CHAPTER 20

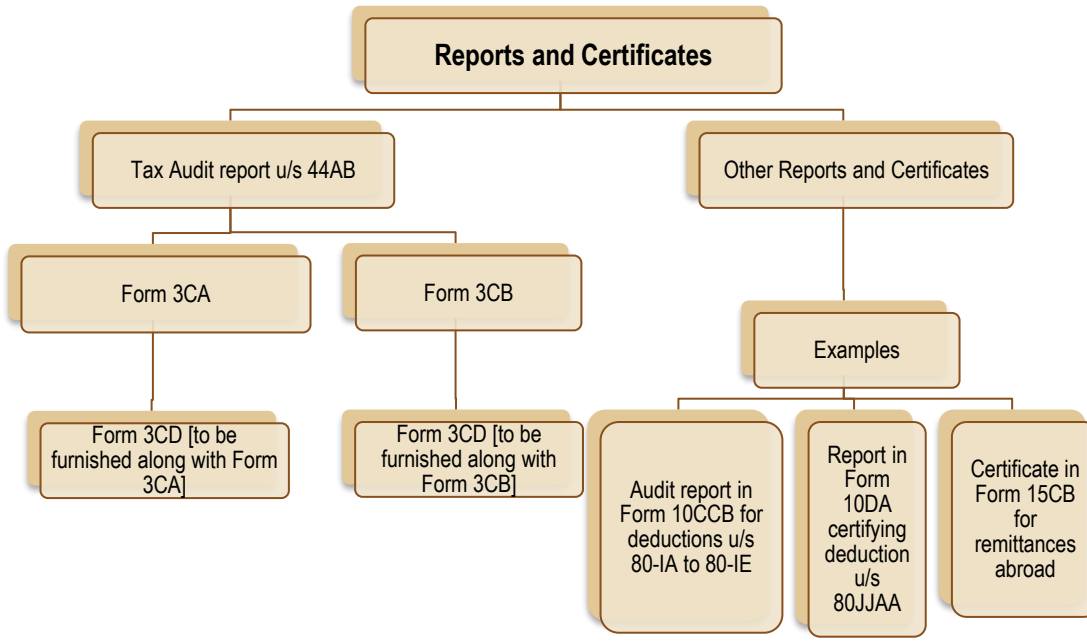
TAX AUDIT AND ETHICAL COMPLIANCES

LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **appreciate** the provisions relating to tax audit and other audit reports and certificates under the Income-tax Act, 1961;
- **examine** the cases where the assessee is mandatorily required to get the books of accounts audited;
- **comprehend and apply** the provisions of section 44AD read with Rule 6G to identify Form No. under which tax audit report is to be furnished;
- **comprehend** the clause-by-clause reporting requirements in Form 3CD;
- **analyse** the ethical implications in case of failure to comply with the reporting requirements.

CHAPTER OVERVIEW



20.1 INTRODUCTION

The provisions relating to tax audit were inserted by the Finance Act, 1984 applicable w.e.f. 01.04.1985, marking a milestone in the history of chartered accountancy profession in the realm of professional opportunity in direct taxes. Since tax audit was introduced to ensure the accuracy of books of accounts maintained, which forms the basis of computation of income, this significant responsibility was entrusted by the Government to chartered accountants.

Time and again changes were made in the reporting requirements of tax audit report widening the scope of tax audit. Considering the significant responsibility entrusted by the Government to

chartered accountants, the ICAI has issued Guidance Note on Tax Audit u/s 44AB of the Income-tax Act, 1961" offering guidance to members for conduct of tax audit, making of report and related matters.

Audit Reports & Reports and Certificates under the provisions of the Income-tax Act, 1961

In addition to section 44AB, there are other provisions in the Income-tax Act, 1961 which require furnishing of report by a chartered accountant. Section 12A(1)(b) requires audit of accounts of a trust or institution and furnishing of audit report in Form 10B/10BB before the specified date for claiming the benefit of exemption under section 11 or section 12. Also, the provisions permitting deductions in respect of certain incomes under sections 80-IA to 80-IE of Chapter VI-A of the Income-tax Act, 1961 require audit of accounts and furnishing of audit report in Form 10CCB before the specified date, declaring that the undertaking or enterprise has satisfied the conditions stipulated under the respective sections for claim of deduction and the amount of deduction claimed is as per the provisions of the Income-tax Act, 1961.

For claiming deduction under section 80JJAA, report of a chartered accountant in Form 10DA has to be furnished before the specified date certifying the deduction to be claimed. Further, every company to which the provisions of minimum alternate tax under section 115JB applies has to furnish a report in Form 29B from a chartered accountant certifying the correctness of computation of book profit. There is a similar requirement for every person to whom the provisions of alternate minimum tax under section 115JC are applicable. The report, in this case, would be in Form 29C certifying that the adjusted total income and alternate minimum tax have been computed in accordance with the provisions of the Act. In case of slump sale under section 50B, the assessee has to furnish in Form 3CEA, a report of a chartered accountant certifying the correctness computation of the net worth of the undertaking or division.

Also, there are certain provisions under the Income-tax Act, 1961 which require certification by a chartered accountant. For instance, certificate from a chartered accountant in Form 15CB is required in case of remittances to non-residents where the remittance or aggregate of such remittances exceed ₹ 5 lakh during the financial year and the remittances are chargeable under the provisions of the Income-tax Act, 1961.

Government's trust on competence and integrity of Chartered Accountants

The requirement of audit of accounts and furnishing of report of chartered accountant certifying the correctness of computations under different provisions of the Income-tax Act, 1961 indicate the trust reposed by the Government on a chartered accountant. Also, Revenue Authorities rely upon the integrity of the chartered accountant to assist tax authorities. The decision rendered by the

Delhi High Court in the case of *Additional CIT v. Jay Engineering Works Ltd. (1978) 113 ITR 389* indicates the extent to which the income-tax authorities place reliance on the audit reports -

"It is quite competent for the income-tax authorities not only to accept the auditor's report but also to draw proper inference from the same. The income-tax authorities can, therefore, come to the conclusion that, since the auditors were required by the statute to find out if the deductions claimed by the assessees were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions.

Where the original account books of the assessee had been destroyed in a fire, it was held that the Appellate Tribunal, in allowing a deduction, could rely upon other material mainly consisting of the auditor's reports from which it could be inferred that the deductions were properly supported by the relevant entries in the account books".

This clearly demonstrates the faith which the Government and the Revenue Authorities have in the competency and integrity of a chartered accountant due to which various statutory duties and responsibilities have been cast upon them under the provisions of the Act. It is in this context that the conduct of the chartered accountant has to be appreciated. Chartered accountants cannot be oblivious to their professional duties and sign audit reports and certificates in a mechanical manner.

Paras 13.3 and 13.4 of the Guidance Note on Tax Audit under section 44AB read as follows -

"The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. The tax auditor should keep necessary working papers about the evidence on which he has relied upon while conducting the audit and also maintain all the necessary working papers. Such working papers should include the auditor's notes on the following, amongst other matters:

(a) work done while conducting the audit and by whom;

(b) explanations and information given to him during the course of the audit and by whom;

(c) decision on the various points taken;

(d) the judicial pronouncements relied upon by him while making the audit report; and

(e) certificates issued by the client/management letters

The requirements of documentation are applicable in respect of tax audit conducted by chartered accountants. For this purpose, attention is also invited to SA 230, Audit Documentation, which

provides that the tax auditor should prepare documentation that provides a sufficient and appropriate record of the basis for the auditor's report and evidence that the audit was planned and performed in accordance with SA's and applicable legal and regulatory requirements."

A chartered accountant in practice would be deemed to be guilty of professional misconduct under clauses (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

In this chapter, we would be first discussing the reporting requirements under different clauses of Form 3CD. Thereafter, with the aid of case studies, the ethical aspects to be considered by a chartered accountant while undertaking tax audit and issuing reports and certificates under the different provisions of the Income-tax Act, 1961 and the Rules made thereunder have been explained.

It may be noted that in certain clauses the tax auditor, in addition to the reporting requirements under the said clauses, has to qualify his report in para 3 of Form 3CA or para 5 of Form 3B, as the case may be.

It may also be noted that penalty under section 271J would be attracted in the hands of, *inter alia*, an accountant for furnishing incorrect information in any report or certificate furnished under any provision of the Income-tax Act, 1961 or Income-tax Rules, 1962. The quantum of penalty is ₹ 10,000 for each such report or certificate.

20.2 TAX AUDIT UNDER SECTION 44AB

Under section 44AB, it is obligatory in the following cases for a person carrying on business or profession to get his accounts audited before the "specified date" by a Chartered Accountant:

(i) if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year ≤ 5% of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. ≤ 5% of such payments.

Payment or receipt by a cheque or by a bank draft which is not account payee, would be deemed to be made in cash.

The twin conditions of paragraph with respect to cash receipts and cash payments is to be satisfied together. Further, if the sales, turnover or gross receipts is > 10 crores, the person is required to get his accounts audited even if these conditions are fulfilled.

(ii) if the gross receipts in profession exceed ₹ 50 lakhs in any previous year.

(iii) where the assessee is covered under section 44AE, 44BB or 44BBB and claims that the profits and gains from business are lower than the profits and gains computed on a presumptive basis in any previous year.

(iv) where the assessee is carrying on a notified profession under section 44AA, and he claims that the profits and gains from such profession are lower than the profits and gains computed on a presumptive basis under section 44ADA and his income exceeds the basic exemption limit in any previous year.

(v) where the assessee is covered under section 44AD(4) and his income exceeds the basic exemption limit in any previous year.

The persons mentioned above has to get his accounts audited by an accountant before one month prior to the due date of filing return of income specified under section 139(1) and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Section 44AB is not applicable in case of a person who declares profits or gains for the previous year in accordance with the provisions of section 44AD(1) or 44ADA(1). This section shall also not apply to an assessee, being a non-resident who derives income of the nature referred to in section 44B i.e., from operation of ships or section 44BBA i.e., from operation of aircraft.

For this purpose, the CBDT has prescribed under Rule 6G, Forms 3CA/3CB/3CD containing forms of audit report and particulars to be furnished therewith. In the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, Form 3CA has to be furnished. In the case of a person who carries on

business or profession whose accounts are not required to be audited under any other law, Form 3CB has to be furnished. The particulars required to be furnished under section 44AB is to be furnished in Form 3CD. In a case where the accounts of a person are required to be audited by or under any other law before the specified date, it will be sufficient compliance if the person gets his accounts audited under such other law before the specified date and also furnishes by the said date, the report of audit required under such other law and a further report by an accountant in Form 3CA.

Sales, Turnover and Gross Receipts

The provisions relating to tax audit under section 44AB apply to every person carrying on business, if his total sales, turnover or gross receipts in business exceed the prescribed limit (₹ 1 crore or, in certain specified cases, ₹ 10 crore) and to a person carrying on a profession, if his gross receipts from profession exceed the prescribed limit (₹ 50 lakhs) in the previous year 2024-25. However, the terms "sales", "turnover" or "gross receipts" are not defined in the Act, and therefore, the meaning of the aforesaid terms has to be considered for the applicability of the section.

The words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

Applying the above generally accepted accounting principles, a few typical cases may be considered:

(i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.

(ii) Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.

(iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.

(iv) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

(v) Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year/s.

(vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.

(vii) Sale proceeds of property held as investment property will not form part of turnover.

(viii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However, if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover.

The term "gross receipts" is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. Broadly speaking, the following items of income and/or receipts would be covered by the term "gross receipts in business":

(i) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;

(ii) Any indirect tax re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995;

(iii) The aggregate of gross income by way of interest received by the money lender;

(iv) Commission, brokerage, service and other incidental charges received in the business of chit funds;

(v) Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.) and if the same is credited to a separate account in the books, only the net surplus on this account should be added to the turnover for the purposes of section 44AB;

(vi) The net exchange rate difference on export sales during the year on the basis of the principle explained in (v) above will have to be added;

(vii) Hire charges of cold storage;

(viii) Liquidated damages;

(ix) Insurance claims - except for fixed assets;

(x) Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;

(xi) Gross receipts including lease rent in the business of operating lease;

(xii) Finance income to reimburse and reward the lessor for his investment and services;

(xiii) Hire charges and instalments received in the course of hire purchase;

(xiv) Advance received and forfeited from customers.

(xv) The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

Note *- Where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (i.e., ₹ 1 crore & ₹ 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not.*

However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded.

Example 1. DB Pvt. Ltd. has a total turnover of ₹ 10.25 crore for the F.Y. 2024-25. Its receipts and payment during the P.Y. 2024-25 are made otherwise than by way of cash.

DB Pvt. Ltd has to mandatorily get its books of account audited under section 44AB, since its turnovers for the P.Y. 2024-25 exceed ₹ 10 crores, irrespective of the fact that its entire receipts and payments are in a mode other than cash.

Example 2. DB Ltd. has a total turnover of ₹ 9 crores for the F.Y.2024-25. Out of this, only ₹ 7 crores is received during the previous year 2024-25. These amounts are received through account payee cheque/bank draft and other permissible electronic modes. Apart from this, it also received advance of ₹ 4 crores for the future supply of goods. Out of such advance, it received ₹ 46 lakhs in cash. Assume that all payments are made otherwise than by way of cash. Is DB Pvt. Ltd. mandatorily required to get its accounts audited?

For the purpose of computing the threshold limit of cash receipts, total receipts including the amount received for turnover need to be considered. Since in the present case, ₹ 46 lakhs does not exceed ₹ 55 lakhs i.e., 5% of total receipts of ₹ 11 crores (₹ 7 crores *plus* ₹ 4 crores), DB Pvt. Ltd. is not required to mandatorily get its accounts audited.

20.3 FORM 3CA & FORM 3CB

	Form 3CA	Form 3CB
Applicability	Tax audit report is to be furnished in Form No. 3CA, in a case where the accounts of the business or profession of a person have been audited under any other law like the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.	Tax audit report is to be furnished in Form No. 3CB, in 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. In the case of companies having their accounting year which is different from the financial year, accounts of the financial year are required to be prepared and audited. The audit report shall be in Form No. 3CB. This has been clarified *vide Circular No. 561 dated 22.5.1990.*
Requirement	In this case, it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor along with his (tax auditor's) report in Form No. 3CA with statement of particulars required to be furnished under section 44AB is annexed in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished in Form 3CD by the assessee are true and correct, subject to observations and qualifications, if any.	In this case, the tax auditor is required to give his opinion as to whether or not the accounts audited by him give a true and fair view: (i) in the case of the balance sheet, of the state of affairs as at the last date of the accounting year. (ii) in the case of the profit and loss account, of the profit or loss of the assessee for the relevant accounting year. The second part of the report states that the statement of particulars required to be furnished under section 44AB is annexed to the audit report in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished by the assessee are true and correct, subject to observations and qualifications, if any The tax auditor may have a difference of opinion with regard to the

		particulars furnished by the assessee These differences are to be reported in Para 5 of Form 3CB. [Para 18.6 of the Guidance Note on Tax Audit]
Revision of Tax audit report	As per Rule 6G(3), the report of audit furnished in Form 3CA/3CB along with particulars in Form 3CD may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, if there is payment by such person after furnishing of such report which necessitates recalculation of disallowance under section 40 or section 43B. The revised report of audit has to be furnished before the end of the relevant assessment year for which the report pertains. Thus, a scenario may arise where, after issuing the audit report, but before the due date for filing the return u/s 139(1), the assessee may make payment of tax deducted at source or of tax, duty, cess, fee or other payments referred to in section 43B, deduction for which is allowed only on actual payment basis. A question may arise as to whether the revised audit report can be revised again. There is no limit to revise the tax audit reports.	

20.4 FORM 3CD – STATEMENT OF PARTICULARS REQUIRED TO BE FURNISHED UNDER SECTION 44AB

This form prescribes the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 in case of both corporate and non-corporate assessees carrying on business or profession as Annexure to the audit report in Form 3CA or Form 3CB. This form has been designed to facilitate the determination of assessee's income from business or profession.

As per Para 19.3 of the Guidance Note on Tax Audit, while furnishing the particulars in Form No. 3CD, it would be advisable for the tax auditor to consider the following:

(a) If a particular item of income/expenditure is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.

(b) If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.

(c) If any particular clause in Form No. 3CD is not applicable, he should state that the same is not applicable.

(d) In computing the allowance or disallowance, he should keep in view the law applicable in the relevant year, even though the form of audit report may not have been amended to bring it in conformity with the amended law.

(e) In case the assessee has furnished prescribed particulars in part or piecemeal or relevant form is incomplete or the assessee does not give the information against all or any of the clauses, the auditor should not withhold the audit report. In such a case, he should qualify his report in para 3 of Form 3CA or para 5 of Form 3CB as applicable on matters in respect of which information is not furnished or if furnished, are inadequate/insufficient.

(f) The information in Form No. 3CD should be based on the books of accounts, records, documents, information and explanations made available to the tax auditor for his examination.

(g) In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in para 3 of Form No. 3CA or para 5 provided in Form No. 3CB, as the case may be.

(h) Where in respect of any particular aspect, reporting is required at more than one clause, in that case, information may be furnished at any one of the clause and reference may be given at other clause.

Clause by clause analysis of Form 3CD

Clause	Particulars	Reporting requirements in relation to the relevant clause
	PART A	
1.	Name of the assessee	(i) The name of the assessee whose accounts are being audited under section 44AB should be given as specified in PAN. (ii) In case there is a different trade name, the same should be reported. (iii) If the tax audit is in respect of a branch, name of such branch should be mentioned along with the name of the assessee. (iv) In case of change in the name of the assessee, if the change has taken place during the financial year, name at the end of the financial year should be stated. However, if the change in name has

		taken place after the close of the financial year but before signing of tax audit report, name as at the year ending date should be mentioned. In either case, fact of name change should be suitably clarified as an observation in audit report.
2.	Address	(i) The address to be mentioned should be the same as has been communicated by the assessee to the Income-tax Department as on the date of signing of the audit report. (ii) If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given. (iii) In the case of a company, the address of the registered office should be stated. (iv) In the case of other assessees, the address of the principal place of business should be stated.  *The tax auditor should verify the relevant details of the assessee from the available income tax records or from the profile of the assessee on Income-tax portal. In case of difference, the same should be given as an observation in the audit report.*
3.	Permanent Account Number or Aadhaar Number	(i) The permanent account number (PAN) allotted to the assessee should be indicated. (ii) Clause further asks to mention Aadhaar number (in case of Individuals) as an alternative. (iii) It may be noted that in the e-filing format, PAN is a mandatory field and Aadhaar is an optional field.
4.	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. If yes, please furnish the registration number, GST number or any other identification number allotted for the same	The auditor is required to examine from the appropriate evidence, the registration number or any other identification number, if any. For any indirect tax, if multiple registration numbers are available, all registration numbers should be examined by the tax auditor and duly reported.  *The auditor should obtain the list of indirect taxes applicable on him if the different types of indirect taxes are leviable on him and that too in multiple states.* *It is recommended that the tax auditor should obtain from the assessee:* - *list of indirect taxes applicable on him* - *copy of registration certificates issued by the*

		various authorities clearly mentioning the registration number under that relevant law. *Where 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 Importer Exporter Code (IEC) may be obtained, and information be accordingly furnished.*
5.	Status	The status of the assessee is to be mentioned as included in the definition of person in section 2(31) namely, individual, Hindu Undivided Family, company, firm, an association of persons or a body of individuals, whether incorporated or not, a local authority or artificial juridical person. It should not be confused with the residential status. In case of proprietorship concern, the status shall be quoted as individual.
6	Previous year	The relevant previous year should be mentioned i.e., starting from 1st April to 31st March. If the business is started during the year, the date of starting of business to 31st March. In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc., the date of beginning and ending of the previous year may be different, the auditor may accordingly mention the relevant date of beginning and ending of the previous year.
7.	Assessment Year	The assessment year relevant to the previous year for which the accounts are to be audited should be mentioned.
8.	Indicate the relevant clause of section 44AB under which the audit has been conducted	The auditor is required to mention the relevant clause of section 44AB under which the audit has been conducted. In case the assessee is carrying on business and his total sales, turnover or gross receipts as the case may be, exceeds ₹ 1 crore in the relevant previous year, the auditor is required to mention clause (a) of section 44AB. If the assessee is carrying on profession and his gross receipts exceed ₹ 50 lakhs in the relevant previous year, the auditor is required to mention clause (b) of section 44AB. Likewise, if the audit under section 44AB is being conducted by virtue of provisions of section 44AE, 44BB and 44BBB, the auditor is required to mention clause (c). For audit being conducted by virtue of provisions of

		section 44ADA, clause (d) is to be mentioned under this head. Where a person is required by or under any other law to get his accounts audited, say a company, a society etc. then audit under section 44AB is conducted under the third proviso to section 44AB and not under clause (a) or (b) of that section.
8a	Whether the assessee has opted for taxation u/s 115BA/ 115BAA/ 115BAB/ 115BAC[1]/ 115BAD/ *115BAE*?	Assessee is required to pay income-tax at the rates specified in the annual Finance Act. However, sections 115BA, 115BAA, 115BAB, 115BAD and 115BAE provide option to the assessee to pay tax at special rates and forego certain deductions, exemptions etc. The assessee can opt to pay tax under the rates prescribed in the Finance Act or the one made available by any of the aforesaid sections. The tax auditor has to mention whether the assessee has opted for taxation under any of the aforesaid sections and in case answer is Yes, then, he has to select the appropriate section. With effect from A.Y. 2024-25, tax shall be payable as per section 115BAC, unless the assessee being an individual, HUF, AOP (other than co-operative society) or BoI or an artificial Juridical person exercises the option to shift out of the default scheme and pay tax under the optional tax regime as per the normal provisions of the Act. Companies can pay tax as per the normal provisions of the Income-tax Act, 1961 or opt to pay tax as per section 115BAA or section 115BAB, subject to fulfillment of conditions stipulated thereunder and forgoing certain exemptions/deductions. Likewise, Co-operative Societies can pay tax as per the normal provisions of the Income-tax Act, 1961 or opt to pay tax as per section 115BAD or section 115BAE, subject to fulfillment of conditions stipulated thereunder and forgoing certain exemptions/deductions. The tax auditor has to examine the income tax return of the previous year to verify the option which has been exercised by the assessee.  *For the purpose of reporting under clause 8a, the tax auditor should verify whether –* ❑ *The application for exercise of*

[1] With effect from A.Y. 2024-25, tax shall be payable as per section 115BAC unless the assessee being an individual, HUF, AOPs (other than co-operative society) or BoIs or an artificial Juridical person exercises the option to shift out of the default scheme and pay tax as per the normal provisions of the Act.

			option in the prescribed form being 10-IB, 10-IC, 10-ID, 10-IF and 10-IFA has been furnished electronically under section 115BA, 115BAA, 115BAB, 115BAD and 115BAE. ❑ *In case of section 115BAC, the auditor should verify whether the assessee has furnished in Form 10-IEA the option to shift out of the default tax scheme under section 115BAC and pay tax under the optional tax regime as per the normal provisions of the Act, is filed by the assessee.* ❑ *In case, the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the concessional regime or otherwise and based on written representation, the reporting under this clause should be made.* ❑ *Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.*
PART B			
9.	(a)	If firm or association of persons, indicate name of partners/members and their profit sharing ratios.	Where the assessee is a firm or association of persons (AOP) or body of individuals, the names of partners of the firm or members of the AOPs or BOIs and their profit sharing ratios (%) have to be stated. In case where the partner of a firm or the member of AOP/ BOI acts in a representative capacity, the name of the beneficial partner/member should be stated. Thus, the details of partners or members during the entire previous year will have to be furnished.  ❑ *The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or AOPs including any supplementary documents or other documents effecting such changes.* ❑ *The tax auditor should obtain certified copies of the deeds, documents, understanding, notice of changes etc. including certified copies of the acknowledgment, if any, evidencing filing of documents with the concerned authorities, if registered.*

			❑ *In case of certain AOPs/BOIs, where shares are not precisely ascertainable during the previous year resulting in a situation wherein the shares of members are indeterminate or unknown, the relevant fact should be stated.*
	(b)	If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.	If there is any change in the partners of the firm or members of the AOPs/ BOIs or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change must be stated. All the changes occurring during the entire previous year must be stated.
10.	(a)	Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).	The principal line of each business is to be reported. If the assessee is in more than one business, the information has to be furnished in respect of all business. i.e., the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry. In case a person belongs to service sector, the nature of each type of service should be broadly stated. Thereafter, the auditor is required to mention the sub-sector pertaining to the sector selected. The code is to be mentioned against the nature of business pertains to the main area of business activity.
	(b)	If there is any change in the nature of business or profession, the particulars of such change.	Any material change in the business should be precisely set out. The change will include change from manufacturer to trader as well as change in principal line of business. Likewise, any addition to or other than temporary discontinuance of, a particular line of business may also amount to change requiring reporting. However, temporary suspension of the business may not amount to change and therefore need not be reported.  *A review of business report or the minutes of meetings would enable the tax auditor to note the changes, if any. He may make necessary enquiries on this basis and seek information to determine whether any change has occurred or not. If need be, the tax auditor should get a declaration from the assessee regarding change in the nature of business.*

			In case of a business reorganization/reconstruction, if there is a similar line of activity, no reference needs to be made. However, if a new line of activity emerges, the same may be stated. If any line of activity is being hived off in case of restructuring, the same may be reported.
11.	(a)	Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.	As per section 2(12A), books or books of account includes ledgers, daybooks, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device. Rule 6F has prescribed the books of account and other documents to be kept and maintained by a person carrying on certain professions specified in section 44AA(1). Section 44AA(2) provides that persons carrying on business or profession, other than those specified in section 44AA(1), shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, if his income from business or profession exceeds the monetary limits prescribed under section 44AA(2) or his total sales, turnover or gross receipts in business or profession exceed the monetary limits prescribed under section 44AA(2) in any one of the three years immediately preceding the previous year.
	(b)	Lists of books of account maintained and the address at which the books of account are kept. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of account are not kept at one location, please furnish the addresses of	The address at which the books so maintained are kept is also required to be mentioned under this clause. In case the books of accounts are kept at more than one location then the details of address of each such location along with the detail of books of account maintained thereof is to be stated. In case, where books of account are maintained and generated through computer system, 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 is to be mentioned under this clause. Where the books of account are stored on cloud or online, IP address (unique) of the same may be reported. It is to be specified which books of account have been maintained in computer system and which of the records have been maintained in hard copy form.

		locations along with the details of books of account maintained at each location).	 *The tax auditor should obtain from the assessee a complete list of books of account and other documents maintained by him (both financial and non-financial records) and make appropriate marks of identification to ensure the identification of the books and records produced before him for audit. The list of books of account maintained by the assessee should be given under this clause.*
	(c)	List of books of account and nature of relevant documents examined.	Books of accounts examined would constitute the books of original entry and the other books of account. In addition to the list of books of accounts examined, the extent of examination is also to be reported. Whereas sub-clause (b) requires furnishing list of books of account maintained by the assessee and address of the place where books of account are kept, sub-clause (c) requires the tax auditor to state a list of books of account and the nature of relevant documents that he has examined.  *The list of books of account prescribed, maintained and examined has to be stated under this clause. There may be difference between the three lists. For example, books of account may have been prescribed but all the prescribed books might not have been maintained or the entire books of accounts maintained might not have been produced for examination. The tax auditor should exercise his professional judgment in order to arrive at the conclusion whether such a situation warrants any disclosure or qualifications while forming his opinion on the matters covered by reporting requirements in Form No. 3CB.*
12.		Whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section [44AD, *44ADA,* 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G (provisions relating	Where the profit and gains of the business or profession are assessable to the tax under presumptive basis under any of the given sections, the amount of such profit and gains credited to the profit and loss account should be stated under this clause. The amount to be mentioned in this clause means amount included in the profit and loss account. The tax auditor is not required to indicate as to whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the report requirement gets satisfied, if the amount as per profit and loss account is reported.

		to shipping business), First Schedule (Insurance business) or any other relevant section].	 *Even where the assessee opts for presumptive taxation, the tax auditor should consider to impress upon the assessee that it would be advisable to maintain some basic records to support the turnover/gross receipts declared for presumptive taxation.*
13.	(a)	Method of accounting employed in the previous year.	Section 145 provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The hybrid system of accounting, viz. mixture of cash and mercantile, is not permitted. However, the assessee may adopt cash system of accounting for one business and mercantile system of accounting for other business. Once the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed.
	(b)	Whether there had been any change in the method of accounting employed *vis-à-vis* the method employed in the immediately preceding previous year.	If there is any change in the method of accounting, that is to be reported and the effect thereof i.e., increase or decrease in profits has to be stated under this clause.  *The tax auditor should apply reasonable checks to the earlier year's accounts to ascertain whether there is any change in the method of accounting as compared to that of the year under audit, after obtaining a written confirmation from the assessee as to the method of accounting followed.* It may be noted that in view of section 128 of the Companies Act, 2013, every company is required to keep books of account on accrual basis. ***Note -*** *A change in an accounting policy does not amount to change in method of accounting. A change in the method of valuation of stock will be a change in accounting policy and hence, such change need not be mentioned in clause 13(b).*
	(c)	If answer to (b) above is in affirmative, give details of such change, and the effect thereof on the profit or loss with increase/ decrease in profits.	In case there is any change in the method of accounting, employed *vis-à-vis* the method employed in the immediately preceding previous year, the details of the same, along with impact on the profit for the year need to be mentioned. As regards the impact on profit the concept of materiality is the basic governing factor. If it is not possible to quantify the effect of the change in the method of

			accounting, appropriate disclosure should be made under this clause.
	(d)	Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2)?	In exercise of the powers conferred by section 145(2), the Central Government notified the ICDSs to be followed by all assessees (who are required to get their books of account audited) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources". This clause requires the auditor to state whether any adjustment is required to be made to profit and loss for complying with the provisions of income computation and disclosure standards (ICDS). Such adjustment is required to be stated separately. The increase/decrease in profit and net effect should be reported in the absolute terms. The tax auditor should obtain draft computation of the total income and disclosures required under ICDS.  *For the purpose of clause (d), the tax auditor should obtain draft computation of total income and disclosures required under ICDS. Based on information and books of account, the tax auditor should consider whether any adjustment is required to be made to the profit or loss and if the answer is in affirmative, to state 'yes' otherwise to state 'no'.* *While reporting, auditor has to consider draft of income computation provided by the assessee. This fact should be mentioned in Audit report in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB.*
	(e)	If answer to (d) above is in the affirmative, give details of such adjustments ICDS wise with increase or decrease in profit and net effect.	If answer to 'd' above is in affirmative, the tax auditor is required to quantify the amount of adjustment against each ICDS in clause 'e'.  *Tax auditor may refer technical guide on ICDS issued by the ICAI in July, 2017. In working paper file of ICDS, checklist should be prepared and maintained alongwith computation working for any increase/decrease in income as per ICDS. Also, last year tax audit report should be reviewed to ascertain any effect in current year.*

	(f)	Disclosure as per ICDS (to be given ICDS wise)	This clause requires disclosure of significant income computation and disclosure policies adopted by a person for computation of income chargeable under the head "Profits and gains from business or profession" or "Income from other sources".  *In this clause, if information furnished is based on income computation furnished by the assessee, appropriate disclosure of this fact should be mentioned in Form No. 3CA or 3CB as the case may be.*
14.	(a)	Method of valuation of closing stock employed in the previous year.	Ascertain the method of valuation of closing stock employed during the year. Where there is change in the basis of determining cost, market value or net realizable value even though there is no change in the method of valuation. The auditor should understand the procedure followed by the assessee in taking the inventory of closing stock at the end of the year and valuation thereof.  *The tax auditor should –* ❑ *obtain the inventory of closing stock, indicating the basis of valuation thereof for reporting on the method of valuation of closing stock.* ❑ *review the methods of valuation adopted for valuation of closing stock and compare the same with the method prescribed under section 145A.* ❑ *obtain from the assessee, the inventory valuation sheet of the stock in trade giving quantitative details, method of valuation, rate and total value of each item.* ❑ *ascertain whether the method of valuation is such that the value of closing stock includes the amount of any tax, duty or cess actually paid or incurred by the assessee to bring the goods to the place of its location and conditions as on the date of valuation.*
	(b)	In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit and loss	
15.	Give the following particulars of the capital asset converted into stock-in-trade:		For furnishing the particulars required under this clause, the provisions of section 2(47) [meaning of transfer], section 45(2) [conversion of capital asset into stock-in trade deemed to be transfer of the previous year in which conversion took place], proviso below to section 47(iv) & (v) [transfer of capital asset by a holding company to its subsidiary or vice versa not considered as transfer by virtue of clause (iv) or (v) of section 47 if condition specified thereunder are satisfied. However, such benefit
	(a)	Description of capital asset;	
	(b)	Date of acquisition;	
	(c)	Cost of acquisition;	

	(d)	Amount at which the asset is converted into stock-in-trade.	would not be available where capital asset is transferred by a subsidiary company to its holding company or *vice versa* as stock-in trade] and section 47A [Where transfer of capital asset by a holding company to its subsidiary *or vice versa* not considered as transfer by virtue of clause (iv) or (v) of section 47 but such capital asset is converted into stock-in trade within eight years from the date of transfer, such capital gain would be deemed to be capital gains of the previous year in which such transfer took place] have to be kept in mind. The particulars to be stated under this clause should be furnished with respect to the previous year in which the capital asset have been converted into stock in trade. The clause does not require the details regarding the taxability of capital gains or business income arising from deemed transfer. The description of the capital assets is required to be mentioned, for example, shares, securities, land, building, plant, machinery etc.  *For ascertaining the correct date, the tax auditor will have to refer the accounts of the financial year in which such capital assets is acquired. The date is important to determine whether assets is long term capital assets or short term capital assets.* In this clause, the cost of acquisition as per books of accounts is to be mentioned. In case of depreciable assets, the carrying cost appearing in the books will be written down value. But the value to be reported should be the original cost of acquisition. The amount recorded in the books at which the asset is converted into stock in trade should be stated. Such an amount may not be fair market value as on the date of conversion. The valuation of stock-in-trade is to be examined with reference to AS-2: Valuation of Inventories or Ind AS-2: Inventories, as applicable.
16	Amounts not credited to the profit and loss account, being –		
	(a)	The items falling within the scope of section 28;	Under this clause various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated. **Example**. A Ltd., a manufacturing company sponsored the Dubai trip of Mr. B, seller of construction material, along with his spouse, upon achieving of sales target set

			by the company. Neither any money received in the books, nor any expenses incurred through the books. The same is chargeable to tax as benefit or perquisite arising from business or profession by virtue of section 28(iv). Thus, the same is required to be reported though it is not credited in the profit and loss account.
	(b)	The proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned;	For this clause, the tax auditor should examine all relevant correspondence, records, assessee's particulars on portal of the department and evidence in order to determine whether any particular refund/claim has been admitted as due and accepted during the relevant financial year. The words 'admitted by the concerned authorities' would mean 'admitted by the authorities within the relevant previous year'. Credits/claims which have been admitted as due after the relevant previous year need not be reported here. If the assessee is following cash basis of accounting, it should be clearly reported by the auditor that acceptance of claim during the relevant year without actual receipt has no significance. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be clearly brought out.
	(c)	Escalation claims accepted during the previous year;	The escalation claim accepted during the previous year but not credited to the profit and loss account has to be stated here. Escalation claims would normally arise pursuant to a contract (including contracts entered into in earlier years), if so permitted by the contract. Only those claims to which the other party has signified unconditional acceptance could constitute accepted claims. Mere making of claims by the assessee or claims under negotiations or claims which are sub-judice *[CIT v. Hindustan Housing & Land Development Trust Ltd. [1986] 161 ITR 524 (SC)]* cannot constitute claims accepted.
	(d)	Any other item of income;	Any other item which the auditor considers as an income based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account. If employees contribution to any provident fund or superannuation fund or any other fund is not paid on or

			before the due date under the respective Act, then it becomes income of the assessee. Such information is to be stated in this clause. Similar information is also furnished in clause 20(b) of Form 3CD, therefore, cross referencing may be required. ***Note -*** *In giving the details under* sub-*clauses (c) and (d), due regard should be given to AS-9: Revenue Recognition/Ind AS 115: Revenue from Contracts with Customers, as applicable.*
	(e)	Capital receipt, if any.	The tax auditor should use his professional expertise and judgement in determining whether a receipt is capital or revenue. The capital receipts are not generally credited to the profit and loss account, hence, the auditor should take enough care to check out any transaction generating receipts of capital nature. ***Note –*** *The information under sub-clauses (a), (d) and (e) of clause (16) is to be given with reference to the entries in the books of account and records made available to the tax auditor for the purpose of tax audit under section 44AB. The auditor should check thoroughly the bank account of the assessee and also the cash book to find out any credits regarding any income earned but not credited to the profit and loss account of the assessee. The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause*  *The tax auditor may use his professional expertise and judgement in determining whether the receipt is taxable or not for the purpose of reporting under sub-clauses (a) to (d) of clause 16 and may report in the observation para of audit report, disclosing the basis of the same.*
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 the State Government referred to in section 43CA or 50C, please furnish	Where any land or building or both is transferred during the previous year for a consideration less than the 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. The tax auditor has to furnish the details about the nature of property i.e., whether the property transferred during the year is land or building along with the address of

		details of property, consideration received or accrued and value adopted or assessed or assessable.	such property. The tax auditor should obtain the list of all properties transferred by the assessee during the previous year. The tax 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. For reporting the value adopted or assessed or assessable, the tax auditor should obtain from the assessee relevant information with regard to sale of Land or Building or both during the previous year. 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. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his report in Form 3CA/CB.
18.		Particulars of depreciation allowable as per the Income-tTax Act, 1961 in respect of each asset or block of asset, as the case may be, in the following form:-	With respect to this clause, the tax auditor is required to examine the following: (a) Classification of the asset (b) Classification thereof to a block (c) actual cost or written down value (d) The date of acquisition and the date on which it is put to use (e) The applicable rate of depreciation (f) The additions / deductions and dates thereof (g) Adjustments required – specified as well as on account of sale, etc.
	(a)	Depreciation of asset/block of assets	For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. The tax auditor should ensure that the classification as made by the assessee is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free from doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block. Since the tax auditor is

			not a technical expert, he has to obtain suitable certificate from concerned experts.
	(b)	Rate of depreciation	Once the classification has been ascertained and checked properly, the rates applicable as per the Income-tax Rules, 1962 follow as a natural corollary. The tax auditor must have due regard to the Income-tax Rules, 1962, relevant clarifications from the Department and judicial decisions.  *Under sub-clauses (a) to (b), information in respect of description of assets, block of assets under which the concerned asset is classifiable and the rate of depreciation are to be stated. This will include information about the existing assets. In respect of the existing assets, the computation of depreciation would involve stating the opening written down value of the block of assets which should be taken from the relevant income-tax records. The tax auditor should ensure the opening block of assets matches with the income-tax return filed for the immediately preceding previous year.*
	(c)	Actual cost or written down value, as the case may be.	For the purpose of determination of actual cost, the tax auditor has to be guided by the relevant legal provisions. Since determination of actual cost has got accounting implications, he can rely on the relevant Accounting Standards and Guidance Notes. Depreciation is also allowable on intangible assets like know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. There may be intangible assets like know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature for which the assessee might have incurred costs. From 01.04.2021, intangible asset being goodwill does not qualify for depreciation. The tax auditor should examine this and the basis on which the cost of such intangible assets has been arrived at.
	(d)	Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustment on account of:	In case an asset is purchased in foreign currency on deferred payment basis, the auditor should verify the actual cost on the basis of section 43A. Addition or reduction will be limited to the exchange difference actually paid during the previous year. The tax auditor is required to verify that the adjustments in the cost of fixed assets on account of changes in the rate of exchange of currency in the schedule of fixed assets prepared for

		(i) Central Value Added Tax credits claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March 1994, (ii) change in rate of currency, and (iii) subsidy or grant or reimbursement, by whatever name called.	computation of depreciation as per Income-tax Rules are in accordance with the provisions of section 43A and information about such adjustment is provided under sub-clause (ii) of clause 18(d) of Form 3CD. The provisions of Section 36(1)(iii) and *Explanation 8* to section 43(1) i.e., interest related to the period after asset first put to use should not form part of actual cost of such asset, should be kept in mind for capitalization of interest to the cost of assets. *Explanation* 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Subsidy in respect of asset acquired in any earlier year(s) and received during the year has to be deducted from the written down value of such assets in the year of receipt. Any expenditure for acquisition of any asset etc. exceeding ₹ 10,000 otherwise than account payee cheque/draft drawn on a bank or use of electronic clearing system, then such expenditure shall be ignored for determining actual cost. The tax auditor should also verify that the amount of GST input credit deducted from cost of capital goods tallies with the credit availed on this account. The additions/deductions during the year have to be reported, with dates. Where any addition was made, the date on which the asset was put to use is to be reported. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.  *To ascertain when the asset has been put to use, the tax auditor could call for basic records like production records/installation details/excise records/service tax records/ goods and service tax records/records relating to power connection for operating the machine, title deeds or building completion certificate etc. in case of immovable assets and any other relevant evidence. In the absence of any specific documentation with regard to the effective date from which the asset is put to use, he could get a*

			representation letter from the management, in respect of the assets acquired.
	(e)	Depreciation allowable.	The amount of depreciation and written down value of the block at the year-end is calculated correctly by taking the relevant figure at the beginning of the year and adjusted in respect of the additions/deductions during the year. The tax auditor shall check the WDV at the beginning of the year in respect of each block of assets.  *Wherever a claim for depreciation involves any reliance on any judgement or opinion or other contentions (as to its classification, rate applicable, cost, date on which put to use etc.), it may be advisable for tax auditor to disclose full particulars thereof and the basis on which the depreciation allowable has been determined and vouched by him.*
	(f)	Written down value at the end of the year.	
19.		Amounts admissible under sections: 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), *35ABA,* 35ABB, 35AD, 35CCA, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E[2] *and any other relevant section*	In case the assessee has obtained a separate Audit Report for claiming deductions under any of these sections, he must make a reference to that report while giving the details under this clause. The Tax Auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the applicable provisions of law. The amount not debited to the Profit & Loss Account but admissible under any of the sections mentioned in the clause have to be stated. For example, sections 33AB and 33ABA allow deduction in respect of amount deposited in designated account for specified purposes which as per the accounting principles are not debited to the Profit and loss A/c. The tax auditor should verify the claim of deductions by examining whether the assessee is eligible for deduction under the relevant section, the deduction is correctly computed and whether the assessee fulfils all the conditions specified in the relevant section for allowability of deduction. The tax auditor should also ensure the eligibility of the expenditure/payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority,

[2] *Reference to section 32AC, 32AD, 35AC and 35CCB is not given, since no deduction under these sections is available for the current assessment year.*

			notification issued by the Central Government, any other guideline circular etc. issued in this behalf. Tax auditor should also refer Rule 6 of Income-tax Rules, 1962.  *In case the auditor relies on a judicial pronouncement, he may mention the fact in his observations para provided in Form No. 3CA or Form No. 3CB, as the case may be.*
20	(a)	Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend	Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission.  *The tax auditor should obtain the list of employees eligible for bonus or commission for services rendered with amounts and check the basis of calculation of bonus or commission.*
	(b)	Details of contributions received from employees for various funds as referred to in section 36(1)(va) namely, nature of fund, sum received from employees, due date for payment, actual amount paid and the actual date of payment to the concerned authorities.	Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or ESI fund or any other fund for employees welfare. Section 36(1)(va) permits deduction of any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) are applicable, if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date. In respect of such sum, if any extension is granted by respective authorities, it shall be considered. This can be taken into consideration for determining the due date of payment. Under this clause, details regarding the nature of fund, details of the amount deducted, due date for payment, actual amount paid and actual date of payment to the concerned authorities in respect of provident fund, ESI fund or other staff welfare fund have to be stated.  *Under this clause, the requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/ contract details of the employees so as to ascertain the nature of payments.* *The tax auditor should get a list of various contributions recovered from the employees which come within the*

			scope of this clause and the date on which it is deposited. He should also verify the documents relating to provident funds and other welfare funds. He should verify the agreement under which employees have to make contributions to provident fund and other welfare funds. *The ledger account of contributions from employees should be reviewed; the due dates of payments and the actual dates of payment should be verified with the evidence available. In view of the voluminous nature of the information, the tax auditor can apply test checks and compliance tests to satisfy himself that the system of recovery and remittance is proper.*
21	(a)	Please furnish the details of amounts debited to profit and loss account, being in the nature of capital, personal, advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party, expenditure incurred at clubs, *expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India),* expenditure by way of other penalty or fine not covered above, *expenditure incurred to compound an offence under any law for the time being in force, in*	- Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act. The details of capital expenditure, if any, debited to the profit and loss account should be maintained in a classified manner stating the amounts under various heads separately. The total amount of capital expenditure debited to the profit and loss account is to be reported under this clause in the e filing portal. - Personal expenses debited to the profit and loss account are to be specified under this sub-clause as they are not deductible in the computation of total income under section 37. ***Note*** *- 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.* - Section 37(2B) provides that no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a

		India or outside India, expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person.	political party. Therefore, the expenditure of this nature should be segregated and reported under this clause. The auditor may also keep in mind the provisions of section 80GGB and 80GGC which allow deduction in respect of contribution made by corporate and non-corporate assessees respectively to political parties and electoral trust, as required to be reported by him in clause 33 of Form no. 3CD. - The amount of payments made to clubs by the assessee during the year being cost for club services and facilities used should be indicated under this clause. The fact whether such expenses are incurred in the course of business or whether they are of personal nature should be ascertained. If they are personal in nature, they are to be shown separately under Clause 21(a) referred to earlier. - This clause requires separate reporting of any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law is to be reported. It also requires reporting of expenditure by way of penalty or fine for violation of any law (enacted in India or outside India). The tax auditor should obtain in writing from the assessee, the details of all payments by way of penalty or fine for violation of any laws have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of accounts produced for audit. This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages. The tax auditor should keep in mind the difference between the amount prohibited by law and the amount paid which is compensatory in nature under the relevant statue. Supreme Court in *Mahalakshmi Sugar Mills Co. Ltd. vs CIT 123 ITR 429* and *CIT vs Hyderabad Allwyn Metal Works Ltd 172 ITR 113 (SC)* wherein it was held that when an amount paid by assessee could be regarded as compensatory in character then it would be allowable u/s 37(1) and if it were penal in nature it was not allowable.

			Tax auditor is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law. He is only required to give the details of such items as have been charged in the books of accounts. - In this clause, the tax auditor has to verify and report any expenditure incurred by the assessee during the year to compound an offence under any law for the time being in force, in India or outside India. - This clause requires specifically to report any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, where acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person. The tax auditor should obtain the list of beneficiaries in respect of whom tax has been deducted at source under section 194R to form an opinion as to whether any benefits and perquisites are inadmissible and require reporting under this clause. In case the tax auditor is of the opinion that any amount debited to the profit and loss account is to be disallowed as per section 37 and hence, has to be reported under this clause, then, reporting need not be done under clause 21(b) on amounts inadmissible under section 40(a)(ia) for non-deduction of tax at source. Appropriate disclosure should be made in the audit report in respect of such transactions in the observation in Para 3 of Form No. 3CA or Para 5 of Form No. 3CB, as may be applicable.
	(b)	Amounts inadmissible under section 40(a)(i)/(ia) with details of payment on which tax has not deducted or after deduction, tax has not been paid on or before the	Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Under section 40(a)(i), 100% disallowance attracted with respect to sum paid or payable to a non-resident and under section 40(a)(i)/(ia) 30% disallowance attracted with respect to sum paid or payable to a resident payee on tax is deductible at source and such tax has not been deducted or after deduction has not been paid on or

		due specified under section 139(1) and the amount inadmissible under section 40(a)(iib), 40(a)(iii), 40(a)(iv), 40(a)(v)[3]	before the due date of furnishing return of income under section 139(1). Under this clause, the tax auditor is required to report the details of payment on which tax is not deducted at source and also the details of payment on which tax has been deducted but not paid during the previous year or before due date of filing return of income specified under section 139(1). The tax auditor is advised to give details under this clause for each individual payee. Sub clause 40(a)(iib) provides that (a) any amount paid by way of a royalty, license fees, service fees, privilege fees, service charge or any other fees 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 is inadmissible expenditure. The Tax auditor should verify any such payment made by State Government undertaking to the State Government and should report under clause. The amount of salary which is paid outside India or to a non-resident in respect of which tax has not been deducted but which is required to be deducted under the applicable provisions of the Income-tax Act,1961 or tax has not been paid after deductione is not allowed as a deduction u/s. 40(a)(iii) and the same is required to be reported under this sub-clause. This information is required to be given for each individual payee. The tax auditor should also furnish the date of payment along with the name and address of the payee. 40(a)(iv) provides that any payment to a provident or other fund established for the benefit of employees of the assessee shall be disallowed, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries". The tax auditor is also required to report the same under this sub-clause. Any tax paid by an employer on non-monetary perquisites is exempt in the hands of the employee as per section 10(10CC). Further, as per section 40(a)(v) the tax paid by the employer on non-monetary

[3] *Sub-clause (ic) of section 40(a) relates to fringe benefit tax and sub-clause (iia) thereof relates to wealth-tax. Reference to these sub-clauses are not given since these taxes have been abolished.*

			perquisites provided to employees shall not be deductible in computing profits and gains from business or profession. The tax auditor is required to report the amount of such tax paid by the employer, in case it is debited to the profit and loss account under this sub-clause.  *For this purpose the tax auditor may examine the books of accounts and tax deduction returns.* *In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of section 40(a), the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the view points. In case of voluminous nature of the information, the tax auditor can apply materiality principles, tests checks and compliance tests for verifying the information required to be provided under this clause.* **Note***: Case Studies on the ethical aspects in relation to tax audit under section 44AB and other Audit Reports are presented at the end of this Chapter.* *Case Study 1 pertains to reporting under Clause 21(b)*
	(c)	Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;	Tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is also required to be given in respect of interest/ remuneration paid to member of an AOP/BOI. The inadmissible remuneration, salary, bonus or commission under section 40(b) has to be determined on the basis of the provisions of sub-clause (v) of section 40(b) read with the limits laid down therein. Such limits are laid down as a percentage of book profits. It is advisable for the auditor to obtain from the assessee a detailed working of the inadmissible remuneration, salary, bonus or commission under section 40(b). He has to verify the computation from the instrument or agreement or any other document evidencing partnership including any supplementary documents or other documents effecting changes which would affect the computation of the inadmissible amounts under section 40(b).

			Under section 40(b)(iv), any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time will not be admissible as a deduction. Section 40(ba) lays down that any interest or remuneration paid by an AOP to its member shall not be allowed as a deduction to the AOP.  *In order to determine the amount inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.* *The tax auditor may note that the information required to be reported is the amount of inadmissible expenditure as per section 40(b)/40(ba) and not the total amount debited in the profit and loss account.*
	(d)	Disallowance under section 40A(3) / deemed income under section 40A(3A) [On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3)/40A(3A) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. If not,	Disallowance would be made if the payment or aggregate of payments, exceeding ₹ 10,000 (₹ 35,000 in case of plying, hiring or leasing of goods carriage) is made to a person in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. However, no disallowance would be attracted in respect of cases and circumstances prescribed under Rule 6DD.  *The tax auditor should obtain a list of all cash payments in respect of expenditure exceeding the prescribed limit under section 40A(3A). The list should be verified by the tax auditor with the books of accounts in order to ascertain whether the conditions for specific exemption granted under Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause. Certain audit tools are available to find out such payments expeditiously and accurately. These tools may be employed in case data is voluminous.* *Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft or use of electronic clearing system through a bank account or through such other electronic*

		please furnish the details of date of payment, nature of payment, amount and name and PAN or Aadhaar number of the payee, if available].	*mode as may be prescribed, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments for expenditure referred to in section 40A(3) and section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, as the case may be.* *Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA and para 5 of Form 3CB, as the case may be. The tax auditor, in his report, may comment on such violation as under:-* *"It is not possible for me/us to verify whether the payments in excess of ₹ 10,000 have been made otherwise than by account payee cheque or bank draft or prescribed electronic modes, as the necessary evidence is not in the possession of the assessee".* ***Note**: Case Studies on the ethical aspects in relation to tax audit under section 44AB and other Audit Reports are presented at the end of this Chapter. Case Study 2 pertains to reporting under Clause 21(d).*
	(e)	Provision for payment of gratuity not allowable under section 40A(7);	As per section 40A(7), no deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason. The deduction, however, shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of contribution towards an approved gratuity fund or for the purpose of payment of gratuity that has become payable during the previous year.  *The tax auditor should call for the order of the Principal Commissioner of Income-tax/ Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.*
	(f)	Any sum paid by the assessee as an employer not allowable under section 40A(9);	Under section 40A(9), any payment made by an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of person, body of individuals, society registered under Societies Registration Act or other institutions is not allowable.

			 *Tax Auditor shall maintain detailed working papers documenting the factual nature of such expenses incurred and debited to the Profit and Loss for the previous year under consideration which are considered disallowable u/s 40A(9). Tax Auditor should get the relevant content in working papers prepared for such disallowance duly confirmed by the assessee as a necessary safeguard.* *If any such contribution is made by the assessee in a capacity other than that of an employer, then such contribution is not to be considered as disallowable u/s 40A(9) of the Income-tax Act, 1961. Thus, the Tax Auditor should carefully examine the capacity of assessee while making such contribution before reaching any conclusions for allowing or disallowing such contribution.* It may be noted that section 40A(9) allows deduction of any contributions made as an employer towards recognized provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund or as required by or under any other law for the time being in force. Thus, any contribution made to Employees' Welfare Co-op Society will not be allowed as a deduction in the case of the employer company under section 40A(9), unless such contribution is required by or under any other law for the time being in force. *Instruction: No. 1799, dated 3-10-1988.*
	(g)	Particulars of any liability of a contingent nature;	The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account. The tax auditor, for verifying the details of contingent liability debited to the profit and loss account, may conduct a detailed scrutiny of various account heads e.g., outstanding liabilities, provision etc., if required. Accounting policy followed and disclosed would be helpful in ascertaining and verifying details. The tax auditor may also verify reporting under CARO and disclosure in the Notes on accounts. ICDS X, Para 9 provides that Contingent liability shall not be deductible.  *Tax auditor should note that the Contingent liability shown in Notes to Accounts is not required to be reported, as the amounts*

			debited to Profit and Loss account are required to be reported in this sub-clause.
	(h)	Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of total income;	The expenditure which is relatable to the income which does not form part of total income is not allowed as deduction in terms of Section 14A of the Act. Rule 8D lays down the method for determining the amount of expenditure in relation to income not includable in total income. An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of total income, even in such case the provision of section 14A will apply. The tax auditor has to verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income etc. For allocation of interest between taxable and nontaxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered. It is primarily the responsibility of the assessee to furnish the details of amount of deduction inadmissible in terms of section 14A i.e., in respect of the expenditure incurred in relation to income, which does not form part of the total income. The tax auditor has to examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination the tax auditor is entitled to rely on the management representation.
	(i)	Amount inadmissible under the proviso to section 36(1)(iii)	The provisions of section 36(1)(iii) provide that the amount of interest paid in respect of capital borrowed for the purposes of business or profession would be allowed as a deduction in computing the income referred to in section 28. The proviso thereunder provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized  in the books or account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was put to use, shall not be allowed *as a deduction.*

			The tax auditor, while determining the admissible/ inadmissible amount under section 36(1)(iii) should also keep in mind the requirements of ICDS X relating to borrowing cost.
22.		Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 *or any other amount not allowable under section 43B(h).*	The tax auditor is required to state the amount of interest inadmissible under section 23 of Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). MSMED is an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises. **Meaning of Micro and Small enterprise** **Manufacture enterprises and enterprises rendering services** **Micro enterprise** - Where the investment in plant and machinery ≤ ₹ 1 crore and Turnover ≤ ₹ 5 crores **Small enterprise** - Where the investment in plant and machinery ≤ ₹ 10 crores and Turnover ≤ ₹ 50 crores Section 23 of the MSMED Act lays down that an interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not for the purposes of the computation of income under the Income-tax Act,1961 be allowed as a deduction. The inadmissible interest has to be determined on the basis of the provisions of the MSMED Act. Section 16 of the MSMED Act provides for the date from which and the rate at which the interest is payable. Accordingly, where a buyer fails to make payment of the amount to the supplier, being micro and small enterprise, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed date or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank. Section 24 of MSMED Act provides that sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Sections 15 to 24 of the MSMED Act make a buyer liable to pay interest but they, by themselves, do not

		require the buyer to make payment to the supplier. However, as payment of such interest is considered as penal in nature, no deduction is allowed under section 37 of the Income Tax Act, 1961.  *The tax auditor, while reporting in respect of clause 22, should:* *(a) seek information regarding status of the enterprise i.e., whether the same is covered under the MSMED Act, 2006.* *(b) cross check the disclosure made in the financial statements, since Section 22 of the MSMED Act, 2006 requires disclosure of information.* *(c) obtain a full list of suppliers of the assessee which fall within the purview of the definition of "Supplier" under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.* *(d) review the list so obtained.* *(e) verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account.* *(f) verify the interest payable or paid as mentioned above on test check basis.* *(g) verify the additional information provided by the auditee relating to interest under section 16 in his financial statement.* If on test check basis, the tax auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22. In order to promote timely payments to micro or small enterprises, the Finance Act, 2023 include payments made to such enterprises within the ambit of section 43B of the Income-tax Act. Accordingly, clause (h) in section 43B has been inserted w.e.f. A.Y. 2024-25 to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the MSMED Act shall be allowed as deduction only on actual payment. ***Note -*** *Section 15 of the of the Micro, Small and Medium Enterprises Development Act, 2006 mandates payment of goods or services to supplier, being a micro or small*

		enterprises by the buyer on or before the date agreed upon between them in writing i.e., as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the payment shall be made before the appointed day i.e., within 15 days. *If the sum payable by the assessee to a micro or small enterprise is paid as per written agreement (maximum within 45 days) or within 15 days in case of no agreement, the deduction can be claimed on accrual basis if mercantile method of accounting is followed by the assessee.* *However, if the sum payable by the assessee to a micro or small enterprise is not paid as per written agreement or within 15 days in case of no agreement, the deduction would be allowed in the previous year in which it is actually paid.* Clause 22 also provides to report any other amount not allowable due to the applicability of section 43B(h). ***Note –*** *Section 23 of MSMED Act specifically prohibits the assessee from claiming the deduction in respect of interest paid to MSME. Thus, no deduction would be allowed in respect of such interest even if such sum is actually paid by the assessee. However, any sum payable (not being interest referred under section 23 of MSMED Act, 2006) by the assessee to a micro or small enterprise (being a supplier) beyond the time limit specified in section 15 of MSMED Act, 2006 shall be allowed as deduction only on actual payment.*
23.	Particulars of payments made to persons specified under section 40A(2)(b)	The section enjoins on the Assessing Officer, the power to fix the quantum of disallowance. Under this clause, the particulars of payments stated to be made to persons covered under section 40A(2)(b) should be examined. The tax auditor in this connection: (a) Obtain full list of specified persons as contemplated in this section. (b) Obtain details of payments made to the specified persons. (c) Scrutinise all items of payments to the above persons. (d) Call for all the contracts or agreements entered into by the assessee and list out the contracts and agreements entered into with the specified persons

		and segregate the items of payments made to them under these agreements. Where the transactions are voluminous or the list contains several names, scrutiny to be made to the extent possible. In that case, reliance may be made on the information supplied by the client with adequate disclosure in the report.
24.	Amounts deemed to be profits and gains under section 33AB or 33ABA.	Section 33AB allowed deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33AB(4)/(5)/(7)/(8). Section 33ABA allowed deduction in respect of Site Restoration Fund. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33ABA(5)/(7)/(8).  *Tax auditor has to verify the details regarding the deposit account and site restoration account. He also has to verify the accuracy of details given by the assessee by scrutinizing the books of accounts and other relevant documents and evidence.* *He also has to verify whether the assets acquired through deposit account is not sold or transferred before expiry of eight years from the date of acquisition. Verify the manner of utilization of amount withdrawn from the specified reserve account.*
25.	Any amount of profit chargeable to tax under section 41 and computation thereof.	The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence etc. He should examine the past records to satisfy himself about the correctness of the information provided by the assessee.  *The tax auditor has to state the profit chargeable to tax under this section. This information has to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not. The computation of the profit chargeable under this clause is also to be stated.* *The tax auditor should check whether amounts which have been written back in respect of trading liability by way of remission or cessation thereof or otherwise, is credited to Profit & Loss account. If any such liability credited to profit*

			and loss account is already offered to tax in any prior period, the same shall not, once again, be considered as income in the year in which it is so credited. In case the amount given in this clause regarding section 41 of the Act is not routed through profit and loss account or income and expenditure account, the auditor may include the said fact in the observation para of the audit report.
26.		In respect of any sum referred to in clauses (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:-	As per section 43B, deduction in respect of certain expenditure is allowable only on the basis of actual payment made within the time limits specified in section 43B. Section 43B is applicable in respect of expenditure for which a deduction is otherwise allowable under the Act. Therefore, where any expenditure is reported under any other clause indicating that deduction is otherwise not allowable, there is no need of reporting such expenditure under this clause. If the assessee is maintaining its books of accounts on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year and the return of income for the earlier assessment years so that the information about the aforesaid payments made in the subsequent year can be furnished. The tax auditor should clearly distinguish the liability incurred during the year in respect of all the specified sums for the liability that pre-existed on the first day of the relevant previous year.
	(a)	Pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was (a) paid during the previous year; (b) not paid during the previous year;	
	(b)	Was incurred during the previous year and was (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1); (b) not paid on or before the aforesaid date (State whether sales	

		tax, customs duty, excise duty, or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account).	
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.	The amount of CENVAT/GST availed or utilized should be reported under this clause. In some cases, CENVAT/GST availed may be lesser than the CENVAT/GST credit utilized during the year on account of opening balance in CENVAT/GST account or vice versa as such it would be advisable, in order to avoid any misleading conclusion and inferences to report the opening and closing balances of CENVAT/GST. Regarding the reporting of accounting treatment of CENVAT/GST credit, the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT/GST credit in the account have to be reported upon. The tax auditor should verify and maintain the information in his working papers for the purpose of reporting in the format given in the e-filing utility.
	(b)	Particulars of income or expenditure of prior period credited or debited to the profit and loss account.	It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current year's expenses/income even though they may relate to earlier years. The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed. It may be noted that there is a difference between expenditure of any earlier year debited to the profit and loss account and the expenditure relating to any earlier year, which has crystallised during the relevant year. Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items. In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the

			year on the basis that the liability materialised or crystallised during the year and such cases will not be reported under this clause. Similar consideration will apply in relation to income also.
29A	(a)	Whether any amount is to be included in income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)	This clause requires disclosure of whether any amount is chargeable to tax under section 56(2)(ix), and if so, to furnish prescribed details of such income. Section 56(2)(ix) provides for taxability as Income from Other Sources of any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset. The auditor is not required to report any such forfeited amount if it is in respect of a personal capital asset, where such asset or the advance or the forfeiture is not recorded in the books of account relating to the business or profession. If an advance has been received and has been outstanding for a considerable period of time or has become time barred, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee. Forfeiture of amounts received as advance towards transfer of a capital asset is required to be reported under this clause. Any advances received and forfeited towards sale of stock-in-trade would be taxable under section 28(i) and would not be required to be reported since the amount would be credited to profit & loss account.  *The tax auditor should obtain a representation from the assessee regarding all such advances received towards transfer of capital assets which have forfeited during the year. He should examine whether any amount of such advances has been written back during the year and examine the basis of such write back was on account of an act of forfeiture.*
	(b)	If yes, please furnish the following details: (i) Nature of income (ii) Amount thereof	
29B	(a)	Whether any amount is to be included as income chargeable under the head 'Income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)	This clause requires reporting as to whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x). Section 56(2)(x) provides that where any person receives in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied, then, it is treated as income of the recipient.

	(b)	If yes, please furnish the following details: (i) Nature of income: (ii) Amount (in ₹) thereof:	Receipt of assets, other than immovable property or assets included within the purview of property under the said section, would not be covered by the provisions of this section, and would, therefore not be required to be reported. For e.g., Stock-in-trade, not being a capital asset, is not covered by this provision.  *The tax auditor should obtain a representation from the assessee regarding any such* receipts *during the year, either received in his business or profession and recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein. Based on such verification, tax auditor has to consider whether the question is to be answered in affirmative or otherwise.* *In case answer to clause 29B(a) is yes, then tax auditor has to furnish the following details namely nature of income and amount. In case of nature of income, tax auditor should state whether the income is by way of receipt of any sum of money or from acquisition of any immovable property like land, building etc. or other than immovable property like shares and securities, jewellery, drawings, paintings etc.*
30.		Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque [Section 69D]	Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause. The tax auditor should obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account. The tax auditor should obtain from the assessee, particulars of any amount borrowed on hundi or any amount due thereon, including interest on the amount borrowed or repaid otherwise than by an account payee cheque.  *The tax auditor should check whether any such repayment/ payment has been made otherwise than by an account payee cheque. If yes, list out the amount involved on a transaction-to-transaction basis indicating date of payment and mode of payment.*
30A	(a)	Whether primary adjustment to transfer price, as referred to in sub-	 This clause is requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under section 92CE.

		section (1) of 92CE, has been made during the previous year? (Yes/No)	*The tax auditor should obtain a certificate from the assessee as to what transfer pricing adjustments has been made during the previous year so that the primary onus should be with the management and then the same should also be verified from the tax records to check whether there is any such occurrence.*
	(b)	If yes, please furnish the following details:- (i) Under which clause of sub-section (1) of 92CE primary adjustment is made? (ii) Amount (in ₹) of primary adjustment (iii) Whether the excess money available with the associated enterprise is to be repatriated to India as per the provisions of sub- section (2) of section 92CE? (Yes/No) (iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No) (v) If no, the amount (in ₹) of imputed	Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus the tax auditor is required to verify whether any primary adjustment is 'made' in terms of section 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration. It is also necessary that the disclosure under Clause 30A may need to be done is respect of each and every type of primary adjustment made in the relevant financial year, irrespective of the previous year to which this adjustment pertains to. For instance, an assessment order in relation to say, F.Y. 2021-22 may be passed in during F.Y. 2023-24 wherein AO has made a primary adjustment and the same has been accepted by the taxpayer. Such primary adjustment may need to be reported in the tax audit report of F.Y. 2023-24. The tax auditor then needs to report the relevant clause of section 92CE(1) under which the relevant adjustment falls, and the amount of adjustment. Under clause 30A(b)(iii), the requirement is to report whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE(2). In case any such primary adjustment has taken place, which requires repatriation of the excess money or part thereof, the tax auditor should verify whether the excess money has been received, and whether it has been received within the prescribed time. He should report accordingly. In case the excess money or part thereof has not been repatriated within the prescribed time, the imputed interest income, which would be the secondary adjustment, needs to be computed. Since the reporting is for the previous year, it is advisable for the tax auditor to ensure that the amount of interest imputed till the end of the previous year is furnished. In case the interest up to the date of filing of the tax audit report is given, it is

		interest income on such excess money which has not been repatriated within the prescribed time.	advisable for the tax auditor to provide a break-up of the amount of interest imputed till end of the relevant previous year and for the period post the end of the relevant previous year ending with the date of filing tax audit report. It is possible that interest income may be imputed during the relevant previous year in connection with primary adjustment made during the earlier previous years. Such interest income arising from primary adjustment made in earlier year is also taxable during the previous year under consideration and will be included in the return of income of the concerned previous year. Thus, it may be advisable for the taxpayer to furnish and tax auditor to verify and report the information pertaining to such primary adjustments in respect of interest income which is chargeable u/s. 92CE(2).  *The tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return/(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence. In this regard, the auditor should also obtain a prior management representation on the information obtained to be true and accurate, basis which he should make the disclosure in the tax audit report. Hence the primary onus should be with the management.*
30B	(a)	Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)	This clause requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident Associated Enterprises under section 94B while computing income under the head "Profits and gains from business and profession". The excess interest is to be calculated as the lower of total interest paid or payable in excess of 30% of earning before interest, taxes, depreciation and amortization (EBITDA) of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year.

	(b)	If yes, please furnish the following details:- (i) Amount (in ₹) of expenditure by way of interest or of similar nature incurred: (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year: (iii) Amount (in ₹) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above: (iv) Details of interest expenditure brought forward as per section 94B(4) (v) Details of interest expenditure carried forward as per section 94B(4)	The excess interest which is disallowed, is allowed to be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profit and gain of any business in subsequent years, to the extent of maximum allowable interest expenditure under this section. In computing the limit of ₹ 1 crore, only interest and expenditure of similar nature which is deductible while computing income under the head "Profits and Gains of Business or Profession" should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible. Therefore, any interest disallowable under section 14A, under the proviso to section 36(1)(iii), under section 40(a)(i) or section 40A(2) should not be considered as interest for the purposes of section 92B(1). Similarly, interest disallowed on account of transfer pricing under section 92, should also not be considered, since such interest is not allowable in computing income under the head "Profits and Gains of Business or Profession". In case such interest exceeds ₹ 1 crore, details in part (b) of the clause need to be given. In item (i) of sub-clause (b), details of expenditure incurred by way of interest or of similar nature need needs to be provided. The language in the clause creates a doubt whether details that need to be given are of the total amount of interest and similar expenditure claimed as a deduction and not just the interest paid to non-resident AE(s). However, in view of the requirement of clause (a) where a specific question has been asked only with respect to section 94B(1) the subsequent clauses seem to be consequential and flowing from clause (a). Section 94B(1) confines itself to interest paid to Non-resident AE and section 94B(2) can be regarded as controlled by section 94B(1) since Section 94B(2) operates "for the purposes of sub-section (1)". The computation of "excess interest" as per section 94B(2) should be within the boundaries of interest referred to in section 94B(1), which is NR AE interest paid. The language of para 46.3 of CBDT Circular No. 2 of 2018 containing Explanatory Notes to Provisions of Finance Act, 2017 (dated 15 February 2018) is similar to the format of reporting prescribed by CBDT in clause 30B of Form No. 3CD. The better view is to disclose interest paid only to non-resident AE(s).

			Thus, the tax auditor has to obtain and report the expenditure incurred by way of interest or of similar nature paid to its non-resident AE or to the lender to whom the AE has provided an implicit or explicit guarantee or has deposited a matching amount of funds, out of the total interest and similar expenditure claimed as deduction. It should be kept in mind that word 'paid' in terms of section 43(2) means actually paid or incurred according to the method of accounting employed.
30C	(a)	Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)	This clause requires the tax auditor to report impermissible avoidance arrangements as referred to in section 96 entered into by the assessee during the previous year and to quantify the tax benefit arising in the aggregate in the previous year to all parties to such arrangement. The auditor should examine if, in any earlier year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, if such reference has been made, the auditor should report the fact in Form 3CA/3CB. In the light of the Chapter X-A, provisions of the Income-tax Act relating to GAAR, the rules made thereunder and CBDT Circular thereto, the auditor should examine the following: (i) The tax auditor should examine whether the Principal Commissioner or the Commissioner or the Approving Panel has, in any earlier previous year, declared any arrangement as IAA. In case, if any arrangement has been declared to be an IAA in any earlier previous year, the tax auditor should further examine if any transaction pertaining or in connection with such declared IAA has taken place during the previous year under the audit. (ii) The tax auditor should examine if, in any earlier previous year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, if such references been made, the auditor should report the fact in Form 3CA or Form 3CB, as the case may be. In both the cases, the auditor should further examine if any transaction pertaining or in connection with such declared IAA or such arrangement in respect of which reference has been made, has taken place during the previous year under the audit. If any transaction
	(b)	If yes, please specify:- (i) Nature of the impermissible avoidance arrangement: (ii) Amount (in ₹) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement";	

			pertaining or in connection with such declared IAA or such arrangement has taken place during the previous year under the audit, the tax auditor should report this fact along with the tax benefit arising to all parties. If, however, he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be. In either case, where the assessee has given response to any show cause notice or has preferred an appeal, along with outcome thereof should be taken into consideration while reporting.
31.	(a)	Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year - (i) name, address and PAN or Aadhaar Number (if available with the assessee) of the lender or depositor; (ii) amount of loan or deposit taken or accepted; (iii) whether the loan or deposit was squared up during the year; (iv) maximum amount outstanding at any time during the previous year; (v) whether the loan or deposit	This clause seek certain particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year. Particulars of each loan or deposit falling within the scope of this section taken or accepted during the previous year have to be stated under this clause. Reporting is required only where each loan or deposit in an amount of ₹ 20,000 or more severally or in aggregate of the three sums, as specified in the section. This sub-clause requires six specific particulars in respect of each loan or deposit including the permanent account number or Aadhaar number of the lender or depositor, if available. The tax auditor should obtain the details from the assessee in respect of each reportable loan or deposit and verify the same from the records and evidence available with the assessee. There will be practical difficulties while verifying the loan or deposit taken or accepted by the account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, for answering, as to whether bank cheque or bank draft was 'account payee', the tax auditors should make a suggested comment in his report. The suggested comment is as follows: *"It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by*

		was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account; (vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or account payee bank draft.	*an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee".* ***Note –*** *The Finance Act, 2023 has amended section 269SS to provide for higher threshold limit of ₹ 2,00,000 where a deposit is accepted by a primary agricultural credit society or a primary cooperative agricultural and rural development bank from its member or a loan is taken from a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member [For more details, please refer Chapter 19: Miscellaneous provisions].*
	(b)	Particulars of each specified sum in an amount exceeding the limits specified in section 269SS taken or accepted during the previous year: (i) name, address and PAN or Aadhaar number (if available with the assessee) of the person from whom specified sum is received; (ii) amount of specified sum	Under this clause, particulars of any specified sum taken or accepted in relation to transfer of an immovable property, whether or not the transfer takes place has been dealt with. Such specified sum may be any sum of money receivable whether or not the transfer takes place.  *The tax auditor should ascertain whether the assessee has any immovable property which has been transferred or was proposed to be transferred during the year and review the relevant agreements, documents etc. in this regard. The auditor should satisfy himself that the proceeds arising from such transfer, based on the review of documents has been duly credited to the bank account by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.*

		taken or accepted; (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account; (iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or account payee bank draft (Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act)	
	(ba)	Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of	The sub-clauses (ba), (bb), (bc) and (bd) of clause 31 deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 269ST. Section 269ST does not distinguish between receipt on capital account and revenue account. Accordingly, sub-clauses (ba), (bb), (bc) and (bd) of clause 31 do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as

		transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account - (i) Name, address, PAN or Aadhaar Number (if available with the assessee) of the payer; (ii) Nature of transaction; (iii) Amount of receipt (in ₹) (iv) Date of receipt;	the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses. The tax auditor should bear this in mind while examining the books of account and records of the assessee. Particulars are required to be given if receipts or payments, even though individually are lower than ₹ 2 lakh but in aggregate amount to ₹ 2 lakh or more if such receipts or payments are to or from one person in a day (whether related to a single transaction or otherwise) or relate to a single transaction (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than ₹ 2 lakh) or are in respect of more than one transaction but relate to a single event or occasion (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than ₹ 2 lakh). Sub-clauses (ba) and (bb) of clause 31 requires particulars to be furnished in respect of transactions exceeding ₹ 2 lakh **where assessee has received the amount** from a person, whereas sub-clauses (bc) and (bd) of clause 31 requires information about the transactions exceeding ₹ 2 lakh **where the payment has been made** by the assessee to a person.
	(bb)	Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:-	While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts and payments, as the case may be, otherwise than by the modes specified in this section received/ made in respect of single transaction and verify if the aggregate amount exceeds the limits specified in section 269ST. A single invoice may relate to multiple transactions and vice-a-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments is pertaining to a single transaction. Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.

		(i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer; (ii) Amount of receipt (in ₹)	For example, for a function organized by a person, assessee contractor may have been given catering contract as well as contract for flower decoration. In such a case, while the transactions may be different, the occasion or event would be the same and provisions of section 269ST will be attracted if the receipts exceeding the limits specified under section 269ST are by mode other than those specified in the section. It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party, consideration for which exceeds ₹ 2 lakh. In such a case, if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, such set off is not a receipt as contemplated under section 269ST. If the amount of such set off exceeds ₹ 2 lakh, the tax auditor may give appropriate note to the effect that such set off not being a receipt or payment has not been included in the particulars given and the relevant sub-clause. If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then, the tax auditor will have to verify the mode of the receipt or payment, as the case may be. He will have to classify the receipt or the payment, as the case may be, as under: (i) otherwise than by cheque or bank draft or use of electronic clearing system through a bank account, into receipt or payment; (ii) by cheque or bank draft not being an account payee cheque or an account payee bank draft. While section 269ST deals only with receipts exceeding ₹ 2 lakh or more otherwise than by the specified modes, sub-clauses (ba), (bb), (bc) and (bd) of clause 31 require details to be furnished of both receipts and payments. The particulars required under these sub-clauses need not be given in case of a receipt by a or payment to a government company, banking company, a post office saving bank, co-operative bank or in the case of transactions referred to in section 269SS.
	(bc)	Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year :- (i) Name, address and PAN or Aadhaar number (if available with the assessee) of the payee; (ii) Nature of transaction; (iii) Amount of payment (in ₹); (iv) Date of payment;	

	(bd)	Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year: (i) Name, address and PAN or Aadhaar number (if available with the assessee) of the payee; (ii) Amount of payment (in ₹) (Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in *Notification No. S.O. 2065(E) dated I3rd July, 2017)*	

	(c)	Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year: (i) Name, address, PAN or Aadhaar number (if available with the assessee) of payee; (ii) amount of repayment; (iii) maximum amount outstanding at any time during the previous year; (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account; (v) in case repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or bank draft.	This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loan or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. In the case of company assessee, loan or deposit is defined to mean deposit repayable after notice or loan or deposit repayable after a period. Therefore, in case of a company, loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. However, in the case of non-company assessee, loan or deposit is defined to mean loan or deposit of any nature. This distinction will have to be kept in mind while giving information under this sub-clause. Loan or deposits discharged by means of transfer entries in the books of account constitute repayment of loan or deposits otherwise than by account payee cheque or account payee bank draft. Hence, such entries have to be reported under this clause.  *The tax auditor has to take into account the technological advancements in the field of banking and information technology, where loans have been repaid otherwise than through an account payee cheque or 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 "use of electronic clearing system through a bank account" is a permissible mode for the purposes of section 269T. 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.* The monetary limit of ₹ 20,000 or more is applicable in respect of a banking company or a co-operative bank with reference to each branch and in all other cases, assessee as a whole.

			Note - *The Finance Act, 2023 has amended section 269T to provide for higher threshold limit of ₹ 2,00,000, where a deposit is made by a primary agricultural credit society or a primary co-operative agricultural and rural development bank to its member or a loan is repaid to a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member. [For more details, please refer Chapter 19: Miscellaneous Provisions].*
	(d)	Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of ECS through a bank account during the previous year: (i) Name, address, PAN or Aadhaar number (if available with the assessee) of the payer, (ii) amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of ECS through a bank account during the previous year.	Under this clause the tax auditor has to provide the details of repayment received by the assessee from a person in respect of loan or deposit or specified advances exceeding the limit specified in section 269ST received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year based on the examination of books of accounts or other relevant documents. In case the repayments are voluminous, it may not possible to verify each repayment, reflected in the bank statement, as to whether the acceptance of deposits or loans or specified advances has been through cheque, bank draft or not.  *Tax auditor can obtain a certificate form the assessee to the effect that the repayment referred to in this sub-clause were received through permitted mode. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be.*

	(e)	Particulars of repayment of loan or deposit or any specified advance in amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year: (i) Name, address, PAN or Aadhar Number (if available with the assessee), of the payer, (ii) amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee bank cheque or account payee bank draft during the previous year. (Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government,	Under this sub-clause, the tax auditor has to provide details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received by cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year based on the examination of books of accounts or other relevant documents. It may not be possible to verify each repayment, reflected in bank statement, as to whether the acceptance or deposits or loans or specified advances has been made through cheque, bank draft which is not an account payee cheque or account payee bank draft.  *The tax auditor should obtain suitable certificate from the assessee to the effect that the repayment referred to in this sub-clause were received in the permitted manner. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB.*

		Government company, banking company or a corporation established by the Central, State or Provincial Act)	
32.	(a)	Details of brought forward loss or depreciation allowance to the extent available containing information relating to assessment year, nature of loss/allowance (in ₹), amount as returned (in ₹)* all losses/allowances not allowed under section 115BAA/ 115BAC/ 115BAD, *115BAE* amount as assessed (give reference to relevant order) and remarks. * If the assessed depreciation is less and no appeal pending than take assessed.	The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders or appellate orders, if any. Depreciation on goodwill will not be available from A.Y. 2021-22. Brought forward losses may relate to different heads of income such as property income, profits and gains of business or profession, speculation business or capital gains. Different provisions are contained in sections 32 and 70 to 79A of the Income-tax Act, 1961, with regard to loss/ depreciation under different heads. In the remarks column, information about the pending assessment or appellate proceedings or about delay in filing loss returns should be given. For giving the above information, the auditors should study the assessment records i.e., the income-tax returns filed, assessment orders, appellate orders, orders giving effect to appellate order and rectification/revisional orders for the earlier years and ascertain if the figures given in the above clause are correct. The tax auditor should keep in mind the provisions of section 71B regarding carry forward and set-off of loss from house property, section 73A regarding carry forward and set-off of losses by specified business and also section 78 regarding carry forward and set-off of losses in case of change in constitution of firm or on succession. The tax auditor should obtain all the assessment orders or appellate orders completed and pending during the audit. If the consequential order for any revision / appellate order is yet to be passed, the same can be disclosed along with the impact thereof, if material. It means in case of any undisclosed income determined in case of an assessee during any proceedings of search, requisition or survey, then no adjustment or set off shall be allowed against such undisclosed income.

			The set off shall not be available in case of both brought forward losses as well as the unabsorbed depreciation. From the Assessment Year beginning from 2022-23 onwards, the tax auditor has to confirm and verify whether any search or survey has been taken place or undergoing based on the records of assessment proceedings of the assessee and accordingly shall check if any undisclosed income has been determined in case of assessee. The eligibility of brought forward losses and unabsorbed depreciation against such undisclosed income as computed by the assessee should be checked and based on that, the necessary adjustments should be made to losses to be carried forward by the assessee.
	(b)	Whether a change in the shareholding of the company has taken place during the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.	The Tax Auditor should obtain the details of changes in voting power pattern year-on-year and verify the reasons for any such changes before determining the allowability of losses eligible to be carried forward. The Tax Auditor should obtain necessary representation to this effect wherever it is not feasible to verify or cross-check the shareholding pattern and changes therein. The comparison of the composition of the shareholding is to be done with reference to the last day of the current previous year and the last day of every previous year in which the loss was incurred. The carry forward of the loss incurred in respect of different previous years is to be determined with respect to the individual previous years. Such comparison of the shareholding can be done by referring to the Register of Members.
	(c)	Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year. If yes, please furnish details of the same.	Having regard to the definition of "speculative business", the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in section 73, if any incurred by the assessee during the previous year. It may be noted that it is not necessary that same speculation business needs to be continued to set off its loss of earlier year(s) against profit of same speculation business. It can be 'any' speculation business i.e., a different speculation business.

	(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.	Under clause 32(d), the tax auditor has to verify from the books of accounts and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses and loss has been incurred in both the business, the details of the loss incurred with respect of each business is to be specified separately.
	(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, provide details of speculation loss if any incurred during the previous year.	The *Explanation* to Section 73 provides that where part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads income from securities, income from house property, capital gain and income from other sources or a company the principal business of which is the business of trading in shares or banking or granting of loans and advances consist in the purchase or sale of shares of the other companies shall be deemed to be carrying on a speculation business to the extent to which business consists of purchase and sale of such shares. The tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred to in *Explanation* to section 73.
33.		Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10AA) specifying the section under which deduction is claimed and the 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	The tax auditor has to ensure that the assessee fulfils all the conditions specified in the sections under which deduction is claimed. For ascertaining this, the tax auditor has to obtain all necessary evidence which would enable him to express the opinion regarding the admissibility of deductions. In order to ascertain the fulfillment of this condition, the tax auditor may have to check all documentary evidence. There may be cases where there is difference between the amount claimed by the assessee and the amount computed by the tax auditor. In such cases, it is quite possible that the assessee's claim is based on some judicial pronouncement on the subject. In such cases, it may be advisable for the tax auditor to report the amount admissible. The amount claimed and the background behind and the basis of the claim of the assessee may form part of the working papers. If the claim of the

		or Income-tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf.	assessee is well-founded and settled by judicial pronouncement, the tax auditor may accept the claim but he has to record in his working papers that admissible amount has been reported on the basis of such judicial pronouncement. In appropriate circumstances, such judicial pronouncements etc. should be mentioned in the report. It may be noted that separate audit report or certificate is required to be obtained under section 10AA and certain sections like 80-IA, 80-IB, 80-IC, 80-JJAA under Chapter VIA. While giving information with regard to the deduction allowable under these sections, the tax auditor should refer to separate audit reports/ certificates obtained by the assessee. These audit reports/ certificates may have been given by the tax auditor or by any other auditor. The figures given in such separate audit reports/certificates should be taken into consideration while giving information with regard to income covered by these sections. ***Note**: Case Study 3 and Case Study 4 deal with the ethical aspects which have to be considered while issuing audit report in Form 10CCB.* Some sections in Chapter VIA such as section 80G (donations), Section 80GGB/80GGC (contributions to political parties), section 80JJAA (wages of new workmen) etc. relate to the expenditure incurred by an assessee. There are other sections such as section 80-P (income of cooperative societies), etc. which relate to income of the assessee. In respect of all these sections, the tax auditor should ascertain whether there is any expenditure or income covered by the above sections recorded in the books of accounts audited by him. Section 115BAA, 115BAB, 115BAC, 115BAD and 115BAE provide that no deductions under Chapter VI-A or Chapter III can be claimed by the assessee opting for taxation under any of these sections except deductions mentioned under section 80M and 80JJAA, reply to clause 8a shall be considered and accordingly admissibility of deductions should be examined.
34.	(a)	Whether the assessee is required to deduct or collect tax as per the provisions of Chapter	While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The auditor may have a difference of opinion with regard to the applicability of the provisions of

		XVII-B or Chapter XVII-BB, if yes, please furnish details of (1) Tax deduction and collection Account Number (TAN) (2) Section No. (3) Nature of payment (4) Total amount of payment or receipt (5) Total amount on which tax was required to be deducted or collected (6) Total amount on which tax was deducted or collected at specified rate (7) Amount of tax deducted or collected (8) Total amount on which tax was deducted or collected at less than specified rate or Amount of tax deducted or collected at less than specified rate and amount of tax deducted or collected not deposited to the credit of Central Government.	TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in the para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be. It is essential to note that it is the primary responsibility of the assessee to prepare the information in such a manner that the tax auditor can verify the compliance as required in the clause. The tax auditor is required to verify that no items have been omitted in the information furnished to him and reasonable test checks would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified. It may be noted that while determining the amount to be reported in this clause, the tax auditor has to check and verify the payments made by the assessee and should not only restrict to verification of expenses debited to Profit & Loss or the TDS/TCS returns filed and provided by the assessee e.g., an advance payment made to any contractor may also be liable for deduction of tax. In the case of payment to non-residents, the applicable rate of tax deduction at source is to be read along with the Double Taxation Avoidance Agreement. This clause also requires the tax auditor to furnish the total amount out of the amount deductible or collectible, at which the tax was deducted or collected at the rate less than the specified rate. The lesser deduction is required to be reported in this clause. This will include deduction at a lower rate than what is prescribed, application of wrong section for deduction of tax at source, etc. For example, section 194C requires deduction @2% in case payment is made to a person other than individual or HUF, but the deductor deducts only 1%, the same has to be reported under this clause. The tax auditor should also consider applicability of higher rate of TDS/TCS under certain circumstances like non-furnishing of PAN, non-filers of return as provided in section 206AA/206AB/206CC/206CCA. The tax auditor should verify the cases where the tax has been deducted

			at source but not paid to the credit of the Central Government till the date of the audit. It may be seen that tax deducted but deposited late will not be –required to be reported.  *Tax auditor should obtain a copy of TDS/TCS returns filed by the assessee and reconcile the same with the books of accounts, which shall form the basis of reporting under this clause. The tax auditor should take into consideration the relevant sections, rules, notifications, circulars and various judicial pronouncements in relation to transactions of relevant payment or collections. If the tax auditor has not agreed with the interpretation/ views taken by the assessee, he should report the same in Form 3CA/3CB.*
	(b)	Whether the assessee is required to furnish the statement of tax deducted, or tax collected. If yes, please furnish the details of TAN, type of form, due date for furnishing, date of furnishing, if furnished, whether the statement of tax deducted or collected contains information about all transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported.	This clause deals with the information pertaining to statement of tax deducted and collected at source. The tax auditor has to ascertain and report as to whether the assessee is required to furnish the statement of tax deducted or tax collected at source within the prescribed time and answer 'yes' or 'no' depending on his examination. If the answer is 'yes', the tax auditor shall provide further details in a table contained in Clause 34(b) only with regard to the statement required to be furnished by the assessee. The information given in clause 34(a) and (b) should be reconciled with the disallowances reported under section 40(a) in clause 21(b) to the extent applicable for cross checking appropriateness of reporting under both the clauses. Depending upon transactions that require tax deduction or collection, tax auditor should ascertain which statements, the assessee was required to furnish for the financial year under audit. He should check which statements have been furnished by the assessee for tax deducted as well as collected. The reporting requirement is notwithstanding the fact that the assessee has furnished the statements of tax deducted at source and tax collected at source or not.  *The tax auditor should keep in mind laws relating to tax deductions/collections at source and various case laws so as to detect any case of contravention or default in the provisions of Chapter XVII -B / chapter XVII-BB.*

			If the information is voluminous, then the tax auditor should consider reporting significant deficiencies with appropriate remarks in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.
	(c)	Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish details of Tax deduction and collection Account Number (TAN), amount of interest under section 201(1A)/ 206C(7) is payable and amount of interest paid along with date of payment.	Under this clause, the tax auditor is required to furnish detailed information in case an assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. Where the assessee is liable to pay interest u/s 201(1A) or u/s 206C(7), the tax auditor should verify such amount from the books of account as on 31st March of the relevant previous year and also from PART G of the statement generated by the Department in Form No.26AS. In case the assessee had disputed the levy or calculation of interest under TRACES, in Form No.26AS/AIS/TIS of the assessee, the auditor may re-calculate the amount of interest under section 201(1A) or section 206C(7) up to the date of audit report for reporting under this clause and also mention the fact in his observations paragraph provided in Form No.3CA or Form No.3CB, as the case may be.
35.	(a)	In the case of a trading concern, give quantitative details of principal items of goods traded: (i) Opening Stock; (ii) purchases during the previous year; (iii) sales during the previous year; (iv) closing stock; (v) shortage / excess, if any	The tax auditor should examine whether the enterprise is a trading concern or not. If yes, the tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons thereof. The entire quantitative information should be examined by the auditor from the records.
	(b)	In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products:	The tax auditor should ascertain whether the enterprise is a manufacturing concern and accordingly report it in clause 10(a). If yes, this sub-clause is applicable. The tax auditor should obtain certificate from assessee in respect of principal items of raw materials, finished goods and by-products and quantitative information required to be re–ported in this sub-clause.

		A. Raw Materials: (i) opening stock; (ii) purchases during the previous year; (iii) consumption during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) yield of finished products; (vii) percentage of yield; (viii) shortage / excess, if any. **B. Finished products/by-products:** (i) opening stock (ii) purchases during the previous year; (iii) quantity manufactured during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) shortage/ excess, if any.	***Note -*** *This clause requires that quantitative details of "principal items" of raw materials and finished goods should be given. Therefore, information about petty items need not be given. What would constitute principal items will depend on the facts of each case. Normally, items which constitute more than 10% of the aggregate value of purchases, consumption or turnover as the case may be, may be classified as principal items.*
36A		(a) Whether the assessee has received any amount in the nature of dividend as referred to in sub- clause (e)	The tax auditor should obtain from the tax payer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has a substantial interest. The dividend taxable under section 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the

	of clause (22) of section 2? (Yes/No) (b) If yes, please furnish the following details:- (i) Amount received (in ₹): (ii) Date of receipt	date of the payment. Further, if at any time earlier any amount has been considered as income under any of the clauses of section 2(22), the accumulated profits will have to be reduced by such an amount. The tax auditor may not be able to determine the accumulated profits such as on the date of payment of the closely held company making the payment for various reasons. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case, the auditor should include appropriate remarks in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be, about the methodology adopted by him. For attracting section 2(22)(e), it is necessary that the assessee receiving a loan or advance should be a shareholder. Wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make appropriate remark in Form No. 3CA or Form 3CB, as the case may be.  *The tax auditor should also obtain a certificate from the tax payer giving particulars of any loan or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% of the voting power. These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the assessee.* *The tax auditor should verify Form 26AS in the case of the tax payer to know if the closely held company has deducted tax at source from any payment made to it to the taxpayer or the concern under section 194.*
37.	Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/ quantity as may be reported/identified by the cost auditor.	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 details of **disqualification or disagreement on any matter/ item/ value/ quantity as may be reported/ identified by the cost auditor.** The information is required to be given in respect of cost audit report which is received upto the date of tax audit report.

		 *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.*
38.	Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.	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. The information is required to be given in respect of excise audit report which is received upto the date of tax audit report.  *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.*
40.	Details regarding turnover, gross profit, etc. for the previous year and preceding previous year: 1. Total turnover of the assessee 2. Gross profit/ turnover 3. Net profit/ turnover 4. Stock-in-trade/ turnover 5. Material	These ratios have to be calculated only for assessee who are engaged in manufacturing or trading activities. While calculating these ratios, the tax auditor should assign a meaning to the terms used in the above ratios having due regard to the generally accepted accounting principles. All the ratios mentioned in this clause are to be calculated in terms of value only. For the purpose of calculating the ratio mentioned in (4), only closing stock is to be considered. The term ` stock-in-trade' used therein does not include stores and spare parts or loose tools. The term “stock-in-trade” would include only finished goods and would not include the stock of raw material and work-in-progress since the objective here is to compute the stock turnover ratio.

	consumed/ finished goods produced (The details required to be furnished for principal items of goods traded or manufactured or services rendered)	Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools. Under this clause, calculation of the ratios is also to be stated. As such, computation of various components based upon which these ratios have been worked out is required to be stated under this clause. There should be consistency between the numerator and the denominator while calculating the above ratios. Any significant deviation thereof should be pointed out in Form 3CA or Form 3CB, as the case may be. The relevant previous year figures are to be taken from last previous year audit report or the reinstated figures, to make the ratios comparable with current year. In case the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column. The ratios has to be given for the business as a whole and need not be given product wise.
41.	Please furnish 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[4] alongwith details of relevant proceedings.	The assessee may be assessed under various tax laws other than Income-tax Act, 1961 resulting into a demand order or refund order. The tax auditor should obtain copy of all the demand/refund orders issued by the government authorities during the previous year under any tax law other than Income-tax Act, 1961. The auditor should exercise his professional judgement in determining the applicability to relevant tax laws for reporting under this clause.  *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. It is advisable to cross verify the demands from online portal of the respective Department. If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause. Appropriate representation should be obtained from the assessee. In case of corporate assessee, the auditor may check the said details with the*

[4] *abolished with effect from the 1st April, 2016*

			disclosures of contingent liabilities in the audited financials, disclosures in statutory auditor's report pursuant to CARO, if applicable.
42.	(a)	Whether the assessee is required to furnish statement in Form No. 61 or Form No. 61A or Form No. 61B? (Yes/No)	This clause has been introduced where the tax auditor has to report whether the tax payer is required to furnish a statement in Form 61/61A/61B. As per Rule 114D(1), every person referred to in clauses (a) to (k) of Rule 114C(1) and Rule 114(2) and who is required to get his accounts audited under section 44AB who has received any declaration in Form 60 (this form is used by an individual or a person other than a company or a firm who does not have PAN and who enter into any of the transactions specified in rule 114B) is required to furnish statement in Form No. 61 containing particulars of such declaration. The Annual Information Return or Statement of financial transaction required to be furnished under section 285BA(1) is to be furnished in Form No. 61A. Statement of Reportable Account under section 285BA(1)(k) is to be furnished by a reporting financial institution in respect of each account which has been identified pursuant to due diligence procedure as a reportable account.  *The tax auditor should verify that whether the assessee is liable to report the transaction in the prescribed form or not, if yes, whether the assessee has filed the same and he has furnished all the particulars required in the Form.* *The tax auditor is further required to state whether the Form contains information about all details or furnished transactions which are required to be reported. In case it is not, the tax auditor is required to furnish list of the details of transactions which are not reported. If the volume of deficiencies is large, the tax auditor may state certain deficiencies by way of an illustration and make appropriate remark in para 3of Form 3CA or para 5 of Form 3CB.* *Form No. 61, 61A and 61B uploaded on the income tax portal should be examined by the tax auditor for purpose of reporting.*
	(b)	If yes, please furnish Income-tax Department Reporting Entity Identification Number, Type of form, Due date for furnishing, Date of furnishing (if furnished), Whether the form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/ transactions which are not reported.	
43.	(a)	Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as	This clause seeks information about applicability to furnish the report as referred to in section 286(2). Section 286(2) casts an obligation on the parent entity or the alternate reporting entity, if it is resident in India to furnish report, in respect of the international group of which it is a constituent, for every accounting year, within

		referred to in sub-section (2) of section 286 (Yes/No)	a period of 12 months from the end of the said reporting accounting year to the prescribed authority. The reporting requirement under section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed ₹ 6,400 crores (Rule 10DB). The obligation to furnish the report referred to in section 286(2) arises under following situations requiring reply in affirmative to clause 43(a): (i) If the assessee itself is the parent entity of the international group and is resident in India, it will have the obligation to furnish the report under section 286(2); (ii) If the assessee is resident in India and has been designated as the alternate reporting entity of the international group; (iii) If the assessee is a constituent of the international group with its parent entity resident in India and the group has not designated any other resident constituent entity as the alternate reporting entity, the parent entity will have the obligation to file the report under section 286(2). (iv) If the assessee is neither the parent entity nor has it been designated as the alternate reporting entity, but other constituent entity resident in India of the international group has been designated as the alternate reporting entity by the group, such other constituent entity resident in India will have obligation to file the report under section 286(2). *The tax auditor should verify in the case of the assessee if any of the above four situations exist. The tax auditor should verify if the assessee whose parent is a non-resident has filed Form No. 3CEAC. It will indicate if the assessee or another constituent entity resident in India has been designated as the reporting entity for the international group. The tax auditor may obtain necessary certificate from the assessee in respect of constitution of the international group, entities that are resident in India and not resident in India and entity if appointed as the alternate reporting entity.* If none of the above four situations described above exists, the reply to clause 43(a) will be negative.

	(b)	If yes, please furnish the following details: (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity (ii) Name of parent entity (iii) Name of alternate reporting entity (if applicable) (iv) Date of furnishing of report	If the assessee is liable to file Form 3CEAC, the tax auditor has to verify whether the necessary compliance as prescribed in section 286 has been done and the requisite information has been furnished by the assessee. If the assessee has filed a report, the tax auditor should verify acknowledgement for furnishing the same. If the report has been filed either by the parent of the assessee or another constituent entity of the international group, the tax auditor should ask for a copy of the report and acknowledgement for filing the report. The term parent entity is defined in section 286(9)(h). The tax auditor should examine which is the parent entity and report name thereof. The term alternate reporting entity is defined in section 286(9)(c). The tax auditor should examine whether any such alternate reporting entity exists and if yes, name of the alternate reporting entity should be stated. From acknowledgement for furnishing report as referred to in section 286(2), date for furnishing of the said report should be stated. The tax auditor may obtain necessary certificate from the assessee in respect of the constituent entity.
44.		Break-up of total expenditure of entities registered or not registered under the GST. Specifying total amount of expenditure incurred during the year, expenditure in respect of entities registered under GST relating to goods or services exempt from GST, relating to entities falling under composition scheme, relating to other entities and total payment to registered entities. Expenditure relating	This clause requires to provide details of the expenditure in respect of entities registered under GST, which is further sub-classified into four categories as follows: (a) Expenditure relating to goods or services exempt from GST - Here, the value of all inward supply of goods or services which are exempt from GST is to be given. (b) Expenditure relating to entities falling under composition scheme - Value of all inward supplies from composition dealers is to be mentioned here. (c) Expenditure relating to other registered entities - Value of all inward supplies from registered dealers, other than supplies from composition dealers and exempt supply from registered dealers, are to be mentioned here. (d) Total payment to registered entities - The word 'payment' should harmoniously be interpreted as 'expenditure', as the combined heading is 'Expenditure in respect of entities registered under GST'. Hence, the total expenditure in respect of registered entities i.e., sum total of values reported in (a), (b) and (c) should be reported in (d) above.

		to entities not registered under GST also need to be specified.	Under this clause, expenditure relating to entities not registered under GST is also to be given. The value of inward supply of goods and/or services received from unregistered persons should be reported here. It is important to differentiate the 'current status' of supplier's registration from their status as it was at the time of supply. There are several instances where registration may be cancelled with effect from an earlier date which may be prior to the date of supply to assessee. Events occurring after balance sheet date that alter the data relating to year under audit does not alter the nature of the expenditure, that it is from registered suppliers. Auditors may elect to extend their review up to a certain cut-off date or not at all. In either case, disclosure of notes of the position with regard to (i) known cancellations and (ii) treatment in the disclosure considering possibility of such cancellations would go a long way in making the report meaningful and unambiguous. Under clause 44, the language used is "expenditure in respect of". Since, the word used is 'expenditure', it is necessary that the capital expenditure should also be reported in the format prescribed. Separate reporting of capital expenditure will provide ease in reconciliation. In case of multiple GST registrations of an entity, there is likelihood of inter-branch supply, which is eliminated at the consolidated financials. Proper reconciliation for such type of transactions may be kept on record. This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information in these columns may have to be filled up consolidating the expenditure incurred under various GST registrations. ***Note -*** *It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.*

20.5 SUMMARY OF PROVISIONS IN RESPECT OF WHICH INFORMATION TO BE FURNISHED IN FORM 3CD

The following table will give you a bird's eye view of certain provisions for which the information is to be given in Form 3CD

Section of the Income-tax Act, 1961	Clause No. of the Guidance Note	Details to be furnished
44AB	8	Indicate the relevant clause of section 44AB under which the audit has been conducted
115BA,115BAA, 115BAB, 115BAC, 115BAD, 115BAE	8a	Mention whether the individual/HUF/AOP/BOI has opted to shift out of the default regime u/s 115BAC. In case of companies/co-operative societies, mention whether they have opted for concessional rates of taxation under the special regimes under section 115BAA/115BAB or 115BAD/115BAE, as the case may be.
44AA	11(a)	Mention whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.
44AD,44ADA, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G (provisions relating to shipping business)	12	Mention whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section.
145(2)	13(d)	Mention whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards.
145A	14(b)	Review the methods of valuation adopted for valuation of closing stock and compare the same with the method prescribed under section 145A.
45(2)	15	Mention the details of capital asset converted into stock- in-trade
28	16	Indicate the amounts falling within the scope of section 28 which are not credited to the profit and loss account

43CA or 50C	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, furnish the following details: (a) Details of property (b) Consideration received or accrued (c) Value adopted or assessed or assessable
32	18	Mention the particulars of depreciation allowable as per the Income-tax Act, 1961 in respect of each asset or block of asset in the mentioned format. Section 43(1) and Explanations thereunder and section 36(1)(iii) also to be kept in mind.
33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1) (iv), 35(2AA), 35ABA, 35(2AB), 35ABB, 35AD, 35CCA, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E	19	State the amounts admissible under these sections
36(1)(ii)	20(a)	Indicate the sums paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend
36(1)(va) read with 2(24)(x)	20(b)	Mention the details of contributions received from employees for various funds as referred to in section 36(1)(va)
37	21(a)	Mention the details of amounts debited to profit and loss account, being in the nature of capital, personal, advertisement expenditure, expenditure incurred at clubs, expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India), expenditure by way of other penalty or fine not covered above, expenditure incurred to compound an offence under any law for the time being in force, in India or outside India, expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such

		benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person
40(a)(i)/(ia)/(iib)/ (iii)(iv)/(v)	21(b)	Indicate the amounts inadmissible under section 40(a)(i)/(ia) with details of payment on which tax has not deducted or after deduction, tax has not been paid on or before the due specified under section 139(1) and the amount inadmissible under section 40(a)(iib), 40(a)(iii), 40(a) (iv), 40(a)(v)
40(b)/40(ba)	21(c)	State the amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof
40A(3)/ 40A(3A)	21(d)	State the amount of disallowance under section 40A(3)/ deemed income under section 40A(3A)
40A(7)	21(e)	Indicate the provision for payment of gratuity not allowable under section 40A(7)
40A(9)	21(f)	State the amount of payment made to an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of person, body of individuals, society registered under society registration act or other institutions which is not allowable
ICDS X	21(g)	Examine the particulars of any liability of a contingent nature debited to the profit and loss account.
14A	21(h)	Verify and state the amount of expenditure relatable to the income which does not form part of total income which is not allowed as deduction in terms of section 14A
36(1)(iii)	21(i)	Indicate the amount inadmissible under the proviso to section 36(1)(iii)
Section 23 of MSMED Act, 2006	22	Indicate the amount of interest inadmissible under section 23 of the MSMED Act, 2006.
43B(h)	22	Indicate the amount of sum payable by the assessee to a micro or small enterprise not allowable as per section 43B.
40A(2)(b)	23	Mention the particulars of payments made to persons specified under section 40A(2)(b)

33AB or 33ABA	24	Report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33AB(4)/(5)/(7)/(8) or in section 33ABA(5)/(7)/(8)
41	25	Indicate the amount of profit chargeable to tax under section 41 and computation thereof
43B(a)/(b)/(c)/(d)/ (e)/ (f) or (g)	26	Indicate the amount of expenditure not allowable as per section 43B.
-	27(a)	Indicate the 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.
-	27(b)	Mention the particulars of income or expenditure of prior period credited or debited to the profit and loss account.
56(2)(ix)	29A(a)/(b)	Indicate the sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
56(2)(x)	29B(a)/(b)	Mention the amount which is treated as income in the hands of a person who received in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied.
69D	30	Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated
92CE	30A(a)/(b)	Mention the details of primary adjustment to transfer price and details of excess money available with the AE.
94B	30B(a)/(b)	Mention the details of expenditure incurred during the previous year by way of interest or of similar nature respect of debt issued by a non-resident Associated Enterprises under section 94B.
96	30C(a)/(b)	Mention the details of impermissible avoidance arrangements as referred to in section 96 entered into by the assessee during the previous

		year and to quantify the tax benefit arising in the aggregate in the previous year to all parties to such arrangement.
269SS	31(a)/(b)	Furnish the particulars of each loan or deposit or specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year.
269ST	31(ba)/ (bb)/ (bc)/ (bd)	Furnish the particulars of each receipt in an amount exceeding the limit specified in section 269ST.
269T	31(c)/(d)/(e)	Furnish the particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year.
	32(a)	Furnish the details of brought forward loss or depreciation allowance to the extent available.
79	32(b)	Furnish the details of change in the shareholding of the company taken place during the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.
73	32(c)	Furnish the details of speculation loss incurred by the assessee during the previous year.
73A	32(d)	Furnish the details of loss incurred in respect of specified business during the previous year.
Explanation to section 73	32(e)	Mention whether the company is deemed to be carrying on a speculation business as referred in Explanation to section 73.
Chapter VIA or section 10AA	33	Provide section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III.
-	34(a)/(b)	Mention whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB.
201(1A)/206C(7)	34(c)	Mention the details of the amount of interest under section 201(1A) or section 206C(7).
-	35(a)/(b)	Provide quantitative details of principal items of goods, in case of a trading or manufacturing concern.

2(22)(e)	36A	Mention whether the assessee has received any amount in the nature of dividend as referred to in section 2(22)(e)
-	37	Mention the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.
-	38	Mention the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified under audit was conducted under the Central Excise Act, 1944.
-	40	Provide the details regarding turnover, gross profit, etc. for the previous year and preceding previous year.
-	41	Provide the details of demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961.
-	42(a)/(b)	Mention whether the assessee is required to furnish statement in Form No. 61 or Form No. 61A or Form No. 61B.
286(2)	43	Mention whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in section 286(2).
-	44	Provide the break-up of total expenditure of entities registered or not registered under the GST.

20.6 PENALTY FOR FAILURE TO FURNISH TAX AUDIT REPORT [SECTION 271B]

If any person fails to get his accounts audited in respect of any previous year furnish a tax audit report as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to

- ½ % of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or
- ₹ 1,50,000,

whichever is less.

However, according to section 273B, no penalty shall be imposed if reasonable cause for such failure is proved.

Example: DB Ltd's turnover for the F.Y. 2024-25 is ₹ 15 crore from textile business and ₹ 3 Crore from petrol pump business. All transactions are through banking channels. DB Ltd. prepared its financial statements for textile business and got its accounts audited and furnished the same to the Income Tax department within the prescribed time. The company was of the view that since the turnover from the petrol pump business is ₹ 3 crore and all transactions were through banking channels, the accounts of petrol pump business were not required to be audited. Section 44AB is attracted where the total turnover from business exceeds the threshold of ₹ 10 crore i.e., total turnover indicates that the turnover from all businesses are to be aggregated.

Taking the facts from Example, the Assessing Officer wants to invoke penalty on ₹ 18 crore i.e., ₹ 15 crore plus ₹ 3 crore, considering ½% of the total turnover. Since the assessee has already furnished the report for ₹ 15 crore, the penalty u/s 271B shall be invoked only on turnover of ₹ 3 crore and not on turnover of ₹ 18 crore.

CASE STUDIES

Case Studies have been included to underline the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report under section 44AB as well as audit reports and certificates under the other provisions of the Income-tax Act, 1961. These case studies are based on the orders passed by the Disciplinary Committee of ICAI and/or the final orders passed by the Appellate Authority constituted by the Central Government under the Chartered Accountants Act, 1949.

Every Case Study begins with "A Word about the Case Study" which, as the phrase suggests, gives an overview as to what the case study is about. Thereafter, each case Study is presented in the following manner, highlighting the -

I. Relevant provisions of income-tax law

II. Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949

III. Facts of the case

IV. Contentions/Submissions of the chartered accountant

V. Bases for Conclusion

VI. Key Takeaways

Additional categories have also been included in a Case Study, if found necessary.

CASE STUDY 1

A Word about the Case Study		
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report. The issue involved in this Case Study relates to the responsibility of the chartered accountant in relation to reporting in Clause 34(a) and clause 21(b) of Form 3CD for non-deduction of tax at source and consequent disallowance under section 40(a)(ia).		
I	**Relevant provisions of income-tax law**	
	(1)	**Section 194J** Section 194J requires tax deduction at source@10% on, *inter alia*, fees for professional services, at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. As per clause (a) of the *Explanation* to section 194J, "Professional services" means services rendered by a person in the course of carrying on, *inter alia*, medical profession.

(2) **Section 40(a)(ia)**

Section 40(a)(ia) provides for disallowance of 30% of the sum payable to a resident, on which tax is deductible at source under Chapter XVII-B of the Income-tax Act, 1961 and such tax has not been deducted or after deduction, has not been paid on or before the due date for filing return of income u/s 139(1).

(3) **Reporting requirement in Clause 21(b) of Form 3CD (Relevant Extract)**

Amounts inadmissible under section 40(a)

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

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

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(4) **Reporting requirement in Clause 34(a) of Form 3CD (Relevant Extract)**

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 –

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
TAN	Section	Nature of payment	Total amt of payment or receipt of the nature specified in column (3)	Total amt on which tax was required to be deducted or collected out of (4)	Total amt on which tax was deducted or collected at specified rate out of (5)	Amt of tax deducted or collected out of (6)	Total amt on which tax was deducted or collected at less than specified rate out of (7)	Amt of tax deducted or collected on (8)	Amt of TDS or TCS not deposited to the credit of the Central Govt. out of (6) & (8)

II **Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949**

As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

III	**Facts of the case**	
	A survey was conducted on the premises of a hospital consequent to which it was found that the hospital had made payments of consultancy charges to doctors, without deducting tax under section 194J, even though the payments to each doctor exceeded the threshold of ₹ 30,000. In the tax audit report, the amount inadmissible under section 40(a)(ia) was mentioned as NIL in clause 21(b) of Form 3CD. Also, there was no mention of or reporting of TDS section 194J in clause 34(a).	
IV	**Contentions of the Chartered Accountant**	
	The Chartered Accountant contended that since the doctors did not provide any professional service to the hospital, the provisions of section 194J would **not** be attracted. He explained his contention that sometimes, due to unavoidable reasons/circumstances, the hospital collected the consultation fees on behalf of the doctors and the same is then paid/remitted to the doctors. Such payments were not expenses of the hospital and hence, the question of TDS does not arise. He also contended that as per the decision passed by the Special Bench of the Tribunal (Vishakapatnam) in case of *Merilyn Shipping and Transports v. ACIT*, section 40(a)(ia) is applicable only in respect of the amounts of expenditure which are payable as on 31st March of every year and it cannot be invoked to disallow the amounts which have been actually paid during the previous year, without deduction of tax at source. In this case, all payments were made to the respective doctors before 31st March. Therefore, according to him, the payment made to doctors by way of reimbursement of the fees collected from patients does not fall under the ambit of TDS and even if it does, the same would not be disallowed under section 40(a)(ia) due to the above decision. ***Note*** – *It may be noted that the Supreme Court, in Palam Gas Service v. CIT (2017) 394 ITR 300, observed that when the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word "payable" occurring in section 40(a)(ia) refers only to those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. Once the section mandates a person to deduct tax at source not only on the amounts payable but also when the sums are actually paid to the contractor, any person who does not adhere to this statutory obligation has to suffer the consequences which are stipulated in the Act itself*. *Also, the CBDT has, vide Circular No.10/2013 dated 16.12.2013 that the provisions of section 40(a)(ia) are amply clear that the term "payable" would include the "amounts which are paid during the year".* *The case in question relates to a period prior issuance of the Circular and the pronouncement of the Supreme Court ruling.*	
V	**Basis for Conclusion**	
	(1)	As per the Guidance Note on Tax Audit issued by ICAI, the tax auditor is required to report as to whether tax is deductible under any section of Chapter XVII-B and any amount is inadmissible u/s 40(a)(ia) under clauses 34(a) and 21(b), respectively.

	(2)	**If tax has not been deducted on the basis of Court judgement in a particular case, then, the tax auditor is required to disclose the same in his report so as to enable the Income-tax department to know the reason as to why tax was not deducted by the assessee.**
	(3)	On perusal of the profit and loss account of the hospital *vis-à-vis* the working papers of the CA, it has been noted that consultancy charges were shown as expenses in the Profit and Loss account of the hospital. Thus, the contention that the hospital collected fees on behalf of doctors and payment of such fees is not expenditure for attracting TDS u/s 194J is not correct, since such expenditure has been debited to the profit and loss account
	In this case, the CA had ignored the reporting requirements in Form 3CD and had not exercised due diligence in carrying out his professional duties. Hence, he was held guilty of professional misconduct falling within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.	
VI	**Key Takeaway**	
	The tax auditor should exercise due diligence while reporting under various clauses of Form 3CD. In case he has taken a view that tax is not deductible by virtue of a Court judgement, like in this case, he should disclose the same in his report.	

CASE STUDY 2

A Word about the Case Study		
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report. The issue involved in this Case Study relates to the responsibility of the chartered accountant in relation to reporting in clause 21(d) of Form 3CD of expenditure exceeding ₹ 10,000, for which payment is made otherwise than by way of account payee cheque/bank draft, ECS or other prescribed electronic modes. Such expenditure would attract disallowance under section 40A(3) of the Income-tax Act, 1961.		
I	**Relevant provisions of income-tax law**	
	(1)	**Section 40A(3)**
		Where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction. The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay. The provision applies to all categories of expenditure involving payments for goods or services which are deductible in computing the taxable income.

<table>
<tr><td></td><td>(2)</td><td><u>Reporting requirement in Clause 21(d) of Form 3CD</u></td></tr>
<tr><td></td><td></td><td>(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 -
<table>
<tr><th>Serial No.</th><th>Date of payment</th><th>Nature of payment</th><th>Amount</th><th>Name and PAN/Aadhar No. of the payee, if available</th></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
</table></td></tr>
<tr><td>II</td><td colspan="2"><u>Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u></td></tr>
<tr><td></td><td colspan="2">As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.
As per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.</td></tr>
<tr><td>III</td><td colspan="2"><u>Facts of the case</u></td></tr>
<tr><td></td><td colspan="2">A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of PQR Jewellers, a leading gold jewellery retail chain, on 30.1.2025. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the concern was involved in violation of section 40A(3) in a major way to the tune of ₹ 30 crores in the purchase of old gold.
The tax audit report of the concern for the P.Y. 2023-24 was issued by a chartered accountant u/s 44AB of the Income-tax Act, 1961. The audit report has a specific clause, namely, clause 21(d), concerning compliance of section 40A(3). However, the chartered accountant had not properly filled up this clause and had failed to highlight the extensive violation of section 40A(3).</td></tr>
<tr><td>IV</td><td colspan="2"><u>Contentions of the Chartered Accountant</u></td></tr>
<tr><td></td><td colspan="2">The chartered accountant submitted that he had done test checks and he did not come across any payment which warrants disclosure in Form 3CD. He also submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes. Copy of these instructions were verified by him. He had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000.
Therefore, the tax auditor submitted that he had taken reasonable professional care and on the basis of test checks, nothing came to his attention to warrant a reporting of violation of section 40A(3).</td></tr>
</table>

V	**Contentions of the Director of Income-tax (Investigation)**	
	The DIT (Investigation) made the following contentions -	
	(1)	As part of the post search enquiries, data from the billing software was analysed and violations u/s 40A(3) to the tune of ₹ 30 crores were noticed. In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerges from the enquiries is that PQR Jewellers purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.
	(2)	Though the audit report has a specific clause, namely, clause 21(d) concerning compliance of section 40A(3), it was not properly filled up and the auditor failed to highlight the extensive violation of section 40A(3). He drew reference to the Guidance Note on Tax Audit issued by ICAI which states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA and para 5 of Form 3CB, as the case may be. The tax auditor, in his report, may comment on such violation as under:- "It is not possible for me/us to verify whether the payments in excess of ₹ 10,000 have been made otherwise than by account payee cheque or bank draft or prescribed electronic modes, as the necessary evidence is not in the possession of the assessee". However, in this case, the tax auditor had mentioned "Yes" in response to the statement in sub-clause (A) of Clause 21(d) on 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.
	(3)	As per the Guidance Note, for the purpose of furnishing the required particulars, the tax auditor should have obtained a list of all cash payments in respect of expenditure exceeding ₹ 10,000/- made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should have been verified by the tax auditor with the books of accounts in order to ascertain whether the conditions for specific exemption granted under Rule 6DD are satisfied. Details of payments, which do not satisfy the above conditions, should have been stated under this clause. He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.
	(4)	Reference was drawn to the CBDT Circular No. 387, dated 06.07.1984, which clarifies the purpose of tax audit. The relevant extract of the circular is given below:-

		"*A proper audit is for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the tax payer and he correctly makes claims for deduction. Such audit would also help in preventing fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of the Assessing Officers in carrying out routine verifications like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the Assessing Officers thus saved could be utilised for attending to more investigational aspects of the case*".
	(5)	In this case, given the massive scale of violation of section 40A(3), the chartered accountant has not exercised reasonable diligence before offering the remarks; and the audit in this case was not carried out as per the Guidance Note of the ICAI and the CBDT Circular.
VI	**Basis for Conclusion**	
	(1)	In Form 3CD, particulars in respect of cash payments made in violation of Section 40A(3) are required to be reported, as such payments are inadmissible as deduction.
	(2)	The contention of the chartered accountant that the test checks conducted by him did not reveal the aforesaid violation was not tenable. Considering the nature of business of the assessee, namely, jewellery business, the onus was on the chartered accountant to verify the same before reporting in Form 3CD. Stating the fact that no such transaction was identified during test check is not acceptable because such payments can be identified independent of bank transaction provided the chartered accountant had extended the verification to cover the same. Mere reliance on certificate issued by the management is not acceptable.
	(3)	The chartered accountant was, thus, required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, the chartered accountant has certified that there were no such instance, though such instances aggregate to a large quantum of ₹ 30 crores.
	Thus, in this case, the chartered accountant was held guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.	
VII	**Key Takeaway**	
	The chartered accountant should consider the nature of business of the assessee and accordingly undertake necessary checks to verify whether there are violations in the provisions of the Act, like cash payments in violation of section 40A(3) made, as in this case, by the assessee engaged in jewellery business. He should make use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.	

CASE STUDY 3

A Word about the Case Study		
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing Form 10CCB. While issuing Form 10CCB, the chartered accountant has to ensure compliance with the conditions stipulated under the relevant section (in this case, section 80-IA) for claim of deduction. Since the profit-linked deductions are available for a specified period, ten years in case of deduction u/s 80-IA, the chartered accountant has to ensure that the ten year period has not already elapsed. In case he notices the error after issuing Form 10CCB, he should withdraw the report timely and inform the same to the assessee immediately.		
I	**Relevant provisions of income-tax law**	
	(1)	**Section 80-IA** Section 80-IA provides for deduction of 100% of the profits and gains derived from the business of, *inter alia*, developing or operating and maintaining or developing, operating and maintaining any infrastructure facility for 10 consecutive assessment years. Section 80-IA(7) requires audit of accounts and furnishing of audit report in the prescribed form on or before the specified date i.e., 30th September of the assessment year for claim of such deduction.
	(2)	**Rule 18BBB and Form 10CCB** Rule 18BBB requires the audit report under section 80-IA(7) to be furnished in Form 10CCB along with the copy of the agreement of the enterprise with the Central Government or State Government or the local authority for carrying on the business of developing or operating and maintaining or developing, operating and maintaining the infrastructure facility. In Form 10CCB, the chartered accountant gives a declaration that in his opinion the enterprise satisfies the conditions stipulated in section 80-IA and the amount of deduction claimed thereunder is as per the provisions of the Income-tax Act, 1961 and meets the required conditions.
II	**Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949**	
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties	
III	**Facts of the case**	
	M/s. XYZ & Co. is a firm engaged in developing, operating and maintaining a highway project filed its return of income for A.Y.2016-17 on 30th September, 2016 claiming deduction under section 80-IA, on the basis of Form 10CCB issued by the chartered accountant. However, in August, 2017, it came to the notice of the chartered accountant that the ten year period for which the company had been eligible to claim deduction and	

	had, in fact, claimed deduction had expired in A.Y.2015-16. The chartered accountant withdrew the audit report in Form 10CCB and advised the firm to file a revised return u/s 139(5). At that point of time, the time limit for filing a revised return was one year from the end of the relevant assessment year i.e., upto 31.3.2018. Accordingly, the firm filed a revised return u/s 139(5) for A.Y.2016-17 on September, 2017. The Assessing Officer completed the assessment on the basis of the revised return and issued the assessment order on 1.3.2019.	
IV	**Contentions of the Chartered Accountant**	
	The Chartered Accountant contended that as soon as he came to know about the error, he withdrew his report in Form 10CCB and informed the assessee accordingly. The assessee, accordingly, filed a revised return withdrawing the claim under section 80-IA. He informed the Commissioner of Income-tax about the same in March 2019 at the first available opportunity since he was neither the tax auditor of the company nor was he representing the assessee before the tax authorities. He added that the Assessing Officer had completed the assessment on the basis of the revised return. Further, according to him, his report in Form 10CCB was neither the subject matter at the time of assessment nor at the time of penalty proceedings.	
V	**Basis for Conclusion**	
	(1)	The claim for deduction under section 80-IA was made by the assessee in the original return, supported by Form 10CCB issued by the chartered accountant. However, as soon as the chartered accountant came to know of the error, he withdrew his report and informed the assessee, who also filed a revised return withdrawing the claim under section 80-IA.
	(2)	Therefore, the chartered accountant had withdrawn his audit report in Form 10CCB and informed the assessee, who also had filed a revised return immediately withdrawing the claim for deduction under section 80-IA.
	Accordingly, the chartered accountant was held "not guilty" of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.	
VI	**Key Takeaway**	
	The chartered accountant should exercise due care while issuing audit reports and ensure that all the conditions stipulated under the relevant provisions of the Income-tax Act, 1961, including the time period for claim of deduction, are satisfied. In case he notices an error subsequently, he should immediately withdraw his report, and communicate the same to the assessee immediately.	

CASE STUDY 4

A Word about the Case Study
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing audit report in Form 10CCB and conducting tax audit. The issue involved in this Case Study relates to the responsibility of the chartered accountant to ensure compliance with the stipulated conditions for claim of profit-linked deduction under Chapter VI-A while issuing audit report. He has to ascertain whether a certain activity carried out by the assessee would constitute "manufacture" for claim of deduction under section 80-IE and whether the conditions for claim of deduction have been satisfied in a case where the assessee is a company which had taken over a sole proprietary concern. The actual case on the basis of which this Case Study is developed was in relation to section 80-IB for the A.Y.2002-03 to A.Y.2008-09, prior to the insertion of definition of "manufacture" in the Income-tax Act, 1961 w.e.f. 1.4.2009. The Case was decided in the year 2014 and reference was invited to the definition of "manufacture" under the Income-tax Act, 1961 by the Assistant Commissioner of Income-tax (ACIT). However, in the final decision, the meaning assigned to "manufacture" under different laws were resorted to considering that there was no definition in the Act during the relevant period (i.e., A.Y.2002-03 to A.Y.2008-09). In this Case Study, the dates have, therefore, been modified to a period post insertion of the definition and reference has been given to section 80-IE, since section 80-IB is no longer relevant for manufacture or production of article or thing.

I	**Relevant provisions of income-tax law**	
	(1)	**Section 80-IE**
		Section 80-IE applies to an undertaking which has begun **to manufacture or produce any eligible article or thing** on or before 1.4.2017. Deduction of 100% of profits and gains from such business would be available for ten consecutive assessment years from the year in which it begins to manufacture or produce eligible article or thing. The conditions to be satisfied for claim of deduction are that the undertaking should **not** be formed by - **(i) splitting up or the reconstruction of a business already in existence and** **(ii) the transfer to a new business, of machinery or plant previously used for any purpose.**
	(2)	**Section 2(29BA)**
		"**Manufacture**" with its grammatical variations, means a change in a non-living physical object or article or thing – (a) resulting in transformation of the object or article or thing into a **new and distinct object or article** or thing having a **different name, character and use**; or

		(b) bringing into existence of a **new and distinct object or article** or thing with a **different chemical composition or integral structure**.
	(3)	**Form 10CCB**
		This is the form for audit report, *inter alia,* u/s 80-IE. It requires a chartered accountant to give a declaration that the undertaking satisfies the conditions stipulated under section 80-IE and the amount of deduction claimed is as per the provisions of the Income-tax Act and meets the required conditions.
II	**Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949**	
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.	
III	**Facts of the case**	
	Alpha Packaging Services Ltd. located in Guwahati has been claiming deduction under section 80-IE of the Income-tax Act, 1961 since P.Y.2016-17 on the ground that it was engaged in manufacture or production of an eligible article or thing. A survey conducted on the company followed by a scrutiny of the case showed that the company was merely involved in packaging washing powder of a leading brand, Turf, obtained from Unilever Ltd. and giving the same back to them. The tax audit report as well as the report in Form 10CCB for claiming deduction under section 80-IE was issued by the same chartered accountant.	
	A show cause notice was issued by the ACIT to the chartered accountant stating the company got undue relief under section 80-IE for the last seven years on the basis of his report in Form 10CCB to the effect that the concern was involved in manufacturing/production of an eligible article or thing.	
IV	**Contentions of the ACIT** The ACIT contended that the report in Form 10CCB issued by the chartered accountant is **not** correct since – - The company is not in any way involved in manufacturing or production of any article or thing. The company is merely involved in packaging of washing powder that was given by LMN Ltd. It was not involved in manufacturing of any pouch or cover or sachet which was independently saleable as a product in the market. - The company is not a new undertaking because it had taken over a proprietary concern and hired the plant and machinery of the said proprietary concern. Hence, it did not satisfy the condition for claim of deduction u/s 80-IE.	

V **Submissions of the Chartered Accountant and the ACIT's counter contentions**

	CA's Submission	ACIT's Contention
1.	The report in Form 10CCB was only a declaration not a certificate	This contention is not acceptable as Form 10CCB is a declaration by the chartered accountant that the undertaking satisfies the stipulated conditions for claim of deduction and the amount claimed is as per the provisions of the Income-tax Act, 1961 and meets the required conditions.
2.	Reliance on the Certificate of Directorate of Industry, Assam	The activity(s) which amount to manufacture or production is different under each Act. The chartered accountant issuing Form 10CCB has to ensure that the same amounts to "manufacture" as per the definition given in section 2(29BA) of the Income-tax Act, 1961.
3.	Reference to Supreme Court ruling in *ITO v. Arihant tiles and Marbles Pvt. Ltd.* wherein it was held that only when the marble blocks are cut into slabs and there is an activity of polishing and ultimate conversion of block into polished tiles, such slabs and tiles ultimately produced are held to be manufacturing activity because a new product has emerged.	Even according to the Supreme Court ruling, the condition to be fulfilled is that there should be emergence of a new and distinct commodity. In the case of the assessee, the washing powder remains a washing powder. The original product and the end product remained the same. No new and distinct commodity emerges as a result of packaging. Further, the end product is patented by Unilever and it cannot undergo change in any manner.
4.	The proprietary business was taken over by the company with all assets and liabilities except plant and machinery pertaining to the old units. The plant and machinery was not transferred to the company but given on hire to it and for using the machines, payment of hire charges was made and shown in the statement of profit and loss. Hence, the company has not violated any condition.	The assessee did not own plant and machinery, and such assets hired by the assessee amounted to transfer and thus, the company was not entitled to deduction u/s 80-IE.

VI	**Basis for Conclusion in the original case**	
	(1)	The definition of manufacture was inserted with effect from 1.4.2009. Since the case in question actually related to a period prior to insertion of definition of "manufacture" in the Income-tax Act, 1961, it was decided that though packaging or repackaging of a product is not manufacturing activity, the further activity of removing dust, grinding can be treated as manufacturing activity because the said activity changes the quality of the product and makes the product commercially marketable in different form. This conclusion emerged on the basis of Court ruling in relation to Excise law and other case laws holding that provisions of a taxing statute granting incentive for promoting growth should be construed liberally.
	(2)	Certain Tribunal and High Court rulings have held that in order to constitute an industrial undertaking (which was a requirement under section 80-IB), the industrial unit need not necessarily own its plant and machinery and hiring of plant and machinery would not inhibit the ability of industrial unit or company to claim deduction.
	(3)	Considering the rationale emerging from the Court decisions as regards whether the activity of packaging constituted manufacture/production and whether hiring of plant and machinery from the sole proprietary concern which was taken over by the company would be in violation of the stipulated condition, the benefit of doubt was extended to the chartered accountant and he was held "not guilty of professional misconduct".
VII	**Key Takeaways in the context of the current provisions of Income-tax law**	
	(1)	In the current context, however, the definition of "manufacture" as per section 2(29BA) of the Income-tax Act, 1961 would be relevant. Therefore, the chartered accountant giving a declaration in Form 10CCB has to ensure that the activity carried on by the assessee amounts to "manufacture" as per the said definition. He may rely on judicial rulings based on the definition of manufacture u/s 2(29BA) or a similar definition under any other law for this purpose. It may be noted that "making the product commercially marketable", which was one of the bases for conclusion in the actual case is not included in the definition of manufacture under section 2(29BA).
	(2)	With the introduction of several anti-avoidance provisions in the Income-tax Act, 1961, in the last decade, the action of taking over all assets and liabilities of the sole proprietary concern except plant and machinery and subsequently hiring the plant and machinery from the said concern itself in order to claim deduction under section 80-IE may be viewed as a tax avoidance measure. This may be viewed as an arrangement entered into solely or primarily for the purpose of obtaining a tax advantage and even GAAR provisions may be attracted if the tax benefit is more than ₹ 3 crores. Therefore, the chartered accountant must ensure satisfaction of conditions for claiming deduction under section 80-IE before issuing the audit report under Form 10CCB.

CASE STUDY 5

A Word about the Case Study	
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing certificate in Form 15CB. The issue involved in this Case Study relates to the responsibility of the chartered accountant to examine the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of deduction of tax at source.	
I	**Relevant provision of income-tax law**
	Section 195(6) and Rule 37BB The person responsible for paying to a non-corporate non-resident or a foreign company, any sum, whether or not chargeable under the provisions of the Income-tax Act, 1961, has to furnish information relating to payment of such sum in the prescribed form and manner. Rule 37BB(1) provides that the person responsible for paying to a non-corporate non-resident or a foreign company, any sum chargeable under the provisions of the Income-tax Act, 1961, has to furnish the information in Part C of Form No.15CA, if the amount of payment or the aggregate of such payments, as the case may be, during the financial year exceeds ₹ 5 lakh, after obtaining a certificate in Form No.15CB from a chartered accountant.
II	**Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949**
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. As per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.
III	**Facts of the case**
	The Income-tax department collected documents from X Bank which revealed that M/s. Y Travels and Consultancy Services (Y Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Y Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant

	facilitated such violations. During the six-month period in question, the chartered accountant had issued 80 certificates in Form 15CB approximately involving remittances of ₹ 25 crores in favour of Y Travels.	
IV	**Submissions of the Chartered Accountant**	
	The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 2,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.	
V	**Basis for Conclusion**	
	(1)	Form 3CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source.
	(2)	The CA certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS.
	(3)	In this case, however, the CA mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.
	(4)	The CA issuing certificate in Form 15CB is, therefore, required to examine the agreement between the remitter and the beneficiary along with the relevant documents as well as books of account of the company – (i) for arriving at a conclusion as to the nature of remittance and rate of TDS; and (ii) for ensuring that the particulars mentioned in the certificate were true and correct.
	In this case, since he has failed to do so, he is held guilty of professional misconduct as per clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to obtain sufficient information and failure to exercise due diligence in discharging his professional responsibilities.	

VI	**Key takeaway**
	As elucidated in the Guidance Note, while issuing certificates, absolute level of assurance is expected to be provided by the practitioner on the subject matter. Therefore, a CA has to exercise due diligence and discharge the duties expected of him as a professional while issuance of such certificates. Accordingly, in this case, before issuing certificate in Form 15CB, the CA should verify the agreement between the remitter and the beneficiary, along with the relevant documents and books of account of the company for arriving at a conclusion as to the nature of remittance and rate of TDS. Only after ensuring that the particulars mentioned in the certificate were true and correct, should he issue such certificate. In case after issuing the certificate in Form 15CB, he comes to know that the remittance was not genuine, he has to withdraw the same within 7 days.

TEST YOUR KNOWLEDGE

Questions

1. *Sunlight & Co., a partnership firm engaged in trading of electronic goods, has a turnover of ₹ 265 lakhs for the F.Y. 2024-25. Examine whether Sunlight & Co. is required to get its books of account audited mandatorily as per section 44AB from the information given below–*

	Particulars	***₹***
(i)	*Total turnover of F.Y.2024-25*	*2,65,00,000*
(ii)	*Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)*	*3,25,00,000*
(iii)	*Cash receipts out of (i) above*	*14,00,000*
(iv)	*Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)*	*16,00,000*
(v)	*Aggregate of all payments during the year*	*1,35,00,000*
(vi)	*Cash payments out of (v) above*	*6,95,000*

Would your answer change if the cash receipts indicated in (iii) is ₹ 13 lakh instead of ₹ 14 lakh?

2. *Mr. Abhinav Ahuja runs a travel agency business since the year 2010. His total commission receipts for the F.Y. 2024-25 is ₹ 287 lakhs. The details of receipts and payments made by him during the year 2024-25 are as follows:*

Particulars	**Amount (₹)**	**Mode of receipt/payment**
Date of Receipt		
15.4.2024	15,65,000	BHIM UPI
27.4.2024	13,80,000	A/c payee cheque
7.5.2024	13,35,000	Bearer cheque
6.6.2024	18,21,000	A/c payee cheque
15.8.2024	15,25,000	NEFT
19.9.2024	16,72,000	NEFT
18.10.2024	15,35,600	UPI
15.2.2025	16,25,350	UPI

17.3.2025	18,19,450	NEFT
Other aggregate receipts not exceeding ₹ 2,000 per person on certain occasions from various customers. Out of this, receipts of ₹ 52,500 are received in cash.	1,44,21,600	A/c payee cheques, NEFT and UPI
Payments		
Aggregate all payments made during the P.Y. 2024-25	2,58,00,000	
Amount incurred for expenditure in cash (not exceeding ₹ 10,000 per person in each case)	20,58,000	

Mr. Abhinav contended that he is not required to get his accounts audited since his turnover does not exceed ₹ 3 crores and he is eligible to declare his income as per presumptive provisions of section 44AD. Examine the contention of Mr. Abhinav Ahuja.

3. *X Ltd., an Indian company, paid interest of ₹ 95 lakhs to X Inc., a non-resident associated enterprise in the P.Y.2024-25 on loan borrowed from it. X Ltd. also obtained loan of ₹ 5 crore@10% p.a. on 1.4.2024 from Y Inc., a foreign company in which it holds 20% voting power. X Inc. deposits ₹ 2 crore with Y Inc. X Ltd. contends that the provisions of section 94B are not attracted in its case, since the interest paid to non-resident associated enterprise does not exceed ₹ 1 crore in the P.Y.2024-25. The tax auditor is, however, of the opinion that the interest of ₹ 20 lakh (i.e., 10% of ₹ 2 crore) also has to be considered for the purpose of section 94B. X Ltd. contends that X Inc. has not deposited a corresponding and matching amount of ₹ 5 crore with Y Inc, and hence, the provisions of section 94B will **not** be attracted in this case. Examine the reporting requirement, if any, of the tax auditor in this case.*

4. *ABC Ltd. is engaged in transportation of building material and transportation of goods to contractors. It made payment for hiring dumpers for this purpose. The company has not deducted tax at source on the ground that since the payment was for transportation of goods and not renting out machinery and equipment, such payments could not be termed as rent paid for use of machinery under section 194-I and hence, no tax was deductible at source.*

The tax auditor is, however, of the view that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works

contracts, thereby attracting the provisions of section 194C. He relied upon the Gujarat High Court ruling in CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484.

What is the reporting responsibility of the tax auditor in such a case and the consequent ethical implications? Examine.

5. *A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of LMN Jewellers (P) Ltd., a gold jewellery retail chain, on 28.2.2024. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the company was involved in violation of section 40A(3) in a major way to the tune of ₹ 20 crores in the purchase of old gold.*

In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerged from the enquiries is that LMN Jewellers (P) Ltd. purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.

However, the tax auditor had mentioned "Yes" in response to the statement in sub-clause (A) of Clause 21(d) on 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. The tax auditor submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes; and copy of these instructions were verified by him. He further submitted that he had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000. Also, he mentioned that the test checks conducted by him did not reveal any violation.

Examine the ethical implications in this case and the consequences thereof.

6. *XYZ & Co, a firm engaged in interior decoration business, employed 20 new employees on 1.4.2024 on a monthly salary of ₹ 25,000 to be paid by account payee cheque. In addition, each employee was entitled to 10% employer contribution to recognised provident fund. The employees were also entitled to transport allowance of ₹ 3,000 p.m. paid in cash. The gross total income of XYZ & Co. included profits and gains from business of ₹ 62 lakhs.*

The firm claimed deduction under section 80JJAA of ₹ 18 lakh, being 30% of 60 lakh (20 new employees x ₹ 25,000 p.m. x 12) on the basis of the report of the chartered accountant issued in Form 10DA. The same chartered accountant was also the tax auditor of the firm. The chartered accountant contended that "emoluments" do not include employer contribution to PF. Also, cash payments were not to be considered as "additional employee cost" for the purpose of section 80JJAA. Hence, only ₹ 25,000 p.m. per employee paid by account payee cheque has to be treated as additional employee cost. Since the same does not exceed the limit of ₹ 25,000 p.m. and the employees have been employed for more than 240 days in the P.Y.2024-25, the employees would qualify as "additional employees" for the purpose of deduction under section 80JJAA for A.Y.2025-26.

Is his contention correct? Examine the ethical implications in this case.

7. *The Income-tax department collected documents from ABC Bank which revealed that M/s. Alpha Travels and Consultancy Services (Alpha Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Alpha Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the nine-month period in question, the chartered accountant had issued 120 certificates in Form 15CB approximately involving remittances of ₹ 30 crores in favour of Alpha Travels.*

The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He however, failed to bring on record the invoices. He further submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 3,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.

Examine the ethical implications in this case.

Answers

1. As per section 44AB, every person carrying on business or profession is required to get his accounts audited before the "specified date" by a Chartered Accountant, if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year ≤ 5% of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. ≤ 5% of such payments or

In this case, the turnover of Sunlight & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory.

In this case, the percentage of cash receipts of ₹ 16 lakhs to aggregate receipts of ₹ 325 lakhs is 4.92% and the percentage of cash payments to aggregate payments is 5.14%.

Since the cash payments made during the year exceed 5% of aggregate payments, the firm is required to get its accounts audited under section 44AB and furnish audit report before the specified date, irrespective of the fact that its turnover does not exceed ₹ 10 crores and its cash receipts do not exceed 5% of total receipts.

It may be noted that, in this case, Sunshine & Co. cannot declare profits as per the presumptive provisions of section 44AD, since the percentage of turnover receipts in cash of ₹ 14 lakhs to the total turnover of ₹ 265 lakhs is 5.28%.

If the cash receipts indicated in (iii) is ₹ 13 lakhs instead of ₹ 14 lakhs, the percentage of turnover receipts in cash of ₹ 13 lakhs to the total turnover of ₹ 265 lakhs would be 4.91%. In such a case, Sunshine & Co. can declare profits as per the presumptive provisions of section 44AD, in which case, it need not get its books of account audited under section 44AB.

2. As per section 44AB, every person *inter alia* carrying on business or profession is required to get his accounts audited before the "specified date" by an accountant, if total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ ₹ 10 crore in the relevant previous year (P.Y.), if -

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year ≤ 5% of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. ≤ 5% of such payments or

As per section 44AD, a resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C – deductions in respect of certain incomes" whose total turnover/ gross receipts in the P.Y. ≤ ₹ 200 lakhs (where cash receipts do not exceed 5% of total turnover, higher threshold limit of ₹ 300 lakhs applicable) can declare 8%/6%, as the case may be, of total turnover/ sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee. However, a person *inter alia* carrying on any agency business are not eligible for presumptive provisions of section 44AD.

In the present case, since Mr. Abhinav Ahuja is carrying on travel agency business, he is not eligible for presumptive provisions of section 44AD, though his turnover does not exceed ₹ 3 crores.

In this case, the turnover of Mr. Abhinav Ahuja exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory. During the P.Y. 2024-25, his cash receipts are ₹ 13,35,000 plus ₹ 52,500 totalling to ₹ 13,87,500, which is 4.83% of total receipts of ₹ 2,87,00,000. Cash payments made during the P.Y. 2024-25 are ₹ 20,58,000 which is 7.98% of aggregate payments of ₹ 2,58,00,000. Since his cash payments during the P.Y. 2024-25, exceed 5% of aggregate payments made during the year, he is required to get the accounts audited under section 44AB and furnish tax audit report on or before the specified date i.e., one month prior to the due date of filing return of income under section 139(1).

3. **Relevant provision of law** - Section 94B provides that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

In this case, the debt issued by Y Inc. is ₹ 5 crore and the deposit made by the associated enterprise, X Inc. with Y Inc. is ₹ 2 crore. Since the deposit is not of a matching amount, the X Ltd. contends that provisions of section 94B will not be attracted in respect of interest payable by it to Y Inc. The tax auditor is of the opinion that interest on ₹ 2 crore amounting to ₹ 20 lakhs will have to be considered for the purpose of section 94B. Accordingly, the interest payable/paid by X Ltd. to non-resident associated enterprises during the year would be ₹ 115 lakhs and hence, the provisions of section 94B would be attracted, since the same exceeds the threshold of ₹ 1 crore. This appears to be the legislative intent, since otherwise it is possible to escape the application of this provision by even by depositing a marginally lower amount than the loan taken.

Relevant clause of Form 3CD - Clause 30B(a) of Form 3CD requires the tax auditor to state whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B.

Relevant paras of the Guidance Note on Tax Audit - As per para 18.6 of the Guidance Note on Tax Audit, the tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee. These differences are to be reported in para 3 of Form No. 3CA or para 5 of Form 3CB. As per para 19.3, if there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.

Therefore, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be.

Accordingly, in this case, the tax auditor may state both the view points in Clause 30B as well as report the difference of opinion appropriately as an observation in para 3 of Form 3CA to enable the tax authority to take a decision in the matter.

4. In clause 34(a) of Form 3CD, the tax auditor is required to report whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, and if yes, to furnish the details mentioned thereunder. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The tax auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion

appropriately as an observation in para 3 of Form 3CA. This requirement is contained in the Guidance Note on Tax Audit.

Also, in clause 21(b)(ii) of Form 3CD, the amount inadmissible under section 40(a)(ia) has to be mentioned.

In case the tax auditor does not comply with the reporting requirements under these clauses and fails to mention the difference of opinion appropriately as an observation in para 3 of Form 3CA, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for not exercising due diligence may be invoked.

5. As per section 40A(3), where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction.

Clause 21(d) of Form 3CD requires the tax auditor to report, 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; and if not, to furnish details mentioned thereunder, namely, date of payment, nature of payment, amount etc.

The Guidance Note on Tax Audit issued by ICAI states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA.

The tax auditor is required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, in this case, the tax auditor has certified that there was no such instance, though such instances aggregate to a large quantum of ₹ 20 crores.

The tax auditor should have considered the nature of business i.e., jewellery business of the assessee and accordingly undertaken necessary checks to verify whether there are cash payments in violation of section 40A(3). He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.

In this case, considering the nature of business of the assessee, namely, jewellery business, the onus was on the tax auditor to verify the same before reporting in Form 3CD. Mere reliance on certificate issued by the management is not acceptable in such a case. Also, even in a case where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA, which he had failed to do.

Thus, in the case, the tax auditor had failed to exercise due diligence in the conduct of his professional duties. He had also failed to obtain sufficient information which is necessary for expression of opinion. On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

6. Deduction under section 80JJAA is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

"Additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year. However, in the case of an existing business, the additional employee cost shall be nil, if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or use of ECS through bank account or other prescribed electronic mode.

"Emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called but does not include, *inter alia*, contribution by employer to provident fund.

"Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include, inter alia, an employee whose total emoluments are more than ₹ 25,000 p.m.

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,000 paid in cash by way of transport allowance to the employee. Hence, the total emoluments per employee is ₹ 28,000 p.m. Due to this reason, the 20 employees employed on 1.4.2024 will not qualify as "additional employees" for the purpose of deduction under section 80JJAA, since

their total emoluments are more than ₹ 25,000 p.m. Hence, XYZ & Co. is not eligible for any deduction under section 80JJAA due to failure to fulfil the condition for being treated as an "additional employee". In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

Also, clause 33 of Form 3CD requires section-wise details of deductions, if any, admissible under Chapter VIA. Here again, the tax auditor has to ensure that the assessee fulfils all the conditions specified in the section under which the deduction is claimed. However, in this case, the tax auditor has failed to do so.

On account of such failure, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

7. Form 15CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source. The chartered accountant certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS. In this case, however, the chartered accountant mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.

On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to exercise due diligence in discharging his professional responsibilities and failure to obtain sufficient information may be invoked.

QUESTIONS BASED ON SIGNIFICANT SELECT CASES

You are required to answer the following questions on the basis of decided case laws, bringing out the following -

(a) Issue involved

(b) Relevant provisions of law

(c) Analysis and Conclusion

1. ABC Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2024-25, it made payment to various parties and deducted tax amounting to ₹ 22 lakhs. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Act. The company submitted that it is facing financial hardship since a large sum of money has been stuck-up with its debtors and also with the income-tax department in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has *suo-moto* deposited the TDS amount along-with interest u/s 201(1A), before receiving any notice from the income-tax department in this regard. However, prosecution proceedings were initiated under section 276B against the company and its directors. The company has approached you to advise in the matter.

2. XYZ Limited entered into a contract for purchase of patented process with M/s. Delta Inc, a non-resident company based in Country X. It filed an application u/s 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of patented process without deducting tax at source.

   The assessee, XYZ Limited, contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Country X, no tax was to be deducted in India on same. The Assessing Officer rejected the assessee's application on grounds that consideration for patented process constituted royalty u/s 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 10% on said royalty payment.

   On Appeal, the Commissioner (Appeals) passed an order in favour of the assessee. On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of patented processes were in the nature of royalty and tax at source to be deducted on such payment.

The assessee company filed a miscellaneous application for rectification under section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

The Tribunal allowed said application in exercise of his powers under section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favour the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. Is Tribunal justified in recalling its original order?

3. The assessee, being an Indian branch of US Company, LMN Inc, was engaged in contract research activities and cultivation of parent seeds in India. It had been claiming exemption by treating its entire income as agricultural income.

On scrutiny assessment for the period from year 2012 to 2018, the Assessing Officer treated entire income of the assessee as business income and attributed deemed income from research activity holding the assessee to the Permanent Establishment (PE) of LMN Inc. However, the assessee company disputed the matter for resolution under Mutual Agreement Procedure (MAP) under the DTAA agreement between India and USA. The MAP was culminated in the year 2022. The assessment was finalized and taxes alongwith interest were paid by the assessee u/s 220(2).

However, the assessee disputed the amount of interest u/s 220(2) for the period from 2018 to 2022.

Thereafter, the assessee filed an application before Jurisdictional Commissioner of Income-tax under section 220(2A) for waiver of interest levied u/s 220(2). The Commissioner dismissed application of the assessee.

The assessee is a part of LMN Inc, a global conglomerate which had in 2022 ₹ 86,000 crores in net sales and ₹ 15,000 crores as operating profit. The amount paid by it towards interest u/s 220(2) of the Act was ₹ 1.75 crores.

Discuss whether the Commissioner of Income-tax is justified in rejecting the claim of assessee or not.

4. During the scrutiny assessment of Refresh Me Ltd., a company engaged in manufacture and distribution of packaged juices, the Assessing Officer increased the income passed an order of demand. Aggrieved by the order, the assessee filed an appeal to CIT(A), who confirmed the order of Assessing Officer. The assessee further appealed to Appellate Tribunal requesting for the stay of collection of tax, which the Tribunal provided initially for 180 days on deposit of 20% of the amount of tax by Refresh Me Ltd. Thereafter, the Bench was functioning intermittently and therefore, the disputed matter could not be disposed off. The

company applied for extension of stay and was granted extension upto 365 days. The Appellate Tribunal did not dispose off the appeal before the time extended for collection of tax. The revenue served an order of demand citing the reason that the order of stay automatically gets vacated post the expiry of 365 days. The assessee seeks your opinion as to whether the contention of the revenue is justified.

5. On 31.07.2024, a search under section 132 was conducted in the business and residential premises of Mr. Y and some gold bars were seized from the locker. Mr. Y voluntarily disclosed ₹ 12.50 crores of income during the course of search. Later on, he filed an application for sale of the gold bars weighing 5 kgs for adjustment towards the tax liability, even before the completion of the assessment by the Assessing Officer. However, the Assessing Officer rejected the application and observed that such action can be taken only after the assessment is completed and a demand has been quantified. Is the Assessing Officer justified in rejecting the application? Examine.

6. Mr. X filed his return of income for A.Y. 2024-25 by declaring a total income of ₹ 10 lakhs. His case was selected for scrutiny assessment and an addition of ₹ 4 lakhs was made by the Assessing Officer on account of disallowances of certain expenses. During the course of the assessment proceedings, Mr. X found that he erroneously failed to claim the set-off of brought forward losses under section 72 amounting to ₹ 3 lakhs, which he was otherwise entitled to. By the time the error was discovered by Mr. X, the time-limit for filling revised return had also expired. Hence, during the course of the proceedings, Mr. X approached the Assessing Officer to allow the set-off of the brought forward losses which was erroneously not claimed in the return of income filed under section 139(1). Whether the Assessing Officer is bound to accept the request of Mr. X? Examine.

7. M/s LMN Travels is a Travel Agent engaged in sale of air tickets of AirGo and AirJet Airlines. It earns standard commission @ 5% as well as supplementary commission. AirGo and AirJet have deducted tax at source under section 194H on the standard commission, which is a fixed percentage designated by the International Air Transport Association (IATA). However, they have not deducted tax on the supplementary commission, which is the additional amount LMN Travels charges over and above the net fare quoted by AirGo and AirJet and retained by LMN Travels as its own income.

   The details of the amounts at which the tickets were sold are transmitted by LMN Travels to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of LMN Travels. The contract between

LMN Travels and the airlines stated that "all monies" received by LMN Travels were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged.

AirGo and AirJet contended that tax is not deductible on supplementary commission which LMN Travels retains out of the sale proceeds of the air tickets, since there is no agency relationship between the airlines and LMN Travels and that the supplementary commission is not within the control of the airlines. Discuss the correctness of the above contention.

8. "The arm's length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law; accordingly, in an appeal u/s 260A, the High Court is precluded from examining the correctness of determination of the ALP" – Examine the correctness of this statement with reference to a recent Supreme Court ruling.

9. In the case of M/s HKHR Ltd., the Income-tax Appellate Tribunal decided against the assessee and issued order under section 254. The assessee filed an appeal to the jurisdictional High Court by framing the substantial question of law under section 260A(2)(c). The High Court, without framing the substantial question of law u/s 260A(3) at the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal on the questions raised by the assessee appellant. Discuss whether the High Court was justified in not formulating the substantial question of law as required under section 260A(3) and adjudicating merely on the questions put forth by the appellant under section 260A(2)(c).

10. The assessment of Mr. Arora was completed u/s 143(3) of the Income-tax Act 1961 with an addition of income of ₹ 9 lakh to the returned income. Mr. Arora contends that the order of assessment is bad in law as no notice was issued u/s 143(2) even though he had participated in the assessment proceedings. The Assessing Officer, relying on section 292BB, contends that since Mr. Arora has participated in assessment proceedings, he cannot raise such objection.

Examine the validity of the contentions of both Mr. Arora as well as the Assessing Officer.

ANSWERS – SIGNIFICANT SELECT CASES

1. **Issue Involved**: The issue under consideration is whether prosecution proceedings can be initiated where tax deducted has been deposited by the assessee *suo moto*, after the time prescribed under the Act but before receiving notice from the income-tax department, along with interest under section 201(1A) and the assessee has shown reasonable cause for such delay.

Relevant provisions of law: Prosecution proceedings are attracted under section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act. The punishment is rigorous imprisonment for not less than 3 months but which may extend to 7 years and with fine.

Section 278AA, however, provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

Analysis & Conclusion: The CBDT has, *vide Circular No. 24/2019 dated 9.9.2019*, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days.

In this case, the company has reasonable and sufficient cause since it was facing financial hardship on account of large sum of money stuck up with the debtors and also with the income-tax department on account of refunds. Inspite of the financial crisis, the company has *suo moto* deposited the TDS along with interest under section 201(1A) of the Act, before receiving any notice from the income-tax department in this regard.

Since it has deposited the TDS along with interest *suo moto* before receiving any notice from the department and it has also shown reasonable cause for such delay in deposit, the company cannot be punishable for the delay in deposit of TDS. The initiation of prosecution proceedings under section 276B against the company and the directors is, therefore, **not** correct.

Note *- The facts given in the question are similar to the facts in ACIT v. AT-Dev Prabha (JV) and others (2023) 454 ITR 59, wherein the above issue came up before the Supreme Court.*

The above answer is based on the rationale of the Supreme Court in the said case read along with the CBDT Circular.

2. **Issue Involved**: The issue under consideration is whether the powers under section 254(2) can be exercised by the Tribunal to recall an order and rehear the entire appeal on merits.

Relevant provision of law: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

Analysis & Conclusion: The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law.

Note *– The facts given in the question are similar to the facts in Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

3. **Issue Involved:** The issue under consideration is whether pendency of dispute resolution under MAP is a valid ground for waiver of interest under section 220(2A).

Relevant provision of law: Section 220(2) provides for levy of simple interest for delay in paying the sum specified in the notice of demand within the period specified thereunder.

Section 220(2A) provides for reduction or waiver of interest payable under section 220(2) if, *inter alia*, the Commissioner is satisfied that payment of such amount has caused or would cause genuine hardship to the assessee.

Analysis & Conclusion: Merely raising the dispute before any authority cannot be a ground for waiver of interest under section 220(2A). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was *bona fide*, no interest is leviable.

Further, in this case, the assessee is a part of a global conglomerate which had in the 2022 ₹ 86,000 crores in net sales and ₹ 15,000 crores as operating profit. In comparison to the profitability over the years, the amount paid by it towards interest under section 220(2) was merely ₹ 1.75 crores. This fact is relevant in concluding that no 'genuine hardship' can be said to have been caused to the assessee on account of payment of interest.

The Commissioner of Income-tax is, therefore, justified in rejecting the claim of assessee.

Note *– The facts given in the question are similar to the facts in Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2022) 449 ITR 186, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

4. **Issue Involved:** The issue under consideration is whether the stay order can be automatically vacated upon expiry of extended period of stay of 365 days, where the delay in disposing of the appeal is not attributable to the assessee.

Relevant provision of law: The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

Analysis & Conclusion: This provision would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Thus, the vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. This will cause undue hardship to the assessee, even where he is not at fault. In this sense, the provision is arbitrary and disproportionate so far as the assessee is concerned.

The contention of the revenue is **not** justified. Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

Note – *The facts given in the question are similar to the facts in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.*

5. **Issue Involved:** The issue involved in this case is whether Mr. Y's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, can be entertained where assessment has not been completed.

Relevant provision of law: The provision contained in section 132B(1) lays down the manner in which the assets seized under section 132 may be dealt with. An assessee is entitled to make an application to the Assessing Officer for adjustment of seized assets towards existing tax liability.

Analysis & Conclusion: Here, the application by the assessee is not for adjustment of any existing liability, but towards the tax liability. In the said provision, the expression used is "the amount of the liability determined". "A liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

Note - *The facts given in the question are similar to the facts in Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 wherein the issue came up before the Allahabad High Court. The above answer is based on the rationale of the Allahabad High Court in the said case.*

6. **Issue Involved:** The issue under consideration is whether the Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee, Mr. X, in this case, has not claimed the same in the return filed by him and the time limit for filing revised return has expired.

Relevant provision of law: Under section 72, business losses shall be carried forward and shall be set-off against the profits and gains of any business in the next assessment year. It is assumed that the assessee has filed the return of income within the time stipulated u/s 139(1) and hence is eligible for set off of the unabsorbed loss in the subsequent year.

The wording used in section 72 is "shall", indicating that the provisions relating to set off of brought forward business loss are mandatory provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Analysis & Conclusion: As per *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955,* it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Thus, it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of Mr. X's total income and consequential tax liability. Merely because Mr. X has not claimed the set-off of brought forward losses of ₹ 3 lakh in the original return filed and the time limit for filing revised return has expired, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

The Assessing Officer is bound to accept the request of Mr. X and allow the set-off of brought forward losses of ₹ 3 lakh under section 72, even if Mr. X has not claimed the same in the return filed, and the time limit for filing the revised return has expired.

Note *– The facts given in the question are similar to the facts in CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case, taking note of the CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955.*

7. **Issue Involved**: The issue under consideration in this case is whether TDS under section 194H is attracted in respect of both standard and supplementary commission paid by AirGo and AirJet Airlines to LMN Travels.

Relevant provision of law: TDS is attracted on income by way of commission or brokerage payable to a resident, where the amount or aggregate amount credited or paid to a person during the financial year exceeds ₹ 15,000.

Analysis & Conclusion: Section 194H does not distinguish between direct and indirect payments. Both standard commission and supplementary commission fall within the meaning of "commission" under clause (i) of the *Explanation* thereto.

Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of "commission" under section 194H stands attracted and the requirement to deduct tax at source arises.

There was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. Accordingly, the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship. Notwithstanding the lack of control over the actual fare, the contract definitively stated that

"all monies" received by the agent were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged. The billing and settlement plan also demarcated "supplementary commission" under a separate heading.

Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessees, being the airlines to deduct tax at source on this additional income earned by the agent.

The contention of AirGo and AirJet is **not** correct and they are required to deduct tax at source under section 194H on both the standard commission and supplementary commission paid to LMN Travels.

Note *– The facts given in the question are similar to the facts in Singapore Airlines Ltd / KLM Royal Dutch Airlines v. CIT / British Airways Plc v. CIT (TDS) (2022) 49 ITR 203, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.*

8. **Issue Involved**: The issue under consideration is whether the arm's length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law.

Relevant provision of law: As per section 260A(1), an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Analysis & Conclusion: The Apex Court, in *SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121*, laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of arm's length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A.

When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

Therefore, in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

The statement is, therefore**, not** correct.

9. **Issue Involved**: The issue under consideration is whether the High Court is justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant.

Relevant provision of law: Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. As per section 260A(3) and 260A(4), if the High Court is so satisfied, it shall formulate that question and the appeal shall be heard only on the question so formulated.

Analysis & Conclusion: There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3). Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3**)** and not on the questions proposed by the appellant.

In case the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so

as to attract the rigour of section 260A for its admission and accordingly, should have dismissed the appeal at the preliminary stage itself. However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c).

The High Court was, therefore, not justified since it did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.

Note *– The facts given in the question are similar to the facts in CIT v. A.A. Estate Pvt. Ltd. [2019] 413 ITR 438, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

10. **Issue Involved:** The issue under consideration is whether the participation by the assessee in assessment proceedings would make the omission to issue notice under section 143(2) a curable defect on account of the deeming provision under section 292BB.

Relevant provision of law: As per section 292BB, any notice which is required to be served upon an assessee shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner,

if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or re-assessment.

Analysis & Conclusion: Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings.

For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure the complete absence of notice itself.

Accordingly, non-issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.

In the present case, since the assessment of Mr. Arora was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB.

Therefore, the contention of Mr. Arora is valid and the contention of the Assessing Officer is invalid in spite of the fact that Mr. Arora participated in the assessment proceedings.

Note *– The facts given in the question are similar to the facts in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*