

Puzzling Points in Tax Audits

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Date :- 09-08-2023, Wednesday

1. When form 3CA & 3CB are used ?

3CA :- If case is already subject to statutory audit following provisions of other laws, other than Income Tax Act.

3CB :- If case is not subject to statutory audit under provision 44AB of the Income Tax Only.

Point to ponder :- 3CB is applicable if statutory audit under other laws not carried out till the date of tax audit. But unfortunately, legal notice may proceed, as online portal does not recognize given provision.

1. When form 3CA & 3CB are used ?

FORM NO. 3CA

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

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

*I/we report that the statutory audit of M/s. (Name and address of the assessee with Permanent Account Number or Aadhaar Number) was conducted by *me/us/M/s. in pursuance of the provisions of theAct, and*I/we annex hereto a copy of *my/our/their audit report dated along with a copy of each of :-

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

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

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

- a.
- b.
- c.

1. When form 3CA & 3CB are used ?

Place:

Date:

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

Name of the signatory

Full address

Notes :

1. * Delete whichever is not applicable
2. This report has to be signed by a person eligible to sign the report as per the provisions of section 44AB of the Income-tax Act, 1961.
3. Where any of the requirements in this Form is answered in the negative or with qualification, give reasons therefor.
4. The person who signs this audit report shall indicate reference of his membership number/certificate of practice/authority under which he is entitled to sign this report.

1. When form 3CA & 3CB are used ?

FORM NO. 3CB

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

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

1. I have examined the balance sheet as on, , and the profit & loss account for the period beginning from to ending on , attached herewith, of **Xyz**,
,
2. I certify that the balance sheet and the profit & loss account are in agreement with the books of account maintained at the head office at and 0 branches.
3. (a) I report the following observations/comments/discrepancies/inconsistencies; if any: NIL
(b) Subject to above,-
 - (A) I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purposes of the audit.
 - (B) In my opinion, proper books of account have been kept by the head office and branches of the assessee so far as appears from my examination of the books.
 - (C) In my opinion and to the best of my information and according to the explanations given to me, the said accounts, read with notes thereon, if any, give a true and fair view:-
 - (i) in the case of the balance sheet, of the state of the affairs of the assessee as at ; and
 - (ii) in the case of the profit & loss account of the of the assessee for the year ended on that date.

1. When form 3CA & 3CB are used ?

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

Place:

Date:

Name of the signatory:

(Signature and stamp/seal of the signatory)

Full Address:

, India

2. Whether audit u/s 44AB can be carried out, without considering cash transactions.

The clause no “8” of 3CD requisite auditor to write section under which tax audit carried out.

Section 44AB(1) provides exemption from audit to those assessee who have less than 5% of cash receipts and payments of total receipts and payments.

It audit is carried out without considering the given exemption, even though assessee does not having any problem or knowledge, the auditor will be at considered at fault.

2. Whether audit u/s 44AB can be carried out, without considering cash transactions.

FORM NO. 3CD

8 Indicate the relevant clause of section 44AB under which the audit has been conducted :

8a Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/ 115BAD? : **No**

3(1). How to calculate exemption given from audit in case of cash transactions below 5%

The law says that exemptions from audit is given provided :-

(1) Turnover, sales or receipts are less than Rs. 10 Cr.

AND

(2) Total cash receipts are less than 5% of total receipts

AND

(3) Total cash payments are less than 5% of total payments.

NAME OF THE PARTY
FINANCIAL YEAR

XYZ
2022-23

Check Audit applicability IF turnover is less than 10 crores and more than 1 crore	
Particulars	Amount Rs.
Turnover	
Sales as per profit and loss account	
Add :-	
Any business earning in capital account	₹ -
Any business earning as indirect tax	₹ -
Less	
Sales return shown as debit balance seperately (under income or exp. head)	₹ -
Sales discount shown as debit balance seperately (under income or exp. head)	₹ -
Net total sale (this figure must go in ITR as turnover)	₹ -
Receipts	
Cash Receipts (Except Contra i.e. other than from any bank account SB, CA, CC, OD etc.,	₹ -
Total Receipts as per cash book, bank book including SB, CA, CC & OD Account (Except Contra, i.e. other than from bank)	₹ -
Cash Receipts % of total Receipts	#DIV/0!
Error	
Payments	
Cash Payments (Except Contra i.e. deposited in any bank account SB, CA, CC, OD etc.,)	₹ -
Total Payments as per cash book, bank book including SB, CA, CC & OD Account etc., (Except Contra, i.e. other than from bank)	₹ -
Cash payments % of total Payments	#DIV/0!
Error	
Audit applicable or not	#DIV/0!

Note:- Gray and Yellow marked area of amount column is auto Populated

Whether turnover is > Rs. 10 Cr.

Whether % of cash Receipt < 5 % of total Receipt

Whether % of cash payment < 5 % of total payment

#DIV/0!

#DIV/0!

3(2). How to calculate exemption given from audit in cash of lesser cash transactions.

Issues are :-

- (1) Receipts of payment through JV
- (2) Bank withdrawals and deposits (contra)
- (3) Cash introduction and withdrawn by owner
(proprietor & partner)
- (4) Fluctuation in working capital limit during the year.

4. What may happen in case audit carried out without considering exemption for cash.

(1) As said earlier, such mistake is professional omission

(2) Due date for filling ITR will fall under category of “non auditable case”, resulting issues are

- carried forward of loss,
- 234A,B interest to department
- Applicability of section 43B
- Applicability of section 40A(3) and others...

5. Whether audit u/s 44AD is necessary, if assessee had no or below 5% cash transactions ?

The provision 44AD provides that in case assessee, who followed provision 44AD in previous year, and does not offers profit following presumptive provision 44AD in current year, then his case will be liable to audit u/s 44AD for next five consecutive years.

That means, such case will not get any exemption irrespective of any turnover or any level of cash transactions upto five years.

5. Whether audit u/s 44AD is necessary, if assessee had no or below 5% cash transactions ?

If a person opts for presumptive taxation scheme then he is also required to follow the same scheme for next 5 years. If he failed to do so, then presumptive taxation scheme will not be available for him for next 5 years. [For example, an assessee claims to be taxed on presumptive basis under Section 44AD for 2021-22. However, for AY 2022-23, if he did not opt for presumptive taxation Scheme. In this case, he will not be eligible to claim benefit of presumptive taxation scheme for next five AYs, i.e. from AY 2023-24 to 2027-28.] Further, he is required to keep and maintain books of account and he is also liable for tax audit as per section 44AB from the AY in which he opts out from the presumptive taxation scheme. [If his total income exceeds maximum amount not chargeable to tax]

6. Whether corporate hospitals are doing business or profession ?

A doctor is professional but corporate hospital is a business.

But how to judge ? Difficult question.

Though depends of many other situations... professionals working in individual capacity is profession, whereas in a group is business.

8. Whether change in method of accounting and stock valuation is allowed ?

Definitely.... Provided

- (1) If assessee proves that changes are necessary for his business or profession
- (2) Changes made will be followed consistently for longer period.
- (3) Changes are not just tool to avoid tax

But reporting of changes in audit report, may lead to scrutiny.

8. Whether change in method of accounting and stock valuation is allowed ?

13	(a) Method of accounting employed in the previous year.	
	(b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.	No
	(c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.	Not Applicable

1

Serial number	Particulars	Increase in profit (Rs.)	Decrease in profit (Rs.)
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9. Whether unpaid GST will be disallowed u/s 43B relevant to (1) goods (2) services

GOODS :- unpaid GST relevant to closing stock is disallowable considering recasting of profit and loss account following provision 145A which provides for inclusion of tax & duty in closing stock, resulting in necessary routing of such relevant GST through PL.

Services :- Normally 43B may not be applicable, except GST payable following RCM, and claimed as an expense.

Even though it is reported that “taxes” are not routed through PL, unpaid taxes are added to income while processing return u/s 143(1), and then appeal remains the ultimate way out.

9. Whether unpaid GST will be disallowed u/s 43B relevant to (1) goods (2) services

GST not routed through Profit and loss account
(GST unpaid Rs. 5000)

Particulars	Amount	Particulars	Amount
To Opening Stock	10000	By Sale	40000
To Purchases	30000	By Closing Stock	20000
Add: GST	0		
Gross Profit	20000		
Total	60000	Total	60000

9. Whether unpaid GST will be disallowed u/s 43B relevant to (1) goods (2) services

Profit and loss account :- Restructured as per Sec 145A
Resulting in disallowance of tax of Rs. 3600 u/s 43B out of Rs. 5000

Particulars	Amount	Particulars	Amount
To Opening Stock	10000	By Sale	40000
To Purchases	30000	By Closing Stock	23600
Add: GST 18% (GST relevant to stock)	3600	(GST to be added to stock)	
Gross Profit	20000		
Total	60000	Total	60000

10. In case of no TDS u/s 194Q, but the supplier has made TCS u/s 206C(1H), then auditor can issue non-qualified report ?

The auditors are bound to follow income tax provisions and guideline of ICAI.....

No where in the law or in guideline, exemption from TDS u/s 194Q has been provided, considering TCS made by supplier u/s 206C(1H).

So reporting without qualification is not permissible.

The section 40A(3) provides for disallowance of 30% of expenses on which TDS not made including TDS u/s 194Q. So not making TDS of Rs. 100 u/s 194Q may result in tax of about Rs. 10,000 (i.e. 100 times)

11(1) . Whether TDS u/s 194Q applicable on diesel received by sub-contractor from principle transporter.

It is normal business custom of our area where main (principle) transporter provides diesel to sub-contractors who run their vehicles under contract of main transport.

In fact supply of diesel to sub-contractor from pump is nothing but reimbursement payment by the main transporter, and real purchase of sub-contractor.

Now making TDS is quite difficult issue as TDS of principle will make principle supplier of goods, whereas principle has already made TDS of petrol pump.

11(1) . Whether TDS u/s 194Q applicable on diesel received by sub-contractor from principle transporter.

For example:- Ramdev Roadlines provided diesel of Rs. 25 lacs to Gajanand Roadlines (Sub contractor).

Now in case

- 1.If Gajanand Roadlines will not make TDS u/s 194Q, Diesel expense will not be allowed.
2. If Gajanand Roadlines will make TDS u/s 194Q, then through TDS return it will result in sale of goods by Ramdev Roadlines and VAT inquiry may proceed.

11(2). Whether TDS u/s 194Q applicable on diesel received by sub-contractor from principle transporter.

Better answer is (1) Sub-contact should be asked to make TDS directly of petrol pump, and main transporter should not made TDS of such amount from the payment of petrol pump (2) In worst situation, exemption from TDS provided on issue of CA certificate in form no. 26A can be followed.

Now question remains unanswered in cases, when the main transporter provides diesel from his own stock.

12. Whether cash received from partner exceeding Rs. 2 lacs will be hit by section 269ST ?

There are very few words in section 269ST. The section says that

No person shall receive an amount of two lakh rupees or more
(1) aggregate in a day (2) against a transaction or (3) against an event
or occasion from a person.

No where exemptions are given except to the Banks and Government.
No important judicial announcements have come till date.

So as firm is being separate “person” then partners, the transaction of cash receipt more than 2 lacs will be hit by section 269ST.

13. What would happen in case of no or lesser shortage in material, then normal or expected ?

In case of sawing of timber, saw dust or firewood are natural bi-product. In case of washing of salt, loss in quantity is natural.

But if there is no or lesser shortage shown by assessee on record, and may fail to prove his point, then (1) estimated shortage will result in concealed income. (2) the officer may get right to estimate his profit, by way of rejecting his books of accounts

14(1). Whether interest is an allowable exp provided interest bearing fund applied for non interest or non business purpose ?

Section 37 provides for deduction of expenses incurred for business purpose.

It is normal in our business customs, in which interest bearing funds are applied for on interest or non business purpose like advance to sister concern, subsidiary, partners or invested in non business assets or investments like shares, plots etc.

Such part of interest will be not allowed as deduction. In case of violation, misreporting will result, which will lead to tax and penalty with interest.

14(2). Whether interest is an allowable expense provided interest bearing fund applied for non interest or non business purpose ?

There are two ways to find out compliance

(1) Take total of interest bearing fund and interest free fund, find out difference and difference of interest thereon.

(2) Take total of interest free fund and its placement.

But taking difference between interest income and interest exp.
sometimes may not achieve purpose.

15. What should be the treatment of reversal of capital input tax credit of GST in current and ensuing year ?

The reversal of capital ITC of GST in the first year should be made by way of debiting asset itself, provided asset largely used for making exempted supply. (otherwise the same should be written off to PL)

Obviously from next year, such reversal of capital ITC should be debited to profit and loss account, as reversal of ITC does not result in enhancement of life or performance of fixed assets, so as to treat the same as revenue exp.

16. Whether depreciation is allowed on vehicles registered in the name of other, whereas purchased and used by the assessee?

Though till date it is accepted that as per section 32 of Income Tax Act, 1961, an assessee is entitled to claim depreciation on fixed assets only if the following conditions are satisfied: **1.** Assessee must be owner of the asset – registered owner need not be necessary. **2.** The asset must be used for the purposes of business or profession. **3.** The asset must be used during the previous year.

But as assessment has become “faceless” certain legal interpretation issue will come up, as section reads “**owned, wholly or partly, by the assessee and used for the purpose of business or profession**”

17. Quantitative details of consumables are required to be reported in form 3CD ?

No. as form 3CD requires reporting of goods traded or manufactured. So detail of any consumables are not required, whether in business or in profession.

35	<p>(a) In the case of a trading concern, give quantitative details of principal items of goods traded:</p> <ul style="list-style-type: none">(i) opening Stock;(ii) purchases during the previous year;(iii) sales during the previous year;(iv) closing Stock;(v) shortage/excess, if any.	Not Applicable
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18. Whether payment of tax of earlier years is allowed as deduction following section 43B ?

(1) If provided in books of accounts, then such payment of taxes of earlier years are allowed as deduction following section 43B.

But

(2) If not provided in books of accounts, such expenditures will not be allowed as expenditure considering prior period expense, so question of allowing them as per section 43B will not at place, as 43B start with the words *“Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of –”*

19 What is “crystallization” mean in considering prior period exp or income ?

In simple words, the time on which any income really become “receivable” and expenditure “payable”, such happening is called as “crystallization”.

So while doing audit “crystallization” between balance sheet date to date of audit, having relevance with the audit period, must be recognized to avoid prior period effect.

Discount, Rate difference, Bad Debt, Suit filling, Assessment and demand orders etc., between this period must be considered.

20 Applicability of TDS on ocean freight and related exp paid to foreign lines ?

Ocean Freight for Import paid out of India

Not applicable as income accrued and arise out of India.

Ocean Freight and related charges for Export paid to foreign lines

No TDS applicable. Collect NOC issued u/s 172 or 195

Ocean Freight and related charges for Import paid to Indian

TDS u/s 194C will be followed.

21 Whether TCS applicable on highseas purchase of timber imported timber ?

TCS is nothing but advance tax or withholding tax.

Every resident is liable to tax under Income Tax for Universal Income.

TCS is applicable u/s 206C to all residents.

So question of where the transactions carried out is not material. If sales made to resident, TCS is applicable.

And even “highseas sales or purchase” is “nomenclature” for indirect tax, having no relevant in Income Tax.

22 Whether TCS u/s 206C(1H) is required on sale of timber to manufacturing company against form no. 27C ?

No TCS u/s 206C(1H) is not applicable on such sales, as the notification refers to words that TCS u/s 206C(1H) is not applicable on such sales to which other provisions of TCS are applicable.

23 Whether TDS u/s 194Q is required on purchases which are exempted from TCS ?

Yes, on all such purchases TDS u/s 194Q is applicable, as words refers

“NO TDS REQUIRED IF TCS MADE UNDER OTHER SECTIONS, OTHER THAN 206C(1H)”

Section 194Q(5) :- The Provisions of this section shall not apply to a transaction on which-

(a) Tax is deductible under any of the provisions of this Act:

and

(b) Tax is collectible under the provisions of section 206C other than a transaction to which sub section (1H) of section 206C applies

23 Whether TDS u/s 194Q is required on purchases which are exempted from TCS ?

- (1) 50 commercial vehicles purchased at Rs. 8 lacs each. Not liable to specified TCS, as value is less than Rs. 8 lacs for each one.
- (2) Timber of Rs. 1 Cr purchased against issue of form no. 26C.
- (3) In both the cases TDS u/s 194Q applicable, as exemption given for tax collectible u/s 206C (other than 206C(1H))

24 What would be the effect of non maintenance of quantitative details ?

(1) In case of scrutiny assessment, officer has right to estimate profit rejecting book results.

(1) Rejection of GST ITC provided shortage in stock sensed or detected.

In case of non-maintenance of quantity details by the assessee, the auditor must derive monthly closing stock following cost of sales method by way of deducting GP from the sales of each month.

Opening Stock + Purchase + direct exp. - Sales less estimated GP = Closing Stock.

25 Whether entry of purchases of goods or consumable of earlier year booked in current year is prior period exp?

If quantity details maintained – NO

If quantity details not maintained – May be
(relevant goods sold – yes, otherwise no)

Thank You...