

Clause Wise Reporting in Form No. 3CD



Reporting & Analysis of Clauses of Tax Audit Report

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Tax Audit Objective & Scope

The scope and effect of section 44AB – CBDT circular No. 387, dated 6th July, 1984 [(1985) 152 ITR St. 11] – para 17.2. –

“17.2 A proper audit for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims of deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. **The time of the assessing officers thus saved could be utilised for attending to more important investigational aspects of a case.**”

Further, as per section 44AB, an assessee satisfying the broad criteria set therein, has to obtain and furnish the report of audit in prescribed form and **set forth such particulars as may be prescribed.** Thus, the primary responsibility of setting forth the prescribed particulars is that of an assessee. An auditor only has to verify the same and report upon the veracity of the same.

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Clause 1 to 3 & 5:

- Name of the Assessee
- Address
- Permanent Account Number
- Status
 - ✓ Verify the details with assessee's profile on the IT portal
 - ✓ Status of the assessee should be in line with 4th alphabet of the PAN
 - ✓ In case of demise of assessee, ensure that authorised representative or legal heir is duly added as per recent procedures.

Clause 8

- Applicable clause for audit – 9 options in drop down
- Audit under any other law – LLP Act

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Clause 8A:

Exercise of option for concessional rate of taxation

- **115BA** – certain domestic manufacturing companies registered on or after 1-4-2016 taxed at 25% without specific deductions or losses
- **115BAA** certain domestic companies taxed at 22% without specific deductions or losses
- **115BAB** – New manufacturing domestic companies set-up and registered on or after 1/10/2019 taxed at 15% without specific deductions or losses
- **115BAC** – Individuals and HUF new slab rates
- **115BAD** – Tax at lower rate on resident co-operative societies without deductions u/s. 80P

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Clause 9:

Applicable to Firms & Association of Persons

- If there is reconstitution (admission, retirement & change in PSR), of Partnership / Association since the last day of preceding year, the particulars of such change. Also applies to LLP [Section 2(23)]
- Section 45(4) – taxation of gains of partners on reconstitution in the hands of the firm or AOP
- Section 9B – Enlarging the charge on firm or AOP in respect receipt of capital asset or stock in trade on dissolution or reconstitution by partners or members
- Section 48(iii) – Adjustments to cost as a consequence of above events
- Also see Rules 8AA(5), 8AB and Circular 14 of 2021

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Clause 10:

Nature of Business / Profession and change in the nature of Business or Profession

- Selection of proper code.
- Due to COVID 19 one may see situations of changes either in process of carrying on the business or change in items traded or serviced and many other situation. Every such change would not tantamount to change in nature of business or profession.

Clause 11:

Books of Account prescribed, maintained and examined

- Such books as may enable computation of income
- Rule 6F for specified profession
- ERP, SAP etc. – Books of accounts? Section 2(12A) Books or books of account

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Clause 12:

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

- Only the amount of profit is required to be reported. In case of any disagreement recourse to Form No. 3CA or 3CB as the case maybe.

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Clause 13:

Method of Accounting followed, any change therein and details of such change and its effect on profit / loss [Sub-Clauses (a) to(c)]

- The quantified impact on profit due to change has to be specifically be disclosed in the table under clause (c)
- **Adjustments required on application of Income Computation & Disclosure Standards with details and disclosures thereunder [Sub-Clauses (d) to (f)]**

- Introduced vide notification No. 87/2016 dt. 29.09.2016 applicable from A.Y. 2017-18 onwards [Section 145(2) of the Income Tax Act, 1961]. [Also see notification No. SO 892(E) dt. 31/03/2015]
- Applicable for computation of income under head "Profits and Gains of business/profession" and Income from Other Sources. In case of conflict Act prevails. If not followed consequences – Best Judgement Assessment.
- Applicable to all assessee (other than individual/HUF not liable to tax audit) following mercantile system of accounting.
- ICDS to be followed for purpose of computation of income and not for maintenance of books of account.
- Hon'ble Delhi High Court quashed certain ICDS and certain portions of other ICDS.
- Amendments brought out by Finance Act, 2018 w.r.e.f. A.Y. 2017-18 to over rule the judgement of the Hon'ble High Court.
- Circular No. 10/2017 – Clarifications made by way of FAQ

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS 1- Accounting Policies				
MTM Loss/ Expected loss	Prudence concept to be followed i.e. provision to be made for all known liabilities and losses on best estimate basis	Not to be recognized unless specified by any other ICDS [36(1)(xviii) r.w.s. 40A(13)]	Follow AS	Follow ICDS
Marked to Market Gains	Anticipated profits are not recognized	Q No. 8 of Circular- Same principle like MTM Losses to apply i.e. MTM Gains not to be recognized unless specified in any ICDS	Follow AS	AS and ICDS at par and old position continues
Materiality	Materiality to be considered i.e. financial statements should disclose all "material" items	No specific provisions- ICDS does not specifically exclude materiality.	Follow AS	Old position continues
Change in accounting policy	Change in accounting policy permitted if req. by statute or for compliance of AS or change results in more appropriate presentation of FS	Accounting policies shall not be changed without a "reasonable cause" <u>Q No. 9</u> - "reasonable cause" is an existing concept and has evolved over time	Follow AS	AS and ICDS at par and old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (PreICDS)	Treatment (Post-ICDS)
III- Construction Contracts				
Recognition of contract revenue	Contract revenue to be recognized if it is possible to reliably measure the outcome of a contract & No profit during early stages of contract	ICDS requires recognition if there is reasonable certainty of its ultimate collection. ICDS objectively defines early stage as not to exceed beyond 25%	Follow AS	AS & ICDS at par, except for “early stage of completion” which is 25% in ICDS
Retention Money	Silent on treatment of accrual Income	Retention money to be considered as part of contract revenue and revenue to be recognised on POCM basis	Follow AS (not offered to tax)	Follow ICDS
Allowability of losses including probable / expected loss	Losses fully allowable irrespective of commencement, stage of completion and expected profits from other independent contracts	Losses not allowable unless actually incurred and only on POCM basis. ICDS on accounting policies also does not permit recognition of foreseeable loss.	Follow AS	Follow ICDS

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Contract Work in progress recognition	Contract cost which relate to future activity shall be recognised as an asset only if recoverability is probable	Contract cost to be recognised as an asset	Follow AS	Follow ICDS
Pre-construction incidental income	Contract cost may be reduced by any incidental income that is not included in contract revenue	Contract cost shall be reduced by any incidental income (except interest, dividend and capital gains) that is not included in contract revenue	Follow AS	Follow ICDS (Interest, dividend and capital gain to be separately offered as income)

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS IV- Revenue Recognition				
Method of revenue recognition for service contracts	Proportionate completion method or Completed service contract method	<p>Section 43CB – POCM to be followed. However for</p> <ul style="list-style-type: none"> - Contracts with duration of 90 days or less, follow project completion method - Contracts involving indeterminate number of acts over specific period of time, follow straight line method. 	Follow AS	Follow ICDS
Postponement of revenue recognition	if significant uncertainty exists on measurability and collectability of revenue from sale of goods, rendering of services, interest, royalties and dividends	Revenue to be recognized only if there is reasonable certainty of its ultimate collection from sale of goods and rendering of services.	Follow AS	AS and ICDS at par and old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS V- Tangible Fixed Assets				
Applicability	Fixed assets such as land, building, plant and machinery, vehicles, furniture and fittings.	Tangible fixed assets being land, building, machinery, plant or furniture.	Follow AS	AS and ICDS at par and old position continues
Component of cost	<p>'Cost' of fixed asset comprises</p> <p>1) its purchase price, import duties & non- refundable taxes after deducting trade discount and rebates</p> <p>2) Any directly attributable cost of bringing the asset to its working condition for its intended use.</p>	It has similar definition to AS 10 but words used are 'actual cost' as compared to 'cost' in AS 10	Follow AS	AS and ICDS at par and old position continues
Assets acquired for consolidated price	Consolidated price to be apportioned to various assets on a fair basis	Consolidated price shall be apportioned to various assets on a fair basis	Follow AS	AS and ICDS at par and old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS VI- Effects of changes in foreign exchange rates				
Initial Recognition	To be recorded at rate on date of transaction	To be recorded at rate on date of transaction	Follow AS	AS and ICDS at par and old position continues
Year end recognition of monetary items if realisable in Foreign Currency.	Converted into reporting currency by applying the closing rate. Exchange difference recognised in P&L a/c.	Converted into reporting currency by applying the closing rate. Exchange difference recognised in P&L a/c subject to Rule 115	Follow AS + rule 115	AS and ICDS at par + rule 115 and old position continues
Year-end recognition of Inventory valued in foreign currency	<u>If item is carried at historical cost</u> – Reported at the exchange rate on the date of transaction <u>If item is carried at fair value</u> – Reported at the exchange rate that existed when the value was determined	<u>If item is carried at historical cost</u> – Reported at the exchange rate on the date of transaction <u>If item is carried at NRV</u> – Reported at the exchange rate that existed when the value was determined	Follow AS	AS and ICDS at par and old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS VII – Government grants				
Recognition of grant	On reasonable assurance of compliance of attached conditions and reasonable certainty of ultimate collection. Mere receipt of grant is not sufficient.	On reasonable assurance of compliance of attached conditions and reasonable certainty of ultimate collection Recognition cannot be postponed beyond date of actual receipt	Follow AS	Follow ICDS
Grant in the nature of promoters contribution	To be credited to capital reserve and to be treated as shareholders' funds	ICDS silent on this category	Follow AS	Old position continues as no mention in ICDS
	Note: Grant received in nature of promoters contribution should be checked for implication of <u>Section 56</u>			
Grants relatable to depreciable fixed assets	To be reduced from cost or recognised as deferred revenue by systematic credit to P&L A/c	To be reduced from cost of fixed asset [in line with Explanation 10 to S. 43(1)]	Follow AS	AS and ICDS at par and old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Relatable to non-depreciable fixed assets	To be credited as capital reserve, if no conditions attached to the grant. To be credited to P&L A/c over period of incurring cost of meeting conditions of grant.	To be considered as income on an upfront basis, if there are no conditions attached to grant. To be treated as income over period over which cost of meeting conditions is incurred.	Follow AS	AS and ICDS at par and old position continues
Grants other than those covered above	Revenue grant to be credited as income or reduced from related expense	Grant to be treated as income over period over which cost of meeting conditions is incurred.	Follow AS	AS and ICDS at par and old position continues
Compensation for expenses / loss incurred or for giving immediate financial support	To be recognised as income in the year in which it is receivable	To be recognised as income in the year in which it is receivable	Follow AS	AS and ICDS at par and old position continues

Particular	Accounting Standards	ICDS	(Pre-ICDS)	(Post-ICDS)
ICDS X- Provisions, Contingent Liabilities and Contingent Assets				
Executory contracts	Includes onerous executory contracts within its scope. Upfront recognition of liabilities required under onerous contracts	Executory contracts excluded from the scope of ICDS	Follow AS	Follow AS for onerous executory contracts
Recognition of provision	Provision shall be recognized when it is " probable " that an outflow of economic resources will be required to settle an obligation Provision is not discounted to NPV	Provision shall be recognised when it is " reasonably certain " that an outflow of economic resources will be required to settle an obligation Provision is not discounted to NPV	Follow AS	AS & ICDS at par*

ICDS- Impact Analysis

Particular	Accounting Standards	ICDS	(Pre-ICDS)	(Post-ICDS)
Recognition of contingent asset and reimbursement claims	Contingent asset / reimbursement claims are recognised when the realization of related income is "virtually certain"	Contingent asset/reimbursement claims are recognised when the realization of related income is "reasonably certain"	Follow AS	Follow ICDS
Meaning of obligation	Clarifies that obligations may be legally enforceable and may also arise from normal business practice, custom and a desire to maintain good business relations or act in an equitable manner.	No specific guidance on meaning of 'obligation'	Follow AS	Old position continues as no mention in ICDS

*except that ICDS acknowledges concept of "reasonably certainty" as against "probable" in AS

Clause 14:

Method of Valuation of Closing Stock employed and details of deviation from the method of valuation prescribed u/s. 145A & effect on profit / loss

- Lower of the actual cost or net realizable value and ICDS II
- Valuation inclusive of tax, duty, fee, cess
- Stock of unlisted securities or unquoted securities to be taken at cost initially recognised as per ICDS II
- Actual Cost comparison with NRV to be made category-wise

Section 145A

- Inventory – lower of actual cost or net realizable value as per ICDS
- Purchase & Sale of goods or services and of inventory – inclusive of taxes
- Unlisted or not regularly quoted securities – actual cost initially recognized as per ICDS
- Other securities – lower of actual cost or net realizable value as per ICDS

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS 2 - Valuation of Inventories				
Methods of valuation	(a) FIFO (b) WAM formula; (c) Specific identification (d) Retail method; (e) Standard cost method	(a) FIFO (b) WAM formula; (c) Specific identification (d) Retail method; (e) Standard cost method	Follow AS	AS and ICDS at par and old position continues
Opening inventory	No specific provision	- same as the value of inventory at the end of the preceding FY - commencement of business- cost on the day of commencement	Follow AS	AS and ICDS at par and old position continues
Cost of Inventory`	(a) Costs of purchase, (b) Costs of conversion (c) Other costs incurred in bringing the inventories to their present location and condition.	(a) Costs of purchase, (b) <i>Costs of services</i> ,* (c) Costs of conversion and (d) Other costs incurred in bringing the inventories to their present location and condition.	Follow AS	AS and ICDS at par so old position continues

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Inventory valuation in case of certain dissolutions	No specific provision	In case of partnership firm, AOP or BOI inventory on the date of dissolution shall be valued at *NRV, whether or not business is discontinued	*Dissolution Business is not discontinued inventory to be value at lower of cost or NRV.	Follow ICDS

*Cost of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overhead. ICDS II does not cover valuation of service inventory

*Net Realizable Value: Estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale. (AS2)

*Shakti Trading Co. vs CIT (2001) 250 ITR 871 (SC)

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
ICDS VIII- Securities				
Applicability	AS clarifies that principles applicable to 'current investments' can apply to securities held as stock-in-trade	ICDS applicable to securities held as stock-in-trade. 'Securities' defined to have meaning assigned in S.2(h) of SCRA except derivatives referred in s.2(h)(1a) of SCRA	Follow AS	For year end valuation of open contracts of derivatives follow ICDS I.
Security acquired against non-monetary consideration	Cost of security acquired should be recorded either at (a) fair market value of securities issued or (b) fair market value of asset given up, whichever is more clearly evident	actual cost of security acquired shall be recorded at fair value of security acquired	Follow AS	Follow ICDS
Year-end valuation of securities	Current investments- lower of cost or fair value on individual investment basis or category of investment but not on global basis.	Securities should be valued at lower of cost or NRV. Comparison of cost and NRV shall be done category wise.*	Follow AS	Follow ICDS

*Securities are classified under following categories (a) shares; (b) debt; (c) convertible securities;(d) other securities.

- Scheduled banks or public financial institutions to follow ICDS after taking into account RBI guidelines.

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Opening value of securities	<u>No specific provision.</u> (However as per general presumption and judicial proceedings, value of opening inventory was the value of closing Inventory in PY, and in case of retrospective amendments the closing stock is accordingly restated.)	Value of opening inventory of securities shall be the same as the value of securities at the end of the preceding FY Commencement of business, Cost on the day of commencement of business will be opening value	As per the general presumptions	AS and ICDS at par, however in case of retrospective amendment opening stock cannot be changed.

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Valuation of unlisted/thinly traded	No specific provision	Valuation of unlisted or thinly traded securities shall be valued at actual cost initially recognised	Usually valued at cost	AS and ICDS at par and old position continues
Determination of cost	Cost formulae are the same as those specified in AS 2 (e.g. FIFO; average cost, etc.)	Cost, which cannot be ascertained by reference to specific identification shall be determined on the basis of FIFO/weighted average method.	Follow AS	AS and ICDS at par and old position continues

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Clause 15:

Conversion of Capital Asset into Stock-in-Trade – Description of Capital Asset, Date of Acquisition, Cost of Acquisition and Amount at which asset is converted into Stock-in-Trade

- Fair Market Value is not required to be mentioned
- Chargeable to tax when asset actually transferred or sold
- Exemption will be available for investments made within 6 months of the sale [circular 791 dt. 2/6/2020]
- Benefit of Indexation available upto conversion or transfer?

Clause 16:

Amounts not credited to profit and loss account

- Escalation – acceptance by the other party essential
- Section 43(1) adjustments?
- Receipts in kind and non-business receipts?

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Clause 17:

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

- Safe Harbour – Stamp Duty Value > 110% of consideration – Held to be retrospective [Amrapali Cinema (2021) 127 taxmann.com 376 (Del ITAT)]
- Relief u/s.43CA for 1st allotment of residential units for consideration < ₹ 2 crores between 12/11/2020 to 30/6/2021.
- Project completion v/s percentage completion
- Transfer for Section 43CA vis-à-vis Sec 50C
- Section 50 v/s. Section 43(6) [United Marine 130 ITD 113 (Mum SB)]
- To be furnished where consideration < than stamp duty value.

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Clause 18:

Particulars of depreciation allowable in respect of each asset or block of assets

- Assets held in individual name of partners / directors [Edwise Consultants P. Ltd. [2017] 83 taxmann.com 27 (Mumbai - Trib.)]
- Beneficial Ownership [Mysore Minerals Ltd. 239 ITR 775 (SC)]
- Personal Use in case of a Company – Question of Perquisite
- Determination of block – Functionality Test
- Non user of individual asset in the block [Whittle Anderson 79 ITR 613 and G. N. Agrawal 217 ITR 250]
- Addition to tangible fixed assets – ICDS V
- Adjustment relating to foreign borrowings – section 43A

Contd...

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contd...

Clause 18:

Particulars of depreciation allowable in respect of each asset or block of assets

- Three new sub-clauses added-
 - One time adjustment of Unabsorbed depreciation in case of those opting for sections 115BAB or 115BAC – Rule 5(1)
 - Exclusion of Goodwill from w.d.v. of Intangible Assets – Rule 8AB
 - Adjusted w.d.v. after giving effect to the above 2 items.

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Clause 20:

Sum paid to employee as bonus or commission, where same was payable as profits or dividend u/s. 36(1)(ii)

- Commission for personal guarantee held to be not covered [Controls & Switchgear Contractors Ltd. (2014) 225 Taxmann 41]
- Commission paid to Directors – covered u/s.36(1)(ii) [Dalal Broacha Stock Broking (P.) Ltd. 11 taxmann.com 426 (Mumbai) (SB)]

Sums received from employees as contributions to any provident or superannuation funds or any other fund u/s. 2(24)(x); due date for payment & actual date of payment to concerned authorities u/s. 36(1)(va)

- Not to be covered by section 43B – Clarificatory amendment in Finance Act, 2021 w.e.f. 1/4/2021
- Amendment prospective [Crescent Roadways Private Limited TS-510-ITAT-2021 (HYD); Harendra Nath Biswas TS-618-ITAT-2021(Kol); Insta Exhibitions Pvt Ltd TS-775-ITAT-2021(Del)]

Clause 21:

- Expenditure in nature of capital, personal, advertisement expenditure etc. [Sub clause (a)]
- Amounts admissible under 40(a). [Sub clause (b)]
- Amounts debited to Profit & Loss Account being interest, salary, bonus, commission or remuneration inadmissible under 40(b)/40(ba) [Sub clause (c)]
- Disallowance under 40A(3). [Sub clause (d)]
- Provision for gratuity not allowed under 40A(7) . [Sub clause (e)]
- Sums paid by an assessee as an employer not allowed under 40A(9) . [Sub clause (f)]
- Particulars of contingent liability. [Sub clause (g)]
- Amounts of deductions inadmissible in terms of Section 14A [Sub clause (h)].
- Amounts inadmissible under proviso to 36(1)(iii) [Sub clause(i)]

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a) Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.

Nature	Sr. No.	Particulars	Amount in Rs.
Capital Expenditure			
Personal Expenditure			
Advertisement expenditure in any souvenir, brochure or the like published by a political party			
Expenditure incurred at clubs being cost for club services and facilities used.			
Expenditure by way of penalty or fine for violation of any law for the time being force			
Expenditure by way of any other penalty or fine not covered above			
Expenditure incurred for any purpose which is an offence or which is prohibited by law			

Relevant Issues:

- Capital expenditure is not defined in the Act and no conclusive test or rules can be laid down to determine whether an expenditure is capital / revenue. However, different tests have been applied by courts to decide whether the nature of expenditure is capital or not.
- The Tax Auditor is not an expert to decide the nature of payment (as to whether it is prohibited by law or not) and may not be aware about the intricacies of all the laws of the land. The Tax auditor should distinguish between compensation and penalty.
- Compensation are allowable business expenditure, whereas penalty is not.
[Malwa Vanaspati & Chemical Co. v CIT]

b) Amounts inadmissible under 40(a):

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

(A) Details of payment on which tax is not deducted- (date of payment, amount of payment, nature of payment, name & address of payee)

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)- (date of payment, amount of payment, nature of payment, name & address of payee, amount of tax deducted)

b) Amounts inadmissible under 40(a):

(ii) As payment to resident referred to in sub clause (ia)

(A) Details of payment on which tax is not deducted- (date of payment, amount of payment, nature of payment, name & address of payee)

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 139(1)- (date of payment, amount of payment, nature of payment, name & address of payee, amount of tax deducted, amount out of tax deducted, deposited, if any)

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b) Amounts inadmissible under 40(a):

(iii) under sub-clause (ic): sum paid on account of FBT

(iv) under sub-clause (iia): sum paid on account of Wealth tax

(v) under sub-clause (iib): amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on or which is appropriated, directly or indirectly, from a SG undertaking by the SG.

(vi) under sub-clause (iii): amount chargeable under the head “Salaries” payable outside india or to a non-resident (date of payment, amount of payment, name & address of the payee)

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b) Amounts inadmissible under 40(a):

- (vii) under sub-clause (iv): payment to a provident or any other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head “Salaries”
- (viii) under sub-clause (v): any tax actually paid by an employer referred to in clause (10CC) of Section 10.

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

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

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

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

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- **Payments to non Residents Section 40(a)(ia):** Can we rely on CA certificate for foreign remittances or should we decide for each and every foreign payment based on underlying documents/agreements ?
- **Disallowance under section 14A:** While carrying out the examination of the details furnished by the assessee the tax auditor can rely on management representation letter. SA 580 on 'Written representation' may be referred to. The Auditor should verify the list of cash payments. In respect of expenditure of more than Rs. 20,000/- and should include list of payments exempted under Rule 6DD.

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Clause 21:

Interest inadmissible under proviso to S. 36(1)(iii)

- Proviso to **S. 36(1)(iii)** disallows 'Interest' paid -
 - ✓ in respect of capital borrowed
 - ✓ for acquisition of assets
 - ✓ for extension of existing business / profession
 - ✓ for any period from date of borrowing till date of put to use of asset
- ICDS IX – Borrowing Costs

ICDS IX- Borrowing costs

Borrowing cost	Borrowing cost includes exchange difference to the extent that they are regarded as an adj. to interest costs	Borrowing cost does not include exchange differences arising from foreign currency borrowings	Follow AS	Follow ICDS
Qualifying Asset	Which necessarily takes a substantial period of time to get ready for its intended use or sale	Inventory - 12months or more. All Specified tangible and intangible assets are qualifying assets (regardless of substantial period condition)	Follow AS	Follow ICDS
Qualifying asset being inventory	Means inventory which take substantial period of time to bring them to a saleable condition	Means inventory for which which 12 months or more are taken e to bring them to a saleable condition	Follow AS	Follow ICDS

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
<u>In case of borrowing costs relating to Specific borrowing</u>				
Commencement and cessation of capitalisation	Commence when all the three conditions are satisfied: (a) incurrence of capital expenditure (b) incurrence of borrowing cost (c) construction activity is in progress and cessation from the date when asset is ready to use	Commence from date of borrowing of funds and cessation from the date when asset is put to use	AS was followed subject to 36(1)(iii)	ICDS and 36(1)(iii) are at par, hence pre and post ICDS position continues.
Method of capitalisation	Directly attributable to borrowing cost	Directly attributable to borrowing cost		

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
<u>In case of borrowing costs relating to General borrowing</u>				
Commencement and cessation of capitalisation	Commence when all the three conditions are satisfied: (a) incurrence of capital expenditure (b) incurrence of borrowing cost (c) construction activity is in progress and cessation from the date when asset is ready to use	Commence from date of utilisation of funds and cessation from the date when asset is put to use (only for assets satisfying the 12m criteria)	AS was followed subject to section 36(1)(iii)	Ambiguity as to whether 12 month criteria mentioned in ICDS is to be followed or Section 36(1)(iii) to be followed irrespective of 12 month criteria. In case view is taken that Act prevails over ICDS, then old position continues.
Method of capitalisation	Weighted average cost of borrowing applied to capital expenditure	A * B / C A= Total borrowing cost excluding specific borrowings B= Avg. cost of qualifying assets excl. specific borrowing (12m criteria) C= Avg. amt. of total assets	Follow AS along with section 36(1)(iii)	

ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Income from temporary funds deployed	Income from temporary deployment of unutilised funds from specific loans to be reduced from borrowing cost	No similar provision in ICDS	Follow AS	Old position continues as no mention in ICDS
Suspension of capitalization	Capitalisation suspended during extended periods in which active development is interrupted	No similar provision in ICDS	Follow AS, however as per section 36(1)(iii), capitalisation to be done for the specific time period as provided, and no suspension provision.	Old position continues as no mention in ICDS

Reporting & Analysis of Important Clauses of Form 3CD

Clause 22:

Amount of interest inadmissible under **S. 23 of Micro, Small & Medium Enterprises Development Act, 2006**

- Any interest payable to a MSME is inadmissible as expenditure under the Income-tax Act, 1961 in view of the provisions of **Section 23 of Micro, Small & Medium Enterprises Development Act, 2006**
- **Section 16 of the MSMED Act** provides the period for which and rate at which the interest is payable to an MSME.
- **Section 15 of the MSMED Act** fixes the interest liability mandatorily irrespective of any agreement with the supplier of goods or services. The interest liability is on compounded basis with monthly rests.
- Section 22 of MSMED Act – Additional Disclosures & check ROC filings.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 25:

Amount of profit chargeable to tax u/s. 41 & computation thereof

- Confirmation not produced in respect of sundry creditors. Amount outstanding in the books – Held not covered by section 41 [Shri Vardhman Overseas Ltd. 204 Taxman 524 (Del)]
- Where AO made addition under section 41(1) in respect of amount payable by assessee to a creditor, since there was no act of remission or cessation of said liability, mere fact that liability was more than seven years old, could not be a ground to make impugned addition [Alvares & Thomas (2015) 62 taxmann.com 286 (Bang - Trib.)]

Reporting & Analysis of Important Clauses of Form 3CD

Clause 26:

In respect of any sum referred to in Section 43B

- Pre-existed on first day of P.Y but was not allowed in assessment of preceding P.Y & was-
 - Paid during P.Y
 - Not paid during P.Y [Sub-Clause (i A)]
- Was incurred in P.Y. & was-
 - Paid on or before due date for furnishing return of P.Y **u/s.139 (1)**
 - Not paid on or before due date [**Sub-Clause (i B)**]
- Advance deposit of central excise duty in Personal Ledger Account constitutes actual payment of duty within meaning of section 43B and, therefore, assessee would be entitled to benefit of deduction of said amount [Modipon Ltd. (2017) 252 ITR 123 (SC)]

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29:

Receipt of any consideration for issue of shares which exceeds the FMV of the shares as referred to in section 56(2)(viib)

- Section 56(2)(viib) – provides that -

where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a **resident**, any consideration for issue of shares that exceeds the face value of such shares, the aggregate **consideration received for such shares as exceeds the fair market value** of the shares shall be chargeable to tax under the head Income from Other Sources.

- Rule 11UA provides the methodology for computation of FMV.
- What would be the consequences if the company has issued shares to residents and non-residents under private placement at a price which is higher than the FMV of the shares ?

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29A:

Forfeiture of any moneys received as advance or otherwise in the course of transfer of any capital asset – section 56(2)(ix)

- The tax auditor should obtain details of all advances appearing as liability in the balance sheet of the assessee and determine from the details furnished by the auditee whether any of such advance is in connection with transfer of a capital asset.
- In cases where minutes are maintained, the same will also need to be checked to see if any fact of negotiation relating to any such transaction for transfer of capital asset are terminated and the amount received as advance, if any, is forfeited.
- The tax auditor may also obtain confirmation of the third person in respect of amounts outstanding.

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29A: contd...

Forfeiture of any moneys received as advance or otherwise in the course of transfer of any capital asset – section 56(2)(ix)

- Forfeiture of advances/ deposits not covered in cases where:
 - Not in relation to capital asset
 - Not in relation to transfer (Example: Deposit taken under lease arrangements- except in case of effective transfer through lease of 99 years)
- Reporting has to be in which year?
 - Year of receipt/ forfeiture/ failure of negotiations?
- What if the terms of contract contain a right to forfeit on some conditions and such conditions have occurred, but assessee has not yet forfeited the advance?

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B:

Any amount to be included as income by virtue of section 56(2)(x)

- Any person receiving on or after the 1st day of April, 2017:-
 - **any sum of money, without consideration**, aggregate value of which exceeds ₹50,000, whole of the aggregate value of such sum
 - **any immovable property/ any property other than immovable property without consideration**, the stamp duty value/ aggregate FMV of which exceeds ₹50,000/-, the stamp duty value/ aggregate fair market value of such property [110% safe harbour – section 50C]
 - **any immovable property/ any property other than immovable property for inadequate consideration**, which is less than the stamp duty value/ aggregate FMV of property by an amount exceeding ₹50,000/-, the stamp duty value/ aggregate FMV of such property as exceeds such consideration shall be chargeable to tax under the head ‘Income from Other Sources’.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B:

Any amount to be included as income by virtue of section 56(2)(x)

- Any property other than immovable property



Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B:

Any amount to be included as income by virtue of section 56(2)(x)

- **Wider applicability of New clause (x) in Section 56(2):**
 - Applicable for receipts on or after 01st April 2017
 - Clauses (vii) and (viia) are not applicable to such receipts
 - Clause (x) is applicable for receipts from **ANY PERSON** of receipts by way of **money, immovable property and specified movable property**
- This section is not applicable to certain cases as specified in Section 56(2)(x)
- The FMV where applicable shall be determined based on Rule 11U and Rule 11UA

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B: contd...

Any amount to be included as income by virtue of section 56(2)(x)

- In the cases where individual tax payer's books of accounts for his business or profession are common with his personal books of accounts- the tax auditor should be more careful while verifying the credits to the capital account
- In cases where minutes book are required to be maintained, same may be checked to see if there are receipt of any gratuitous assets
- Applicability of Section 50CA in the hands of a transferor of unquoted equity shares of a company at a consideration less than the FMV
- The CBDT vide Notification No. 61/2017 dated 12-7-2017 amended rules prescribing the method of valuation of unquoted equity shares for the purpose of Section 56(2)(x) and Section 50CA by taking into account:
 - FMV of jewellery, artistic work, shares and securities
 - Stamp duty value in case of immovable property
 - Book value for the rest of the assets.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B: contd...

Any amount to be included as income by virtue of section 56(2)(x)

- Issues while calculating FMV of unquoted equity shares as per amended Rule 11UA:
 - Value of each step down companies needs to be calculated
 - Difficulty in cases where shares of many companies are owned by the company whose shares are to be valued
 - Difficulty in getting the data for the step down companies which are not group companies.
 - No threshold provided – Even if one share of an unlisted company is owned – calculation is necessary

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 29B: contd...

Any amount to be included as income by virtue of section 56(2)(x)

- Identify purchase of immovable properties during the year:
 - Verify Index II
 - Check whether SDV as reduced by consideration > ₹50,000
 - Tolerance: 10% of sales consideration [Amendment FA 2021]
 - Registered: Obtain and verify the registration documents with the price recorded in the books
 - Unregistered: Insist on obtaining property value certified by an expert and in such an event procedure prescribed under SA 620 may be followed. In case the auditee does not agree to obtain opinion of an auditors' expert or is of the view that such an opinion is not necessary, such fact may be disclosed along with auditee's view, if any.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 30A:

Excess money to be received as per section 92CE(2) from the AE on account of primary adjustment

Applicability: Only in cases where there has been a primary adjustment to transfer price:

- suo motu by the assessee in his return of income;
- made by the Assessing Officer has been accepted by the assessee
- under APA
- under safe harbour rules
- is arising as a result of resolution of an assessment by way MAP procedures

Exclusions: Primary Adjustment does not exceed ₹ 1 Crore

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 30A: contd...

Implications:

Where primary adjustment results in increase in total income or reduction of loss which is available with AE, then the excess money i.e. difference between ALP determined in primary adjustment and transaction price of International Transaction, not repatriated to India within prescribed time frame shall be treated as advance to AE and interest shall be computed in prescribed manner.

Rule 10CB provides the time limit for repatriation of excess money and imputation of interest.

Option:

In case excess money is not repatriated, assessee has an option to pay additional income tax at 18% on such excess money. Secondary adjustment and computation of interest shall not be required if assessee opts for this option. Applies from date of tax payment.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 30B:

Thin Capitalisation – interest expenses over ₹ 1 crore – Section 94B

Applicability: Payer being Indian Company or PE of Foreign Company.

Thus, these provisions are not applicable in case interest is paid by LLP or Firm.

Exclusions: Engaged in business of banking or insurance. NBFC may not be covered within business of banking and hence would be exposed to section 94B provisions.

Threshold – Interest or of similar nature exceeding INR 1 Crore in respect of debt issued by a non-resident AE.

EBITDA – Not defined, better view to take Accounting EBIDTA

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 30B: contd...

Thin Capitalisation – interest expenses over ₹ 1 crore – Section 94B

Interest or of similar nature: Interest is defined u/s 2(28A). However, the term includes not only interest but also expenditure of 'similar nature'. Debt has been defined widely u/s 94B(5)(ii) to include debt as considered in conventional sense and financial instruments, finance lease, financial derivatives or arrangement giving rise to interest, discounts or finance charges deductible under PGBP.

Thus, the term expenditure of similar nature needs to be looked from the perspective of expanded definition of debt.

BEPS Action Plan 4 considers guarantee fees as equivalent to interest.

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 30B: contd...

Thin Capitalisation – interest expenses over ₹ 1 crore – Section 94B

Implications: Excess Interest as defined u/s 94B(2) shall not be deductible and shall be allowed to be carried forward for 8 AY. Excess Interest is defined to be lower of following –

- Amount of **total interest** paid or payable in excess of 30% EBITDA or
- Interest paid/payable to AE

It is not specified whether total interest shall include interest payable to both NR AE and Other lenders or only NR AEs.

Manner of set off: If interest paid or payable for the previous year is less than 30% of EBITDA, the excess interest brought forward can be set off maximum to the extent of difference between interest paid or payable for the previous year and 30% of EBITDA.

Change of shareholding should not ideally impair the claim for set off of excess interest.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 31:

(a) Particulars of each loan / deposit exceeding limits specified u/s. 269SS taken or accepted during P.Y-

- Whether through cheque or bank draft or electronic clearing system?
- In case of cheque & bank draft whether marked account payee?

(b) Particulars of each specified sum exceeding the limit specified in section 269SS

- Specified sum means any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property – whether transfer takes place or not.
- The particulars need not be given in the case of a Government company, banking company or a corporation established by a Central, State or Provincial Act.
- Limit Specified is ₹ 20,000/- or more.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 31: contd...

- (ba)** Particulars of each receipt exceeding limits specified (₹ 2 lakhs) u/s. 269ST in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion, during the previous year – otherwise than by cheque or bank draft or use of electronic clearing system
 - (bb)** Particulars of each receipt of the nature covered in (ba) otherwise than by account payee cheque or account payee bank draft.
 - (bc)** Particulars of each payment of the nature covered in (ba) otherwise than by cheque or bank draft or electronic clearing system.
 - (bd)** Particulars of each payment of the nature covered in (ba) otherwise than by account payee cheque or account payee bank draft.
- The particulars need not be given in the case of receipt from or payment to a Government company, banking company or post office savings bank, a co-operative bank or in case of transaction covered u/s.269SS or in case covered under notification No. SO 2065(E) dt. 3/7/2017.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 31: contd...

- (c) Particulars of each loan or deposit or specified advance repaid exceeding limits specified u/s. 269T during P.Y.**
 - (d) Particulars of repayment of each loan or deposit or specified advance exceeding the limits specified u/s. 269T received during the P.Y. by cheque or bank draft or electronic clearing system.**
 - (e) Particulars of repayment referred to above by cheque or bank draft which are not marked account payee.**
- The particulars need not be given in the case of a Government company, banking company or a corporation established by a Central, State or Provincial Act.
 - Specified sum means any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property – whether transfer takes place or not.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 31: contd...

Section 269ST- Issues

- Transactions by Journal entries
 - Implementation Guide: such transaction are neither receipt or payment and not covered under 269ST, hence not required to be reported
 - CIT Vs. Triumph International Finance Ltd. ITA No. 5745 of 2010 (Bom.HC)
- Cash withdrawals from bank
 - As per notification no 28/2017 dt. 5.4.17- 269ST shall not apply to the above transaction.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 32:

- Details of brought forward loss or depreciation allowance, in following manner [**Sub-Clause (a)**]-

Serial No	Assessment Year	Nature of Loss / Allowance (in ₹)	Amount as returned (in ₹)	All losses / allowances not allowed u/s. 115BAA / 115BAC / 115BAD	Amt as adjusted by withdrawal of addl depreciation on opting for taxation u/s.115BAC / 115BAD	Amount as assessed (give reference to relevant order)	Remarks
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Reporting & Analysis of Important Clauses of Form 3CD

Clause 32:

- Where change in shareholding of company has taken place in P.Y due to which losses incurred in preceding P.Ys cannot be carried forward as per **S. 79 [Sub-Clause (b)]**
- Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year [**Sub-Clause (c)**]
- Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year. [**Sub-Clause (d)**]
- In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73. [**Sub-Clause (e)**]

Reporting & Analysis of Important Clauses of Form 3CD

For reporting under Clause 32, the following provisions need to be considered:

- Brought forward losses may pertain to different heads of income such as property income, profits and gains in business or profession, speculation business or capital gains, the provisions of which are contained in sections 32 and 70 to 79.
- Section 79 – provides that -
where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss shall be carried forward and set off against the income of the previous year unless—
 - (a) on the last day of the previous year the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less 51% of the voting power on the last day of the year or years in which the loss was incurred

Reporting & Analysis of Important Clauses of Form 3CD

For reporting under Clause 32, the following provisions need to be considered:

- Section 73 – provides that any loss in respect of speculation business shall not be set off except against profits or gains of another speculation business
- Section 73A – provides that Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

Matters to be considered:

- Where assessments are in various stages of litigation, is it correct to merely state ‘information is not readily available and hence not furnished’?
- Any assessment, rectification, revision or appeal proceedings pending at the time of tax audit have to be disclosed under remarks column under sub-clause (a). If orders are yet to be passed, the same can be disclosed along with impact thereof, if material.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 33:

- Section-wise details of deductions admissible under Chapter VI-A or Chapter III (Section 10A, Section 10AA)

Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfills the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc. issued in this behalf.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 34:

- Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB.

Tax deduction and collection account No. (TAN)	Section	Nature of Payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of Tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of CG out of (6) & (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Reporting & Analysis of Important Clauses of Form 3CD

Clause 34:

- Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time.

Tax deduction and collection Account No. (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported
(1)	(2)	(3)	(4)	(5)

Reporting & Analysis of Important Clauses of Form 3CD

Clause 34:

- Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).

Tax deduction and collection account No. (TAN)	Amount of interest under section 201(1A) or 206C(7) is payable	Amount paid out column(2) along with date of payment
(1)	(2)	(3)

Clause 34(a) : Compliance with TCS Provisions

Reporting on compliance with TCS provisions along with TDS provisions

Clause 34(b) :filling of TDS and TCS returns

the tax auditor shall report on the compliance by the assessee with provisions of furnishing of TDS or TCS statements within prescribed time.

Clause 34(c) : Assessee in default

if assessee is deemed as an assessee in default and he is liable to pay interest u/s 201(1A) or 206C(7), the tax auditor shall furnish the TAN of the assessee, interest payable and interest actually paid.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 35:

- In case of trading concern, quantitative details of principal goods traded-
 - Opening Stock
 - Purchases during P.Y
 - Sales during P.Y
 - Closing Stock
 - Short / Excess [**Sub-Clause (a)**]
- In case of manufacturing concern, quantitative details of raw materials-
 - Opening Stock
 - Purchases during P.Y
 - Consumption / Production during P.Y
 - Sales during the previous year
 - Closing Stock
 - Yield of finished products *
 - Percentage of yield
 - Short / Excess , if any [**Sub-Clause (b)A.**]

Reporting & Analysis of Important Clauses of Form 3CD

Clause 35:

- In case of manufacturing concern, quantitative details of finished goods & / or by-products-
 - Opening Stock
 - Purchases during P.Y
 - Quantity manufactured during the previous year
 - Sales during P.Y
 - Closing Stock
 - Short / Excess, if any [**Sub-Clause (b)B.**]

Reporting & Analysis of Important Clauses of Form 3CD

Clause 36A:

Receipt of Deemed Dividend

- Deemed dividend means any payment by a company, not being a company in which the public are substantially interested, of any sum, by way of advance or loan
 - i. to a shareholder, being a person who is the beneficial owner of shares holding not less than ten per cent of the voting power, or
 - ii. to any concern in which such shareholder is a member or a partner and in which he has a substantial interest, or
 - iii. to any person on behalf, or for the individual benefit, of any such shareholder
 - iv. to the extent to which the company in either case possesses accumulated profits

Reporting & Analysis of Important Clauses of Form 3CD

Clause 36A: contd...

- **Accumulated Profits:** It includes all profits upto the date of payment of dividend. With the available jurisprudence, accumulated profits would include commercial profits in normal sense
 - i.e. profit and loss account, general reserve, development rebate reserve, investment allowance reserve, capital redemption reserve and debenture redemption reserve. Share premium is to be excluded.
 - “Whether capitalized or not” does not exist in dividend u/s 2(22)(e) and therefore, if bonus shares have been issued out of reserves, then the same will not be considered while calculating accumulated profits
- **Substantial Interest:** Assessee is said to have substantial interest, if at any time during the year, the assessee is entitled to 20% or more of the income of the concern.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 36A: contd...

Following are four situations that may possibly occur:

Situation	% of holding by Assessee in company	% of holding by Assessee in Firm/ Concern	Whether Deemed Dividend applicable or not when the loan is given to the assessee?	Whether Deemed Dividend applicable or not when the loan is given to the concern in which assessee has interest?
1	<10%	>=20%	No	No
2	>=10%	<20%	Yes	No
3	<10%	<20%	No	No
4	>=10%	>=20%	Yes	Yes

Reporting & Analysis of Important Clauses of Form 3CD

Clause 36A: contd...

- The tax auditor will be required to exercise due care in respect of such transactions and devise elaborate checklist to carry out the audit process.
- The tax auditor should obtain the list of all the entities in which the auditee is a beneficial owner and all the transactions carried out with such entities.
- Registered vs. beneficial owner.
- It may be noted that bonafide business transactions may not always be covered by the fiction of section 2(22)(e) and the tax auditor will have to exercise professional judgement in deciding whether the transactions are bona fide. In case of difference of opinion both the views should be furnished in the report.
- Trade advances in the ordinary course of business for business exigencies are not considered vide Circular No. 18/2017 dated 12.06.2017

Reporting & Analysis of Important Clauses of Form 3CD

Clause 36A: contd...

- Accumulated profits shall be commercial profits - CIT Vs. P. K. Badiani 105 ITR 642 (SC)
- Capital profits shall not be included – Tea Estate India Pvt. Ltd. Vs. CIT 103 ITR 785 (SC)
- Profits earned u/s 41(2) shall not be part of accumulated profit – CIT Vs. Urmila Ramesh 230 ITR 422 (SC)
- TDS provisions applicable.
- Practical Issues:
 - Finding accumulated profit of payer company
 - Finding accumulated profit on the date of transaction

Reporting & Analysis of Important Clauses of Form 3CD

Clause 37:

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

Clause 38:

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

Clause 39:

- Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services. Finance Act 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter as may be identified by the auditor.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 40:

- Calculate following ratios:

Total turnover of the assessee

Gross Profit / Turnover

Net Profit / Turnover

Stock-in-trade / Turnover

Material Consumed / Finished Goods Produced

(The details required to be furnished for principal items of goods traded or manufactured or services rendered.)

Clause 41:

- Details of demand raised or refund issued during the previous year under any tax law other than Income-tax Act, 1961 and Wealth-tax Act, 1957 alongwith details of relevant proceedings.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: 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 in Form No.61 online to DIT(Intelligence and Criminal Investigation) or JDIT(Intelligence and Criminal Investigation).
- **Form No.60** - Form for declaration to be filed by an individual or a person (not being a company or firm) who does not have PAN and who enters into any transaction specified in Rule 114B.
- **Rule 114B**- There are 18 transactions prescribed wherein if the value exceeds the prescribed limit against a particular type of transaction, PAN is to be quoted in all documents pertaining to such transactions. One of such transaction is sale or purchase, by any person of goods or services of any nature for an amount exceeding ₹2 lacs per transaction

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61:- Statement containing particulars of declaration received in Form No.60

Due Date to file Form 61:

- Persons who do not have a PAN and have taken Form 60, need to file Form 61 half-yearly as per time lines below:
- If declarations are received upto 30th September: by 31st October
- If declarations are received upto 31st March: by 30th April

Section 285BA- Any specified person who is responsible for registering or maintaining books of accounts or other document containing record of any specified financial transaction (SFT) or any reportable account as may be prescribed shall furnish a statement in respect of such SFT or such reportable account to income tax authority or other authority as may be prescribed.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61A:- Statement of Specified Financial Transaction u/s 285BA(1)

- **Rule 114E-** Every person in respect of the transaction of specified nature and value entered on or after 1/4/2016 in respect of FY has to furnish a statement in Form No.61A online. One of such transaction is receipt of cash payment exceeding ₹2 lacs for sale of goods or services of any nature by any person who is liable for audit u/s 44AB. Such person shall take into account all accounts of same nature and aggregate all transactions of same nature in respect of that person during the FY.
- Form 61A has to be furnished by 31st May of immediately following financial year in which transaction is registered or recorded. [Extended to 30/6/2021 vide Circular 9/2021]

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61A:- Statement of Specified Financial Transaction u/s 285BA(1)

Sr. No.	Nature & Value of Transaction	Monetary Limits	Reporting Person
1	Receipt of cash payment for sale of goods or services of any nature from a person towards a single transaction.	2 Lacs (Per transaction)	Any person who is subject to Tax audit.
2	Receipt from a person for issue of shares (including share application money)	10 Lacs (In aggregate during the year)	Any Company
3	Buy back of shares from a person (other than shares bought in the open market)	10 Lacs (In aggregate during the year)	Listed Company

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61A:- Statement of Specified Financial Transaction u/s 285BA(1)

Sr. No.	Nature & Value of Transaction	Monetary Limits	Reporting Person
4	Receipt from a person for acquisition of bonds or debentures issued by the company	10 Lacs (In aggregate during the year)	Company issuing bonds or debentures
5	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person	10 Lacs (In aggregate during the year)	NBFCs

Apart from the above mentioned transactions, there are many other transactions that need to be reported in Form 61A by specified persons such as Banks, Post Master General, Nidhi Companies, Trustee of Mutual Funds, Authorised person under FEMA, etc., based on specified monetary limits which are not covered in detail for the sake of brevity.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61A:- Statement of Reportable Account u/s 285BA(1)

Penalties on Non-Compliance for Form 61A

- If a person fails to furnish the specified statement, penalty of ₹500 per day of default will be levied.
- However, if the assessee receives any notice from the department for filing the statement then it must be filed within the limit of 30 days from the date of service of notice. In case of any default in filing the statement in response to such notice, the penalty shall be ₹1,000 per day of default.
- If a person furnishes inaccurate particulars in SFT, a penalty of ₹50,000 shall be leviable

Reporting & Analysis of Important Clauses of Form 3CD

Clause 42: Form No.61B:- Statement of Reportable Account u/s 285BA(1)

- **Rule 114G-** Every reporting financial institution shall furnish the statement of reportable account in Form No.61B in respect of each account which has been identified as a reportable account in pursuant to due diligence procedure specified in Rule 114H. Where no account has been identified as a reportable account, a nil statement shall be furnished by reporting financial institution.
- Reporting financial institution means:-
 - (a) a financial institution which is resident in India but excludes any branch of such institution that is located outside India, and
 - (b) any branch, of a financial institution which is not resident in India, if that branch is located in India.

Reporting & Analysis of Important Clauses of Form 3CD

Clause 43: Furnishing report in respect of international group

- Any company liable to file CbCR related forms as required under section 286(2) needs to disclose the following information:
 - i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
 - ii. Name of the parent entity
 - iii. Name of alternate reporting entity (if applicable)
 - iv. Date of furnishing report
- Time limit available u/s. 286 is 12 months from end of accounting year – Hence, report may not have been filed though applicable

contd...

Reporting & Analysis of Important Clauses of Form 3CD

Clause 43: Furnishing report in respect of international group

contd...

- The tax auditor should ascertain from the auditee whether such report was furnished by the entity or its parent or its alternate reporting entity.
- The tax auditor is not required to study the information in detail however he should take note of the same to the extent relevant.
- The details will be required to be furnished in respect of the reports that are due and furnished during the previous year.

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