

# ISSUES IN TAX AUDIT-

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# Legislative Intention & Objective

- ◉ Inserted By Finance Act, 1984
- ◉ Ensure proper maintenance of books of accounts and other records
- ◉ Facilitation of proper administration of tax laws.
- ◉ Assistance to Tax officers.
- ◉ Opportunity to Professionals (only CA's)

# Applicability                      wrt                      Certain Assessee's

- ▶ Section 44AB
- ▶ Applicability to 44AD cases
- ▶ Applicability to 12A Trusts, section 10 assessee, ICAI view, contra view by ITAT Bombay in Asstt. CIT v. India Magnum Fund [2002] 81 ITD 295 (Mum.),
- ▶ Applicability to Agriculturist etc.

# FORM 3CA & 3CB

## [See Rule 6G(1)(a)/(b)]

- ▶ True and Correct V/s True and Fair View

- ▶ TRUE AND CORRECT [Explained in ICAI Guidance Note]

**Completeness** of the information furnished, i.e., no items have been omitted in the information furnished; &

**Correctness** of the information furnished.

Factual Accuracy based on test checks

# FORM 3CA & 3CB [Contd..]

- ◉ Audit Report to be issued in cases where the accounts of the business or profession of a person have not been audited under any other law.
- ◉ Tax Auditor to state whether he has **examined** BS & PL for the year ended on 31<sup>st</sup> March....& **Certify** that they are in agreement with the Books of Accounts.
- ◉ **Balance Sheet, P & L A/c** to be attached.
- ◉ To specify the **number of Branches**, [where books of accounts maintained].

# 3CA & 3CB COMMON ISSUES

## ◉ Statutory Auditors to separately disclose reliance on Branch Auditor

“I/We have taken into consideration the audit report and the audited statements of accounts, and the statement of particulars in Form No. 3CD received from the auditors, duly appointed under the relevant law, of the branches not audited by me/us”.

## ◉ Branches out side India not Audited by Tax auditor “I

To obtain information required by form 3CD FROM “Assessee”, who would obtain the same from overseas auditor, who has audited a/cs of foreign branch.

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

# 3CA & 3CB COMMON ISSUES

- ◉ **F.Note no. 3 of form 3CA**, “Where any of the requirements in this Form is answered in negative or with qualification, give reasons thereof”
- ◉ Proper Signature **[F.Note no.4]**
  - Signature
  - Name
  - Address
  - Authority under which signing
  - ICAI Membership No. of Member
  - Firm Registration No.



# 3CD [PART -A]

## Clause 4 (Newly Inserted)

Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. if yes, please furnish the registration number or any other identification number allotted for the same

**Remark:-** To obtain the knowledge about the eligibility of assessee being assessed under Indirect tax also. TIN NO, ST REG NO., EXCISE REG NO. ETC WHICHEVER IS APPLICABLE.



# 3CD [PART -A]

## Clause 8 (Newly Inserted)

The relevant clauses of section 44AB shall be reported under which audit has been conducted

*Remark:- This clause is newly inserted in revised 3CD. In earlier 3CD, there was no such requirement.*

## 3CD [PART -B]

### Clause 9 (Old Clause no.7)

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

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

# 3CD Issues on Clause 7

- ▶ Applies to Firm and AOP.
- ▶ LLP also covered
- ▶ LLP's registered outside India?
- ▶ Profit sharing Ratio
- ▶ Loss sharing ratio
- ▶ Year end/All Changes
- ▶ Change in Remuneration whether required (To be stated, refer page 38 of 'Issues on Tax Audit' issued by ICAI & also 106 ITR 292 R.M. Chidambaram Pillai.

# 3CD [PART -B]

## Clause 10 (Old Clause no.8)

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)

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

Note: Business added/discontinued during the previous year with respect to the preceding year of the previous year.

- ▶ To Correspond to Annexure – I of form 3CD
- ▶ Permanent Discontinuance to be stated
- ▶ Temporary suspension not required
- ▶ Materiality to be seen for determination of change
- ▶ Also refer CBDT circular No. 04/2007 dt. 15/06/2007 & 06/2016 dated 29.02.2016.

# 3CD [PART -B]

## Clause 11 (Old Clause No.9)

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

**Remark:- To know where the books of accounts are kept in case of search & survey.**

# 3CD Issues on Clause 9

- ▶ Any books means the books so as to enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.
- ▶ Books of accounts defined u/s 2[12A]
- ▶ Rule 6F (5)
- ▶ In case of Books maintained on computer—printout
- ▶ Specified Profession  
Information Technology, last entrant
- ▶ Relevance of Inventory Records (refer section 87(4)(d) of DTC Bill, 2013)
- ▶ Chetan Gupta vs ACIT ITA 1891/2012 Del ITAT on scope of 'Pen Drive' as an admissible evidence.

# 3CD [PART-B]

## CLAUSE 14 (Old Clause no.12)

- (a) Method of valuation of closing stock employed in the previous year.
- (b) Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss.(A tabular format is specified for reporting of financial impact of changes in method of accounting and method of stock valuation)



# Table for Clause 14

Serial Number	Particulars	Increase in Profit (Rs.)	Decrease in Profit (Rs.)
XXX	XXX	XXX	XXX

*REMARK:- TO PROVIDE A STANDARD & SIMPLIFIED FORMAT FOR REPORTING*

## **ISSUES ON CLAUSE 14**

- ▶ Term closing stock is to be construed having regard to section 145A and AS-2
- ▶ Raw Material, WIP, Finished Goods, Spares, loose tools, etc.
- ▶ ALA firm's case (189 ITR 285) - when business is discontinued on dissolution, the stock should be valued at market price.
- ▶ Contrary View of Supreme Court in Sakti Trading Co. V/s ITO.
- ▶ Section **145A is tax neutral** as long as the assessee makes payment of the duty in accordance with the provisions of section 43B.
- ▶ Adjustments are profit neutral – CIT v. Indo Nippon Chemicals Co. Ltd. 261 ITR 275 (SC)
- ▶ Reconciliation – **ICAI Guidance Note**
- ▶ Applies to **Excise duty and VAT**
- ▶ Does **not apply to service tax** on services (till 31.03.2012)

# 3CD [PART-B]

## CLAUSE 15 (Old Clause no.12A)

15. Give the following particulars of the capital asset converted into stock-in-trade

- a) Description of capital asset
- b) Date of acquisition
- c) Cost of acquisition
- d) Amount at which the asset is converted into stock-in-trade

## **ISSUES ON CLAUSE 15**

- ▶ Considered **Deemed Transfer** u/s 2[47]
- ▶ **Chargeable to Tax** in the year, in which, **such stock in trade is sold**.
- ▶ Description of Capital Asset is to be stated.
- ▶ Date of Acquisition, cost of Acquisition is to be stated.
- ▶ Depreciable Asset—WDV/cost of purchase?
- ▶ Date of Transfer of such stock in trade?
- ▶ **Reverse situation, not in contemplation**, i.e conversion of stock in trade in capital asset. Relevant to Builders, and stock brokers moreso, in sluggish times.(ITA 6374/MUM/2004, ACIT v Bright Star Inv P Ltd

# 3CD [PART-B]

## **CLAUSE 16** *(Old Clause no.13)*

Amounts not credited to the profit and loss account, being,—

- a) the items falling within the scope of section 28;
- b) the Performa credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;
- c) escalation claims accepted during the previous year;
- d) any other item of income;
- e) capital receipt, if any.

## **ISSUES ON CLAUSE 16**

- ▶ Sub clause (a) – Chargeability of Income u/s 28 (free gifts, tours, etc.) refer 250 ITR 667 and CBDT circular no. 5/12 dt. 01/08/2012
- ▶ Sub clause (b)-Only undisputed credits of CED, VAT & Service Tax need be stated.
- ▶ unilateral claims not admitted by the relevant authorities?
- ▶ Income Tax Refunds?
- ▶ Sub clause (c)-Escalation claims accepted during the year? If pending determination?
- ▶ Sub clause (d)- Any other item of income not credited to P & L a/c [eg. Employee contribution to statutory dues].
- ▶ Items falling u/s 10 need not be stated.
- ▶ “Capital receipts” for this clause not cover share capital or item of gift etc.
- ▶ Capital Subsidy, surplus on sale of FA not passed thru P & L A/c are includible. Section 2(24)(xviii)

# 3CD [PART-B]

## Clause 17 (Newly Inserted)

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

Details of Property	Consideration received or accrued	Value Adopted or assessed or assessable
XXX	XXX	XXX

**Remark:- Details regarding to any transfer of property whether any land or building However if property is transferred for a consideration at or more than the stamp value, this clause shall not apply.**



# 3CD [PART-B]

## CLAUSE 21(Old Clause no.17)

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

Nature	Serial Number	Particulars	Amount in Rs.
XXX	1.	XXX	XXX
	2.	XXX	XXX
	3.	XXX	XXX

**Remark:- To Provide a Standard & Simplified Format For Reporting**

# 3CD [PART-B]

Particulars	Serial Number	Particulars	Amount in Rs.
Expenditure incurred at clubs being cost for club services and facilities used.	1.	XXX	XXX
	2.	XXX	XXX
	3.	XXX	XXX
Expenditure by way of penalty or fine for violation of any law for the time being force	1.	XXX	XXX
	2.	XXX	XXX
	3.	XXX	XXX
Expenditure by way of any other penalty or fine not covered above	1.	XXX	XXX
	2.	XXX	XXX
	3.	XXX	XXX
Expenditure incurred for any purpose which is an offence or which is prohibited by law	1.	XXX	XXX
	2.	XXX	XXX
	3.	XXX	XXX

**Remark:- To Provide a Standard & Simplified Format For Reporting**

# 3CD [PART-B]

## CLAUSE 21 *(Old Clause no.17)*

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

(i). as payment to non-resident referred to in sub-clause (i)

**A.** Details of payment on which tax is not deducted:

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name and address of the payee

# **3CD [PART-B]**

**B.** Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name and address of the payee
- (V) amount of tax deducted

# 3CD [PART-B]

(ii). as payment referred to in sub-clause(ia)

**A.** Details of payment on which tax is not deducted:

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name and address of the payee

# 3CD [PART-B]

**B.** Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.

- (I) date of payment
- (II) amount of payment
- (III) nature of payment
- (IV) name and address of the payer
- (V) amount of tax deducted
- (VI) amount out of (V) deposited, if any

# 3CD [PART-B]

(iii). under sub-clause (ic) [Wherever applicable]

(iv). under sub-clause (ia)

(v). under sub-clause (ib)

(vi). under sub-clause (iii)

- (A) date of payment
- (B) amount of payment
- (C) name and address of the payee



# 3CD [PART-B]

(vii). under sub-clause (iv)

(viii). under sub-clause (v)

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

(d). Disallowance/deemed income under section 40A(3):

# 3CD [PART-B]

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

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available
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## 3CD [PART-B]

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

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available
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# 3CD [PART-B]

- (e). provision for payment of gratuity not allowable under section 40A(7);
- (f). any sum paid by the assessee as an employer not allowable under section 40A(9);
- (g). particulars of any liability of a contingent nature;
- (h). amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income;
- (i). amount inadmissible under the proviso to section 36(1)(iii).

**Remark:- To obtain more information from assessee in respect of different provisions of direct tax.**

# 3CD [PART-B]

## Clause 23 (Old Clause no. 18) Payment made to person specified u/s 40A(2)(b)

- ◉ Reporting requirements
- ◉ List of specified persons
- ◉ Applicability to sales/services rendered to specified persons?
- ◉ Circular 6P DT 06-07-1968-primary onus and ultimate burden.

## Clause 24 (Old Clause no.19)

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

# 3CD [PART-B]

Clause 25 (Old Clause no. 20) Any amount of profit chargeable to tax under section 41 and computation thereof.

- ▶ Expenditure must have been allowed earlier.
- ▶ Expiration of Limitation period under The Limitation Act?
- ▶ Waiver of principal Balance of Loans under OTS scheme of Banks, whether 41[1] applicable.

# 3CD [PART-B]

## 25. Waiver of Unsecured or Secured Loan unilaterally or in pursuance of OTS Scheme

### ▶ Assessee Favorable

- CIT v. Shivali Construction Pvt. Ltd. [2013] 355 ITR 218 (Delhi)
- Iskraemeco Regent Ltd. v. CIT [2011] 331 ITR 317 (Mad)
- CIT v. Tosha International Ltd. [2011] 331 ITR 440 (Delhi)



# 3CD [PART-B]

- ▶ Partly Favorable – Purpose based dimension added
  - Rollatainers Ltd. v. CIT [2011] 339 ITR 54 (Delhi)
  - Held:– If the loan is for purchase of a capital asset, one-time settlement would not fasten liability, but where it is for purchase of stock-in-trade, liability cannot be avoided.”

# 3CD [PART-B]

## Clause 26 (Old Clause no.21) Section 43B

- ▶ **Purpose of s.43B** – to avoid delayed payment of tax, cess, duty or fees, etc.
- ▶ If assessee is following **cash system** of accounting, then tax auditor should write “**Not applicable since cash system followed by the assessee**” against clause 21
- ▶ On belated payment of ESIC, EPF, etc. SC Decision in case of Alom Extrusion 319 ITR 306, DHC in P.M.Electronics 313 ITR 161.
- ▶ 5 days of Grace available.
- ▶ Not applicable to Professional Tax collected from Employees.
- ▶ Payment within extended due date DHC 332 ITR 483 [Del.]

# 3CD [PART-B]

## **26. Section 43B**

- ▶ **Excise Duty**– Advance paid in PLA Account.

Unadjusted credit in Modvat Receivable Ac/  
Ratio of Special Bench in GLAXO. Also Delhi ITAT in  
Maruti Udyog.

- ▶ **Applicability to Service Tax –**

1. CIT VS NOBLE AND HEWITT (I) (P) LTD. [2008] 305 ITR 324 (DELHI)
2. PCIT v/s Macro Nirman Pvt Limited, ITA 861/2015 dated 17.11.2015 of DHC
2. CIT Versus Ovira Logistics Pvt. Ltd., ITA NO.1023 OF 2013, dated 17.04.2015 of Bombay HC.

- ▶ Rescheduling of Loans and interest unpaid being converted into Loans. **Explanation 3C & 3D TO SEC 43b**

# 3CD [PART-B]

## Clause 27 (Old Clause no.22)

- (a) Amount of Modified Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Modified Value Added Tax credits in the accounts.
- (b) Particulars of income or expenditure of prior period credited or debited to the profit and loss account.
- ⊙ Regarding Modvat Utilization, preferable to state the opening and closing balances too.
  - ⊙ Refer Excise records, RG 23 (both parts).
  - ⊙ One may refer to working done for cl.12[section 145A]
  - ⊙ While reporting on cl 22[b] AS-5 of ICAI may also be referred.

Modvat Credit—whether an income!!!!

# 3CD [PART-B]

## Clause 28 (Newly Inserted)

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)(vii-a), if yes, please furnish the details of the same.

**Remark:- Any gift or property received without consideration or inadequate consideration from closely held company within the meaning of sec 56(2)(vii-a) during the year from any person other than relatives (More than Rs. 50000), if yes, we are required to furnish detail thereon.**

# 3CD [PART-B]

## Clause 29 (Newly Inserted)

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

**Remark:-** In case of un-listed companies premium can be considered as income in case the price charged at the time of issue of share is more than face value (that is at premium) and is also higher than fair market value. In such case, excess of issue price above the fair market value will be considered as income of issuing price.

# 3CD [PART-B]

## Clause 31 [Old Clause no. 24(a) & 24 (b)]

Acceptance/repayment of Loans and deposits in amounts exceeding limits stated u/s 269SS & u/s 269T respectively otherwise then by way of a/c payee cheque or a/c payee draft.

- ◉ Difference between Loan & Deposits.

A. M. Shamsudeen v. UOI 244 ITR 266 (Mad)

Baidya Nath Plastic Industries (P.) Ltd. v. ITO 230 ITR 522 (Delhi)

- ◉ Payments through RTGS, NEFT, TT, etc.

- ◉ Legislative Intention and Insertion vide FA 1984.

- ◉ Scope of Transfer Entry/Book Adjustments.



# 3CD [PART-B]

## Clause 32 (Old Clause no.25)

- (a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:
- (b) whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of Sec 79;
- (c) Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year, If yes, please furnish the details of the same.
- (d) whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.
- (e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.



# 3CD [PART-B]

- ▶ Details of Losses, can be verified from earlier year ITR's, CARO [in case of corporate]
- ▶ Incase of pending Litigation, details may be given till the stage of last order and state fact relating to litigation in remarks.
- ▶ Sec 79 is not applicable to Change in shareholding by virtue of gift, inheritance, etc.
- ▶ In cl 25[b], the tax auditor is merely to state Yes/No relevant for section 79 and not to provide the extent of change.

**Remark:- If company is deemed to have a speculative business, than we have to give detail of loss from such deemed business. (Please note: If we don't have any loss from such deemed business, we are not required to give details of such business) In brief specified company means company other than investment company, banking company and finance company. Please note: This clause is applicable to the company only, so we have to take care of this sub clause in the case of tax audit & assignment of company only.**

# 3CD [PART-B]

## Clause 33 (Old Clause no. 26)

### **Section wise detail of deduction admissible under Chapter VIA**

Section under which deduction is claimed

Amounts admissible as per the provision of the Income-tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.

# 3CD [PART-B]

- ▶ Payments made outside books subject to audit?
- ▶ Meaning of Derived From, Liberty India-318 ITR (SC)?
- ▶ Certificates under respective Sections?

# **3CD [PART-B]**

## **Clause 34 (Old Clause no.27)**

(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: (In Tabular Format)

See Next Slide

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(a)]

\*Should be read as (5) for proper reporting

\*\* Should be read as (7) for proper reporting

\*\*\* Should be read as (9) for proper reporting

## 3CD [PART-B]

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

Tax deduction and collection Account Number (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
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## 3CD [PART-B]

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

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.
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## 3CD [Clause 34]

- ▶ Refer cl. 17(f) also
- ▶ Tax auditor not required to state compliance wrt issuance of TDS certificates.
- ▶ Disagreement with Auditee on exigibility of WHT provisions on payments.



Every deductor is liable to pay interest u/s 201 for non deduction or non-payment of TDS and deductor shall be deemed to be in default. However relief has been given to the deductor if prescribed conditions is satisfied(please refer the sec 201 for prescribed condition), however deductor shall be liable to pay interest u/s 201(1A) for the period from 'the due date of such TDS required to pay to department' to till the date on which the payee submits his return of income. Sec 206C(7):- If seller does not collect tax or does not remit the tax after collection, he shall be liable to pay interest.

# 3CD [PART-B]

## Clause 35 (Old Clause no. 28)-

- (a) In the case of a trading concern, give quantitative details of principal items of goods traded.
- (b) In the case of a manufacturing concern, give quantitative details of the principal items of raw material, finished products and by- products
- ▶ Principal Items are those items which constitute more than 10% of the aggregate value of purchase, consumption or turnover.

# 3CD [PART-B]

**Clause 36 (Old Clause no.29)-** In the case of a **domestic company**, details of tax on distributed profits under section 115-O in the following form :—

- (a) total amount of distributed profits;
  - (b) amount of reduction as referred to in section 115-O(1A)(i);
  - (c) amount of reduction as referred to in section 115-O(1A)(ii);
  - (d) total tax paid thereon
  - (e) dates of payment with amounts.
- 
- ▶ DDT is to be deposited within 15 days of declaration, distribution or payment, whichever is earliest.
  - ▶ Not required to verify availability of reserves/accumulated profits.
  - ▶ 2[22][e] whether also covered?

# 3CD [PART-B]

## Clause 37 (Old Clause no.30)-

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

## Clause 38 (Old Clause no.31)-

Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

- ◉ If audit pending, state fact.
- ◉ Tax auditor's whether can comment on such audit report.
- ◉ Excise Audit/Cost audit for period other than covered by Tax Audit?

**Remark:- No change in contain but in additon put note for any disqualification or disagreement or any matter along with detailed break-up**

# 3CD [PART-B]

## Clause 40 (Old Clause no. 32)-

Accounting ratios with calculations as follows FOR  
CURRENT YEAR & PREVIOUS YEAR AS WELL :—

- (a) Total turnover of the assessee
- (b) Gross profit/Turnover;
- (c) Net profit/Turnover;
- (d) Stock-in-trade/Turnover;
- (e) Material consumed/Finished goods produced.
  - ▶ Sales, purchases, Inventory, which values?
  - ▶ Stock Turnover Ratio, whether raw material includible?
  - ▶ Product wise ratio/ business segment wise, whether permissible?
  - ▶ Variation in numerator and denominators ?
  - ▶ Builders, construction companies, GP ratio, whether permissible?

# 3CD [PART-B]

## Clause 41 (Newly Inserted)

Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.

**Remark:- This is newly inserted clause in revised 3CD.**

**This clause requires the discloser regarding any demand raised or refund granted under direct tax laws along with relevant proceedings. Please note: if any refund is received or demand paid other than any proceeding, this clause shall not apply.**

# SUMMARY OF CHANGES

**Change 1. Registration number in case of indirect tax liability:** Assessee liable to pay indirect taxes (like excise duty, service tax, sales tax, customs duty, etc.) shall furnish their registration number or any other identification number allotted to them/**clause 4 of Part A**/.

**Change 2. Relevant clauses of section 44AB:** The relevant clauses of section 44AB shall be reported under which audit has been **conducted**/**clause 8 of Part A**/.

**Change 3. Location at which books of account are kept:** New Form seeks details of the address at which books of account of assessee have been kept/**clause 11(b) of Part B**/.



# SUMMARY OF CHANGES

## **Change 4. Nature of documents examined by the auditor:**

The auditor is required to specify the nature of documents examined by him in the course of tax audit/**clause 11(c) of Part B**].

## **Change 5. Change in method of accounting/stock valuation:**

A tabular format is specified for reporting of financial impact of changes in method of accounting and method of stock valuation/**clause 13 and clause 14 of Part B**].



# SUMMARY OF CHANGES

## **Change 6. Transfer of land/building for less than stamp duty value:**

Details of land or building transferred by assessee for less than stamp duty value (under section 43CA or under section 50C) shall be reported in new Form 3CD [**clause 17 of Part B**].

## **Change 7. Deduction allowable under Sections 32AC/35AD/35CCC/35D:**

Deductions allowable under sections 32AC, 35AD, 35CCC and 35DDD are also required to be reported in revised Form No. 3CD [**clause 19 of Part B**].

# SUMMARY OF CHANGES

## Change 8. Disallowances

Old Form 3CD required reporting of inadmissible payments only when they were debited to Profit and loss account. However, the new Form 3CD requires reporting of following disallowable payments, even if they are not debited to profit and loss account [clause 21 of Part B]:

- *Disallowance of TDS default U/S 40(a)*
- *Disallowance for cash payments U/S 40A(3)*
- Disallowance for provision for gratuity under section 40A(7)
- Disallowance under Section 40A(9)
- Particulars of any liability of a contingent nature
- Amount of deduction inadmissible under section 14A
- Interest inadmissible under the proviso to section 36(1)(iii)

# SUMMARY OF CHANGES

## **Change 9. Deemed income under Section 32AC:**

Section 32AC of the Act provides for investment allowance of 15% for investment in plant and machinery. New form provides for reporting of deemed income which results from sale or transfer of new asset, (if asset was acquired and installed by the assessee for the purpose of claiming deductions under Section 32AC) within a period of five years from the date of its installation **[clause 24 of Part B]**.

## **Change 10. Receipt of unlisted shares:**

A new clause is inserted in the Form 3CD which requires reporting of all unlisted shares which were received by assessee either for inadequate consideration or without consideration in view of section 56(2)(viiia) **[clause 28 of Part B]**.

# SUMMARY OF CHANGES

## **Change 11. Issue of shares above fair market value:**

A new clause is inserted in the Form 3CD which requires reporting of all transactions of issue of shares where consideration received by assessee exceeds its fair market value in view of section 56(2)(viib)/**clause 29 of Part B**.

## **Change 12. Speculation losses:**

New Form No. 3CD provides for reporting of losses from speculation business as referred to in Section 73/**clause 32(c) of Part B**.

## **Change 13. Losses from business specified under section 35AD:**

Assessee shall furnish details of losses incurred as referred to in Section 73A in respect of specified businesses mentioned in Section 35AD/**clause 32(d) of Part B**.

# SUMMARY OF CHANGES

## **Change 14. Reporting of deductions claimed under Sections 10A and 10AA:**

If any deduction has been claimed by assessee under Sections 10A and 10AA then it shall be reported in new Form No. 3CD/**clause 33 of Part B**.

## **Change 15. Compliance with TCS provisions:**

Old Form 3CD required reporting on compliance with TDS provisions only. However, New Form No. 3CD requires reporting on compliance with TCS provisions as well **[clause 34(a) of Part B]**.

## **Change 16. Filing of TDS/TCS statements:**

The tax auditor shall report on the compliance by the assessee with the provision of furnishing of TDS or TCS statement within prescribed time**[clause 34(b) of Part B]**.

# SUMMARY OF CHANGES

## **Change 17. Assessee-in-default:**

If assessee is deemed as an assessee-in default and he is liable to pay interest under Section 201(1A) or 206C(7), the tax auditor shall furnish the TAN of assessee, interest payable and interest actually paid/***clause 34(c) of Part B***].

## **Change 18. Dividend Distribution Tax:**

Revised Form No. 3CD requires reporting of following reductions as referred to in clause (i) and clause (ii) of Section 115-O(1A)/***clause 36 of Part B***:

- i) Dividend received by domestic company from its subsidiary, and
- ii) The amount of dividend paid to any person for or on behalf of the New Pension System Trust referred to in Section 10(44).



# SUMMARY OF CHANGES

## Change 19. Audits:

- (i) Cost audit: Old Form No. 3CD required reporting only when statutory cost audit was** carried out under Section 233A of the Companies Act, 1956. However, the revised Form No. 3CD specifies reporting requirement even when cost audit has been carried out voluntarily. The requirement of attachment of copy of cost audit report along with Form has been substituted with reporting of qualifications in cost audit report [**clause 37 of Part B**].
- (ii) Cost Audit under Central Excise Act: The requirement of attachment of copy of** cost audit report along with Form has been substituted with reporting of qualifications in cost audit report [**clause 38 of Part B**].

# SUMMARY OF CHANGES

(iii) *Special Audit under Service Tax: If any service-tax audit is carried out in relation to valuation of taxable services, the tax auditor shall report any qualifications made in relation to valuation of taxable services*[clause 39 of Part B].

## Change 20. Ratios:

Unlike old form which required reporting of certain ratios pertaining to current year only, the new Form requires reporting of ratios of preceding financial year as well. Further, total turnover is to be reported for the previous year as well as for preceding financial year[clause 40 of Part B].



# SUMMARY OF CHANGES

## *Change 21. Demand raised or refund issued:*

The new Form seeks details of demand raised or refund issued under any tax laws (other than Income Tax Act, 1961 and Wealth Tax Act, 1957) along with details of relevant proceedings [*clause 41 of Part B*].

# Miscellaneous Issues?

- ▶ Extention of Due date u/s 139(1)
- ▶ Late filing of ITR beyond due date in cases subjected to 44AB-scope of 271B.
- ▶ 271A and 271B simultaneous?
- ▶ Multiple Reports in Form 3CD for multiple business of an assessee?

## Miscellaneous Issues? Cont...

- ▶ Penalty for Non Compliance of Section 44AB –
- ▶ Penalty Under section 271B.
- ▶ If any person require to get his audit done under section 44AB fails to do so before the specified date shall be liable for penalty of **1/2%** of the gross receipts/Turnover subject to maximum penalty of Rs. **1,50,000.**

# Miscellaneous Issues? Cont...

- ▶ However, Section 273B states that no penalty shall be levied under section 271B if there is reasonable cause for such failure. For example:–
  - ❑ Resignation of the Tax auditor and consequent delay.
  - ❑ Death or physical inability of the partner in charge of the Accounts.
  - ❑ Labour problems such as strikes , lock outs etc.
  - ❑ Natural calamities etc.

# Miscellaneous Issues? Cont...

- ▶ Revision of Tax Audit Report in the following cases:
  - ❑ Revision of accounts of the company after its adoption in the AGM.
  - ❑ Change in Law with retrospective effect
  - ❑ Change in interpretation of Law

Note : In case the Tax Audit Report e-filed is revised, the Auditor shall state that it's a Revised Report and shall also state the Reason for the same.

# Miscellaneous Issues? Cont...

## ► Limitation on CA's for the number of tax Audits.

The maximum number of Tax Audit Assignments under section 44AB which can be taken by a CA has been increased from 45 to 60.

*Let say,* If a firm has 3 partners then the maximum No. of Tax Audits that can be taken by a CA firm in an assessment year would be  $(3*60)=180$ .

**CBDT      Instruction      No.9/2008      dated**  
**31.7.2008, 40-A BCAJ 778 (Sept 2008)**

- ▶ Information available in tax audit reports not being properly analysed during assessment proceedings.
- ▶ Tax audit reports and other statutory audit reports should be critically examined along with connected records and other available evidence.
- ▶ Information available in reports should be effectively utilised while finalising assessment.
- ▶ AO should not merely rely on certificate regarding payments/ loans otherwise than by account payee cheque/draft, but test check and keep results of test check on record.
- ▶ In cases of factual misrepresentation by CAs, suitable action u/s.288 should be taken – disciplinary action through ICAI.