After studying this chapter, you will be able to:

- Identify the provisions of Section 12A of the Act dealing with the conditions as to registration of trust. Also understand exemption from Income tax that would be available under sections 11 and 12 of the Income-tax Act in relation to the income of any trust or institution on fulfillment of certain conditions.

- Know reporting requirements of Form No 3CA/3CB and 3CD. Understand each and every clause of Form 3CD.

- Ensure the books of accounts and other records of assessee are properly maintained.

- Identify that books of accounts accurately reflect the income of tax payers and deductions are correctly declared.

- Learn and understand the administration of tax laws by proper presentation of accounts before tax authorities and considerably save the time of assessing officers in carrying out routine verification.


- Understand and learn the various provisions of GST relating to Audit.
CHAPTER OVERVIEW

1. INTRODUCTION

For ensuring compliance sometimes audit becomes a necessity. Therefore, various statutes, including legislations governing direct and indirect tax provisions have incorporated audit provisions in some or the other form. Under direct taxes, the Central Board of Direct taxes has posed onerous responsibility on the auditor via Income-tax Act, 1961 which has various provisions requiring compulsory audit. However, with the growing importance of the indirect taxes-now one tax i.e GST in the economy, the Government is realizing the need of audit by independent bodies especially equipped to do the same. Introduction of audit provisions in the newly introduced GST legislations is a step towards this direction.

2. AUDIT(S) UNDER THE INCOME-TAX ACT, 1961

General provisions: The Income-tax Act, 1961 (hereinafter referred to as the Act)

* Source: Community tax

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AUDIT UNDER FISCAL LAWS

contains several provisions for audit of accounts of public charitable trusts, non-corporate assesses and other assesses to meet the specific objectives of the Act. Under the Act, several sections such as 12A, 35D, 35E, 44AB, 80IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 142(2A), etc., require audit of accounts for tax purposes. We shall discuss the requirements of some of these provisions from the audit angle.

Who can audit the Accounts under the Income-tax Act - Normally, in all the sections referred to above, subject to the exceptions specifically provided, the audit is to be conducted by an ‘accountant’, as defined in the Explanation below Section 288(2) of the Act.

2.1 Audit of Public Trusts

Section 12A of the Act deals with the conditions as to registration of trust etc. According to this section, exemption from Income tax would be available under sections 11 and 12 of the Income tax Act in relation to the income of any trust or institution provided the following conditions are satisfied:

(A) Clause (a) of section 12A requires a charitable or religious trust or institution to make an application for registration within one year from the date of creation of the trust or establishment of the institution. The Commissioner is empowered to condone the delay in making the application for registration if he is satisfied that there were sufficient reasons for such delay. In such cases, the exemption provisions of section 11 and 12 would apply from the date of creation of the trust or establishment of the institution.

This requirement of filing an application for registration under section 12A within one year of creation of the religious or charitable trust or institution has been removed. The application can be filed at any time now. This has been provided by insertion of new clause (aa) in section 12A(1). Further, a proviso has been inserted in clause (a) to restrict the applicability of that clause to applications made prior to 1.6.2007.

Also, the power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, has been removed.

Accordingly, in respect of applications filed on or after 1st June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year.

(B) Where the total income of the trust or institution as computed under this Act, without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax in any previous year i.e. ₹ 2,50,000 for the A.Y. 2018-19, the accounts of the trust or institution for that year have been audited by an accountant as defined in the explanation below sub-section (2) of Section 288 and the person in receipt of the income furnishes along with the return of Income for the relevant assessment year,
the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. Rule 17B of the Income tax Rules, 1962 provides that the report of audit of accounts of a trust or institution which is required to be furnished under Clause (b) of Section 12A should be in Form No. 10B.

The audit programme is outlined in the following paragraphs:

(a) Preliminary:

(i) Obtain a resolution from the trust specifying the appointment as also indicating the scope of audit. In particular, the resolution should specify the duties of the auditor in relation to the items specified in the annexure to the prescribed Form No. 10B.

(ii) Obtain a letter of appointment from the trust, before accepting the audit, communicate with such previous auditor.

(iii) Obtain a certificate as to the opening balances of assets and liabilities and the fund.

(iv) Obtain a list of books of accounts which are maintained by the trust.

(v) Obtain a certificate from the trust as to the system of accounting and internal control.

(vi) Obtain from the trust a list of the institutions/activities run/carried out by the trust.

(vii) Obtain from the trust a certified true copy of the Deed of Trust or any other scheme containing the objects and conditions of the trust as operative from time to time.

(b) Routine Checking:

(i) Check the books of account and other records having regard to the system of accounting and internal control.
(ii) Vouch the transactions of the trust to satisfy that:
   
   (a) the transaction falls within the ambit of the trust;

   (b) the transaction is properly authorised by the trustees or other delegated authority as may be permissible in law;

   (c) all incomes due to the trust have been properly accounted for on the basis of the system of accounting followed by the trust;

   (d) all expenses and outgoings appertaining to the trust have been recorded on the basis of the system of accounting followed by the trust; and

   (e) amounts shown as applied towards the object of the trust are covered by the objects of the trust as specified in the document governing the trust.

(iii) Obtain a trial balance on the closing date certified by the trustees.

(iv) Obtain the Balance Sheet and Profit & Loss Account of the trust authenticated by the trustees and check the same with the trial balance with which they should agree.

(c) **Accounting Principles**: The auditor should follow, i.e., generally accepted accounting principles and ascertain the accuracy, truth and fairness of the Balance Sheet and Profit & Loss Account.

<table>
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<tr>
<th>In particular, the auditor will scrutinize that:</th>
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<tr>
<td>(i) all assets of the trust are verified;</td>
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<tr>
<td>(ii) the assets of the trust have been properly valued and depreciation duly provided for;</td>
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<tr>
<td>(iii) all liabilities of the trust are properly accounted for;</td>
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<tr>
<td>(iv) the investments of the trust are properly classified and indicated and market values shown; and</td>
</tr>
<tr>
<td>(v) outstanding due to the trust are properly accounted for and their recoverability examined and provision made for irrecoverable.</td>
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(d) **Annexure to the Audit Report**:

   (i) Obtain from the trustees, a certified list of persons covered by Section 13(3).

   (ii) Obtain from the trustees, a statement enlisting the various items specified in the Annexure to Form No. 10B and giving the information against each item together with explanatory or supporting schedules.

   (iii) Verify the information supplied by the trustees in the statements specified above in the light of available material. Where a list of persons specified in Section 13(3) is not available, indicate against Sections II and III of the items specified in the annexure the appropriate qualifying remarks.
The audit report is required to be furnished to the relevant year. Failure to furnish the report will disentitle the trust or institution to the benefit of Sections 11 and 12. The Auditor can accept as correct the list of persons covered by Section 13(3) as given by the managing trustees.

2.2 Audit of Accounts w.r.t. the Claim for Deduction under Sections 35D and 35E

The conditions under which certain specified preliminary expenditure incurred before the commencement of business and once the business is commenced on expanding an industrial undertaking or in connection with setting up a new industrial unit can be amortized are stated in Section 35D of the Act. The manner in which deductions are allowed in respect of expenditure on any prospecting operations relating to certain specified minerals listed in the Seventh Schedule to the Act are stated in Section 35E of the Act. In respect of assessee other than a company or a co-operative society, these deductions are admissible only if the accounts for, the year or years in which the above specified expenditure is incurred are audited by an “accountant” as defined in explanation below sub-section (2) of section 288 of the Income-tax Act, 1961 and the report of such audit is furnished by the assessee along with the return of income. Rule 6AB of the Income-tax Rules 1962 provides that the report of audit required to be furnished by the above-mentioned assessee under section 35D and 35E should be in Form No.3AE. While doing the audit, the auditor is expected to follow general principles of auditing as mentioned in Standards on Auditing.

3. TAX AUDIT UNDER SECTION 44AB

Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:

| “Audit of accounts of certain persons carrying on business or profession”. |
| Every person - |
| (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds **one crore** rupees in any previous year. |
| (b) carrying on profession shall, if his gross receipts, in profession exceed **fifty lakhs** rupees in any previous year, |

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(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

[Note: Sub section (4) of section 44AD of the Income Tax Act, 1961 states that where an eligible assessee declares profit for any Previous Year in accordance with the provisions of this section 44AD and he declares profit for any of the 5 Assessment Years relevant to the Previous Year succeeding such Previous Year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 Assessment Years subsequent to the Assessment Year relevant to the Previous Year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.]

It may be noted that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

It may also be noted that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

### Example

**Applicability of Tax Audit Provisions**

DB Pvt. Ltd. has total turnover of ₹ 125 lacs for the FY 2017-18.

- Section 44AD is not applicable to company assessee, hence Limit of ₹ 2 crore is not applicable to DB Pvt. Ltd and it has to conduct the Audit of Books of Accounts under section 44AB of the Act for the FY 2017-18 as turnover exceeds ₹ 1 crore.
ABC & Co. (a partnership firm) engaged in trading of electronic goods having a turnover of ₹ 165 lacs for the FY 2017-18.

- Section 44AD is applicable to Partnership Firm. Thus, ABC & Co. can declare the minimum profit @ 8% of the turnover as its turnover during the PY 2017-18 does not exceed ₹ 2 crores. If the firm do not opt for presumptive income scheme under section 44AD, it has to get books of accounts audited u/s 44AB of the Act.

Mr. Anand Khater, a Commission Agent has commission receipts of ₹ 137 lacs during the FY 2017-18.

- Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Anand earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2017-18 in respect of commission income exceeds ₹ 1 crore, he has to get his books of accounts audited u/s 44AB of the Act.

Mr. Vishal Raka, owning an Agency of Samsung Mobile for the city of Pune and makes the turnover of ₹ 87 lacs during the FY 2017-18.

- Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Vishal earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2017-18 in respect of commission income does not exceed ₹ 1 crore, therefore, he need not to get his books of accounts audited u/s 44AB of the Act.

**Explanation** : For the purposes of this section,

(i) “accountant” shall have the same meaning as in the explanation below sub-section (2) of Section 288;

(ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

The above section stipulates that every person carrying on business is required to get his accounts audited before the “specified date” by a chartered accountant, if the total sales turnover or gross receipts in the business in any previous year exceed ₹ 1 crore. A person carrying on a profession will also have to get his accounts audited before the “specified date” by a chartered accountant if his gross receipts in profession in any previous year exceed ₹ 50 lakhs w.e.f. A.Y. 2018-19.

**Clause (c) of Section 44AB**, provides that in the case of an assessee carrying on a business of the nature specified in sections 44AE, 44BB or 44BBB, tax audit will be required if he claims his income to be lower than the presumptive income deemed under those sections. Therefore, such assessees will be required to have a tax audit even if their sales, turnover or gross receipts do not exceed ₹ 100 lakhs (one crore rupees).
If a person is carrying on business(es), coming within the scope of sections 44AE, 44BB or 44BBB but he exercises his option given under these sections to get his accounts audited under Section 44AB, tax audit requirements would apply, in respect of such business(es) even if the turnover of such business(es) does not exceed ₹ 100 lakhs (one crore rupees).

In the case of a person carrying on businesses covered by sections 44AE, 44BB or 44BBB and opting for presumptive taxation, tax audit requirement would not apply in respect of such businesses, if such person is carrying on other business(es) not covered by presumptive taxation, tax audit requirements would apply in respect thereof if the turnover of such business(es), other than the business covered by presumptive taxation thereof, exceed ₹ 100 lakhs (one crore rupees).

The first proviso to section 44AB stipulates that the provisions of that section will not be applicable to a person who derives income of the nature referred to in sections 44B, or 44BBA. Where the assessee is carrying on any one or more of the businesses specified in section 44B or 44BBA referred to in the first proviso to section 44AB, the sales/turnover/gross receipts from such businesses shall not be included in the total sales/turnover/gross receipts for determining the applicability of section 44AB.

The report of such audit, duly signed and verified by the chartered accountant is required to be given in such form and setting forth such particulars as prescribed by the Board. Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB as may be applicable and the statement of particulars should be given in Form No.3CD.

A question may arise in the case of an assessee who is eligible to claim deductions under sections 80-IA, 80-IB, 80-IC etc., as to whether, it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under Section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the consolidated accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether situated at one place or at different places. If turnover of all the units put together exceeds prescribed limits, the assessee would be required to get a separate audit report/certificate under above said sections he wants to avail deduction under the respective sections. Therefore it will be necessary for an assessee to get separate audit reports/certificates under above said sections in addition to an audit report, if any, required under section 44AB.

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**ILLUSTRATION**

Concession Ltd. is engaged in the business of manufacturing of threads. The company recorded the turnover of ₹ 1.13 crore during the financial year 2017-18 before adjusting the following:

- Discount allowed in the Sales Invoice: ₹ 8,20,000
- Cash discount (other than allowed in
You are required to ascertain the effective turnover to be considered for the prescribed limit of tax audit under the relevant Act and guide the company whether the provisions relating to tax audit applies.

Solution

The provisions relating to tax audit under section 44AB of the Income Tax Act, 1961 applies to every person carrying on business, if his total sales, turnover or gross receipts in business exceed the prescribed limit of ₹ 1 crore and to a person carrying on a profession, if his gross receipts from profession exceed the prescribed limit of ₹ 50 lakhs (w.e.f. A.Y. 2017-18) in any previous year. However, the term "sales", "turnover" or "gross receipts" are not defined in the Act, and therefore the meaning of the aforesaid terms has to be considered for the applicability of the section.

Some of the points for merit consideration in this regard as discussed in the Guidance Note issued by the Institute are given below:

(i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.

(ii) 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. Therefore, should not be deducted from the turnover.

(iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. As per trade practice, it is in the nature of trade discount and should be deducted from the figure.

(iv) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

(v) Price of goods returned should be deducted from the turnover even if the returns are from the sales made in the earlier year/s.

(vi) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However, if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover.

In the given case, Concession Ltd. is engaged in manufacturing business. Therefore, the tax audit would be applicable if the turnover exceeds ₹ 1 crore during the financial year 2017-18. The calculation of effective turnover for the prescribed limit purpose, in accordance with abovementioned conditions, is given below:
Recorded turnover during the year ₹ 1,13,00,000

Less:  
(i) Discount allowed in the Sales Invoice ₹ 8,20,000
(ii) Trade discount ₹ 2,90,000
(iii) Sales Return ₹ 1,60,000

Effective turnover ₹ 1,00,30,000

Conclusion: The effective turnover of Concession Ltd. is Rupees one crore and thirty thousand only which is over and above the prescribed limit for tax audit under section 44AB of the Income Tax Act, 1961. Thus, the provisions related to tax audit are applicable to the company and is therefore liable for tax audit.

3.1 Tax Auditor

The term “accountant” has been defined in sub-clause (i) of Explanation to Section 44AB as under:

“Accountant" shall have the same meaning as in the Explanation below sub-section (2) of Section 288”.

1. The above-mentioned explanation read as under-

"Accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or

(b) in any other case,—

(i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;

(ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;

(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;

(iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

(v) an officer or employee of the assessee;

(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;
<table>
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<tr>
<th>(vii) an individual who, or his relative or partner—</th>
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<tr>
<td>(I) is holding any security of, or interest in, the assessee:</td>
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<tr>
<td>Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;</td>
</tr>
<tr>
<td>(II) is indebted to the assessee:</td>
</tr>
<tr>
<td>Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;</td>
</tr>
<tr>
<td>(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:</td>
</tr>
<tr>
<td>Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;</td>
</tr>
<tr>
<td>(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;</td>
</tr>
<tr>
<td>(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.</td>
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2. The proviso to section 44AB lays down that where the accounts of an assessee are required to be audited by or under any other law, it shall be sufficient compliance with the provisions of this section, if such person gets the accounts of such business or profession audited under such other law before the specified date and furnishes by that date the report by an ‘accountant’ as required under section 44AB. It may be noted that after amendment by the Finance Act, 2001, tax audit can be carried out by an accountant only. Accordingly, in case of any assessee like a co-operative society where the accounts under the relevant law have been audited by a person other than a chartered accountant, the tax audit will have to be conducted by the ‘accountant’ as defined under section 44AB.

3. Though the section refers to the accounts being audited by an accountant, which means a chartered accountant as defined above, the audit can also be done by a firm of chartered accountants. This has been a recognised practice under the Act. In such a case, it would be necessary to state the name of the partner who has signed the audit report on behalf of the firm. The member signing the report as a partner of a firm or in his individual capacity should give his membership number while registering himself in the e-filing portal.

4. Section 44AB stipulates that only Chartered Accountants should perform the tax audit. This section does not stipulate that only the statutory auditor appointed under the Companies Act or other similar Statute should perform the tax audit. As such the tax audit can be conducted either by the statutory auditor or by any other chartered accountant in full time practice.

5. Tax audit under section 44AB being a recurring audit assignment, for expressing professional opinion on the financial statements and the particulars, the member accepting the assignment
should communicate with the member who had done tax audit in the earlier year as provided in the Chartered Accountants Act. When making the enquiry from the retiring auditor, the member accepting the assignment should find out whether there are any professional or other reasons why he should not accept the appointment. The professional reasons for not accepting the appointment include:

- Non-compliance of the provisions of sections 224 and 225 of the Companies Act as mentioned in Code of Ethics issued by ICAI under Clause (9) of Part I of First Schedule to Chartered Accountants Act, 1949. Sections 224 and 225 have been replaced with section 139/142 and section 140 respectively in Companies Act, 2013.
- Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act or various other statutes.
- Issuance of qualified report.

6. The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB. It is advisable that such an appointment letter should be signed by the person competent to sign the return of income in terms of the provisions of section 140. It would also be useful if the letter affirms that no other auditor was appointed to conduct the tax audit for the year for which the appointment is being made. The letter may also give the name and address of the tax auditor for the previous year, wherever relevant. This would give the necessary information to the incoming tax auditor to communicate with the previous auditor. The letter of appointment should also specify the remuneration of the tax auditor. SA 210 – “Agreeing the Terms of Audit Engagement” issued by the ICAI requires that the auditor to agree with the terms of audit engagement with management or those charged with governance as appropriate. The agreed terms would need to be recorded in an audit engagement letter or other suitable form of written agreement.

7. The tax auditor should get the statement of particulars, as required in the annexure to the audit report, authenticated by the assessee before he does the same.

8. A chartered accountant who is responsible for writing or the maintenance of the books of account of the assessee should not audit such accounts. This principle will apply to the partner of such a member as well as to the firm in which he is a partner. In view of this, a chartered accountant who is responsible for writing or the maintenance of the books of account or his partner or the firm in which he is a partner should not accept tax audit assignment under section 44AB in the case of such an assessee.

9. The audit of accounts of a professional firm of chartered accountants, under section 44AB cannot be conducted by any partner or employee of such firm.

10. A chartered accountant/firm of chartered accountants, who is appointed as tax consultant of the assessee, can conduct tax audit under section 44AB. But an internal auditor of the assessee cannot conduct tax audit if he is an employee of the assessee. The Council of ICAI
has decided that an internal auditor of an assessee, whether working with the organisation or independently practicing chartered accountant or a firm of chartered accountants, cannot be appointed as his tax auditor.

11. A question may arise whether an assessee can remove a tax auditor appointed under section 44AB. The answer depends upon the facts and circumstances of the case. It is, however, possible for the management to remove a tax auditor where there are valid grounds for such removal. This may arise where the tax auditor has delayed the submission of audit report under section 44AB for an unreasonable period and if it is found that there is no possibility of getting the audit report uploaded before the specified date. In such cases, the management may be justified in removing the tax auditor. However, the tax auditor cannot be removed on the ground that he has given an adverse audit report or the assessee has an apprehension that the tax auditor is likely to give an adverse audit report. If there is any unjustified removal of tax auditors, the Ethical Standards Board constituted by the Institute can intervene in such cases. No other chartered accountant should accept the audit assignment if the removal of his predecessor is not on valid grounds.

12. Before accepting a tax audit, the chartered accountant should take into consideration the ceiling on tax audit assignments fixed under the Notification dated 13th January, 1989, issued by the ICAI. In view of the said Notification, a member of the Institute in practice, shall be deemed to be guilty of professional misconduct if he accepts in a financial year more than 60 tax audit assignments or such other limit as may be prescribed by ICAI from time to time under section 44AB, whether in respect of a person whose accounts have been audited under any other law or a person who carries on business or profession but who is not required by or under any other law to get his accounts audited. Further, as per a Council decision, audits of accounts of persons carrying on business covered by sections 44AE, 44BB or 44BBB is not included in the aforesaid limit.

13. The audit of head office and branch offices of the assessee shall be regarded as one tax audit assignment.

14. The Council has issued a Guideline which states that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking/Government Company/Listed Company and other Public Company having turnover of ₹ 50 crores or more in a year and accepts any other work or assignment or service in regard to the same undertaking/company on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking/company.

15. The tax auditor is required to upload the tax audit report directly in the e-filing portal.

16. A question may arise in the case of a public sector company or any other company where the statutory auditor has not been appointed by the authorities concerned as to whether the tax auditor appointed under section 44AB can complete his audit without waiting for statutory
audit report on the accounts audited by the statutory auditors. It may be noted that Form No. 3CA requires the tax auditor to enclose a copy of the audit report conducted by the statutory auditor or the auditor of the financial statements as the case may be. Where a statutory auditor has not been appointed by the authorities concerned or where the report of the statutory auditor is not available for whatever reasons, it will be possible for the tax auditor to give his report in Form No. 3CB and to certify the relevant particulars in Form No. 3CD. This is particularly important in those cases where the assessee concerned has suffered losses in the relevant accounting year. It may, however, be noted that the tax auditor in such cases will have to conduct the financial audit as well in order to enable him to certify whether or not the accounts reported upon by him give a true and fair view of the state of affairs of the assessee whose accounts are audited by him under section 44AB.

17. The appointment of the auditor for tax audit in the case of a company need not be made at the general meeting of the members. It can be made by the Board of Directors or even by any officer, if so authorised by the Board in this behalf. The appointment in the case of a firm or a proprietary concern can be made by a partner or the proprietor or a person authorised by the assessee. It is possible for the assessee to appoint two or more chartered accountants as joint auditors for carrying out the tax audit, in which case, the audit report will have to be signed by all the chartered accountants. In case of disagreement, they can give their reports separately.

18. The chartered accountants should charge reasonable fees depending upon the responsibility involved under the revised forms and taking into consideration the work involved in tax audit assignment which has increased considerably consequent to the revision of the forms. It is necessary that members of the profession should also maintain reasonable standards of professional fees.

3.1.1 Specified date and tax audit

As per the recent developments, the tax audit report is required to be uploaded using digital signature of the tax auditor. A question may arise whether a tax auditor appointed under section 44AB can be held responsible if he does not complete the audit and if the tax audit report is not uploaded before the specified date. Answer to this question will depend on the facts and circumstances of the case. Normally, it is the professional duty of the chartered accountant to ensure that the audit accepted by him is completed before the due date. If there is any unreasonable delay on his part, he is answerable to the Institute if a complaint is made by the client. However, if the delay in the completion of audit is attributable to his client, the tax auditor cannot be held responsible. It is, therefore, necessary that no chartered accountant should accept audit assignments which he cannot complete within the above time frame.

3.1.2 Penalty for Not Getting the Accounts Audited as Required u/s 44AB

According to section 271B, if any person who is required to comply with section 44AB fails to get his accounts audited in respect of any year or years as required under section 44AB, the Assessing Officer may impose a penalty. The penalty shall be lower of the following amounts:
(a) 0.5% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such year or years.

(b) ₹ 1,50,000.

However, according to section 273B, no penalty shall be imposed if reasonable cause for such failure is proved.


Under section 145(1), income chargeable under the heads “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee.

Section 145(2) empowers the Central Government to notify in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assesses or in respect of any class of income.

Accordingly, the Central Government has, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assesses (other than an individual or a HUF who is not required to get his accounts of one previous year audited in accordance with the provisions of section 44AB), following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profit and gains of business or profession” or “Income from other sources”. from the A.Y. 2017-18.

All the notified ICDSs are applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts. In the case of conflict between the provisions of the Income-tax Act, 1961 and the notified ICDSs, the provisions of the Act shall prevail to that extent.

The Central Government has prescribed 10 Income Computation and Disclosure Standards (ICDSs) as under:

<table>
<thead>
<tr>
<th>A.</th>
<th>ICDS I relating to Accounting Policies.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.</td>
<td>ICDS II relating to Valuation of Inventories</td>
</tr>
<tr>
<td>C.</td>
<td>ICDS III relating to Construction Contracts.</td>
</tr>
<tr>
<td>D.</td>
<td>ICDS IV relating to Revenue Recognition.</td>
</tr>
<tr>
<td>E.</td>
<td>ICDS V relating to Tangible Fixed Assets.</td>
</tr>
<tr>
<td>F.</td>
<td>ICDS VI relating to the Effects of Changes in Foreign Exchange Rates.</td>
</tr>
<tr>
<td>G.</td>
<td>ICDS VII relating to Government Grants.</td>
</tr>
<tr>
<td>H.</td>
<td>ICDS VIII relating to Securities.</td>
</tr>
</tbody>
</table>
1. ICDS IX relating to Borrowing Costs.

J. ICDS X relating to Provisions, Contingent Liabilities and Contingent Assets.

The above ICDSs are to be followed by all assesses (other than an individual or a HUF who is not required to get his accounts of one previous year audited in accordance with the provisions of section 44AB following mercantile system of accounting. Therefore, it is clear that those assesses who are following cash system of accounting need not follow the ICDSs notified above.

4. AUDIT PROCEDURES

1. In the case of an audit, the tax auditor is required to express his opinion as to whether the financial statements give a true and fair view of the state of affairs of the assessee in the case of the balance sheet and in the case of the profit and loss account/ income and expenditure account, of the profit/loss or income/expenditure.

He would be well advised to refer to the Standards on Auditing (SAs) issued by ICAI, as well as the "Guidance Note on Audit Reports and Certificates for Special Purposes". If the statutory auditor of a person is also appointed to undertake tax audit, it is advisable to carry out both the audits concurrently.

2. SA 210, “Agreeing the Terms of Audit Engagements” requires an auditor to establish whether the pre-conditions for an audit are present so as to accept or continue an audit engagement. As per para 6(b) (iii) the auditor is required to obtain agreement of management that it acknowledges and understands its responsibilities to provide the auditor with:

(a) access to all information of which the management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters,

(b) additional information that the auditor may request the management for the purpose of the audit and

(c) unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence.

Moreover, since the appointment of the tax auditor is made by assessee, it will be in the interest of the assessee to furnish all the information and explanations and produce books of account and records required by the tax auditor. 3. The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. In order that the tax auditor may be in a position to explain any question which may arise later on, it is necessary that he should keep necessary working papers about the evidence on which he has relied upon while conducting the audit and also maintain all his necessary working papers.
Where the assessee has been subjected to an internal audit and the tax auditor decides to use the work of the internal auditor for the purpose of the tax audit under section 44AB, the latter’s procedures would be guided by the principles laid down in Standard on Auditing (SA) 610, Using the Work of Internal Auditors.

Form No. 3CA and Form No. 3CB are required to be filed online in a preset form and the same are not in line with the requirements of SA 700, there is no specifically allocated field for providing information relating to the respective responsibilities of the assessee and the tax auditor as required in terms of the principles laid out in SA 700. However, having regard to the importance of these respective responsibility paragraphs from the perspective of the readers of the tax audit report, 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.

While test checks may suffice in the conduct of a statutory audit for the expression of the auditor’s opinion as to whether the accounts depict a ‘true and fair’ view, the tax auditor may be required to apply reasonable tests on the total information to be prepared by the assessee in respect of certain items in the prescribed form, e.g., in verification of payments for purchases/expenses exceeding ₹ 10,000/- in cash. While the entity may have to prepare the details for the entire year, the tax auditor may have to ensure that no items have been omitted in the information furnished and a reasonable test check would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

Such working papers should include his notes on the following, amongst other matters:

(a) work done while conducting the audit and by whom;
(b) explanations and information given to him during the course of the audit and by whom;
(c) decision on the various points taken;
(d) the judicial pronouncements relied upon by him while making the audit report; and
(e) certificates issued by the client/management letters.
5. AUDIT REPORT

Section 44AB requires the tax auditor to submit the audit report in the prescribed form and setting forth the prescribed particulars. Sub-rule 1 of rule 6G provides that the report of audit of accounts of a person required to be furnished under Section 44AB shall –

- in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;
- in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

Sub-rule (2) of Rule 6G further provides that the particulars which are required to be furnished under Section 44AB shall be in Form No. 3CD.

It may be noted that the audit report in Form No.3CB is in two parts.

The first part requires the tax auditor to give his opinion as to whether or not the accounts audited by him give a true and fair view:

(i) in the case of the balance sheet, of the state of affairs as at the last date of the accounting year.
(ii) in the case of the profit and loss account, of the profit or loss of the assessee for the relevant accounting year.

The second part of the report states that the statement of particulars required to be furnished under section 44AB is annexed to the audit report in Form No. 3CD.

The tax auditor is required to give his opinion whether the prescribed particulars furnished by the assessee are true and correct subject to observations and qualifications, if any.

In paragraph 3 of Form No. 3CB the auditor has to report that the financial statements audited by him give a ‘true’ and fair view. The requirement in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB relating to particulars in Form No. 3CD is that the auditor should report that these particulars in Form No. 3CD are "true and correct". The terminology "true and fair" is widely understood though not defined even under the Companies Act, 2013. On the other hand, the words "true and correct" lay emphasis on factual accuracy of the information. In this context reference is invited to AS-1 and AS(IT)-1 relating to disclosure of accounting policies.

These standards recognise that the major considerations governing the selection and application of accounting policies are (i) prudence, (ii) substance over form and (iii) materiality. Therefore, while giving particulars in Form No.3 CD these aspects should be kept in view. In particular, considering the nature of particulars to be given in Form No. 3CD, the aspect of materiality should be considered. In other words, particulars should be given in the respect of material items and the
auditors should ensure factual accuracy relating to these particulars. In the case of a person whose accounts of the business or profession have been audited under any other law, it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view as indicated herein above. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor with his report in Form No. 3CA along with Form No. 3CD.

In the case of a person who carries on business and also renders professional services but who is not required by or under any other law to get his accounts audited, report should be given in Form No. 3CB. The statement of particulars should be given in Form No. 3CD.

In the case of “person” having their accounting year which is different from the financial year, accounts of the financial year are required to be prepared and audited. The audit report shall be in Form 3CB.

5.1 Form No. 3CA

5.1.1 Format of Form No. 3CA

<table>
<thead>
<tr>
<th>FORM NO. 3CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>[See rule 6G(1)(a)]</td>
</tr>
<tr>
<td>Audit report under section 44AB of the Income-tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law</td>
</tr>
<tr>
<td>1. <em>I/we report that the statutory audit of M/s. ………………………………………. (Name and address of the assessee with Permanent Account Number) was conducted by me/us/M/s. …………………………………………………. in pursuance of the provisions of the ……………………………………….Act, and</em>I/we annex hereto a copy of *my/our/their audit report dated ………………………………………. along with a copy of each of :-</td>
</tr>
<tr>
<td>(a) the audited *profit and loss account/income and expenditure account for the period beginning from ………………………………………………….to ending on ……………………………………….</td>
</tr>
<tr>
<td>(b) the audited balance sheet as at, ………………….; and</td>
</tr>
<tr>
<td>(c) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/income and expenditure account and balance sheet.</td>
</tr>
<tr>
<td>2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.</td>
</tr>
<tr>
<td>3. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the said Form No.3 CD are true and correct subject to the following</td>
</tr>
</tbody>
</table>
AUDIT UNDER FISCAL LAWS

observations/qualifications, if any:

a. ……………………………………………………………………………………………

b. ……………………………………………………………………………………………

c. ……………………………………………………………………………………………

…………………………………………………………………………………………

**(Signature and stamp/Seal of the signatory)**

Place: …………… Name of the signatory …………………

Date: …………… Full address ……………………………

Notes:

1. *Delete whichever is not applicable.
2. This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income-tax Act, 1961.
3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.

The person who signs this audit report shall indicate reference of his membership number/certificate of practice/authority under which he is entitled to sign this report.

5.1.2 General Discussion on Contents of Form No. 3CA

1. This form is to be used in a case where the accounts of the business or profession of a person have been audited under any other law. The first part of the report refers to the fact that the statutory audit of the assessee was conducted by a chartered accountant or any other auditor in pursuance of the provisions of the relevant Act, and the copy of the audit report along with the audited profit and loss account and balance sheet and the documents declared by the relevant Act to be part of or annexed to the profit and loss account and balance sheet, are annexed to the report in Form No. 3CA. In a case where the tax auditor carrying out the audit under section 44AB is different from the statutory auditor, a reference should be made to the name of such statutory auditor. In case the statutory auditor is carrying out the audit under section 44AB, the fact that he has carried out the statutory audit under the relevant Act should be stated. Attention of the members in this context is invited to SA 600 “Using the work of Another Auditor”.

2. Statement of particulars required to be furnished under section 44AB is annexed with the particulars in Form No. 3CD. The tax auditor has to further state that, in his opinion and to the best of his information and according to examination of books of account including other relevant documents and explanations given to him, the particulars given in the said Form No. 3CD and the annexure thereto are true and correct subject to the observations/qualifications, if any.

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3. The auditor is required to examine not only the books of accounts but also other relevant documents directly related to transactions reflected in the books of accounts like original purchase invoice, copy of bank statements, bills, vouchers, various agreements/contracts or any other document on the basis of which preliminary entries are passed in the books of accounts.

4. Where any of the requirements in this form is answered in negative or with qualification, the report shall state the reasons thereof. 5. It is possible that in the case of a person whose accounts of the business or profession have been audited under any other law, which has branches at various places, the branch accounts might have been audited by branch auditors under the statute. If the audit under section 44AB is also carried out by the same branch auditors or other chartered accountants, they should submit the report in Form No. 3CA to the management or the principal tax auditor appointed for the head office under Section 44AB. Attention in this regard is drawn to SA 600, “Using the Work of Another Auditor” which discusses the procedures in this regard as well as the principal tax auditor's responsibility in relation to his use of the work of the branch auditor. The principal tax auditor should submit his consolidated report on the registered office/head office and branch accounts and report in his tax audit report as his observation in paragraph 3 of Form No. 3CA as under:

"I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, duly appointed under the relevant law, of the branches not audited by me/us".

6. Item No. 4 of the notes to Form No. 3CA requires that the person, who signs this audit report, shall indicate reference of his membership No./certificate of practice number/authority under which he is entitled to sign this report. 7. An assessee may have one or more branches outside India. The accounts of such branches are normally audited by the professional accountants overseas. The results of such branches are also incorporated in the consolidated accounts prepared in this country. In the case of foreign branches, the relevant information in respect of such branches as is required by Form No. 3CD, may be obtained by the tax auditor in India from the assessee who should obtain the same from the overseas auditor who had audited the accounts of such foreign branches. The tax auditor in India while certifying the information in Form No. 3CD may rely upon the information obtained by him from the overseas auditor and while submitting his consolidated report in Form No. 3CD, he should specifically point out the following in his audit report in paragraph 3 of Form No. 3CA as his observation:-

"I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, appointed under the relevant law, of the overseas branches not audited by me/us".

If the assessee is unable to obtain relevant information in respect of the overseas branches duly certified by the overseas auditor, the relevant facts should be suitably disclosed and reported upon.
8. Where the tax auditor is unable to obtain the required information in respect of branches situated in India or outside India then the fact should be suitably disclosed along with its impact on the Auditor’s opinion on the particulars furnished in Form No. 3CD, as an observation in clause (3) of Form No. 3CA. Reference is drawn to SA 705 “Modifications to the opinion in the Independent Auditor’s report”.

5.2 Form No. 3CB
5.2.1 Format of Form No. 3CB

<table>
<thead>
<tr>
<th>FORM NO. 3CB</th>
</tr>
</thead>
<tbody>
<tr>
<td>[See rule 6G(1)(b)]</td>
</tr>
<tr>
<td>Audit report under section 44AB of the Income-tax Act 1961, in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G</td>
</tr>
</tbody>
</table>

1. *I/we have examined the balance sheet as on, ……………………, and the *profit and loss account/income and expenditure account for the period beginning from ………………………to ending on …………………………., attached herewith, of ……………………(Name), …

2. *I/we certify that the balance sheet and the *profit and loss/income and expenditure account are in agreement with the books of account maintained at the head office at ………………………and ** …………………branches.

3. (a) *I/we report the following observations/comments/discrepancies/ inconsistencies; if any:

   (b) Subject to above, -

   (A) *I/we have obtained all the information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit.

   (B) In *my/our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from*my/ our examination of the books.

   (C) In *my/our opinion and to the best of *my/our information and according to the explanations given to *me/us, the said accounts, read with notes thereon, if any, give a true and fair view :-

   (i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31st March; and

   (ii) in the case of the *profit and loss account/income and expenditure account of the *profit/loss or *surplus/deficit of the assessee for the year ended on that date.
4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.

5. In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in the said Form No.3 CD are true and correct subject to following observations/qualifications, if any:
   a. ……………………………………………………………………………………………
   b. ……………………………………………………………………………………………
   c. ……………………………………………………………………………………………

**(Signature and stamp/Seal of the signatory)

Place: ………….. Name of the signatory
Date: …………… Full address …………………

Notes:
1. *Delete whichever is not applicable.
2. **Mention the total number of branches.
3. ***This report has to be signed by person eligible to sign the report as per the provisions of section 44AB of the Income-tax Act, 1961.
4. The person, who signs this audit report, shall indicate reference of his membership number/certificate of practice number/authority under which he is entitled to sign this report.

5.2.2 General Discussion on Contents of Form No. 3CB

1. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the audit report has to be given in Form No. 3CB. Form No. 3CB consists of five paragraphs.

2. The tax auditor has to state whether he has examined the balance sheet as on a particular relevant date and the profit and loss account/income and expenditure account for that period. Further, such a balance sheet and the profit and loss account must be attached with the audit report.

3. The tax auditor has to certify that the balance sheet and the profit and loss account/income and expenditure account are in agreement with the books of account maintained at the head office and branches. Also, he has to mention the total number of branches.

4. He has to report his observations, comments, discrepancies or inconsistencies, if any. Subject to the above observations, comments, discrepancies, inconsistencies he has to state whether:
(a) he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purposes of the audit;

(b) in his opinion proper books of account have been kept by the head office and branches of the assessee so far as appears from his examination of the books;

(c) in his opinion and to the best of his information and according to the explanations given to him the said accounts, read with notes thereon, if any, give a true and fair view;

(i) in the case of the balance sheet of the state of the affairs of the assessee as at 31st March, ______ and

(ii) in the case of the profit and loss account/income and expenditure account of the profit/loss or surplus/deficit of the assessee for the year ended on that date.

5. Under clause (a) of paragraph 3 of Form No. 3CB, the tax auditor has to report his “observations/ comments/ discrepancies/ inconsistencies,” if any. The expression “Subject to above” appearing in clause (b) makes it clear that such observations /comments/ discrepancies/ inconsistencies which are of qualificatory nature relate to necessary information and explanations for the purposes of the audit or the keeping of proper books of accounts or the true and fair view of the financial statements, respectively to be reported on in paragraphs (A), (B) and (C) under clause (b) of paragraph 3. While reporting on clause (a) of paragraph 3 of Form No. 3CB the tax auditor should report only such of those observations/comments/ discrepancies/ inconsistencies which are of qualificatory nature which affect his reporting about obtaining all the information and explanations which were necessary for the purposes of the audit, about the keeping of proper books of account by the head office and branches of the assessee and about the true and fair view of the financial statements. Further, only such observations/comments/ discrepancies/inconsistencies which are of a qualificatory nature should be mentioned under clause (a). Any other observations/ comments/ discrepancies/ inconsistencies, which do not affect the reporting on the matters specified above may form part of the notes to accounts forming part of the accounts. In case the tax auditor has no observations/ comments/ discrepancies/ inconsistencies to report which are of qualificatory nature, “NIL” should be reported in this part of paragraph 3. The tax auditor may then give his report as required by sub-paragraphs (A), (B), and (C) of paragraph 3 and paragraph 4.

6. Paragraph 4 of Form No. 3CB provides that the prescribed particulars are furnished in Form No. 3CD annexed to the report. Paragraph 5 of Form No. 3CB requires the auditor to report whether in his opinion and to the best of his information and according to the explanations given to him, the particulars given in Form No. 3CD are true and correct subject to observations/qualifications, if any.

7. If a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, has branches and separate accounts are maintained at the branches, the assessee can request the tax auditor appointed under section 44AB to audit the head office and branch accounts. In the alternative, the assessee can appoint separate tax auditors for branches. The branch tax auditor in such a case will have to give an audit report in Form No. 3CB to the management or the tax auditor appointed for the audit of
head office accounts. 8. If the tax auditor is called upon to give his report only in respect of one or more businesses carried on by the assessee and the books of accounts of the other businesses are not produced as the same are not required to be audited under the Act, the tax auditor should mention the fact that audit has not been conducted of those businesses whose books of account had not been produced. However, if the financial statements include, inter alia, the results of such business for which books of account have not been produced, the auditor should qualify his report in Form No. 3CB.

5.3 Form No. 3CD

The statement of particulars given in Form No. 3CD as annexure to the audit report contains forty one clauses. The tax auditor has to report whether the particulars are true and correct. This Form is a statement of particulars required to be furnished under section 44AB. The same is to be annexed to the reports in Forms No. 3CA and 3CB in respect of a person who carries on business or profession and whose accounts have been audited under any other law and in respect of person who carries on business or profession but who is not required by or under any other law to get his accounts audited respectively.

1. The tax auditor should obtain from the assessee, the statement of particulars in Form No. 3CD duly authenticated by him. It would be advisable for the assessee to take into consideration the following general principles while preparing the statement of particulars:

(a) He can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Form No. 3CD.

(b) If there is a conflict of judicial opinion on any particular issue, he may refer to the view which has been followed while giving the particulars under any specified clause.

(c) The AS, Guidance Notes, SA issued by the Institute from time to time should be followed.

2. While furnishing the particulars in Form No. 3CD it would be advisable for the tax auditor to consider the following:

i. If a particular item of income/expenditure is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.

ii. If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the viewpoints and also the relevant information in order to enable the tax authority to take a decision in the matter.

iii. If any particular clause in Form No. 3CD is not applicable, he should state that the same is not applicable.
iv. 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.

v. In case the prescribed particulars are given in part or piecemeal to the tax auditor or relevant form is incomplete and the assessee does not give the information against all or any of the clauses, the auditor should not withhold the entire audit report. In such a case, he can qualify his report on matters in respect of which information is not furnished to him. In the absence of relevant information, the tax auditor would have no option but to state in his report that the relevant information has not been furnished by the assessee.

vi. 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.

vii. In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in clause (3) of Form No. 3CA or clause (5) provided in Form No. 3CB, as the case may be.

Clauses 1 to 41 Part-A and Part-B of Form No 3CD are discussed below and after every clause audit procedure to be followed for particulars to be furnished in Form No. 3CD is discussed. It is discussed in detailed manner to get practical exposure also.

- **Clause (1), Name Clause**: Under this clause the name of the assessee whose accounts are being audited under section 44AB should be given.

**Audit checklist for practical understanding**:

- In the case of an existing assessee, name under which return furnished in earlier years should be given. This name should be the same under which PAN is obtained.

- In the case of a new assessee, give the name in which PAN has been obtained.

- In case of proprietorship firm give name and style in which business is carried on also mentioning the name of the proprietor.

- In case of firm, give name of the firm.

- In case of company, give name in which the company is registered.
• **Clause (2), Address Clause:** 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.

**Audit checklist for practical understanding:**

- Ask from the assessee the address communicated by him/her to the department and mention that address.
- In case of HUF assessee, mention address at which HUF is assessed and not that of the Karta.
- In case of company assessee, in addition to the address at which the company is assessed also give address of the registered office of the company, if both are different.
- In case of tax audit of branch/unit, mention address of the branch/unit.

• **Clause (3), Permanent Account Number of the Assessee:** The permanent account number (PAN) allotted to the assessee should be indicated. It may be noted that in the e-filing format PAN is a mandatory field.

**Audit checklist for practical understanding:**

- Obtain from the assessee its Permanent Account Number and ensure that the same is correct.
- Check the same from the PAN Card allotted to the assessee.
- Auditor should keep a copy of the PAN card in his permanent file relating to auditee.

• **Clause (4), Details as to Indirect Tax Registration:** Part A of Form No. 3CD generally requires the auditor to give the factual details of the assessee. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

**Audit checklist for practical understanding:**

- Ask the assessee whether he is liable to pay indirect tax like excise duty, service tax, VAT, customs duty, (or GST) etc.
- Scrutinize the books of account to check whether the assessee is liable to pay indirect taxes.
like excise duty, service tax, VAT, customs duty, (or GST) etc.

(a) Obtain from the assessee representation indicating various indirect tax laws applicable to him.

(b) Obtain copy of registration certificate issued by GST/Excise/VAT/Service Tax Authorities.

(c) If the assessee is liable to pay any indirect tax but he has not got himself registered then bring out this fact as a qualification/observation in the main audit report in Form No. 3CA/3CB

- **Clause (5), Status of the Assessee**: The status of the assessee is to be mentioned. Obviously, this refers to the different classes of assessees included in the definition of “person” in section 2 (31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person.

  **Audit checklist for practical understanding:**

  Ensure that the status is quoted as per section 2(31) of the Act. It should not be confused with the residential status of the assessee. Further, in case of a proprietorship concern status shall be quoted as individual.

- **Clause (6), Previous Year**: The period of the previous year has to be stated. Since the previous year under the Act now uniformly begins on 1st April and ends on 31st March, the relevant previous year should be mentioned. In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc. the date of beginning/ending of the previous year may be different, the auditor may accordingly, mention the relevant date of beginning and ending of the previous year in this clause. Hence, the tax auditor has to apply his professional judgement depending on the facts and circumstances of the same.

  **Audit checklist for practical understanding:**

  Previous year shall be quoted as per Income Tax Act i.e. 1-4-2017 to 31-3-2018 and not be confused with the accounting year. For assessment year 2018-19, previous year is 2017-18.

- **Clause (7), Assessment Year**: The assessment year relevant to the previous year for which the accounts are being audited should be mentioned i.e. for previous year 2017-18 assessment year would be 2018-19.

- **Clause (8), Under which Clause of Section 44AB the audit has been conducted**: The auditor is required to mention the relevant clause of section 44AB under which the audit has been conducted.
Diagram representing various clauses of section 44AB of the Income Tax Act, 1961 under which a tax audit is required to be conducted

**Audit checklist for practical understanding:**

Ascertaining the relevant clause of section 44AB applicable to the assessee and indicate here.

- **Clause 9(a):** If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.

- **Clause 9(b):** If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.

**Explanation for Clauses 9(a) and 9(b):** The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents or other documents effecting such changes.

**Audit checklist for practical understanding:**

- Enquire whether the assessee is a partnership firm or Limited Liability Partnership (LLP) or AOP.
- Obtain a schedule from the assessee indicating the name of partners/members and their profit sharing ratios.
- Also see the original copy of the partnership deed/LLP agreement to find out name of the partners and their profit sharing ratios and obtain a copy of the deed and place it in the
Enquire whether there has been any change in the partners/members or their profit-sharing ratios during the year under audit since the last date of preceding year. Also check the copy of the deed as on the last day of the preceding year and as on the first day of the previous year concerned.

If yes, ask the assessee to produce original copy of the amendment/admission/retirement deed. Note down the details of change and state the particulars thereof. In respect of the audit for the period 1-4-2017 to 31-3-2018 any change after 31-3-2017 shall be reported.

If there is any change in the constitution of firm/AOP on or after first day of previous year, find out the change and report the same. If there is any change in the partners of the firm or members of the association of persons or their profit sharing ratio since the last date of the preceding year, the particulars of such change must be stated. All the changes occurring during the entire previous year must be stated.

Check the retirement deed/amendment deed/admission deed to ascertain any change in the partners/members and their profit sharing ratio.

Obtain management representation that there is no change in the partners/ members or their profit-sharing ratios and if there is any change in that respect then such change is adequately disclosed.

- **Clause 10(a):** Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).

- **Clause 10(b):** If there is any change in the nature of business or profession, the particulars of such change.

**Explanation for Clauses 10(a) and 10(b):** In regard to the nature of business, the principal line of each business is to be determined and stated in this clause, i.e. the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry. In case of a person belongs to service sector the nature of each type of service should be broadly stated. Thereafter, the auditor is required to mention the sub-sector pertaining to the sector selected. Information has to be furnished in respect of each business. The code to be mentioned against the nature of business pertains to the main area of business activity.

**Audit checklist for practical understanding:**

- Ensure that details as to every type of business that is carried out by the assessee during the previous year are given. If the assessee carries on more than one business or profession then the nature of every such business or profession carried on by the assessee
during the previous year is to be stated.

- Change from one line of business to another should be treated as change of business.
- Addition/deletion of line of business shall be treated as change.
- Go through the financial statements and other related documents to ascertain whether there has been any change in the nature of business or profession carried on by the assessee.
- Pay particular attention to any business activity started/discontinued by the assessee during the year under audit. If there is any change, state the particulars thereof. Say an assessee is a retail trader and started a petrol pump, then state against this clause that during the year the assessee has started a new petrol pump.
- Obtain from the assessee a clarificatory letter specifying the change in business.

- **Clause 11(a):** Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.
- **Clause 11(b):** List of books of account maintained and the address at which the books of account are kept.

  (In case books of account are 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.)

- **Clause 11(c):** List of books of account and nature of relevant documents examined.

**Audit checklist for practical understanding:**

- Check that the books of accounts have been maintained as required by law:
  - (i) In case of professionals, requirements of section 44AA read with rule 6F of the Income Tax Rules, 1962, should be kept in mind.
  - (ii) In case of corporate assessee, the books of accounts required to be maintained are contained in the relevant statute.
- Rule 6F read with section 44AA has prescribed books of account to be maintained by professionals. In case the assessee is a professional then only inquiry under clause 11(a) will be answered in the affirmative and list of the books prescribed will have to be given. In case of assessee engaged in business, no such books have so far been prescribed; hence this question will be answered in the negative.
- Obtain a schedule indicating the list of books of accounts maintained. It should be duly certified by a responsible officer of the company/entity.
- Obtain details as to place where books are maintained.
- Enquire whether books are maintained on a computer system. If yes obtain a list of books generated by such system. Verify that list from the print out of such books obtained by the
as assessee. In case books maintained on a computer system insist for a print out of ledger and place identification marks thereupon.

- Also obtain details in respect of financial books, production records, stock records and other relevant books and records.
- Indicate all the books and other documents examined.
- Place appropriate identification marks on all the books and record examined.
- In case of branch returns, similar information with regard to books of account should be asked for.

**Clause 12: Presumptive Income Scheme:** Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections (44AD, 44ADA, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB Chapter XII-G, First Schedule or any other relevant section).

Where the profits and gains of the business are assessable to tax under presumptive basis under any of the sections mentioned below, the amount of such profits and gains credited/debited to the profit and loss account should be indicated under this clause:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section</th>
<th>Business covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>44AD</td>
<td>Eligible business</td>
</tr>
<tr>
<td>2</td>
<td>44ADA</td>
<td>Eligible professionals</td>
</tr>
<tr>
<td>2</td>
<td>44AE</td>
<td>Transport business</td>
</tr>
<tr>
<td>3</td>
<td>44B</td>
<td>Shipping business of a non-resident</td>
</tr>
<tr>
<td>4</td>
<td>44BB</td>
<td>Providing service or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils</td>
</tr>
<tr>
<td>5</td>
<td>44BBA</td>
<td>Operation of aircraft by non-resident</td>
</tr>
<tr>
<td>6</td>
<td>44BBB</td>
<td>Civil construction etc. in certain turnkey power project by non-residents</td>
</tr>
<tr>
<td>7</td>
<td>Chapter XII-G</td>
<td>Special provisions relating to Shipping Companies (Section 115V to 115VT)</td>
</tr>
<tr>
<td>8</td>
<td>First Schedule</td>
<td>Insurance Business</td>
</tr>
<tr>
<td>9</td>
<td>Any other relevant section</td>
<td>This refers to the sections not listed above under which income may be assessable on presumptive basis like section 44D and section 115A(1)(b) and will include any other section that may be enacted in future for presumptive taxation.</td>
</tr>
</tbody>
</table>
If the profit and loss account does not include profit assessable on presumptive basis, then, there is no requirement to furnish the particulars under this clause.

The amount to be mentioned under this clause means the amount included in the profit and loss account. The tax auditor is not required to indicate as to whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the reporting requirement gets satisfied if the amount as per profit and loss account is reported.

The auditor should keep in mind the prescribed guidance while furnishing information under this clause in the format provided in the e-filing utility.

**Audit checklist for practical understanding:**

- If the income is taxed on presumptive basis then the assessee is not entitled to claim any expenditure under sections 30 to 38 except the salary and interest to partners in case of a firm. The auditor should ensure that the assessee does not claim any such expenditure. Further written down value of any asset used for the purpose of such a business shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of depreciation for each of the relevant assessment years. The auditor shall ensure that the written down value of any asset used for such business is correctly determined.

- Go through the profit and loss account and make out a revenue analysis in order to determine whether turnover includes any revenue from any business which is assessable on presumptive basis under section 44AD, 44ADA, 44AE, 44B, 44BB, 44BBA, 44BBB. Chapter XII-G or any other relevant section.

- Go through the past assessment records to find out the basis at which such income was assessed in the past.

- Qualify the report if there is included any turnover from such business in the gross turnover because income from such business is to be computed on presumptive basis and if it is computed under normal provisions of the Act then the accounts are to be audited.

**Clause 13 (a): Method of accounting employed in the previous year.**

**Clause 13 (b): Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.**

**Clause 13 (c): If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.**

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Particulars</th>
<th>Increase in profit (₹)</th>
<th>Decrease in profit (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- **Clause 13 (d):** Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2).

- **Clause 13 (e):** If answer to (d) above is in the affirmative, give details of such adjustments:

<table>
<thead>
<tr>
<th>ICDS</th>
<th>Accounting Policies</th>
<th>Increase in profit (₹)</th>
<th>Decrease in profit (₹)</th>
<th>Net effect (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICDS II</td>
<td>Valuation of Inventories</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS III</td>
<td>Construction Contracts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS IV</td>
<td>Revenue Recognition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS V</td>
<td>Tangible Fixed Assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS VI</td>
<td>Changes in Foreign Exchange Rates</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS VII</td>
<td>Governments Grants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS VIII</td>
<td>Securities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS IX</td>
<td>Borrowing Costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICDS X</td>
<td>Provisions, Contingent Liabilities and Contingent Assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Clause 13 (f): Disclosure as per ICDS:**

| (i) | ICDS I - Accounting Policies |
| (ii) | ICDS II - Valuation of Inventories |
| (iii) | ICDS III - Construction Contracts |
| (iv) | ICDS IV - Revenue Recognition |
| (v) | ICDS V - Tangible Fixed Assets |
| (vi) | ICDS VII - Governments Grants |
| (vii) | ICDS IX - Borrowing Costs |
| (viii) | ICDS X - Provisions, Contingent Liabilities and Contingent Assets*. |
Audit checklist for practical understanding:

**Clause 13(a)**

(a) Review the accounting policy followed by the assessee by ascertaining the basis adopted for accounting incomes of different nature. Ensure that the accounting method employed is mercantile or cash because hybrid system is not permissible under the Act. Review the financial statements for this purpose.

(b) Ascertain the method of accounting by (i) vouching incomes and expenses during the year, and (ii) checking the basis on which provisions have been made at year end.

(c) Obtain a management representation as to the method of accounting followed.

(d) Pay particular alteration to the method employed to account for the following incomes -
   (i) Interest on Fixed deposits; (ii) Insurance expenses and claims; (iii) Export incentives; (iv) Tax refunds including income-tax, sales tax, excise duty; (v) Cash incentives received; (vi) Benefits arising out of business like free holiday trip to foreign country on achieving sales targets; (vii) Claims, settlements, grants, subsidies; and (viii) Bad debts recovered.

**Clauses 13(b) and 13(c)**

(a) Enquire whether there has been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year. If yes note down the details. Take a copy of the previous year’s audit report to ascertain the method followed in the previous year. If it is the first year of audit then obtain a management representation as to method of accounting followed in the immediately preceding previous year.

(b) If there is any change in method of accounting followed, then ensure that the details of change are appropriately disclosed in the financial statements as well as the report and effect thereof on the profit/loss is also disclosed.

(c) Obtain a declaration from management as to the nature of change.

(d) The reasons for changes in the method of accounting employed and their effect on profit and loss are not required to be stated yet its disclosure will make the report more self-contained.

(e) Quantify the effect of change in method of accounting on the profit or loss for the current year.

**Clause 13(d)**

(i) Ensure that the method of accounting employed by the assessee is in conformity of the accounting standards prescribed under section 145.

(ii) If there is any deviation, then quantify the effect thereof on the profit or loss for the period and mention the amount so quantified in the report.

- **Clause 14 (a): Method of valuation of closing stock employed in the previous year.**
• Clause 14 (b): Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Particulars</th>
<th>Increase in Profit (₹)</th>
<th>Decrease in Profit (₹)</th>
</tr>
</thead>
</table>

Audit checklist for practical understanding:

(i) Clause 14(a)
- Ascertain the method of valuation of stock employed during the previous year.
- Where there is change in the basis of determining cost, market value or net realisable value even though there is no change in the method of valuation, the same should be reported under clause 14.
- Where there is change in the method of valuation then determination should be made of the direct effect of such change on profits for the year and disclosure be made under clause 14.
- Ascertain from the management the method adopted by it for valuation of closing stock. Ensure that the method adopted is in conformity with the AS-2 as this AS is mandatory in all cases.
- Closing stock will include raw materials, work-in-progress, finished goods, stores and spare parts and also loose tools.
- Obtain from the assessee a copy of the physical stock-taking instructions issued to the staff and ensure that the work was properly organised.
- At least for the part of the time, visit the place of assessee and observe the work of physical verification of all stocks and ensure that these have been correctly determined.
- Obtain from the assessee inventory valuation sheet of the stock-in-trade giving quantitative details, method of valuation, rate and total value of each item.
- Stock records should be checked for opening balances, receipts, issues and closing balances. Comparison of the balances as per stock records, should be done with balances obtained on physical verification. Any discrepancies between the two should be noted.
- Inventory valuation sheet should be checked thoroughly as regard to quantities, rates, methods of valuation and calculation made.
- Stock certificate should be obtained in the format as recommended by the Institute of Chartered Accountants of India.
- If there is any change in the method of valuation of closing stock then the fact and effect of such change would have to be disclosed as per the requirements of clause 14.
If the assessee is not maintaining any stock records then ascertain on what basis the value of stock has been arrived at. State the fact in the report.

If possible, depute persons to attend stock taking by the assessee to review the process. Otherwise take a detailed look at the notes on stock taking and the instructions issued to the stock taking personnel. Test check the valuation procedure.

(ii) Clause 14(b)

Make a review of the method of valuation adopted for valuation of closing stock and compare the same with the method prescribed under section 145A.

Ascertain whether the method of valuation is such that the value of closing stock includes the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Pay particular attention to the following:

- That the duties paid in respect goods cleared have been included;
- That the duties payable in respect of goods held in bond have been included.

Check that opening stock of raw materials/purchase price of raw materials/ closing stock of raw materials includes all taxes, duties even though they are refundable in nature.

Ascertain whether there is any deviation the method of valuation of closing stock as compared to the provisions contained in section 145A. If yes, then ensure that the fact as to deviation and effect of such deviation on the profit or loss is adequately disclosed.

- Clause 15: Give the following particulars of the capital asset converted into stock-in-trade:
  
  (a) Description of capital asset;
  (b) Date of acquisition;
  (c) Cost of acquisition;
  (d) Amount at which the asset is converted into stock-in-trade.

Audit checklist for practical understanding:

<table>
<thead>
<tr>
<th>Details of capital assets converted into stock in trade during the year</th>
<th>Check whether the assessee has converted any capital asset into stock-in-trade during the year under audit.</th>
<th>If yes, then obtain the details as to nature of such capital asset, its date and cost of acquisition and the amount at which the asset has been converted into stock-in-trade.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ask the assessee whether he has converted any capital asset into stock-in-trade of the business during the previous year.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- Clause 16: Amounts not credited to the profit and loss account, being,-

(a) the items falling within the scope of section 28;

(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;

(c) escalation claims accepted during the previous year;

(d) any other item of income;

(e) capital receipt, if any.

Audit checklist for practical understanding:

<table>
<thead>
<tr>
<th>(i) Incomes Falling Under Section 28 [Clause 16(a)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Ascertain whether the assessee has earned any income falling under section 28 or derived any benefit referred to in that section. Examine whether such income is credited to profit and loss account or not. If not, then report the fact.</td>
</tr>
<tr>
<td>- The auditor should go through the accounts of the assessee to find out whether there are any receipts of the nature specified in section 28 which have not been included in the total income of the assessee.</td>
</tr>
<tr>
<td>- The auditor should ensure that such income has been correctly computed by allowing the expenditure that is statutorily allowable and ignoring the expenditure not so allowable.</td>
</tr>
<tr>
<td>- Pay particular attention to check whether the assessee has obtained any benefit or perquisite referred to in section 28(iv) and whether value thereof has been credited to the profit and loss account.</td>
</tr>
<tr>
<td>- In present times, various companies award various benefits to their dealers on achieving sales targets like all expenses paid foreign trip or vehicles or white goods, etc. Quantify the value of such benefit and ensure that the amount involved is credited to the profit and loss account, otherwise state the fact against this clause.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(ii) Proforma Credits, Drawbacks, Refund of Duty, Etc. [Clause 16(b)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Enquire whether there has been admitted any claim in respect of proforma credits/drawbacks/refund of duties of customs or excise or both/refund of sale tax/service tax/value added tax by the authorities. If yes, then obtain a schedule from the assessee indicating details of all such claims admitted by the authorities but not credited to the profit and loss account.</td>
</tr>
<tr>
<td>- Cross check the details contained in the schedule with the claim, papers and other relevant correspondence including assessment orders. Ensure that the claims have</td>
</tr>
</tbody>
</table>
been admitted as due by the concerned authorities.

Note that the item admitted by the authorities will mean the item admitted before the closing of accounts.

Ensure that the accounting of such claims is in accordance with the method of accounting regularly followed by the assessee.

Ensure that all the claims admitted have been credited to the Profit and loss account. Any exception should be reported.

Where cash system of accounting is followed then this fact should be stated in the report.

The reporting should be done in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Date on which claim lodged</th>
<th>Nature of claim lodged</th>
<th>Amount</th>
<th>Status of claim</th>
<th>Status at year end</th>
<th>Whether received after year end (Y/N)</th>
<th>Date of Receipt</th>
<th>Remark</th>
</tr>
</thead>
</table>

(iii) Escalation Claims [Clause 16(c)]

This inquiry is particularly relevant to the assessees engaged in the construction business.

The auditor should go through the copy of every agreement in respect of any contract undertaken by the assessee during the previous year and find out whether there is any escalation clause therein. If yes, then check whether any escalation claims have been made by the assessee during the previous year under audit.

Obtain a schedule indicating details as to escalation claims made by the assessee during the previous year. Check the claims that have been accepted by the assessees clients/ customers. Ensure that the claims have been accepted as due during the previous year. It may happen that only a part of the claim has been accepted.

Check whether the claims accepted has been accounted for and the amount involved has been credited to profit and loss account. If the claims have not been accounted for, then state the fact and the amount involved.

Ensure that the claims have been accounted for as per the accounting method followed by the assessee.

If the assessee follows cash system of accounting, then working of claims would be of no significance till the amount involved is received. Because in that case nothing would be credited to profit and loss account. But the auditor should state the fact and amount involved even in such cases.
(iv) Any Other Income [Clause 16(d)]

- Enquire whether during the previous year the assessee has earned any income which has not been credited to the profit and loss account. Note that the inquiry will extend to any income, which is chargeable to tax and will not be limited to the business/professional income.
- The auditor should check thoroughly the bank account of the assessee and also the cash book to find out any credits regarding any income earned but not credited to profit and loss account of the assessee.
- Pay particular attention to the following incomes:
  - Interest on fixed deposit;
  - Discounts received;
  - Insurance claims received;
  - Any type of reimbursements.

(v) Capital Receipt [Clause 16(e)]

It is to be noted that capital receipts are not generally credited to profit and loss account hence the auditor should take enough care to check out any transaction generating receipts of capital nature--

(v) Enquire whether the assessee is in receipt of any amount of capital nature during the previous year. Capital receipt may include subsidies, non-compete fees, etc.

(vi) Go through the financial statements, in particular the reserve account, to ascertain whether the assessee has received any such receipts and credited them directly to the reserve account.

(vii) If the assessee has received any amount of capital nature during the year under audit, then enquire whether the assessee has credited such receipts to profit and loss account. State the fact and the amount involved.

(viii) Check that any such receipt is accounted for in terms of method of accounting followed by the assessee.

While writing the audit program for tax audit in respect of A Ltd., you wish to include possible instances of capital receipt if not credited to Profit & Loss Account which needs to be reported under clause 16(e) of form 3CD. Please elucidate possible instances.

The following is an illustrative list of capital receipts which, if not credited to the profit and loss account, are to be stated under clause 16(e) of Form 3CD:
(a) Capital subsidy received in the form of Government grants, which are in the nature of promoters’ contribution i.e., they are given with reference to the total investment of the undertaking or by way of contribution to its total capital outlay. For e.g., Capital Investment Subsidy Scheme.

(b) Government grant in relation to a specific fixed asset where such grant is shown as a deduction from the gross value of the asset by the concern in arriving at its book value.

(c) Compensation for surrendering certain rights.

(d) Profit on sale of fixed assets/investments to the extent not credited to the profit and loss account.

- Clause 17: Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:

<table>
<thead>
<tr>
<th>Details of property</th>
<th>Consideration received or accrued</th>
<th>Value adopted or assessed or assessable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Audit checklist for practical understanding:

- Obtain particulars of all land or building or both transferred during the previous year.
- Obtain following details:
  - (a) Consideration stated in transfer documents
  - (b) Value adopted or assessed or assessable by any authority of a State Government.

- Clause 18: Particulars of depreciation allowable as per the Income-tax Act, 1961 in respect of each asset or block of assets, as the case may be, in the following form:

  (a) Description of asset/block of assets.

  (b) Rate of depreciation.

  (c) Actual cost or written down value, as the case may be.

  (d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –

    (i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

    (ii) Change in rate of exchange of currency, and

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13.43

(iii) Subsidy or grant or reimbursement, by whatever name called.

(e) Depreciation allowable.

(f) Written down value at the end of the year.

Having regard to the nature of requirements prescribed, it may be necessary for the tax auditor to examine:

- Classification of the asset
- Classification thereof to a block
- Working of actual cost or written down value
- The date of acquisition and the date on which it is put to use
- The applicable rate of depreciation
- Additions / deductions and dates thereof
- Adjustments required – specified as well as on account of sale, etc.

For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. The purpose for which the asset is used is also very material in this regard. Hence, the tax auditor should ensure that the classification as made by the assessee is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free from doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block. Since the tax auditor is not a technical expert, he has to obtain suitable certificate from concerned experts.

Audit checklist for practical understanding:

(i) Wherever, the full deduction of the cost of capital goods is allowed (e.g. expenditure on Scientific Research u/s. 35) the auditor should verify that the cost of such asset is not included in the block of assets for the purpose of depreciation. Description of Asset [Clause 18(a)]

- Obtain a list of fixed assets owned and used by the assessee for the purposes of his business or profession.
- Classify the assets into different blocks if the same has not been done already. This is necessary because in most cases rate at which depreciation is charged in accounts is different from the rate at which the same is charged for tax purposes.
- The auditor shall check out whether there are such assets with the assessee which are eligible for depreciation under the Act.

(ii) Rate of Depreciation [Clause 18(b)]

- The auditor should go through the rates of depreciation prescribed for different categories
of assets. In case any additional depreciation under section 32(1)(iia) is claimed ensure that the same is claimed at rate prescribed under that section.

(iii) Actual Cost or Written Down Value of the Asset [Clause 18(c)]

- Verify opening WDV with the tax return submitted for immediately preceding previous year. Cross check the same with the audit report for the same year, if available. Go through the previous year’s audit report to ascertain opening balances (WDV) of various assets, i.e., WDV of various blocks of assets.

- Segregate the assets acquired during the year between the assets used for 180 days or more and the assets used for less than 180 days.

- In case of an asset newly coming into existence during the previous year, the auditor shall check out the vouchers reflecting payment made by the assessee to find out the actual cost of the asset. In case any amount is capitalised and added to the purchase price, the auditor shall check out that amount eligible for capitalisation has only been capitalised.

- Basis of determining cost of intangible assets should be examined carefully.

- In case of an existing asset/block of asset, the auditor shall check the written down value as at the beginning of the year.

- In case of an asset acquired in any of the circumstances mentioned under the various Explanations to section 43(1), the auditor shall ensure that the actual cost thereof is determined by applying the relevant provisions.

- For verifying CENVAT credit, the auditor shall go through the excise records to find out CENVAT credit availed of by the assessee during the previous year.

- In case an asset is purchased in foreign currency on deferred payment basis, the auditor shall verify the increment/decrement in liability thereof on the basis of change in rate of exchange of currency. The change in rate of exchange can be verified from the RBI bulletin. The auditor shall take note of provision of section 43A in terms of which only such liability due to fluctuation in foreign exchange, which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee can only be added to the actual cost of the asset.

- In case of subsidy the auditor can verify the existence thereof by going through the letter of appropriate authority granting the subsidy and the receipt thereof can be verified from the bank records.

(iv) Sale or Purchase of Asset During the Year [Clause 18(d)]

- The auditor shall take the list of assets existing as on the first day of the previous year.

- The auditor shall go through the fixed assets register of the assessee if such register is maintained, to find out the exact dates of addition/deduction of the assets.
- Obtain a list of assets sold/demolished/discarded during the year and ensure that WDV thereof is reduced out of the WDV of the block of assets.

- Obtain a list of assets acquired during the year. Check that the actual cost thereof is properly recorded and added into the block of asset having similar rate of depreciation. Enquire about the date on which such asset has been put to use. Obtain management representation as to date on which asset was first put to use.

- In case of assets acquired during the previous year, pay particular attention to the following:
  - Actual cost of acquisition of the asset including expenses eligible for capitalisation;
  - Date on which the asset is put to use;
  - Adjustment towards CENVAT;
  - Adjustment towards increase in liability towards foreign exchange loan in case asset financed in foreign currency. Ensure that such adjustment is in accordance with the provisions of section 43A;
  - Adjustment towards subsidy. As per Explanation 10 to section 43(1) such subsidy is to be reduced out of the actual cost of the asset.
  - Obtain copies of the documents relating to acquisition/sale of fixed assets. In case the assessee is a company get copy of board resolution in this regard.

<table>
<thead>
<tr>
<th>(v) Depreciation Allowable [Clause 18(e)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The auditor shall check out that depreciation is calculated by applying the correct rate of depreciation on the written down value at year end applicable in case of the asset concerned.</td>
</tr>
<tr>
<td>- The written down value of the block at the year end is calculated correctly by taking the relevant figure at the beginning of year and adjusted in respect of the additions/deductions during the year.</td>
</tr>
<tr>
<td>- The auditor shall check out whether any asset has been put to use for less than 180 days because in respect of such an asset only 50 per cent of the amount of depreciation is allowable.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(vi) Written Down Value at the Year End [Clause 18(f)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The auditor shall check the WDV at the beginning of the year in respect of each of the blocks of assets.</td>
</tr>
<tr>
<td>- The auditor shall go through fixed assets register to check out the additions/ deletions to the block of assets during the year.</td>
</tr>
</tbody>
</table>
| - The auditor shall check that current amount of depreciation is calculated on the WDV at
the beginning of the year as adjusted by the additions/deletions during the year. The correctness of the amount of depreciation can be checked by verifying the rates of depreciation applicable as specified in Appendix I and IA to Income Tax Rules, 1962.

(vii) Check the calculation of depreciation and ensure that the depreciation is correctly computed.

- Clause 19: Amounts admissible under sections:

<table>
<thead>
<tr>
<th>Section:</th>
<th>Amount debited to profit and loss account:</th>
<th>Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions. If any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf:</th>
</tr>
</thead>
<tbody>
<tr>
<td>32AC, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Audit checklist for practical understanding:

1. Obtain from the assessee complete details in respect of expenditure incurred under sections 32AC, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E and deduction claimed on account thereof in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Date</th>
<th>Relevant Section</th>
<th>Particulars of transaction</th>
<th>Amount debited to P&amp;L A/c</th>
<th>Deduction admissible</th>
<th>Remarks</th>
</tr>
</thead>
</table>

2. Verify the claim of deduction with particulars reference to the following—
   - the fact that assessee is eligible for deduction under the relevant section;
   - that the deduction is correctly computed;
   - that the assessee fulfils all the conditions specified in the impugned section for allowability of deduction.

3. Ensure that amount is properly deposited in the specified account for availing of
deduction under each of these sections.

4. Further ensure that amount credited to the reserve account is properly utilised according to the scheme of relevant section.

5. Check the details of expenditure debited and not debited to the profit and loss account with relevant vouchers and books of account.

- Clause 20(a): Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)].

Audit checklist for practical understanding:

Bonus or Commission Paid to Employees [Clause 20(a)]
- Obtain a list of employees eligible for bonus or commission for services rendered. Such schedule should also indicate the amount paid.
- Check the basis for calculation of bonus or commission for services rendered.
- Obtain a management representation that the sum paid to employees as bonus, etc. was not payable to them as profit or dividend.
- The auditor should obtain from the assessee particulars of the expenditure incurred on bonus paid to employees in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of persons</th>
<th>Bonus amount</th>
<th>Expenditure not considered as bonus</th>
<th>Description</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Check the accounts for (i) Commission, (ii) Bonus, (iii) Salary and wages, (iv) Staff welfare to ensure that all bonus and commissions paid to employees have been included in the statement.
- Details of commission paid to employees should be furnished as under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Voucher No.</th>
<th>Date</th>
<th>Name of Employee</th>
<th>Amount</th>
<th>Description of commission</th>
<th>Basis of determination</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- The auditor should check whether bonus and commission paid to employees for services rendered were otherwise payable to them as profits or dividend. If, yes, then report such payments.

- Clause 20(b): Details of contributions received from employees for various funds as referred to in section 36(1)(va):
Audit checklist for practical understanding:

**Contribution From Employees Towards Fund Set Up For Their Welfare [Clause 20(b)]**

- Obtain from the assessee a schedule indicating the sum received from employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24)(x). Such schedule shall also indicate the due date of payment and actual date of payment. Also verify the evidence of payment.

- Obtain from the assessee a statement giving particulars in respect of any amount received from employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24)(x) and due date for payment and the actual date of payment, in the following manner:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Date</th>
<th>Particulars of receipt</th>
<th>Amount received</th>
<th>Amount paid</th>
<th>Due date for payment</th>
<th>Actual date for payment</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Check the correctness of the said statement with vouchers and books of account.
- Scrutinise the ledger of the employees.
- Make sure that the amount received from employees has been deposited with the concerned authorities within due date.

**Clause 21(a): Please furnish the details of amounts debited to the profit and loss account, being in the nature of Capital, personal, advertisement expenditure etc.:**

<table>
<thead>
<tr>
<th>Nature</th>
<th>Serial number</th>
<th>Particulars</th>
<th>Amount in ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Expenditure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Expenditure</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party

### Expenditure incurred at clubs being entrance fees and subscriptions

### Expenditure incurred at clubs being cost for club services and facilities used.

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

- **Clause 21(b): Amounts inadmissible under section 40(a):**
  - (i) As payment to non-resident referred to in sub-clause (i)

  (A) Details of payment on which tax is not deducted:
  - (I) date of payment
  - (II) amount of payment
  - (III) nature of payment
  - (IV) name and address of the payee

  (B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)
  - (I) date of payment
  - (II) amount of payment
  - (III) nature of payment
  - (IV) name and address of the payee
  - (V) amount of tax deducted
(ii) As payment referred to in sub-clause (ia)

<table>
<thead>
<tr>
<th>A</th>
<th>Details of payment on which tax is not deducted:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(I)</td>
<td>Date of payment</td>
</tr>
<tr>
<td>(II)</td>
<td>Amount of payment</td>
</tr>
<tr>
<td>(III)</td>
<td>Nature of payment</td>
</tr>
<tr>
<td>(IV)</td>
<td>Name and address of the payee</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B</th>
<th>Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(I)</td>
<td>Date of payment</td>
</tr>
<tr>
<td>(II)</td>
<td>Amount of payment</td>
</tr>
<tr>
<td>(III)</td>
<td>Nature of payment</td>
</tr>
<tr>
<td>(IV)</td>
<td>Name and address of the payer*</td>
</tr>
<tr>
<td>(V)</td>
<td>Amount of tax deducted</td>
</tr>
<tr>
<td>(VI)</td>
<td>Amount out of (V) deposited, if any</td>
</tr>
</tbody>
</table>

(iii) Under sub-clause (ic) [wherever applicable]

(iv) Under sub-clause (iia)

(v) Under sub-clause (iib)

(vi) Under sub-clause (iii)

(A) Date of payment

(B) Amount of payment

(C) Name and address of the payee

(vii) Under sub-clause (iv)

(viii) Under sub-clause (v)

*should be read as “payee” for proper reporting.

This clause is substantially expanded to furnish detailed information for deduction and deposit of TDS. Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”. In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of sub-section (a) of section 40, the tax auditor may exercise his judgment in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the viewpoints. In case of voluminous nature of
the information, the tax auditor can apply materiality principles, tests checks and compliance tests for verifying the information required to be provided under this clause.

- **Clause 21(c): Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/ 40(ba) and computation thereof.**

The tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is also required to be given in respect of interest/ remuneration paid to a member of an Association of persons (AOP)/Body of individuals (BOI). By Finance Act (No.2) 2009, w.e.f. 1.4.2010, the term firm includes LLP (as registered under the provisions of LLP Act, 2008). The word "inadmissible" implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prima facie inadmissibility of the deduction and also quantify the same.

In order to determine the amounts inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.

The tax auditor should maintain the information in the prescribed format as a part of his working papers and report appropriately in the format provided in the e-filing utility. The tax auditor may note that the information required to be reported is the amount of inadmissible expenditure as per section 40(b) or 40(ba) and not the total amount debited to profit and loss account.

- **Clause 21(d): Disallowance/deemed income under section 40A(3).**

  (A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Date of Payment</th>
<th>Nature of Payment</th>
<th>Amount</th>
<th>Name and Permanent Account Number of the payee, if available</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A):

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Date of Payment</th>
<th>Nature of Payment</th>
<th>Amount</th>
<th>Name and Permanent Account Number of the payee, if available</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
For the purpose of furnishing the above particulars, the tax auditor should obtain a list of all cash payments in respect of expenditure exceeding ₹ 10,000/- (₹ 35,000/- in case of plying, hiring or leasing goods carriages) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses (a) to (l) of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause.

The tax auditor has to take into account the technological advancements in the field of banking and information technology where payments have been taken other than through an account payee cheque or bank draft.

- **Clause 21(e): Provision for payment of gratuity not allowable under section 40A(7).**

  As per section 40A(7), the deduction shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.

  The tax auditor should call for the order of the Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.

  In case the provision made for payment of gratuity is not allowable under section 40A(7), the same is to be stated under this sub-clause.

- **Clause 21(f): Any sum paid by the assessee as an employer not allowable under section 40A(9).**

  Under section 40A(9) any payment made by an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860, or other institutions (other than contributions to recognised provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund) is not allowable. The tax auditor should furnish the details of payments which are not allowable under this section.

- **Clause 21(g): Particulars of any liability of a contingent nature.**

  The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account. The tax auditor may not be able to immediately ascertain the details of contingent liabilities debited to the profit and loss account without a detailed scrutiny of various account heads e.g. outstanding liabilities, provision etc. Accounting policy followed and disclosed would be helpful in ascertaining and verifying details. The expenses relating to disputed claims will be revealed only on the basis of the scrutiny of records relating to contingent liabilities. The tax auditor may look into particular items of contingent liabilities of
the earlier year in order to determine whether or not any items has been charged to the profit and loss account of the current year and if so, whether the liability continues to be contingent in nature. Wherever necessary, a suitable note should be given by the tax auditor as to the non-availability of such particulars relating to the contingent liabilities.

- **Clause 21(h): Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.**

The tax auditor shall examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination the tax auditor is entitled to rely on the management representation. However, Standard on Auditing (SA) 580, “Written Representations” may be referred to.

The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income etc. For allocation of interest between taxable and non-taxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered. This requires proper estimates to be made by the assessee. The tax auditor is required to audit such estimates. Attention is invited to Standard on Auditing - 540 “Audit of Accounting Estimates, including Fair value Accounting Estimates and Related Disclosures”.

An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Even in such a case the provisions of section 14A will apply. Accordingly, the tax auditor is required to verify such contention of the assessee.

- **Clause 21(i): Amount inadmissible under the proviso to section 36(1)(iii).**

The provisions of section 36(1)(iii) provide that the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession would be allowed as a deduction in computing the income referred to in section 28 of the Act.

The proviso thereunder provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books or account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was put to use, shall not be allowed as a deduction.

The extension of an existing business or profession is a fact based exercise and the tax auditor should apply the professional judgment in determining the applicability of the proviso. The tax auditor is also advised to verify the treatment given for such asset under other provision of the Act like Chapter VI A deductions or under other statutes.
The tax auditor has to verify the correctness of the particulars furnished by the assessee with the documentary evidence.

Audit checklist for practical understanding:

<table>
<thead>
<tr>
<th>(i)</th>
<th>Amounts Debited to Profit &amp; Loss Account [Clause 21(a)] (Inquiry Under Clause 21(a) of Form No. 3CD)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Obtain details of capital expenditure debited to profit and loss account even if the same is deductible under the Income Tax Act:</td>
</tr>
<tr>
<td></td>
<td>(i) Other capital assets written off.</td>
</tr>
<tr>
<td></td>
<td>(ii) Scientific research expenditure of capital nature under section 35.</td>
</tr>
<tr>
<td></td>
<td>The format to be used for aforesaid purpose is given above.</td>
</tr>
<tr>
<td></td>
<td>The format to be used for aforesaid purpose is given above.</td>
</tr>
<tr>
<td></td>
<td>Obtain the details of amounts capitalised in the cost of fixed assets and capital work-in-progress.</td>
</tr>
<tr>
<td></td>
<td>Ensure the correctness of the details of capital expenditure with vouchers and assets records.</td>
</tr>
<tr>
<td></td>
<td>Check the complete details of expenses under the following heads to ensure that no capital expenditure is included therein:</td>
</tr>
<tr>
<td></td>
<td>(i) Travelling expenses;</td>
</tr>
<tr>
<td></td>
<td>(ii) Staff welfare;</td>
</tr>
<tr>
<td></td>
<td>(iii) Salaries and wages;</td>
</tr>
<tr>
<td></td>
<td>(iv) Depreciation;</td>
</tr>
<tr>
<td></td>
<td>(v) Stores and spares consumed;</td>
</tr>
<tr>
<td></td>
<td>(vi) Repairs and maintenance;</td>
</tr>
<tr>
<td></td>
<td>(vii) Labour expenses;</td>
</tr>
<tr>
<td></td>
<td>(viii) Interest paid on borrowed capital particularly if the capital is borrowed for acquisition of any fixed asset;</td>
</tr>
<tr>
<td></td>
<td>(ix) Preliminary expenses; and</td>
</tr>
<tr>
<td></td>
<td>(x) Scientific research expenditure.</td>
</tr>
<tr>
<td></td>
<td>Those items of capital expenditure, which are otherwise fully deductible under the Act, should be separately indicated under this clause.</td>
</tr>
<tr>
<td></td>
<td>Check whether any capital expenditure has been debited to profit and loss account. State the fact and amount involved.</td>
</tr>
<tr>
<td></td>
<td>Keep in mind the nature of the concern, the business carried on by the assessee and the capitalization policy of the assessee.</td>
</tr>
</tbody>
</table>
## (ii) Personal Expenses Debited to Profit & Loss Account [Clause 21(a)]

The aforesaid information should be collected in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Voucher No.</th>
<th>Date</th>
<th>Account</th>
<th>Name of the person in respect of whom expenditure incurred</th>
<th>Account head under which debited</th>
<th>Description of Expenditure</th>
<th>Reasons for treating as personal</th>
<th>Details of expenditure</th>
<th>Remarks in earlier year(s)/if disputed</th>
</tr>
</thead>
</table>

- The auditor should also consider the expenses considered by statutory auditor as personal expenditure in his report under section 143(1)(e) of the Companies Act, 2013.
- Where payment is made to employees under a contractual obligation then it need not to be disclosed even if it is of personal nature.
- Check the vouchers relating to the above heads of expenditure to determine personal element therein.
- Obtain copies of the latest income-tax assessment order of the last three years and find out the basis of disallowance as personal expenditure by the assessing officer. Where any appeal was preferred by the assessee against the order of the assessing officer then find out whether the appeal was allowed by the Appellate Tribunal.
- Obtain a schedule indicating expenditure of personal nature debited to the profit and loss account.
- Scrutinise various expenses account to ascertain whether any expenses of personal nature are debited to the profit and loss account.
- Scrutinise telephone expense account and vehicle expense account to ascertain personal element involved. Obtain a declaration from the assessee that these two expenses account do not include personal expenses. In the report do not rule out the possibility of personal element involved in these expenses. These two expense accounts should particularly be scrutinised in case of firms/proprietorship concern. In case of companies, it has been held by various courts that in case of companies there can be no personal element in the expenses incurred.
- Also scrutinise the following expenses accounts:
  - Expenditure on Presents and Gifts;
  - Travelling expenses;
  - Repairs and maintenance;
- Bank charges; and
- Entertainment expenses.
- Also review the relevant accounts to ensure that no personal expenses are charged to profit and loss account.

(iii) Expenses on Advertisement in the Media of a Political Party [Clause 21(a)]
- Enquire whether the assessee has incurred any expense on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.
- If yes, obtain a schedule indicating details of such expenses.
- Also go through the advertisement expenses account to find out whether expenses of such nature have been incurred.
- The auditor can furnish the information in the following manner:

<table>
<thead>
<tr>
<th>Date</th>
<th>Voucher No.</th>
<th>Name of political party</th>
<th>Nature of expenditure</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Obtain from the client bill of the political party for the advertisement and a copy of the advertisement published.
- Check the expenditure incurred with the bills of advertisement of the political parties and from the copy of the advertisement published.

(iv) Expenses Incurred at Clubs [Clause 21(a)]
- Obtain a schedule indicating payments made to clubs classified as under:
  - As entrance fees;
  - As subscriptions;
  - As payments for club services and facilities.
- Ensure that a payment made as reimbursements (like reimbursement of entrance fee, subscription fees, payments for club services, etc.) to employees is also included.
- Obtain from the assessee particulars of club expenses in the following manner:

<table>
<thead>
<tr>
<th>Date</th>
<th>Voucher No.</th>
<th>Name of Director/ Employees</th>
<th>Entrance Fee</th>
<th>Amount paid for Locker</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Catering</td>
<td>Subscription</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- If separate account for club expenses has been maintained then ensure that all expenses relating to clubs have been debited to such account. Otherwise, scrutinise the
ledger accounts of staff welfare, entertainment expenses, sales promotion and miscellaneous expenses, etc., to see that all expenses relating to clubs are identified and included in the above statement.

- Check the particulars furnished with the relevant vouchers and books of account.
- Ensure that the expenses incurred at clubs are not included in any other expenses account. Particularly check sales promotion, advertisement, and staff welfare accounts for this purposes.

(v) **Penalty or Fine [Clause 21(a)]**

- Check whether assessee has incurred expenditure by way of penalty or fine for violation of any law for the time being in force. Check whether assessee has incurred expenditure for any purpose which is an offence or which is prohibited by law.
- Obtain a certificate from the management to the effect that no expenses have been incurred as penalty or fine and if any such expenses have been incurred then the same is disclosed properly in the book.
- Obtain a schedule indicating details of payments as under:
  - Expenditure by way of penalty or fine for violation of any law for the time being in force;
  - Any other penalty or fine;
  - Expenditure incurred for any purpose which is an offence or which is prohibited by law.
- For this purpose check, the following records/accounts:
  - Sales tax records
  - Export/Import documents/records
  - ESI/PF records
  - Contract agreements.
- Ask the assessee to furnish details of all expenses by way of penalty or fine. If there is any such expenditure then segregate the same as per the requirement of clause 21(a).
- Enquire whether any payments have been made towards legal fee. If yes, enquire as to the reason for which such payment has been made. Check whether any such payment has been made for consultation in any matter involving penalty for violation of law or for defending in any case involving any offence, etc.

(vi) **Amounts Inadmissible Under Section 40(a) [Clause 21(b)]**

Ascertain whether the assessee has made any payment of interest, royalty, fees for
technical services or other sum chargeable under the Act, which is payable:

- outside India; or
- in India to a non-resident, not being a company or to a foreign company.

On which tax is deductible at source under Chapter XVII-B:

- Check, the following accounts to comply with the requirements of section 40(a):
  - TDS
  - Salary
  - Interest
  - Royalty
  - Commission
  - Brokerage
  - Fees for technical services
  - Fees for professional services
  - Amounts payable to contractor/sub-contractor
  - Share purchase/sale account
  - Income Tax
  - Wealth Tax
  - Any other tax account
  - Salary
  - Provident Fund.

- Any amount not deductible under section 40(a) should be presented in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Account Head</th>
<th>Total Amount</th>
<th>Amount Inadmissible</th>
<th>Comments</th>
</tr>
</thead>
</table>

(i) If yes then enquire whether the tax has been deducted in respect of such payment. If the answer is in affirmative then note down the amount paid and date of payment from the copy of challan.

(ii) Check whether the date of payment is within the time prescribed by section 139(1).

(iii) In all the above cases deduction would be allowed in the computation of income of the previous year during which liability for payment has been incurred.
In case the tax is deducted in a subsequent year or deducted in the previous year and is paid after the time prescribed under section 139(1) then the deduction for the amount concerned would not be allowed in the previous year under consideration. If no tax is deducted or is not paid to the government after deduction then no deduction will be allowed in respect of such payments.

- **In respect of section 40(a)(ia)** check the following:
  - Whether any payment covered by section 40(a)(ia) is made by the assessee during the previous year and debited to the profit and loss account?
  - Whether tax is deductible under chapter XVII-B in respect of such payments?
  - Whether tax has been deducted?
  - Whether tax has been remitted to the government as per requirement of section 40(a)(ia)
  - The challan indicating deposit of amount involved is to be checked and verified.
  - Verify TDS returns

- Check whether any debit is made in respect of Securities Transaction Tax (STT) wealth-tax, income-tax, etc., to the profit & loss account. If yes, indicate the amount.

- Check whether the assessee has made any payments which is chargeable as salaries and is:
  - a. payable outside India or
  - b. to a non-resident

- If yes, check whether the assessee has paid tax thereon or deducted tax therefrom. If there is failure either in paying tax thereon or in deducting tax therefrom then amount so paid will be disallowed. In particular check the following:

  Salary accounts, perquisite accounts.

  TDS account.

**(vii) Amount Inadmissible Under Section 40(b)/40(ba) [Clause 21(c)]**

- Obtain from the client particulars of payments by way of interest, salary, bonus, commission or remuneration to the partners of the firm in the following manner:

<table>
<thead>
<tr>
<th>Date</th>
<th>Voucher No.</th>
<th>Name of partners</th>
<th>Interest (Indicate rate of interest)</th>
<th>Salary</th>
<th>Bonus</th>
<th>Commission</th>
<th>Remuneration (indicate whether a working partner)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Obtain from the assessee a certified copy of partnership deed.
- Go through the partnership deed to ascertain the terms and conditions as to payment of interest and remuneration to partners.

- The following conditions are required to be satisfied to obtain deduction of remuneration paid to partners:
  
  (i) Remuneration should be paid only to a working partner;
  
  (ii) Remuneration must be authorised by the partnership deed;
  
  (iii) Remuneration should not relate to period prior to partnership deed; and
  
  (iv) Remuneration should not exceed the prescribed limit.

- The following conditions should be satisfied to obtain deduction of interest paid to partners:
  
  (i) Payment of interest should be authorised by partnership deed;
  
  (ii) Payment of interest should not relate to period prior to partnership deed; and
  
  (iii) Rate of interest should not exceed 12 per cent.

- Check the above particulars with reference to the partnership deed, books of account and vouchers.

- Scrutinise the ledger accounts of interest, salary, bonus, and commission to ensure that all payments to partners under these heads have been identified and included in the above statement.

- Commission or bonus may in general be regarded as part of remuneration.

- Go through the partnership deed to ascertain the terms and conditions as to payment of interest and remuneration to partners.

- Check the calculation of book profit.

- In case of AOP, any payment of interest and remuneration to members thereof is straightway disallowable.

**(viii) Amount Inadmissible Under Section 40A(3)[Clause 21(d)]**

- Obtain a list of all payments exceeding ₹ 10,000/- in aggregate to a single party on a day made by the assessee during the year under audit, if such payments are made otherwise than by account payee cheque drawn on a bank or account payee bank draft.

- Scrutinise the entries in cash book for correctness of the list.

- From the list so obtained, identify the payments falling under rule 6DD. Check these payment with vouchers.
- Scrutinise cash book and prepare a list indicating all the expenses for which payment or aggregate payment in a day has been made in excess of ₹ 10,000/- to a single party. Ask the assessee to furnish reasons for such cash payment. Check if the payment are covered by exceptions contained in rule 6DD or any circular issued by the CBDT. If yes, indicate the details of such expenses and also the fact that they are covered by exception contained in rule 6DD or CBDT circular.

- Obtain management representation that no expenses, other than specified above, is paid otherwise than by way of account payee cheque/draft in excess of specified limits.

- Obtain a certificate from management regarding payments relating to any expenditure covered under section 40A(3) and 40A(3A) that the payments were made by account payee cheque drawn on a bank or account payee bank draft, as the case may be.

- Note that only payment towards revenue expenses are hit by section 40A(3), capital payment are not hit by section 40A(3) and 40A(3A). Payment for purchase of raw material and stocks are, however, covered.

- As per ICAI, where the client is not able to obtain paid cheques from the bank (which are practically not available) then the auditor should obtain a certificate from the management to the effect that all payments through bank in excess of ₹ 10,000/- in aggregate, apart from those mentioned in the certificate, have been made only by an account payee cheque/draft. In this case, the auditor should give a note in the report that it has not been possible for him to verify, whether the payment in excess of ₹ 10,000/- in aggregate have been made otherwise than by account payee cheque or bank draft as the necessary evidence was not in the possession of the management.

(ix) **Provision for Payment of Gratuity [Clause 21(e)]**

- Obtain from the assessee the following documents:
  
  (i) the trust deed of the gratuity fund.
  
  (ii) the order of the Commissioner of Income Tax granting approval for the gratuity fund and the date from which it is effective.
  
  (iii) the rules of the gratuity fund.
  
  (iv) the calculation of contributions to the gratuity fund done as per the rules of the gratuity fund.

Check with reference to the above mentioned documents whether the provision has been made for contribution to a recognised gratuity fund.
Details of provision for payment of gratuity should be furnished in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Voucher No.</th>
<th>Date</th>
<th>Amount</th>
<th>Nature</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
<td>Provision for contribution to an approved gratuity fund</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td>Provision for contribution to an unapproved gratuity fund</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td>Provision for gratuity accrued but not due</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
<td>Provision for gratuity accrued and due</td>
<td></td>
</tr>
</tbody>
</table>

- Check that the provisions made are not in excess of the contribution calculated as per the rules of the gratuity fund.

- Where provision for gratuity is made in respect of what has become due and payable during the relevant years, then check the following that:
  
  (i) the employees in respect of whom the provision has been made have left the services,

  (ii) the calculation of amount payable.

Disclosure in this clause should be done in the following manner--

(i) provision made for payment of gratuity to an approved gratuity fund covered under section 40A(7),

(ii) provision for payment of gratuity that has become due and payable during the year under audit,

(iii) other provisions.

- Review the staff related accounts or provision account to ascertain whether any provision has been made for payment of gratuity. Check whether such provision is allowable as per section 40A(7).

- Also obtain a schedule indicating the provision for payment of gratuity.

- Ensure that the gratuity paid or payable does not include any provisions. If yes, then check whether such provision is allowable as per section 40A(7).

- Where there is made any contribution to an approved gratuity fund, review the following:
  
  - Proof as to deposit of the contribution amount;

  - Review the copy of the trust deed and ensure that the gratuity fund is approved. See the copy of the letter of the concerned authority approving the fund. Ensure that the approval is in force during the year.
(x) Any Sum Paid by Assessee as Employer Not Allowable Under Section 40A(9) [Clause 21(f)]

- Obtain from the assessees particulars of all payments made towards the setting up or formation of or contribution to any fund, trust, company AOP, BOI, etc., in the capacity of employer and debited to the Profit and Loss Account.

- The following payments which are not disallowable under section 40A(9) should be identified in the particulars furnished by the assessee:
  
  (i) Payment to recognised provident fund
  (ii) Payment to approved gratuity fund
  (iii) Payment to approved superannuation fund
  (iv) Payment as required under any other law

- Check the ledger accounts for staff welfare, donations, contribution to provident fund, gratuity and miscellaneous expenses to see if there are payment of the type referred to in section 40A(9). Make sure that all these payments have been included in the particulars furnished by the auditee. Check whether any such payment is allowable as per section 40A(9) or not. If not, then indicate the amount involved.

- Also scrutinise the staff welfare and the related account to check whether any such payment is included therein.

- Other payments made as per the particulars furnished by client should also be stated under this clause.

(xi) Contingent Liabilities [Clause 21(g)]

- Obtain a schedule indicating contingent liabilities being debited to profit and loss account.

- Scrutinise the correspondence relating to cases pending in courts of law.

- If particulars relating to contingent liabilities are not available then a suitable note should be given under this clause.

- The reporting should be done in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature of claim</th>
<th>Year in which claim raised</th>
<th>Total amount</th>
<th>Amount debited to P&amp;L A/c</th>
<th>Reasons for debit</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Refer to AS-29 : Provisions, Contingent Liabilities and Contingent assets, in order to determine what constitute contingent liability.
- Ask the assessee whether there is any liability of disputed and contingent nature which has been debited to profit and loss account not treated as contingent liability. In such cases the assessee treats the liability as of permanent nature and debit it to the profit and loss account, but in fact the liability is of contingent nature.

(xii) Expenditure Inadmissible Under Section 14A [Clause 21(h)]
- Check whether the total income of the assessee includes any income which is exempt from tax.
- Check whether the assessee has claimed any expenses against such income.
- Scrutinize expense accounts particularly interest account to check whether there is included any expense which is relatable to exempt income. If yes, note down the amount and mention against this clause.

(xiii) Amount Inadmissible Under Proviso to Section 36(1)(iii) [Clause 21(i)]
- Check whether the assessee has undertaken any expansion of business or profession for which any new asset has been acquired.
- Check whether the assessee has borrowed any capital for such purpose.
- Check whether the assessee has debited any interest on capital borrowed for acquisition of new asset for extension of the existing business or profession for any period beginning from the date on which the capital was borrowed and ending on the date on which such asset was first put to use, to the profit and loss account.
- In that case the amount of interest so debited will be inadmissible under proviso to section 36(1)(iii).

Illustration

Ploy Ltd., engaged in the leasing of goods carriage, appointed you as the tax auditor for the financial year 2017-18. How would you deal with the following payments relating to the leasing transactions in your tax audit report:

(i) Payments of 6 invoices of ₹ 5,000 each made in cash to Mr. X on 4th July, 2017.
(ii) Payments of 2 invoices of ₹ 18,000 each made in cash to Mr. Y on 5th July, 2017 and 6th July, 2017 respectively.
(iii) Payment of ₹ 40,000 made in cash to Mr. Z on 7th July, 2017 against an invoice for expenses booked in 2016-17.

Solution

Reporting of Payments Exceeding ₹ 35,000 in Cash: Disallowance under section 40A(3) of the Income Tax Act, 1961 is attracted if the assessee incurs any expenses in respect of which
payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on bank or account payee draft, exceeds ₹ 10,000. However, in case of payment made for plying, hiring or leasing of goods carriage, limit is ₹ 35,000 instead of ₹ 10,000.

Further, as per section 40A(3A) of the Income Tax Act, 1961, where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payments made to a person in a day, exceeds ₹ 10,000 (₹ 35,000 in case of plying, hiring or leasing of goods carriages).

However, exemption is provided under Rule 6DD having regard to nature and extent of banking facilities available and other relevant factors.

Subsequently, under clause 21(d)(A) and 21(d)(B) of Form 3CD, the tax auditor has to scrutinize on the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) and 40A(3A) respectively read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, the same has to be reported under abovementioned clauses.

Therefore, as per the provisions and explanations discussed above, the given cases are dealt as under-

(i) Payments of 6 invoices of ₹ 5,000 each aggregating ₹ 30,000 made in cash on 4th July, 2017 need not be reported as the aggregate of payments do not exceed ₹ 35,000.

(ii) Payments of 2 invoices of ₹ 18,000 each made in cash on 5th July, 2017 and 6th July, 2017 respectively aggregating ₹ 36,000 need not be reported as the payment do not exceed ₹ 35,000 in a day.

(iii) Payment of ₹ 40,000 made in cash against an invoice for expenses booked in 2016-17 is likely to be deemed to be the profits and gains of business or profession under section 40A(3A) of the Income Tax Act, 1961. Thus, the details of such amount needs to be furnished under clause 21(d)(B) of Form 3CD.

- **Clause 22: Amount inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.**

  The tax auditor is required to state the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006. The Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) is an Act to provide for facilitating the
promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

Section 23 of the MSME Act lays down that an interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not for the purposes of the computation of income under the Income-tax Act, 1961 be allowed as a deduction.

The inadmissible interest has to be determined on the basis of the provisions of the MSME Act.

The tax auditor while reporting in respect of clause 22 should take the following steps:

(a) The auditor should seek information regarding status of the enterprise i.e. whether the same is covered under the Micro, Small and Medium Enterprises Development Act, 2006.

(b) Since Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006 requires disclosure of information; the tax auditor should cross check the disclosure made in the financial statements.

(c) Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.

(d) Review the list so obtained.

(e) Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSME Act has been debited or provided for in the books of account.

(f) Verify the interest payable or paid as mentioned above on test check basis.

(g) Verify the additional information provided by the auditee relating to interest under section 16 in his financial statement.

(h) If on test check basis, the auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22.

Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSME Act, then no amount is inadmissible under section 23 of MSME Act. In such a case, appropriate reporting should be made against this clause in the format provided in the e-filing utility.

**Audit checklist for practical understanding:**

<table>
<thead>
<tr>
<th>Obtain the following information--</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;</td>
</tr>
</tbody>
</table>
(ii) the amount of interest paid by the buyer in terms of section 16 along with the amounts of
the payment made to the supplier beyond the appointed day during each accounting
year;

(iii) the amount of interest due and payable for the period of delay in making payment (which
have been paid but beyond the appointed day during the year) but without adding the
interest specified under the Act;

(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year;
and

(v) the amount of further interest remaining due and payable even in the succeeding years,
until such date when the interest dues as above are actually paid to the small enterprise,
for the purpose of disallowance as a deductible expenditure under section 23.

• Clause 23: Particulars of payments made to persons specified under section 40A(2)(b).

Section 40(A)(2) provides that expenditure for which payment has been or is to be made to
certain specified persons listed in the section may be disallowed if, in the opinion of the
Assessing Officer, such expenditure is excessive or unreasonable having regard to:

(i) the fair market value of the goods, services or facilities for which the payment is made; or

(ii) for the legitimate needs of business or profession of the assessee; or

(iii) the benefit derived by or accruing to the assessee from such expenditure.

Further, proviso to section 40A(2)(a) provides that no disallowance on account of any
expenditure being excessive or unreasonable having regard to the fair market value, shall be
made in respect of a specified domestic transaction referred to in section 92BA, if such
transaction is at arm's length price as defined in clause (ii) of section 92F.

The section enjoins on the Assessing Officer the power to fix the quantum of disallowance.
Under this clause, the particulars of payments coming under this sub-section are to be stated.
The following steps may be taken by the tax auditor in this connection:

(a) Obtain full list of specified persons as contemplated in this section.

(b) Obtain details of expenditure/payments made to the specified persons.

(c) Scrutinise all items of expenditure/payments to the above persons.

(d) It may be difficult to locate all such payments and it may also involve a time consuming
effort. It is, however, possible to localise the area of enquiry.

Audit checklist for practical understanding:

- Obtain a schedule indicating--
  - Name of the persons specified in section 40A(2)(b);
  - Details of payment made to such persons.
The statement should be furnished as under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of person</th>
<th>Relationship with assessee</th>
<th>Amount</th>
<th>Account head</th>
<th>Nature of Expenditure</th>
<th>Voucher No.</th>
<th>Date</th>
</tr>
</thead>
</table>

It may be noted that in the aforesaid statement, a complete list of persons specified in section 40A(2)(b)(i) should be furnished even where no payment is made to them.

- The details of concerns in which any of the persons specified in section 40A(2)(b)(i) has substantial interest should be furnished as under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of person</th>
<th>Name of concern</th>
<th>Nature of interest</th>
<th>Quantum of interest</th>
</tr>
</thead>
</table>

- Check the particulars with the vouchers and books of account.
- Scrutinise the personal accounts in ledger to identify whether they include the account of any specified persons as per the list given by the client.
- Scrutinise the pay roll to see if any of the specified persons are employed by the assessee.
- Scrutinise the ledger accounts of parties with whom contracts for supply of goods and services have been entered into by the assessee.
- Check the accounts for cash purchases and also accounts of expenses for large amounts.
- Obtain management representation indicating the payment made to related persons and nature of payment.
- In the case of a company, ascertain whether any director or employee of the company has a substantial interest in the company. In that case salary and other payment made to such persons would also have to be indicated.
- Where the transactions are voluminous or the list contains several names, scrutiny to be made to the extent possible. In that case reliance may be made on the information supplied by the client with adequate disclosures in the report.
- Also ask the assessee to furnish details as to payments made to specified persons for services and facilities including purchases.

Illustration:

An assessee has paid Rent to his brother ₹ 2,50,000/- and paid interest to his sister ₹ 4,00,000. State the reporting requirements in the Tax Audit Report.

Solution

(i) **Payment of Rent and Interest:** A tax auditor has to report under Clause 23 of Form 3CD which deals with the particulars of payments made to persons specified under Section 40A(2)(b) of the Income Tax Act, 1961. Where the assessee is an individual, the specified persons include any relative of the assessee (i.e. Husband, Wife, Brother, Sister or any other Lineal Ascendant or Descendant).
(iii) In the present case, an assessee has paid rent to his brother ₹ 2,50,000 and interest to his sister of ₹ 4,00,000 which may be disallowed if, in the opinion of the Assessing Officer, such expenditure is excessive or unreasonable having regard to:

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

Hence this fact needs to be reported in the Tax Audit Report accordingly.

- **Clause 24: Amounts deemed to be profits and gains under section 32AC, 33AB or 33ABA or 33AC.**

Section 32AC allows deduction @ 15% in respect of Investment in new Plant & Machinery to a company who is engaged in the business of manufacture or production of any article or thing and who acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate actual cost of such new assets exceeds one hundred crore rupees. The Finance Act, 2014 has amended section 32AC w.e.f. financial year 2014-15. The investment limit in the plant and machinery has been reduced to ₹ 25 crores from ₹ 100 crores. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (2) of section 32AC. Only because section 32AC(2) provides for chargeability of deemed income under the head “profit and gains from business or profession” in addition to taxability of capital gains, the auditor is not required to report any capital gains/losses arising on transfer on the said asset. The tax auditor will be required to verify the compliance to the conditions of the provisions of section 32AC and report the claim of deduction accordingly.

**Audit checklist for practical understanding:**

- Obtain from assessee details as to deemed profits under section 32AC.
- Obtain from the assessee the details regarding Deposit Account, Site Restoration Account and Reserve account for shipping business.
- Verify the accuracy of details given by the assessee by scrutinizing the books of account and other relevant documents or evidence.
- Make sure that asset acquired through deposit account is sold or transferred before expiry of eight years from the date of acquisition.
- Verify the manner of utilisation of amount withdrawn from the specified reserve account.
- Make a reference to the relevant sections to ascertain as to when any profit is deemed under such sections.
- Check whether any such event took place due to which profits are to be deemed under these sections in case of the assessee. If yes, then check that the profit amount is determined as per the requirement of the relevant sections.
- Obtain a Schedule indicating the amount deemed as profit and gains under the relevant sections.
- Review all the related accounts to ascertain that the profits are properly accounted for.

Note: No deduction is allowable under section 33AC from the assessment year 2018-19.

• Clause 25: Any amount of profit chargeable to tax under section 41 and computation thereof.

The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence, etc. He should in all relevant cases examine the past records to satisfy himself about the correctness of the information provided by the assessee. The tax auditor has to state the profit chargeable to tax under this section. This information has to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not. The computation of the profit chargeable under this clause is also to be stated.

The tax auditor should maintain the following in his working papers for the purpose of furnishing details required in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of person</th>
<th>Amount of income</th>
<th>Section</th>
<th>Description of transaction</th>
<th>Computation if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

Audit checklist for practical understanding:

- Obtain a schedule indicating amount of profit chargeable to tax under section 41.
- In order to provide information required under clause 25 it is necessary that past income-tax records of the assessee be examined in order to ascertain the amount for which deduction was allowed.
- Obtain copies of at least three years profit and loss account and see whether any bad debts have been written off during such years. Also see the list of parties in case of which bad debts were written off. If the parties are still dealing with the concern, check that the amount received from such parties match with the bills. If any payment is not against bill, it might have been received against bad debts written off.
- In case the assessee is engaged in the scientific research then check whether an asset representing capital expenditure on scientific research, within the meaning of section
35(1)(iv) or 35(2B)(c), is sold without having been used for other purposes and the proceeds of the sale together with the total amount of deductions made under section 35(2)(i) or 35(2)(ia) or 35(2B)(c) exceed the amount of the capital expenditure. If yes, then the excess so realised will be charged to tax.

Inquire whether the assessee has received during the year, any amount towards an allowance or deduction, made in the assessment for any previous year. If yes, then the same in taxable.

- Clause 26: In respect of any sum referred to in clause (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:

  (A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was

  (a) paid during the previous year;

  (b) not paid during the previous year;

  (B) was incurred in the previous year and was

  (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

  (b) not paid on or before the aforesaid date.

(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account.)

In the case of an assessee maintaining its accounts on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year as well as return of income for the earlier assessment years so that the information about the aforesaid payments made in the subsequent year can be furnished.

The tax auditor, in his tax audit report, should clearly distinguish the liability incurred during the previous year in respect of all the specified sums referred to in clauses (a) to (g) from the liability that pre-existed on the first day of the relevant previous year.

In some cases the tax auditor may find amounts of the nature referred to in section 43B being credited to the profit and loss account although the relevant provisions for such liability had not been allowed as a deduction in any previous year in view of the specific provisions of section 43B requiring actual payment as a condition precedent to allowance. The amounts so credited to the profit and loss account are not chargeable to tax since the conditions referred to in section 41(1) have not been satisfied. The tax auditor should identify such items and maintain the same in his working papers.
Audit checklist for practical understanding:

- Obtain from the assessee the particulars as to tax, duty, cess, fee, other sum, the amount paid and the amount provided for.

- Identify the following kind of taxes, duties and other sums covered by section 43B:
  (i) Fees
  (ii) Cesses
  (iii) Contribution to any other fund for welfare of employees
  (iv) Contribution to gratuity fund
  (v) Contribution to superannuation fund
  (vi) Contribution to provident fund
  (vii) Municipal or local taxes
  (viii) Sales-tax
  (ix) Excise duty
  (x) Other taxes under any law
  (xi) Interest on any loan or borrowing from any financial institution or a state financial corporation or a state industrial investment corporation.
  (xii) Interest on any loan or borrowing from a scheduled bank. [Effective from assessment year 1997-98]

- Verify the payments with challans or receipts.

- Check the ledger accounts of the above mentioned taxes, duties, etc., to verify the correctness of particulars furnished by the assessee.

- Where the assessee claims that any sum payable in terms of clause (a) to (g) of section 43B has been paid before the due date for furnishing return of income insist on proof of payment and obtain a copy thereof.

- Ascertain the method of accounting followed by the assessee. Where mercantile system of accounting is followed, then see whether a part of the amount debited in profit and loss account has not been paid during the relevant year. In case of cash system of accounting there will be no question of any amount being debited to the Profit and Loss Account which has not been paid during the previous year.

- Obtain a schedule showing the following information in respect of amount referred to in clauses (a) to (g) of section 43B--
  - liability existed at the beginning of the year;
- Amount paid towards such liability during the year and also the amount not so paid.
- Amount incurred during the previous year, amount paid during the previous year, amount remaining unpaid as at the end of the previous year, amount paid before the due date of furnishing of return and amount remaining unpaid as on that date.
- In case there is any pre-existed liability in respect of sum specified in section 43B [clauses (a) to (g)] then trace the date of origin of such liability through preceding years record and find out whether such liability was allowed in the past or not. For this purpose check preceding year's assessment return.
- Obtain a list indicating name of the employees and corresponding sum payable by an assessee as an employer for contribution to provident fund or gratuity fund or superannuation fund or any other fund for the welfare of such employees.

**Clause 27(a): Amount of Central Value Added Tax/GST credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax/GST credits in the accounts.**

The tax auditor should verify that there is a proper reconciliation between balance of CENVAT/GST credit in the accounts and relevant excise and service tax records. The tax auditor should report the amount of CENVAT/GST availed and utilised under this sub-clause. In a given case CENVAT/GST availed may be lesser than the CENVAT/GST credit utilised during the year on account of opening balance in CENVAT/GST account or vice-versa and as such it would be advisable, in order to avoid any misleading conclusion and inferences, to report the opening and closing balances of CENVAT/GST. Further the sub-clause requires reporting of the credits availed of or utilized during the previous year, it is desirable to report both the credits availed and the credits utilized.

In so far as the reporting of accounting treatment of CENVAT/GST credit is concerned the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT/GST credit in the account have to be reported upon.

The tax auditor should maintain the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>CENVAT/GST</th>
<th>Amount</th>
<th>Treatment in Profit &amp; Loss Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening balance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENVAT/GST Availed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENVAT/GST utilized</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closing / outstanding Balance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Clause 27(b): Particulars of income or expenditure of prior period credited or debited to the profit and loss account.**
It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current year’s expenses/income even though they may relate to earlier years. The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed. In the case of a person whose accounts of the business or profession have been audited under any other law, the information may be available from annual accounts. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, however, a close scrutiny of the ledger in regard to the period for which expenditure or income is entered in the account books may be necessary.

The tax auditor should maintain the following information in his working papers file for the purpose of reporting in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Type</th>
<th>Particulars</th>
<th>Amount</th>
<th>Prior Period to which it relates (Year in yyyy-yy format)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

Audit checklist for practical understanding:

(i) CENVAT Credits [Clause 27(a)]

The auditor should check records related to CENVAT/GST.

The auditor shall go through relevant records to find out details regarding CENVAT/GST credit available/receivable, Treatment of CENVAT/GST credit availed of during standing at the year and the CENVAT/GST credit outstanding at the year end.

The auditor shall check that CENVAT/GST credit is availed of only against the duty payable on final products.

Check the CENVAT/GST receivable account and collect the following information therefrom--

- Opening balance;
- CENVAT/GST credit availed of during the year;
- CENVAT/GST credit utilised during the year;
- Treatment of both the above in the profit and loss account and also the treatment of CENVAT/GST credit outstanding at the year end.

Ask the assessee to furnish details as to accounting policy followed in respect of CENVAT/GST. See that such policy is in consonance with the Guidance Note issued by the ICAI on Accounting for CENVAT/GST.
(ii) **Expenditure/Income of Earlier Years Debited/ Credited in Current Year [Clause 27(b)]**  

- Ask the assessee to furnish a schedule indicating particulars of expenditure/ income of any earlier year debited/credited to the Profit & Loss account of the relevant previous year.
- Verify various expenses account to see whether any expenditure pertaining to any earlier year has been debited to the profit and loss account. For example, an assessee might have paid some certification fee etc., for four years in the year under audit. In that case payment of expenses for previous three years would be prior period payment.
- Also see that all such items are properly disclosed.
- Check while conducting the routine audit, that there is no expenditure/ income relating to earlier years that has not been mentioned in the particulars furnished by the assessee.
- In case of cash system of accounting, there will be no amount to be disclosed under this head.

- **Clause 28:** Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia), if yes, please furnish the details of the same.

**Audit checklist for practical understanding:**

- **(a)** Check whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia) if yes, note down the details of the same.
- **(b)** Obtain from the auditee, a list containing the details of shares received, if any, by him from any other company and verify the same from the books of accounts and other relevant documents.
- **(c)** Check books of accounts with reference to investments or stock in trade.
- **(d)** In case such shares are received without consideration, the same may not be reflected in the books of accounts. Such shares may be verified from the relevant documents such as share certificates issued, if any, demat account statement etc.
- **(e)** Consider the provisions of Rule 11UA(1)(c).

- **Clause 29:** Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish the details of the same.
Audit checklist for practical understanding:

(a) Check whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib); if yes, note down the details of the same.
(b) Section 56(2)(viib) is applicable to companies in which public is not substantially interested, therefore, reporting under this clause is to be done only for corporate assessees.
(c) Obtain from the auditee, a list containing the details of shares issued, if any, by him to any person being a resident and verify the same from the books of accounts and other relevant documents.
(d) Consider the provisions of Rule 11UA(1)(c)(a).

- Clause 30: Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D].

Audit checklist for practical understanding:

- Ask the assessee whether any amount has been borrowed on hundi. If yes, then ask whether any amount due in respect of such hundi has been repaid during the year including interest payment.
- Obtain from the assessee particulars of any amount borrowed on hundi or any amount due thereon, including interest on the amount borrowed or repaid otherwise than by an account payee cheque.
- Check whether any such repayment/payment has been made otherwise than by an account payee cheque. If yes, then list out the amount involved on a transaction-to-transaction basis indicating date of payment and mode of payment.
- Obtain management representation that there has not been made any repayment of amount borrowed on hundi or payment of interest in respect thereof otherwise than by account payee cheque.
- Give a note suggested by ICAI that it is not possible for me/us to verify whether the amounts borrowed on hundi or any amount due thereon (including interest on the amount borrowed) were repaid otherwise than by an account payee cheque, as the necessary evidence is not in the possession of the assessee.
- This note may not be given in e-report but may be given in the physical report.

Details of amount borrowed on a hundi and details of payment should be furnished as under:
13.77

**Clause 31 (a)**: Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:

(i) name, address and permanent account number (if available with the assessee) of the lender or depositor;

(ii) amount of loan or deposit taken or accepted;

(iii) whether the loan or deposit was squared up during the previous year;

(iv) maximum amount outstanding in the account at any time during the previous year;

(v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(v) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)*

Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As per this section, no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more.

For the purposes of section 269SS "loan or deposit" means loan or deposit of money.
If the total of all loans/deposits from a person exceed ₹ 20,000 but each individual item is less than ₹ 20,000, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches ₹ 20,000 or more and until the balance goes down below ₹ 20,000. As such the tax auditor should verify all loans/deposits taken or accepted where balance has reached ₹ 20,000 or more during the year for the purpose of reporting under this clause.

- **Clause 31 (b):** Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-
  
  (i) name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;

  (ii) amount of specified sum taken or accepted;

  (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

  (iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

  (Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

- **Clause 31 (c):** Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:-

  (i) name, address and Permanent Account Number (if available with the assessee) of the payee;

  (ii) amount of the repayment;

  (iii) maximum amount outstanding in the account at any time during the previous year;

  (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;

  (vi) in case the repayment was made by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limits specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loans or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. The tax auditor should verify such repayments and report accordingly.
• Clause 31 (d): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:

(i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;

(ii) amount of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

• Clause 31 (e): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:

(i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;

(ii) amount of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act).

• Clause 32(a): Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Assessment year</th>
<th>Nature of loss / allowance (in rupees)</th>
<th>Amount as returned (in rupees)</th>
<th>Amount as assessed (give reference to relevant order)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders. A reporting format is prescribed for the sake of standardization.

At times while the particular claim for loss/allowance pertains to a particular assessment year as per the return of income, the same may relate to another assessment year as per the assessment order, e.g., depreciation claim in respect of assets capitalized at the end of the financial year. In those cases, once the assessment order is received, the particulars have to be re-stated with
reference to the assessment year to which they relate as per the assessment order. This should be accompanied by suitable explanation in the remarks column.

The e-filing utility may require additional information regarding the relevant order. The information is required to be disclosed to the extent available. The tax auditor should consider the above guidance for the purpose of reporting under this clause in the format provided in the e-filing utility.

- **Clause 32(b):** Whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.

Section 79 of the Act provides that, notwithstanding anything contained in Chapter VI of the Act, in the case of a company, not being a company in which the public are substantially interested, where a change in shareholding has taken place in a previous year, then no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of that previous year and on the last day of the previous year in which the loss was incurred, the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons.

- **Clause 32(c):** Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, if yes, please furnish the details of the same.

Section 73 of the Act provides for the treatment of losses in speculation business. Section 73(1) provides that any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

The tax auditor should maintain the prescribed information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

- **Clause 32(d):** Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.

Section 73A provides for provisions relating to carry forward and set off of losses by specified business. It provides that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

Under clause 32(d), the tax auditor has to verify from the books of accounts and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses and loss has been incurred in both the business, the details of the loss incurred with respect of each business is to be specified separately.
The tax auditor should maintain the prescribed information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

- **Clause 32(e):** In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.

The Explanation to section 73 provides that where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources" or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. The Finance Act, 2014 has amended the explanation to section 73 by deleting the words “the principal business of which is the business of trading in shares” from financial year 2014-2015.

Under this clause, the tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred in explanation to section 73. The auditor may obtain information in the following format from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents.

The prescribed information so maintained may be used by the tax auditor for the purpose of reporting against this clause in the format provided in the e-filing utility.

**Audit checklist for practical understanding:**

- Obtain a schedule indicating the amount of loss brought forward or any unabsorbed depreciation. Brought forward losses classified as per section involved.
- Obtain from the assessee all the relevant information which are required to be reported upon. The method of reporting in this regard is as under--

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Assessment Year</th>
<th>Nature of loss/allowance (in ₹)</th>
<th>Amount as returned (in ₹)</th>
<th>Amount as assessed (give reference to relevant order)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Make sure that brought forward loss from house property is set off only against the income from house property and further ensure that no loss is brought forward after expiry of eight assessment years beginning immediately succeeding the assessment year for which the loss was first computed.
- Check in respect of business losses that the same are only in consequence of business or profession and claimed by the person who incurred it and it is not brought forward for a period of more than eight assessment years immediately succeeding the assessment year.
for which the loss was first computed.

- Further make sure that losses of illegal business are not carried forward and if it is claimed to be set off it is only against the income of the same illegal business.
- In case of amalgamation or demerger, verify that accumulated loss and unabsorbed depreciation of amalgamating company is deemed to be the loss of the amalgamated company and the period of eight years for carry forward and set off is reckoned from the assessment year immediately succeeding the assessment year for which the loss was first computed.
- Check in case of demerger that if the accumulated loss or unabsorbed depreciation is not directly relatable to the undertaking the same is apportioned between the demerged company and the resulting company in same proportion in which the value of the assets have been transferred.
- Make sure that losses from the speculation business are claimed to set off only against profits in speculation business and further ensure that loss is not brought forward for more than four years. [Eight years upto assessment year 2005-06]
- Also make sure that in case of loss under the head capital gains the same is not brought forward for more than eight years beginning from the assessment year immediately succeeding the assessment year for which the loss was first computed.
- Verify that unabsorbed loss from the activity of owning and maintaining race horses is not brought forward for more than four years beginning from the assessment year immediately succeeding the assessment year for which the loss was first computed.
- Check whether the assessee is a company not being a company in which public are substantially interested.
  (i) Check whether there has taken place any change in the shareholding pattern of the company during the previous year.
  (ii) Check whether the company has incurred any loss in any year prior to the previous year under audit. If yes, then ensure that the shares of the company carrying not less than fifty-one per cent of the voting power are beneficially held by persons who beneficially held such shares on the last day of the year or years in which the loss was incurred. Otherwise loss would not be allowed to be carried forward.
  (iii) Ensure that change in shareholding does not take place consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift. In that case section 79 would not apply and hence loss would be allowed to be carried forward.
- Make sure that assessee has filed return within the time allowed under section 139(1), if there is any loss to be brought forward under the head business or profession, capital gain or horse race.
- Check the relevant assessment order to ascertain the amount actually allowed to be brought forward. Also, check the subsequent return to determine whether any set-off claimed/allowed in any subsequent years.
- If the assessment has not been made, check the return for the year in which such loss/depreciation was first claimed to be carried forward. Also, check the subsequent return to determine whether any set-off claimed/allowed in any subsequent years.
- Clause 33: Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

| Section under which deduction is claimed | Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf. |

Audit checklist for practical understanding:

- Obtain from the assessee all the details of deductions claimed under chapter VI-A and Chapter III (Section 10A and 10AA). Deduction claimed under each section should be checked separately. The details may be obtained in the following manner--

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section</th>
<th>Qualifying amount, if required</th>
<th>Admissible deduction</th>
<th>Consecutive years from which deduction is claimed, if required</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Ensure that the assessee fulfils all the conditions specified in the sections under which deduction is claimed.
- Deductions are claimed correctly by taking into consideration the status of the assessee.
- Under certain sections deduction is admissible for a limited period as under sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE hence the validity of the deduction is to be checked by taking into consideration the scheme of relevant section.
- Some special privileges are given to senior citizens as appeared under sections 80D and 80DDB, hence check that deduction has been rightly claimed in case of such assessees in order to get maximum benefits.
- Verify the validity of deduction claimed under section 80G by scrutinising the relevant receipts.
- Check the correctness of amount and period of deduction under various sections by scrutinising the books of accounts, and relevant documents if required to be looked into in view of the scheme of the relevant section.

- Clause 34 (a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:
While reporting under this clause the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the applicability of the provisions of Chapter XVII-B or XVII-BB with regard to the auditee. The tax auditor may rely upon the judicial pronouncements while taking any particular view.

The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS return by the assessee for verifying the information required to be provided under this clause.

- **Clause 34 (b)** Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

<table>
<thead>
<tr>
<th>Tax deduction and collection Account Number (TAN)</th>
<th>Type of Form</th>
<th>Due date for furnishing</th>
<th>Date of furnishing, if furnished</th>
<th>Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
• **Under clause 34(b),** the tax auditor has to ascertain and report as to whether the assessee has furnished the statement of tax deducted or tax collected at source within the prescribed time.

Clause 34(b) also requires the auditor to report the transactions with regard to each TAN for which tax has been deducted but the return has either not been filed or has been filed after the expiry of the prescribed time. With regard to each TAN, the auditor is required to mention the “Type of form” that was applicable like Form 24, 24G, 24Q, 26, 26A, 26B, 26Q etc, due date of furnishing such statement and the actual date of furnishing, if the statement(s) has been furnished. Lastly, the auditor is required to state as to whether the statement of tax deducted or collected, which has been furnished beyond prescribed time contains information about all the transactions which are required to be reported.

• **Clause 34 (c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).** If yes, please furnish:

<table>
<thead>
<tr>
<th>Tax deduction and collection Account Number (TAN)</th>
<th>Amount of interest under section 201(1A)/206C(7) is payable</th>
<th>Amount paid out of column (2) along with date of payment.</th>
</tr>
</thead>
</table>

Under this clause, the auditor is required to furnish detailed information in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. Section 201(1A) provides for payment of interest at a specified rate in case the tax has not been deducted wholly or partly or after deducting has not been paid to the credit of Central Government as required by the Act. Similarly, section 206C(7) provides for payment of interest at a specified rate in case the tax is not collected wholly or partly or if collected not paid to the credit of the Central Government as required by the Act. The reporting as to whether the assessee is liable to pay such interest, should be in consonance with the reporting under clause 34(a) where the details of non-deduction are required to be reported by him.

**Audit checklist for practical understanding :**

(a) Check whether the assessee has made any payments during the year on which tax is deductible/collectible under Chapter XVII-B/Chapter XVII-BB.
(b) Check whether the tax has been deducted/collected as per rates prescribed under Chapter XVII-B/Chapter XVII-BB.
(c) Ask the assessee, whether he has deducted/collected any tax at source.
(d) Check whether the assessee has deducted/collected tax by the time by which he was required so to do.
(e) If tax is deducted/collected, then enquire whether the same has been deposited with the government in accordance with the requirements of Chapter XVII-B/Chapter XVII-BB.
this purpose see the copy of challan indicating deposit of tax deducted/collected along with the date of deposit.

(f) Obtain from the assessee a statement giving details of tax deducted/colleced at source in the following format:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section</th>
<th>Nature of payment</th>
<th>Total Amount</th>
<th>TDS Amount</th>
<th>Date of Tax deduction</th>
<th>Date of payment to government</th>
</tr>
</thead>
</table>

(g) Check whether the date of deposit falls within the time specified in Chapter XVII-B/Chapter XII-BB read with relevant rule 30.

(h) A tax-auditor should keep in mind laws relating to tax deduction/collection at source and various case law so as to detect any case of contravention or default of the provisions of Chapter XVII-B/Chapter XII-BB, besides giving genuine advice to his clients.

(i) He should see all the accounts of cash, creditors, expenditure accounts such as salary, commission, interest and TDS/TCS account. Besides, he should examine challans, copy of TDS/TCS returns, declaration form for not deducting/collccting tax or deducting tax at a lower rate, etc.

(j) Reporting, if any, required under this clause can be done in the format prescribed under the clause itself.

- **Clause 35 (a)** In the case of a trading concern, give quantitative details of the principal items of goods traded:
  
  (i) Opening stock;
  
  (ii) Purchases during the previous year;
  
  (iii) Sales during the previous year;
  
  (iv) Closing stock;
  
  (v) shortage / excess, if any.

  The tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/ excess/damage and the reasons thereof.

- **Clause 35 (b)** In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products:

<table>
<thead>
<tr>
<th>Raw materials</th>
<th>Finished products / By-products</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>B.</td>
</tr>
<tr>
<td>(i) opening stock;</td>
<td>(i) opening stock;</td>
</tr>
<tr>
<td>(ii) purchases during the previous year;</td>
<td>(ii) purchases during the previous year;</td>
</tr>
</tbody>
</table>
(iii) consumption during the previous year;
(iv) sales during the previous year;
(v) closing stock;
(vi) yield of finished products;
(vii) percentage of yield;
(viii) shortage / excess, if any.

(iii) quantity manufactured during the previous year;
(iv) sales during the previous year;
(v) closing stock;
(vi) shortage / excess, if any.

Audit checklist for practical understanding:

- Where the client has not maintained any stock record and has compiled the information from the books of account then this fact must be disclosed in the statement of particulars in Form 3CD.

- Ask whether the assessee maintains stock register.
  (a) If not then qualify the report.
  (b) If yes, then:
    - Cross check the details of opening stock with the details of closing stock disclosed in the preceding previous year. Also match the same details with the audit report of the preceding previous year.
    - Ascertain the figures as to purchase, sale during the year and also the closing stock at the year end.

- Ask the assessee to prepare a schedule indicating the opening stock, purchases during the year, sales during the year and closing stock.

- Ascertain whether there is any shortage/excess.

- Obtain a copy of stock statement given to bankers.

- Obtain management representation as to quantitative details.

- For, yield of finished products; percentage of yield; shortage/excess, if any state that the information is given as submitted/ explained by the client.

- Clause 36: In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form:-
  (a) total amount of distributed profits;
  (b) amount of reduction as referred to in section 115-O(1A)(i);
  (c) amount of reduction as referred to in section 115-O(1A)(ii);
(d) total tax paid thereon;
(e) dates of payment with amounts.

Audit checklist for practical understanding:

- This clause, however, applies in case of company assessee only.
- Obtain from the assessee the details regarding the amount distributed as profits, tax on such distributed profits and the relevant dates of their payment with amount.
- See the challan copy to verify the date of payment.
- Check the ledger account of the shareholders so as to verify the correctness of particulars furnished by the assessee.
- Make sure that tax on distributed profits is paid to the credit of the Central Government within fourteen days from the date of declaration of any dividend or distribution of any dividend, whichever is earlier.
- Make sure that no deduction is claimed under any other provision by the company or a shareholder in respect of the amount of tax paid.
- No need to report whether the date of payment is per law.

- Clause 37: Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

Audit checklist for practical understanding:

Ask from the assessee whether any cost audit was conducted during the year.

If yes, than take note of any observation in the cost audit report.

No need to report in case the Cost Audit is ordered but not carried out during the year.

Collect details if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

- Clause 38: Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.
Audit checklist for practical understanding

(i) Tax auditor to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor

The tax auditor should ascertain from the management whether any audit was conducted under section 72A of the Finance Act, 1994 and if such audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.

(ii) Information about service audit ordered but not completed

In cases where service tax audit, which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since service tax audit is not completed and the service tax audit report is not available with the assessee.

(iii) Information about only such audit covered by the period of tax audit report

The tax auditor should examine the time period for which the service tax audit, if any, has been required to be carried out. Information is required to be given only in respect of such
service tax audit report the time period of which falls within the relevant previous year. In effect the information is required to be given in respect of that service tax audit report which is received upto the date of tax audit report.

- **Clause 40:** Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Particulars</th>
<th>Previous year</th>
<th>Preceding previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Total turnover of the assessee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Gross profit/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Net profit/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Stock-in-trade/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Material consumed/finished goods produced</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

These ratios have to be calculated only for assessees who are engaged in manufacturing or trading activities. Moreover, the ratios have to be given for the business as a whole and need not be given product wise. Further, the ratio mentioned in (5) need not be given for trading concern or service provider.

**Audit checklist for practical understanding:**

- Determine the different ratios by culling out relevant information from the Manufacturing/Trading and Profit and Loss account.
- There can be different interpretations as to the items involved like gross profit, turnover, stock-in-trade. Place a suitable note explaining the basis adopted.
- Calculate ratios for different business lines separately.
- Ratios need not be calculated product-wise.
- In case of trading concern, no reporting shall be made in respect of Materials Consumed/Finished goods produced.
- Calculation of ratios shall be given along with the computation of key terms.

**Clause 41:** Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.
The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1956 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/refund orders issued by the governmental authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act. The auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause.

If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause.

The tax auditor should maintain the information prescribed in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

Audit checklist for practical understanding:

(i) **Tax auditor to obtain copy of demand/refund order**

   The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1956 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/refund orders issued by the governmental authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act. Normally, the Indirect tax laws such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax, GST etc would be covered as other tax laws. Hence, the cess or duty like Marketing Cess, Cess on Royalty, Octroi Duty, Entry Tax etc. would not be covered as other tax laws. However, the auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

(ii) **Demand/refund order for any year other than previous year**

   It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause. The tax auditor should verify the books of account and the orders passed by the respective Department for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same. If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause.

(iii) **Details to be maintained by tax auditor**

   The tax auditor should maintain the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.
Signature and Stamp/Seal of the Signatory: Form 3CD has to be signed by the person competent to sign Form No. 3CA or Form No. 3CB as the case may be. He has also to give his full name, address, membership number, firm registration number, wherever applicable, place and date. Further, the e-filing portal requires the tax auditor to affix his Digital Signature while registering himself. He is also required to put his stamp/Seal as well.

6. CODE OF ETHICS AND OTHER MATTERS

Some of the issues which are commonly raised in regard to different aspects of tax audit vis-à-vis the liability / obligations of the tax auditor are considered hereunder.

1. The liability of the tax auditor in respect of tax audit will be the same as in any other audit assignment. It may be noted that when any question relating to the audit conducted by a tax auditor arises, he is answerable to the Council of the Institute under the Chartered Accountants Act. In all matters concerning tax audit, ICAI’s disciplinary jurisdiction will prevail.

2. In case the assessee is found guilty of having concealed the particulars of his income it would not ipso facto mean that the tax auditor is also responsible. If the Assessing Officer comes to the conclusion that the tax auditor was grossly negligent in the performance of his duties, he can refer the matter to the ICAI so that appropriate action can be taken against the tax auditor under the Chartered Accountants Act.

3. The Assessing Officer or any other authority who is authorised to issue summons and to call for evidence or documents, can call upon the tax auditor who has audited the accounts to give any evidence or produce documents. For this purpose notice under section 131 can be issued by the Assessing Officer or other tax authority mentioned in the said section.

4. If the actual work relating to examination of books and records is done by a qualified assistant in a firm of chartered accountants and the partner of the firm signing the audit report has relied upon this work, action, if any, for professional negligence can be initiated against
the member who has signed the report and in such an event, it would be open for the member concerned to prove that he has taken due care and diligence in the performance of his duties and is not aware of any reason to believe that he should not have so relied.

5. If the qualified assistant (whether or not holding the certificate of practice) is found to be grossly negligent in the performance of his duties, the Council of the Institute can take disciplinary action against him.

6. A tax auditor can accept the assignment of tax representation.

7. Under the Code of Ethics, no tax auditor can charge professional fees by way of percentage of profits or which are contingent upon findings, or results of such employment, except as permitted under any regulation made under this Act.

8. Since the figures in Form No. 3CD are duly verified by a chartered accountant, they should normally be accepted by tax authorities. If, however, there is a specific reason for differing from the view taken by tax auditor, the Assessing Officer may compute the income of the assessee by adopting different figures.

9. The opinion expressed by the tax auditor is not binding on the assessee. If the tax auditor has qualified his report and expressed an opinion on a particular item, the assessee may take a different view while preparing his return of income. In such cases, it is advisable for the assessee to state his viewpoint and support the same by any judicial pronouncements on which he wants to rely.

**Format of Financial Statements:** The tax auditor of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited has to give his report in Forms No. 3CB/3CD and will have to ensure that the financial statements i.e. balance sheet and profit and loss account/ income and expenditure statement, are prepared in such a manner that adequate information which is necessary to convey a true and fair view of the state of affairs of the assessee is given. So far as a person whose accounts of the business or profession have been audited under any other law is concerned, the information to be given in the financial statements is normally provided in the particular statute by which the assessee is governed. Since there is no such legislation in respect of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, it is necessary to achieve some uniformity in respect of information to be provided in the financial statements. For presentation and disclosure requirements, applicable AS and AS (IT) should be kept in mind.

[Note: Students may refer “Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961” given in CD with Handbook on Auditing Pronouncements for comprehensive knowledge.]
7. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS

The GST roll out on 1st July 2017 has paved the way for realization of the goal of “one nation-one tax-one market”. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Definition of “Audit” has been as per section 2(13) of the CGST Act, 2017 is given below:

“audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.”

The definition of ‘audit’ under the Act is a wide term covering the examination of records, returns and documents maintained/ furnished under this Act or Rules and under any other law in force. Any document, record maintained by a registered person under any law can thus be called upon and audited. It becomes critical for the person to maintain true documents/ records to ensure correctness and smooth conduct of audit.

7.1 Types of Audit under GST

GST envisages three types of Audit.

(1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]

(2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]

(3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]
7.1.1. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

(i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores.

Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of:
- Audited annual accounts
- A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.

Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 65</td>
<td>Audit by tax authorities</td>
<td>The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.</td>
</tr>
</tbody>
</table>

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7.1.3. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- Value has not been correctly declared; or
- Credit availed is not within the normal limits.

It would be interesting to know how these ‘subjective’ conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

**Circumstances for Notice for Special Audit:** An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of Rule 102 (1) FORM GST ADT-03

The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

**Time Limit to Submit the Audit Report:** The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) FORM GST ADT-04.

**Extension in Submission of Audit Report:** In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

Considering the special nature of this audit, i.e. audit having been conducted under other proceedings or under other laws; this does not preclude the proper officer from exercising this option.

While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered
person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

**Expenses for Examination and Remuneration for Audit:** The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

During the course of audit, the registered person to afford the auditor with the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the CGST Rules on Assessment and Audit Rules, the auditor shall verify the documents on the basis of which the accounts are maintained and the periodical returns/statements are furnished. While conducting the audit, the auditor is authorized to:

- Verify books & records
- Returns & statements
- Correctness of turnover, exemptions & deductions
- Rate of tax applicable in respect of supply of goods and/or services
- The input tax credit claimed/availed/unutilized and refund claimed.

Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused. This could be done by verifying:

(a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.

(b) The Information System Audit report and the internal audit report.

(c) Internal Control questionnaire designed for GST compliance.

(i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.

(ii) The reconciliation of the books of account or reports from the ERP’s to the return is imperative.

(iii) The review of the gross trial balance for detecting any incomes being set off with expenses.

(iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.

(v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.

(vi) Ratio analysis could provide vital clues on areas of non-compliance.
7.2 Format of Audit report under the GST law:

Form GST ADT-04

[See Rule 102(2)]
Reference No. :

Date :

To,

GSTIN ………………………………
Name ………………………………
Address ………………………………

Information of Findings upon Special Audit

Your books of account and records for the F.Y………………..…. has been examined by ……………………… (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of information available/documents furnished by you and the findings/discrepancies are as under :

<table>
<thead>
<tr>
<th>Short payment of</th>
<th>Integrated tax</th>
<th>Central tax</th>
<th>State/UT tax</th>
<th>Cess</th>
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</thead>
<tbody>
<tr>
<td>Tax</td>
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<tr>
<td>Interest</td>
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<tr>
<td>Any other amount</td>
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</tr>
</tbody>
</table>

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature ........................................
Name ...........................................
Designation .....................................

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TEST YOUR KNOWLEDGE

Theoretical Questions

1. Mr. A engaged in business as a sole proprietor presented the following information to you for the FY 2017-18. Turnover made during the year ₹ 124 lacs. Goods returned in respect of sales made during FY 2016-17 is ₹ 20 lacs not included in the above. Cash discount allowed to his customers ₹ 1 lac for prompt payment. Special rebate allowed to customer in the nature of trade discount ₹ 5 lacs. Kindly advise him whether he has to get his accounts audited u/s 44AB of the Income Tax Act, 1961.

2. Comment with respect to computation of total sales, turnover or gross receipts in business exceeding the prescribed limit under Section 44 AB of Income Tax Act, 1961.
   (i) Discount allowed in the sales invoice
   (ii) Cash discount
   (iii) Price of goods returned related to earlier year
   (iv) Sale proceeds of fixed assets.

3. Write a short note on - Method of accounting in Form No. 3CD of Tax Audit.

4. ABC Pvt. Ltd. and XYZ Pvt. Ltd. are the companies in which public are not substantially interested. During the previous year 2017-18, ABC Pvt. Ltd. received some property, being shares of XYZ Pvt. Ltd., the details of which are provided below:

   No. of Shares: 1,000
   Aggregate fair market value of shares: ₹ 75,000
   Consideration value: Nil

   The management of the company contends that the shares need not to be furnished in Form No. 3CD. As the tax auditor of ABC Pvt. Ltd., how would you deal with the matter?

5. ABC Printing Press, a proprietary concern, made a turnover of above ₹ 1.03 crore for the year ended 31.03.2018. The Management explained its auditor Mr. Z, that it undertakes different job work orders from customers. The raw materials required for every job are dissimilar. It purchases the raw materials as per specification/ requirements of each customer, and there is hardly any balance of raw materials remaining in the stock, except pending work-in-progress at the year end. Because of variety and complexity of materials, it is rather impossible to maintain a stock-register. Give your comments.
6. A Co-operative Society having receipts above ₹ 1 crore gets its accounts audited by a person eligible to do audit under Co-operative Societies Act, 1912, who is not a Chartered Accountant. State with reasons whether such audit report can be furnished as tax audit report under Section 44AB of the Income-tax Act, 1961?


8. State whether a Tax audit report can be revised and if so state those circumstances.

9. Briefly discuss the provisions given under section 66 regarding Special Audit required under CGST Act.

**Answers to Theoretical Questions**

1. Turnover limit for the purpose of Tax Audit: The following points merit consideration as stated in the Guidance note on Tax Audit issued by the Institute of Chartered Accountants of India-

   (i) Price of goods returned should be deducted from the figure of turnover even if the return are from the sales made in the earlier years.

   (ii) 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.

   (iii) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount.

Applying the above stated points to the given problem,

1. **Total Turnover** 124 Lacs
2. **Less – (i) Goods Returned** 20 Lacs
   (ii) Special rebate allowed to customer in the nature of trade discount would be deducted 5 Lacs

   **Balance** 99 Lacs

As the limit for tax audit is ₹ one crore, he would not be required to get his accounts audited under section 44AB of the Income Tax Act, 1961.

2. **Computation of Sales, Turnover or Gross Receipts:**

   In the context of section 44AB of the Income Tax Act, 1961: Following considerations are required with regard to computation of sales, turnover or gross receipts in business exceeding the prescribed limit under section 44AB of the Income Tax Act, 1961 -

   (i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.
(ii) 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. Therefore, should not be deducted from the turnover.

(iii) Price of goods returned should be deducted from the turnover even if the returns are from the sales made in the earlier year/s.

(iv) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.

3. **Method of accounting in Form No. 3CD of Tax Audit**: Clause 13 of Form No. 3CD of the tax audit requires to state method of accounting employed in the previous year. It also requires to state the change in method of accounting vis-à-vis the preceding year. If so, details of change and the effect on the profit or loss are to be stated. Also details of deviation thereof if any, from accounting standards prescribed under section 145 and the effect thereof on the profit or loss are stated. Section 145 provide that method of accounting be either cash or mercantile. Hybrid system is not permitted.

4. **Reporting for Receipt of Shares, the Aggregate Fair Market Value of Which Exceeds ₹ 50,000**: In this case, ABC Pvt. Ltd. is a company, other than a company in which the public are substantially interested. During the previous year 2017-18, the company received property, being shares, for no consideration, the aggregate fair market value of which is ₹ 75,000.

Provisions and Explanations: A tax auditor has to furnish the details of shares received during the previous year, under clause 28 of Form 3CD, in case, the assessee has received any property, being share of a company not being a company in which public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia) of the Income Tax Act, 1961.

Section 56(2)(viia) provides that where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year any property being shares of a company not being a company in which the public is substantially interested,

(i) without consideration, the aggregate fair market value of which exceeds ₹ 50,000, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹ 50,000, the aggregate fair market value of such property as exceeds such consideration,

shall be chargeable to income-tax under the head “Income from other sources”.

The fair market value of shares means the value as determined in accordance with the method prescribed in Income Tax Rules, 1962.
Conclusion: As per the facts of the case, provisions and explanations given above, the income generated by ABC Pvt. Ltd., being whole of the aggregate fair market value of shares received (i.e. ₹ 75,000), is chargeable to income-tax under the head “Income from other sources” as per section 56(2)(viia) of the Income Tax Act, 1961.

Therefore, the tax auditor of ABC Pvt. Ltd. is required to furnish the details of such shares received under clause 28 of Form 3CD. The contention of the management of the company, for not reporting such receipt of shares, is not acceptable.

5. **Non-maintenance of stock register:** The explanation of the entity for the use of varieties of raw materials for different jobs undertaken may be valid. But the auditor needs to verify the specified job-orders received and the different raw materials purchased for each job separately. The use of different papers (quality, quantity and size) ink, colour etc. may be examined. If possible, the auditor may also enquire with the other similar printers in the locality to ensure the prevailing custom. At the same time, he has to report and certify under the clause 35(b) and clause 11(b) of Form 3CD read with the Rule 6G(2) of the Income-tax Act, 1961, about the details of stock and account books (including stock register) maintained. He (or his deputy) must verify the closing stock of raw materials, work-in-progress and finished goods of the concern, at least on the date of its balance sheet. In case the said details are not properly maintained, he has to specifically mention the same with reasons for non-maintenance of stock register by the entity.

6. **Furnishing Audit Report of a Co-operative Society:** As per Section 44AB read with Explanation to Section 288(2) of the Income Tax Act, 1961, “accountant” means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of section 141 of the Companies Act, 2013, is entitled to be appointed to act as an auditor of companies registered in that State.

Accordingly, the person who is not a Chartered Accountant as mentioned in the question, though is eligible to act as auditor of Cooperative Society under the Cooperative Society Act, 1912, but is not eligible to carry out tax audit under Section 44AB of the Income Tax Act, 1961.

Hence, such audit report cannot be furnished as tax audit report under Section 44AB of the Income-tax Act, 1961.

7. **An auditor should conduct routine checking during the course of audit of a public trust, in the following manner:**

   (i) Check the books of account and other records having regard to the system of accounting and internal control;

   (ii) Vouch the transactions of the trust to satisfy that:
the transaction falls within the ambit of the trust the transaction is properly authorized by the trustees or other delegated authority as may be permissible in law;

- all incomes due to the trust have been properly accounted for on the basis of the system of accounting followed by the trust;

- all expenses and outgoings appertaining to the trust have been recorded on the basis of the system of accounting followed by the trust;

- amounts shown as applied towards the object of the trust are covered by the objects of trust as specified in the document governing the trust.

(iii) Obtain trial balance on the closing date duly certified by the trustee;

(iv) Obtain Balance Sheet and Profit & Loss Account of the trust authenticated by the trustees and check the same with the trial balance with which they should agree.

8. Revision of Tax Audit Report:

(a) Normally, the report of the tax auditor cannot be revised later.

(b) However, when the accounts are revised in the following circumstances, the tax Auditor may have to revise his Tax audit report also.

(i) Revision of accounts of a company after its adoption in the annual general meeting.

(ii) Change in law with retrospective effect.

(iii) Change in interpretation of law (e.g.) CBDT Circular, Notifications, Judgments, etc.

The Tax Auditor should state it is a revised Report, clearly specifying the reasons for such revision with a reference to the earlier report.

9. Refer Para 7.1.3