

TAX AUDIT U/S 44AB OF IT ACT 1961

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CAG Reports Non-adherence to various provisions of Income Tax Act by Cas

Report no.-32 of 2014-Union Government (Department of Revenue-Direct Taxes) – Report of the Comptroller and Auditor General of India on Performance Audit on Appreciation of Third Party (Chartered Accountant) Reporting in Assessment Proceedings.

The Report has been laid on the table of the Parliament house on
19-12-2014

We found cases;

- (a) where the CAs failed to report full and correct information in 367 cases leading to short levy of taxes of Rs. 2,813.11 crore and
- (b) where the AOs failed to utilize the information available in 102 reports/certificates submitted to them leading to short levy of taxes of Rs. 1,310.05 crore.

Some of the important audit findings are as follows:

- a. Tax auditors failed to give correct information relating to allowance of depreciation in 66 cases involving short levy of tax of Rs. 457.79 crore (Paragraph 2.3).*
- b. Tax auditors did not report correct information regarding brought forward loss/depreciation resulting in irregular brought forward loss/depreciation allowance in 46 cases involving short levy of tax of Rs. 557.79 crore (Paragraph 2.4).*
- c. In 42 cases personal/capital expenditure was incorrectly allowed as the tax auditors did not report the amount in their tax audit reports which resulted in short levy of tax of Rs. 477.89 crore (Paragraph 2.5).*
- d. CAs have certified wrong information/claims for various exemptions and deductions in 74 cases having tax effect of Rs. 259.72 crore (Paragraph 2.7).*
- e. CAs gave incorrect/incomplete information in TARs/certificates in 132 cases having a revenue impact of Rs. 1,037.61 crore (Paragraph 2.8).*

We also found in another 616 cases where CAs committed mistakes viz. in allowance of exemption/deductions, charging of tax on Book Profit under Section 115JB, adoption of Arm's Length Price and reporting on cash payments exceeding Rs. 20,000 per day (Paragraphs 2.6 and 2.10-2.12).

In 109 cases, assesseees did not furnish requisite Form 3CEB on verification of ALP and Form 29B relating to certification for Book Profit (Paragraphs 2.10-2.11).

We have also commented on lacunae in the existing Forms which need modification in order to capture full information of the affairs of assesseees so that taxes are applied correctly (Paragraph 3.2-3.4).

Regarding monitoring of work of CAs and ensuring quality tax audit, ICAI issued guidance to its members for limiting the tax audit assignments in a financial year.

We found that 18.87 per cent of CAs (12,435 CAs) for AY 2013-14 issued more tax audit reports than prescribed by ICAI (Paragraph 3.6).

We also got cases where CAs did not mention their membership numbers (Paragraph 3.7).

ITD did not refer any case for professional negligence to ICAI for taking action against erring CAs in terms of Section 288 of the Act (Paragraph 3.9).

***ITAT decision – Vijay V Meghani vs DCIT
(Mum) 20/8/2014***

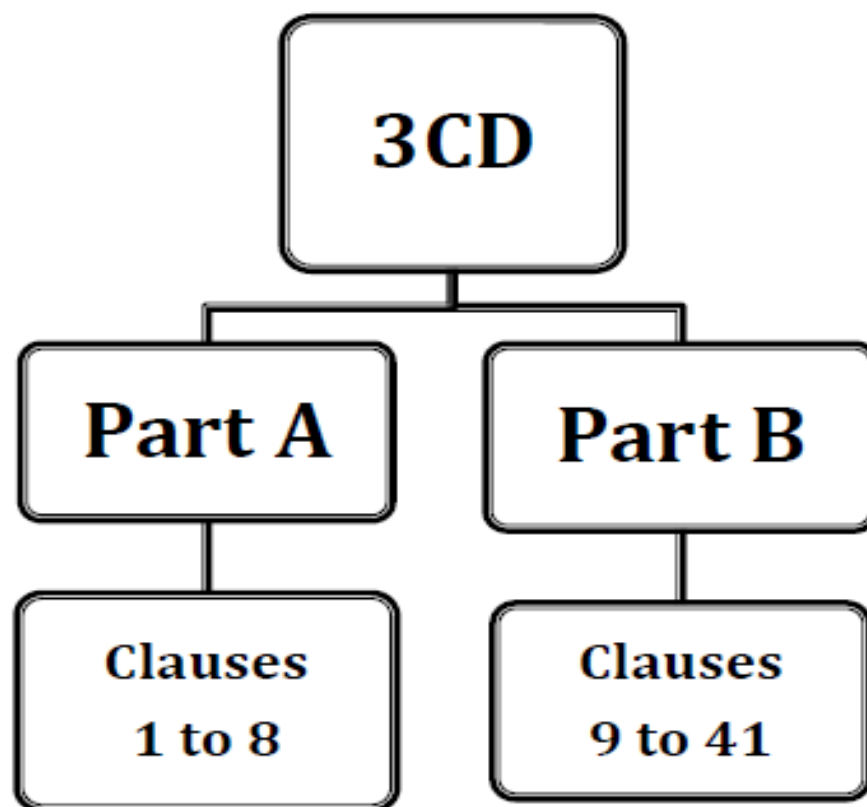
- *Serious doubts cast on conduct of concerned CA firm*
- *Has doubted the methodology of training and CPE of ICAI*

Discussion on Amendments in Form 3CA, 3CB & 3CD

**Notification No. 33/2014,F
No.133/1/2014-TPL dated
25.07.2014**

- NEW FORM 3CA/3CB
- NEW FORM 3CD CONSISTS OF 41 CLAUSES
- OLD FORM 3CD CONSISTS OF 34 CLAUSES
- NEW CLAUSES INTRODUCED – 7 CLAUSES
- MODIFIED CLAUSES – 18 CLAUSES
- NO CHANGES – 16 CLAUSES
- ANNEXURE 1 PART A & PART B PREVIOUSLY EXISTING TO FORM 3CD IS DELETED.

Form 3CD ...



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.....

Notes :

1. *Delete whichever is not applicable.
2. **Mention the total number of branches.
3. ***This report has to be signed by-
 - ~~i. A chartered accountant within the meaning of the Chartered Accountant Act 1949,(38 of 1949);~~
~~or~~
 - ~~ii. Any person who, in relation to any state, is, by virtue of the provision of sub-section(2) of section 226 of the companies Act 1956 (1 of 1956),entitled to be appointed to act as an auditor companies registered in the State.~~ **person eligible to sign the report as per the provisions of section 44AB of the Income Tax Act, 1961.**
4. The person, who signs this audit report, shall indicate reference of his membership number / certificate of practice number / authority under which he is entitled to sign this report.

CHANGES IN FORM 3CA & 3CB

In the new utility, for qualifications, the following format is prescribed:

Sr No.	Qualification Type (to select from a drop down list)	Observations/ qualifications
1	Proper books of account, to enable reporting in form 3CD, have not been maintained by the assessee	
2	All the information and explanations which to the best of my/our knowledge and belief were necessary for the purpose of my/our audit has not been provided by the assessee	
3	Documents necessary to verify the reportable transaction were not made available.	
4	Proper stock Records are not maintained by the assessee	
5	Valuation of Closing stock is not possible	
6	Yield / Percentage of wastage is not ascertainable.	

Sr No.	Qualification Type (to select from a drop down list)	Observations/ qualifications
7	Records necessary to verify personal nature of expenses not maintained by the assessee	
8	T D S returns could not be verified with the books of account	
9	Records produced for verification of payments through account payee cheque were not sufficient	
10	Amount of expenses related to exempt income U/s 14 A of Income-tax Act, 1961 could not be ascertained	
11	Creditors under Micro, Small and Medium Enterprises Development Act, 2006 are not ascertainable	
12	Prior Period expenses are not ascertainable from books of account	

Sr No.	Qualification Type (to select from a drop down list)	Observations/ qualifications
13	Fair market value of shares u/s 56(2)(viia) / (viib) is not ascertainable	
14	Reports of audits carried by excise / Service tax Department were not made available	
15	GP is not ascertainable from the financial statements prepared by the assessee.	
16	Information regarding demand raised / refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and wealth-tax Act, 1957 was not made available.	
17	Others	

CHANGES IN FORM 3CD

Clause wise comparison of revised Form 3CD

Clause of Revised 3CD	Clause of Pre revised 3CD	Clause of Revised 3CD	Clause of Pre revised 3CD	Clause of Revised 3CD	Clause of Pre revised 3CD
1	1	16	13	31	24
2	2	17	-	32	25
3	3	18	14	33	26
4	-	19	15	34	27
5	4	20	16	35	28
6	5	21	17	36	29
7	6	22	17A	37	30
8	-	23	18	38	31
9	7	24	19	39	-
10	8	25	20	40	32
11	9	26	21	41	
12	10	27	22		
13	11	28	-		
14	12	29	-		
15	12A	30	23		

AMENDMENTS MADE IN
FORM NO. 3CD – PART A

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART A		<u>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.</u>

Issues

What does the term liable represents?

What if liable but not registered.

Suggestion : The tax auditor should obtain such list from his client alongwith copy of Registration Certificates.

REVISED GUIDANCE NOTE 2014

17.4 Under clause (4), the auditor is required to mention the registration number or any other identification number, if any, allotted, in case the the assessee is liable to pay indirect taxes like excise duty, service tax, sales tax, customs duty, etc.

17.5 Part A of Form No. 3CD generally requires the auditor to give the factual details of the assessee.

Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee.

The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

17.6 The term “Indirect taxes” is neither defined in the Income-tax Act, 1961 nor under any other law.

The levy of different types of indirect taxes on various transactions may differ from State to State.

Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him.

Once the auditor obtains this management representation, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law.

For example, Service tax registration number, Excise registration number, VAT registration number/ Central Sales tax Registration number etc.

The assessee may have multiple registrations for various manufacturing units, service units, godowns etc under the same law.

In such circumstances also, a copy of all registration certificates is to be obtained from the assessee for appropriate disclosure under this clause.

Where the indirect tax law does not require any registration, appropriate identification number may be reported in this clause.

For example, in Customs Act, 1962, since there is no registration number, a copy of Export Import Code (IEC) may be obtained and information be accordingly furnished.

17.7 The information may be obtained and maintained in the following format:-

Sr. No	Relevant Indirect tax Law which requires registration	Place of Business/ profession/service unit for which registration is in place/ or has been applied for:-	Registration/ Identification number
1.	2.	3.	4.

17.8 The auditor has to keep in mind the provisions of Standard on Auditing 580 “Written Representation”.

In case the auditor prima facie is of the opinion that any indirect taxes laws is applicable on the business or profession of the assessee but the assessee is not registered under the said law, he should report the same appropriately.

CLAUSE NO. 4 - In the new Utility, the following format is prescribed:

Sl No:	Type	Registration / Identification Number
	Central Excise Duty	
	Central Custom Duty	
	Service Tax	
	Sales Tax / VAT	
	State Excise Duty	
	Other Indirect Tax / duty	

One can add further rows as per requirement – no limitation

CLAUSE 4

ONE INSTANCE

Effect of Purchases Made From Suspicious Dealers as Per List Published By Vat Department on Audit Report

*Whether Purchases made from such Suspicious Dealers should actually form part of Purchases while preparing Financials.
The last updated List of 1277 Suspicious Dealers who has issued false bills without delivery of goods is displayed on Website of Government of Maharashtra – VAT Department since July-12.*

Thus, Such Frauds are already known and expected to be known to Auditors and hence he is expected to exercise Professional Skepticism while using the information available publicly relating to Suspicious Dealers on Vat Website.

Following cases are required to be examined regarding such Dealers

1. Some Dealers have actually issued 100% false sales invoices without delivery of goods.
2. Certain dealers have partly issued false sales invoice without delivery of goods and partly Genuine Sales to his Customers.
3. Certain Dealers have actually made genuine Sales to other Dealers but have not deposited taxes into the government Treasury.

So there are cases where in a Dealer has made genuine purchases but still his set-off may have been dis-allowed.

Clause – 4 Sample Reporting

SL No:	Type of Indirect Tax or Name of Statute	Name of Branch / Unit, if applicable	Registration Identification Number, if taken	Remarks
1	Service Tax	Corporate office	AAACA9999A SD001	
2	Service Tax	A Division	AAACA9999A SD002	
3	Service Tax	B Division	AAACA9999A SD003	
4	Central Excise Duty	A Division	AAACA9999A XD001	
5	Central Excise Duty	B Division	AAACA9999A XD002	
6	Karnataka Value Added Tax	B Division	08771347856	
7	Kerala Value Added Tax	A Division	07876930951	
8	Custom Duty	Corporate office	AAACA9999A FT001	

In case the assessee is registered with more than one department or have more than one identification number allotted for the same, all such numbers are to be mentioned.

Clause - 6

Sl No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD-PART A	Previous year ended 31 st March	Previous year from to

17.10 Under clause (6) the period of the previous year has to be stated.

Since the previous year under the Act now uniformly begins on 1st April and ends on 31st March, the relevant previous year should be mentioned.

In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc the date of beginning/ ending of the previous year may be different, the auditor may accordingly, mention the relevant date of beginning and ending of the previous year in this clause.

Hence, the tax auditor has to apply his professional judgement depending on the facts and circumstances of the same.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART A		<u>8. Indicate the relevant clause of section 44AB under which the audit has been conducted. -</u>

CLAUSE 8

The relevant clauses of Audit U/s 44AB are as follows:

44AB(a) carrying on business if total sales, turnover or gross receipts, exceeds One crore rupees.

44AB(b) carrying on profession if gross receipts exceed Twenty-five lakh rupees

CLAUSE 8

44AB(c) Carrying on the business referred to in sections 44AE or 44BB or 44BBB and claiming his income from any such business to be lower than the income prescribed under the relevant section; or

44AB(d) Where the profits and gains from the business are deemed to be the profits and gains of the assessee U/s 44AD and the assessee has claimed his income lower than the income prescribed U/s 44AD and during such previous year his income exceeds the basic exemption limit.

CLAUSE 8

Relevant clause of section 44AB under which the tax audit has been conducted

The Auditor has to report under which clause of Tax Audit, the Audit has been conducted.

The Auditor has to report if the Audit is of Business or Profession or under Presumptive taxation scheme. (Clause 8)

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	<p>9. (a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.</p> <p>b) Books of account maintained. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system.)</p> <p>(c) List of books of account examined. -</p>	<p>11. (a) Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.</p> <p>(b) List of books of account maintained <u>and the address at which the books of accounts are kept.</u> (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. <u>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.</u>)</p> <p>(c) List of books of account <u>and nature of relevant documents</u> examined.</p>

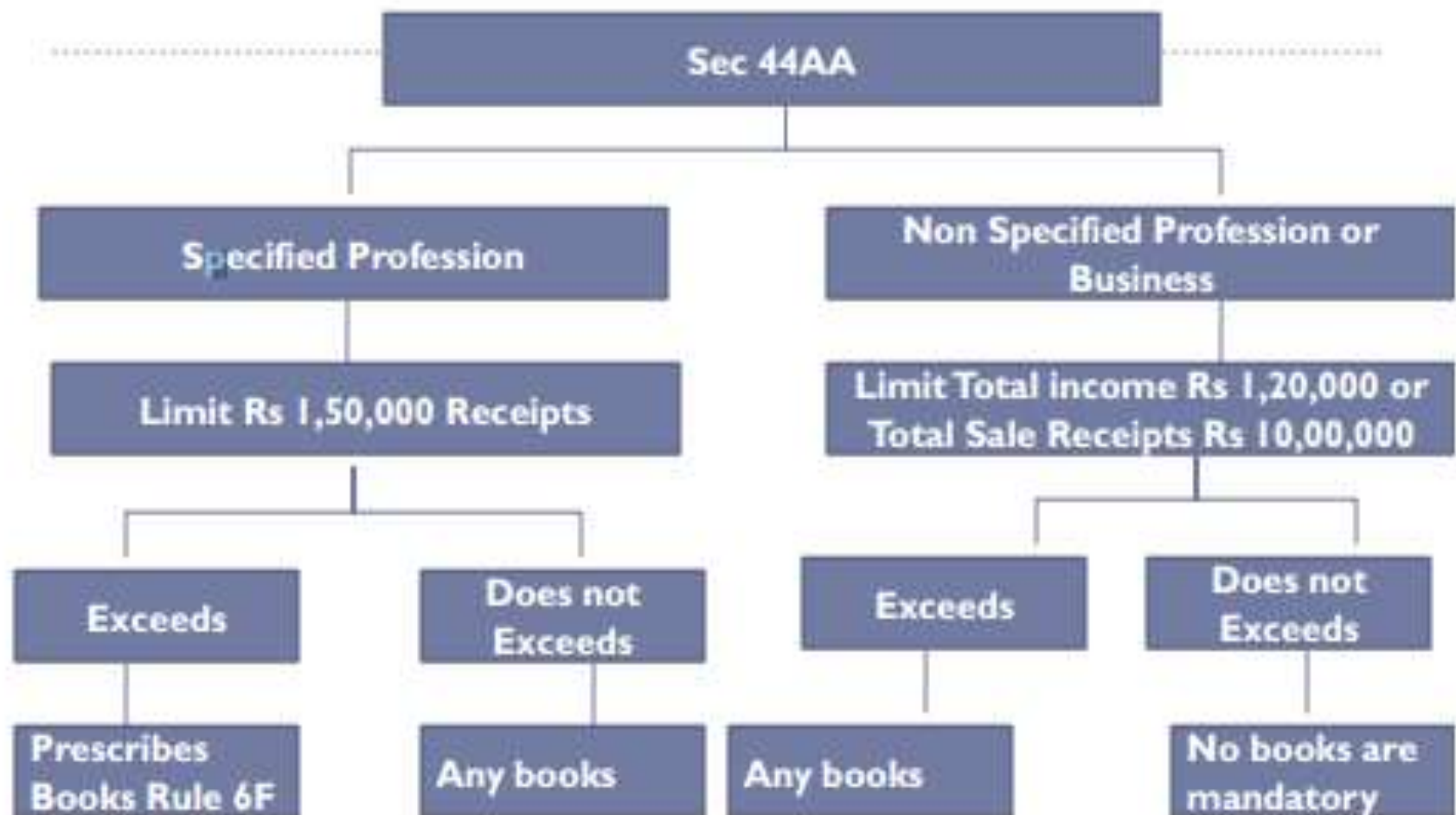
Meaning of Books of account and Document – Sec.2(12A) & Sec 2(22AA)

The expression ‘books of account’ is defined to include ledgers, day books, cash books, account books and other books, whether kept in the written form or as print outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device – sec.2(12A).

The term ‘document’ includes an electronic record as defined under section 2 of the information technology Act, 2000- Sec 2(22AA).

Meaning of Electronic record as per Section 2(1)(t) of the Information Technology Act, 2000 as referred above is reproduced below:

“Electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.



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.

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*

- 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
- Invoicing at depot = document and not books of account

What does the location mean?

- The location from which data entry is made or where the accounts are accessible.
- What does the word “kept” mean in the context of ERP/SAP?

AS PER REVISED GUIDANCE NOTE 2014

20.8 From AY 2014-15, the address at which the books so maintained are kept is also required to be mentioned under clause (b).

In case the books of accounts are kept at more than one location then the auditor is required to mention the details of address of each such location along with the detail of books of account maintained thereof.

The auditor is advised to obtain from the assessee a list in the following format and accordingly report the same in clause 11(b).

In case of a company assessee auditor should also verify as to whether any forms are filed under the Companies Act for maintenance of books of accounts at a place other than the registered office:

Sr. No.	Principal Place of Maintenance of Books of Accounts	Details of books maintained
1	2	3

20.9 In case, where books of accounts are maintained and generated through computer system, the auditor should obtain from the assessee the details of address of the place where the server is located or the principal place of business/Head office or registered office by whatever name called and mention the same accordingly in clause 11(b).

14.3 The auditor is required to examine not only the books of accounts but also other relevant documents directly related to transactions reflected in the books of accounts like original purchase invoice, copy of bank statements, bills, vouchers, various agreements / contracts or any other document on the basis of which preliminary entries are passed in the books of accounts.

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 11(c)

What does “nature of relevant documents” mean?

- List of documents is not required – only nature

Examples of relevant documents

- ✓ Bills / Invoices / Receipts issued / received by assessee
- ✓ Credit / Debit Notes issued / received by assessee
- ✓ Statutory registers maintained under various laws
- ✓ Contracts / agreements entered into by the assessee
- ✓ Correspondence between the assessee and others
- ✓ Third party confirmations / statements of account

- ✓ Fixed assets register
- ✓ Payroll records
- ✓ Lease Deed
- ✓ VAT Audit report
- ✓ Cost audit report
- ✓ Excise audit report
- ✓ Service tax audit report
- ✓ Sale deed of property pur/sold
- ✓ Board minutes
- ✓ VAT / Excise / Service Tax returns
- ✓ TDS returns

In the utility, there is no separate section or drop down list for “nature of documents”

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	10. 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 or any other relevant section).	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, <u>Chapter XII-G, First Schedule</u> 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

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
		<p>11(a) Method of accounting employed in the previous year</p> <p>11(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.</p>	<p>13(a) Method of accounting employed in the previous year</p> <p><u>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</u></p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
		<p>11(c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss</p> <p>11(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.</p>	<p><u>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 *</u></p> <p>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</p>



Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

Is it Item / Transaction Wise ??

AS PER REVISED GUIDANCE NOTE 2014

22.10 The Finance (No. 2) Act, 2014 has amended section 145 w.e.f AY 2015-16 to the effect that the words 'accounting standards' be replaced with the words 'income computation and disclosure standards'.

As per the memorandum explaining the Finance (No. 2) Bill 2014, such an amendment has been made in order to clarify that the standards notified under section 145(2) are only meant for computation of income and disclosure of information and the assessee need not maintain books of account on the basis of AS notified under the Income-tax Act, 1961.

The Accounting Standards issued by ICAI/ Companies Accounting Standard Rule, 2006 would still be required to be followed by the assessee, for preparation of financial statements.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	<p>12 (a) Method of valuation of closing stock employed in the previous year.</p> <p>12(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:</p>	<p>14 (a) Method of valuation of closing stock employed in the previous year.</p> <p><u>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: **</u></p>



Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)

Is it Item / transaction Wise ??

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>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: (contd...)</u>

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

AS PER REVISED GUIDANCE NOTE 2014

26.1 Section 43CA is applicable where the assessee has transferred an asset (other than a capital asset) being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State government authority for the purpose of payment of stamp duty. In such a case for purpose of computing profit & gains from such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration.

26.2 Section 50C is applicable where the assessee has transferred a capital asset being land or building or both and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty. In such a case, for purpose of section 48, the value so adopted or assessed or assessable by stamp duty authority shall be deemed to be the full value of consideration.

26.3 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, the auditor is required to furnish the following details:

- (a) Details of property
- (b) Consideration received or accrued
- (c) Value adopted or assessed or assessable

26.4 In the column requiring the details of property, the auditor has to furnish the details about the nature of property i.e. whether the property transferred by him is land or a building along with the address of such property. If the assessee has transferred more than one property, the detail of all such properties is required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the case may be. Attention is invited to the meaning of the term “transfer” as defined in section 2(47) of the Act.

26.5 Under the heading “consideration received or accrued”, the auditor has to furnish the amount of consideration received or accrued, during the relevant previous year of audit, in respect of land/building transferred during the year as disclosed in the books of account of the assessee.

26.6 For reporting the value adopted or assessed or assessable, the auditor should obtain from the assessee a copy of the registered sale deed in case, the property is registered. In case the property is not registered, the auditor may verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of section 43CA/ section 50C of the Act. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his report 3CA/CB

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26.7 Auditor would have to apply professional judgment as to what constitutes land or building for e.g. whether leasehold right / development rights / TDR / FSI etc would fall under this provisions or not, would require to be evaluated based on facts & circumstances of transactions.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	<p>15. Amounts admissible under sections - (a) 33AB (b) 33ABA (c) 33AC (wherever applicable) (d) 35 (e) 35ABB (f) 35AC (g) 35CCA (h) 35CCB (i) 35D (j) 35DD (k) 35DDA (l) 35E:- (a) debited to the profit and loss account (showing the amount debited and deduction allowable under each section separately); (b) not debited to the profit and loss account</p>	<p><u>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</u></p> <p><u>Clause b deleted in the new form 3CD</u></p>

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.

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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.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	16(b) Any sum received from employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24)(x); and due date for payment and the actual date of payment to the concerned authorities under section 36(1)(va). -	<p><u>20(b) Detail of contributions received from employees for various funds as referred to in section 36(1)(va).</u></p> <p style="text-align: center;">*</p>

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

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SI No	Nature Of Fund	Sum received from employees	Due date for Payment	The actual Amount paid	The actual date of payment to the concern authority
		Select			
		Provident fund			
		Superannuation fund			
		Gratuity fund			
		Any fund set up under the provision of ESI Act, 1948			
		Any other welfare fund			

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
	3	Income Tax	35,000.00

Advertisement Expenditure	1		
	2		
	3		

Advertisement Expenses

- a) In new 3CD the words used are Advertisement expenses. Now a doubt arises that whether all kind of advertisement expenses to be reported or only the ones disallowed as was reported previously.

The old 3CD specifies the following:

“Expenditure on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party”.

In my opinion the new 3CD will take color from the old 3CD and we should report only the similar expenditure to political party only until any clarification in this regard is received.

b) Expenditure incurred at club as entrance fee and subscription is removed – Implication ???

In my opinion - Payment to clubs would not include organization such as Rotary, Lions, Jaycees, and Giants etc., they being service organization, not considered to be club.

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			

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30.8 Section 143(1)(e) of the Companies Act 2013 specifically requires the auditor to inquire whether personal expenses have been charged to revenue account.

In the case of a person whose accounts of the business or profession have been audited under any other law, the tax auditor will have to report in respect of personal expenses debited in the profit and loss account.

In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the tax auditor will have to verify the personal expenses if debited in the expenses account while conducting the audit and verify the amount of expenses mentioned under this clause.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	17(f) amounts inadmissible under section 40(a);	<p>21 (b) Amounts inadmissible under section 40(a):-</p> <p>(i) <u>As payment to non-resident referred to in sub-clause (i)</u></p> <p><u>(A) Details of payment on which tax is not deducted:</u></p> <p><u>(I) Date of payment</u></p> <p><u>(II) Amount of payment</u></p> <p><u>(III) Nature of payment</u></p> <p><u>(IV) Name of the payee</u></p> <p><u>(V) PAN of the payee If available</u></p> <p><u>(VI) Address of the payee</u></p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
			<p><u>B) Detail of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1) (I) Date of payment</u></p> <p><u>(II) Amount of payment</u></p> <p><u>(III) Nature of payment</u></p> <p><u>(IV) Name and address of the payee</u></p> <p><u>(V) Amount of tax deducted</u></p> <p><u>(</u></p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
			<p><u>(ii) As payment referred to in sub-clause (ia)</u></p> <p><u>(A) Details of payment on which tax is not deducted:</u></p> <p><u>(I) Date of payment</u></p> <p><u>(II) Amount of payment</u></p> <p><u>(III) Nature of payment</u></p> <p><u>(IV) Name of the payee</u></p> <p><u>(V) PAN of the payee If available</u></p> <p><u>(VI) Address of the payee</u></p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
			<p><u>(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.</u></p> <p><u>(I) Date of payment</u></p> <p><u>(II) Amount of payment</u></p> <p><u>(III) Nature of payment</u></p> <p><u>(IV) Name of the payee</u></p> <p><u>(V) PAN of the payee If available</u></p> <p><u>Address of the payee</u></p> <p><u>(VI) Amount of tax deducted (V) Amount out of (VI) deposited, if any</u></p> <p><u>(iii) Under sub-clause (ic) [Wherever applicable]</u></p> <p><u>(iv) Under sub-clause (ia)</u></p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
			<p><u>(v) Under sub-clause(iib)</u></p> <p><u>(vi) Under sub-clause(iii)</u></p> <p>A. <u>Date of payment</u></p> <p>B. <u>Amount of payment</u></p> <p>C. <u>Name of the payee</u></p> <p>D. <u>PAN of the payee If available</u></p> <p><u>Address of the payee</u></p> <p><u>(vii) Under sub-clause(iv)</u></p> <p><u>(viii) Under sub-clause(v)</u></p>

Old clause 17(f) vs new clause 21(b) Sec 40(a)

- (i) Sec 40(a)(i) - Any Interest, Royalty of FTS or any other sum chargeable to tax under this act to which is payable,— (A) *outside India*; or (B) *in India* to a non-resident, not being a company or to a foreign company on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200: Please note that vide Finance (No. 2) Act, 2014, the time prescribed under 200(1) has been extended upto due date specified u/s. 139(1) of the Act wef 1-4-15.

(ii) 40(a)(ia) *any interest, commission or* brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work including supply of labour for carrying out any work, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of Section 139

Amounts inadmissible under section 40(a) –

This Revised Clause restricts the reporting only to sub-clause (i) and (ia).

- Sub-Clause (i) deals with allowability of payment made to non-resident Payees
- sub-clause (ia) deals with payment to resident payees

It further requires Auditor to report the name and address of the payees in respect of whom default has been committed. (Clause 21(b))

Amounts inadmissible under section 40(a) –

- Sub-clause(ii & iia) – Income tax and Wealth tax are not deductible. Income tax also includes tax paid in any other country for which relief is available U/s 90, 90A, 91 of the Income tax Act 1961. (Reporting not required in New Form 3CD)
- Sub-clause(iib) – any amount -
 - (A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or
 - (B) Which is appropriated, directly or indirectly, from, a state government undertaking by the state Government.

Amounts inadmissible under section 40(a) –

- Sub-clause(iii) – Any salary payable outside India or to a non-resident shall be disallowed, if tax has not been deducted or paid .

- Sub-Clause (iv) Any payment to a provident or other fund for the benefit of the employees shall be disallowed unless the employer 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”

-

- Sub clause (v) Any tax on non-monetary perquisites borne by the employer, on behalf of the employee which is exempt u/s 10(10CC) in the hands of the employee shall be disallowed.

Earlier also we were suppose to report all these matters, in new substituted form it is now specifically provided enumerating all applicable sub clauses and reporting format. Now clause wise separate reporting in a given format is called for.

Cross reference your inputs in this clause with inputs of clause 34.

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(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)

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the Payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of tax deducted
1										

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

(A) Details of payment on which tax is not deducted:

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	PAN of the payee, if available	Address Line 1	Address Line 2	City or Town or District	Pincode
1									

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

S.No.	Date of payment	Amount of payment	Nature of payment	Name of the payer	PAN of the Payer, if available	Address Line 1	Address Line 2	City or Town or District	Pincode	Amount of tax deducted	Amount out of (VI) deposited, if any
1											

For all the items of TDS, .CSV templates can be downloaded and then filled up in excel and later imported into the utility

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	17(h) (A) whether a certificate has been obtained from the assessee regarding payments relating to any expenditure covered under section 40A(3) that the payments were made by account payee cheques drawn on a bank or account payee bank draft, as the case may be; Yes No (B) amount inadmissible under section 40A(3), read with rule 6DD [with break-up of inadmissible amounts; - See more at:	<p>21(d) Disallowance/deemed income under section 40A(3)</p> <p><u>(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:</u></p> <p>***</p>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	17(h) (A) whether a certificate has been obtained from the assessee regarding payments relating to any expenditure covered under section 40A(3) that the payments were made by account payee cheques drawn on a bank or account payee bank draft, as the case may be; Yes No (B) amount inadmissible under section 40A(3), read with rule 6DD [with break-up of inadmissible amounts; - See more at:	<u>(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);</u> <u>****</u>

*** / ****

Serial number	Date of Payment	Nature of Payment	Amount	Name and Permanent Account Number of the payee, if available

Additional Reporting of disallowance U/s. 40A(3A)

- Earlier Auditor had to report only the cash payment for expenses incurred during the year in excess of prescribed limit but now the CBDT has casted additional responsibility on auditor to report the cash payment made during the year in respect of expenses incurred in earlier years exceeding the prescribed limit U/s. 40A(3A).

Now auditor has to verify all the cash payments in excess of prescribed limits to report under section **40A(3) and 40A(3A)**.

Clause has further removed the reporting requirement of certificate if any been obtained by the Auditor from the Assessee U/s. 40A(3). (Clause 21(d)).

Section 40A(3A): Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an **account payee cheque drawn on a bank or account payee bank draft**, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of **payments made to a person in a day**, exceeds Rs. 20,000/-.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	19. Amounts deemed to be profits and gains under section 33AB or 33ABA or 33AC -	24. Amounts deemed to be profits and gains under section <u>32AC</u> or 33AB or 33ABA or 33AC. -

DEEMED INCOME U/s. 32AC: (Clause 24)

- In Old form 3CD the auditor was required to report only for sec.33AB/33ABA/33AC But as per new form 3CD reporting about Sec 32AC has been included.
- Sec.32AC of the Act provides for investment allowance of 15% for investment
- New form provides for reporting of deemed income which results from sale or transfer of new asset, (if asset was acquired and installed by the assessee for the purpose of claiming deduction under Section 32AC) within a period of five years from the date of its installation. in plant and machinery <100cr.

Word Modvat been replaced by the word Cenvat. (Clause 27(a)).

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.

➤ Tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant excise records. (Viz. RG-23)

➤ Tax auditor should verify that the information furnished under this sub-clause is compatible with the information under clause 27(b)

➤ 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>

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>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)(vii), if yes, please furnish the details of the same. -</u>

Reporting of shares acquired without consideration or inadequate consideration-

The Tax Auditor has to report 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).

This clause applies only to Firms and Companies in which Public are not substantially interested. (Clause 28)

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

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>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.</u>

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

- As per revised form 3CD focus would be on, 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, the auditor is required to furnish the details of the same.
 - This Clause applies to Companies in which Public are not substantially interested.

Issue of shares by a closely held company in excess of face value **– Sec. 56(2)(viib)**

Where a closely held company receives in any previous year from any person being a resident any consideration for issue of shares that exceed 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.

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) from a non resident.

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

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	24(c) Whether a certificate has been obtained from the assessee regarding taking or accepting loan or deposit, or repayment of the same through an account payee cheque or an account payee bank draft. Yes No The particulars (i) to (iv) at (b) and the Certificate at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act;	<u>31(c) Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents</u> The particulars (i) to (iv) at (b) and comment at (c) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act; -

50.6 The tax auditor has to take into account the technological advancements in the field of banking and information technology where loans have been repaid other than through an account payee cheque of bank draft which are capable of being tracked such as bank transactions made electronically through the internet or through mail transfer or telegraphic transfer.

These types of payments, though not made by account payee cheques in the conventional manner, are capable of being tracked. In order to judicially apply the provisions of section 269T, the tax auditor need not report such cases under this clause.

The Finance (No.2) Act, 2014 has acknowledged the fact and allowed the “use of electronic clearing system through a bank account” as a permissible mode for the purposes of section 269T.

Notification no. 208/2007 dated June 27, 2007

The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods /services will not be treated as loans or deposits repaid.

51.5 Practically, it may not possible to verify each payment, reflected in the bank statement, as to whether the payment/ acceptance of deposits or loans has been made through account payee cheque, demand draft, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments/ receipts referred to in section 269SS and 269T were made by account payee cheque drawn on a bank or account payee bank draft as the case may be.

Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in clause (3) of Form No. 3CA and clause (5) of Form No.3CB, as the case may be.

Amendment in the latest budget (2015)

MEASURES TO CURB BLACK MONEY

Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances

The existing provisions contained in section 269SS of the Income-tax Act provide that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more.

However, certain exceptions have been provided in the section.

Similarly, the existing provisions contained in section 269T of the Income-tax Act provide that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more.

In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

It is also proposed to amend section 269T of the Income-tax Act so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more.

The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

It is further proposed to make consequential amendments in section 271D and section 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

These amendments will take effect from 1st day of June, 2015.

Judgement likely to be overruled

MADHAV ENTERPRISES PVT LTD [TS-842-HC-2014(GUJ)]

Gujarat HC observed that the amount received by the assessee (builder) from the prospective buyers (for booking of flat/shop) was advance money simplicitor which was neither a loan nor a deposit even within the meaning of the said term assigned to u/s 269T. Therefore, the HC held that when such amount is returned that too without interest, the provisions of section 269T would not be applicable.

Sec 269SS – Contd...

(iv) “specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.’.

w.e.f. 01.06.2015

Sec 269T – Contd...

Newly inserted Clause (iv) to Explanation:

“specified advance” means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

w.e.f. 01.06.2015

Sec 269SS and 269T

Specified **sum** v. Specified **advance**

	Specified sum	Specified advance
1)	Any sum of Money receivable	Any sum of Money
2)	Whether as advance or otherwise	In the nature of advance by whatever name called
3)	In relation to IP	In relation to IP
4)	Whether or not transfer takes place	Whether or not transfer takes place

Sec 269SS and 269T

1. Applies to 'Specified advance' jointly taken with any other person.
2. Includes 'interest' in the limit of sec 269T.
3. Immovable property not defined
4. Section 3(26) of General Clauses Act –
Immovable property shall include
 - Land
 - Benefits to arise out of land
 - Things attached to the earth
 - Permanently fastened to anything attached to earth

Sec 269SS and 269T

1. Section 3 of TP Act– Immovable property shall not include standing timber
2. The word 'receivable' in specified sum
3. Advance or otherwise – would it include part payment of consideration also for 'specified sum'

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.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>32(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. -</u>
	FORM NO. 3CD – PART B		<u>32(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.</u> -

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>32(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. -</u>

Additional Reporting of Losses in speculation business (Section 73) and of carry forward and set-off of losses by specified business (Section 73(A) – Auditor has to furnish the following details.

- (1) details of speculation loss referred to in section 73 during the previous year
 - (2) details of loss referred to in section 73A in respect of any specified business
 - (3) Auditor has to state whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73 and details of speculation loss from such business.
- (Clause 32(c), 32(d) and 32(e))

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	26. Section-wise details of deductions, if any, admissible under Chapter VI A	33. Section-wise details of deductions, if any, admissible under Chapter VIA or <u>Chapter III</u> (<u>Section 10A, Section 10AA</u>).

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.

Reporting of Deduction Claimed U/s. 10A and 10AA –

In addition to deduction claimed under chapter VIA New form 3CD requires auditor to report deduction claimed under section 10A and 10AA. (Clause -33)

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

- In 2009 Government had made unsuccessful attempt to bring in **form 24C – TDS compliance statement** through notification no. 31/2009 dated 25th March 2009 read with circular no. 02/2009.
- This statement is exact copy of form 24C (*except 1 field*)
- This is the very statement which all TDS AO invariably demands during proceedings u/s 201 {*TDS Survey*}
- It's a more or less reconciliation of your PL with your TDS/TCS returns.
- If assessee is not covered by TDS/TCS provisions at all – No need to jump into this clause.

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 of 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.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	<p>29. In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form :—</p> <p>(a) total amount of distributed profits;</p> <p>(b) total tax paid thereon;</p> <p>(c) dates of payment with amounts.</p>	<p>36. In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form :—</p> <p>(a)total amount of distributed profits;</p> <p><u>(b)amount of reduction as referred to in section 115-O(1A)(i)</u></p> <p><u>(c) amount of reduction as referred to in section 115-O(1A)(ii)</u></p> <p>(d)total tax paid thereon;</p> <p>(e)date of payment with amounts.</p>

Separate reporting of tax on distributed profits

- Under section 115-O(1A)(i) Dividend received by domestic company from its subsidiary
- Under section 115-O(1A)(ii) dividend paid to any person for or on behalf of the New Pension System Trust referred to in Section 10(44).

(Clause 36)

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	30. Whether any cost audit was carried out, if yes, enclose a copy of the report of such audit [See section 139(9)]. - See more	37. Whether any cost audit was carried out, if yes, <u>give the details, if any, of disqualification or disagreement on any matter/item/quantity as may be reported/identified by the auditor.</u>

REPORTING ON COST AUDIT: (clause 37)

- Old Form No. 3CD required reporting of cost audit only when statutory cost audit was carried out U/s. 233A of Companies Act 1956
- Revised Form No. 3CD specifies reporting requirement even when cost audit has been carried out voluntarily
- The requirement of attachment of copy of cost audit report along with Form has been substituted with reporting of qualifications in cost audit report(clause 37).

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B	31. Whether any audit was conducted under the Central Excise Act, 1944, if yes, enclose a copy of the report of such audit. - See more	38. Whether any audit was conducted under the Central Excise Act, 1944, if yes, <u>give the details, if any, of disqualification or disagreement on any matter/item/quantity as may be reported/identified by the auditor</u>

AS PER REVISED GUIDANCE NOTE 2014

64.1 The tax auditor should ascertain from the management whether cost audit was carried out and if yes, a copy of the same should be obtained from the assessee. .

Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the the details of disqualification or disagreement on any matter/ item/ value/ quantity as may be reported/identified by the cost auditor.

The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.

64.2 In cases where cost audit which might have been ordered is not completed by the time the tax auditor issues his report, he has to report appropriately in this report stating that since cost audit is not completed and the cost audit report is not available with the assessee.

64.3 The tax auditor should examine the time period for which the cost audit if any has been required to be carried out.

Information is required to be given only in respect of such cost audit report the time period of which falls within the relevant previous year.

In effect the information is required to be given in respect of that cost audit report which is received upto the date of tax audit report.

REPORTING FOR CENTRAL EXCISE:(clause 38)

- Revised 3CD report do not require the attachment of EXCISE audit report with Tax Audit report and
- Requires us to report on qualifications in cost audit report if any .

AS PER REVISED GUIDANCE NOTE 2014

65.1 The tax auditor should ascertain from the management whether any audit was conducted under the Central Excise Act, 1944 and if such audit was carried out, obtain a copy of the report.

Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details if any, of disqualification or disagreement on any matter/ item/ value/ quantity as may be reported/identified by the auditor.

The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.

65.2 In cases where excise audit which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since excise audit is not completed and the excise audit report is not available with the assessee.

65.3 The tax auditor should examine the time period for which the excise audit, if any, has been required to be carried out. Information is required to be given only in respect of such excise audit report the time period of which falls within the relevant previous year.

In effect the information is required to be given in respect of that excise audit report which is received upto the date of tax audit report.

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<u>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/quantity as may be reported/identified by the auditor.</u>

Audit under Service tax to be reported - Report on Audit conducted under section 72A

Auditor has to report whether any audit was conducted under section 72A of the Finance Act and has to give details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor. (Clause 39)

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		

- Column of Turnover is added.
- Preceding year data is to be provided.

Ratio Analysis of Two years

- Up to last year Auditor was required to disclose Ratio of current year only but now auditor needs to disclose ratio of preceding financial year also.

In addition to this auditor, has also to report the total turnover for the previous year as well as for preceding financial year.
(Clause 40)

Sr. No.	Particulars	Old Form 3CD	New Form 3CD – Changes Under Lined and in Bold
	FORM NO. 3CD – PART B		<p><u>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 along with details of relevant proceedings.</u></p> <ul style="list-style-type: none"> ▪ <u>VAT, Excise, Service Tax, Customs, Municipal Tax, Luxury Tax, STT, CTT, Central Sales Tax, Octroi, Stamp Duty, Toll Tax, RTO/Road Tax, Electricity Duty, Professional Tax.</u> ▪ <u>Can you think of more taxes?</u> ▪ <u>Details of proceedings to be given.</u>

Details of Demand and Refund under other Laws

Auditor has to furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings. (Clause 41)

Example : Vat, Service tax, Excise, customs, Municipal tax, Octroi, R M C, etc.,

AS PER REVISED GUIDANCE NOTE 2014

68.1 The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1956 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/ refund orders issued by the governmental authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act.

Normally, the Indirect tax laws such as Central Excise Duty, Service Tax, Customs Duty, Value Added Tax, CST, Professional Tax etc would be covered as other tax laws. Hence, the cess or duty like Marketing Cess, Cess on Royalty, Octroi Duty, Entry Tax etc. would not be covered as other tax laws.

However, the auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

68.2 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. . The tax auditor should verify the books of account and the orders passed by the respective Department for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same.

If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause.

68.3 The tax auditor should maintain the following information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

Sr. No.	Name of the applicable Act	Demand refund order No., If any	Date of Demand raised refund issued	Financial year to which the demand / refund relates	Amount of demand raised / refund issued	Adjustment of refund against demand, if any	Remarks
1	2	3	4	5	6	7	8

- 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>

+ Add

✖ Delete

S.No		Year	Name of other Tax law	Type (Demand raised/Refund received)	Date of demand raised/refund received	Amount	Remark
1		2001-02	Select	Select			
<div>+ Add</div> <div>- Delete</div>		2002-03	Select	Select			
		2003-04	Select	Select			
		2004-05	Central Excise Duty	Demand raised			
		2005-06	Central Custom Duty	Refund received			
		2006-07	Service Tax				
		2007-08	Sales Tax/VAT				
		2008-09	State Excise Duty				
		2009-10	Other Indirect Tax/duty				
Member		2010-11					
		2011-12					
FRN (Firm Reg		2012-13					
		2013-14					
As		2014-15					
		2015-16					
		2016-17			Select		
		2017-18					
		2018-19					
		2019-20					
		2020-21					

Important points for Tax Auditors

Important Points for Tax Auditors

- Maintain detailed working papers (SA 230):
 - ✓ Work Sheets / Time Sheets
 - ✓ Query Sheets /Explanatory Notes /Checklists
 - ✓ Materiality factor calculation
 - ✓ Relevant Standards on Auditing
 - ✓ Judicial Pronouncements relied upon
 - ✓ Certificates – 269SS/T, 40A(3), 40A(2)(b)
 - ✓ Management Representation Letter

**ISSUES ON ADDITIONS ON BASIS OF STOCK
STATEMENTS SUBMITTED TO BANKS**

Pledge V. Hypothecation of stocks

a) It is well settled that there is a real difference between pledging and hypothecation because in the case of the pledging, the goods remain under the lock and key of the bank and, therefore, are liable to be physically checked and examined but in the case of hypothecation such goods remain in the custody of the assessee and the physical verification of the goods hypothecated to the bank is normally not done. The figures reported to the bank authorities cannot be taken at their face value as true and correct and the Assessing Officer cannot make additions on such basis

– ITO v. Devi Dayal Rice Mills [2002] 75 TTJ (Asr.) 24

b) Where assessee hypothecated, and did not pledge, stock with banks for obtaining overdraft facilities and submitted stock statements on estimate basis for getting better loan facilities, no addition could be made on account of alleged undervaluation of stock found on comparing stock statements given to banks and stock declared in books.

c) There are a number of reasons in commercial and business practice where the assessee who obtains a loan from banks, reports a higher figure of stock in hand than what is actually with them, in order to show that the bank is safe and secure and its interest is not in jeopardy. The figures reported in such fashion to the bank authorities cannot be taken at their face value as true and correct and the Assessing Officer cannot make additions on such basis.

- *ITO v. Jagdip Kanjibhai* [2000] 112 Taxman 280 (Ahd.) (Mag.)

Difference between stock statement given to bank dated 28th March and book stock of 31st March

Where bank overdraft/ CC is secured by hypothecation of stocks and not pledge of stocks and difference of stock as on 31-3-1974 disclosed by the assessee to the bank (as per statement submitted on 28-3-1974) and closing stock as per the books of the assessee as on 31-3-1974 and there were sales between the two dates, no addition on account of the discrepancy between the stock of the assessee as on 31-3-1974 as per books and with the bank as on 31-3-1974, was warranted

- *ITOV. Khazanchi Bros.* [1982] 14 TTJ (Chd.) 223

Where part of stock in stock statement belonged to sister concern/partner/principal (consignor)

Merely because there was difference between stock shown in statement given to bank to avail overdraft and closing stock shown in the books of account no addition under section 69 could be made where assessee explained that part of stock shown in bank statement was in fact belonged to its sister concern

- *ITO v. Muni Lal Sukhwant Rai Khanna* [1983] 17 TTJ (Chd.) 514.

Where difference in stock as per statement of pledged stock furnished to bank and stock disclosed in books of account was due to reason that stocks belonging to one of partners was also included with his consent in hypothecated stocks to bank, no addition on account of suppressed stocks, could be made

- *ITOV. Vigyan Chemical Industries* [1991] 40 TTJ (Delhi) 81

Where contention of assessee that stock statement furnished to bank was inflated and that statement also included the stock of the agriculturists lying in the godown of the assessee, was not controverted by the Assessing Officer addition made by the Assessing Officer only on the basis of the stock statement submitted to the bank was not justified.

***ITO v. Devi Dayal Rice Mills* [2002] 75 TTJ (Asr.) 24**

Difference in valuation

Where difference between the value of stocks as per books and value of same stocks as given in bank statement had been indicated in the statement of materials provided for obsolescence and same. had been treated as obsolete stocks, there was no undervaluation of closing stock by assessee and, consequently, no addition could be made on that account

- *IAC v. Fibreglass Pilkington Ltd* [1989] 35 TTJ (Born.) 581.

Where valuation of closing stock in statement submitted to bank was made at cost inclusive of excise duty paid but valuation of closing stock in assessee's books was made exclusive of excise duty and this method was not only a recognised method but was also being consistently followed by assessee, no addition to assessee's income on account of discrepancy in valuation of stock was justified.

- *Gujarat Processing Works v. ITO* [1997] 58 TTJ (Ahd.) 168

Difference between stock register and bank stock statements

Where stock register maintained by assessee was checked from time to time by various Government authorities such as civil supplies department, sales tax department, etc., and no discrepancy was found by them therein, addition made for difference between stock register and bank stock statement not justified. In the instant case, when the assessee had furnished certain figures to the banks and these figures differed from the stock register, it was for the assessee to prove, which one was correct. The assessee had accepted that the onus was on it and had referred to certain facts to show that the figures, as per the stock register, were correct.

The statements given to the bank regarding the goods hypothecated with them was of interest only to the assessee and the bank. Those statements were not available to any other authority, whereas the position of the stock, as represented in the stock register, was a matter of interest to many other authorities. All the Government Departments had access to these registers and had a right to be satisfied that these registers disclosed the correct state of affairs. It was seen that the stock register had been considered and verified by several authorities. They had not noticed any discrepancies. They had also satisfied themselves that the figures given in stock registers were correct. It is now well settled that the department cannot rely merely on the bank statements. They have to consider all other relevant materials. In the instant case, it was found that the stock held by the assessee had been checked and found correct by many Government authorities. So, that had to be preferred to the bank statements. The addition made on account of discrepancy in the stock was not justified.

- *Jai Sharda Rice Mills v. ITO* [1991] 36 ITD 254 (Asr.)

Where assessee was maintaining regular books of account and books were duly accepted by Assessing Officer, sales tax department and excise department and no addition had ever been made by Assessing Officer by rejecting books and neither purchases nor sales shown in regular books were doubted and Assessing Officer had not brought on record any material or evidence that assessee had dealt in goods in question outside books of account and where assessee had duly reconciled discrepancy in stock as appearing in hypothecation statement and as per books, no addition could be made in that regard.

- *Poly Plastics v. Asstt. CIT*[2003] 1 SOT 66 (Chd.)

Addition made on basis of estimated figure of hypothecated stock submitted to bank in order to get overdraft facility, could not be justified in absence of any discrepancy in account books.

- *Asstt. CIT v. Lakshmi Printing Co.* [1993] 46 TTJ (Chd.) 177

Whether, there being no reliable and cogent material to establish that assessee made investments in additional stocks, figures reported to bank could not form basis for Assessing Officer to conclude that there had been unexplained investment in stocks.

-Ramniklal & Bros. v. ITO [1995] 81 Taxman 26 (Ahd.) (Mag.)

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Without establishing a collusion between assessee and bank to which assessee had hypothecated stock, Assessing Officer was not justified in adding difference between book value of assessee's stock and its value declared to bank while hypothecating it to bank for overdraft.

-Asstt. CIT v. Axia Engineering Co. [1996] 54 TTJ (Chd.) 410

The rule that any statement furnished by the assessee to the bank, whether in connection with hypothecation or pledging of goods, is an admission on the part of the assessee and has to be explained by him, is not an absolute rule, and in several cases it has been established that statement furnished to the bank is not a precise and accurate statement but is given on estimate basis merely to complete the formality and is not verified.

- *ITO v. Harpreet Industries* [1996] 59 ITD 346 (Chd.)

Where there was nothing to show that assessee was having higher stock than disclosed in books of account, mere difference in stock statement furnished by assessee to bank, which was admittedly inflated to obtain higher cash credit, and assessee's books of account could not justify addition of such difference to assessee's income.

- *ITO v. Tilak Rice Mills* [2002] 75 TTJ (Asr.) 20

Where though there was discrepancy between stock as per books of account and that shown in statement given to bank allegedly to obtain higher credit facilities, Tribunal had accepted explanation given by assessee and in that context had stated that when books of account or accounting system had been found to be genuine supported by vouchers, etc., addition was not justified, Tribunal's finding did not call for any interference

- *CITv. Arrow Exim (P.) Ltd* [2010] 230 CTR (Guj.) 293

Survey and stock surrender

Pursuant to survey under section 133A, which disclosed excess stock as against book stock at assessee's business premises, assessee, after reducing value of stock, admittedly belonging to its two sister concerns, admitted balance difference as income from unexplained investment and declared same in its return. Assessing Officer, however, in course of assessment proceedings, having found wide variation between book stock and stock statements submitted to bank for availing of credit facilities inferred excess investment as assessee's unexplained investment, and made addition after working out deemed income with reference to peak value of stock, allowing credit for book stock as also stock surrendered on survey operation.

Held - A heavy burden lay on assessee to prove that books of account alone gave a correct picture and its own statement given to Bank was motivated, and, courtesy survey operations, such burden in proving that its books did not reflect true picture and statements SUBMITTED to Bank were, in fact, inflated, was amply discharged and, therefore, it would be incorrect as well as inconsistent with facts on record to ignore same. In view of fact that stock of assessee or any business entity for that matter, could not be held at constant levels throughout year, assessee's plea that its entire excess stock stood discovered and surrendered at time of survey could not be accepted. In view of above, addition made by Assessing Officer subject to reduction made to extent of stock of its two sister concerns was to be upheld, and since addition was being sustained on basis of peak value of stock, addition on basis of stock found on survey was to be simultaneously deleted.

- *ITO v. Harish Hosiery Mart* [2006] 6 SOT 175 (Ahd.)

Estimate Physical stock difference

Where inflated stock statement given to bank for obtaining higher loan facilities was on an estimate basis without any actual physical verification and stock disclosed for assessment purpose was based on actual physical verification, difference in value of stock could not be treated as assessee's under valuation of stock or undisclosed income.

- *CIT v. Apcom Computers (P.) Ltd* [2007] 158 Taxman 363 (Mad.)

No difference in quantities, only in values

Where there was difference between value of stock shown in accounts . and value disclosed to bank, and Tribunal's finding was that Assessing Officer had not been able to point out any discrepancy in quantity of stock hypothecated to bank and quantity of stock as per books of account, on face of such finding, even if there was some difference in valuation of stock as mentioned above, it could not be said to be resulting into any income from undisclosed sources, coming to assessee, capable of being added to its income.

- *CIT v. Laxmi Engineering Industries* [2009] 308 ITR 279 (Raj.)

Issues in Section 14 A

Clause 21(h)

Amount of deduction inadmissible in terms of section 14A

In the Bombay HC ruling in Godrej & Boyce

- ✓ With insertion of Sec 14A the apportionment of expenditure attributable to earning of exempt income is necessary
- ✓ Primarily, the assessee has to furnish the details of disallowance
- ✓ If the disallowance computed by the assessee is not satisfactory in the opinion of the AO, or when the assessee claims that no expenditure has been incurred in relation to exempt income, then he may proceed with disallowance of expenses
- ✓ The AO must arrive at satisfaction in an objective manner having regard to the accounts of the assessee
- ✓ Once AO has reached satisfaction that the disallowance is warranted, he must compute the same as per Rule 8D

Issues in Section 14 A Contd...

Amount of deduction inadmissible in terms of section 14A –

Bombay HC ruling in Godrej & Boycecontd

- Rule 8D is not arbitrary such that it should be struck down by the court as unconstitutional
- Rule 8D is prospective w.e.f date of its notification 24 March 2008
- So far as attribution of borrowing cost to the investments yielding tax free income is concerned, it is not sufficient to prove that assessee's capital and reserves are more than the value of investments.
- It must be demonstrated that there were actually free funds available with the assessee to establish that the investments were out of own funds.
- The existence of reserves cannot be equated with availability of free funds

Issues in Section 14 A Contd...

Amount of deduction inadmissible in terms of section 14A (Cont ...)

Bombay HC ruling in Godrej & Boycecontd

- For the periods prior to notification of Rule 8D, the AO shall apply any reasonable method to compute the disallowance
- There is no merit in the argument that having paid dividend distribution tax the dividend income ceases to be characterized as tax free income
- Dividend distribution tax is not a tax on dividend but an additional tax on company's profit quantified with reference to the amount of dividend paid

What is auditor's role in reporting ?

- When assessee adopts Rule 8D
- When assessee computes disallowance with other method
- When he claims that no expenditure has been incurred

Issues in Section 14 A Contd...

Amount of deduction inadmissible in terms of section 14A (Cont ...)

No disallowance under 14A if no tax free income earned ?

Delite Enterprises [ITA No. 110 of 2009 (Bombay HC)]

Avshesh Mercantile [ITA No.5779/Mum/2006 & ITA No.208/Mum/2009 (Mumbai Tribunal)]

REI Agro [144 ITD 141 (Kolkata Tribunal)]

Cheminvest [121 ITD 318 (Delhi Special Bench)]

CBDT circular 05/2014 dt. 11/2/2014

Shivam Motors [ITA no 88 of 2014(Allahabad HC)]

Cortech Energy [ITA 239 of 2014(Gujarat HC)]

M Baskaran [ITA 1717/MDS/2013 (Chennai Tribunal)]

No disallowance of admin expense under 14A for investment in subsidiary ?

JM financial (ITA/4521/Mum/2012)

EIH Associated Hotels [ITA 1503/MDS/2012 (Chennai Tribunal)]

Issues in Section 14 A Contd...

**No disallowance of interest be made U/s. 14A r.w. Rule 8D(ii) -
when own funds are sufficient to cover tax free investments and (ii) when
there is no link/nexus between borrowed fund and tax free investments:**

M/s. Bharatiya Reserv Bank Note Mudran Pvt. Ltd, v/s. DCIT LTU B'lore – ITA
NO. 650(Bang)/2011/08-09

Shopper's Stop Ltd, v/s. ACIT – ITA No. 1448 & 4475/Mum/2010 A.Y. 2006-
2007 and 2007-2008

CIT v/s. Gujarat State Fertilizers & Chemicals Ltd, 36 Taxman.com 557 (Guj)

CIT v/s. Suzlon Energy Ltd, 33 Taxman.Com 151 (Guj)

M/s. Balarampur Chini Mills Ltd, v/s. DCIT – ITA No. 504/Kol/ 2011 – A.Y.
2008-2009

ACIT v/s. Best & Crompton Engineering Ltd, 36 Taxmann .com 555

Issues in Section 14 A Contd...

Where Investments were made out of mixed funds and own funds are sufficient to cover tax free investments, then presumptions would arise that the investments are made out of own funds:

Munjal Sales Corpn. Vs CIT 298 ITR 298 (SC)

CIT v/s. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom.)

CIT v/s. Sambandham Spinning Mills Ltd., 298 ITR 306 (Mad)

ITO v/s. Usha Commercial (P) Ltd., 120 TTJ 1004

Issues in Section 14 A Contd...

There should be a nexus/proximate cause between expenditure incurred and tax exempt income:

CIT v/s. Walfort Share & Stock Brokers Pvt. Ltd., 326 ITR 1 (SC)

Additional Commissioner of Income tax v/s. Hero Cycles Ltd., 323 ITR 518 (P&H)

CIT v/s. Winsome Textile Industries Ltd, 319 ITR 204 (P & H)

CIT v/s. Sushma Kapoor 319 ITR 299 (Del)

ACIT v/s. Sun Investments Pvt. Ltd., 48 SOT 159 (Delhi)

Issues in Section 14 A Contd...

Rule 8D not to be uniformly applied without referring to accounts of assessee:

AFL (P) Ltd, v/s. ACIT 37 Taxman.com 274 (Mumabi) (Trib)

ACIT v/s. Punjab State Co-operative & Marketing Federation Ltd,
ITA No. 1579/Chd/2011

Issues in Section 14 A Contd...

No Disallowance is called for when no extra expenses incurred for Managing investment not giving rise to exempt dividend income:

CIT v/s. Metal Man Auto P Ltd., (2011) 336 ITR 434 (P & H)

CIT v/s. Reliance Industries Ltd., (2011) 339 ITR 632 (Bom)

M/s. Bharatiya Reserv Bank Note Mudran Pvt. Ltd, v/s. DCIT MP
43/Bang/13

