

Tax Audit  
u/s 44AB

C A P.T Joy, B.com, LLB, FCA, DISA



# Introduction

Tax audit was introduced by the recommendation of **Wanchoo Committee** in the year **1984** with a view to saving considerable time for the Assessing Officer which could then be utilized by them for more important investigational aspect of a case.

The latest amendment in Income Tax Audit Report (Form 3CD) was by Notification No.33/2018 dated 20-7-2018, with effect from 20-08-2018

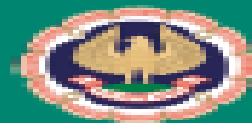
By Finance Act, 1984 a new Section viz., Section 44 AB was introduced in the Income-tax Act, 1961 by which certain classes of assesseees such as businessmen with a turnover of more than **Rs.40 lakhs** and a person carrying on a profession with a gross receipt of **Rs.10 lakhs** a year were required to get their accounts audited by a Chartered Accountant and get a report from him.

# Tax audit limits at a glance

Financial Year	Tax audit limit for Business	Tax audit limit for Profession
1984-85 to 2009-10	40 Lakhs	10 Lakhs
2010-11 to 2011-12	60 Lakhs	15 Lakhs
2012-13 to 2015-16	1 Cr	25 Lakhs
2016-17 to 2018-19	1 Cr	50 Lakhs

To supplement the objective enshrined in tax audit the Institute Of Chartered Accountants Of India has issued “ **Guidance Note on Tax Audit under Section 44AB of the Income-tax Act 1961**”, which was published in the year 1985 and revised in the past from time to time in 1989,1998,1999,2005, 2013, 2014

**Implementation Guide**  
**w.r.t. Notification No. 33/2018**  
**dated 20.7.2018**  
**effective from 20.8.2018**



**Direct Taxes Committee**  
**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

## Applicability of tax audit when there are common partners

Two partnership firms are independent assesseees for income tax purpose. This is so even if they have common partners or even if their partners are the same . Gross receipts/turnover of two or more firms with same partners or common partners cannot be clubbed for determining whether the limit of Rs.1,00,00,000/-.

An illustration of a desk with various business-related items: a calculator, a notebook with a pen, a calendar showing the 25th of a month, a credit card, and hands holding stacks of money.

**BUSINESS INCOME**

Business Income

~~Clubbing~~

Professional Income





## **Assessee carrying on business as well as profession**

If an assessee carries on Business as well as Profession, the gross receipts from profession and turnover/gross receipts from business are not to be clubbed for determining whether limit of Rs.50,00,000/- (for Profession) or Rs.1,00,00,000 ( for business) is exceeded.

## Tax audit not applicable when income is exempt

The provisions of section 44AB cannot and do not have any application in relation to incomes which are enumerated under chapter 111 and are expressly excluded from total income. Hence if the entire income of the assessee is exempt under section 10, he will not be liable to tax audit under section 44AB even though his turnover or gross receipts or sales may have exceeded Rs.1 Crore.

# Tax Audit is an Assessee based Audit

If an assessee have two businesses, where in the 1<sup>st</sup> business he is getting 40Lakhs per year and from the 2<sup>nd</sup> business 70 lakhs per year. Both are different types of businesses. Will he be eligible for income tax audit under section 44AB?

Yes, the assessee will be eligible for Tax audit as both the businesses are in the name of same person. Section 44AB of IT act specifies the turnover, **gross receipt or sales per person and not per business**. So he has to do tax audit under section 44AB and also need to ensure that the tax filling is done before the due date.

## Definition of sales / turnover

- » The term 'gross turnover' and 'net turnover' are sometimes used to distinguish the sales aggregate before and after the deduction of returns and trade discounts.
- » Trade discount, turnover discount, return inwards, price adjustments and cancellation of bills will be excluded from sales.
- » Excise duty/sales tax etc is to be included in the sales, if it is not recovered separately.

- » Cash discount, commission, bad debts written off, etc., are not part of sales. These should be separately debited to the profit and loss account.
- » Packing, freight and forwarding charges are to be included in sales, if these are not separately shown in the invoices.
- » Receipts from sale of fixed asset or other assets held as investments will not be included in sales

- » Sales from commission agent will not be a part of sales only if the ownership of goods sold by the agents continues to vest in the principal at the time of sale.
- » In case of speculative transactions, the aggregate of both positive and negative differences is to be considered as turnover of such transactions
- » The turnover in respect of derivatives, futures and options will include the total of favourable and unfavourable differences and the premium received on sale of options.

# Definition of gross receipts

## Covers the following:

- Profits on sale of import license
- Cash assistance
- Duty drawback
- Reimbursement of expenses such as packing forwarding, freight, insurance, travelling etc.,
- Hire charges of cold storage
- Liquidated damages
- Insurance claims
- Sale proceeds of scrap wastage etc., unless treated as part of sales or turnover.
- Advance received and forfeited from customers

## Would not cover the following:

- Sale proceeds of fixed assets including the advance forfeited
- Sale proceeds of assets held as investments
- Rental income/ interest income unless the same is assessable as business income
- Dividends on shares except in the case of an assessee dealing in the shares
- Reimbursement of customs duty and other charges by clearing agent
- Write back of amount payable to creditors, provisions or taxes no longer required



# Income Tax Department

Government of India

## **Audit of accounts of certain persons carrying on business or profession.**

**44AB.** 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; or
- (b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or
- (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; or
- (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 :



**Provided** that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of [section 44AD](#) and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

**Provided further** 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 :

**Provided also** 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.

# Analysis of tax audit provisions under section 44AB of the Income Tax Act, 1961

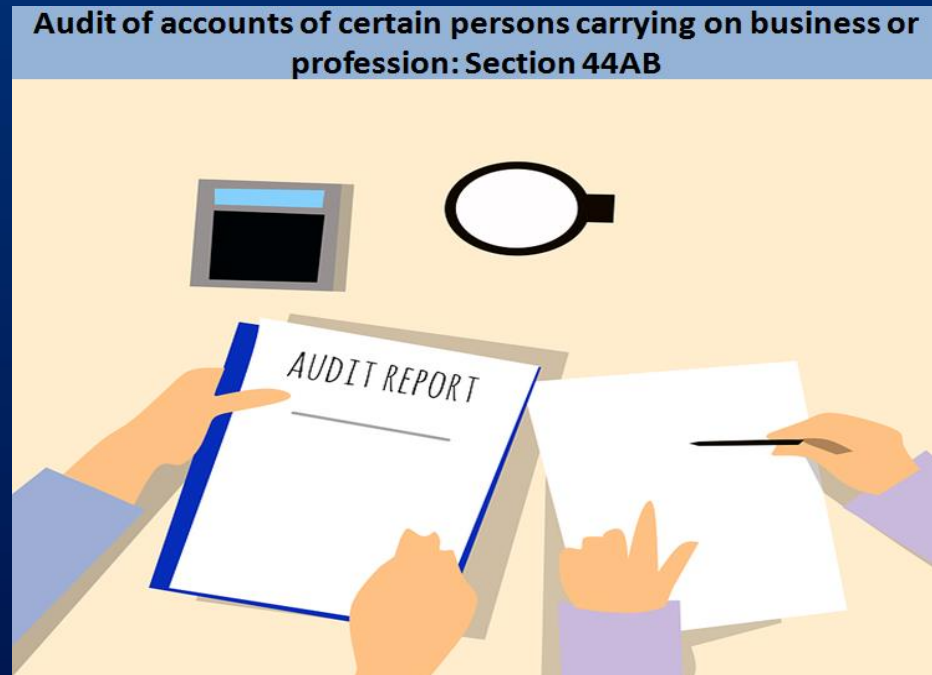
Section 44AB of the income tax Act, 1961

Provides as follows:

Every Person,

a) Carrying on business shall if his total sales, turnover or gross receipts, as the case may

be, in business exceeds 1 Cr in any previous year – the limit of 1 Cr must be applied business wise.



b) Carrying on profession shall, if his gross receipts in profession exceeds 50 Lakh rupees in any previous year



c) Carrying on the business shall, if the profits and gain 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.**

An illustration showing two hands in dark suits holding a white rectangular sign with the text '44ADA' in large, bold, red letters. The background is a stylized globe with green and blue colors.

**44ADA**

- 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:

**Provided** that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed Rs. 2 Crores in such previous year.



**Provided** further 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 1<sup>st</sup> day of April 1985 or as the case may be the date on which the relevant section came into force whichever is later

**Provided** also 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

Form 3CD consist of 44 clauses in total. Let's discuss some of the major clauses



clauses

# Clause 8



## Tax Audit under Section 44AB –

**Indicate the relevant clause of section 44AB under which the audit has been conducted**

As we discussed, the above section 44AB has 5 clauses – (a) to (e). Clause (b) and (d) apply to persons carrying on profession. Clauses (a), (c) and (e) apply to persons carrying on business.

Tax auditor should indicate relevant clause of section 44AB against clause 8.

4 & 8 Indirect tax Reg. Numbers & relevant clause of section 44AB

3CD Part-A info			
Indirect Taxes Regn. Numbers			
Indirect Tax law Details	Reg. No.	Enacting State, if applicable	

44AB clause

- a (Business)
- b (Profession)
- c (i-44AE case)
- d (44ADA case)
- e (44AD case)
- Third Proviso (Audited under other law)

# 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)

The principal line of each business or profession is to be determined and stated in this clause. The sector in which the business or profession falls such as manufacturing, trading commission agent, builder, contractor, professional service sector, financial service sector or entertainment industry etc.

If there is more than one business or profession then nature of each and every business or profession is required to be mentioned along with the sub-sector pertaining to the sector.

The assessee will have to select the business code applicable to him from the list provided.

3CD Qty details

Navigation icons: Save, Home, Print, Refresh, Undo, Redo, Help, IT, ITR, 3CD, TB, P&L, B/S

10 Nature of Business / Profession

Sector	Sub-sector	Code	Particulars of change
Other Services	Other services	21008	No Change
Agriculture, Animal Husbandry, Forestry			
Computer Related Services			
Construction			
Culture & Sport			
Education Services			
Electricity, Gas & Water			
Extra Territorial Organisations/Bodies			
Financial Services			
Fish Farming			
Health Care			
Hotels, Restaurants, Hospitality			
Manufacturing			
Mining & Quarrying			
Other Services			
Post & Telecom			
Profession			
R&D			

↓ Nature of Business / Profession in first 3 rows are auto-filled from 'Nature of Business / Profession' table of 'ITR Data entry' window.

Bottom navigation bar: Undo, Redo, Help, Ok, Delete, Left Arrow, Right Arrow



b) If there is any change in the nature of business or profession, the particulars of such change

If there are any changes in the nature of business or profession, the particulars of such change needs to be mentioned.

If there is any change in the nature of business or profession, it is not enough to merely give a “yes” answer or to merely state the fact that there is a change. In such case particulars of such change should be also stated.

## Notes :

- » If there is no change in the nature of the business or profession it is sufficient to state the fact that there is no such change.
- » Temporary discontinuance of business need not be mentioned.
- » Only material nature of change in business or profession needs to be mentioned against clause (b).
- » Any change after the Balance Sheet date should be ignored.

## Notes :

- » The “change” in this clause will cover change from manufacturer to trader as well as change in the principal line of business.

## Example:

- 1) If a Manufacturer assessee changes from **wholesale to retail trader** it will be considered as a change in business.
- 2) If an assessee changes from **manufacturing on own account to manufacturing on job work basis**, it will be also considered as a change in business.

# Clause 11

- a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed
- b) List of books of account maintained and the address at which the books of account are kept.
- c) List of books of account and nature of relevant documents examined

## Books of Accounts



Clause 11 (a)	Clause 11 (b)	Clause 11 (c)
Apply only in respect of the assesseees for whom books of account have been prescribed under section 44AA, i.e. for notified professionals *	Apply to all assesseees	Apply to all assesseees

**\* Notified Professionals includes:-**

- Accountancy
- Architectural
- Authorised representatives
- Company secretary
- Engineering
- Film Artist
- Information technology
- Interior Decoration
- Legal
- Medical
- Technical consultancy

The tax auditor should obtain from the assessee a complete list of **books of accounts\*** and other documents (both financial and non-financial) maintained by him. The tax auditor's duties regarding 'books of account maintained' is not limited to merely giving a list of books of account against clause b. He is required to examine the books of account maintained. Based on such examination, he is required to state in Form 3CB whether books of account kept are proper books of account.

Maintenance of books  
of Accounts  
( Section 44AA )

## \*Section 2(12A) Books of Accounts

Includes ledgers, day-book, cash books, account books and other books, whether kept in the written form or as print outs of data stored in a floppy disc, tape or any other form of electro magnetic data storage device.



# Books of Accounts

Nature of Business or Profession	Category of Taxpayer	Threshold Limit of Income	Threshold Limits for Gross Turnover or Receipts
Specified Professionals*	Any	-	Mandatory in every case except when presumptive taxation scheme under Sec. 44ADA is opted by the assessee
Non-Specified Professions	Individual or HUF	Rs. 2,50,000 or	Rs. 25 lakhs in any of the 3 years immediately preceding the previous year
Non-Specified Professions	Others	Rs. 1,20,000 or	Rs. 10 lakhs in any of the 3 years immediately preceding the previous year

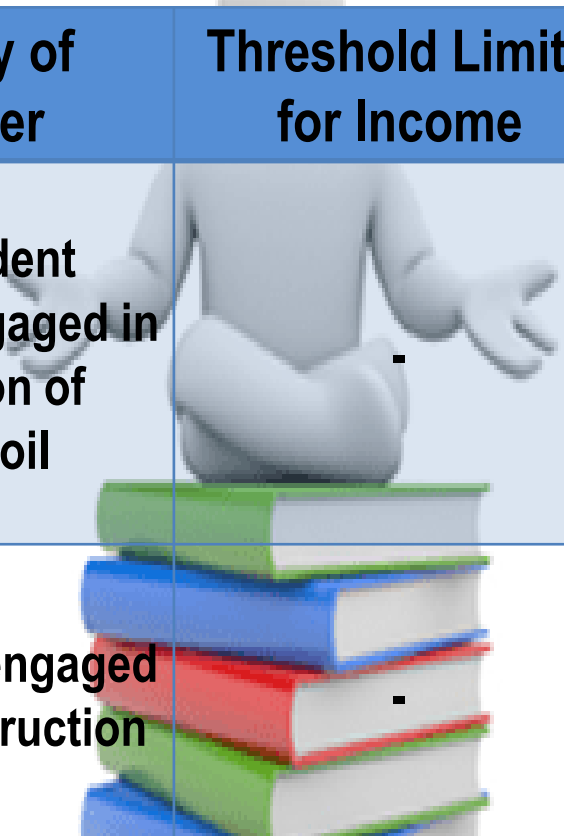
# Books of Accounts

Nature of Business or Profession	Category of Taxpayer	Threshold Limits for Income	Threshold Limits for Gross Turnover or Receipts
Business	Individual or HUF	Rs. 2,50,000 or	Rs. 25 lakhs in any of the 3 years immediately preceding the previous year
Business	Others	Rs. 1,20,000 or	Rs. 10 lakhs in any of the 3 years immediately preceding the previous year
Presumptive Tax Scheme under Sec. 44AD	Resident Individual or HUF	Rs. 2,50,000 or	Taxpayer opted for scheme in any of last 5 previous years but does not opt for in current year.

# Books of Accounts

Nature of Business or Profession	Category of Taxpayer	Threshold Limits for Income	Threshold Limits for Gross Turnover or Receipts
Presumptive Scheme under Tax Sec. 44AD	Resident Individual or HUF	Rs. 2,50,000	Taxpayer opted for scheme in any of last 5 previous years but does not opt for in current year.
Presumptive Scheme under Tax Sec. 44AD	Resident Partnership Firm	-	Taxpayer opted for scheme in any of last 5 previous years but does not opt for in current year.
Presumptive Scheme under Tax Sec. 44AE	Any Assessee engaged in plying, hiring or leasing goods carriage	-	Taxpayer claims that his profits are lower than the deemed profits.

# Books of Accounts



Nature of Business or Profession	Category of Taxpayer	Threshold Limits for Income	Threshold Limits for Gross Turnover or Receipts
Presumptive Scheme under Tax Sec. 44BB	Non-resident assessee engaged in exploration of mineral oil	-	Taxpayer claims that his profits are lower than the deemed profits.
Presumptive Scheme under Tax Sec. 44BBB	Foreign Co. engaged in civil construction	-	Taxpayer claims that his profits are lower than the deemed profits.

# Tax Auditor need not insist on print out of books of accounts

Section 2(12A) of the Income Tax Act recognises that books of accounts may be kept in written form or in the form of print outs. Sec 4 of the Information technology Act, 2000 states that “ where any law provides that information or any other matter shall be in writing or in the type written or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- i. Rendered or made available in an electronic form ; and
- ii. Accessible so as to be usable for a subsequent reference. “

In view of the section 2(12A) of the Act and sec 4 of the Information Technology Act, 2000, the tax auditor need not insist on print out of books of account provided conditions (i) and (ii) above are satisfied.

The term “books of account” would cover books of original entry and other books of account. (*Para 20.10 of the 2014 Guidance note of ICAI*)

## Notes:

- » If the assessee carrying on business as well as profession maintains combined books of accounts, the tax auditor will have to bring out this fact under this clause.
- » It is advisable to maintain separate books of accounts in respect of business and profession.
- » If the books of accounts are not kept at one location the tax auditor is called upon to report the addresses of location along with the details of books of account maintained at each location

## 11 Books maintained

Books	Examined			
Cash book	Yes			
Journal	Yes			
Ledger	Yes			
Bank book	Yes			
Cash and Bank payment vouchers	Yes			
Documents examined				
Payment and Receipt Vouchers				
Service Invoices				
Expense Bills				
Bank statements and Confirmations				
Books Prescribed u/s 44AA				
Address at which books are kept				
Address	City	PIN	State	
26/281A, Vidhyavihar Road, Near S H Colle	Kochi	682 013	Kerala	
Books are kept at more than one location?	No			



# Clause 12



Whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section)

The amount of profit that relates to a business subject to the presumptive scheme of taxation must be reported here.

## Notes :

- » In case of multiple businesses, only the amount of profit that relates to the businesses subject to the presumptive scheme of taxation will be reported section-wise.
- » If the profit and loss does not include any profit and gains assessable on presumptive basis under section 44AD, 44AE, 44AF (non operative w.e.f AY 2011-12), 44B,44BB, 44BBA, 44BBB or any other relevant section.

If a person is engaged in more than 1 business he can opt for presumptive for business having less than 2cr turnover and audit for the other if required.

Winman - Tax Computation - A.Y.: 2019-2020 Individual Dfsdgvf

File View Tools Forms Online Help ITR 3CD TB P&L B/S GST More

<b>Profits and gains of Business or Profession</b>		Turnover/Receipts	Profit
			2,24,36,121
Business: Presumptive profits u/s 44AD	?	2,56,000	20,480
Profession: u/s 44ADA - Presumptive profits			
Special Business: Income from Firm, speculation, without books, 44AE.....			
<b>Business-1: travavkbsd</b>			
Net Profit Before Tax as per P & L a/c	?		2,24,15,641
Add: Inadmissible expenses & Income not included			
Depreciation debited to P & L a/c:			
			2,24,15,641
Less: Deductible expenditure & income to be excluded			
<b>Adjusted Profit of Business-1</b>			2,24,15,641
<b>Profession-1:</b>			
Net Income Before Tax as per P & L a/c	?		
Add: Inadmissible expenses & Income not included			
Depreciation debited to P & L a/c:			
Less: Deductible expenditure & income to be excluded			
<b>Adjusted Income of Profession-1</b>			
<b>Total income of Business and Profession</b>			2,24,36,121
Less: Depreciation as per IT Act			
<b>Income from other sources</b>			
Brought forward losses set off			

F1 FAQ F2 Edit F3 Add to List F4 List F5 Home F6 Asst Year\_Status F9 e-Return F11 Open sub table F12 Close sub table

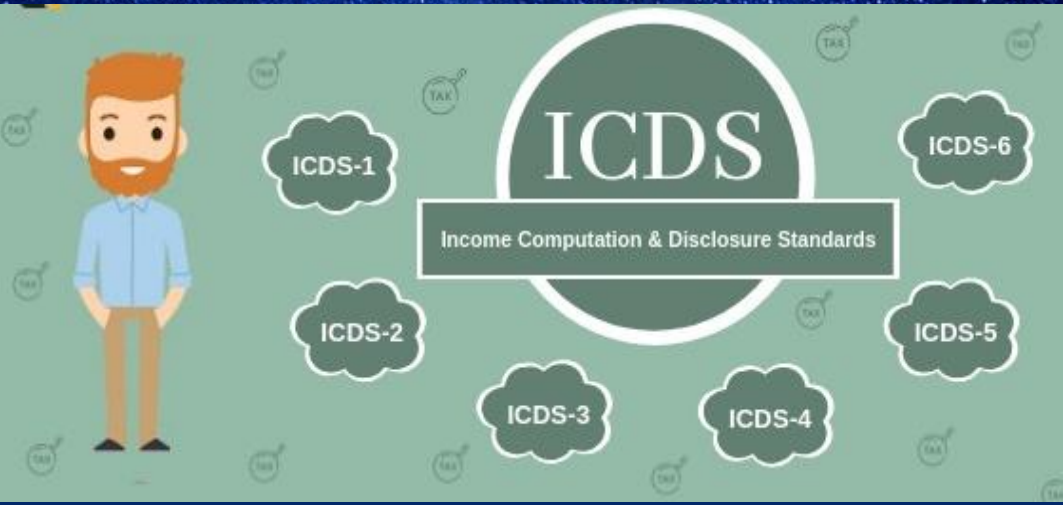
Section	Eligible Business	Assessee	Presumptive Income
44AD	Any eligible business whose turnover less than 2 CR, other than 44AE	Individual, HUF, Firm excluding LLPs	8 % - of Gross receipts or TO 6% - in case of receipts received by an account payee cheque or bank draft or electronic clearing system through a bank account
44ADA	Specified Profession in section 44AA (1)	Any assessee resident in India carrying on profession as per 44AA(1) and whose gross receipts does not exceeds 50 Lakhs	50 % of Gross receipts from such profession
44AE	Plying hiring or leasing of goods carriages	Assessee who owns not more than 10 goods carriages at any time during the previous year.	<b>Heavy goods vehicle</b> - Rs.1000 per ton of gross vehicle weight or unladen weight, for every month or part during which vehicle is owned by assessee in PY <b>Other than heavy vehicle</b> – Rs.7500 per month or part for which each goods carriage is owned by the tax payer.

Section	Eligible Business	Assessee	Presumptive Income
44B	Shipping Business	Non residents	– 7.5% of the following amounts : <ul style="list-style-type: none"> <li>i. the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India;</li> <li>ii. the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.</li> </ul>
44BB	business of providing services 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	Non resident assessee	– 10% of the amounts paid or payable to him for these services or facilities in India and amounts received or deemed to be received in India for these services or facilities outside India

Section	Eligible Business	Assessee	Presumptive Income
44BBA	Business of operation of aircraft	Non residents	5% of the following amounts: <ul style="list-style-type: none"> <li>i. the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and</li> <li>ii. the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.</li> </ul>
44BBB	Business of civil construction, etc., in certain turnkey power projects.	Foreign Company	10% of the amounts paid or payable to the assessee on account of civil, construction, reception, testing or commissioning.

12 Presumptive profits included in P&L a/c

Particulars	Amount
44AE - Transport business profits	
Tonnage tax (Chapter-XII-G)	
First Schedule (Section 44) - Profits from Insurance business	
Others:	
Grand Total	



# Clause 13(f)

## Disclosure as per ICDS

Clause 13 deals with the method of accounting and if any changes occurred, effect of the changes in profit during the FY.

Clause 13(f) requires reporting of the CDS- wise disclosures. The disclosures are required in 8 out of 10 standards notified by CBDT.

Disclosures are to be given as required by the specific standard.



<b>ICDS No</b>	<b>Name of the standards</b>	<b>Disclosure need</b>
ICDS I	Accounting Policies	Disclosure Applicable
ICDS II	Valuation of Inventories	Disclosure Applicable
ICDS III	Construction Contracts	Disclosure Applicable
ICDS IV	Revenue Recognition	Disclosure Applicable
ICDS V	Tangible Fixed Assets	Disclosure Applicable
ICDS VI	The Effects of Changes in Foreign Exchange Rates	No Disclosure applicable
ICDS VII	Government Grants	Disclosure Applicable
ICDS VIII	Securities	No Disclosure applicable
ICDS IX	Borrowing Costs	Disclosure Applicable
ICDS X	Provisions, Contingent Liabilities and Contingent Assets	Disclosure Applicable

## Note the points:

- 1) As per ICDS (vi) and (viii) there is no disclosure requirement
- 2) As per clause 13(d) The effect of these ICDS must be taken in the computation of tax to arrive at the net tax liability – The increase in profit, decrease in profit and net effect is mentioned as per each ICDS.

13 & 14(a) Method of Accounting & Stock Valuation; ICDS Disclosures

Method of Accounting ^	Mercantile	
Is there any change in method of accounting? ^	<input checked="" type="checkbox"/>	
Effect of change in Method of accounting on net profit		
Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)
Method of valuation of closing stock		
<b>Disclosures as per ICDS</b>		
ICDS	Disclosure	

- [Select All]
- I - Accounting Policies
- II - Valuation of Inventories
- III - Construction Contracts
- IV - Revenue Recognition
- V - Tangible Fixed Assets
- VII - Government Grants
- IX - Borrowing Costs
- X - Provisions, Contingent Liabilities / Assets

OK

ation method u/s 145A', go to Computation window -> under 'Add: Inadmissible expenses & Income not included' -> select 'Effect of deviation from ICDS and Valuation

# Clause 15 - particulars of the capital asset converted into stock-in-trade



**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.

Generally speaking, an asset held as a capital asset would attract income tax under the head capital gains at the time of its sale and an asset held as stock-in-trade would attract income under the head profits and gains of business.

When it is decided to treat a capital asset as part of the stock of the business, it is treated as a 'transfer' for income tax purposes and will attract capital gains tax subject to certain conditions and exceptions

### For example:

You convert the Jewellery into stock on September 15, 2016. The Jewellery was purchased by you on 1 May, 2001 for Rs 10,00,000. Fair market value as on 15.09.2016 is Rs 40,00,000. Also you sell the Jewellery on 1st June 2017 for 41,00,000.

Firstly, **in year 2016-17**, there is no tax impact. Tax impact will happen in year 2017-18 when Jewellery is sold.

## In the Financial year 2017-18

### Computation of business profit will be as under:

Sale Consideration	41,00,000
Less: Fair Market Value on Conversion	40,00,000
Business profits	1,00,000

### Computation of capital gain will be as under:

Full value of consideration	40,00,000
Less: Indexed cost of acquisition (10,00,000*272/100)	27,20,000
Capital gain -Long term	12,80,000



3CD Qty details

15 Capital asset converted into stock

Particulars	Acquisition Date	Acquisition Cost	Conversion Amount
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# 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 the State Government

referred to in section 43CA or 50C, please furnish details of property, consideration received or accrued and value adopted or assessed or assessable

If the sale consideration of an immovable property is less than the stamp duty value of such property, the stamp duty value shall be deemed to be the sale consideration for the purpose of computing capital gains thereon where such property is held as a capital asset and where the property is held as stock-in-trade, the stamp duty value shall be taken as income/sale value to be considered under the business head of income. This clause aims to check compliance in this regard.

## Notes:

- » Section 43CA is applicable where the assessee has transferred an asset other than a capital asset i.e. a stock in trade being land or building or both and the value of such asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty.

# Amendment in Finance Act 2018

## Rationalization of section 43CA, section 50C and section 56 w.e.f AY 2019-20

At present, while taxing income from capital gains, business profits and other sources arising out of transactions in immovable property the sale consideration or stamp duty value whichever is higher is adopted. The difference is taxed as income both in the hands of the purchaser and the seller. This variation can occur in respect of similar properties in the same area because of a variety of factors including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, sections 43CA, 50C and 56 have been amended to provide that no adjustments shall be made in case where the variation between stamp duty value and the sale consideration is not more than 5 % of the sale consideration.

These amendments took effect from 1-04-2019 and hence accordingly apply in relation to the AY 2019-20 and subsequent assessment years.

# Example

Mr. A, holds a commercial flat as capital asset.

Mr. A enters into a sale agreement for sale of flat to Mr. B, real estate developer.

The flat was transferred by Mr. A to Mr. B for **Rs. 60.00 Lacs (Transaction value)** and the Stamp duty value of flat is **Rs 100.00 Lacs (SDV)** who further **sold it for 200.00 Lcs**

### For Mr. A–

Income under the head Capital Gains

(As per 50C) = 100 - cost of acquisition / indexed cost of acq.

### For Mr. B –

Income under other sources = Nil as Mr. B purchased the flat as stock in trade.

Income under head PGBP (at time of sale) = 200.00 Lacs  
- 60.00 Lacs = 140.00 Lacs

Now the sale of flat below SDV will attract the deeming provisions of the section 50 C in the hands of seller Mr. A without giving any benefit to Mr. B by way of enhanced cost of acquisition. This situation results in double taxation, although not on the same assessee but on the same immovable property.



## Notes:

- » In case of conversion into stock in trade mode of transfer, verify that necessary details are reported in clause 15 as well with suitable cross references.
- » If assessee has disputed the stamp duty value adopted by stamp valuation authority in appeal or revision proceedings, suitable note may be incorporated in clause 17.

17 Section 50C applicable cases - transfer of land/building

Section 50C details							
Details of Land/Building	Consideration	Value assessable/ assessed	Difference	Address	City	PIN	State
Total							

## Employee State Insurance (ESI) Provident Fund (PF)



## Clause 20

Clause	Particulars	Details
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	The assessee would be allowed a deduction in respect of a payment made to an employee in the nature of a bonus or commission only if such bonus or commission was available exclusively to such employee in relation to the services rendered by him.

## Employee State Insurance (ESI) Provident Fund (PF)



## Clause 20

Clause	Particulars	Details
b	Details of contribution received from employees for various funds as referred to in section 36(1)(va)	These funds include superannuation funds created for the benefit of the employee. The contributions made by the employer to such funds shall be allowed as a deduction only if they are made within the due date as specified in the applicable law.

## Section 36(1)(va)

Any sum received from any of the employees towards their contribution to the welfare fund accounts, if such sum is remitted on or before the relevant due date to the concerned fund account. The amount so received from employees is treated as income u/s 2(24)(x) and it is allowed as deduction only if it is paid within the stipulated due date as specified u/s 36 (1)(va)



**“Due date”** means the date by which the assessee is required as an employer to credit an employee’s contribution to the employee’s account in the relevant fund under any act, rule, order or notification issued there under or under any standing order, award contract of service or otherwise.

## 20 Employees contributions to PF / other funds

Due date	Paid on	Amount paid	Amount collected	Disallowance <sup>^</sup>	
P.F. Contributions					
15-May-2018	20-May-2018	5,000	5000	5,000	
Total					
		5,000	5,000	5,000	
E.S.I. Contributions					
Other Welfare Funds					
Due date	Paid on	Amount paid	Amount collected		Name of Fund
Grand Total					
		5,000	5,000	5,000	
Difference					
				5,000	

<sup>^</sup> The amount shown in 'Disallowance' column is only for your reference and will not appear in Form 3CD.

# Clause 21(b)

Amounts inadmissible  
under section 40(a)(i),  
40(a)(ia), 40(a)(ic),  
40(a)(iia), 40(a)(iib),  
40(a)(iii), 40(a)(iv),  
40(a)(v)

These sections broadly relate to disallowances made in respect of an expenditure or a part of an expenditure where tax was required to be deducted at source but the assessee failed to do so.



## Section 201(1A) Consequences of failure to deduct or pay.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

# Disallowance in the case of all assessee (Section- 40(a))

## Payments attracting 100% disallowance

- 1) According to section 40(a)(i) any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable;
  - a) Outside India
  - b) In India to a non- resident not being a company or to a foreign company,

On which tax is deductible at source shall be disallowed if –

- a) Such tax has not been deducted in the previous year; or
- b) Such tax after deduction has not been paid on or before expiry of time limit prescribed in section 139(1)

- 2) In case the tax is deducted in any subsequent year or has been deducted in the PY but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the PY specified in section 139(1) in which such tax has been paid.
  
- 3) According to section 40(a)(iii), any salary payable outside India or to a non-resident in India shall be disallowed if tax has not been deducted or paid on or before the due date prescribed for such deductions.

## Payments attracting 30% disallowance

- 1) According to section 40(a)(ia), any sum payable to a **resident** on which tax is deductible at source shall be disallowed to the extent of 30% of such sum, if the assessee:
  - a) Fails to deduct tax at source; or
  - b) Deduct tax at source but has not paid the same on or before the due date for filing the return of income u/s 139(1)
- 2) Where tax is deducted in any subsequent year or where the tax deducted during the PY is paid after the due date for filing the return of income, 30% of such sum which has earlier disallowed shall be allowed as a deduction in computing the income of the PY in which tax has been paid.

## Conditions to be fulfilled to avoid disallowance u/s 40(a)(ia)

Where an assessee fails to deduct at source wholly or partly as referred above, disallowance of expenditure u/s 40(a)(ia) shall not attract if the following conditions are satisfied:

- a) The resident payee has furnished his return of income u/s 139;
- b) He has taken into account such sum for computing his total income;
- c) He has paid tax due on the income declared by him in such return of income; and
- d) The person who failed to deduct tax at source furnishes a certificate of a Chartered Accountant in Form 26A that the payee has fulfilled the above mentioned conditions.

## Note :

Form 26A can be submitted to get a relief on disallowance under section 40(a)(ia). Penalty under **section 271C\*** ( Failure to deduct tax at source ) and **section 271H\*** ( Failure to Furnish statements ) will be applicable for an assessee even if he has submitted the form 26A.

## Section 271C – Failure to deduct tax at source

- a) Any person failing to deduct tax at source, wholly or partially u/s 192 to 196D (Chapter XVII- B) shall be levied penalty equal to **tax not deducted**, by the Joint commissioner.
- b) Any person failing to pay the whole or any part of the tax as required u/s 115-O (2) or second provision u/s 194 B shall be levied penalty equal to tax not paid, by the joint commissioner.

*CIT vs. Sri Ram Memorial Education Pr. Society (2006)287 ITR 155(All)*

The assessee was subject to penalty u/s 271C for failure to deduct tax at source again proceedings were initiated for not filing the TDS return in time and for delay in issuing Form 16 by the assessee. It was held that when the assessee has been subjected to penalty for not deducting tax at source, the penalty for further defaults such as non filing or delayed filing of TDS return or issue of TDS certificate would not arise.



## 271H – Failure to furnish statements

- a) The assessing officer may direct that a person shall pay by way of penalty, if he:
  - 1. Fails to furnish a statement of tax deducted at source u/s 200(3) or tax collected at source u/s 206C (3); or
  - 2. Furnishes incorrect information in the statement so furnished.
- b) The penalty shall be a minimum of Rs.10,000/- and maximum of Rs.1,00,000/-
- c) No such penalty shall be levied for the above mentioned failure, if the person proves that after paying tax deducted or collected along with the fee and interest, he had filed the statement referred to above before the expiry of 1 year from the time prescribed for such filing.

(b)(i), (ii), (iii), (vii) Disallowances for non-compliance of TDS

## Disallowances for non-compliance of TDS

## 40(a)(ia) - Resident in India

Deductee Name	Date of payment	Expense Amount	TDS done, if any	TDS deposited, if any*	TDS Section	Nature of payment	Address	City	PIN	PAN if available

## 40(a)(ib) - Equalisation Levy

Deductee Name	Date of payment	Expense Amount	Levy deducted, if any	Levy deposited, if any*	Nature of payment	Address	City	PIN	PAN if available

## 40(a)(i) - amount paid outside India or to Non-Resident

Deductee Name	Date of payment	Expense Amount	TDS done, if any	TDS deposited, if any*	TDS Section	Nature of payment	Address	City	PIN	PAN if available

## 40(a)(iii) - Salary paid outside India or to Non-Resident

Deductee Name	Date of payment	Amount	Address	City	PIN	PAN if available

\*Time to deposit TDS is on or before the due date of furnishing ITR u/s 139.

# Clause 21(d)



Disallowance/ deemed  
income under section 40A(3)

This section places a disallowance on any expenditure incurred by any mode other than an account payee cheque/bank draft or through a bank account using ECS if they exceed Rs. 10,000 in a day subject to certain exceptions

Description			Disallowance		
40A(7) - Provision for gratuity:					
40A(9) - Sums paid as an employer to fund/institution not covered u/s 36(1)(iv)/(iva)/(v):					
40A(13) - Marked to Market loss/Expected loss not allowable as per ICDS:					
Nature of payment	Date of payment	Amount		Name of Payee*	PAN (optional)*
40A(3) - Cash expenses exceeding Rs.10000					
40A(3A) - Cash payments for expenses of earlier years					
Total Disallowance					

 \*These column values are required for 3CD only



Less: Deductible expenditure & income to be excluded

# Clause 21(i)

Amount inadmissible under the proviso to section 36(1)(iii)

Where the assessee borrows a loan for business purposes, the interest thereon would normally be allowed as a deduction. However, if such loan was used to acquire an asset, the interest shall not be allowed for the period between the date of borrowing of the loan to the date on which the asset was put to use

Description		Disallowance	
Employees' contribution to PF/ESI etc. paid after prescribed date u/s 36(1)(va)			
Interest till asset is put to use u/s 36(1)(iii)			
36 - Other disallowances			
Total Disallowance			



# RELATED PARTY TRANSACTIONS

## Clause 23

**Particulars of payments made to persons specified under section 40A(2)(b)**

This clause is applicable to all the assessee and require the tax auditor to report payments made by the assessee during the previous year to the persons specified u/s 40A(2)(b).

## Clause 23



**Particulars of payments made to persons specified under section 40A(2)(b)**

This section basically disallows expenditure incurred by way of payment to specified persons (relatives) if the assessing officer finds them to be excessive or unreasonable in nature.



## Notes :

- » The tax auditor is not required to comment on the reasonableness or otherwise of such payments
- » In case of voluminous transactions the tax auditor may consider grouping the similar transactions based on their nature and disclose such consolidated information as per their nature individual party wise

23 Payments to specified persons u/s 40A(2)(b)

Name	Amount	Relation	PAN	Nature of Transaction

# Clause 26

In respect of any sum referred to in clauses (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 during 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.)



This section allows certain expenditure like cesses, taxes, duties, interest to bank, etc. to be claimed only on actual payment of the same if it is made before the due date of filing the return for the respective assessment year.

## Notes :

- » The deduction in respect of sums specified therein will be allowed only on actual payments of those sums even if the assessee is following mercantile basis of accounting
- » Deduction will not be allowed on the basis of provision made in the books.
- » If the specified sums for which the liability was incurred during the PY are paid on or before the due date for filling IT return, the deduction will be allowed in the PY itself.

## Notes :

- » If the liability to pay the specified sum pre-existed on the 1<sup>st</sup> day of the PY, deduction will be allowed only if payment is made on or before the end of the PY
- » The 'due date for filing return' deadline applies to the sum for which the liability was incurred during the PY and not pre-existing liabilities.
- » The tax auditor is required to report against clause 26(A) only the liability incurred during the PY and outstanding at the end of the PY.

## Notes :

- » The purpose of clause 26(B) is to allow deduction of payments made after the end of the PY but on or before the due date of filing the return of income.
- » Against clause 26(A), the tax auditor would report details regarding the liability that pre existed on the 1<sup>st</sup> day of the PY
- » This clause does not require the tax auditor to comment on the admissibility /inadmissibility of the sums referred to in the clause.

## Notes :

- » The tax auditor should distinguish payments made during the previous year that were earlier allowed from those that were disallowed in earlier years.
- » If amounts referred in section 43B were not allowed in previous years as a deduction then any recovery/refund/remission of liability received against the amounts is not taxable under section 41. These items should be separately identified by the tax auditor in his report



Expenses description	Current Year's O/s		Earlier Years' O/s	
	Paid within	Not paid within	Disallowed	Paid during
	due date	due date	amount B/F	the year
	1	2	3	4

- Bonus / Commission to employees
- CST
- Customs Duty
- Employer's contribution to any Employee welfare fund:
- Employer's contribution to ESI
- Employer's contribution to gratuity fund
- Employer's contribution to PF
- Employer's contribution to superannuation fund
- Excise Duty
- GST

# 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 details of the same.

Where the assessee receives certain shares of a private limited company where the Fair Market Value of such shares minus the amount paid to acquire such shares exceeds Rs. 50,000, such excess shall be chargeable to tax under the head 'Income from other sources'.

Provisions of section 56(2)(viiia) are not applicable w.e.f AY 2018-19.

In this clause mention – NA

Section 56(2)(x) will apply where shares are received on or after 01-04-2017 without consideration or for inadequate consideration.

## Section 56(2)(x)

(b) the negotiations do not result in transfer of such capital asset,

(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;

<sup>69</sup>[(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:]

# Clause 29A

## ADVANCE

a) Whether any amount is to be including in income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)

Advances received in relation to the transfer of a capital asset are shown as income from other sources where the advances are forfeited and the capital asset is not ultimately transferred.

# Clause 29A

b) If yes, please furnish the following details:

(i) Nature of income

(ii) Amount thereof

Clause 31 - Notification No. 58/2017/F. No.  
370142/10/2017-TPL

- a) Particulars of each **loan or deposit** in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year
- b) Particulars of each **specified sum\*** in an amount exceeding the limits specified in section 269SS taken or accepted during the previous year

Taking a loan or any amount in relation to an immovable property (specified sums) exceeding Rs. 20,000 otherwise than by way of an account payee cheque or bank draft or use of a bank account through ECS would attract a penalty equal to the amount borrowed. Details of all loans or specified sums taken exceeding Rs. 20,000 are provided herein.



**\*Specified sum** – any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place

**Specified advance** – any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

ba) Particulars of each specified sum in an amount exceeding the limits specified in section 269ST taken or accepted during the previous year

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:-

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

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

Section 269ST says that a person is not allowed to receive more than Rs. 2 lakh from either:

- (i) From a person in a day (in total);
- (ii) In respect of single transaction; or
- (iii) In respect of transactions relating to a single event/occasion;

If such amount is paid through any mode other than an account payee cheque / bank draft or use of ECS through a bank account. The reporting of non-compliance with this section will be made in this clause.

- 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
  
- 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 ECS through a bank account during the previous year

e) Particulars of repayment of loan or deposit or any specified advance in 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

Repayment of a loan or any amount in relation to purchase of an immovable property (specified sums) exceeding Rs. 20,000 otherwise than by way of an account payee cheque or bank draft or use of a bank account through ECS would attract a penalty equal to the amount borrowed. Details of all repayments of loans or specified sums paid exceeding Rs. 20,000 during the year are provided herein.



31 Particulars u/s 269SS, 269ST and 269T

Name	PAN (If available)	Amount	Whether squared up	Maximum Amount	By Cheque or DD or ECS	Address
Loans/ deposits accepted u/s 269SS						
Specified Sums accepted u/s 269SS						
Loans/ deposits/ sums repaid u/s 269T						
Repayments u/s 269T - accepted otherwise than by Cheque/DD/ECS						
Repayments u/s 269T - accepted by Cheque/DD but not A/c payee						
Having receipts/payments of Rs.2 lakh or more u/s 269ST?	<input checked="" type="checkbox"/>					
Name	PAN (If available)	Amount	Type of Transaction	Date	Nature of Transaction	Address
Otherwise than by Cheque/DD/ECS						
By Cheque/DD but not A/c payee						

# 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 details
- b) Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details
- c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish details.



These sections broadly relate to compliances in respect of TDS payable on certain expenses. The tax auditor reports the expenditure on which tax was required to be deducted, whether such tax was actually deducted and paid to the government on time. In case of a failure to comply on time, the details of penalty in respect of such late payments will also be covered.

## Notes :

- » The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such case, he should bring the difference of opinion appropriate as an observation in the clause 3 of form 3CA or clause (5) of form no.3CB as the case may be.
- » Details of this clause should tally with the disallowances reported u/s 40(a) in clause 21(b) of form 3CD to the extent applicable

34 TDS /TCS summary, delay in filing returns, interest liability

For the procedure to auto-import data from Winman-TDS, click [?](#)

TDS									
Deductor / Branch / Division	TAN	TDS	Nature of payment	Total payments of specified nature	Sum liable to TDS	TDS at specified rate		TDS at Lower rate	
		Section				Sum liable	TDS	Sum liable	TDS
Whether TCS is applicable?		<input type="checkbox"/>							
TDS/TCS return details									
Deductor/Branch/Division/Collector	TAN	Form No.	Quarter	Due date	Date of filing	If return is inaccurate, details	Return accurate?		
Whether there is a interest liability u/s 201(1A)?		<input type="checkbox"/>							

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