Auditor's note, Qualifications & Observations in Tax Audit



Gautam Budh Nagar Branch of ICAI 2<sup>nd</sup> September 2022

DAKSM & Co LLP | दक्षमः Chartered Accountants CA. Deepak Bhholusaria

## **About presenter**

- Mr. Deepak Bhholusaria is a commerce graduate and fellow member of the Institute of Chartered Accountants of India.
- He has also completed various certificate courses of ICAI on Indirect taxes, Blockchain, Information Systems Audit and Valuation.
- A seasoned professional, author, speaker, public figure and YouTuber with 23+ years of experience.







# **Today's objective**



### Our focus is -





# Taxation Audits Quality Review Board





TAQRB, when finds any error or mistake or limitation in tax audit report, appropriate action, including *referring case for disciplinary proceedings*, is initiated. Sole aim of the Taxation Audits Quality Review Board (TAQRB) is to review any report prescribed under the Incometax Act, 1961 and GST



Taxation Audits Quality Review Board The Institute of Chartered Accountants of India



- Compliance with the reporting requirements prescribed under various sections of the Incometax Act, 1961 and Rules thereunder;
- Compliance with the reporting requirements prescribed under various provisions of the Indirect Tax Laws including Goods and Services Tax Law and
- Compliance with the respective pronouncements, Guidance Notes, Technical Guides of ICAI, etc

TAQRB Study on Compliances in Reporting in Tax Audit Report

June 2022 edition

दक्षमः DAKSM During the course of this presentation, we will try to capture / discuss essence of this study, wherever possible.





- This study <u>not</u> to be considered as *a replacement* / gist of Guidance Notes/ publications issued by Direct Taxes Committee but should be read along with them.
- Objective of study is to enhance the quality of tax audit reports.

# Form 3CA/3CB vis-àvis SA700



### SA 700 requirement



- Form No. 3CA and Form No. 3CB are required to be filed online in a preset form
- Same are not in line with the requirements of SA 700
- It is suggested that these respective responsibility paragraphs relating can be provided in the space provided for giving observations, etc., under clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be.

Form	Relevant clause for SA700 disclosure			
3CA	Clause 3			
ЗСВ	Clause 5			

#### Page 12 of report:

- Many of the Tax Audit reports did not have the paragraphs relating to Assesee's responsibility and Tax Auditor's responsibility as required by the Guidance Note in respect of SA 700.
- Some of the tax audit reports contained a reference about the attached the notes/report which mention these paragraphs thereby complying with the requirement of SA 700.
- However, as per the Guidance Note on Tax Audit the same are specifically required to be mentioned / reported under clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB, as the case may be.

- दक्षम: DAKSM
- As per the Guidance Note only qualifications/ observations should be reported in the space provided in the form No. 3CA/3CB itself while the additional information which <u>are not in the nature of qualification</u> could be attached as notes.

### Sample SA700 disclosures

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#### Assesee's responsibility para

SI. No.	Qualification Type	Observations/Qualifications
1	Others	Assessee's Responsibility for the Financial Statements: 1/2: The assessee is responsible for the preparation of the aforesaid financial statements that give a true and fair view of the financial position and financial performance (if applicable) in accordance with the applicable Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI). This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error. The assessee is also responsible for overseeing the entity's financial reporting process.
2	Others	Assessee's Responsibility for the Financial Statements and the Statement of Particulars in Form 3CD: 2/2 In preparing the financial statements, assessee is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless assessee either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.The assessee is responsible for overseeing the entity's financial reporting process.
3	Others	Assessee's Responsibility for the Statement of Particulars in Form 3CD: The assessee is also responsible for the preparation of the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, circulars etc. that are to be included in the Statement. This responsibility also includes designing, implementing and maintaining internal controls, that are relevant and operating effectively for the preparation and presentation of the particulars furnished in Form No. 3CD that are free from material misstatement, whether due to fraud or error.

### Sample SA700 disclosures

#### दक्षम: DAKSM

#### Auditor's responsibility para

Others	Tax Auditor's Responsibility: 1/3 Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with the Standards on Auditing issued by the ICAI. Those Standards require that we comply with the ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.
Others	Tax Auditor's Responsibility: 2/3 In making those risk assessments the auditors consider internal financial controls relevant to the firm's preparation of the financial statements that give a true and fair view in order to design audit procedure that are appropriate in the circumstances, but not for the purpose of expressing an opinion on whether the firm has in place an adequate internal financial controls system over financial reporting and the operating effectiveness of such controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of the accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.
Others	Tax Auditor's Responsibility: 1/3 We also provide assessee with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards. We are also responsible for verifying the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in Form No. 3CD read with Rule 6G(1)(b) of Income-tax Rules, 1962. We have conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.
	Others

# Form 3CB & Accounting Standards (AS)





Where the auditor issues **Form No. 3CB**, as the *audit of financial statements* is being done under section 44AB of the Income tax Act, 1961, the auditor should in relation to audit of the financial statements ensure compliance of:

- Accounting Standards issued by ICAI.
- Standards on Auditing issued by ICAI.
- Framework for presentation of Financial Statements issued by ICAI.

Are we in principle following all accounting standards issued by ICAI for non-corporate assessees?

### Framework of AS

• Appendix I to the Compendium of Accounting Standards (as on February 1, 2022)

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DAKSN

- 4 Levels of Entities
- 27 Accounting Standards: AS-1 to AS-29, except AS-6, AS-8

Level	Turnover Criteria	Borrowings Criteria
1	> 250 cr	> 50 cr
11	>50~250 Cr	>10 ~ 50 cr
ш	>10 ~ 50 cr	>2 ~ 10 cr
IV	Upto 10 cr	Upto 2cr

#### Level I entities are required to comply in full with all the Accounting Standards.

Accounting Standards	Level II Entities	Level III Entities	Level IV Entities
AS 1- Disclosure of Accounting Policies	Applicable	Applicable	Applicable
AS 2- Valuation of Inventories	Applicable	Applicable	Applicable
AS 3- Cash Flow Statements	Not Applicable	Not Applicable	Not Applicable
AS 4- Contingencies and events occurring after the Balance Sheet	Applicable	Applicable	Applicable
AS 5- Net profit or loss for the period, prior period items and change in accounting policies	Applicable	Applicable	Applicable
AS 7- Accounting for Construction Contract	Applicable	Applicable	Applicable
AS 9- Revenue Recognition	Applicable	Applicable	Applicable
AS 10- Property, plant and equipment	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption

## Level wise applicability



Accounting Standards	Level II Entities	Level III Entities	Level IV Entities
AS 11- The effects of change in foreign exchange rate	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 12- Government Grants	Applicable	Applicable	Applicable
AS 13- Accounting for Investments	Applicable	Applicable	Applicable with disclosures exemption
AS 14- Accounting for Amalgamations	Applicable	Applicable	Not Applicable (Refer note 2(C))
AS 15- Employee Benefits	Applicable with exemptions	Applicable with exemptions	Applicable with exemptions
AS 16- Borrowing Costs	Applicable	Applicable	Applicable
AS 17- Reporting on Financial Segments	Not Applicable	Not Applicable	Not Applicable
AS 18- Disclosures of Related Party Transactions	Applicable	Not Applicable	Not Applicable

## Level wise applicability



Accounting Standards	Level II Entities	Level III Entities	Level IV Entities
AS 19- Accounting principles and disclosures on lease accounting	Applicable with disclosures exemption	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 20- Earnings per share	Not Applicable	Not Applicable	Not Applicable
AS 21- Preparation and presentation of Consolidated financial statements	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))
AS 22- Accounting for Taxes	Applicable	Applicable	Applicable only for current tax related provisions (Refer note 2(B)(vi))
AS 23- Accounting for Investment in associates	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))
AS 24- Discontinuing operations	Applicable	Not Applicable	Not Applicable
AS 25-Interim Finacial Reporting	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))	Not Applicable (Refer note 2(D))
AS 26- Intangible Assets	Applicable	Applicable	Applicable with disclosures exemption

## Level wise applicability



Accounting Standards	Level II Entities	Level III Entities	Level IV Entities
AS 26- Intangible Assets	Applicable	Applicable	Applicable with disclosures exemption
AS 27- Joint Ventures reporting of interest in Financial Statements	Not Applicable (Refer notes 2(C) & 2(D))	Not Applicable (Refer notes 2(C) & 2(D))	Not Applicable (Refer notes 2(C) & 2(D))
AS 28- Impairment of Assets	Applicable with disclosures exemption	Applicable with disclosures exemption	Not Applicable
AS 29- Contingent Liabilities and contingent assets and provisions	Applicable with disclosures exemption	Applicable with disclosures exemption	Applicable with disclosures exemption

#### Non-Compliance to AS Disclosure in Form 3CB – Clause 3.a

#### दक्षम: DAKSM

We report the following observations/comments/discrepancies/inconsistencies if any:

In our opinion and to the best of our information and according to the explanations given to us, the aforesaid financial statements give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of affairs of the firm as at 31st March, 2022, and its Profit for the year ended on that date, except for

- Accounting policy on fixed assets as per note 1(f), as required by AS-10 issued by ICAI.
- Accounting Policy on taxation as per note 1(g), as required by AS-22 issued by ICAI

*Matter of emphasis:* Without qualifying our report, your kind attention is invited to note 16, whereby Firm is in the process of reconciling accounting records with GST records.

When it is a matter of "True & Fair"

### Sample form 3CA / 3CB Qualifications

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- Proper books of account have not been maintained by the assessee.
- All the information and explanations which to the best of my/our knowledge and belief were necessary for the purpose of my/our audit has not been provided by the assessee.
- Documents necessary to verify the reportable transaction were not made available.
- Proper Stock records are not maintained by the assessee.
- Valuation of closing stock is not possible.
- Yield/percentage of wastage is not ascertainable.
- Records necessary to verify personal nature of expenses not maintained by assessee.
- TDS returns could not be verified with the books of account.
- Records produced for verification of payments through account payee check were not sufficient.

- Amount of expenses related to exempt income u/s 14A of Income-tax Act, 1961 could not be ascertained.
- Creditors under Micro, Small and Medium Enterprises Development Act, 2006 are not ascertainable.
- Prior period expenses are not ascertainable from books of account.
- Fair market value of shares u/s 56 (2) (viia)/(viib) is not ascertainable.
- Reports of audit carried by Excise/Service tax Department were not made available.
- GP Ratio is not ascertainable from the financial statements prepared by the assessee.

# SA 600

Form 3CA/3CB





#### For Domestic branches not audited by him:

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

#### For overseas branches not audited by him:

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.

### **Principal auditor to disclose**

- दक्षम: DAKSM
- If the *assessee* is unable to obtain relevant information in respect of the overseas branches duly certified by the overseas auditor, the relevant facts should be suitably disclosed and reported upon.
- Where the *tax auditor* is unable to obtain the required information in respect of branches situated in India or outside India then the fact should be suitably disclosed along with its impact on the Auditor's opinion on the particulars furnished in Form No.3CD, as an observation in para (3) of Form No, 3CA SA705

### Para 18.10: Multiple businesses

- दक्षम: DAKSM
- If the tax auditor is called upon to give his report only in respect of one or more businesses carried on by the assessee and the books of accounts of the other businesses are not produced as the same are not required to be audited under the Act, the tax auditor should mention the fact that audit has not been conducted of those businesses whose books of account had not been produced.
- However, if the financial statements include, *inter alia*, the results of such business for which books of account have not been produced, the auditor should qualify his report in Form No. 3CB

# Disclosures under various Clauses of 3CD

Form 3CD



- Rely upon the judicial pronouncements while taking any particular view.
- Suitable cross reference in case of particular item of income / expenditure is covered in more than one of the specified clauses.
- In case of difference/conflict of opinion between auditor & assessee, both view points & relevant information to be stated.
- If any particular clause in Form No.3CD is not applicable, he should state that the same is not applicable.

### **General guidance for 3CD**

- In computing the allowance or disallowance, he should keep in view the **law applicable in the relevant year**, even though the *form of audit report* may not have been amended to bring it in conformity with the amended law.
- In case the assessee has furnished prescribed *particulars in part or piecemeal* or relevant form is incomplete or the assessee does not give the information against all or any of the clauses, the auditor should not withhold the audit report. In such a case, he should qualify his report in para 3 of Form 3CA or para 5 of Form 3CB as applicable on matters in respect of which information is not furnished or if furnished, are inadequate/insufficient
- The information in Form No. 3CD should be based on the books of accounts, records, documents, information and explanations made available to the tax auditor for his examination.

### Clause 1: Name

 If name of the assessee has changed during the year, suitable disclosure should be giving old name and new name.

#### Sample disclosure:

"Company's has changed its business activities from a brick and mortar trading company to e-commerce company and consequently has also changed its name from DAKSM Trading Private Limited to DAKSM ecommerce Private Limited. Please also refer to clause 10 to form 3CD"

- The address to be mentioned under clause (2) should be the same as has been communicated by the assessee to the Incometax Department for assessment purposes as on the date of signing of the audit report.
- If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given.
- In the case of a company, the address of the registered office should also be stated.
- In the case of a new assessee, the address should be that of the principal place of business.

### **Address: ICAI Observations**

- It has been observed that the address reported under this clause was different from the one mentioned in Annual report or as registered with Ministry of Corporate Affairs.
- In the case of a company, the address of the registered office should also be stated

**Presenter's Note:** It is quite possible that company's HO (or principal place of business) is different than its RO. In such case, suitable disclosure may be given in form 3CD like this -

"Company's registered office address as per MCA record is XXX, City, State. However as informed by the assessee its principal place of business is situated at address mentioned in clause 2 of form 3CD. This address also is captured in PAN database and company is regularly filing its income tax return from this address for last many years."

# Clause 4: IDT



- The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation *"written representation" SA 580*, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law.
- Even if the assessee is liable for GST on RCM, the answer should be affirmative.



- Registrations under all the other Indirect Tax Laws which have been mentioned in the Report issued under CARO have not been reported under this clause.
- Registration numbers under the Indirect Tax laws, some of which are based on assessee's PAN, did not match with the PAN as reported under clause 3 of Form No. 3CD.
- Appropriate reporting of this mismatch was not found under Clause (3) of Form No.3CA or Clause (3) and/or Clause (5) of Form No.3CB, as the case may be.

"The assessee is liable to pay Goods and Service tax. The registration numbers pertaining to excise law, service tax, value added tax, work contract tax, central sales tax act have been reported on account of pending assessments. The auditors have relied on assessee for the purpose of reporting under clause 4. "

#### **Presenter's note:**

- All other registration numbers for VAT, Excise etc can also be included if the same are not surrendered.
- Clause 4 can include Entertainment Tax, Luxury Tax etc. wherever applicable
- In some audit report he has seen registrations that are inactive and have been cancelled by the department as on the date of furnishing of Tax Audit report.
- Some audit reports have disclosed registrations which pertains to divisions/business units sold in earlier years by the assessee for which assessments are in progress.



• What if a firm has been converted into LLP during the year and there is no change in PAN?

**Presenter's note:** A suitable note may be given:

"The assessee has changed its constitution from a partnership firm to LLP w.e.f. 18<sup>th</sup> January 2022, vide MCA certificate no. ABA-4144. Pursuant to such conversion, there is no change in the status of assessee under the income tax act."

#### Clause 8: Relevant clause of 44AB ICAI observations

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While reviewing various tax audit reports it was observed that:

- the companies (which are required to get their accounts audited under Companies Act, 2013)
- had selected option

(a) Clause 44AB(a)-Total sales/turnover/gross receipts in business exceeding specified limits

instead of option

*"Third Proviso to section 44AB: Audited under any other law"* 

#### **Clause 8a: New scheme of taxation**

- Only Section 115BA/BAA/BAB/BAC/BAD are covered
- These sections are not applicable for firms/LLPS/AoPs/BOIs/AJPs
- Benefit also not available to foreign companies

#### **Disclosure for firms: -**

"Assessee being a firm, provisions of section 115BA/ 115BAA/ 115BAB/ 115BAC/ 115BAD are not applicable."





- This applies to Firm, Association of Persons (AOPs) and LLPs
- "Profit Sharing Ratio" would include Loss sharing ratio also as "Loss" is nothing but negative profit.
- All the changes occurring during the entire previous year must be stated.
- Change in remuneration not to be reported.
- Sec 9B and Sec 45(4) to be tested separately while reporting under this point.

#### Documentation

- Supplementary / Admission / Retirement deeds
- Filings with ROF / ROC (wherever applicable)
- Minutes of meetings recording such changes

## **Clause 9: Sample Auditor's note**

- During the year under review there is change in the profit sharing ratio with effect from 1st September,
   2021 as per Admission-Cum-Retirement Deed executed on 1st September, 2021
- Mr. Deepak Bhholusaria nominee partner of M/s Daksm LLP retired from the Firm with effect from 06<sup>th</sup> December, 2021 and was replaced by Mr. Jignesh Kansara



- a) The principal line of each business is to be determined and stated in this clause,
- b) The code to be mentioned against the nature of business pertains to the main area of business activity.
- c) Any material change in the nature of business should be precisely set out. The change will include change from manufacturer to trader as well as change in the principal line of business.
- d) Hiving off of any activity in restructuring is change in the nature of business.

 While reviewing various tax audit reports it was observed that codes for business or profession for all main activities (principal line of each of the *businesses*) were not reported. Where they could be located clearly from the Annual report.

## **Clause 10: Sample Auditor's note**

- Assessee is engaged in the business of selling Handwoven Poly Cotton daris and Cotton Fabrics.
- There is no change in business or profession during the year.
- Assessee has stared a new line of business of ecommerce w.e.f. September 09, 2021.
- Company has sold off his Powertrain business for a sum of Rs. 4012 Crores to M/s Fictious Company Ltd., w.e.f. 12<sup>th</sup> December 2021



- (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 Address at which the books of accounts are kept. (If 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.

#### Form 3CD - Clause No. 11



- Prescribed Books RULE 6F
- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bills/ payment vouchers.
- Daily case register in Form No. 3C (Medical Professional)
- Stock of drugs, medicines & other consumable accessories (Medical Professional)

# **Clause 11: TAQRB Study**

- दक्षम: DAKSM
- For Companies, 'NO' books of account have been specifically prescribed under section 44AA of the Income-tax Act, 1961 and /or under Rule 6F of the Income-tax Rules, 1962.
- In some cases, 'YES' was reported while 'NO' should have been reported under this clause.
- The fact that the books of account are maintained in a computer system was not reported in many cases

# **Clause 11: TAQRB Study**

- Location of maintenance of books of account was not reported while the same is the requirement of the format as well as the Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961.
- The various other relevant documents examined such as bills, vouchers, receipts, debit note, credit note, inventory register, agreements, orders, original purchase invoice, copy of bank statements, various agreements/ contracts or any other document on the basis of which preliminary entries are passed in the books of account, have missed reporting in various cases.
- AS per para 20.10 of the Guidance Note, reference to such supporting evidence/ relevant documents is also required to be made under sub-clause 11(c).

## **Clause 11: Sample Auditor's note**

- No specific books of account have been prescribed under Section 44AA read with Rule 6F.
- All the physical documents and records like financials reports, audit reports, tax returns, vouchers, invoices and other documents are maintained at the address mentioned in clause 2 of form 3CD.
- For the purpose of reporting against this clause, we have placed reliance on assessee representation for the location address of the server/computer at which the books of accounts are kept in electronic form.
- The financial books of account are maintained on Tally Accounting Software.
- Data related to sale, purchase and inventory is kept on Magento (which is cloud based open source eCommerce Software & eCommerce Platform Solutions) and Vin e-Retail software (also a cloud based software). The physical custody of server on which Magento is hosted, is owned and maintained by a third party vendor named M/s Amazon Web Servies, having its office at 23 Church Street, Capital Square, #10-01, Singapore 049481. The physical custody of server on which Vin E-Retail is hosted, is owned and maintained by a third party vendor named M/s Vinculum Solutions Pvt. Ltd. having its office at Level-2, Elegance, Mathura Road, Jasola, New Delhi -110025.

# **Clause 11: Auditor's note**

- दक्षम DAKSM
- The computerised books of accounts are maintained in a server located at the referred office and Factory address with IP address 101.102.198.3 and 101.102.198.4 respectively as well as on cloud with IP address 101.102.198.5
- The books of account listed in clause 11(b) and the other regular reports can be generated by the system by defining the fields based on the type of books, data, records and extent of details required.
- Books of account maintained, including those generated electronically, as produced and examined by us in accordance with the Standards on Auditing (including test checks and the concept of Materiality) and Guidance Note on Tax Audit under Section 44 AB of the Income Tax Act, 1961 issued by the Institute of Chartered Accountants of India, include those listed in clause 11(b).

#### **Clause 13: Method of accounting**

- Whether adjustment is required to be made in P&L A/c for ICDS?
- U/s 145 The income chargeable under the head "PGBP" or "Income from other source" must be computed in accordance with either cash or mercantile system of accounting *regularly employed* by the assessee.
- The hybrid system of accounting (*i.e. mixture of cash and mercantile*) is not permitted.
- A change in accounting policy is not required to be considered as a change in the method of accounting as mentioned in para 22.7 of the GN.

#### Clause 13.c: Sample Auditor's note

• The assessee has changed its method of accounting from cash basis to mercantile basis. Pursuant to such change there is an increase in Sales by Rs. 19,25,345, increase in expenses to the tune of 4,76,567. The asssesse has also recognised an amount of Rs. 23,457 as revenue for the year for which invoices were raised by the assessee in the year 2020-21. Consequent changes in assets and liabilities of the assessee are disclosed as per note 21.12 to financial statements.

- U/s 145(2)- ICDS to be followed by all assessees following mercantile system of accounting Points to be taken care of
  - Change in accounting policy does not amount to change in method of accounting and thus need not be reported.
  - Change in method of valuation of stock is not a matter of change in method of accounting but only a change in accounting policy.
  - If there has been any change in method of accounting employed, the effect i.e. Increase or decrease in profits has to be stated.

# **Clause 13: TAQRB Study**

- दक्षम: DAKSM
- In many cases 'NO' was selected under clause 13(d), which disabled reporting under clause 13(e) *{i.e. adjustment for ICDS}*, however, details of such adjustments were found to be reported under clause 13(f) *(i.e., reporting disclosures as per ICDS)*.
- Clause 13(f) requires disclosures in respect of certain notified ICDS, which was not done in many cases. In few cases, disclosures were made where any deviation from the notified ICDS was encountered.

As per the disclosure requirement under ICDS, reporting is to be done in respect of all of the notified ICDS except:

- ICDS VI (Changes in Foreign Exchange Rates) and
- ICDS VIII (Securities).

Further, for ICDS V (Tangible Fixed Assets), the prescribed disclosure requirement is similar to the requirements of clause 18 of Form No. 3CD. Accordingly, reference to reporting as done under clause 18 may be given.



The accounting policies in respect of reported were as per the language prescribed in Para 5 of the Revised AS-2 (or IND AS-2 wherever applicable) and not as per Para 3 of the ICDS –II.

ICDS	Revised AS-2
cost OR net realisable value,	cost AND net realisable value,
whichever is lower	whichever is lower

# Clause-14:-Method of valuation of closing stock employed in the P.Y etc.

- Whether valuation of inventory has to be done as per sec 145A, ICDS II or AS2?
- ICDS II prescribes inclusive method while AS-2 prescribes exclusive method.
- **145A:** Inventory shall be adjusted to include the amount of any tax, duty, cess or fees.

दक्षम:

- दक्षम: DAKSM
- I. ICDS: the valuation of inventory shall be made at lower of actual cost OR net realisable value.

II. the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of tax, duty, cess or fees actually paid or incurred by the assessee.

# **Clause 14: TAQRB Study**

- दक्षम: DAKSM
- Method of valuation has not been reported under clause 14(a) for each item of inventories separately (*be it raw materials, work-in-progress, materials, maintenance supplies, consumables and loose tools*) as suggested by the Para 23.3 of the Guidance Note.
- 2. Valuation in books was done as per exclusive method: Details of deviations encountered in exclusive v/s inclusive method and effects of inclusion of duties & taxes are remained to be reported.

# **Clause 14: TAQRB Study**

- दक्षम: DAKSM
- As per the reporting requirement of clause 14(a), method of valuation of closing stock employed in the previous year is to be reported.

In few cases, the reporting as prescribed for valuation of inventories as per Revised AS-2 (or IND AS-2 wherever applicable) was not done. Instead, reporting as per ICDS was done.

#### Inventories are valued as under:

Cost of raw materials and components has been determined by using weighted average cost method and comprises all costs of purchase, duties, taxes (other than those subsequently recoverable from tax authorities) and all other costs incurred in bringing the inventories to their present location and condition.

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Cost of finished goods and work-in-progress includes direct labour and an appropriate share of fixed and variable production overheads. Fixed production overheads are allocated on the basis of normal capacity of production facilities. Cost is determined on moving weighted average basis.

Cost of traded goods has been determined by using moving weighted average cost method and comprises all costs of purchase, duties, taxes (other than those subsequently recoverable from tax authorities) and all other costs incurred in bringing the inventories to their present location and condition.

Stores and spares has been determined by using moving weighted average cost method and comprises all costs of purchase, duties, taxes and all other costs incurred in bringing the inventories to their present location and condition.

Net realizable value is the estimated selling price in the ordinary course of business, less estimated costs of completion and estimated costs necessary to make the sale.

The accounting policies adopted by assessee in measuring inventories including cost formula used is disclosed as per Note 1(g) to the financial statements. The assessee is following the exclusive method of accounting for GST in the books of account including for the purpose of Valuation of Inventories, which is not in accordance with ICDS-II.

The ICDS prescribes "inclusive method" whereas the Accounting Standards of ICAI prescribe "exclusive method". Accordingly, to that extent, there is a deviation from the method specified u/s. 145A.

However, as shown in table to clause 14(b), the net effect thereof on the profit/loss for the year is Nil.

#### Alternate disclosure:

- The valuation as prescribed under section 145A has been done as per the recommendations of ICAI in its "Guidance Note on Tax Audit under section 44AB of the Income Tax Act".
- The calculations are based on proportionate allocation of total GST credit availed in the accounts to the raw materials, stores & spares consumed & closing stock. In the absence of item wise detail of the GST amount on the closing stock and the opening stock of raw materials, stores and spares and work-in-progress, GST allocation has been done on an overall rate basis, applying the percentage of GST availed on total raw materials and stores and spares purchases.
- The above adjustments have no impact on the profit/ (loss) of the Company during the year. Refer Part 12 of Attachment 1

## Clause 16: Amounts not credited to PL

- Do we need to disclose items which are taxable as "Income from other sources"?
- GN: "28.1 Under this clause various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated...
   ...Sub-clauses 16 (b), (c) & (d) require information in respect of items which may also be covered under section 28 .
   ...However, those items which are reported in clauses 16(b), (c) and (d) need not be reported in clause 16 (a).
- Cross referencing required for employee contribution {taxable u/s 2(24)}

# **Clause 16: Auditor's note**

- As per the accounting policies consistently followed by the Company, there are no items of income which have not been credited to the Profit & Loss Account.
- Income as defined under section 2(24)(x) of the Income-tax Act, 1961 has not been included as the same is disclosed under clause 20(b).

#### **Clause 17: Valuation of property**

- Whether reporting is required in case of sale of personal property also.
- Whether reporting is required in case of transfer of property situated outside India.
- While reporting, whether the auditor should also consider the safe harbor provisions.
- What if there is distressed sale of property due to COVID -19

# **Clause 17: TAQRB Study**

- दक्षम: DAKSM
- While reviewing various tax audit reports, it was observed that in certain cases reporting under this clause was done when consideration received on transfer of an asset (capital or otherwise) being land, or building, or both and the value adopted u/s 43CA or 50C were same, which was not required.

#### **Clause 17: Sample auditor's note**

• "During the previous year, a development agreement in respect of land admeasuring 2000 sq. mts, bearing CTS No. 9211, situated at Village Dadri, GTB, has been entered into for a total consideration of Rs. 5 crores. Under this agreement, the developer is entitled to only a licence to enter the property for the purpose of carrying out the development of the property. The consideration accrued during the previous year, under the agreement, is only to the extent of 15%. This transaction is treated as not covered by the provisions of Sec. 50C and hence is not included above."

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 In an event where the value for stamp duty purposes has not been assessed in respect of any transaction of transfer of land or building or both, reliance may be placed on the lawyer's / other expert's advice for the purpose of determining the amount of assessable value for stamp duty purposes. In this context, the auditor may consider incorporating the following note –

"For the purpose of verification of the assessable value of the land/building/both transferred during the previous year by the assessee, we have relied upon the advice of the lawyer/other expert as obtained by the assessee in this respect."

# **Clause 18: TAQRB Study**

- दक्षम: DAKSM
- The details of additions/ deletions reported in Tax Audit Report were not in line with the figures of additions/ deletions disclosed in the Audited financial statements (3CD v/s AFS)
- The tax Auditor may prepare a reconciliation statement for his own records.
- In some reports, in respect of 'additions' to the block of assets, 'date of purchase' and 'date of put to use' were reported as same in respect of each item under each block of asset purchased, which is practically not possible in all the cases.

# **Clause 18: TAQRB Study**

- दक्षम: DAKSM
- In respect of 'deductions' from the block of assets, 'date of sale' reported were same in respect of each item under each block of asset sold, which again is practically not possible in all the cases.
- Single consolidated amount was disclosed at the end of each half part of the financial year as date of addition, instead of actual date of addition of each asset of the block

# **Clause 18: TAQRB Study**

- दक्षम: DAKSM
- A separate column has been provided for reporting, the 'amount of adjustment on account of Exchange Fluctuation (due to change in rate of exchange, if any)' under the column 'Additions'.
- In few cases, the said amount was not shown in the Tax audit report e-filing utility while the same was reported in the annexure attached and uploaded with the Tax audit report.
- The reported difference observed is not tenable.

# **Clause 18: Auditor's note**

- The opening WDV of each block of assets for the year has been taken from the closing WDV of last year as computed in the Return of Income filed for Assessment Year 2021-22 and furnished to us by the assesse.
- In giving the dates under the column titled "date put to use" in respect of additions during the year, wherever necessary, auditor's have relied on the date certified by the assessee.
- Goods and service tax (GST) was introduced in India with effect from July 01, 2017. With the implementation of GST, the amount of Cenvat claimed includes Input tax credit on account of GST. In view of the voluminous nature of additions, it is not possible for the auditors to verify the completeness of CENVAT credit (GST) reported in clause 18. However, assessee believes that it does not have impact on total additions/depreciation/closing WDV of the assets of the Company as at and for the year ended March 31, 2022.

# **Clause 18: Auditor's note**

- Computers include software, hardware, printers, modems, networking, service and other computer peripherals and related accessories.
- Computers used in technical Centre Bangalore are treated as Plant & Machinery, hence depreciation is charged at the rate of 15% on such computers and no additional depreciation has been claimed on the same consistent with earlier years.
- GST credit and Foreign exchange difference net loss adjusted of Rs. 14,78,00,001/- and Rs.12,09,005/-respectively.
- Building includes leasehold improvements.

**Question:** What if car is not registered in the name of LLP but it Partner?

# **CLAUSE – 20 (a)**



- If bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction unless such payment is wholly and exclusively made to the employee. [Shahzada Nand & Sons v. CIT [1977)] 108 ITR 358 (SC).
- The requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/ contract details of the employees so as to ascertain the nature of payments.

# Clause 20 (b) – Finance Act 2021

#### S.36(1)(va):

'Explanation 2.—For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;'

#### S.43B

"Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies."

- Judgement in the case of CIT vs. Aimil Ltd., ITA No.1063 of 2006, [Delhi HC] nullified.
- Applicable from AY 21-22. Is it prospective or retrospective?
  - Jana Urban Services
  - Transformation Pvt. Ltd. Vs DCIT (ITAT Bangalore)
  - Steel Bird International, Delhi ITAT

### **Clause 20: Certain Considerations**

- No duty of "Tax auditor" to verify if correct ESI/EPF deducted or not, for the purpose of clause 20.
- Reporting required even if delay is on account of non-allotment of PF number.



While reviewing various tax audit reports, it was observed that:

- In certain cases, the details pertaining to provident fund have been reported under clause 20(b) but nothing was reported for ESI Fund, while regular contribution to the same was clearly reflecting in the Annual report of the company.
- 2. Also, "due date" reported for the relevant fund was not correct in some cases.

- दक्षम: DAKSM
- The amounts deposited under clause 20(b) are not again disclosed under clause 16(d). {Cross referencing}

#### Disclosures found in some audit report of FY 2020-21

"The Government of India granted onetime relaxation vide EPFO Circular No C-1/Misc/2020-21/Vol.I/1112 dated 15/05/2020 for payment of ESI contribution, for contribution period from 1st April 2020 to 30th September 2020, up to 15.01.2021." (presenter leave it to the discretion of audience if this note was correct)

- 1. 21(a): Late filing fee of TDS return, paid during the year, was reported under this sub-clause. Its not a penalty and thus not required to be reported in clause 21(a).
- 21(b): a consolidated sum in respect of 'provision for various expenses' of 'sundry parties' were reported. Instead of the date of crediting the amount of provision in the books of account, a random/ dummy date was reported in many cases.

# Clause 21(b): TAQRB Study

- दक्षम: DAKSM
- Reporting under this clause is required separately for each of the individual payee. Consolidated reporting for the heads under which tax has not been deducted has been done in certain cases.
- 2. Details of Resident and Non-resident payee were swapped.
- 3. Complete address of payee missing.

#### Clause 21(d) – Sec 40A(3) TAQRB Study



#### It has been observed that:

 Where the reporting has been done on the basis of certificate from the assessee, the fact was not reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB, as the case may be as required by the Guidance Note.

2. The observation/ qualification under this clause were provided in the notes attached to Form No. 3CA. However, the same should be reported under clause (3) of Form No. 3CA and/or clause (5) of Form No.3CB, as the case may be as required by the Guidance Note.

#### Clause 21(g) – Contingent Liabilities TAQRB Study



- Reporting under this clause was done for the 'provision' created in the Books of accounts
- While in line with the requirement of the Guidance Note any liability of a 'contingent nature <u>debited</u> to the profit and loss account' is to be reported.
- Contingent liabilities which are mentioned merely in notes to accounts are not to be reported here as they are not debited to profit and loss account.

# **Clause 21.a: Auditor's note**

 Based on examination carried out as indicated against clause 11(c) and as confirmed to us by the Management:- There are no items of a capital nature other than those stated in the Form No.3CD, which have been debited to the Statement of Profit and loss;- we have not come across any personal expenses which have been charged to the Statement of Profit and Loss nor we have been informed of any such case by the Management other than those payable under contractual obligation and/or in accordance with generally accepted business practices; and-items like e.g.; expenditure in any souvenir, brochure, tract, pamphlet or the like, published by any political party have not been debited to the Statement of Profit and Loss.

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- Exchange loss on purchase of capital asset capitalized in fixed assets Rs. 12,00,009. The auditors have considered accepted accounting principles in forming an opinion on the data furnished by assessee for disclosure under clause 21(a). Please refer to observations in clause 18 too
- Payments made under contractual obligations or in accordance with generally accepted business practices have not been considered as expenditure of personal nature for the purpose of reporting under clause 21(a).
- The auditors have broadly reviewed relevant and material revenue expenses and also relied on representation of the assessee for reporting expenditure by way of penalty or fine under clause 21(a).

#### **Clause 21.b: Sample Auditor's note**

- दक्षम: DAKSM
- For the purpose of this clause, we have verified the data with relevant records maintained by the company and details certified by them. We have conducted the verification of details on test check basis and considering the concept of materiality in view of complex nature of data and voluminous transactions involved which is in accordance with the generally accepted auditing standards in India and Guidance Note on Tax Audit issued by the Institute of Chartered Accountants of India as amended from time to time.
- Based on such checks as were considered appropriate and as certified by the assessee there are no transaction of interest, fees for professional & technical services, brokerage & commission, rent, royalty and payments to contractors/sub-contractors on which tax is either not deducted or partially deducted or where tax is deducted in the previous year but paid in the subsequent year after expiry of time allowed under section 139(1) and not allowable under section 40(a)(i)/40(a)(ia) were not noticed other than those mentioned above.

#### Clause 21.c/d: Sample Auditor's note

- दक्षम: DAKSM
- Clause 21(c) and 23: The identification of the specified persons covered u/s. 40A(2)(b) is made by the assessee on which we have relied. The Management has represented that no payments have been made to persons specified under section 40A(2) (b) of the Income Tax Act, 1961 other than those mentioned in these clause. Accordingly, verification of such payments was restricted to the list of persons specified by the management. Reimbursement of expenses have not been considered for the above purpose. Amount mentioned is only for the period during which respective person is covered by the provisions of section 40(A)(2)(b)
- Clause 21(d): In respect of payments by cheque/draft for the expenses covered under this clause, we have to state that it is not possible for us to verify whether the payments in excess of Rs 10,000/35,000 have been made otherwise than by account payee cheque / bank draft since the necessary evidence is not in the possession of the assessee. However the assessee has certified that all such payments relating to expenditure covered u/s. 40A(3) / (3A) of the Act read with Rule 6DD, were made either by account payee cheques drawn on a bank or by account payee bank drafts.
- Clause 21 (b), (c), (e), (f), (g), (h), (i): Items as indicated in this clause, if any, have been debited to the Statement of Profit and Loss as revealed during the course of examination carried out as mentioned against clause 11(c) above which were also confirmed by the Management

#### **Clause 21.g: Sample Auditor's note**

• Warranty provision has not been considered as a liability of contingent nature by the assessee in the view of Supreme Court Judgement in the case of Rotork Controls India (P) Ltd vs CIT (223 CTR 425)

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• The table below gives information about movement in warranty provisions:

Particulars	31-Mar-22 (Amount in lacs)
At the beginning of the year	XXX.XX
Additions during the year	XXX.XX
Utilized during the year	(XXX.XX)
Reversal during the year	(XXX.XX)
At the end of the year	XXX.XX



While reviewing various tax audit reports it was observed that where the auditee has 'provided for' or 'paid' any interest payable under the MSME Act, as per audited financial statements, the same was not reported under this clause as an amount so inadmissible under section 23 of MSME Act.

- Tax auditor should obtain, from assessee, the list of 'specified persons' and expenditure/payment made to them and then scrutinize the items with reference to Sec. 40A(2).
- Amounts to be reported whether or not debited to Profit and Loss Account.
- The item does not require report of the auditor as to his own inference, whether the payment is excessive or unreasonable. He is required to specify the amounts paid to such related persons.
- In case of a large Assessee, it may not be possible to verify the list of all persons covered by this Section. Therefore, the information supplied by the assessee can be relied upon and **make an appropriate disclosure.**

# **Clause 23: TAQRB Study**

- दक्षम: DAKSM
- a) In certain cases, 'Name' and 'PAN' of persons specified under section 40A(2)(b) were not reported.
- b) In certain cases, the amount reported under this clause did not match with the amount as mentioned in the Annual Report.
- c) In certain cases, consolidated figures were reported instead of respective transaction with respective persons as specified under section 40A(2)(b).

## **Clause 23: Sample Auditor's note**

- दक्षम: DAKSM
- The identification of the specified persons covered u/s. 40A(2)(b) is made by the assessee on which we have relied.
- The Management has represented that no payments have been made to persons specified under section 40A(2) (b) of the Income Tax Act, 1961 other than those mentioned in these clause. Accordingly, verification of such payments was restricted to the list of persons specified by the management.
- Reimbursement of expenses have not been considered for the above purpose. Amount mentioned is only for the period during which respective person is covered by the provisions of section 40(A)(2)(b)
- Director Remuneration and Salary includes gratuity and leave encashment expense accrued as per actuarial certificate.
- Perquisites have been considered based on the Form 16 issued by the Company.
- PAN not available in case of DAKSM SA, Luxembourg, being a foreign entity.

## Clause 25: Section 41 TAQRB Study

- दक्षम: DAKSM
- While reviewing various tax audit reports it was observed that the amount mentioned in Annual report, which was chargeable to tax under section 41 and reportable under this clause, was not reported in many cases.
- It is to be noted that as per the Guidance Note the same is required to be reported *irrespective* of the fact whether the relevant amount has been *credited to the profit and loss account* or not.

## **Clause 25: Sample Auditor's note**

- Normal under / over accruals debited / credited to Profit & Loss Account have been adjusted against respective expenses. Hence, these have not been separately disclosed under clause 25.
- Rs. 99,99,999/- represents reversal of warranty provision for earlier year.
- The assessee has certified that there are no amounts chargeable to tax under Section 41, which have not been credited to the Statement of Profit and Loss.

#### Clause 26 : Expenses allowable on payment basis Sec 43B

- Tax, duty, cess or fee, by whatever name called, under any law for the time being in force,
- Employer Contribution to provident / superannuation / gratuity or any other welfare fund.
- Employee bonus / commission
- Interest on any loan / borrowing from any specified institutions
- Interest on any loan / borrowing from a deposit taking NBFC or NDSI NBFC [AY 2020-21]
- Interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances,
- Leave Salary / Encashment
- Sum payable to Indian Railways for the use of railway assets,

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### **Clause 26: Sample Auditor's note**

- दक्षम: DAKSM
- Information is only up to date of audit report September 02,2022 except for Gratuity and leave encashment for which information is till March 31, 2022 and does not include any payment which the assessee may make subsequently before the due date of filing of the return of income under section 139(1).
- As per the recommendation of ICAI in its "Guidance Note on Tax Audit under section 44AB of the Income Tax Act" and "Implementation Guide w.r.t Notification No. 33/2018 dated July 20, 2018", details are given only in respect of amounts referred in clauses (a), (b), (c), (d), (e), (f) and (g) of section 43B which were incurred in the previous year but were outstanding as at the end of the relevant previous year.

## Clause 27.a: CENVAT TAQRB Study

While reviewing various tax audit reports it was observed that:

- a) In few instances, the computation shown under this clause was incorrect.
- b) At few occasions, non-reporting of '**CENVAT** utilized' and 'treatment of the same in profit and loss account' were noticed.
- c) In certain cases, even where treatment in profit and loss account was reported, reporting of treatment in the accounts for opening and closing balance of **CENVAT** was missing.

### Clause 27.a: CENVAT Sample Auditor's note

**Option 1:** As per notified form no. 3CD, details of only erstwhile Central Value Added Tax or CENVAT needs to be disclosed. Since there was no reportable figures of CENVAT during the year, thus no disclosure has been made in clause 27(a). The assessee has further represented that this clause is not applicable to GST ITC, since CENVAT is quite different from ITC under GST. However assessee has represented that movement of GST ITC can be furnished before AO during assessment, when demanded.

#### Option 2:

- The information provided in respect of amount of CENVAT credits availed or utilized during the previous year and its treatment in the Statement of Profit and Loss Account including treatment of outstanding CENVAT credits in the accounts is disclosed in clause 27(a) of Form 3CD as per the Goods and Services Tax (GST) returns filed.
- The assessee follows the exclusive method of accounting for GST in the books of account. The GST paid
  on purchase of raw materials / purchase of capital goods and services are debited to ITC Credit
  Receivable account. As and when the said ITC Credit is utilised against payment of GST on final
  products, the GST payable is debited to the GST payable account and ITC Credit Receivable account is
  credited. The purchase cost of the inputs is thus net of the GST. The Inputs consumed and the
  inventory of such Inputs are valued on the basis of purchase cost net of the GST. The debit balance in
  the ITC Credit Receivable account is disclosed as an asset in the Balance Sheet.

#### Form 3CD - Clause No. 27- Prior Period

- Difference between expenditure/income of earlier year vis-à-vis expenditure/income relating to earlier year which is crystallized during year.
- Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items.
- U/s 145 Material Charges (expense) or credit (income) which arise in the current year as a result of **error or omission** in the account of earlier years will be considered as prior period items. **AS-5 issued by ICAI need to be considered for the purposes of this Clause.**
- Assessee sustained loss due to theft in one year, but became finally irrecoverable in subsequent year. Held it was allowable in the year in which loss became irrecoverable. **CIT vs Durga Jewelers 172 ITR 134 (M.P)**
- Expenditure of the earlier years means expenditure which arose, or which accrued in any earlier year and excludes any expenditure of an earlier year for which the liability to pay has crystallized during the year. 3i Infotech Limited, Vs. Assistant CIT [2010] 329 ITR 257 [Bom.]

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# 27.b: Sample Auditor's note

 For identifying items covered under clause 27(b), the auditors have used the definition under Indian Accounting Standard (Ind AS)–8 "Accounting Policies, Changes in Accounting Estimates and Errors".

#### Clause 29A & B



- These clauses are triggered if any income is chargeable:
- u/s 56(2)(ix) : Advance received on capital asset forfeited
- u/s 56(2)(x): Income of gifts exceeding INR 50,000
- Following details to be disclosed:
  - Nature of Income
  - Amount (in Rs.)



The auditor is not required to report

- any such forfeited amount
- if it is in respect of a personal capital asset,
- Where,
  - Neither the asset,
  - Nor the advance
  - Nor the forfeiture
- is recorded in the books of account relating to the business or profession.

# 29: Sample Auditor's note

- During the previous year, the Company has received Rs. 1 crore for issue of 20,000 equity shares of Rs. 10 each fully paid up at a premium of Rs. 490 per share. The issue price does not exceed the fair market value of the shares referred to in Sec. 56(2)(viib).
- During the previous year, the Company has received on 01/10/2021 A sum of INR 6,00,120 for issue of 3369 Compulsory Convertible Preference shares (CCPS) of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share.

During the previous year, the Company has received on 30/03/2021 a sum of INR 11,66,395 for issue of 6548 CCPS of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share.

Per Assessee, the issue price of all above allotments does not exceed the fair market value of the shares referred to in Sec. 56(2)(viib). The assessee states that the above shares have been issued at fair market value which will be substantiated by it in the course of assessment proceedings as provided in clause (a)(ii) of the Explanation to Sec. 56(2)(viib).

# **29: Sample Auditor's note**

- दक्षम: DAKSM
- Following amounts received during the year by the assessee, which, as per information, explanation and representations given to auditors by the assessee are out of purview of section 56(2)(viib):

INR 11,94,00,005 received on 01/10/2021 and Rs. 19,32,33,642 received on 30-03-2022 for issue of 670297 CCPS and 1084790 CCPS respectively, both with a face value of Rs. 10 each fully paid up at a premium of Rs. 168.13 per share from a Non Resident Company.

The assessee states that provisions of section 56(2)(viib) are not applicable for allotment of shares to a **Non-resident**.

## Clause 31: Loans TAQRB Study

While reviewing various tax audit reports it was observed that:

- There were cases where the 'name' of the persons/concerns from whom loan had been taken, was not mentioned. Consolidated figures were reported mentioning 'various parties' under this clause instead of details of loan received person-wise.
- In Observations/Qualifications paragraph i.e., clause (3) of Form No.3CA or Clause (5) of Form No.3CB as the case may be, the language used in Para 49.6 of the Guidance Note has been used, as it is, without making the necessary change in respect to "me/us". Since the general language is provided in the Guidance Note, the report in Form No. 3CA/ 3CB should be reworded as applicable.
- In certain cases, repayment of time deposits such as 'fixed deposits' and /or 'term loans' reflecting in Annual report were not reported while the same were required to be reported as per the Guidance Note.

# **31: Sample Auditor's note**

 It is not possible for the auditors to verify whether specified sum has been taken or accepted otherwise than by account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account, as the necessary evidence is not in the possession of the Company.

(Similar note for repayment)

- Loans from banks/financial institutions are not considered for disclosure under this clause
- The auditors have relied on management representation for the purpose of reporting under clause 31(b).
- Particulars are not furnished in respect of parties from whom loans are borrowed in earlier financial year and carried forward to the next financial year with no transactions during the year except for provision/payment of interest thereon.

# **31: Sample Auditor's note**

- दक्षम: DAKSM
- It is not possible for the auditors to verify whether each receipt in aggregate received 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 has been received otherwise than by cheque or bank draft or by use of electronic clearing system through a bank account, as the necessary evidence is not in the possession of the Company.
- Particulars are not furnished in respect of amounts received from customers whether as advance or similar receipts as they are not treated as loans or deposits and amount refunded in full or part to the customers, if any, either on cancellation of orders or of excess amounts received, in accordance with GN of ICAI, 2022 edition.

### Clause 32: b/f Losses TAQRB Study

While reviewing various tax audit reports it was observed that:

• While reviewing various tax audit reports it was observed that in certain reports the *'section under which assessment order was passed'* and *'date of order'* was not reported.

It is suggested that the above-mentioned observation as well as the requirements of the 'Guidance Note on Tax Audit under Section 44AB of the Income tax Act,1961' and the 'format of efiling utility of Tax audit report' should be kept in mind while reporting under this clause

#### Clause 34 - TDS

#### दक्षम DAKSM

#### As per Guidance note issued by the ICAI

- Rates of deduction is to be consider as per the law relevant to the P.Y.
- Rely upon the judicial pronouncements while taking any particular view.
- Refer relevant provisions, rules, circulars, notifications and such certificates obtained from the auditee to verify the cases where tax has been short deducted at source.
- In case payer deducts/recipient collects tax at source at rate lower than specified rate on basis of certificate u/s 195 or 197, the said rate to be considered as specified rate
- As per the provisions of Sec 195/197, certificate can be issued for no deduction or lower deduction of tax at source.
- In case of payment to NR, the applicable rate of TDS is to be read along with the DTAA.
- The tax auditor is required to provide the detail irrespective of any default on the part of assessee in complying with the provisions of Chapter-XVII-b or XVII-BB.

#### Clause 34 - TDS

- Detail in respect of interest u/s 201(1A) & 206C(7), if any to be provided.
- Sec. 201(1A)- Levy of simple interest on **failure to deduct** tax or payment thereof to the credit of Central Government
- Sec. 206C(7)- Levy of simple interest on **failure to collect** tax or payment thereof to the credit of Central Government
- If the assessee is liable to pay interest u/s 201(1A) or 206C(7), the auditor should verify such amount from the books of account & also from part G of the statement generated by the department in form no. 26AS.
- In case the assessee had disputed the levy or calculation of interest under TRACES, in form no. 26AS, the auditor may re-calculate the amount of interest u/s 201(1A) or Section 206C(7) up to the date of audit report for reporting under this Clause & also mention the fact in his observations provided in form no. 3CA & form no. 3CB.

### Clause 34: TDS compliance TAQRB Study

While reviewing various tax audit reports it was observed that:

 'date of payment' of interest with respective amount were not reported under the relevant columns of this sub-clause.

- दक्षम: DAKSM
- Considering the volume of transactions, the verification of the particulars given under Clause 34 is based on - Procedure followed for ensuring the compliance; Broad review of such procedure & Review of internal checks, internal controls, test check of the transactions and facts thereof.
- The Company has policies and procedures for authorizing accruals and payments of expenditure, based on reasonable checks and controls. This policy is intended to ensure that taxes are deducted / collected at source and deposited with the prescribed authorities, where applicable, in accordance with the provisions of Chapter XVII-B and Chapter XVII-BB as the case may be.
- Our verification of the Company's compliance with the provisions of Chapter XVII-B and Chapter XVII-BB regarding deduction / collection of tax at source and payment thereof to the credit of the Central Government, has been carried out in accordance with Standards on Auditing issued by Institute of Chartered Accountants of India, which includes examination on a test check basis and having regard to materiality of the items involved. Based on the test checks carried out by us, having regard to the Company's existing policies and procedures as well as the specific representation given by the assessee, which has been relied upon by us for the purposes of reporting under Clause 34.

- दक्षम: DAKSM
- In cases, wherein TDS was deducted, at a rate lower than specified rate, based on certificate issued u/s 197 of the Income Tax Act' 1961, such deduction of TDS has been considered as deduction of TDS at specified rate, for the purposes of reporting under this clause.
- Information furnished has been compiled from TDS returns submitted by the Company during the previous year.
- In view of the voluminous level of information involved, the assessee has not been able to prepare reconciliation between the total amounts of payment or receipts of the specified nature and the amounts in respect of which it is required to deduct or collect tax at source. Accordingly, the information provided in column 4 {Total amount of payment or receipt of the nature specified in column (3)} is restricted to those payments or collections in respect of which the assessee has deducted or collected tax at source, and does not include the entire value of payments or receipts of each such specified nature as is required to be disclosed.

### Clause 35: Stock TAQRB Study

While reviewing various tax audit reports it was observed that:

- 1. Quantitative details of principal items of goods traded were not reported under this clause whereas "Trading" was reported as one of the businesses of the assessee under clause 10a.
- 2. In some cases, where closing stock of goods acquired for trading was reported as "NIL", the quantitative details of opening, purchases & sales made during the year (traceable through financial statements) were not reported under this clause.
- 3. In some cases, where the assessee is engaged in "manufacturing", the 'percentage of yield' or 'shortage/excess' were not reported. Also, qualification/ observation with regard to the same was not given in the Tax Audit report.

दक्षम: DAKSM

While reviewing various tax audit reports it was observed that:

 In some cases, details of 'Finished products' were erroneously reported as 'raw materials' under clause 35b(A) instead of clause 35b(B). Also, raw materials, which were clearly traceable from the financial statements, were not reported at all.

- दक्षम: DAKSM
- Reporting is made in respect of principal items which constitute more than 10% of the aggregate value of consumption of raw materials and of turnover. Quantity of raw material includes work in progress.
- Auditors were represented that considering the usage of raw material for manufacturing of multiple finished goods, yield of finished products and percentage of yield can't be calculated.
- As explained by the assesse, keeping in view the volume of business, multiplicity as well as volume of type of items of goods being sold by the assessee and the size of the business of the assessee, it is not practically possible for firm to record quantities of each and every inward and outward of trading goods on transaction to transaction basis or even on day to day basis. Only specific items falling under the category of Principal Item as explained in Guidance Note on Tax Audit Under Section 44AB of The Income-Tax Act, 1961, which has been certified by the assessee and disclosed in clause.

 As per sec 145A, the purchase and sales of goods or services shall be adjusted with the tax, duty, cess or fees etc.

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#### Clause 40: Rations TAQRB Study

- It was observed that in respect of service sector, "not applicable" should be reported under this clause instead of leaving the same blank.
- In certain cases, scrap sale was not considered while arriving at the figure of 'turnover' for Tax Audit Report.
- in certain cases net profit after tax was reported under this clause.
- for calculating stock in trade/ Turnover ratio, average stock was taken instead of calculating stock as per the above-mentioned guidance given in the Guidance Note
- the amount of material consumed reported under this clause did not include stores, spare parts and loose tools.
- reporting of material consumed/ finished goods produced ratio was missing in many reports.
- it was observed that there were mismatch of figures in the material consumed reported in respect of preceding previous years. However, nothing was mentioned / reported under Clause (3) of Form No.3CA or Clause (5) of Form No.3CB, as the case may be

- The assessee has furnished the ratios as per audited financial statements. The previous year comparatives have been re-computed to make them comparable to current year reported ratio formula.
- In view of unavailability of relevant information, computation of ratio of Material consumed / finished goods produced is unascertainable.

### **Clause 44: Auditor's Note**

- दक्षम: DAKSM
- As informed by the assessee, the information reported under clause 44 of Form 3CD is based on the information extracted from accounting software/ relevant GST report. However this may not be accurate as the accounting software used by Assessee is not configured to generate report as required under this clause, in the absence of any prevailing statutory requirements under Income tax or CGST act or under any other statutes. In addition, the software/system does not capture information relating to the entities falling under composition scheme or supply with ineligible credit.
- We have verified statement prepared by assessee in accordance with the Auditing Standards generally accepted in India which includes test checks and the concept of materiality and concept of reasonable assurance. However as per the Accounting entries done in the Accounting Software, it is not possible for us to extract the details required to be reported under this clause and thus we are unable to comment on the accuracy of information provided therein.
- Assessee has further informed that "Expenditure relating to entities not registered under GST" includes import of goods, import of services and services from unregistered suppliers on which GST liability under RCM has been discharged.
- Assessee has further informed that "Total expenditure" reported under the clause includes capital expenditure however does not include depreciation, bad debt and expenditure, like salary, which is not a supply as per GST, Further, as communicated to auditors by assessee, details in accordance with rule 56 of CGST Rules can be furnished during assessment before AO, as and when demanded.

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# Thanks for your time!

#### **Contact us**

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