

TAX AUDIT U/S 44AB OF IT ACT 1961

Tax Audit: When applicable?

- 44AB(a) – Business turnover/sales/gross receipts > 1 Crore
- 44AB(b) – Gross receipts in profession > 25 lacs
- 44AB(c) – Assessee to whom sections 44AE / 44BB / 44BBB are applicable and such assessee claims profits lower than profits deemed under such sections

Section	Whom Applicable	Deemed Profits
44AE	Assessee who owns less than 10 goods carriage	Rs. 7,500/- per month per carriage
44BB	Assessee engaged in business of exploration, etc., of mineral oils	10% of amounts received or receivable
44BBB	Foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects	ten per cent of the amount paid or payable to the assessee

Tax Audit: When applicable?

Contd...

- 44AB(d) –Assessee to whom section 44AD is applicable and the assessee :
 - claims profits lower than profits deemed under 44AD **AND**
 - income exceeds the maximum amount which is not chargeable to income-tax

Turnover	Taxable Profit	Profit %	44AB Audit?
50,00,000	4,50,000	9%	No
50,00,000	4,00,000	8%	No
50,00,000	3,50,000	7%	Yes
50,00,000	2,50,000	5%	???
50,00,000	(2,50,000)	(5%)	???

44AD

Applies to:

- Resident Individual/HUF/Firm (excluding LLP)
- who has not claimed deduction u/s 10A, 10AA, 10B, 10BA or under Chapter VIA under the heading "C. - Deductions in respect of certain incomes" and
- whose turnover does not exceed 1 Crore.

Does not Apply to:

- person carrying on profession as referred to in sub-section (1) of section 44AA.
- person carrying on any agency business
- person earning income in the nature of commission or brokerage

Deemed income = 8% of total turnover or gross receipts
Less: Salary and interest to partners [subject to limits in sec 40(b)]

- A non-resident is also required to get his accounts audited and to furnish report under sec 44AB, but only pertaining to Indian operations.
- An agriculturist is not required to get his accounts audited u/s 44AB even though the total sales of agricultural products may exceed Rs 100 lakhs.

Do disallowances like 43B attract in case of an assessee whose income is computed under 44AD? - *Good Luck Kinetic v. ITO (2015) 58 taxmann.com 267 (Panaji - Trib.)*

- 44AD starts with “*notwithstanding anything to the contrary contained in Sec. 28 to 43C*”
- whereas section 43B starts with the words “*notwithstanding anything contained in any other provisions of this Act*”
- The non-obstante clause in Sec. 43B has a far wider amplitude
- Hence, disallowance could be made by invoking the provisions of Sec. 43B

Can brought forward depreciation loss be claimed as a deduction against deemed profits u/s 44AD?

- 44AD starts with “*notwithstanding anything to the contrary contained in Sec. 28 to 43C*”
- The provision of current year depreciation and brought forward deprecation is provided under Section 32 and Section 44AD overrides Section 28 to sec 43C, so current year depreciation and brought forward deprecation can not be set off against the income declared under Sec 44AD

Turnover/Sales/Gross Receipts

- Not defined in the I.T. Act.
- Analysis by ICAI in Guidance note on Tax audits:
 - Discounts allowed in sales invoice – to be deducted from turnover
 - Cash discount (not allowed in invoice) – not to be deducted
 - Turnover discount - to be deducted from turnover
 - Sales Returns - to be reduced from turnover amount
 - Sales proceeds from sale of Fixed Assets/investments – should not be included in turnover
 - Sales by commission agent – to be included in the turnover of principal if risks and rewards of ownership of goods continue to belong to the principal until transfer to third party. If risks and rewards of ownership belong to agent, the sales to third party will be considered as turnover of commission agent only.

Eg: Share brokers, buy and sell on behalf of clients but do not undertake risk and reward of ownership. Property in goods not transferred.

Turnover/Sales/Gross Receipts

Contd...

TUNOVER IN SPECIAL CASES

- **Speculative transaction:** The contract is settled otherwise than by actual delivery and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference amount is 'turnover'.

Eg: X enters into a contract to sell 100 quintals of Cotton at an agreed price of 15 lacs. On the date of delivery X is unable to deliver the agreed quantity of Cotton and settles the contract at the prevailing market price of 15.5 Lacs. i.e. X pays the buyer 50,000/- towards settlement of contract.

Turnover for 44AB here is 50,000/- and not 15 lacs

Turnover/Sales/Gross Receipts

Contd...

- **Derivatives, futures and options:** These are also squared up by payment of differences. The turnover in such types of transactions is to be determined as follows:
 - The total of favourable and unfavourable differences shall be taken as turnover
 - Premium received on sale of options is also to be included in turnover.
 - In respect of any reverse trades entered, the difference thereon, should also form part of the turnover

Turnover/Sales/Gross Receipts

Business Turnover	Professional receipts	Audit u/s 44AB Applicable?
Rs. 10,00,000/-	Rs. 27,00,000/-	Both the books of accounts will have to be audited
Rs. 90,00,000/-	Rs. 22,00,000/-	No Audit, subject to minimum profit of 8% of turnover in case of business

Turnover/Sales/Gross Receipts

Business I Turnover	Business I Profits	Business II Turnover	Business II Profits	Audit u/s 44AB?
50,00,000	8% u/s 44AD	75,00,000	8% u/s 44AD	No Audit u/s 44AB
50,00,000	7% of turnover	75,00,000	8% u/s 44AD	Audit of only Business I u/s 44AB
50,00,000	7% of turnover	75,00,000	6% of turnover	Audit of both businesses

FORM NO. 3CA

[See rule 6G(1)(a)]

Audit report under section 44AB of the Income - tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law

1. *I / we report that the statutory audit of M/s. _____ (Name and address of the assessee with Permanent Account Number) was conducted by *me / us / M/s.

_____in pursuance of the provisions of the _____Act, and*I/we annex hereto a copy of *my / our / their audit report dated _____along with a copy of each of :-

- (a) the audited *profit and loss account / income and expenditure account for the period beginning **from -----to ending on -----**.
- (b) the audited balance sheet as at, _____; and
- (c) documents declared by the said Act to be part of, or annexed to, the *profit and loss account / income and expenditure account and balance sheet.

2. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No. 3CD.

3. In *my / our opinion and to the best of *my / our information **and according to examination of books of account including other relevant documents** and explanations given to *me / us, the particulars given in the said Form No.3 CD are true and correct **subject to the following observations/qualifications, if any:**

a.

b.

c.

****(Signature and stamp/Seal of the signatory)**

Place : _____

Name **of the signatory**

Date : _____

Full address.....

Notes :

1* Delete whichever is not applicable

2. **This report has to be signed by -

- ~~i. a chartered accountant within the meaning of the chartered accountant Act 1949,~~
- ~~ii. any person who, in relation to any State, is, by virtue of the provision of sub-section(2) of the companies Act 1956 , entitled to be appointed to act as an auditor companies registered in the State~~
- ~~iii. any person who is, by virtue of any law, entitled to audit the accounts of the assessee for the relevant previous year~~

2 **This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.

3 Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefore.

4. The person who signs this audit report shall indicate reference of his membership number / certificate of practice / authority under which he is entitled to sign this report.

FORM NO. 3CB

[See rule 6G(1)(b)]

**Audit report under section 44AB of the Income - tax Act 1961,
in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G**

1.*I / we have examined the balance sheet as on, _____, and the *profit and loss account / income and expenditure account for the **period beginning from -----
-----to** ending on -----., attached herewith, of
_____(Name), _____(Address),
_____(Permanent Account Number).

2. *I / we certify that the balance sheet and the *profit and loss / income and expenditure account are in agreement with the books of account maintained at the head office at _____ and ** _____ branches.

3.(a) *I / we report the following observations / comments / discrepancies / inconsistencies; if any:

(b) Subject to above, -

- (A)*I / we have obtained all the information and explanations which, to the best of *my / our knowledge and belief, were necessary for the purpose of the audit.
- (B) In *my / our opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from*my / our examination of the books.
- (C) In *my / our opinion and to the best of *my / our information and according to the explanations given to *me / us, the said accounts, read with notes thereon, if any, give a true and fair view :-
- (i) in the case of the balance sheet, of the state of the affairs of the assessee as at 31st March, ;and
 - (ii) in the case of the *profit and loss account / income and expenditure account of the *profit / loss or *surplus / deficit of the assessee for the year ended on that date.

4. The statement of particulars required to be furnished under section 44AB is annexed herewith in Form No.3CD.
5. In *my/our opinion and to the best of *my / our information and according to explanations given to *me / us, the particulars given in the said Form No.3 CD are true and correct **subject to following observations/qualifications, if any:**

**** (Signature and stamp/Seal of the signatory)**

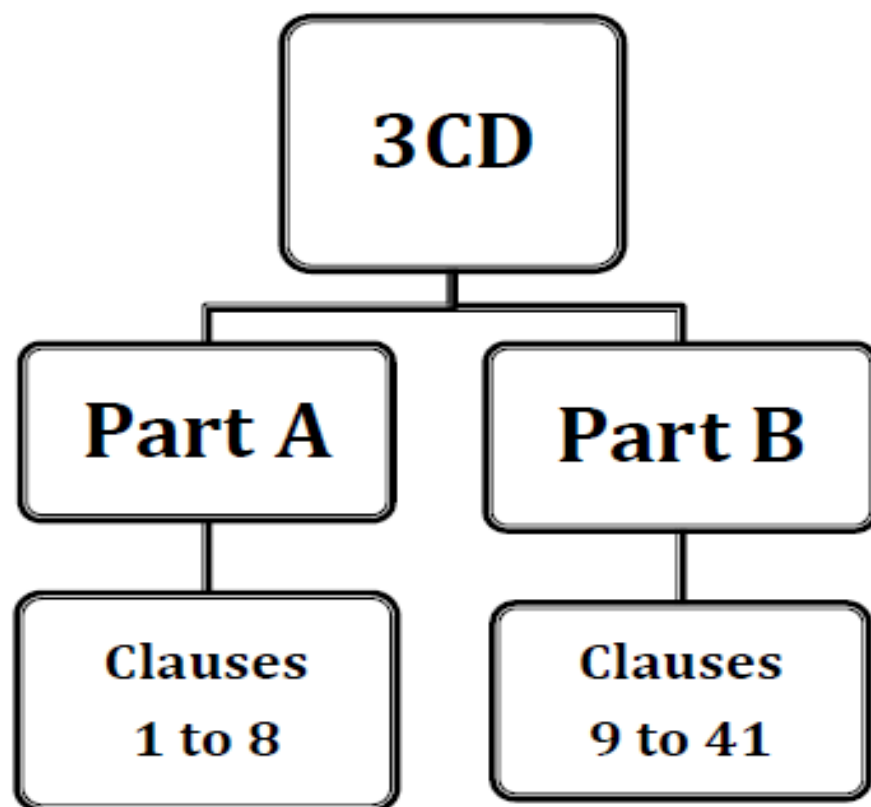
Place : _____

Name **of the signatory**

Date : _____

Full address.....

Form 3CD ...



PART – A

1. **Name of the assessee** : _____
2. **Address** : _____
3. **Permanent Account Number** : _____
4. **Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. If yes, please furnish the registration number or any other identification number allotted for the same**
: _____
5. **Status** : _____
6. **Previous year** : fromto
7. **Assessment year** : _____
8. **Indicate the relevant clause of section 44AB under which the audit has been Conducted**
: _____

[Clauses 1 to 8]

Clause 9:

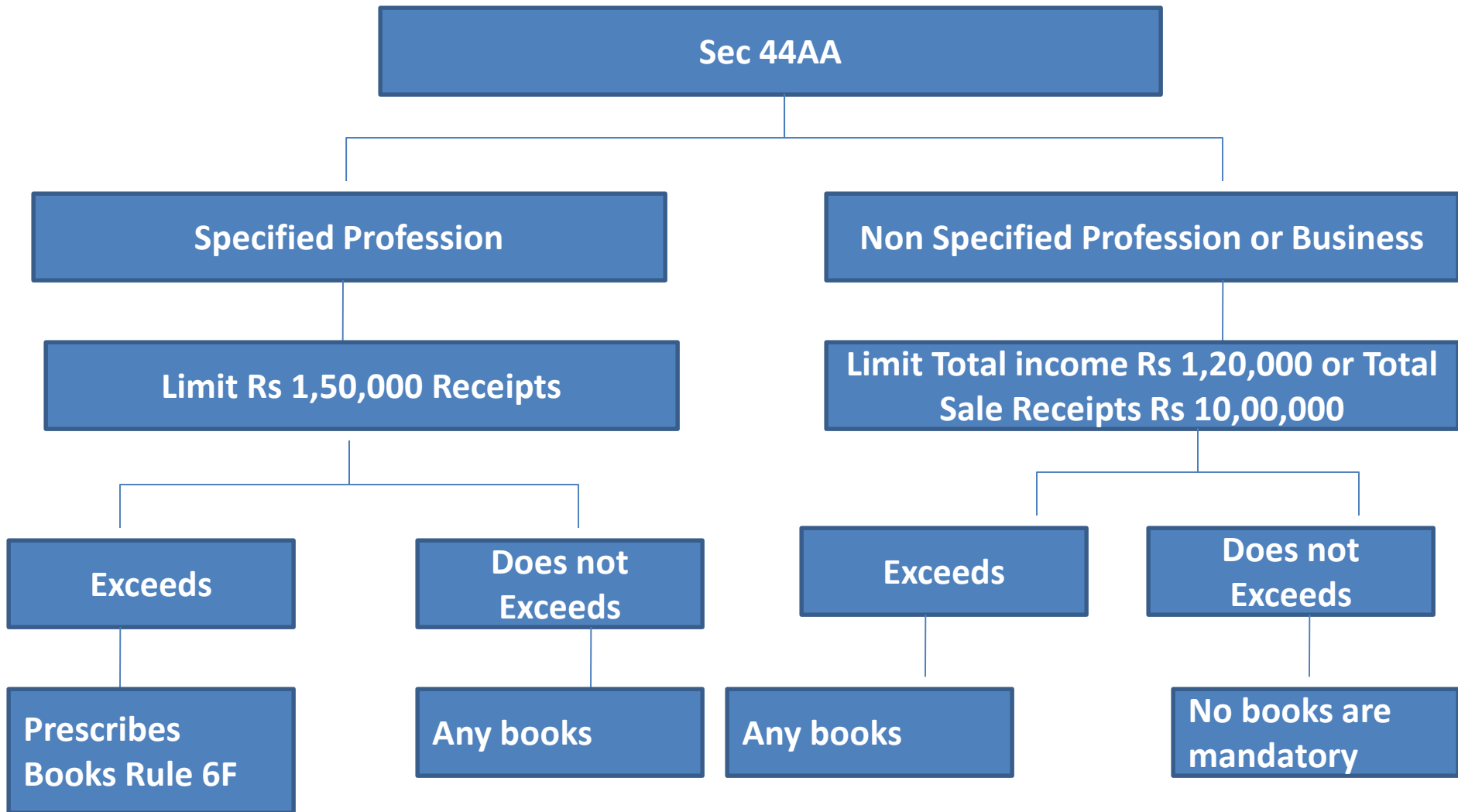
- (a) If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.
- (b) If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change

Clause 10:

- (a) Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession)
- (b) If there is any change in the nature of business or profession, the particulars of such change.

Clause 11:

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



Note: Any books means the books so as to enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

- What documents you should provide to the AO to prove the turnover?
 - copies of invoices issued during the PY
 - copies of cash memo
 - copies of Purchase bill
 - Bank statement
 - Inventory details, if any maintained
 - Returns filed under sales tax/vat/excise/service Tax laws.

Prescribed Books:

- Cash book
- Journal (if the accounts are kept on mercantile bases)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bill/payment vouchers.

If person carrying on medical profession in addition to above books a daily case register in form no. 3C. and stock register [RULE 6F (2) &(3)]

Prescribed books of account are to be kept at the place of profession or principal place of profession if carried at more than one place[s.rule(4)] and for a period of 6 years from the end of the relevant assessment year. [rule 6F(5)]

Specified Profession

- ✓ Legal,
- ✓ medical,
- ✓ engineering,
- ✓ accountancy,
- ✓ architectural profession,
- ✓ technical consultancy,
- ✓ interior decoration or
- ✓ other notified profession.

vide notification : No. SO 17(E), dated 12-1-1977., notified professions are the profession of authorised representative and the profession of a film artist.

Location(s) (address(s)) of keeping books of accounts to be given –Clause 11(b)

- Location(s) (address(s)) of keeping books of accounts to be given.
- Revised Audit Report prescribes the requirement to report address of place where books of accounts audited by the Tax Auditor are kept by the Assessee.
- If the books of accounts are not kept at one location, Auditor has to furnish the addresses of all such locations along with details of books of accounts maintained at each location.

Form 3CD – Clause 11(b) – address – books

Books defined u/s 2(12A) – *includes ledgers, day-books, cash books, account-books and other books whether kept in written form or other electronic forms.*

- Books are maintained in Cloud based software
- Location of data entry and location of storage are different. – e.g. cloud based software
- Name and address of cloud service provider

Clause – 11(b) Sample Reporting

List of locations where books of accounts and other records are maintained.

S. No	Location identifier	Full address of Location
1	HO	No. 18/1,1st main road, k.g Nagar, Bangalore – 560 019
2	BO	18, Church street, M.G ROAD, Bangalore – 560 001
3	Factory Division	No. 122, 3 rd cross, austin town, bda layout, Bangalore – 560 047.
4	SEZ Division	47, 9 th Cross, Indiranagar, Bangalore - 560 048

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 sections (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, **Chapter XII-G, First Schedule** or any other relevant section).

AS PER REVISED GUIDANCE NOTE 2014

21.8 In respect of provisions relating to Chapter XII-G, the auditor should obtain and verify the following information from the assessee being a qualifying shipping company:

Sr No.	Name of the Ship	Net tonnage capacity as per DGS certificate	Net tonnage capacity rounded off to nearest 100	Tonnage income per day	No of days operated during the previous year as per DGS Certificate	Tonnage income per year
1	2	3	4	5	6	7

Clause 13:

- 13(a) **Method of accounting** employed in the previous year
- 13(b) Whether there had been any **change in the method of accounting** employed vis-a-vis the method employed in the immediately preceding previous year
- 13(c) If answer to (b) above is in the affirmative, **give details of such change**, and the effect thereof on the profit or loss
- 13(d) **Details of deviation**, if any, in the method of accounting employed in the previous year from **accounting standards prescribed under section 145** and the effect thereof on the profit or loss - N.A. for this year.

Clause 14:

14 (a) Method of valuation of closing stock employed in the previous year.

14(b) In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

Issues on Clause 14(a) :
Valuation of Closing Stock:

Where an assessee is following cash system of accounting, should he account for the closing stock or alternatively, can the entire purchases be claimed as an expense?

Ans: Even if the assessee is following cash system of accounting, he should account for the closing stock as per the principles laid down in Accounting standard – 2 (Revised) valuation of inventories. The trading account has to be prepared and the opening stock, purchases and closing stock have to be kept in mind while making valuation of closing stock.

In this connection, a reference may be made to the decision of the **Supreme Court in CIT v. A. Krishnaswami Mudaliar (53 ITR 122, 132)**, wherein it was held “But whatever may be the system, whether it is cash or mercantile,..., in a trading venture it would be impossible accurately to assess the true profits without taking into account the value of the stock in trade at the beginning and at the end of the year’.

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

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

Issues on Clause – 15

- This clause is inserted to keep a track record of transactions related to conversion of capital asset into stock-in-trade.
- Such conversion is treated as transfer u/s 2(47)
- U/s 45(2) notional capital gain arise from such transfer and chargeable to tax in the year in which such stock-in-trade is sold.
- No requirement of details of taxability of capital gain or business income from such deemed transfer.

Clause 16: Amounts not credited to the profit and loss account, being

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

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, please furnish:

Details of property	Consideration received or accrued	Value adopted or assessed or assessable

CLAUSE NO. 17

Reporting will be required under this clause if the following conditions are cumulatively satisfied –

- ✓ the assessee has transferred land or building or both;
- ✓ the transfer is during the previous year;
- ✓ consideration for transfer is less than the value adopted or assessed or assesable by any authority of a State Government

Clause 18: Depreciation

- (a) Description of asset/block of assets;
- (b) Rate of depreciation
- (c) Actual cost or written down value, as the case may be
- (d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of –
 - (i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,
 - (ii) change in rate of exchange of currency, and
 - (iii) subsidy or grant or reimbursement, by whatever name called.

Clause 18: contd..

- (e) Depreciation allowable.
- (f) Written down value at the end of the year

Clause 19:

- 19. Amounts admissible under sections – 32AC 33AB 33ABA
33AC Omitted 35(1)(i) 35(1)(ii) 35(1)(iia) 35(1)(iii) 35(1)(iv)
35(2AA) 35(2AB) 35ABB 35AC 35AD 35CCA 35CCB 35CCC 35CCD
35D 35DD 35DDA 35E

19. Amounts admissible under sections:

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
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32AC	Investment in New Plant or Machinery	15% of cost of Asset
33AB	Tea / Coffee / Rubber Development Account	Amount deposited in approved bank or 40% of the profits of such business whichever is lower
33ABA	Site Restoration Fund	Amount deposited in approved bank or 20% of the profits of such business whichever is lower
35(1)(i)	Any expenditure (not being in the nature of capital expenditure said out or expended on scientific research related to the business.	Whole amount
35(1)(ii)	An amount equal to [(one & three-fourth)times of] any sum paid to a research association which has its object of undertaking of scientific research or to a University collage / other institution to be used for scientific research.	175% of the amount paid

35(1)(iia)	An amount equal to 1 & ¼ th times of any sum paid to a co to be used by it for scientific research.	125% of the amount paid
35(1)(iii)	An amount equal to (1 & 1/4th times of)any sum paid to a (research association which has as its object the undertaking of research in social science or statistical research or to a)university/ collage/other institution to be used for research in social science or statistical research.	125% of the amount paid
35(1)(iv)	Any expenditure of a capital nature on a scientific research related to a bus/carried on by the assessee, such deduction as may be admissible under the sec(2)	Whole of the capital exp (excluding land)
35(2AA)	Any sum to National laboratory/University/IIT/for scientific research.	200% of the amount paid
35(2AB)	Company engaged in bio-technology/Manufacture or Production of any article incurs expenditure on Scientific research.	200% of the expenditure

35ABB	Expenditure for obtaining license to operate telecommunication services.	Deduction in equal installments spread over the life of the licence
35AC	Expenditure on eligible projects/schemes.	Whole of the expenditure
35AD	Deductions in respect of specified business.	100-150% of the capital expenditure as the case may be
35CCA	Expenditure by way of payments to associations and institutions for carrying out rural development programmes.	Whole of the amount so contributed
35CCB	Expenditure by way of payment to association & institutions for carrying out programmes of conservation of natural resources.	100% of the expenditure
35CCC	Expenditure of agricultural & extension project	150% of the expenditure

35CCD	Expenditure of skill development project.	150% of the expenditure
35D	Amortization of certain preliminary expenses	1/5 of the expense
35DD	Amortization of expenditure in case of amalgamation/de-merger.	1/5th of the amount incurred
35DDA	Amortisation of expenditure incurred under V R S.	1/5th of the amount so paid
35E	Deduction for expenditure on prospecting etc. for certain minerals	1/10th of the amount of expenditure so incurred

Where the assessee has incurred any expenditure referred to here in-above, the auditor is required to state the amount debited in P&L A/c as well as admissible deduction under relevant provision.

Some times the expenditure referred above are incurred but such expenditure are capitalized, and included in the cost of fixed assets, in that case auditor should state the details of such expenditure and also state the amount of admissible deduction under the relevant provisions.

AS PER REVISED GUIDANCE NOTE 2014

28.8 Where under any section an assessee is eligible for deduction under one or more of the sub-sections of the said section, the Tax Auditor should certify the amount of deduction available under each sub-section separately in the applicable part, i.e. the amount deductible in respect of the amount debited to Profit & Loss Account and the amount not debited to the Profit & Loss Account.

Clause 20:

- 20(a) Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)].
- 20(b) Detail of contributions received from employees for various funds as referred to in section 36(1)(va).

Clause 20(b)

Details of contributions received from employees for various funds as referred to in section 36(1)(va):

Serial number	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

Provident fund

Certain deductions to be allowed only on actual payment (Provident Fund contributions) - Employer did not deposit contribution within stipulated time as contemplated by paragraph 30 of PF Scheme or before due date under provisions of PF scheme/Act - However, he deposited contribution to PF/ESI Fund before due date contemplated under section 139(1)

- Whether assessee would be entitled to deduction?

Held, yes -In favour of assessee in the following judicial pronouncements:-

- CIT v. ANZ Information Technologies (P) Ltd 318 ITR 123 (KAR)
- CIT v. Sabari Enterprises 298 ITR 141 (KAR)
- DCIT v. M/s. Essae Teroaka Pvt Ltd 43 Taxmann.com 33 (KAR)
- CIT – II v. Gujarat State Road Transport Corporation (2014) 41 Taxmann.com 100 (GUJ).
- CIT v. Alom Extrusions Ltd.[2009] 319 ITR 306 (SC)
- CIT v. Aimil Ltd. [2010] 321 ITR 508 (DELHI)

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

Nature	S no.	Particulars	Amount in Rs.
Capital expenditure			
Personal Expenditure			
Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party			

Nature (New Clause)	Serial No.	Particulars	Amount in Rs.
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			

Nature	SL No.	Particulars	Amount in Rs.
Capital Expenditure	1	Building Construction	2,50,000.00
	2		
Personal Expenditure	1	Donation	45,000.00
	2	Car Expenses (20%)	15,000.00

Clause 21(b) Amounts inadmissible under section 40(a):

- (i) as payment **to non-resident** referred to in sub-clause (i)
 - (A) Details of payment on which tax is **not deducted**:
 - (I) date of payment
 - (II) amount of payment
 - (III) nature of payment
 - (IV) name and address of the payee
 - (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)

Clause 21(b) Amounts inadmissible under section 40(a): contd...

- **(ii) as payment 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 and address of the payee**
- **(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in subsection (1) of section 139.**
 - (I) Date of payment (II) Amount of payment (III) Nature of payment**
 - (IV) Name and address of the payee (V) Amount of tax deducted**
 - (VI) Amount out of (V) deposited, if any**

Clause 21(b) Amounts inadmissible under section 40(a): contd...

- (iii) Under sub-clause (ic) [wherever applicable] **FBT**
- (iv) Under sub-clause (iia) **Wealth tax**
- (v) Under sub-clause (iib) **Royalty, license fee etc appropriated by SG**
- (vi) Under sub-clause (iii) **Salaries paid outside India without TDS**
 - (A) Date of payment
 - (B) Amount of payment
 - (C) Name and address of the payee
- (vii) Under sub-clause (iv) **payments made out of PF on which no TDS**
- (viii) Under sub-clause (v) **tax paid by employer under 10(10CC)**

Clause 21: contd..

- (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)**
- (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,

Clause 22:

Amount inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006

Section 15 of the MSME Act, requires the buyer to make payment on or before the date agreed upon in writing, or where there is no agreement in this behalf, before the appointed day. It also provides that the period agreed upon in writing shall not exceed forty five days from the day of acceptance or the day of deemed acceptance.

Section 23 of the MSME Act lays down that an interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not for the purposes of the computation of income under the Income-tax Act, 1961 be allowed as a deduction.

Clause 23. Particulars of payments made to persons specified under section 40A(2)(b)

- Section 40A(2) provides that expenditure for which payment has been or is to be made to specified persons may be disallowed (excess portion) if in opinion of A.O, such expenditure is excessive or unreasonable having regard to,
 1. Fair Market value.
 2. Legitimate needs of business/profession
 3. Benefit derived by assessee
- Tax auditor should obtain a full list of specified persons as contemplated in this section and obtain details of expenditure/payments made to specified persons
- Tax auditor should scrutinize all items of payments to above persons

Chart of persons specified in Section 40A(2)(b)

Individual	Firm	Association of persons	HUF	Company
His relatives	Its Partners	Its Members	Its Members	Its Directors
	Their relatives	Their relatives	Their relatives	Their relatives

Where person having substantial interest in the business or profession of the assessee is

Individual	Firm	Association of persons	HUF	Company
His relatives	Its Partners	Its Members	Its Members	Its Directors
	Their relatives	Their relatives	Their relatives	Their relatives

Note : where one or more the persons falling in any of the above categories (i.e. individual and his relatives, firm, its partners and their relatives, etc.) have substantial interest in the business or profession carried on by any person – that person is also covered under section 40A(2)(b)

Director	Partner	Member of AOP	Member of HUF
Companies in which he is a Director	Firm in which he is a partner	AOP of which he is a member	
All other Directors of such companies	All other partners Of such firms	All other members of such HUF	All other members of such HUF
Their Relatives	Their relatives	Their relatives	Their relatives

Notes:

1. Relative is defined in section 2(41) as including **husband, wife, brother, sister or any lineal ascendant or descendent of the individual.**
2. "Person having a substantial interest" is explained in section 40-A as under:
 - i. In the case of company - the person concerned is, at any time, during the previous year the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than 20% of the voting power.
 - ii. In other cases - such person is at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession.

Clause 24:

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

Clause 25: Any amount of profit chargeable to tax under section 41 and computation thereof

Section 41 mainly includes

- a.) Recovery of any loss, expenditure or trading liability, earlier allowed as deduction.
- b.) In case of undertaking engaged in generation/ distribution of power, if building, machinery, plant or furniture is sold/discarded/demolished or destroyed.
- c.) When an asset used for scientific research is sold.
- d.) Subsequent recovery of bad debt, earlier allowed as deduction.
- e.) Amount withdrawn from special reserve created under section 36(1)(viii).

Clause 26:

In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which:-

(A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and

was (a) paid during the previous year;

(b) not paid during the previous year;

(B) was incurred in the previous year and was

(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

(b) not paid on or before the aforesaid date

(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account.)

43B certain deductions On Actual Payment Basis

Following expenses are covered—

- a. any **tax, duty, cess or fee**, by whatever name called, payable under any law for the time being in force, or
- b. **employer's contribution** to provident fund, gratuity fund or any other fund for the welfare of the employees, or
- c. any **bonus or Commission** payable to the employees, or
- d. **interest payable** on any loan or borrowing from any public financial institution or a state Financial Corporation or state Industrial Investment Corporation, or
- e. Interest payable on any Loan or ADVANCE from a scheduled bank, (“Scheduled bank” includes a Co-operative bank).
- f. **Leave encashment payable to employees.**

CBDT Circular: If under a scheme of the State Government, payment of sales tax is deferred for specified number of years, sales tax deferred will be deemed to have been paid for the purposes of section 43B.

Where interest payable under clause (d) or (e) is converted into a loan or advance or borrowing, then it shall not be deemed to have been actually paid.

Clause 27:

27. (a) Amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.

Reporting in following format

Balance at beginning of the year	XXX
Add: CENVAT Credit available during the year	XXX
Less: CENVAT Credit utilised during the year	<u>(XXX)</u>
Outstanding at the end of the year	<u>XXX</u>

Clause 28:

- 28. Whether during the previous year the assessee has received any property,
 - being share of a company not being a company in which the public are substantially interested,without consideration or for inadequate consideration as referred to in section **56(2)(viia)**, if yes, please furnish the details of the same.

Receipt of Shares of Closely held company by a firm or a closely held company – Sec 56(2) (viiia)

Where a firm or a closely held company receives shares, of another closely held company from any person, either without consideration or for inadequate consideration shall attract tax as detailed here under:

NATURE OF RECEIPT	SUM TAXABLE
Where the shares are received without consideration and the aggregate FMV exceeds Rs. 50,000/-	The aggregate fair market value of the shares
Where the shares are received for an inadequate consideration and such inadequacy exceeds Rs. 50,000.00	The difference between the aggregate fair market value and the consideration paid.

No format prescribed in the 3CD itself. **But, in utility, following details are called for:**

- Name of the person from which shares are received
- PAN of the person, if available
- Name of the company whose shares are received
- CIN of the company
- No. of Shares Received
- Amount of consideration paid
- Fair Market Value of the shares

Clause 29:

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

REPORTING FOR ISSUE OF SHARES AT PREMIUM:(Clause 29)

This Clause applies to Companies in which Public are not substantially interested.

This provision shall not apply where the consideration for the issue of shares is received-

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund or
- (ii) by a company from a class or classes of persons as may be notified by the Central Government.
- (iii) by a startup - **NOTIFICATION NO.45/2016** .

Clause 30 & 31:

30 Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D]

- 31(a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :—
- (b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year :—

Sec 271D - Penalty for failure to comply with the provisions of section 269SS

Sec 271D(1):

If a person takes or accepts any loan or deposit ***or specified sum*** in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit ***or specified sum*** so taken or accepted.

Sec 271E - Penalty for failure to comply with the provisions of section 269T

Sec 271E(1):

If a person repays any loan or deposit ***or specified advance*** referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit ***or specified advance*** so repaid.

Clause 32:

32.(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available :

Serial Number	Assessment Year	Nature of loss/ allowance (in rupees)	Amount as returned (in rupees)	Amounts as assessed (give reference to relevant order)	Remarks

Clause 32:

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

Clause 33:

33. Section-wise details of deductions, if any, admissible under Chapter VIA 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 fulfils the conditions, if any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.

Clause 34(a)

Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB. If Yes, please furnish:-

CLAUSE NO. 34(a)

TCS reporting incorporated along with TDS in following format

TAN	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted Or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (6) and (8)
1	2	3	4	5	6	7	8	9	10

ILLUSTRATION ON TDS

	Particulars	Amount (Rs.)
A	Total Interest as per P & L a/c	10 Lakhs
B	Payments made on which TDS provisions are not applicable 1. Interest to Partners 1.20 Lakhs 2. Interest to Bank 70 Thousand 3. Interest Paid to Government (196) 30 Thousand 4. Interest to Others below threshold limit 50 Thousand 5. Total amount for which 15G/15H Received 1.50 Lakhs	4.20 Lakhs
C	Interest covered under Certificate of deduction at lower rate (2%)	50 Thousand
D	Interest covered under Certificate of deduction at Nil rate	25 Thousand
E	Interest to Non Residents covered u/s 195	1.25 Lakhs
F	Interest on which tax deducted at Normal rate i.e., 10%	60 Thousand
G	Interest on which tax deducted at Higher Rate - 15% (by mistake)	40 Thousand
H	Interest on which tax deducted at lower rate by mistake (5%)	30 Thousand
I	Interest on which tax deducted at lower rate, but remitted at specified rate	90 Thousand
J	Interest on which tax deducted, but not remitted	35 Thousand
K	Interest on which tax deductible, but not deducted	45 Thousand
L	Int. on which Tax Not Deducted but Payee complied all 4 conditions as in Proviso to S.201(1) - Thus deductor not deemed to be "Assessee in Default".	80 thousand
M	TDS remitted to Central Govt (As per challan)	23,500

TAN	1	BLRS78693Y
SECTION	2	194A
NATURE OF PAYMENT	3	INTEREST OTHER THAN INTEREST ON SECURITIES
TOTAL AMOUNT OF PAYMENT OR RECEIPT OF THE NATURE SPECIFIED IN COLUMN 3	4	8,75,000
TOTAL AMOUNT ON WHICH TAX WAS REQUIRED TO BE DEDUCTED OR COLLECTED OUT OF 4	5	4,55,000
TOTAL AMOUNT ON WHICH TAX WAS DEDUCTED OR COLLECTED AT SPECIFIED RATE OUT OF 5	6	3,80,000
AMOUNT OF TAX DEDUCTED OR COLLECTED OUT OF 6	7	25,500
TOTAL AMOUNT ON WHICH TAX WAS DEDUCTED OR COLLECTED AT LESS THAN SPECIFIED RATE OUT OF 7 (should be actually read as col 5)	8	30,000
AMOUNT OF TAX DEDUCTED OR COLLECTED OUT OF 8	9	1500
TOTAL AMOUNT OF TAX DEDUCTED OR COLLECTED NOT DEPOSITED TO THE CREDIT OF CENTRAL GOVT. OUT OF 6 & 8(should be actually read as col 7& 9)	10	3500

WORKINGS

COLUMN 4: TOTAL AMOUNT OF PAYMENT OR RECEIPT OF THE NATURE SPECIFIED IN COLUMN 3

Interest as per P&L a/c	Rs 10.00 lakhs
(-)Interest on Non-Resident U/s 195	Rs. 1.25 Lakhs
Amount to be entered in Column 4	Rs. 8.75 Lakhs

WORKINGS

COLUMN 5: TOTAL AMOUNT ON WHICH TAX WAS REQUIRED TO BE DEDUCTED OR COLLECTED OUT OF 4

Amount as per Column 4		Rs 8.75 lakhs
(-) B payments made on which T D S provision are not applicable		
1. Interest to Partners	Rs 1.20 Lakhs	
2. Interest to Bank	Rs 70 Thousand	
3. Interest Paid to Government (Sec 196)	Rs 30 Thousand	
4. Interest to Others below threshold limit	Rs 50 Thousand	
5. Total Interest for which 15G/15H Received	Rs 1.50 Lakhs	Rs. 4.20 Lakhs
Amount to be entered in Column 5		Rs. 4.55 Lakhs

WORKINGS

COLUMN 6: TOTAL AMOUNT ON WHICH TAX WAS DEDUCTED OR COLLECTED AT *SPECIFIED RATE* OUT OF 5

COLUMN 7: AMOUNT OF TAX DEDUCTED OR COLLECTED OUT OF 6

COLUMN 6 - Amount		COLUMN 7 - TDS
C	Rs 50,000	Rs 1,000
D	Rs 25,000	Rs 0
F	Rs 60,000	Rs 6,000
G	Rs 40,000	Rs 6,000
I	Rs 90,000	Rs 9,000
J	Rs 35,000	Rs 3,500
L	Rs 80,000 Subject to certificate in form 26 A	NIL
TOTAL	Rs 3,80,000	Rs 25,500

WORKINGS

COLUMN 8: TOTAL AMOUNT ON WHICH TAX WAS DEDUCTED OR COLLECTED AT LESS THAN SPECIFIED RATE OUT OF 7(should be actually col 5)

COLUMN 9: AMOUNT OF TAX DEDUCTED OR COLLECTED OUT OF 8

COLUMN 8 – Amount		COLUMN 9 – TDS
H	Rs 30,000	Rs 1,500
TOTAL	Rs 30,000	Rs 1,500

WORKINGS

COLUMN 10: TOTAL AMOUNT OF TAX DEDUCTED OR COLLECTED NOT DEPOSITED TO THE CREDIT OF CENTRAL GOVT. OUT OF 6 & 8(should be actually read as col 7& 9)

Amount		COLUMN 10 - TDS
J	Rs 35,000	Rs 3,500

Reconciliation of Remittance of TDS

Reconciliation of Remittance of TDS	M
Amount of Tax deducted @ Specified rate	Rs 25,500
(+) Amount of Tax deducted @ lower than specified rate	Rs 1,500
(-) Amount of Tax deducted but not deposited with Central Govt.	Rs 3,500
Amount matching with TDS Challan	Rs 23,500

Disallowance under Sec 40(a)(ia)

Particulars	
J: Interest on which tax deducted, but not remitted	Rs 35,000
K: Interest on which tax deductible, but not deducted	Rs 45,000
Total	Rs 80,000

L: 4 Conditions to be complied as in proviso to S.201(1)

[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

- (i) has furnished his return of income under [section 139](#);**
- (ii) has taken into account such sum for computing income in such return of income; and**
- (iii) has paid the tax due on the income declared by him in such return of income,**
- (iv) and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:]**

FORM No. 26A

[See rule 31ACB]

Form for furnishing accountant certificate under the first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961

I (name) _____ am the person responsible for paying (within the meaning of section 204) in the case of (name of the payer) _____ with PAN # (PAN of the payer) _____ and TAN (TAN of the payer) _____ located at (address of the payer)

I do hereby state that I, being the person responsible for paying had paid to/credited to the account of (name of the payee) _____ a sum of _____ rupees without deduction of whole or any part of the tax

A certificate from an accountant certifying that the payee has fulfilled all the conditions mentioned in the first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961 is enclosed as Annex 'A' to this Form

I further state that the interest under sub-section (1A) of section 201 amounting to _____ rupees for non-deduction/short deduction of tax * has been paid by me the details of which are as under -

<i>BSR Code/**24G Receipt Number (first seven digits of BIN)</i>	<i>Challan Serial Number/**DDO Serial Number (last five digits of BIN)</i>	<i>Date of deposit through challan/**date of transfer voucher</i>

or

*has not yet been paid by me.

Place

Signature

Date

Designation

In case of Government deductors "PAN NOT REQD" should be mentioned

* Delete whichever is not applicable

** For payment made without the production of challan

ANNEXURE A

Certificate of accountant under first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961 for certifying the furnishing of return of income, payment of tax etc. by the payee

I/We *hereby confirm that I/we* have examined the relevant accounts, documents and records of (name and address of the payee with PAN) for the period _____ and hereby certify the following:

(i) _____ (payer) has paid to or credited following sum to the account of _____ (payee) without deduction of whole or any part of the tax in accordance with the provisions of Chapter-XVII-B

<i>Nature of</i>	<i>Date of</i>	<i>Section under</i>	<i>Amount</i>	<i>Amount of</i>	<i>Details of amount</i>	
<i>payment</i>	<i>payment or credit</i>	<i>which tax was deductible</i>	<i>paid or credited</i>	<i>tax deductible</i>	<i>deducted, if any</i>	
					<i>Amount deducted</i>	<i>Date of deduction</i>

(ii) The payee, who is a resident, has furnished his return of income for the assessment year relevant to the payment referred to in (i) above. The details of return of income filed by the payee are as under -

<i>Date of filing return</i>	<i>Mode of filing i.e. whether e-filed or paper return</i>	<i>Acknowledgement number of return filed</i>	<i>If paper return designation and address of the Assessing Officer</i>	<i>Amount of total taxable income as per return filed</i>	<i>Tax due on the income declared in the return</i>	<i>Details of tax paid</i>

(iii) The payee has taken into account the sum referred to in (i) for computing his taxable income in return of income filed by him the details of which are as under -

<i>Receipt on which Tax has not been deducted</i>	<i>Head of Income under which the receipt is accounted for</i>	<i>Gross receipt under the head of income under which the receipt is accounted for</i>	<i>Amount of taxable income under the head of income under which the receipt is accounted for</i>

(iv) It has been ensured that the information furnished is true and correct in all respects and no relevant information has been concealed or withheld

(v) Neither I, nor any of my partners, is a director, partner or an employee of the above mentioned entities or its associated concerns

I/we* fully understand that any statement made in this certificate, if proved incorrect or false, will render me/us* liable for any penal or other consequences as may be prescribed in law or is otherwise warranted

(Signature and Stamp/Seal of the Signatory)

†Accountant

Place

Name of the Signatory

Date

Full Address

Membership No.

Notes:

1. *Delete whichever is not applicable
2. †This certificate is to be given by -

- (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
- (ii) any person, who in relation to any State, is, by virtue of the provisions in subsection (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.

CLAUSE NO. 34 (b)

Whether the assessee has furnished the statement of tax deducted and collected within the prescribed time. If not, Please furnish the details:-

Tax deduction and collection account number	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

CLAUSE NO. 34(c)

Whether assessee liable to pay interest u/s 201(1A) 206C(7) ? If yes, the details thereof are to be furnished in the following format:

Tax deduction and collection Account Number (TAN)	Amount of interest under section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment

- Interest U/s. 201(1A)(i) 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and U/s. 201(1A) (ii) 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.
- Interest U/s. 206C(7) –Where a seller does not collect the tax or after collecting the tax fails to pay he shall be liable to pay simple interest at the rate of 1% p.m. or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

Clause 35: Quantitative details

(a) **Trading Concern:**

(i) Opening stock; (ii) Purchases during the previous year; (iii) Sales during the previous year; (iv) Closing stock; (v) shortage / excess, if any.

(b) **Manufacturing concern:**

A. Raw materials: (i) opening stock; (ii) purchases during the previous year; (iii) consumption during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) yield of finished products; (vii) percentage of yield; (viii) shortage/excess, if any.

B. Finished products/By-products: (i) opening stock; (ii) purchases during the previous year; (iii) quantity manufactured during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) shortage/excess, if any.

Clause 36:

36. In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form :-

- (a) total amount of distributed profits;
- (b) amount of reduction as referred to in section 115-O (1A)(i);
- (c) amount of reduction as referred to in section 115-O (1A)(ii);
- (d) total tax paid thereon;
- (e) dates of payment with amounts.

Clause 37 - 39:

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.

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.

39. Whether any audit was conducted under section 72A of the **Finance Act, 1994** in relation to valuation of taxable services, 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.

40. *Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:*

Serial number	Particulars	Previous year	<i>Preceding previous year</i>
1	Total turnover of the assessee		
2	Gross profit/turnover		
3	Net profit/turnover		
4	Stock-in-trade/turnover		
5	Material consumed/finished goods produced		

Clause 41:

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

It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year.

In such cases also, reporting has to be done under this clause

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

S.No		Financial year to which demand/refund relates to	Name of other Tax law	Type (Demand raised/Refund received)	Date of demand raised/refund received	Amount	Remarks
1	<input type="checkbox"/>	<div>Select ▼</div>	<div>Select ▼</div>	<div>Select ▼</div>	<div></div>	<div></div>	<div></div>

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