gross business receipts for 44AB?

- Write back of amounts payable to creditors and/or provisions for expenses or taxes no longer required.

- If the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts (back to back)
- But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts.

- Delhi ITAT in the case of *Brij Lal Goyal (2004) 88 ITD 413* held that the word accounts have not been defined.
- Therefore, in view of Sec 34 of the Indian Evidence Act, the term accounts should be understood as accounts which are maintained in the regular course of business alone should be considered for computing the limit.

Included	Excluded
<ul style="list-style-type: none">• Sale proceeds of any shares, securities, debentures, etc., as stock-in-trade, the sale proceeds thereof will form part of turnover.• Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover• Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount• Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes• Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year	<ul style="list-style-type: none">• Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover, unless held as Stock in trade.• Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.• Special rebate allowed to a customer cannot be deducted from the sales If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.• Sale proceeds of fixed assets would not form part of turnover since these are not held for resale• Sale proceeds of property held as investment property will not form part of turnover.

Speculative and F&O transactions

Para 5.14 of ICAI's Guidance Note
(para 5.10 of exposure draft)

- No delivery transactions.
- The contract is squared up by paying difference, which could be positive (profit) or negative (loss)
- Entry made in books only for difference, not for full value of contract notes.
- **ICAI's GN- The aggregate of both positive and negative values is to be treated as "turnover" for section 44AB purpose.**
- *Growmore Exports Ltd*. – The view of ICAI does not appear to be correct view. No turnover was effected at all by the assessee and hence was not liable to get the accounts audited under Section 44AB of the Act*

* 2001 78 ITD 95 Mum

Such transactions are completed without the delivery of shares or securities. These are also squared up by payment of differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia.

Such transactions to be clubbed for computing TO –

- i) Total of favourable and unfavourable differences
- ii) Premium received on sale of options. *However, where the premium received is included for determining net profit for transactions, the same should not be separately included.*
- iii) Difference in respect of reverse trades entered

- Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether *intended or by default*, the total value of the sales is to be considered as turnover.

- In case such transactions are for the purposes of investment and income/loss arising therefrom is to be computed under the head 'Capital Gains', then the value of such transaction is not to be included in sales or turnover for deciding the applicability of audit under section 44AB
- However, in case such transactions are in the course of business, then the total of such sales are to be included in the sale, turnover or gross receipts as the case may be, of the assessee for determining the applicability of audit under section 44AB.
- Such delivery may or may not be intended.

Judgement

Where the assessee is not carrying on any business independently but is only a partner in a firm interest and salary received by the assessee cannot be constructed as business income under section 28(v) and, consequently, he is not eligible to opt for section 44AD with respect to interest and remuneration earned from partnership firm.

Citation

Anandkumar
Vs
CIT

278 Taxmann 342
(Madras HC)

Under section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by, a partner of a firm from such firm shall be chargeable under the head profits and gains of business and profession. However, partner does not do any business independently but firm was carrying on business in which assessee is only a partner, *therefore, remuneration received by assessee from partnership firm can not be treated as gross receipt/turnover*

Perizad Zorabian
Irani v PCIT, Mumbai
(WP No. 1333/2021)
Bombay High Court
dated 09.03.2022:

- Assessee, running a hardware store, filed its return declaring net profit of 0.99 per cent of turnover
- Assessing Officer found that turnover of assessee's business was more than Rs. 1 crore but assessee had failed to get accounts audited under section 44AB –
- He applied provisions of section 44AD and estimated business profit at 8 percent of assessee's turnover –
- Accordingly, certain addition was made to assessee's income –
- Whether, on facts, Assessing Officer could have ventured into estimation only after rejecting books of account of assessee and thereafter make best judgment assessment under section 144?
- **Held, yes - Whether since Assessing Officer had gone for estimation of income without rejecting books of account of assessee, impugned order passed by him was to be set aside**

Form 3CA or 3CB?

Which form to select?

Form 3CA

- In case of a person carrying business or profession whose accounts are *required to be audited under any other law*.
- Name of the statutory auditor, if not same as tax auditor
-

Form 3CB

- Person other than those referred in Form 3CA.
- Person whose accounts are required to be audited under other law but accounting year is different from PY . ***[Circular : No. 561, dated 22-5-1990]***
- Separate place for discrepancies, comments, observations on the financial statements
- True and Fair view of B/s and P/L
- No of branches to be mentioned

True and Correct v/s True and Fair

- True and correct:
 - Completeness of the information furnished, i.e., no items have been omitted in the information furnished; &
 - Correctness of the information furnished.
 - Factual Accuracy based on test checks
- Tax Auditor to state whether he has examined BS & PL for the year ended on 31st March and certify that they are in agreement with the Books of Accounts.

Form 3CA/3CB vis-à-vis SA700

- Form No. 3CA and Form No. 3CB are required to be filed online in a preset form
- Same are not in line with the requirements of SA 700
- It is suggested that these respective responsibility paragraphs relating can be provided in the space provided for giving observations, etc., **under clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be.**

Form	Relevant clause for SA700 disclosure
3CA	Clause 3
3CB	Clause 5

Page 12 of TAQRB report:

- Many of the Tax Audit reports did not have the paragraphs relating to Assesee's responsibility and Tax Auditor's responsibility as required by the Guidance Note in respect of SA 700.
- Some of the tax audit reports contained a reference about the attached the notes/report which mention these paragraphs thereby complying with the requirement of SA 700.
- However, as per the Guidance Note on Tax Audit the **same are specifically required to be mentioned / reported** under clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB, as the case may be.

- As per the Guidance Note only qualifications/ observations should be reported in the space provided in the form No. 3CA/3CB itself while the additional information which **are not in the nature of qualification** could be attached as notes.



408th meeting of council held from 3rd to 4th February 2022:

1. In many cases such prescribed auditor's report were required to be filed online in a preset form and, hence, it was not possible for the auditors to make necessary changes in these reports to bring them in line with the SA 700 (Revised).
2. Where the auditor's report were to be submitted in a physical form and not filed online, *the concerned regulatory/ government agencies may not accept such audit reports which contained any changes* made by the auditors to the prescribed formats to bring them in line with SA 700 (Revised)
3. The members may, in the situations described above, submit the auditor's report in the format/s prescribed *under the relevant law or regulation until announcement of necessary change is made by the appropriate authority*. In such cases, the members would not be viewed as having not complied with the provisions of SA 700 (Revised).
4. In the background of the difficulties mentioned in paragraph 1 above, it may also not be possible for the auditors to suitably modify the prescribed format. Accordingly, it would not per se be possible for the auditors to state in their audit reports that the audit has been carried out in accordance with the Standards on Auditing. However, the auditors would be required to carry out the audits in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India.

Assessee's responsibility para

Sl. No.	Qualification Type	Observations/Qualifications
1	Others	Assessee's Responsibility for the Financial Statements: 1/2: The assessee is responsible for the preparation of the aforesaid financial statements that give a true and fair view of the financial position and financial performance (if applicable) in accordance with the applicable Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI). This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error. The assessee is also responsible for overseeing the entity's financial reporting process.
2	Others	Assessee's Responsibility for the Financial Statements and the Statement of Particulars in Form 3CD: 2/2 In preparing the financial statements, assessee is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless assessee either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so. The assessee is responsible for overseeing the entity's financial reporting process.
3	Others	Assessee's Responsibility for the Statement of Particulars in Form 3CD: The assessee is also responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, circulars etc. that are to be included in the Statement. This responsibility also includes designing, implementing and maintaining internal controls, that are relevant and operating effectively for the preparation and presentation of the particulars furnished in Form No. 3CD that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility para

4	Others	<p>Tax Auditor's Responsibility: 1/3 Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with the Standards on Auditing issued by the ICAI. Those Standards require that we comply with the ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.</p>
5	Others	<p>Tax Auditor's Responsibility: 2/3 In making those risk assessments the auditors consider internal financial controls relevant to the firm's preparation of the financial statements that give a true and fair view in order to design audit procedure that are appropriate in the circumstances, but not for the purpose of expressing an opinion on whether the firm has in place an adequate internal financial controls system over financial reporting and the operating effectiveness of such controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of the accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.</p>
6	Others	<p>Tax Auditor's Responsibility: 1/3 We also provide assessee with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards. We are also responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income-tax Rules, 1962. We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.</p>

New format of financial statement for non-corporate entities

Form

**3CB & Accounting
Standards (AS)**

Where the auditor issues **Form No. 3CB**, as the ***audit of financial statements*** is being done under section 44AB of the Income tax Act, 1961, the auditor should in relation to audit of the financial statements ensure compliance of:

- Accounting Standards issued by ICAI.
- Standards on Auditing issued by ICAI.
- Framework for presentation of Financial Statements issued by ICAI.

Are we in principle following all accounting standards issued by ICAI for non-corporate assessee's?

- Appendix I to the Compendium of Accounting Standards (as on February 1, 2022)
- 4 Levels of Entities
- 27 Accounting Standards: AS-1 to AS-29, except AS-6, AS-8

Level	Turnover Criteria	Borrowings Criteria
I	> 250 cr	> 50 cr
II	>50~250 Cr	>10 ~ 50 cr
III	>10 ~ 50 cr	>2 ~ 10 cr
IV	Upto 10 cr	Upto 2cr

“AS also apply in respect of financial statements audited under section 44AB of the Income-tax Act, 1961. Accordingly, members should examine compliance with the mandatory Accounting Standards when conducting such audit” - GN

We report the following observations/comments/discrepancies/inconsistencies if any:

In our opinion and to the best of our information and according to the explanations given to us, the aforesaid financial statements give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of affairs of the firm as at 31st March, 2022, and its Profit for the year ended on that date, except for non-compliance of following AS issued by ICAI:

When it is a matter of “True & Fair”

- AS-10: Accounting policy on Property, Plant & Equipment as per note 1(f), impact of which is not ascertainable.
- AS-22: Accounting Policy on taxation as per note 1(g), which would have resulted in reducing the profits by Rs. ____
- *List out other non-complied AS with impact.*

- *The assessee has prepared and presented the financial statements by broadly following the accounting policies with regard to recognition and measurement principles in accordance with the various provisions of Income tax Act and Income Computation and disclosure standards hence not followed the Accounting Standards issued by The Institute of Chartered Accountants of India, which are **inconsistent** with the provision of Income Tax.*
- *In our opinion, these financial statements have been prepared under special purpose framework and hence need to be treated as special purpose financial statements only meant for the use under the provisions of Income Tax Act, 1961.*
- *We have considered the various provisions of the income tax act, rules, notifications, circulars etc while conducting the audit u/s 44AB of the Income Tax Act, 1961 hence any deviations from the other statutory laws, rules and regulations, agreements, commitments whether contractual or otherwise as applicable to the assessee having the impact on these financial statements are broadly outside the purview of the audit u/s 44AB of the Income Tax Act, 1961.*

Note credit: CA. Gopal ji Aggarwal

In financials –

These financial statements have been prepared on a going concern basis and presented under the historical cost convention method on the accrual basis of accounting and in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI), *except to the extent of which are inconsistent with the with the various provisions of Income tax Act and Income Computation and disclosure standards.*

Audit report –

Kind attention is also invited to note XXX in respect of basis of preparation of financials.

Disclosures under various Clauses of 3CD

Form 3CD

- Rely upon the judicial pronouncements while taking any particular view.
- Suitable cross reference in case of particular item of income / expenditure is covered in more than one of the specified clauses.
- In case of difference/conflict of opinion between auditor & assessee, **both view points & relevant information to be stated.**
- If any particular clause in Form No.3CD is not applicable, he should state that the same is not applicable.

- In computing the allowance or disallowance, he should keep in view the **law applicable in the relevant year**, even though the *form of audit report* may not have been amended to bring it in conformity with the amended law.
- In case the assessee has furnished prescribed *particulars in part or piecemeal or relevant form* is incomplete or the assessee does not give the information against all or any of the clauses, the auditor should not withhold the audit report. **In such a case, he should qualify his report in para 3 of Form 3CA or para 5 of Form 3CB as applicable on matters in respect of which information is not furnished or if furnished, are inadequate/insufficient**
- The information in Form No. 3CD **should be based on the books of accounts, records, documents, information and explanations made available to the tax auditor** for his examination.

TAQRB Study On Compliances In Reporting In Tax Audit Report

During the course of next slides, we will try to capture / discuss essence of this study, wherever possible

June 2022 edition

Clause by clause discussion

Form 3CD

Clause 1

Name

- If name of the assessee has changed during the year, suitable disclosure should be given, giving old name(s) and new name.

Sample disclosure:

“Company has changed its business activities from a brick and mortar trading company to e-commerce company and consequently has also changed its name from DAKSM Trading Private Limited to DAKSM e-commerce Private Limited. Please also refer to clause 10 to form 3CD”

Clause 2

Address

- The address to be mentioned under clause (2) 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 of the audit report.
- If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given.
- In the case of a company, the address of the registered office should also be stated.
- In the case of a new assessee, the address should be that of the principal place of business.

- It has been observed that the address reported under this clause was different from the one mentioned in Annual report or as registered with Ministry of Corporate Affairs.
- In the case of a company, the address of the registered office should also be stated

Presenter's Note: It is quite possible that company's HO (or principal place of business) is different than its RO. In such a case, suitable disclosure may be given in form 3CD like this -

“Company's registered office address as per MCA record is XXX, City, State. However as informed by the assessee its principal place of business is situated at address mentioned in clause 2 of form 3CD. This address also is captured in PAN database and company is regularly filing its income tax return from this address for last many years.”

Clause 4

Indirect tax registrations

- The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation *“written representation” SA 580*, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law.
- Even if the assessee is liable for GST on RCM, the answer should be affirmative.

- Registrations under all the other Indirect Tax Laws which have been mentioned in the Report issued under CARO have not been reported under this clause.
- Registration numbers under the Indirect Tax laws, some of which are based on assessee's PAN, did not match with the PAN as reported under clause 3 of Form No. 3CD.
- Appropriate reporting of this mismatch was not found under Clause (3) of Form No.3CA or Clause (3) and/or Clause (5) of Form No.3CB, as the case may be.

“The assessee is liable to pay Goods and Service tax. However, registration numbers pertaining to excise law, service tax, value added tax, and entry tax act have been reported due to pending proceedings under respective statute. The auditors have relied on assessee for the purpose of reporting under clause 4.”

Presenter's note:

- All other registration numbers for VAT, Excise etc can also be included if the same are not surrendered.
- Clause 4 can include Entertainment Tax, Luxury Tax etc. wherever applicable

Clause 7

Status of assessee

- What if a firm has been converted into LLP during the year and there is no change in PAN?

Presenter's note: A suitable note may be given:

“The assessee has changed its constitution from a partnership firm to LLP w.e.f. 18th January 2022, vide MCA certificate no. ABA-4144. Pursuant to such conversion, there is no change in the status of assessee under the income tax act.”

Clause 8

Relevant clause of section 44AB

While reviewing various tax audit reports it was observed that:

- the companies (which are required to get their accounts audited under Companies Act, 2013)

- had selected option

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

instead of option

“Third Proviso to section 44AB: Audited under any other law”

Where a person is required by or under any other law to get his accounts audited, say a company, a society, an LLP etc., then audit under section 44AB is conducted under proviso to section 44AB and not under clause (a) or (b) of that section and thus clause (e) should be appropriately selected.

- Only Section 115BA/BAA/BAB/BAC/BAD are covered
- These sections are not applicable for firms / LLPs / AoPs / BOIs / AJPs
- Benefit also not available to foreign companies

Sample 3CD auditor's note for firms -

“Assessee being a firm, provisions of section 115BA/ 115BAA/ 115BAB/ 115BAC/ 115BAD are not applicable.”

- Tax auditor is advised to examine the previous year Income Tax return to verify the option which has been exercised by the assessee.
- Tax auditor should verify whether the relevant form being 10-IB, 10-IC, 10-ID, 10-IE and 10-IF furnished under section 115BA, 115BAA, 115BAB, 115BAC and 115BAD 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 disclosing this fact in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.

Clause 9

Particulars of Members/Partners in a firm

- This applies to Firm, Association of Persons (AOPs) and LLPs
- “Profit Sharing Ratio” would include Loss sharing ratio also as “Loss” is nothing but negative profit.
- Would not cover any specific ratio or understanding in relation to payment of remuneration or interest to partners or members.
- All the changes occurring during the entire previous year must be stated.
- Change in remuneration not to be reported.
- Where shares are indeterminate, facts should be disclosed.
- **Sec 9B and Sec 45(4) to be tested separately while reporting under this point.**

- *During the year under review there is change in the profit sharing ratio with effect from 1st September, 2021 as per Admission-Cum-Retirement Deed executed on 1st September, 2021.*
- *Mr. Deepak Bholusaria nominee partner of M/s Daksm LLP retired from the Firm with effect from 06th December, 2021 and was replaced by Mr. Jignesh Kansara.*

Clause 10

Nature of business or profession

- a) The ***principal line of each business*** is to be determined and stated in this clause,
E.g., An assessee may be principally engaged in 3 different activities like manufacturing, trading, and services.
- a) The code to be mentioned against the nature of business pertains to the main area of business activity.
- b) Any material change in the nature of business should be precisely set out. The change will include change from manufacturer to trader as well as change in the principal line of business.
- c) Hiving off of any activity in restructuring is change in the nature of business.

- While reviewing various tax audit reports it was observed that codes for business or profession for all main activities (*principal line of each of the businesses*) were not reported. Where they could be located clearly from the Annual report.

- *“Assessee is engaged in the business of selling Handwoven Poly Cotton daris and Cotton Fabrics.”*
- *“There is no change in business or profession during the year.”*
- *“Assessee has started a new line of business of e-commerce w.e.f. September 09, 2021.”*
- *“Company has sold off his Powertrain business for a sum of Rs. 4012 Crores to M/s Fictitious Company Ltd., w.e.f. 12th December 2021”*

Clause 11

Books of account and relevant documents

- a) Whether books of account are prescribed under Section 44AA, **if yes**, list of books so prescribed.
- b) List of books of account maintained and Address at which the books of accounts are kept. *(If maintained in a computer system, mention the books of account generated by such computer system. **If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.**)*
- c) List of books of account and **nature of relevant documents** examined.

- The guidelines set forth in para 20.6 and 20.7 of the Guidance Note state that for a person whose accounts have been audited under any other law, the requirement for maintenance of books of account is contained in the relevant statutes, such as the Companies Act, 2013.
- section 2(12A): "books or books of account" includes ledgers, day-books, cash books, account-books and other books, regardless of whether they are kept in written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.

Prescribed Books - RULE 6F

- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bills/ payment vouchers.
- Daily case register in Form No. 3C (Medical Professional)
- Stock of drugs, medicines & other consumable accessories (Medical Professional)

- Cash Book & Bank Book
- Sales Register & Purchase Register
- Stock Register
- Debit Notes Register & Credit Notes Register
- Journal Ledger & General Ledgers
- Fixed Assets Register {For Companies}
- Cost records {wherever applicable}

Please note “GST records” does not qualify as “books of accounts” but qualify as “other records”

- Para 20.10 of the Guidance Note emphasizes the importance of referring to **supporting evidence/relevant documents** and provides guidance on the term 'relevant documents' in Paras 14.3 and 14.4
- In addition to the list of books of accounts examined, the tax auditor must also mention the nature of relevant documents examined. This is because the assessee is obligated to maintain evidence such as bills, vouchers, receipts, debit and credit notes, inventory registers, agreements, orders, etc. The nature of underlying documents would differ from assessee to assessee based on their business activities.

- For Companies, 'NO' books of account have been specifically prescribed under section 44AA of the Income-tax Act, 1961 and /or under Rule 6F of the Income-tax Rules, 1962.
- In some cases, 'YES' was reported while 'NO' should have been reported under this clause.
- The fact that the books of account are maintained in a computer system was not reported in many cases

- Location of maintenance of books of account was not reported while the same is the requirement of the format as well as the Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961.
- The various other relevant documents examined such *as bills, vouchers, receipts, debit note, credit note, inventory register, agreements, orders, original purchase invoice, copy of bank statements, various agreements/ contracts or any other document* on the basis of which preliminary entries are passed in the books of account, have missed reporting in various cases.
- AS per para 20.10 of the Guidance Note, reference to such supporting evidence/ relevant documents is also required to be made under sub-clause 11(c).

- *No specific books of account have been prescribed under Section 44AA read with Rule 6F. {This note should be there in all 3CDs except for professional's u/s 44AA(1)}*
- *All the physical documents and records like financials reports, audit reports, tax returns, vouchers, invoices and other documents are maintained at the address mentioned in clause 2 of form 3CD.*
- *Data related to sale, purchase and inventory is kept on Magento (which is cloud based open source eCommerce Software & eCommerce Platform Solutions) and Vin e-Retail software (also a cloud based software). The physical custody of server on which Magento is hosted, is owned and maintained by a third party vendor named M/s Amazon Web Servies, having its office at **23 Church Street, Capital Square, #10-01, Singapore 049481.** The physical custody of server on which Vin E-Retail is hosted, is owned and maintained by a third party vendor named M/s Vinculum Solutions Pvt. Ltd. having its office at Street, City, - 110001.*

- *The financial books of account are maintained on Tally Accounting Software.*
- *For the purpose of reporting against this clause, we have placed reliance on assessee representation for the location address of the server/computer at which the books of accounts are kept in electronic form.*
- *The books of account listed in clause 11(b) and the other regular reports can be generated by the system by defining the fields based on the type of books, data, records and extent of details required.*
- *The computerised books of accounts are maintained in a server located at the referred office and Factory address with IP address 102.9.3.6 and 201.102.9.6 respectively as well as on cloud with IP address 121.5.12.9*

- *Books of account maintained, including those generated electronically, as produced and examined by us in accordance with the Standards on Auditing (including test checks and the concept of Materiality) and Guidance Note on Tax Audit under Section 44 AB of the Income Tax Act, 1961 issued by the Institute of Chartered Accountants of India, include those listed in clause 11(b).*

Clause 13

Method of accounting

- Whether adjustment is required to be made in P&L A/c for ICDS?
- **U/s 145** - The income chargeable under the head “PGBP” or “Income from other source” must be computed in accordance with either cash or mercantile system of accounting ***regularly employed*** by the assessee.
- The hybrid system of accounting (*i.e. mixture of cash and mercantile*) is not permitted.
- A change in accounting policy is not required to be considered as a change in the method of accounting as mentioned in para 22.7 of the GN.

- *The assessee has changed its method of accounting from cash basis to mercantile basis. Pursuant to such change there is an increase in Sales by Rs. 19,25,345, increase in expenses to the tune of 4,76,567 and consequent increase in profit too.*
- *The assessee has also recognised an amount of Rs. 23,457 as revenue for the year for which invoices were raised by the assessee in the year 2020-21. Consequent changes in assets and liabilities of the assessee are disclosed as per note 21.12 to financial statements.*

- **U/s 145(2)- ICDS** to be followed by all assesseees following mercantile system of accounting **Points to be taken care of –**
 - Change in accounting **policy** does not amount to change in **method** of accounting and thus need not be reported.
 - Change in method of valuation of stock is not a matter of change in method of accounting but only a change in accounting policy.
 - If there has been any change in method of accounting employed, the effect i.e. Increase or decrease in profits has to be stated.

- In many cases ‘NO’ was selected under clause 13(d), which disabled reporting under clause 13(e) *{i.e. adjustment for ICDS}*, however, details of such adjustments were found to be reported under clause 13(f) *(i.e., reporting disclosures as per ICDS)*.
- Clause 13(f) requires disclosures in respect of certain notified ICDS, which was not done in many cases. In few cases, disclosures were made where any deviation from the notified ICDS was encountered.
- Unless books are maintained in accordance with ICDS (i.e. basis of preparation), clause 13(d) will always require reporting as “Yes”

- ICDS-I for accounting policies (Say on account of AS-19)
- ICDS-II for valuation of inventories (Exclusive v/s inclusive)
- ICDS-V for tangible fixed assets

Please note even if depreciation has been reported in clause 18, still it requires adjustment reporting for ICDS-V.

As per the disclosure requirement under ICDS, reporting is to be done in respect of all of the notified ICDS except:

- ICDS VI (Changes in Foreign Exchange Rates) and
- ICDS VIII (Securities).

Further, for ICDS V (Tangible Fixed Assets), the prescribed disclosure requirement is similar to the requirements of clause 18 of Form No. 3CD. Accordingly, reference to reporting as done under clause 18 may be given.

The accounting policies in respect of reported were as per the language prescribed in Para 5 of the Revised AS-2 (or IND AS-2 wherever applicable) and not as per Para 3 of the ICDS - II.

ICDS	Revised AS-2
cost OR net realisable value, whichever is lower	cost AND net realisable value, whichever is lower

Clause 14

Valuation of Closing Stock

Clause-14:-Method of valuation of closing stock employed in the P.Y etc. DAKSM | दक्षमः

- Whether valuation of inventory has to be done as per sec 145A, ICDS II or AS2?
- ICDS II prescribes inclusive method while AS-2 prescribes exclusive method.
- **145A:** Inventory shall be adjusted to include the amount of any tax, duty, cess or fees.

- I. ICDS:** the valuation of inventory shall be made at lower of actual cost OR net realisable value.

- II.** the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of tax, duty, cess or fees actually paid or incurred by the assessee.

1. Method of valuation has not been reported under clause 14(a) for each item of inventories separately (*be it raw materials, work-in-progress, materials, maintenance supplies, consumables and loose tools*) as suggested by the Para 23.3 of the Guidance Note.
2. **Valuation in books was done as per exclusive method:** Details of deviations encountered in exclusive v/s inclusive method and effects of inclusion of duties & taxes are remained to be reported.

3. As per the reporting requirement of clause 14(a), method of valuation of closing stock employed in the previous year is to be reported.

In few cases, the reporting as prescribed for valuation of inventories as per Revised AS-2 (or IND AS-2 wherever applicable) was not done. Instead, reporting as per ICDS was done.

Clause 14.a: Sample auditor's note on valuation

Inventories are valued as under:

Cost of raw materials and components has been determined by using weighted average cost method and comprises all costs of purchase, duties, taxes (other than those subsequently recoverable from tax authorities) and all other costs incurred in bringing the inventories to their present location and condition.

Cost of finished goods and work-in-progress includes direct labour and an appropriate share of fixed and variable production overheads. Fixed production overheads are allocated on the basis of normal capacity of production facilities. Cost is determined on moving weighted average basis.

Cost of traded goods has been determined by using moving weighted average cost method and comprises all costs of purchase, duties, taxes (other than those subsequently recoverable from tax authorities) and all other costs incurred in bringing the inventories to their present location and condition.

Stores and spares has been determined by using moving weighted average cost method and comprises all costs of purchase, duties, taxes and all other costs incurred in bringing the inventories to their present location and condition.

Net realizable value is the estimated selling price in the ordinary course of business, less estimated costs of completion and estimated costs necessary to make the sale.

- *The accounting policies adopted by assessee in measuring inventories including cost formula used is disclosed as per Note 1(g) to the financial statements.*
- *The assessee is following the exclusive method of accounting for GST in the books of account including for the purpose of Valuation of Inventories, which is not in accordance with ICDS-II.*
- *The ICDS prescribes "inclusive method" whereas the Accounting Standards of ICAI prescribe "exclusive method". Accordingly, to that extent, there is a deviation from the method specified u/s. 145A.*
- *However, as shown in table to clause 14(b), the net effect thereof on the profit/loss for the year is Nil.*

Alternate disclosure:

- *The valuation as prescribed under section 145A has been done as per the recommendations of ICAI in its “Guidance Note on Tax Audit under section 44AB of the Income Tax Act”.*
- *The calculations are based on proportionate allocation of total GST credit availed in the accounts to the raw materials, stores & spares consumed & closing stock. In the absence of item wise detail of the GST amount on the closing stock and the opening stock of raw materials, stores and spares and work-in-progress, GST allocation has been done on an overall rate basis, applying the percentage of GST availed on total raw materials and stores and spares purchases.*
- *The above adjustments have no impact on the profit/ (loss) of the Company during the year. Refer Part 12 of Attachment 1*

Clause 16

Items of Income not credited to PL

- Do we need to disclose items which are taxable as “Income from other sources”?
- GN: *“28.1 Under this clause various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated... Sub-clauses 16 (b), (c) & (d) require information in respect of items which may also be covered under section 28. However, those items which are reported in clauses 16(b), (c) and (d) need not be reported in clause 16 (a).*
- Cross referencing required for employee contribution {taxable u/s 2(24)}

- *As per the accounting policies consistently followed by the Company, there are no items of income which have not been credited to the Profit & Loss Account.*
- *Income as defined under section 2(24)(x) of the Income-tax Act, 1961 has not been included as the same is disclosed under clause 20(b).*

Clause 18

Depreciation

- The details of additions/ deletions reported in Tax Audit Report were not in line with the figures of additions/ deletions disclosed in the Audited financial statements (*3CD v/s AFS*)
- The tax Auditor may prepare a reconciliation statement for his own records.
- In some reports, in respect of ‘additions’ to the block of assets, ‘date of purchase’ and ‘date of put to use’ were reported as same in respect of each item under each block of asset purchased, which is practically not possible in all the cases.

- In respect of 'deductions' from the block of assets, 'date of sale' reported were same in respect of each item under each block of asset sold, which again is practically not possible in all the cases.
- **Single consolidated amount was disclosed at the end of each half part of the financial year as date of addition, instead of actual date of addition of each asset of the block**

- A separate column has been provided for reporting, the 'amount of adjustment on account of Exchange Fluctuation (due to change in rate of exchange, if any)' under the column 'Additions'.
- In few cases, the said amount was not shown in the Tax audit report e-filing utility while the same was reported in the annexure attached and uploaded with the Tax audit report.
- The reported difference observed is not tenable.

Clause 20

- Whether this clause will be applicable for other than company also?
- Whether this clause is applicable to ex-employee also?
- Whether this clause is applicable if the sum is payable.

- If bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction unless such payment is wholly and exclusively made to the employee. [*Shahzada Nand & Sons v. CIT [1977]*] 108 ITR 358 (SC).
- **The requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/ contract details of the employees so as to ascertain the nature of payments.**

S.36(1)(va):

‘Explanation 2.--For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the “due date” under this clause;’

S.43B

“Explanation 5.--For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies.”

- Judgement in the case of CIT vs. Aimil Ltd., ITA No.1063 of 2006, [Delhi HC] nullified.
- Applicable from AY 21-22. *Is it prospective or retrospective?*
 - Jana Urban Services
 - Transformation Pvt. Ltd. Vs DCIT (ITAT Bangalore)
 - Steel Bird International, Delhi ITAT

While reviewing various tax audit reports, it was observed that:

1. In certain cases, the details pertaining to provident fund have been reported under clause 20(b) but **nothing was reported for ESI Fund**, while regular contribution to the same was clearly reflecting in the Annual report of the company.
2. Also, “due date” reported for the relevant fund was not correct in some cases.

- The amounts deposited under clause 20(b) are not again disclosed under clause 16(d). {Cross referencing}

Disclosures found in some audit report of FY 2020-21

“The Government of India granted onetime relaxation vide EPFO Circular No C-1/Misc/2020-21/Vol.I/1112 dated 15/05/2020 for payment of ESI contribution, for contribution period from 1st April 2020 to 30th September 2020, up to 15.01.2021.”

(presenter leave it to the discretion of audience if this note was correct)

Clause 21

Clause 21(a) – Amounts debited to the P&L.

(a) Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.

Nature	Serial Number	Particulars	Amt (in ₹)
Capital Expenditure			
Personal Expenditure			
Advertisement Expenditure in any souvenir, brochure, tract, pamphlet or the like, published by a political party			
Expenditure incurred at clubs being entrance fees and subscription			
for club services and facilities used.			
Expenditure incurred at clubs being cost for club services and facilities used			
Expenditure by way of any other penalty or fine not covered above.			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

Amounts **inadmissible** under **section 40(a)**:-

- i. as payment to **non-resident** referred to in **sub-clause (i)***
- ii. as payment referred to in **sub-clause (ia)*** {TDS}
- iii. under **sub-clause (ic)** [*Wherever applicable*] {FBT}
- iv. under **sub-clause (ia)** {Wealth Tax}
- v. under **sub-clause (iib)** {Applies to state PSUs}
- vi. under **sub-clause (iii)**
 - i. date of payment
 - ii. amount of payment
 - iii. name and address of the payee
- vii. under **sub-clause (iv)**
- viii. under **sub-clause (v)** {Tax paid on expat Salaries}

Furnish the details of amount debited to the profit and loss account:

- Expenditure by way of penalty or fine for violation of any law for the time being in force.
- Expenditure by way of any other penalty or fine not covered above.
- Expenditure incurred for any purpose which is an offence, or which is prohibited by law.
- *Section 40(a)(ib)- Equilisation Levy Disclosure similar to TDS - 'not deducted' or 'deducted by not paid'*

1. 21(a): Late filing fee of TDS return, paid during the year, was reported under this sub-clause. Its not a penalty and thus not required to be reported in clause 21(a).
2. 21(b): a consolidated sum in respect of 'provision for various expenses' of 'sundry parties' were reported. Instead of the date of crediting the amount of provision in the books of account, a random/ dummy date was reported in many cases.

1. Reporting under this clause is required separately for each of the individual payee. Consolidated reporting for the heads under which tax has not been deducted has been done in certain cases.
2. Details of Resident and Non-resident payee were swapped.
3. Complete address of payee missing.

It has been observed that:

1. Where the reporting has been done on the basis of certificate from the assessee, the fact was not reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB, as the case may be as required by the Guidance Note.
2. The observation/ qualification under this clause were provided in the notes attached to Form No. 3CA. However, the same should be reported under clause (3) of Form No. 3CA and/or clause (5) of Form No.3CB, as the case may be as required by the Guidance Note.

- Reporting under this clause was done for the 'provision' created in the Books of accounts
- While in line with the requirement of the Guidance Note any liability of a 'contingent nature *debited* to the profit and loss account' is to be reported.
- Contingent liabilities *which are mentioned merely* in notes to accounts are **not to be reported** here as they are not debited to profit and loss account.

- Based on examination carried out as indicated against clause 11(c) and as confirmed to us by the Management:- There are no items of a capital nature other than those stated in the Form No.3CD, which have been debited to the Statement of Profit and loss;- we have not come across any personal expenses which have been charged to the Statement of Profit and Loss nor we have been informed of any such case by the Management other than those payable under contractual obligation and/or in accordance with generally accepted business practices; and-items like e.g.; expenditure in any souvenir, brochure, tract, pamphlet or the like, published by any political party have not been debited to the Statement of Profit and Loss.
- Exchange loss on purchase of capital asset capitalized in fixed assets – Rs. 12,00,009. The auditors have considered accepted accounting principles in forming an opinion on the data furnished by assessee for disclosure under clause 21(a). Please refer to observations in clause 18 too
- Payments made under contractual obligations or in accordance with generally accepted business practices have not been considered as expenditure of personal nature for the purpose of reporting under clause 21(a).
- The auditors have broadly reviewed relevant and material revenue expenses and also relied on representation of the assessee for reporting expenditure by way of penalty or fine under clause 21(a).

- For the purpose of this clause, we have verified the data with relevant records maintained by the company and details certified by them. We have conducted the verification of details on test check basis and considering the concept of materiality in view of complex nature of data and voluminous transactions involved which is in accordance with the generally accepted auditing standards in India and Guidance Note on Tax Audit issued by the Institute of Chartered Accountants of India as amended from time to time.
- Based on such checks as were considered appropriate and as certified by the assessee there are no transaction of interest, fees for professional & technical services, brokerage & commission, rent, royalty and payments to contractors/sub-contractors on which tax is either not deducted or partially deducted or where tax is deducted in the previous year but paid in the subsequent year after expiry of time allowed under section 139(1) and not allowable under section 40(a)(i)/40(a)(ia) were not noticed other than those mentioned above.

- Clause 21(c) and 23: The identification of the specified persons covered u/s. 40A(2)(b) is made by the assessee on which we have relied. The Management has represented that no payments have been made to persons specified under section 40A(2) (b) of the Income Tax Act, 1961 other than those mentioned in these clause. Accordingly, verification of such payments was restricted to the list of persons specified by the management. Reimbursement of expenses have not been considered for the above purpose. Amount mentioned is only for the period during which respective person is covered by the provisions of section 40(A)(2)(b)
- Clause 21(d): In respect of payments by cheque/draft for the expenses covered under this clause, we have to state that it is not possible for us to verify whether the payments in excess of Rs 10,000/35,000 have been made otherwise than by account payee cheque / bank draft since the necessary evidence is not in the possession of the assessee. However the assessee has certified that all such payments relating to expenditure covered u/s. 40A(3) / (3A) of the Act read with Rule 6DD, were made either by account payee cheques drawn on a bank or by account payee bank drafts.
- Clause 21 (b), (c), (e), (f), (g), (h), (i): Items as indicated in this clause, if any, have been debited to the Statement of Profit and Loss as revealed during the course of examination carried out as mentioned against clause 11(c) above which were also confirmed by the Management

- Warranty provision has not been considered as a liability of contingent nature by the assessee in the view of Supreme Court Judgement in the case of Rotork Controls India (P) Ltd vs CIT (223 CTR 425)
- The table below gives information about movement in warranty provisions:

Particulars	31-Mar-22 (Amount in lacs)
At the beginning of the year	XXX.XX
Additions during the year	XXX.XX
Utilized during the year	(XXX.XX)
Reversal during the year	(XXX.XX)
At the end of the year	XXX.XX

Clause 23

- Tax auditor should obtain, from assessee, the list of 'specified persons' and expenditure/payment made to them and then scrutinize the items with reference to Sec. 40A(2).
- Amounts to be reported whether or not debited to Profit and Loss Account.
- The item does not require report of the auditor as to his own inference, whether the payment is excessive or unreasonable. He is required to specify the amounts paid to such related persons.
- In case of a large Assessee, it may not be possible to verify the list of all persons covered by this Section. Therefore, the information supplied by the assessee can be relied upon and **make an appropriate disclosure.**

- a) In certain cases, 'Name' and 'PAN' of persons specified under section 40A(2)(b) were not reported.
- b) In certain cases, the amount reported under this clause did not match with the amount as mentioned in the Annual Report.
- c) In certain cases, consolidated figures were reported instead of respective transaction with respective persons as specified under section 40A(2)(b).

- The identification of the specified persons covered u/s. 40A(2)(b) is made by the assessee on which we have relied.
- The Management has represented that no payments have been made to persons specified under section 40A(2) (b) of the Income Tax Act, 1961 other than those mentioned in these clause. Accordingly, verification of such payments was restricted to the list of persons specified by the management.
- Reimbursement of expenses have not been considered for the above purpose. Amount mentioned is only for the period during which respective person is covered by the provisions of section 40(A)(2)(b)
- Director Remuneration and Salary includes gratuity and leave encashment expense accrued as per actuarial certificate.
- Perquisites have been considered based on the Form 16 issued by the Company.
- PAN not available in case of DAKSM SA, Luxembourg, being a foreign entity.

Clause 25

- While reviewing various tax audit reports it was observed that the amount mentioned in Annual report, which was chargeable to tax under section 41 and reportable under this clause, was not reported in many cases.
- It is to be noted that as per the Guidance Note the same is required to be reported *irrespective* of the fact whether the relevant amount has been *credited to the profit and loss account* or not.

Clause 26

Section 43B

- Tax, duty, cess or fee, by whatever name called, under any law for the time being in force,
- Employer Contribution to provident / superannuation / gratuity or any other welfare fund.
- Employee bonus / commission
- Interest on any loan / borrowing from any specified institutions
- Interest on any loan / borrowing from a deposit taking NBFC or NDSI NBFC [AY 2020-21]
- Interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances,
- Leave Salary / Encashment
- Sum payable to Indian Railways for the use of railway assets,

Clause 26: Sample Auditor's note

- Information is only up to date of audit report September 02, 2022 except for Gratuity and leave encashment for which information is till March 31, 2022 and does not include any payment which the assessee may make subsequently before the due date of filing of the return of income under section 139(1).
- As per the recommendation of ICAI in its “Guidance Note on Tax Audit under section 44AB of the Income Tax Act” and “Implementation Guide w.r.t Notification No. 33/2018 dated July 20, 2018”, details are given only in respect of amounts referred in clauses (a), (b), (c), (d), (e), (f) and (g) of section 43B which were incurred in the previous year but were outstanding as at the end of the relevant previous year.

Clause 27

While reviewing various tax audit reports it was observed that:

- a) In few instances, the computation shown under this clause was incorrect.
- b) At few occasions, non-reporting of '**CENVAT** utilized' and 'treatment of the same in profit and loss account' were noticed.
- c) In certain cases, even where treatment in profit and loss account was reported, reporting of treatment in the accounts for opening and closing balance of **CENVAT** was missing.

Clause 27.a: CENVAT Sample Auditor's note

Option 1: As per notified form no. 3CD, details of only erstwhile Central Value Added Tax or CENVAT needs to be disclosed. Since there was no reportable figures of CENVAT during the year, thus no disclosure has been made in clause 27(a). The assessee has further represented that this clause is not applicable to GST ITC, since CENVAT is quite different from ITC under GST. However assessee has represented that movement of GST ITC can be furnished before AO during assessment, when demanded.

Option 2:

- The information provided in respect of amount of CENVAT credits availed or utilized during the previous year and its treatment in the Statement of Profit and Loss Account including treatment of outstanding CENVAT credits in the accounts is disclosed in clause 27(a) of Form 3CD as per the Goods and Services Tax (GST) returns filed.
- The assessee follows the exclusive method of accounting for GST in the books of account. The GST paid on purchase of raw materials / purchase of capital goods and services are debited to ITC Credit Receivable account. As and when the said ITC Credit is utilised against payment of GST on final products, the GST payable is debited to the GST payable account and ITC Credit Receivable account is credited. The purchase cost of the inputs is thus net of the GST. The Inputs consumed and the inventory of such Inputs are valued on the basis of purchase cost net of the GST. The debit balance in the ITC Credit Receivable account is disclosed as an asset in the Balance Sheet.

- Difference between expenditure/income of earlier year vis-à-vis expenditure/income relating to earlier year which is crystallized during year.
- Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items.
- U/s 145 - Material Charges (expense) or credit (income) which arise in the current year as a result of **error or omission** in the account of earlier years will be considered as prior period items. **AS-5 issued by ICAI need to be considered for the purposes of this Clause.**
- Assessee sustained loss due to theft in one year, but became finally irrecoverable in subsequent year. Held it was allowable in the year in which loss became irrecoverable. **CIT vs Durga Jewelers 172 ITR 134 (M.P)**
- Expenditure of the earlier years means expenditure which arose, or which accrued in any earlier year and excludes any expenditure of an earlier year for which the liability to pay has crystallized during the year. **3i Infotech Limited, Vs. Assistant CIT [2010] 329 ITR 257 [Bom.]**

- For identifying items covered under clause 27(b), the auditors have used the definition under Indian Accounting Standard (Ind AS)-8 “Accounting Policies, Changes in Accounting Estimates and Errors”.

Clause 29

Clause 29A: Money received as advance or transfer of capital assets. AKSM | दक्षमः

- Whether any amount is to be included as income chargeable u/h IOS as referred to Sec 56(2)(ix).
- If yes, furnish the nature of income and amount thereof.

Clause 29B: Refer 56(2)(x)

- Whether any amount is to be included as income chargeable u/h IOS as referred to Sec 56(2)(x).
- If yes, furnish the nature of income and amount thereof.
- Should personal assets be included?

- These clauses are triggered if any income is chargeable:
- u/s 56(2)(ix) : Advance received on capital asset forfeited
- u/s 56(2)(x): Income of gifts exceeding INR 50,000
- Following details to be disclosed:
 - Nature of Income
 - Amount (in Rs.)

The auditor is not required to report

- any such forfeited amount
- if it is in respect of a personal capital asset,
- Where,
 - Neither the asset,
 - Nor the advance
 - Nor the forfeiture
- is recorded in the books of account relating to the business or profession.

- During the previous year, the Company has received Rs. 1 crore for issue of 20,000 equity shares of Rs. 10 each fully paid up at a premium of Rs. 490 per share. The issue price does not exceed the fair market value of the shares referred to in Sec. 56(2)(viib).
- During the previous year, the Company has received on 01/10/2021 A sum of INR 6,00,120 for issue of 3369 Compulsory Convertible Preference shares (CCPS) of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share.

During the previous year, the Company has received on 30/03/2021 a sum of INR 11,66,395 for issue of 6548 CCPS of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share.

Per Assessee, the issue price of all above allotments does not exceed the fair market value of the shares referred to in Sec. 56(2)(viib). The assessee states that the above shares have been issued at fair market value which will be substantiated by it in the course of assessment proceedings as provided in clause (a)(ii) of the Explanation to Sec. 56(2)(viib).

- Following amounts received during the year by the assessee, which, as per information, explanation and representations given to auditors by the assessee are out of purview of section 56(2)(viib):

INR 11,94,00,005 received on 01/10/2021 and Rs. 19,32,33,642 received on 30-03-2022 for issue of 670297 CCPS and 1084790 CCPS respectively, both with a face value of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share from a Non Resident Company.

The assessee states that provisions of section 56(2)(viib) are not applicable for allotment of shares to a **Non-resident**.

Clause 31

- (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year *where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account.*

Sl. No	Particulars
1	Name, address and PAN of the payer
2	Nature of transactions
3	Amount of receipt
4	Date of receipt

(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions from a person, *received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year*

Sl. No.	Particulars
1.	Name, address and PAN
2.	Amount of receipt

(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, otherwise than by a cheque or bank draft, or use of electronic clearing system through a bank account, during the previous year.

Name, address and PAN of the payee.	Nature of Transactions	Amount of payment	Date of payment

- (bd) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year.

Name, address and PAN of the Payee	Amount of Payment

Clause 31: Loans

TAQRB Study

While reviewing various tax audit reports it was observed that:

- There were cases where the ‘name’ of the persons/concerns from whom loan had been taken, was not mentioned. Consolidated figures were reported mentioning ‘various parties’ under this clause instead of details of loan received person-wise.
- In Observations/Qualifications paragraph i.e., clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be, the language used in Para 49.6 of the Guidance Note has been used, as it is, without making the necessary change in respect to “me/us”. Since the general language is provided in the Guidance Note, the report in Form No. 3CA/3CB should be reworded as applicable.
- In certain cases, repayment of time deposits such as ‘fixed deposits’ and /or ‘term loans’ reflecting in Annual report were not reported while the same were required to be reported as per the Guidance Note.

- It is not possible for the auditors to verify whether specified sum has been taken or accepted otherwise than by account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account, as the necessary evidence is not in the possession of the Company.
(Similar note for repayment)
- Loans from banks/financial institutions are not considered for disclosure under this clause
- The auditors have relied on management representation for the purpose of reporting under clause 31(b).
- Particulars are not furnished in respect of parties from whom loans are borrowed in earlier financial year and carried forward to the next financial year with no transactions during the year except for provision/payment of interest thereon.

- It is not possible for the auditors to verify whether each receipt in aggregate received from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person has been received otherwise than by cheque or bank draft or by use of electronic clearing system through a bank account, as the necessary evidence is not in the possession of the Company.
- Particulars are not furnished in respect of amounts received from customers whether as advance or similar receipts as they are not treated as loans or deposits and amount refunded in full or part to the customers, if any, either on cancellation of orders or of excess amounts received, in accordance with GN of ICAI, 2022 edition.

Clause 32

Clause 32: b/f Losses TAQRB Study

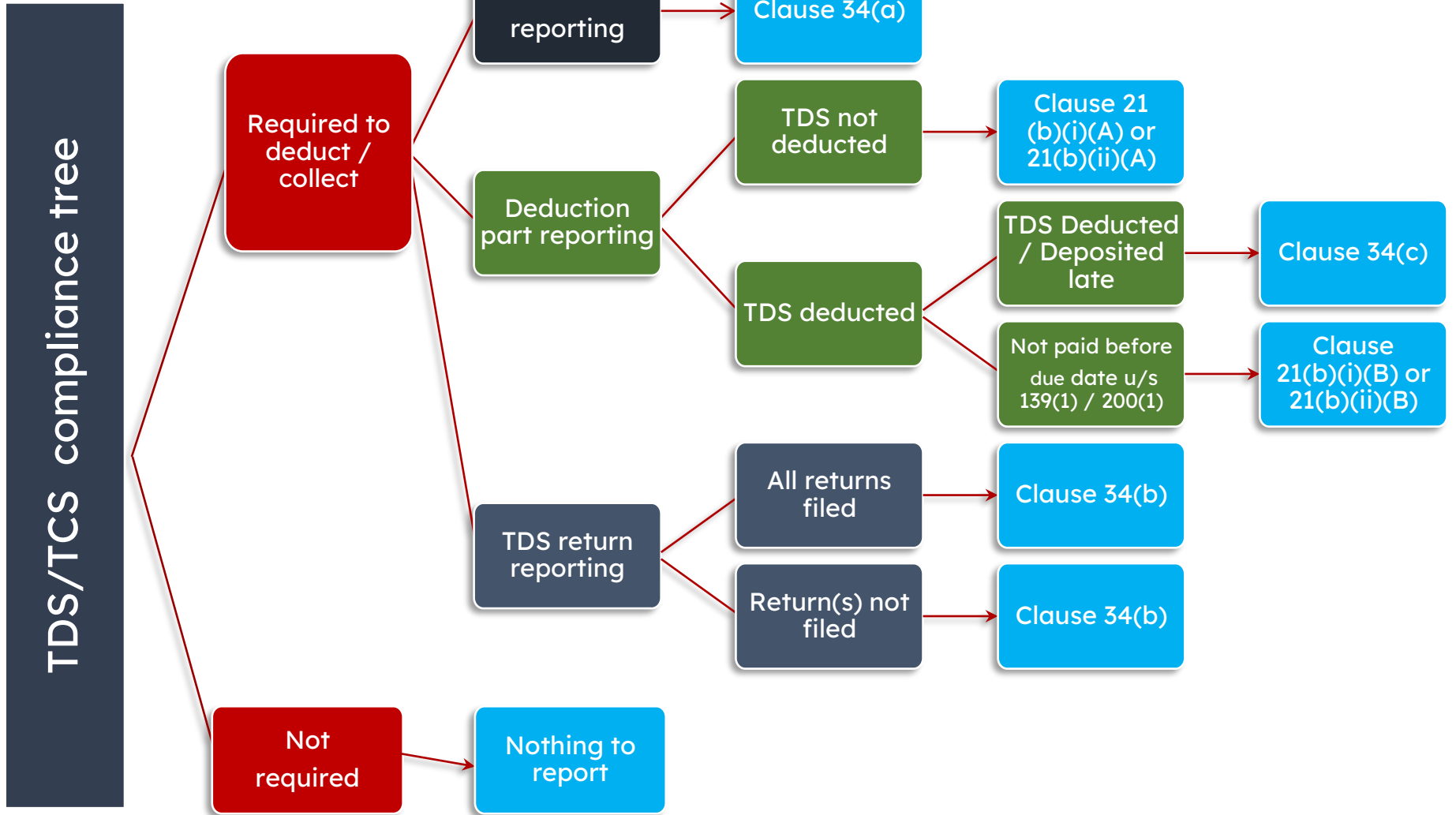
While reviewing various tax audit reports it was observed that:

- While reviewing various tax audit reports it was observed that in certain reports the '*section under which assessment order was passed*' and '*date of order*' was not reported.

It is suggested that the above-mentioned observation as well as the requirements of the 'Guidance Note on Tax Audit under Section 44AB of the Income tax Act,1961' and the 'format of e-filing utility of Tax audit report' should be kept in mind while reporting under this clause

Clause 34

TDS compliance tree and reporting



While reviewing various tax audit reports it was observed that:

- ‘date of payment’ of interest with respective amount were not reported under the relevant columns of this sub-clause.

As per Guidance note issued by the ICAI

- Rates of deduction is to be consider as per the law relevant to the P. Y.
- Rely upon the judicial pronouncements while taking any particular view.
- Refer relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source.
- In case payer deducts/recipient collects tax at source at rate lower than specified rate on basis of certificate u/s 195 or 197, the said rate to be considered as specified rate
- As per the provisions of Sec 195/ 197, certificate can be issued for no deduction or lower deduction of tax at source.
- In case of payment to NR, the applicable rate of TDS is to be read along with the DTAA.
- The tax auditor is required to provide the detail irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-b or XVII-BB.

- Detail in respect of interest u/s 201(1A) & 206C(7), if any to be provided.
- Sec. 201(1A)- Levy of simple interest on **failure to deduct** tax or payment thereof to the credit of Central Government
- Sec. 206C(7)- Levy of simple interest on **failure to collect** tax or payment thereof to the credit of Central Government
- If the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account & also from part G of the statement generated by the department in form no. 26AS.
- In case the assessee had disputed the levy or calculation of interest under TRACES, in form no. 26AS, the auditor may re-calculate the amount of interest u/s 201(1A) or Section 206C(7) up to the date of audit report for reporting under this Clause & also mention the fact in his observations provided in form no. 3CA & form no. 3CB.

- Considering the volume of transactions, the verification of the particulars given under Clause 34 is based on - Procedure followed for ensuring the compliance; Broad review of such procedure & Review of internal checks, internal controls, test check of the transactions and facts thereof.
- The Company has policies and procedures for authorizing accruals and payments of expenditure, based on reasonable checks and controls. This policy is intended to ensure that taxes are deducted / collected at source and deposited with the prescribed authorities, where applicable, in accordance with the provisions of Chapter XVII-B and Chapter XVII-BB as the case may be.
- Our verification of the Company's compliance with the provisions of Chapter XVII-B and Chapter XVII-BB regarding deduction / collection of tax at source and payment thereof to the credit of the Central Government, has been carried out in accordance with Standards on Auditing issued by Institute of Chartered Accountants of India, which includes examination on a test check basis and having regard to materiality of the items involved. Based on the test checks carried out by us, having regard to the Company's existing policies and procedures as well as the specific representation given by the assessee, which has been relied upon by us for the purposes of reporting under Clause 34.

- In cases, wherein TDS was deducted, at a rate lower than specified rate, based on certificate issued u/s 197 of the Income Tax Act' 1961, such deduction of TDS has been considered as deduction of TDS at specified rate, for the purposes of reporting under this clause.
- Information furnished has been compiled from TDS returns submitted by the Company during the previous year.
- In view of the voluminous level of information involved, the assessee has not been able to prepare reconciliation between the total amounts of payment or receipts of the specified nature and the amounts in respect of which it is required to deduct or collect tax at source. Accordingly, the information provided in column 4 {Total amount of payment or receipt of the nature specified in column (3)} is restricted to those payments or collections in respect of which the assessee has deducted or collected tax at source, and does not include the entire value of payments or receipts of each such specified nature as is required to be disclosed.

Clause 35

Clause 35: Stock TAQRB Study

While reviewing various tax audit reports it was observed that:

1. Quantitative details of principal items of goods traded were not reported under this clause whereas “Trading” was reported as one of the businesses of the assessee under clause 10a.
2. In some cases, where closing stock of goods acquired for trading was reported as “NIL”, the quantitative details of opening, purchases & sales made during the year (traceable through financial statements) were not reported under this clause.
3. In some cases, where the assessee is engaged in “manufacturing”, the ‘percentage of yield’ or ‘shortage/excess’ were not reported. Also, qualification/observation with regard to the same was not given in the Tax Audit report.

While reviewing various tax audit reports it was observed that:

1. In some cases, details of 'Finished products' were erroneously reported as 'raw materials' under clause 35b(A) instead of clause 35b(B). Also, raw materials, which were clearly traceable from the financial statements, were not reported at all.

- Reporting is made in respect of principal items which constitute more than 10% of the aggregate value of consumption of raw materials and of turnover. Quantity of raw material includes work in progress.
- Auditors were represented that considering the usage of raw material for manufacturing of multiple finished goods, yield of finished products and percentage of yield can't be calculated.
- As explained by the assessee, keeping in view the volume of business, multiplicity as well as volume of type of items of goods being sold by the assessee and the size of the business of the assessee, it is not practically possible for firm to record quantities of each and every inward and outward of trading goods on transaction to transaction basis or even on day to day basis. Only specific items falling under the category of Principal Item as explained in Guidance Note on Tax Audit Under Section 44AB of The Income-Tax Act, 1961, which has been certified by the assessee and disclosed in clause.

Clause 40

- As per sec 145A, the purchase and sales of goods or services shall be adjusted with the tax, duty, cess or fees etc.

Clause 40: Ratios TAQRB Study

- It was observed that in respect of service sector, “not applicable” should be reported under this clause instead of leaving the same blank.
- In certain cases, scrap sale was not considered while arriving at the figure of ‘turnover’ for Tax Audit Report.
- in certain cases net profit after tax was reported under this clause.
- for calculating stock in trade/ Turnover ratio, average stock was taken instead of calculating stock as per the above-mentioned guidance given in the Guidance Note
- the amount of material consumed reported under this clause did not include stores, spare parts and loose tools.
- reporting of material consumed/ finished goods produced ratio was missing in many reports.
- it was observed that there were mismatch of figures in the material consumed reported in respect of preceding previous years. However, nothing was mentioned / reported under Clause (3) of Form No.3CA or Clause (5) of Form No.3CB, as the case may be

- The assessee has furnished the ratios as per audited financial statements. The previous year comparatives have been re-computed to make them comparable to current year reported ratio formula.
- In view of unavailability of relevant information, computation of ratio of Material consumed / finished goods produced is unascertainable.

Clause 41

When a refund is said to be issued. Whether the date of passing the order can be taken as date of issue of refund or the date of credit in the A/c of the assessee is the date.

For example:

- The officer passed the order on 28th March 2022 and
- the order received by the assessee on 15th April 2022 and
- the refund credited in the assessee a/c on 5th May 2022

Then in which P/Y it will be reported?

Clause 42

- Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B?

Income Tax department reporting Identification Number	Type of Form	Due date for furnishing	Date of furnishing	Whether the Form contains information about all details/ furnished transactions which are required to be reported. If not, please furnish list of details / transactions which are not reported.

Clause 44

- 1. Total amount of Expenditure incurred during the year**
- 2. Expenditure in respect of *entities* registered under GST**
 1. Relating to goods or services exempt from GST
 2. Relating to entities falling under composition scheme
 3. Relating to other registered entities
 4. Total payment to registered entities (should be sum total of 1, 2 and 3)
- 3. Expenditure relating to *entities* not registered under GST**

1. Applicable for all 3CD reports issued after 31-03-2022
2. **Para 82.16 of GN:** Reporting is qua PAN, not GSTIN
3. **Para 82.4 of GN:** Applicable even if auditee is not registered under GST (e.g., Lawyer, GTAs)
4. Applicable even if auditee is registered and his entire/part income is exempt.

Para 82.1 of GN, 2022 edition:

Heading of the table starts with the words
“Breakup of **total expenditure**”

- hence the total expenditure including purchases as per the notified format may be given.
- Head wise/nature wise expenditure is not envisaged

Para	Recommendations
82.2	Depreciation under section 32, deduction for bad debts u/s 36(1)(vii) etc. <i>which are not expenses</i> should not be reported under this clause in any of the Columns from 3 to 7* .
82.3	Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus <i>expenditure</i> incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7* . ☞ Remuneration to employees need not be reported.
82.15	Both Revenue & Capital expenditure is covered. Separate reporting of capital expenditure will provide ease in reconciliation.

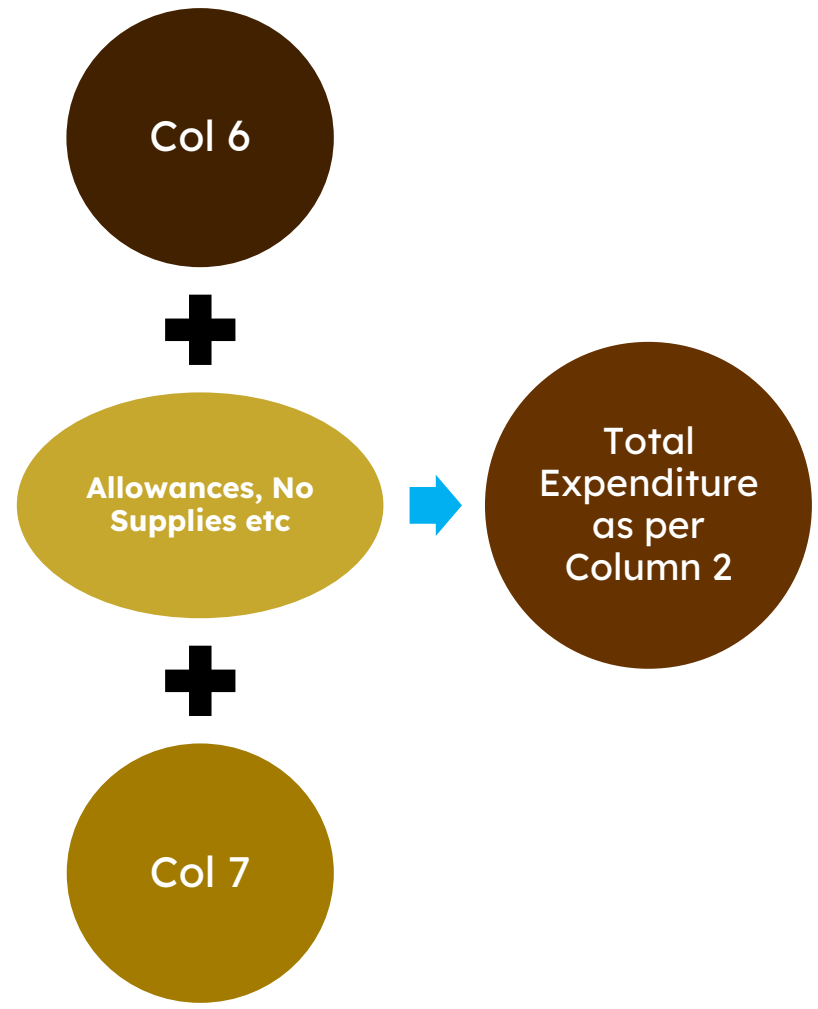
**GN is silent on column 2 in respect of items covered by para 82.2 and 82.4*

- **Petroleum** crude, high speed **diesel** oil, motor spirit, natural gas and aviation turbine fuel – **Non supplies or Exempt supplies?**
- Interest paid to bank/NBFCs?
- What if some entries are appearing in 2A/2B and auditee did not claim such ITC, being personal in nature?
- **What about Gift given by employer to employee exceeding 50K?**

Para 82.14 –

It should be ensured that the total of columns 6 and 7, tallies with the amount mentioned in column (2) except to the extent of expenditure/ allowance mentioned in para 82.2. and 82.3**.

The auditor may retain the reconciliation prepared by the assessee for verification.



**Can an item be “expenditure”
for Column 2 and not for
column 3 to 7?**

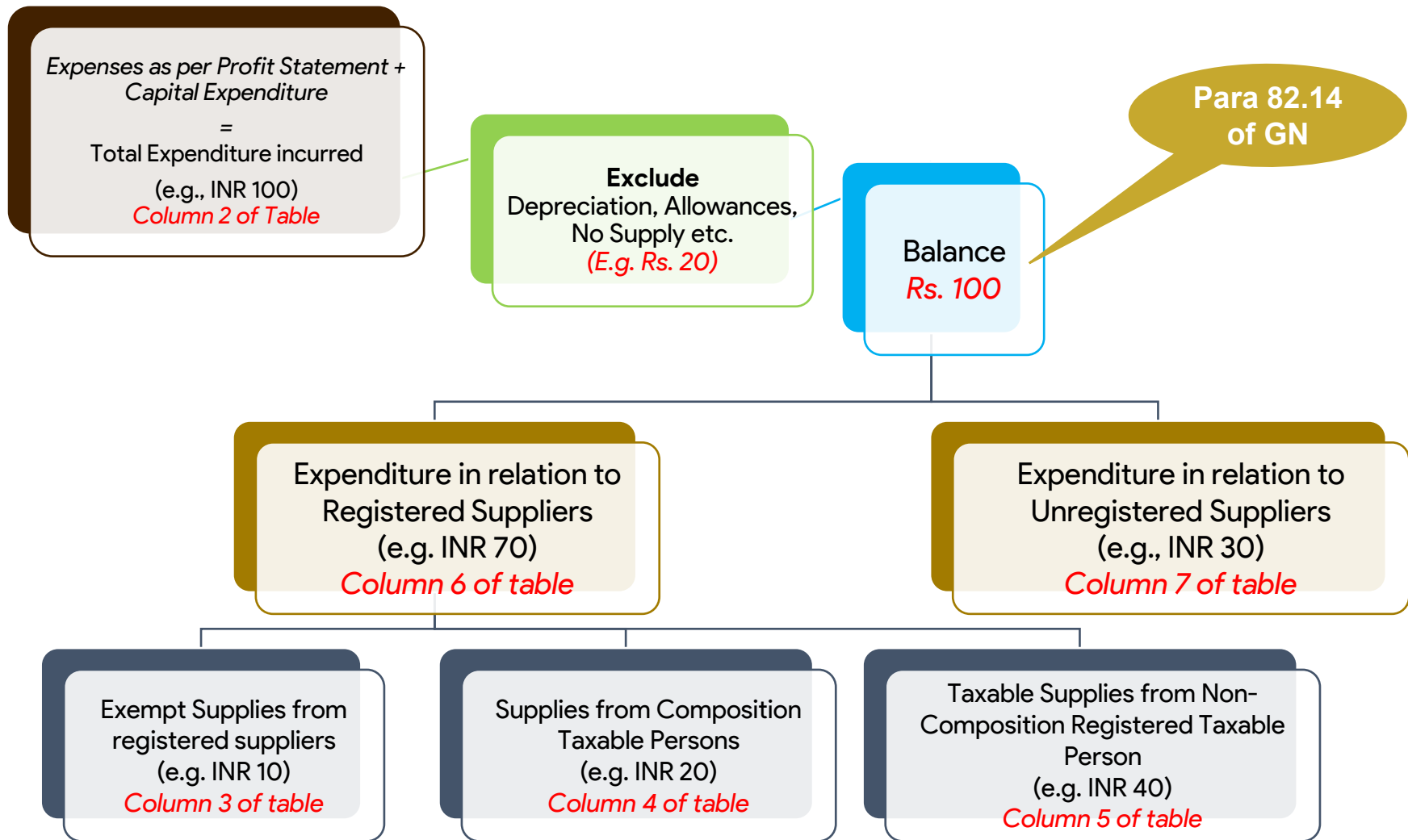
35. Accounts and other records.—

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- a) ***
- b) **inward** and outward **supply** of goods or services or both;
- c) ***
- d) *input tax credit **availed***;
- e) ***
- f) *such other particulars as may be **prescribed***:

56. Maintenance of accounts by registered persons.-

- (1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, ***
 - (2) Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him ***
- ***
- (4) Every registered person, other than a person paying tax under section 10, shall **keep and maintain an account**, containing the details of tax payable ***, **input tax, input tax credit claimed**, together with **a register of tax invoice**, credit notes, debit notes, delivery challan issued or **received during any tax period**.
 - (5) Every registered person shall keep the **particulars of** –
 - (a) **names and complete addresses of suppliers** from whom he has received the goods or services chargeable to tax under the Act;
 - (b) ***



- As informed by the assessee, the information reported under clause 44 of Form 3CD is based on the information extracted from accounting software/ relevant GST report. However this may not be accurate as the accounting software used by Assessee is not configured to generate report as required under this clause, in the absence of any prevailing statutory requirements under Income tax or CGST act or under any other statutes. In addition, the software/system does not capture information relating to the entities falling under composition scheme or supply with ineligible credit.
- We have verified statement prepared by assessee in accordance with the Auditing Standards generally accepted in India which includes test checks and the concept of materiality and concept of reasonable assurance. However as per the Accounting entries done in the Accounting Software, it is not possible for us to extract the details required to be reported under this clause and thus we are unable to comment on the accuracy of information provided therein.
- Assessee has further informed that "Expenditure relating to entities not registered under GST" includes import of goods, import of services and services from unregistered suppliers on which GST liability under RCM has been discharged.
- Assessee has further informed that the difference between Clause 2 (i.e. "Total expenditure") and sum of clause 6&7 is on account of depreciation, bad debt and expenditure, like salary, which is not a supply as per GST. Also, Total Expenditure as per column 2 includes "capital expenditure".
- Further, as communicated to auditors by assessee, details in accordance with rule 56 of CGST Rules can be furnished during assessment before AO, as and when demanded.

- Are clients ready for this level of disclosure?
- Are auditors ready/prepared to complete this mammoth exercise?
- Can/should auditors give disclaimer?
- Can auditor apply concepts of materiality and audit sampling? *[Reputation of auditors already at all time low 😞]*

- If any person fails:-
- to get his accounts audited in respect of any previous year
- to furnish a report of such audit as required u/s 44AB

the Assessing Officer may direct that such person shall pay, by way of penalty,

- a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or
- a sum of Rs. 1.50 lakh, whichever is less.

**Thanks for your
time!**

Save Contact



Contact

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