



# IMPORTANT CLAUSES OF TAX AUDIT REPORT

Navi Mumbai Branch of ICAI of WIRC jointly with Panvel CPE Study Circle

CA GAUTAM RAJESH MOTA

# COVERAGE

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No.	Particulars
1	Background
2	Applicability of Tax Audit
3	ICAI Code of Ethics
4	Clauses of Tax Audit
5	Common Error observed by ICAI Tax Quality Review board
6	Way Forward

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# Background

# BACKGROUND

- Section 44AB of the Income-tax Act, 1961
- Objective - Assist AO in computing total income and complete assessments
- Also applicable to Non resident (for India related operations)
- Trigger point – applicability
  - ✓ Business - sales, turnover or gross receipts > Rs. 1 cr / Profession – gross receipts > Rs. 50 L
  - ✓ Presumptive taxation – 44AD, 44ADA etc.
- Tax Audit Report – Form 3CA / 3CB and Form 3CD
  - ✓ Penalty - Sec 271B – lower of 0.5% of T/o or 150000/-
- True and Fair v/s True and Correct
  - ✓ Penalty – 271J – Rs 10,000 - for furnishing inaccurate information



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# Applicability

# APPLICABILITY OF AUDIT

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- Turnover more than 1 crore (appx. 1.5 Crores) and having loss ?
- Turnover more than 1 crore (appx. 5.5 Crores) and having loss ?
- Relevant criteria for determining whether audit applicable or not
  - ✓ Turnover
  - ✓ Status of Assessee
  - ✓ Eligible business
  - ✓ Applicability of 44AD in previous year
  - ✓ Cash receipts and cash payments less than 5%

# APPLICABILITY OF AUDIT – BUSINESS

## ➤ Engaged in eligible business (**Eligible assessee**)

Turnover	Cash Receipt / Payment	Profit %	Audit Applicability
More than 10 Cr	NA	NA	Yes [44AB(a)]
2 Cr – 10 Cr	Less than 5%	NA	No
	More than 5%	NA	Yes [44AB(a)]
Upto 2 Cr	NA	More than 6%/8%	No
	NA	Less than 6%/8%	Yes [44AD(4) read with 44AB(e)]

## ➤ Engaged in business (**Other than eligible assessee**)

Turnover	Cash Receipt / Payment	Profit %	Audit Applicability
More than 10 Cr	NA	NA	Yes [44AB(a)]
More than 1 Cr but Less than 10 Cr	Less than 5%	NA	No
	More than 5%	NA	Yes [44AB(a)]

# APPLICABILITY OF AUDIT – PROFESSION

## ➤ Engaged in Profession

Turnover	Cash Receipt / Payment	Profit %	Audit Applicability
More than 50 Lakhs	NA	NA	Yes [44AB(c)]
Upto 50 Lakhs	NA	More than 50%	No
	NA	Less than 50%	Yes [44AB(d) r.w.s 44ADA]



# APPLICABILITY OF AUDIT - CASH RECEIPT / PAYMENTS

- Aggregate of all amounts received / payments should be less than 5 % - what all included ?

Receipt	Payment
Trading Receipt (cash Sales, receipt from debtors, etc.)	Trading Payment (Cash Purchase, payment to creditors, etc.)
Loan accepted during the year	Loan given during the year
Sale proceeds of Capital Assets	Purchase of Capital Assets
Reimbursement / Amount contributed / withdrawn by Partners	

# BUSINESS V/S PROFESSION

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- “Business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture [S. 2 (13)]
  - ✓ Barendra Prasad Roy v ITO [1981] 129 ITR 295 (SC)

**Activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income.** The expression "business" does not necessarily mean trade or manufacture only.
- “Profession” includes vocation [S. 2 (36)] - vocation not defined under Act
  - ✓ CIT Vs. Manmohan Das (1966) 59 ITR 699 (SC)

**The expression "profession" involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator,** as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of commodities.
- Whether Company can carry on profession ? - ITO vs. Ashalok Nursing Home (P) Ltd (ITA 2455/Del/2003)
- Firm where specified professional and others are partners

# Inclusion in Total Turnover / Gross Receipts

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- Cash Discount
- Export Benefits
- GST / Indirect Tax
- Out of Pocket Reimbursements
- Insurance claim received
- Partners Remuneration / Interest on Partners Capital
- Share of Profit from Partnership Firm



# Inclusion in Total Turnover / Gross Receipts

Particulars	Computation of Turnover / Gross Receipts
Speculative transactions	Aggregate of both positive and negative differences is to be considered as the turnover – Para 5.14 (a)
Futures	Total of favorable and unfavorable differences shall be taken as turnover – Para 5.14 (b)
Options	<p>Total of favorable and unfavorable differences shall be taken as turnover + (plus) Premium received on sale of options is also to be included in turnover</p> <p>However, where the premium received is included for determining net profit for transactions, the same should not be separately included. – Para 5.14 (b)</p>
Delivery-based transactions	Total value of the sales is to be considered as turnover – Para 5.14 (c)

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# ICAI Code of Ethics

# ICAI CODE OF ETHICS

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- Appointment and NOC procedures
- Same person cannot conduct Internal Audit & Tax Audit
- Compliance with Standards issued by ICAI
- Ceiling on number of tax audit assignments - 60 per partner
- Record of tax audit assignments in prescribed format
- Mentioning of UDIN
- Formation of Quality Review Board by ICAI (24<sup>th</sup> July, 2018)



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## Relevant clauses

# CLAUSE 8a – OPTIONAL REGIME OF TAXATION

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- Optional regime of taxation for all assessee
- For taxpayers having business income option to be exercised on or before due date u/s 139(1) and once exercised the option to apply for subsequent years
  - ✓ 115BAA – Cannot be withdrawn subsequently
  - ✓ 115BAB – To be exercised in the first year
  - ✓ 115BAC - Can be withdrawn only once in a subsequent year.
    - Once withdrawn not eligible to re-exercise option under section 115BAC unless business income ceases to exist
- Form 10IC / 10-IE to be filed before the date of filing the return of income



# Clause 18 – DEPRECIATION ON GOODWILL

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- Finance Act 2021 specifically exclude goodwill of business or profession from being eligible for depreciation from AY 2021-22 (retrospective in nature)
- Amendment to following Section
  - ✓ S. 2(11) - Expression 'intangible asset' will include assets such as know-how, brand, copyright etc. not being goodwill irrespective of the mode of acquisition of goodwill
  - ✓ S. 32(1)(ii) and Explanation 3 to s. 32 - Goodwill remains a capital asset but not a depreciable asset
  - ✓ S. 43(6) – Written down value of block to be adjusted on account of acquisition of goodwill
- Rule 8AC notified providing mechanics for adjustment of WDV on account of goodwill amendment



DEPRECIATION

# Clause 18 – ADJUSTMENT TO OPENING BLOCK – OPTIONAL TAX REGIME

Particulars	Opted for new regime	Treatment
115BAC (individuals and HUFs) / 115BAD (cooperative society)	AY 2021-22	Opening WDV as on 01.04.2020 to be adjusted
	AY 2022-23	No adjustment in opening WDV permissible for unabsorbed depreciation – same will lapse
Companies under section 115BAA	AY 2020-21	Opening WDV as on 01.04.2019 to be adjusted
	AY 2021-22	No adjustment in opening WDV permissible for unabsorbed depreciation – same will lapse

# CLAUSE 18 – DEPRECIATION

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- Proper classification based on legal precedents – important to claim depreciation
  - ✓ Rate of Depreciation on Computer peripherals
- Assets used partly for Business purpose, deduction restricted to proportionate part
- In respect of succession of business (business transfer) – proportionate depreciation upto the date of succession in hands of transferor and balance in hands of transferee
- Ascertainment of actual cost – S. 43(1)
- Capitalization of interest – Proviso to S. 36(1)(iii) / Explanation 8 to S. 43(1)
- Foreign Currency adjustments – S. 43A
  - ✓ Impact of ICDS – Exchange difference on monetary items

# CLAUSE 18 – DEPRECIATION

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- Subsidies and assistance received from Government
  - ✓ Adjustment to the cost of assets – amendment to section 2(24)(xviii)
- Asset used for business – active as well as passive use
  - ✓ Nirma Credit & Capital Ltd. (2008) 220 CTR 537 (SC)
- Asset registered in name of Partners / Director
  - ✓ CIT Vs. Aravali Finlease Ltd. 341 ITR 282 (Guj)
- Depreciation on Intangibles
  - ✓ Non Compete Fees - Mediacorp Technologies – (2009) 30 SOT 506 (Mad)

# CLAUSE 20 – EMPLOYEE CONTRIBUTION TO FUNDS

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- S.2(24)(x) – Contribution received from employee
- S. 36(i)(va) – allowable as expenditure if paid within due date
- Due date as prescribed under respective laws
- Section 36(1)(va) and section 43B amended by Finance Act 2021 w.e.f. AY 2021-22
  - ✓ contribution to be disallowed even if deposited late but before the due date of filing the return of income resulting in **permanent disallowance**
- Supreme Court ruling in Checkmate Services TS 791 SC 2022
- Whether delay in payment due to technical glitch result in disallowance ?
- Delay on account of non obtaining / allotment of registration number needs to be disallowed ?



# CLAUSE 21 – CONTRIBUTION TO EMPLOYEE FUND – 40(a)(iv)

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## ➤ Amounts disallowable under 40 (a)(iv)

- ✓ Payment to provident fund or other fund for benefit of the employees is to be disallowed, unless the assessee has made effective arrangements to secure TDS from payments made from such fund which is chargeable under the head salaries
- ✓ Advisable to examine PF Trust Deed/ obtain representation to ensure that there are adequate provisions for TDS on payments made out of PF fund – particularly in view of the fact that provisions relating to exemption of PF contribution have undergone significant change due to amendment in section 17 (employer's contribution to PF, superannuation fund and NPS in excess of INR 750,000 and interest accruing thereon) and 10(11)/10(12) (interest on employees' contribution to PF in excess of INR 250,000)

# CLAUSE 21 – FINE / PENALTIES / OFFENCE

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- Explanation 3 to S. 37(1)
- i. for any purpose which is an **offence under, or which is prohibited** by, any law for the time being in force, **in India or outside India**; or
  - ii. to provide any **benefit or perquisite**, in whatever form, to a person, whether or not carrying on a business or a profession, and acceptance of such benefit or perquisite by such person is **in violation of any law or rule or regulation or guideline**, for the time being in force, governing the conduct of such person; or
  - iii. **to compound an offence** under any law for the time being in force, **in India or outside India**



# CLAUSE 21 – FINE / PENALTIES / OFFENCE

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## ➤ Clause (i)

- ✓ Mahalakshmi Sugar Mills Co. Ltd. vs CIT (123 ITR 429) – Distinction in Nature of Penalty
  - Compensatory – deductible
  - Penal – non deductible
- ✓ Overrides ruling which held that fine / penalties paid under foreign law were deductible expenditure

## ➤ Clause (ii)

- ✓ Apex Laboratories (P.) Ltd. -[2022] 135 taxmann.com 286 (SC)
- ✓ CBDT Circular No. 5/2012- Freebees provided in violation of Indian Medical Council Regulation, 2002 (IMC) – inadmissible u/s 37(1)



# CLAUSE 21 – FINE / PENALTIES / OFFENCE

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- Clause (iii)
  - ✓ Existence of an offence or Admission of guilt required?
  - ✓ “compound an offence” v. “compounding fees”
  - ✓ Many authorities and legislations have a different approach towards compounding
  - ✓ Sometimes payments made to buy peace without admitting to the offence.
- **EON Hadapsar Infrastructure (P.) Ltd. 159 ITD 532 (Mum ITAT):** Compounding fee paid as per RBI direction for some technical violations without committing any offence, is an allowable business expenditure
- **Reliance Shares & Stockbrokers (P.) Ltd. 67 SOT 73 (Mum ITAT), Anil Dhirajlal Ambani 171 ITD 144 (Mum ITAT):** There is no reason to believe or infer that consent application without admitting guilt amounts to evidence of an offence having been committed
- **Sun Pharmaceutical Limited - ITANo.360/AHD/2017 - (Ahmd ITAT)** held that settlement payment without admitting guilt does not constitute an offence

# CLAUSE 21 – FINE / PENALTIES / OFFENCE

Law / Act / Regulation	Particular	Allowable / Disallowable
Income Tax	Interest on TDS	?
Income Tax	TDS Late Fee u/s 234 E	?
GST	Penalty for late furnishing of GST returns	?
FEMA	Late submission of Form FC-GPR	?
FEMA	Compounding fees paid for regularising ECB defaults	?
USFDA	Paid for violation of USFDA Norms (Pharma Companies)	?

# CLAUSE 21 – TDS DISALLOWANCE – 40(a)(i)/(ia)/(ib)

## ➤ TDS on Provisions - If payee not identifiable – no disallowance

- ✓ Pfizer Ltd - ITA No. 1667/Mum/2010 & IDBI 107 ITD 45 (Mum)
- ✓ Inter Globe Aviation Limited – ITA No. 5347/Del/2012

Nature of Provisions	Amount known	Payee known	Relevant section for withholding, if required	TDS Applicability
Rent of March (invoice awaited)	Yes	Yes	194 I	Yes
Interest on cumulative transferable bonds (due on 30.6.2020)	Yes	No	193	No (Based on ITAT Ruling in case of IDBI)
Commission on net sales by distributors to ultimate customers	No	Yes	194H	Yes
Estimated provision to account for expense on pending obligation under a contract which is substantially complete	No	No	194C	No

# CLAUSE 21 – DISALLOWANCE – 40(a)(i)/(ia)/(ib)

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- TDS deduction on payment basis – Non-resident – Disallowance ?
- No TDS on reimbursement of expenses
  - ✓ DLF Commercial Project Corporation 379 ITR 538 (Del)
- Deduction of TDS at lesser rate – Whether disallowance required
  - ✓ Chandabhoy and Jassobhoy 49 SOT 448 (Mum.)
- Second proviso – If tax paid by the recipient – No disallowance to be made – Form 26A – Interest liability u/s 201

# CLAUSE 21 – CAPITAL EXPENDITURE

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- Few tests whether expenses capital / revenue in nature – Ref. GN of ICAI
  - ✓ Whether it brings into existence an asset or advantage of enduring benefit
    - Capital field v/s Revenue field
  - ✓ Whether it is referable to fixed capital or fixed assets in contrast to circulating capital or current assets
- Construction Expenditure incurred on an abandoned project is allowable as revenue expenditure
  - ✓ Binani Cement Ltd. Vs. ACIT 380 ITR 116 (Cal.) - No asset is created
- Expenses on Computer Software – Whether capital or revenue in nature
  - ✓ CIT v. Raychem RPG Ltd –(2013) 346 ITR 138 (Bom HC)

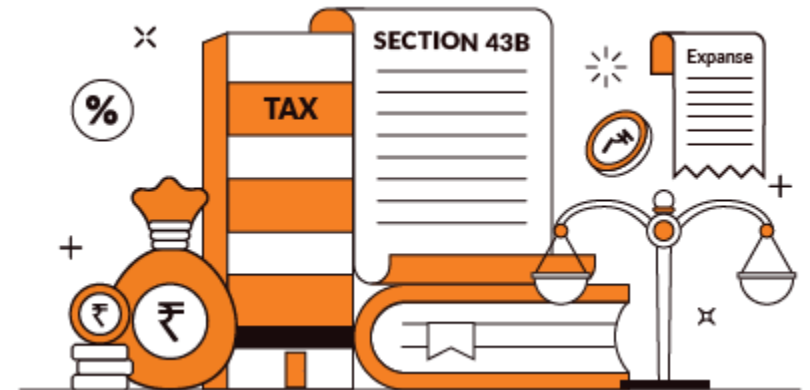
# CLAUSE 21 – INTEREST DEDUCTION – 36(1)(iii)

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- Proviso – Capital borrowed for acquisition of FA
  - ✓ Interest cost – date of borrowing till date of asset put to use not allowed as deduction
  - ✓ Extension of existing business – not required
  - ✓ ICDS - interest capitalization only for qualifying assets - more favorable than provisions of the Act
- Hypothetically for each and every purchase of FA – capitalization required
- Arguments relevant to S. 14A could be applicable

# CLAUSE 26 – LIABILITIES ALLOWED ON PAYMENT BASIS

- S. 43B – certain specific liabilities covered
- Taxes paid after the completion of audit but before filing of report
  - ✓ Amendment to section 143(1)
  - ✓ Revision of Tax Audit report (wherever applicable)
- Write back of liability – post 31<sup>st</sup> March not allowable
- Allowability of Moratorium Interest



# Clause 33 – CHAPTER VIA DEDUCTIONS

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- Section-wise details of deductions, if any admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA)
- Deductions likely to be available under new regime
  - ✓ Section 80JJAA
  - ✓ Section 80M
    - Deduction is available for dividend received or dividend distributed, whichever is lower
    - Dividend distributed by domestic company up to 139(1) due date to be considered
- TAR of Individual – whether personal deduction (Sec. 80C / 80D) to be reported ?



# CLAUSE 34 – TDS / TCS REPORTING

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- Cumbersome reporting requirement
- Clause 34(a)
  - ✓ Reconciliation with profit and loss ?
  - ✓ Inclusion of perquisite ?
- TCS on sale of goods – Sec. 206C(1H)
  - ✓ Collection point of TCS – receipt v/s invoice
- TDS 194Q v/s TCS 206C(1H)
  - ✓ CBDT Circular 13/2021 – if both applicable – TDS 194Q to be deducted
  - ✓ However, if TCS collected before buyer could deduct TDS – then TDS not required
  - ✓ Disallowance of expenditure – 40a(ia)



# CLAUSE 34 – TDS / TCS REPORTING

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## ➤ TDS 194R

- ✓ Deduction of tax on “any benefit or perquisite”
- ✓ “Benefit or perquisite”:- Is not defined - May or may not be convertible into money - May be in cash or kind or partly in cash and partly in kind - Should arise from the carrying on of business or profession; and aggregate value of such benefit or perquisite provided during the FY should exceed Rs. 20,000
- ✓ CBDT Circular No. 12 of 2022 dated 16<sup>th</sup> June, 2022 & Circular No. 18 of 2022 dated 13<sup>th</sup> September, 2022 explaining through various FAQ the applicability of provisions

# CLAUSE 44 – GST Reporting

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- Reporting required for all tax audit report issued after 31.03.2022
- Taxpayers / consultants are divided with respect to position on clause44:
  - ✓ Disclosure to be made based on available data with appropriate notes
  - ✓ No disclosure with suitable disclaimers
- Information to be reported in the following categories
  - ✓ Total amount of expenditure incurred during the year
  - ✓ Expenditure in respect of **entities registered** under GST
  - ✓ Expenditure related to **entities not registered** under GST



# CLAUSE 44 – GST Reporting

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- In respect of expenditure incurred with entities registered under GST, further bifurcation required
  - ✓ Expenditure relating to goods or services exempt from GST
  - ✓ Expenditure relating to entities falling under composition scheme
  - ✓ Expenditure relating to other registered entities
  
- Certain Issues
  - ✓ Whether head wise details of expenses to be collated? – Para 82.1 of GN
  - ✓ Whether reporting to be done for Bad debts, Depreciation etc. ? – Para 82.2 of GN
  - ✓ Capital expenditure whether to be included? - Para 82.15 of GN
  - ✓ Source of information – whether from GST Returns or from books of accounts
  - ✓ Reporting for Import purchases / services on which RCM is paid ?

# CLAUSE 44 – GST Reporting

Particulars	31 March 2022	Items not reportable	Exempt	Taxable	Unregistered dealer
Purchases of RM	56,22,066	-	-	56,22,066	-
Purchases of Stock in Trade	1,17,01,770	-	-	1,17,01,770	-
Import Purchase	2,14,61,770	2,14,61,770	-	-	-
Change in Inventories of RM, work in progress and finished goods	(77,414)	(77,414)	-	-	-
Employee Benefit Expenses	14,96,500	14,96,500	-	-	-
Depreciation and Amortization Expenses	2,05,930	2,05,930	-	-	-
Other Expenses	5,62,82,490	44,34,280	4,70,520	3,73,33,501	1,40,44,189
<b>Total</b>	<b>9,66,93,112</b>	<b>2,75,21,066</b>	<b>4,70,520</b>	<b>5,46,57,337</b>	<b>1,40,44,189</b>

# CLAUSE 44 – GST Reporting

Particulars	31 March 2022	Items not reportable	Exempt	Taxable	Unregistered dealer
Bad debts	15,87,290	15,87,290	-	-	-
Freight outward	2,10,92,970	-	-	1,89,83,673	21,09,297
Electricity	4,70,520	-	4,70,520	-	-
Partners Remuneration	10,38,840	10,38,840	-		
Rent	49,44,311	-	-	49,44,311	-
Rates and taxes	8,63,930	8,63,930	-	-	-
Royalty paid outside India	50,41,590	50,41,590	-	-	-
Miscellaneous expenses	95,84,050	-	-	63,25,473	32,58,577
CSR Contribution	6,29,220	6,29,220	-	-	-
Foreign Exchange Losses	3,49,569	3,49,569	-	-	-
Labour Charges	1,06,80,200	-	-	70,48,932	36,31,268
<b>Total</b>	<b>5,62,82,490</b>				

# CLAUSE 44 – GST Reporting

Expenditure in respect of entities registered under GST						
Particulars	Total amount of Expenditure incurred during the year	Relating to goods or services exempt from GST	Relating to Entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	Expenditure relating to entities not registered under GST
Revenue Expenditure	6,91,72,046	4,70,520	-	5,46,57,337	5,51,27,857	1,40,44,189
Capital Expenditure	1,00,000	-	-	1,00,000	1,00,000	-

# CLAUSE 44 – GST Reporting Note

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As informed by the assessee, the information reported under clause 44 of Form 3CD is based on the information extracted from the accounting software. However, in view of the voluminous nature of transactions the same may not be accurate enough.

Further, the accounting software does not capture information relating to the entities falling under the composition scheme / ineligible credit. Therefore even in cases where the expenditure has been incurred through a entity who is registered under composition scheme, the same has been reported under the column (7) namely expenditure relating to entities not registered under GST.

Also, as explained to us, the Assessee is maintaining adequate records to identify the list of registered and unregistered vendors under GST. We have verified details on test check basis and based on concept of materiality for the purpose of reporting under the said clause.

Total revenue expenditure reported under the said clause does not include following items

- Changes in Inventories, Depreciation, Bad-debts, Salary (Including employee benefits), loss on sale of asset / investment, which are not considered as supply under GST
- Import of goods as IGST has been paid on the same
- Import of Services or purchase of goods



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## OTHER CLAUSES

# CLAUSE 6 – PREVIOUS YEAR

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- Previous year might be different in following case:
    - ✓ Amalgamation / Demerger / New Business / Closure of Business
  - S. 28 – Charging Section for PGBP

“the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year”
  - S. 3 – Defines previous year

“business newly set up...., the previous year shall be the period beginning with the date of setting up of the business and ending with the said financial year”
  - Principles – set up of business were first laid down in
    - ✓ **Western India Vegetable Products Ltd v. CIT– (1954) 26 ITR 151 (Bom HC)** - Business is set up when major activities are completed and necessary infrastructures required for commencement of the business are in place
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# CLAUSE 12 – PRESUMPTIVE TAXATION

## 44AD – Presumptive Income for Business

- 44AD is mandatory or optional ?
- Income from Derivatives (F&O) – if loss - whether tax audit is required ?
- Whether professional (eligible for 44ADA), can claim benefit of S. 44AD for his other business ?
- Condition of maximum amount not chargeable to tax for Partnership Firm ? – S. 44AD(5)



## 44ADA – Presumptive Income for Profession

- Partners remuneration whether part of gross receipts? **Anandkumar v. ACIT Salem 122**  
**Taxmann.com 252 Madras HC**

# CLAUSE 12 – PRESUMPTIVE TAXATION

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## Common Issues

- Can assessee offer 8% or 6% / 50% of turnover or gross receipt to tax, even if the actual income earned is higher ?
  - ✓ Shivani Builders 108 ITD 520-against , Surindra Pal Anand 192 Taxmann 264- favour
- Deduction/ disallowance under section 40(a)/ 43B – presumed to have been given effect to
- Set off of unabsorbed depreciation – non permissible – as overriding effect of S. 30 to S. 38

# CLAUSE 14 – DEVIATION FROM S. 145A

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## Deviation from method of valuation prescribed u/s 145A

- Dispute – AS-2 v/s 145A
- S. 145A is tax neutral - Hawkins Cooker – (2008) 14 DTR 206 Mum ITAT
- Judicial Pronouncement – adjustment not only to closing stock but opening stock also
- Section 145A - What if closing inventory is valued at market price (NRV) – Whether taxes to be included for valuation?

# CLAUSE 16 – AMOUNTS NOT CREDITED TO PROFIT AND LOSS

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- Tax auditor not obligated to report items outside the books of account and which cannot be found by normal audit procedures
- Refers to items not '**credited to P&L account**' and not books of account
  - ✓ the item is credited to a liability account - e.g. GST collected from customers credited to GST payable account
  - ✓ the item in question is credited to an asset account (i.e., reduced from the cost of the asset)
  - ✓ items directly credited to reserve / partner's capital/ current account
  - ✓ the item is netted off from the relevant expense heads ??

# CLAUSE 16 – AMOUNTS NOT CREDITED TO PROFIT AND LOSS

## Sub Clause (a) – items falling within scope of S. 28

Sale proceeds of capital asset on which deduction u/s 35AD already claimed

Conversion of stock-in-trade into capital asset – 28(via)

## Sub Clause (d) – Any other item of income

Employees Contribution to PF / ESIC – 2(24)

Income under section 43CA

Income referred to section 41(1)

## Sub Clause (e) – Capital Receipt

Premium received on issue of shares

Profit on sale of fixed Asset not routed through P&L

# CLAUSE 17 – TRANSFER OF LAND / BLDG

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- Tolerance Limit increased from 5% to 10%
  - ✓ Amendment to be considered as retrospective in nature - [Amrapali Cinema 127 taxmann.com 376 \(2021\) Delhi ITAT](#)
  - ✓ [Surendra S Gupta \(93 taxmann.com 456\)](#) had allowed higher than specified tolerance limit while evaluating the taxability under Sec. 43CA and Sec. 50C
- Section 43CA – whether applies in the case of Percentage completion method ?
- Does S. 43CA apply to sale of flat under construction ? (Shri Laxmi Estate Pvt Ltd vs. ITO [ITA 798/Mum/2019])



# CLAUSE 17 – TRANSFER OF LAND / BLDG

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- Whether S. 43CA has to be considered for computing deduction u/s. 80-IBA
- Applicability of provisions
  - ✓ Tenancy Rights / Lease hold Rights / TDR / FSI / Development Rights
  - ✓ Depreciable Asset – Interplay between Section 50C and section 50 - ITO Vs. United Marine Academy 130 ITD 113 (Mum. SB)
  - ✓ Shares of the company holding only immovable property - Irfan Abdul Kadar Fazlani Vs. ACIT 56 SOT 12 (Mum.)

# CLAUSE 21 – CASH PAYMENTS S. 40A(3) / S.40A(3A)

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- Disallowance for expenditure / liability– where payment in cash beyond prescribed limits
- Exceptions provided in Rule 6DD
  - ✓ Notification no. 97/2008 dated 10.10.2018 has amended Rule 6DD.
- Genuineness of payment and business compulsion – even if Rule 6DD exception does not apply – no disallowance
  - ✓ Anupam Tele Services .v. ITO – (2014) 88 CCH 035 (Gujarat HC)
  - ✓ Honey Enterprises Vs. CIT 381 ITR 258 (Del.)

# CLAUSE 22 – INTEREST TO MSME

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- Interest paid to MSME – inadmissible
  - ✓ Disclosure, even if not provided in books of accounts ?
  - ✓ Whether reporting under ICDS – fundamental accounting assumptions not followed ?
  - ✓ Affects true and fair view of accounts – whether qualification of Form 3CA / 3CB ?

# CLAUSE 29B – GIFT TAXATION - 56(2)(X)

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- Taxability of “Receipt” in case where received without consideration / for inadequate consideration
  - ✓ Money / Movable Property / Immovable Property
- Rule 11UA – Difficulty in case where you need to determine fair value of shares where there is multi layered holding structure
  - ✓ Fair market valuation to be done on the valuation date – cumbersome
  - ✓ Registered valuer’s report in case of jewellery / artistic work
- Applicability to following transactions
  - ✓ Bonus Issue
  - ✓ Rights Issue - Sudhir Menon HUF Vs. ACIT 148 ITD 260 (Mum.) / Rajeev Ratanlal Tulshyan (ITA 5748/Mum/2017)

# CLAUSE 31 – 269SS / 269T

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- Transactions by Journal entry whether covered
  - ✓ CIT v. Triumph International Finance (I) Ltd. [2012] 22 taxmann.com 138 (Bom.) (followed in Lodha Builders (P.) Ltd. v. Asstt. CIT [2014] 163 TTJ 778 (Mum. - Trib.)), it was held that where loan/deposit has been repaid by merely debiting account through journal entries, it must be held that assessee has contravened provisions of section 269T.
- Reporting for “specified sum” accepted / repaid during the year
  - ✓ Specified Sum – any money in relation to transfer of immovable property
  - ✓ Cumbersome reporting for Large Real Estate Builders

# CLAUSE 31 – 269ST

Particulars	Otherwise than by a cheque or bank draft	Otherwise than by a account payee cheque or an account payee bank draft
Particulars of each <b>receipt</b> in an amount exceeding the limit specified in section 269ST	Clause 31(ba)	Clause 31(bb)
Particulars of each <b>payment</b> in an amount exceeding the limit specified in section 269ST	Clause 31(bc)	Clause 31(bd)

- All receipts covered – capital / revenue receipts (including exempt receipts)
- Clauses 31(ba) to 31(bd) make a reference to section 269ST only for the limited purpose of limit
  - ✓ No exception for items exempted from scope of S. 269ST

# CLAUSE 42 – FORM 61 / 61A / 61B

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## ➤ Form No.61A:- Statement of Specified Financial Transaction u/s 285BA(1)

- ✓ Rule 114E - Yearly statement containing particulars of declaration in Form No.61A to be furnished online
- ✓ Due date for filing form 61 – 31st May
- ✓ Common Transactions that are covered
  - Receipt of cash payment exceeding Rs.2 lacs for sale of goods or services of any nature - person who is liable for audit u/s 44AB
  - Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares / bonds / debentures
  - Distribution of dividend by Company
  - Interest paid by Banks / NBFC accepting deposits from public

# CLAUSE 42 – FORM 61 / 61A / 61B

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- Form No.61:- Statement containing particulars of declaration received in Form No.60
  - ✓ Rule 114D(1)- Half yearly statement containing particulars of declaration in Form No.60 to be furnished online
  - ✓ Due date for filing form 61 – Generally 31st October and 30th April
  - ✓ Rule 114B – Compulsory quoting of PAN on all documents
    - One of such transaction is sale or purchase, by any person of goods or services of any nature for an amount exceeding Rs.2 lacs per transaction



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# Common Non-compliance while preparing TAR

# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

## ➤ Revised SA 700, Forming an Opinion and Reporting on Financial Statements

- ✓ Many of the Tax Audit reports do not have the paragraphs relating to Assessee'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 physically signed tax audit reports 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

<https://www.icaai.org/post/icaai-publications-taxation-audits-quality-review-board>



# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

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## ➤ Observations/Comments/ Discrepancies/Inconsistencies by Auditor

- ✓ Only qualifications/ observations should be reported in clause (3) of Form No.3CA or Clause (5) of Form No.3CB, as the case may be, while the additional information which are not in the nature of qualification could be attached as notes.

## ➤ Clause 2 - Address

- ✓ Address mentioned is different than one mentioned in Annual Report or Registered office address
- ✓ In case of Company – address of registered office also needs to be stated

## ➤ Clause 4 – Indirect Tax Registration

- ✓ Registration under Indirect tax laws mentioned in CARO have not been reported
- ✓ Indirect tax registration which are PAN based did not match with PAN quoted at clause 3 of Form 3CD

# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

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## ➤ **Clause 8 - Clause under which audit is conducted**

- ✓ If audit is being conducted under any other law, “*Third proviso to sec 44AB*” is to be mentioned as applicable clause under which audit is undertaken

## ➤ **Clause 10 – Nature of Business**

- ✓ *All main business activities are not reported* – only one or some of activities reported

## ➤ **Clause 11 – Books of Accounts**

- ✓ For Companies – no books of accounts have been prescribed – *however ‘Yes’ was reported*
- ✓ Location of books of accounts / fact that books maintained in computer system was not reported
- ✓ Other supporting / documents which forms basis of verification, have not been reported

# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

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## ➤ **Clause 13 – ICDS**

- ✓ Adjustment reported in clause 13(f) instead of clause 13(e)
- ✓ **Disclosure as per clause 13(f) not done in all cases.** In few cases, reporting done only where there are any deviation from notified ICDS

## ➤ **Clause 14 – Method of valuation and Deviation u/s 145A**

- ✓ **Method of valuation not reported for each item of inventory separately**
- ✓ Memorandum accounts for adjustment on account of S. 145A not reported

## ➤ **Clause 17 – Transfer of land / Bldg – referred in S. 43CA / 50C**

- ✓ Reporting done in cases where consideration and Value as per 43CA / 50C – wherein no reporting is required

# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

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## ➤ **Clause 18 – Depreciation**

- ✓ Mismatch with the annual report filed in MCA(either addition not shown properly or sale not shown)
- ✓ The adjustment for Foreign exchange fluctuation shown in the annual report but missed in the TAR.
- ✓ **Single consolidated amount reported 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 20(b) – Contribution to Employee Fund**

- ✓ ESI contribution reflecting in annual report but not reported under clause 20(b)
- ✓ Due date reported for relevant fund were incorrect

## ➤ **Clause 23 – Payments to related party**

- ✓ Name and PAN of related party are not reported
- ✓ Consolidated figures reported instead of reporting individual transactions

# COMMON NON COMPLIANCE – ICAI PUBLICATION JUNE 22

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## ➤ Clause 25 – Amount Chargeable to tax u/s 41

- ✓ Reporting not done in many cases - reporting required even if the same is credited to profit and loss

## ➤ Clause 35 – Quantitative Details

- ✓ 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.
- ✓ Percentage of yield has not been reported nor any qualification is reported. Also, qualification/ observation with regard to the same was not given in the Tax Audit report.
- ✓ Details of ‘Finished products’ were erroneously reported as ‘raw materials’ under clause 35b(A) instead of clause 35b(B)

# WAY FORWARD....

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- Make standard checklist for purpose of reporting
  - ✓ Quality Review Board has issued checklist for conducting audit
- Ensure proper disclosures / notes in the tax audit report
- Emphasis on proper documentation
- Learn, Unlearn & Relearn on a continuous basis



# Questions

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