



KOTTAYAM BRANCH OF

Southern India Regional Council of

The Institute of Chartered Accountants of India

**A DISCUSSION ON TAX AUDIT UNDER
SECTION 44AB
SEPTEMBER 19 2018**

FIRST QUESTION- WILL THERE BE AN EXTENSION?



?



We always live in hope

INTRODUCTION OF TAX AUDIT

- FINANCE MINISTER SPEECH 1984
- “ Tax Audit intended to ensure that the books of account and other records are properly maintained and **faithfully** reflect the **true** income of the taxpayer”

BACKGROUND

- The tax audit was introduced by section 11 of the Finance act, 1984 by insertion of a new section 44AB to the Income Tax Act, 1961 w.e.f 1st April, 1985.

Circular No 387/06.07.1984

- “ A proper audit for tax purposes would ensure that the books of account and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of Assessing Officers in carrying out routine verifications, **like checking correctness of totals and verifying whether purchases and sales are properly vouched or not.** The time of the Assessing Officers thus saved could be utilised for attending to more important investigational aspects of a case”

CLAUSES

- Total Number of clauses exceed 50!
- In the Revised Form 3CD, existing clauses have been amended and new clauses have been inserted

THE CONTROVERSIAL CLAUSE- DEFERRED

44. Break-up of total expenditure of entities registered or not registered under the GST:

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST			Total payment to registered entitites	Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities		
(1)	(2)	(3)	(4)	(5)	(6)	(7)

ALSO DEFERRED

30C. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)

(b) If yes, please specify:—

(i) Nature of impermissible avoidance arrangement:

(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:

THE EASIEST CLAUSES?

- Clauses 1 to 8 in Part A
- Clauses 9 to 13 in Part B
- **Amendment in Clause 4- GSTIN number to be mentioned**
- *Should GSTIN not be a part of ITR?*

CLAUSE 13D) E)

(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)

(e) if answer to (d) above is in the affirmative, give details of such adjustments:

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and Contingent Assets			
	Total			

ICDS

(f) Disclosure as per ICDS :

<i>(i) ICDS I</i>	<i>- Accounting Policies</i>
<i>(ii) ICDS II</i>	<i>- Valuation of Inventories</i>
<i>(iii) ICDS III</i>	<i>- Construction Contracts</i>
<i>(iv) ICDS IV</i>	<i>- Revenue Recognition</i>
<i>(v) ICDS V</i>	<i>- Tangible Fixed Assets</i>
<i>(vi) ICDS VII</i>	<i>- Governments Grants</i>
<i>(vii) ICDS IX</i>	<i>- Borrowing Costs</i>
<i>(viii) ICDS X</i>	<i>- Provisions, Contingent Liabilities and Contingent Assets.</i>

IMPACT OF ICDS

- ICDS is very different from Ind AS
- ICDS will be very different from Revised AS
- There will be substantial differences between tax and accounting profits

ICDS

- Do we need ICDS?
- ICDS should keep pace with Accounting Standards
- Increasing Confusing Decreasing Simplicity

Clause 19 : Amounts admissible as deductions from 32AC to 35E

Clause 19

Amounts admissible under sections:

Section	Amount debited to profit and loss Account	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.
32AC		
33AB		
33ABA		
35		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

Audit Considerations:

- The Tax Auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the said sections.
- The Tax Auditor should ensure eligibility of the expenditure/payment for deduction and compliance of conditions prescribed in the said sections.
- Amendment- deduction under Section 32AD to be reported
- **Investment in new Plant or machinery in notified backward areas in certain States.**

Relevant Issues:

- In case where audit is required under certain sections to claim deduction and separate auditor is appointed for this purpose, is it enough to rely on such auditor's report ?
- How will the auditor rely on the work done by such other auditors / experts for the work done by them? What should be the extent of reliance to be placed?
- What would be the stand of a Tax Auditor in case such report is unavailable?
- Where auditors have changed, can the auditor rely on previous year's computation and audit report with respect to sec 35D, 35DD, 35DDA etc or should scrutinize expenses incurred in earlier years?

CLAUSE 24

- Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.
- 32AD Added

Clause 26

In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of Section 43B, the liability of which :

- A) Pre-existed on the 1st day of the previous year but not allowed in the assessment of any 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 dates.

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

Section 43B - Certain deductions to be only on actual payment.

The following amounts shall be allowed as deduction only in the previous year in which such amounts are actually paid:

- (a) any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or
- (b) any sum payable as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or
- (c) any sum referred to in section 36(1)(ii), or
- (d) & (e) any sum payable as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, or a scheduled bank
- (f) any sum payable as an employer in lieu of any leave at the credit of his employee,

(g) Reporting of any sum payable to Railways

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

Matters to be considered:

- Is Profession tax liability required to be reported under section 43B ?
- Where taxes, duties etc. referred to in Section 43B are paid after tax audit is completed but before due date of filing returns, how should the same be dealt with by a Tax Auditor ?

Clause 28 : Purchase of shares of company for inadequate consideration

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)(viiia), if yes, please furnish the details of the same.

- **Section 56(2)(viiia)** – provides that –
where a firm or a company in which the public is not substantially interested, receives from any person or persons, any property, being shares of a company not being a company in which the public are substantially interested,—
 - (i) without consideration, the **aggregate FMV of which exceeds Rs.50,000**, the whole of the aggregate FMV of such property;
 - (ii) for a consideration which is less than the aggregate FMV of the property by an amount exceeding Rs.50,000, the **aggregate FMV of such property as exceeds such consideration** shall be chargeable to tax under the head Income from Other Sources.
- Rule 11UA provides the methodology for computation of FMV. **The FMV of the shares has to be computed as per Rule 11UA , irrespective of the market value of the shares transferred.**

Clause 28 : Purchase of shares of company for inadequate consideration

Audit Considerations:

- This clause may also attract Standard on Auditing – 620 “Using the work of an Auditor’s expert” in case a valuation report is obtained to determine the FMV of the shares in case of unquoted instruments.
- The Auditor should obtain a list containing the details of shares received and verify the same with the relevant documents and books of accounts. Such shares will be reflected in the books of accounts under “Investments” or “Stock in trade”.
- When the shares are issued for no consideration, then the Tax Auditor can verify the same by share certificates, demat account statements etc. as the same will not be reflected in the books of accounts.

CLAUSE 3 I

- 269SS
- Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year : -
- in case the repayment was made by cheque or bank draft, whether the same was **taken or accepted (repaid)** by an account payee cheque or an account payee bank draft.
- Amount of replaced by repayment

TDS

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

CLAUSE 34-TDS

(b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details :

<i>Tax deduction and collection Account Number (TAN)</i>	<i>Type of Form</i>	<i>Due date for furnishing</i>	<i>Date of furnishing, if furnished</i>	<i>Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported.</i>



NEW CLAUSES



56(2)(IX)

- the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—
- *ix)* any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—
- (a) such sum is forfeited; and
- (b) the negotiations do not result in transfer of such capital asset;
- Nature of Income/Amount

CLAUSE 36A

- (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause(e) of clause (22) of section 2? (Yes/No.)
- (b) If yes, please furnish the following details:—
 - (i) Amount received (in Rs.):
 - (ii) Date of receipt:

2(22)E

- any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

2(22)E

- Very difficult to implement as there are conflicting court judgements
- Supreme Court in National Travel Services

56(2)(X)

- where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—
- (a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;
- (b) any immovable property,—
- (A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
- (B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

56(2)(X)

- **Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019 :**
- *(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—*
- *(i) the amount of fifty thousand rupees; and*
- *(ii) the amount equal to five per cent of the consideration*

92(CE)(1)

- **92CE. (1)** Where a primary adjustment to transfer price,—
- (i) has been made suo motu by the assessee in his return of income;
- (ii) made by the Assessing Officer has been accepted by the assessee;
- (iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC;
- (iv) is made as per the safe harbour rules framed under section 92CB; or
- (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,
- the assessee shall make a secondary adjustment:

92CE

- Under which clause of sub-section (1) of section 92CE primary adjustment is made?
- (ii) Amount (in Rs.) of primary adjustment:
- (iii) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
- (iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
- (v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

94B

- **94B.** (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :
- **Provided** that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.
- (2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.

94B

- Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
- (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):
- iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:
- (iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B:

269ST

- **Mode of undertaking transactions.**
- No person shall receive an amount of two lakh rupees or more—
- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,
- otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

269ST

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

269ST

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

269ST

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

CLAUSE 42

- Reporting details of transactions not disclosed/ specified in Form No. 61/ 61A/ 61B

FORMS

Form	Purpose
60	Form for declaration to be filed by an individual or a person (not being a company or firm) who does not have a permanent account number and who enters into any transaction specified in rule 114B
61	Statement containing particulars of declaration received in Form No. 60
61A	Statement of Specified Financial Transactions under section 285BA(1) of the Income-tax Act, 1961
61B	Statement of Reportable Account under sub-section (1) section 285BA of the Income-Tax Act, 1961

CLAUSE 43

- Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority [*within a period of twelve months from the end of the said reporting accounting year*], in the form and manner as may be prescribed
- alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;

ISSUES IN TAR

- Why should the announcements be made so late?
- Why should some taxpayers be permitted to file in the old form and some in the new form?
- International Taxation adjustments should be a part of Form 3CEB and not 3CD?



THANK YOU!

MOHAN.LAVI@GMAIL.COM

