

COMPREHENDING TAX AUDIT PROVISIONS AND ITS PRACTICAL ISSUES



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COVERAGE

- Purpose
- Approach
- Introduction
- Applicability
- Forms
- Clauses of Form 3CD
- Questions & Answers

PURPOSE OF TAX AUDIT

- Proper maintenance of books accounts and other records
- Reflect correct income
- Check on correct claims of Deductions
- Check on fraudulent practices
- Facilitate in administration and compliance function
- Save time of Tax Department



TAX AUDIT APPROACH

- Awareness - Applicability of tax audit, applicable form
- Knowledge - Income tax provisions and Amendments (**BARE ACT AND NOT GOOGLE**)
- Knowledge - Clients business
- Thorough reading of the Annual Report
- **REFER (NOT COPY PASTE!!!)**– Previous tax audit reports
- Guidance Note issued by ICAI, FAQs etc.
- Analyze impact on the computation of income and taxes
- Judicial Pronouncements
- Office Notes, Tax Audit Notes
- Documentation, wherever required

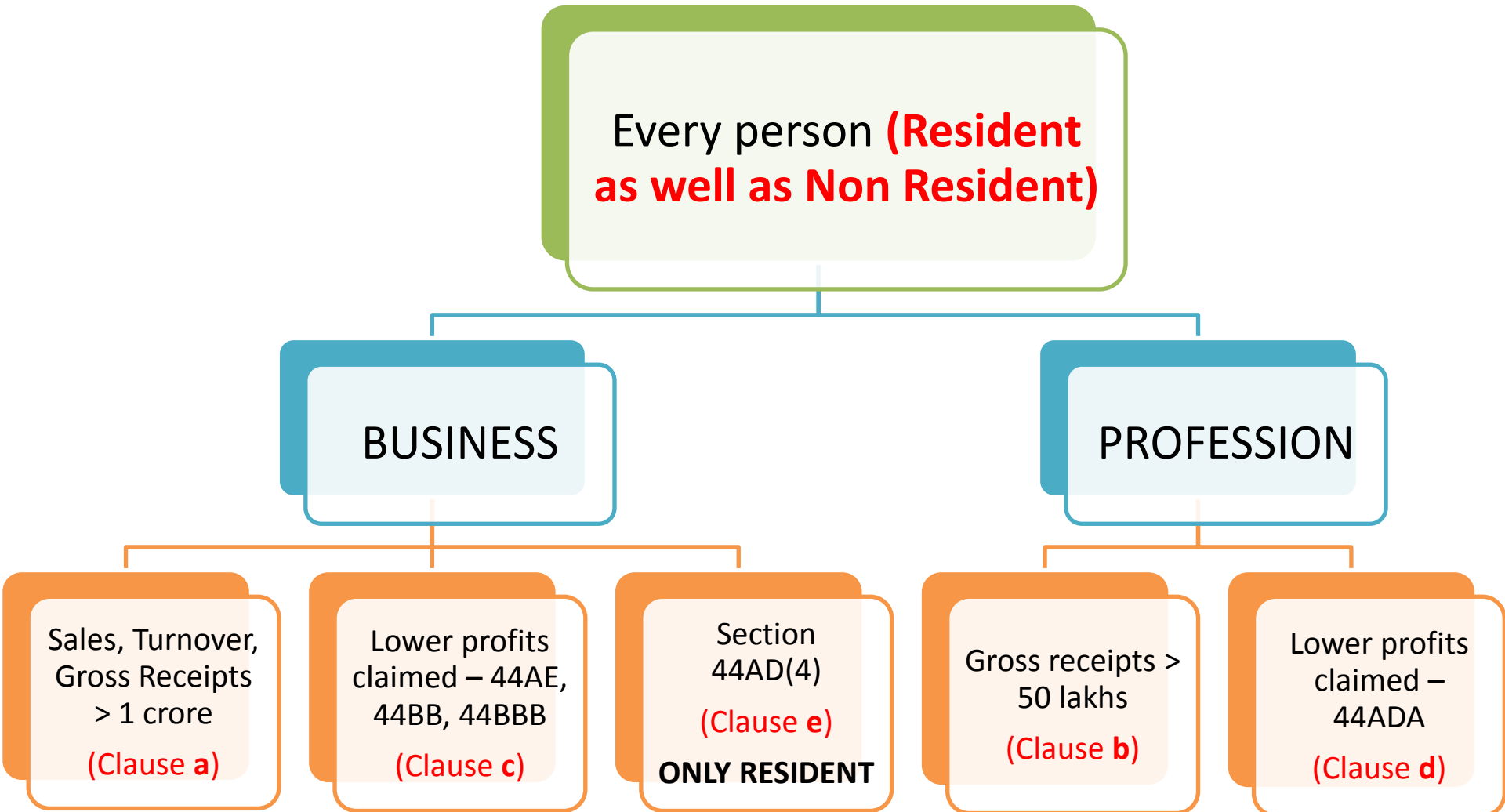


INTRODUCTION

- Section 44AB of the Income-tax Act, 1961 read with Rule 6G
- Trigger point – applicability
 - ✓ Business - sales, turnover or gross receipts > Rs. 1 crore
 - ✓ Profession - gross receipts > Rs. 50 lakhs
 - ✓ Presumptive taxation
- Due Date – 30th September or 30th November
- E-filing Tax Audit Report (**MANDATORY**)
- Sec 271B – Failure to get accounts audited – Penalty is lower of : 0.5% of sales, turnover or gross receipts or 150,000/- (**ONUS ON ASSESSEE**)
- Sec 271 J- Furnishing of incorrect audit report/ certificate- Rs 10,000 for every such audit report/ certificate furnished (**ONUS ON CHARTERED ACCOUNTANTS**)



APPLICABILITY - SECTION 44AB



APPLICABILITY - SECTION 44AB

- Proviso to Sec 44AB – **No** Tax Audit in case of profits declared as per Sec 44AD(1)
- Qua Assessee or Qua Business?

PRESUMPTIVE TAX – SEC 44AD

- **Eligible Assessee** - Individual, HUF and Partnership firm (**Excludes LLP**)
 - Has **not** claimed deduction u/s. 10A, 10AA, 10B, 10BA, 80H to 80 RRB
- **Eligible Business** - All Business except plying, hiring. or leasing of goods carriage u/s. 44AE
- **Excluded** - Persons engaged in professions specified u/s. 44AA
 - Commission or Brokerage Business
 - Agency Business
- **Profits** - 6% - Digital payments
 - 8% - non digital payments
 - 8% - payments unrealized till the return filing date

PRESUMPTIVE TAX – SEC 44AD

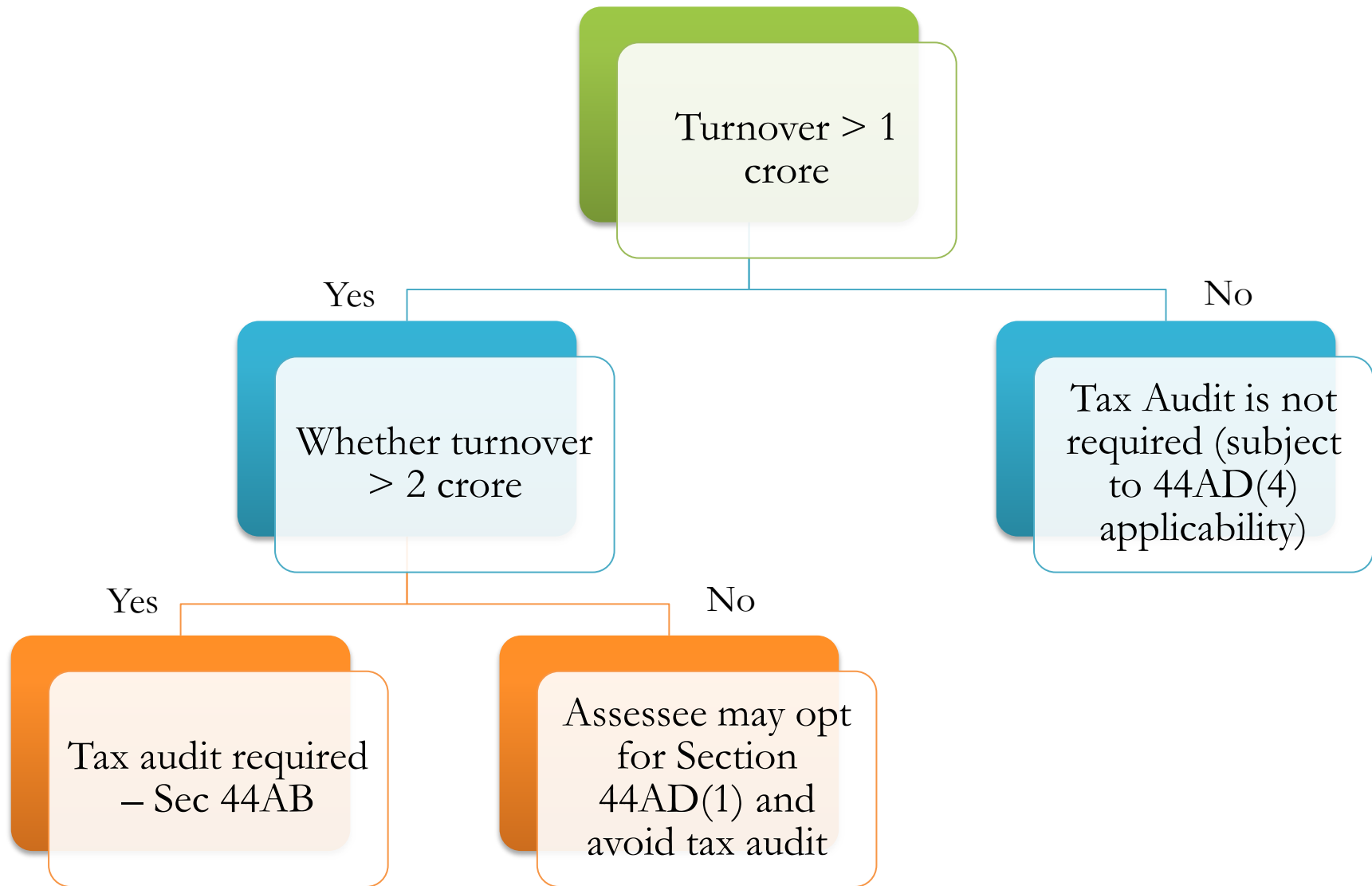
➤ Sec 44AD (4)

- ✓ Profits not declared in accordance with Sec 44AD (1) – (Year1 – 44AD(1) satisfied)
- ✓ For any 5 Assessment years subsequent to the Assessment year in which profits are not declared as per Sec 44AD(1) - (Year 3 – 44AD(1) not satisfied)
- ✓ Benefit not available to offer profits as per Sec 44AD(1)
- ✓ For 5 Assessment years subsequent to the Assessment year in which the default is made – (Year 4 to Year 8 – claim not available)

➤ Sec 44AD (5)

- ✓ Assessee to whom provisions of Sec 44AD(4) are applicable
- ✓ Whose income chargeable to tax exceeds basic exemption limit
- ✓ Then books to be maintained and audit to be done under Sec 44AB

PRESUMPTIVE TAX – SEC 44AD



PRESUMPTIVE TAX – SEC 44AD

FOOD FOR THOUGHT

- Losses or NIL profit – whether it shall get covered under the ambit of Lower profits and hence triggers Sec 44AD (Assumed that total income exceeds maximum chargeable limit)?
- Turnover > 1 crore, Profit = Rs. 2 lakhs (Assumed Total income = 2 lakhs i.e. no other income) Sec 44AD not applicable but whether Sec 44AB triggered?
- Turnover of all eligible business to be tested in aggregate or individually?
- Qua Business or Qua Assessee?

BUSINESS v/s PROFESSION

➤ Business

- ✓ “Business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture [S. 2 (13)]
- ✓ It means dealings either continued or contemplated to be continued with a profit motive.
- ✓ Business is a wider term and includes Profession
- ✓ **All Profession can be Business but all Business cannot be Profession.**

BUSINESS v/s PROFESSION

➤ Profession

- ✓ “Profession” includes vocation [S. 2 (36)] - vocation not defined under Act
- ✓ It means occupation requiring special knowledge and skill which is usually advanced Education on the basis of special learning and special qualification
- ✓ List of professions mentioned in S. 44AA - Additional requirements w.r.t maintenance of books of accounts

➤ Whether Company can carry on profession ?

- ✓ A company does not possess the skill and so it cannot carry on profession by itself
- ✓ ITO vs. Ashalok Nursing Home (P) Ltd (ITA 2455/Del/2003)

BUSINESS v/s CAPITAL GAINS

Transfer of
listed shares
& securities

- Assessee treats it as stock in trade, then business income
- If held for more than 12 months, capital gains (Circular No. 06/2016 dtd 29Feb,2016)

Transfer of
unlisted
shares

- Income to be considered under Capital Gains (Notification No. 225/12/2016/ITA II dtd 2May, 2016)
- AO may take a contrary view in specified situations

Circular No.
4/2007 dtd
15
June2007

- Reflected in books of accounts
- Frequency and magnitude of transactions
- Motive to earn profit/dividend
- Two portfolios-CIT Vs Associated Industrial Development Company (P) Ltd (82 ITR 586)

TURNOVER / GROSS RECEIPTS

- Whether following to be included while computing Turnover / Gross receipts – [refer Para 5.11 of GN of ICAI]
 - ✓ Sales tax, Excise duty
 - ✓ Trade discount, Cash discount
 - ✓ Sale of scrap, Sales returns
 - ✓ Dividend income
 - ✓ Sale proceeds of investments and fixed assets
 - ✓ Share of profit of partner [exempt u/s 10(2A)]
- Turnover for speculative / derivative transaction – [refer Para 5.12 of GN of ICAI]
 - ✓ Favorable and unfavorable difference in absolute terms



APPLICABLE FORM

Form 3CA
/ 3CD

- Accounts audited under any other law (financial year audited same as previous year)

Form 3CB
/ 3CD

- Accounts audited under any other law (financial year audited different from previous year) – Circular No. 561 dated 22nd May, 1990

Examples
of 3CB in
place of
3CA

- Different accounting period (Eg : accounts prepared for 15 months)
- Demerger / Amalgamation orders (Eg: orders received in FY 2018-19 after adoption of accounts of FY 2017-18, wherein effective date being 1st April 2017 (i.e. FY 2017-18))

FORM 3CD

- Responsibility of the management
- Chartered Accountant to verify the correctness of the data
- “True and correct view” as against “True and fair view”
- Factual accuracy
- Reasonable Assurance (GN to Tax Audit)
- Onerous responsibility on tax auditor to verify whether data reported is “true and correct”
- Importance of adequate documentation – to safeguard potential risks

DOCUMENTATION REQUIREMENT

Permanent File

- PAN, TAN,
- Tax Registration Number
- Registered Office / Branch Details
- Partnership Deed, MOA/ AOA

Current File

- All the working papers collected while doing the audit for that particular year starting with appointment letter and ending with a management representation letter

CLAUSE 1 to 4

➤ **Clause 1 – Name of the Assessee**

- ✓ (Trade name + Proprietor, Erstwhile name)

➤ **Clause 2 – Address of the Assessee**

- ✓ Principal Place of Business + Registered Address

➤ **Clause 3 – Permanent Account Number**

- ✓ Allotted by the Department

➤ **Clause 4 – Indirect Tax Registration**

- ✓ Basic knowledge of indirect tax laws
- ✓ If assessee is liable to pay taxes however not registered – reporting ?
- ✓ In case of branches separate registrations - Reporting each of them



CLAUSE 5 - 7

➤ **Clause 5 – Status of the Assessee**

- ✓ Individual, HUF, Company, LLP, AOP, BOI, Local Authority
- ✓ What if status of the Assessee changed during the year ?

➤ **Clause 6 – Previous Year**

- ✓ Sec. 3 - Definition of previous year
- ✓ Is previous year same for all Assessee ?
- ✓ **Relevant for businesses which are set up during the year** Western India
Vegetable Products Ltd v. CIT– (1954) 26 ITR 151 (Bom HC)

➤ **Clause 7 – Assessment Year**

- ✓ Period of 12 months commencing from 1st day of April.

CLAUSE 8 - 9

- **Clause 8 – Relevant clause of Sec 44AB under which Tax Audit conducted**
- **Clause 9 – Name of Partners & PSR and indicate if any change**
 - ✓ In case of Firm and AOP, indicate name of partners and their PSR and change if any during the previous year

Sr No.	Name of Partner	Old Profit/Loss Sharing Ratio	Change during the previous year	New Profit/Loss Sharing Ratio

CLAUSE 10 & 11

Clause 10 – Nature of Business

- ✓ Indicate nature of business or profession and change if any

Clause 11(a) – Books of accounts - **PRESCRIBED**

- ✓ Books of Accounts prescribed u/s. 44AA

Clause 11(b) - **MAINTAINED**

- ✓ Rule 6F – maintenance of specified books for some Assessee
- ✓ In case where accounts are maintained at more than one location– address of all locations will have to be given

Clause 11(c) - **EXAMINED**

- ✓ Nature of relevant documents –wide and subjective term
- ✓ Examples of relevant documents – vouchers, invoices, contracts, valuation report, minutes, share certificates, agreement for sale, indirect tax returns etc.

CLAUSE 12 & 13

➤ Clause 12 – Presumptive Tax

- ✓ Whether Profit & Loss A/c includes and profit and gains assessable on presumptive basis → 44AD, 44AE, 44BB, etc

➤ Clause 13 – Method of Accounting

- ✓ Whether Assessee follows- Mercantile System OR Cash System?
- ✓ Change in method of accounting - Immediate preceding previous year
- ✓ Income Computation & Disclosure Standards-
 1. Adjustments to Profit/ Loss
 2. Disclosures

CLAUSE 14

- Clause 14 – Method of Valuation of Closing Stock
- Dispute – AS-2 v/s 145A
- Exclusive v/s Inclusive method of accounting
- S. 145A is tax neutral - Hawkins Cooker – (2008) 14 DTR 206 Mum ITAT
- Judicial Pronouncement – adjustment not only to closing stock but opening stock also
- In case of deviation, format of reporting specified - Reference to GN of ICAI

CLAUSE 15

➤ Clause 15 – Conversion of Capital Asset into Stock in Trade

- ✓ Particulars of capital asset converted to Stock-In-Trade
 - Description of capital asset
 - Date of Acquisition
 - Cost of acquisition
 - Amount at which the asset is converted into stock-in-trade

CLAUSE 16

➤ Clause 16- Amounts not credited to Profit & Loss A/c

- ✓ Clause 16(a) – Items within the scope of Sec 28
- ✓ Clause 16(b) – Proforma credits, drawbacks, refunds of custom duty, excise duty, service tax , sales tax or VAT etc . that are admitted
- ✓ Clause 16(c) – Escalation claims accepted
- ✓ Clause 16(d) – Any other item of income
- ✓ Clause 16(e) – Capital Receipts – Professional judgement to be applied to determine whether revenue or capital in nature

CLAUSE 17

➤ Clause 17 – Transfer of Land or Building

- ✓ Any Land/ Building transferred during the year
- ✓ Land / Building referred to in Sec 43CA / Sec 50C
- ✓ Transfer Price < Value adopted/ assessed/ assessable by → Authority or State Government
- ✓ Reporting
 - Description of Property
 - Consideration received or accrued
 - Value adopted or assessed or assessable
- ✓ Variation of 5 percent permitted

CLAUSE 18

- Clause 18 - Depreciation
- Following information to be disclosed
 - ✓ Description of asset / block of asset
 - ✓ Rate of depreciation
 - ✓ Actual cost or written down value
 - ✓ Addition / deletion
 - ✓ Depreciation allowable
 - ✓ WDV at the year end

CLAUSE 18

- Proper classification – based on legal precedents – important to claim depreciation
- Identification of assets eligible for higher depreciation
- Depreciation rates – Rule 5 - given in New Appendix I – rates range from 5% to 40% (The maximum depreciation restricted to 40%- Notification No 103/2016, dated 07/11/2016 w.e.f A.Y. 2017-18)
- Ascertainment of actual cost – S. 43(1)
- Capitalization of interest – 36(1)(iii)
- Foreign Currency adjustments – S. 43A
- Condition regarding put to use - only in the year of acquisition

CLAUSE 18

- Additional Depreciation u/s 32(ia) – Additions 20% > 180 days, 10% < 180 days
- Additional Depreciation – computers installed in the factory
- Details of additions and deletions to Fixed Assets
- Reconciliation of Sale and Purchase of Assets as per books of accounts and as per Income tax

Documentation requirement

- ✓ Copies of sample bills in respect of asset purchased during the year
- ✓ Details of fixed asset sold, scrapped during the year (FA register)
- ✓ Evidences to substantiate put to use date
- ✓ Evidences to establish that asset is eligible for additional depreciation

CLAUSE 19

➤ Clause 19 – Amounts admissible u/s. 32AC, 33AB, 35AC, 35AD, etc.

Sr. No.	Section	Debited to Profit and Loss a/c	Amount admissible as per the provisions of the Income Tax Act, 1961 and also fulfills 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.
1	32AC		
2	35AC		
3	35AD		

➤ Documentation requirement

CLAUSE 20

- Bonus or commission to employees – Sec 36(1)(ii)
- **Contribution to various funds**
- ✓ S.2(24)(x) – **Contribution received from employee**
- ✓ S. 36(i)(va) – allowable as expenditure if paid within due date
- ✓ Due date as prescribed under respective laws
- ✓ Contribution paid after due date but before filing of return of income
 - AIMIL Ltd (2010) 321 ITR 508 (Delhi HC) – Favour
 - Gujarat State Road Transport Corp (2014) 265 CTR 64 (Guj HC) –Against
 - Bihar State Warehousing Corporation Ltd [2016] 71 taxmann.com 247 (Patna HC) – Favour (July 19,2016)
- ✓ Due Date – Provident Fund and ESIC is 15th of next month.
- ✓ **Documentation** : Copies of PF / ESIC / labour welfare funds challans, Case laws relied upon

CLAUSE 21

CAPITAL EXPNEDITURE

- Some test whether expenses capital / revenue in nature
 - ✓ Whether it brings into existence an asset or advantage of enduring benefit
 - ✓ Whether it is referable to fixed capital or fixed assets in contrast to circulating capital or current assets
 - ✓ Whether it is an expenditure to acquire an intangible asset
- Expenses on Computer Software – Whether capital or revenue in nature

CLAUSE 21

PERSONAL EXPENSES

- Scrutinize expenses to verify any personal expenditure incurred
- Sec 143(1)(e) under Companies Act, 2013 requires the Statutory Auditor to enquire any personal expenses charged to revenue account.

ADVERTISEMENT in any souvenir, brochure, tract, pamphlet, published by a Political Party

- Disallowance u/s. 37(2B)

CLUB EXPENDITURE

- Entrance Fees and Subscription
- Club services and facilities used

CLAUSE 21

➤ Fine / Penalties

- Explanation 1 to S. 37(1) : Expense incurred for any offence or prohibited by law shall be disallowed
- Nature of Penalty
 - ✓ Compensatory / civil
 - ✓ Penal / criminal
 - ✓ Composite (Part Compensatory/Penal)
- Penalty → violation of law / violation of contract

Documentation requirement

- Copies of order / notices



CLAUSE 21

- DISALLOWANCE U/S. 40(a)(i) / 40(a)(ia)
- Non deduction of TDS
- TDS Deducted but not paid to / deposited with the government
- No disallowance - Non Resident – paid within due date u/s 139(1) (Else 100% disallowance)
- No disallowance - Resident – paid within due date u/s 139(1) (Else 30% disallowance)
- Payment after due date u/s. 139(1) → allowed in subsequent years on payment basis
- No disallowance – Non resident (Amendment under Finance (No. 2), Act, 2019) as well as Resident – Payee has filed return of income u/s. 139 - paid tax on income received without tax deduction – Accountants certificate to be submitted by payer in Form 26A
- TDS on Provisions - If payee is not identifiable – no disallowance – Judicial Pronouncements

CLAUSE 21

- Clause No. 21(b) - S. 40(a)(ic)- Fringe Benefit Tax
- Clause No. 21(b) - S. 40(a)(iia)- Wealth Tax not allowable
- Clause No. 21(b) - S. 40(a)(iib)- Royalty, license fee etc. paid by State Govt. undertaking - not allowable
- Clause No. 21(b) - S. 40(a)(iii)- Salaries paid outside India / NR without TDS
- Clause No. 21(b) - S. 40(a)(iv)- Payment of PF from fund without TDS
- Clause No. 21(b) - S. 40(a)(iii)- Tax paid by employer u/s 10(10CC) - perquisites
- Clause 21(c) – Interest, salary, remuneration etc. inadmissible u/s. 40(b) / 40(ba)
- Clause 21(e) – Provision for payment of gratuity not allowable u/s 40A(7)
- Clause 21(f) – Payment made for setting up or formation of fund, trust, etc-not allowable.
- Clause 21(g) – liability of contingent nature – liability to be ascertain

CLAUSE 21

- **CASH PAYMENT S. 40A(3) / 40(A)(3A)**
- 40A(3) - Disallowance for expenditure
- 40A(3A) – liability booked in a particular year and payment made in subsequent year
- where payment in cash
- Payment or aggregate of payments
- **Made in a day** to a person
- Exceeding Rs, 10,000/-
- Exceeding Rs. 35,000/- in case of payment made for plying, hiring, or leasing of goods or carriages
- Exceptions provided in Rule 6DD

Documentation requirement - Copy of Cash Book

CLAUSE 21

- **S. 14A – AMOUNT INADMISSIBLE**
- Disallowance of ‘expenditure incurred in relation to income which does not form part of total income’
- AO is empowered to determine amount inadmissible as per Rule 8D only if having regard to its accounts not satisfied with–
 - ✓ correctness of Assessee’s claim, or
 - ✓ Assessee’s claim of NIL expenditure incurred
 - ✓ Disallowance as per Rule 8D to be total of -
 - Expenditure directly relating to exempt income
 - 1% of Annual average of monthly average of investments (yielding exempt income)
 - Amount derived shall not exceed the total expenditure

CLAUSE 21(i), 22, 23,24

- **Clause 21(i)** – amount inadmissible under proviso to sec. 36(1)(iii)
 - ✓ Proviso – Interest on borrowings – acquisition of an asset
 - ✓ Interest – capitalise till the date the asset put to use.

- **Clause 22** – amount on interest inadmissible u/s 23 of MSME Act, 2006

- **Clause 23** – payments made to Related parties specified in Sec40A(2)(b)
 - ✓ In the nature of expenditure
 - ✓ Disallowance if in the opinion of the Assessing Officer the expenditure is excessive or unreasonable having regard to Fair market value
 - ✓ Proviso - No disallowance if transactions at Arm's Length Price as per Sec92F(ii)
 - ✓ Scope of Related parties –wider
 - ✓ Purchase of Fixed Assets?
 - ✓ Reporting of reimbursements?

- **Clause 24-** Amounts deemed to be profits u/s 32AC, 33AB, 33ABA or 33AC

CLAUSE,25

➤ Clause 25

- ✓ S.41(1) – Obtained cash or any other manner any amount in respect of loss / expenditure or cessation / remission of trading liability – chargeable to tax
- ✓ S. 41(2) – Depreciation on Asset u/s 32(1) – Moneys payable does not exceed difference between Actual cost and WDV
- ✓ S. 41(3) Asset used for scientific research is discarded – sale proceeds and deduction claimed exceeds capital expenditures
- ✓ S. 41(4) – Bad debt recovered
- ✓ Sec 41(4A) – Withdrawl of special reserve created u/s. 36(1)(viii)

CLAUSE 26

➤ LIABILITIES ALLOWED ON PAYMENT BASIS

- Introduced to curb non payment of statutory dues
- Reporting in Two Parts -
 - ✓ Part A – Liability which pre existed on first day of previous year
 - ✓ Part B – Liability incurred during the year and paid before due date of filing of return u/s 139(1)
- Following are covered u/s 43B
 - ✓ Tax, duty, cess etc under any law in force
 - ✓ Employer contribution to PF, gratuity or any other fund for labour welfare
 - ✓ Bonus or commission
 - ✓ Interest payable to Public Financial Institution, etc
 - ✓ Interest payable to Deposit taking NBFC, systematically important non deposit taking NBFC (**Amended by Finance (No.2) Act, 2019**)
 - ✓ Interest payable to Scheduled bank or cooperative bank
 - ✓ Leave encashment

CLAUSE 26

- Explanation 3C & 3D – Conversion of interest into loan- not deemed payment
- Amounts written back and credited to Profit & Loss account out of the said items from (a) to (g) – not chargeable to tax
- Payment made before due date – after Tax Audit report- allowed
- Extended due date for filing return of income – payments made till extended due date shall be allowed.
- Sum payable shall be sum for which liability created in books of accounts even though not liable in that year under the respective law.

CLAUSE 27

➤ Clause 27(a)- Details of CENVAT Credit

Sr No	Particulars	For Inputs	Service Tax GTA
1	Opening Balance of Modvat Credit		
2	Add: Modvat Credit availed off during the year		
3	Less: Modvat Credit utilized during the year		
4	Closing Balance of Modvat Credit		

➤ Clause 27(b)- Whether Income/ Expenditure → Earlier Years → Debited/Credited to P&L A/c

CLAUSES 28, 29, 29A, 29B

- Clause 28 to 29B extended to Income form other sources
- Clause 28 – Sec 56(2)(viiia) - Applicable to private Companies
 - ✓ Redundant after 1st April, 2017 since now covered under Sec 56(2)(x)
- Clause 28 – Sec 56(2)(viib) - Applicable to private Companies
 - ✓ Details to be furnished only if,
 - ✓ A Private Company
 - ✓ Receives consideration from another private Company
 - ✓ form issue of shares
 - ✓ consideration is in excess of fair market value of shares
 - ✓ Shares issued at above face value
 - ✓ 11UA valuation to be obtained
- Clause 29A – Sec 56(2)(ix)
 - ✓ Amount received as advance
 - ✓ On negotiation for transfer of capital asset
 - ✓ Amount is forfeited
 - ✓ And negotiation does not result in transfer of capital asset
 - ✓ Nature and Amount of advance to be reported

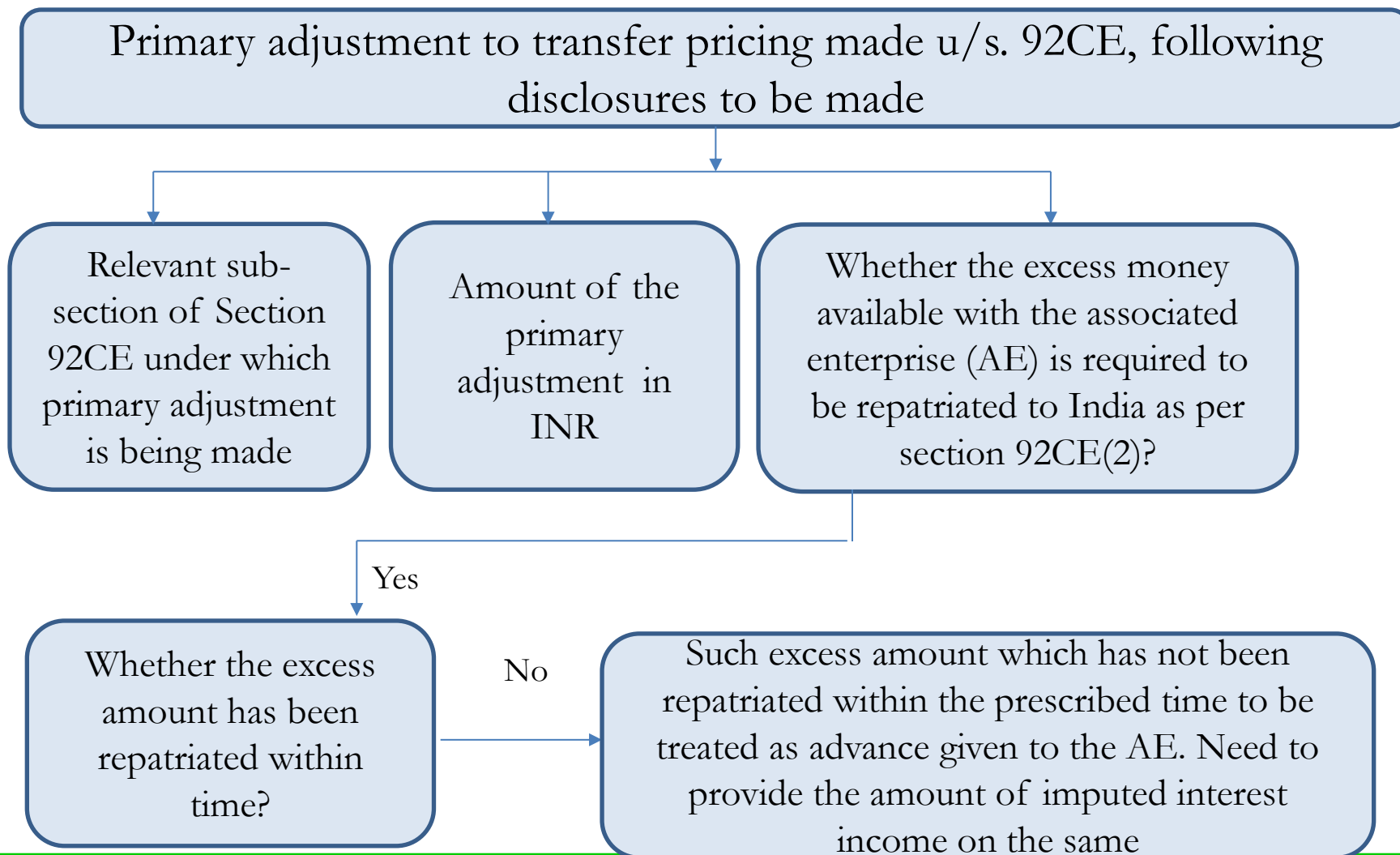
CLAUSES 29B, 30

➤ Clause 29B – Sec 56(2)(x)

- ✓ Scope widened by including all persons
- ✓ Receiving sum of money, immovable property, other property
- ✓ without consideration or inadequate consideration.
- ✓ Sum of money, immovable property, other property exceeding, difference between fair market value and consideration exceeding Rs. 50,000/-.
- ✓ Immovable property - variation of 5 % from stamp duty value permitted.

- ✓ Clause 30 – Amounts borrowed by hundi or any amounts due thereon repaid (including interest) otherwise than by account payee cheque

CLAUSES 30A – SECONDARY ADJUSTMENT



CLAUSES 30B – Limitation on Interest Deduction

Revised Form 3CD

Clause No	Particulars
30B	(a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No.) (b) If yes, please furnish the following details in the format specified

- Section 94B – Inserted vide Finance Act 2017 – to limit the interest deduction in certain cases and to bring in the concept of “Thin Capitalisation”
- Restrictions on deduction to be claimed:
 - 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) (or)
 - Interest paid or payable to associated enterprisewhichever is less
- Certain relaxations provided by this section
- Need to report the amount of interest expenditure, EBIDTA of the previous year, Amount of interest expense over 30% of EBIDTA, interest expenditure brought forward (relevant AY and amounts), interest expenditure carried forward (relevant AYs and amounts)

CLAUSE 31 – SECTION 269SS / T

31(a)

- Loan or deposit taken or accepted exceeding Rs. 20,000/- Sec 269SS

31(b)

- Specified Sum taken or accepted exceeding Rs. 20,000/- - Sec 269SS

31(ba)

- Receipt of amount exceeding Rs. 200,000/- other than cheque or bank draft or ECS - Sec 269ST

31(bb)

- Receipt of amount exceeding Rs. 200,000/- by way of a cheque or bank draft but not account payee cheque or bank draft- Sec 269ST

31(bc)

- Payment of amount exceeding Rs. 200,000/- other than cheque or bank draft or ECS - Sec 269ST

31(bd)

- Payment of amount exceeding Rs. 200,000/- by way of a cheque or bank draft but not account payee cheque or bank draft- Sec 269ST

CLAUSE 31 – SECTION 269SS / T

31(c)

- Repayment of loan or deposit or specified advance exceeding Rs. 20,000/- - 269T

31(d)

- Repayment of loan or deposit exceeding Rs. 20,000/- otherwise than by cheque or bank draft or ECS - 269T

31(e)

- Repayment of loan or deposit exceeding Rs. 20,000/- by cheque or bank draft but not account payee cheque or bank draft - 269T

CLAUSE 31 – SECTION 269SS / T

- **Specified Sum** – any money in relation to transfer of an immovable property - whether or not the transfer takes place
- Cumbersome reporting for Large Real Estate Builders
- Sec 269ST – Receipt of an amount exceeding Rs. 2 lakhs otherwise than by way of an account payee cheque or account payee bank draft
 - ✓ 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,
- Transactions by Journal entry whether covered?
 - CIT Vs. Triumph International Finance (I) Ltd. 345 ITR 270 (Bom)
 - Ajitnath Hi-Tech Builders Private Limited 92 taxmann.com 228 (Bom)

CLAUSE 32 – BROUGHT FORWARD LOSS

- **Clause 32(a)** - Nature of loss, Amount
- Amount as assessed, Remarks – Assessment pending, Status of appeal, etc.
- Reporting Format:

Serial No.	Assessment Year	Nature of loss/allowance (in Rs)	Amount as returned (in Rs)	Amount as assessed (give reference to relevant order)	Remarks
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- **Clause 32(b)** - Change in shareholding
 - ✓ Last day of Year in which loss was incurred and year in which loss set off – 51% of the voting power beneficially held by same persons
 - ✓ Eligible start ups u/s. 80IAC – shareholder hold shares in the year of loss and the year of set off and loss in incurred during 7 years from date of incorporation
 - ✓ Not applicable in certain cases
- **Clause 32(c)** – **Speculation loss u/s. 73**
- **Clause 32(d)** – **Loss from specified business u/s. 73A**
- **Clause 32(e)** – **Deemed speculation loss under Explanation to Sec 73.**

CLAUSE 33 – DEDUCTIONS UNDER CHAPTER VI-A OR CHAPTER III

Serial No.	Section	Head	Amount admissible as per the provisions of the Income Tax Act, 1961 and also fulfills 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.
1	80G	Donation to organisations approved u/s 80G (Eligible at 50%)	
2	80JJAA	Employment of New Employees	

CLAUSE 34 – TDS REPORTING

- In hand information regarding TDS/TCS default, non payment of interest would be available with tax officer
- Intention appears to cross verify the amount debited to P&L with amount on which tax is actually deducted

Documentation requirement

- Copy of TDS / TCS Challans
- Copy of Acknowledgements of TDS / TCS return filed
- Form 26AS

CLAUSE 34 – TDS REPORTING

Clause 34(a) - Details of tax deducted or collected

TAN	Section	Nature of Payment	Total amount of Payment or Receipt of the nature specified in Col. (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 (7) and (9).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	194I	Rent	2,50,000	2,00,000	2,00,000	20,000	0	0	0
	194J	Prof fee	1,00,000	80,000	60,000	6,000	20,000	1,000	0
	194J	Prof fee	1,00,000	80,000	60,000	6,000	20,000	1,000	1,500

Clause 34(b) – Details of Statements filed

TAN	Type of Form	Due Date for furnishing	Date of Furnishing, if furnished.	Whether the statement of Tax deducted or collected contains information about all transactions which are required to be reported.
(1)	(2)	(3)	(4)	(5)

Clause 34(c) – Details of Interest paid u/s. 201(1A) /206C(7)

TAN	Amount of Interest Payable	Amount paid out of Col. (2)	Date of Payment
(1)	(2)	(3)	(4)

CLAUSE 35 – QUANTITATIVE DETAILS OF STOCK IN TRADE & RAW MATERIAL

➤ Clause 35(a)- In case of trading concern → quantitative details of goods traded

Opening Stock	Purchases during C.Y	Sales during C.Y	Closing Stock	Shortage/ Excess
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➤ Clause 35(b)- In case of manufacturing concern → quantitative details of –

A. Raw Materials

Opening Stock	Purchases during C.Y	Consumption during C.Y	Sales during C.Y	Closing Stock	Yield of finished products	Percentage of yield	Shortage / Excess, if any
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CLAUSE 35 – QUANTITATIVE DETAILS OF STOCK IN TRADE & RM

B. Finished Goods/ By Products

Opening Stock	Purchases during C.Y	Qty manufactured during C.Y	Sales during C.Y	Closing Stock	Shortage/ Excess, if any
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CLAUSE 36, 36A

➤ Details of Tax on Distributed Profits u/s 115-O

Total Amt of Distributed Profits	Amount of reduction as referred to u/s 115-O(1A)(i)	Amount of reduction as referred to u/s 115-O(1A)(ii)	Total Tax paid thereon	Date of payment with amounts
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➤ **Deemed Dividend u/s. 2(22)(e)**

- ✓ Amount and date of receipt to be reported

CLAUSE 37-39

➤ **Clause 37- Cost Audit**

- ✓ Whether Cost Audit conducted?
- ✓ Whether Audit Report contains → disqualification/ disagreement

➤ **Clause 38- Excise Audit**

- ✓ Whether Central Excise Audit conducted?
- ✓ Whether Audit Report contains → disqualification/ disagreement

➤ **Clause 39- Service Tax Audit**

- ✓ Whether Service Tax Audit conducted → Sec 72A
- ✓ Whether Audit Report contains → disqualification/ disagreement

CLAUSE 40 – Computation of Ratios

Serial No.	Particulars	Previous Year	Preceding Previous Year
1	Total turnover of the assessee	XXX	XXX
2	Gross profit / Turnover	XXX	XXX
3	Net profit / Turnover	XXX	XXX
4	Stock - in - trade / Turnover	XXX	XXX
5	Material consumed / Finished goods produced	XXX	XXX

CLAUSE 40 – Computation of Ratios

Components for working out above ratios :-

Serial No.	Particulars	Previous Year	Preceding Previous Year
1	Gross Profit	XXX	XXX
2	Gross Turnover	XXX	XXX
3	Net profit	XXX	XXX
4	Stock in trade (Finished Goods)	XXX	XXX
5	Material consumed	XXX	XXX
6	Finished Goods Produced	XXX	XXX

Clause 41 – Demand / Refund

- Additional checks required to identify demand raised or refund issued during PY
- Greater reliability on management representation
- Basic knowledge of other laws - must
- Octroi Duty, Entry Tax – not covered
- Refund determined adjusted against outstanding demand – whether to be reported ?? (Para 68.2 of GN)

Documentation requirement

- Copies of departmental orders where demand is raised / refund issued
- Contingent liability working

Clause 42 – Form 61, 61A, 61B

- (a) Whether the Assessee is required to furnish statement in Form No. 61 or Form No.61A or Form 61B? (Yes/No)
- (b) If yes, please furnish the details in specified format
- Requires the auditor to ensure if all the required details have been submitted and if not, then the unreported details/ transactions are required to be reported in Form 3CD
- Reporting of details of submission and due date of the respective forms with the income-tax
- Form 61, 61A and 61B relate to information to be filed in respect of specified financial transactions, etc.

Clause 43

- (a) Whether the Assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286? (Yes/No)
- (b) If yes, please furnish the following details :
 - (i) Whether report has been furnished by the Assessee or its parent entity or an alternate reporting entity
 - (ii) Name of parent entity
 - (iii) Name of alternate reporting entity (if applicable)
 - (iv) Date of furnishing of report
- Section 286 r.w.r 10DB specifies the Companies liable to comply with CbCR requirements
- Entities to whom CbCR is applicable need to comply with reporting requirements of Form 3CEAC and 3CEAD, wherever applicable
- Details of parent entity, alternate reporting entity and date of furnishing of these reports are to be mentioned under this clause of TAR

QUESTION AND ANSWERS



