

ISSUES ON TAX AUDIT INCLUDING 44AD

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I have been asked by the organizers to present a paper on “Issues on Tax Audit”. Therefore, the presumption is that the participants is well aware about the provisions of the “Tax Audit”.

Hence, I straight way go to the “Issues”.

Turnover

1. Assessee is a proprietor of a business, where the sales are Rs. 30/- lakhs and purchases are Rs. 60/- lakhs . Is he liable for tax audit u/s. 44AB?

2. In case of squared up of shares transaction . what will be the turn over?
 - (a) Full sale value proceeds, or
 - (b) Net Profit or Loss of the day, or
 - (c) Net Profit or Loss of individual transaction/scrip.Also what will be the turnover in case of derivative/speculative transactions?
 - (a) Net Profit Loss of the day, or
 - (b) Net Profit or Loss of individual transactions/ scrip
 - (c) Positive or negative difference

3. . Partner of a professional firm received remuneration/interest from firm exceeding Rs. 15 lakhs p.a. _ Whether Tax Audit u/s. 44AB necessary?.

4. Estate Agents, Finance broker: whether their income be treated as professional and tax audit be done in case their brokerage exceeds Rs. 15 lakhs p.a. OR whether they should be treated as having business income and limit for tax audit is Rs. 60 lakhs.

5. In the case of Trusts and Societies, which have part of their income arising from business, a question arises whether such other collections/gross receipts should also be included in computing the threshold limit of Rs. 60 Lacs. Thus, a members club that provides services to the members and has gross collection as under needs to decide its position vis-à-vis S. 44AB
It receives the following collections:
 - a) Membership Fees (Annual Fees) Rs. 30 Lacs

b) Service Charges recovered from Members for use of swimming pool and sauna	Rs. 27 Lacs
c) Reservation charges from Indian Olympic Association –for occasional use of swimming Pool for training of the Indian Water Polo Team	Rs. 13 Lacs
d) Royalty from Canteen Contractor	Rs. 15 Lacs
e) Collections on sale of Liquor in the clubs Permit Rooms	Rs. 30 Lacs

Would you advise the said club to conduct a tax audit u/s. 44AB and to furnish it alongwith the return of income? Would the position be different if the Club is a Trust having an 80-G registration?

6. (i) Research association carrying on business enjoying exemption u/s. 10(21), whether liable for tax audit, if turn over exceeds Rs. 60/- lacs?
- (ii) Society running school having annual receipt of more than 5/- crores, whether it is liable for tax audit. Particularly the school is exempt u/s. 12A?
- 7 An advocate has credited Rs. 14/- lacs to his profit and loss account and Rs. 2/- lacs to clients' a/c. being fees received in advance. He has also interest and dividend income of Rs. 1.5 lacs and sale of old assets worth of Rs. 1.25 lacs. Whether turnover/gross receipt would include (a) fees received in advance (b) interest and dividend and (c) sale proceeds of old car for the purpose of turnover limit.
- 8 Professional receipts say Rs. 8/- lacs and total sales/ turn over from business say Rs. 54/- lacs whether tax audit is applicable?
- 9 Whether goods sold in the earlier year but returned during the year. Whether the same should be reduced from the current year's turnover?
- 10 A Ltd. having gross turn over of Rs. 61/- lacs, which includes turnover of Rs. 5/- lacs of earlier year. Whether tax audit is required?

- 11 Whether amount received as advance by builder to be included in gross receipt, particularly when, the builder maintains the accounts on accrual basis
- 12 Whether an assessee is liable for tax audit in following situations, if his:
- Sales is of Rs. 55 lakhs, and
 - Rent received is Rs. 6 lakhs, and
 - Job work charges is Rs. 6 lakhs.
13. In case of an advertising agency, whether reimbursement from the clients would be turnover?
14. In case of contractor AS 7 applies which recognizes "revenue" whether it is to be considered as 'turnover'?

Surrendered of Stocks:

15. A survey was conducted during the financial year 2010/11 and the assessee surrendered stocks worth of Rs. 12 lakhs. During the financial year 2010/11 the assessee is having a turnover of Rs. 59 lakhs. Should the value of surrendered stock be included in the turnover for determining the applicability of section 44AB?

Sale of car:

16. Sale of car is not included in sales for the purpose of tax audit but according to some Supreme Court judgments under Sales tax Act, the sale of a car is to be treated as sales and sales tax has to be charged. Then, why should the same be excluded for tax audit purposes?

Write back:

17. As a result of writing back the account of a creditor, the turnover/gross receipt has exceeded Rs. 60 lakhs. Will the assessee be liable for tax audit?

Inclusion of Sales-tax:

A, an assessee, provides the following figures:

Sales	Rs. 58 lakhs
Sales tax collected	Rs. 3 Lakhs

Is A liable for tax audit under section 44AB?

Sales through stalls:

19. 'AK' Pvt. Ltd. is running a departmental store. There are several stalls. Each stall belongs to a different person. According to the arrangement by the stall owners with 'AK' Pvt. Ltd., all sales proceeds are to be collected on the printed bills of 'AK' Pvt. Ltd. The delivery counter is common for all stall owners and the same is managed by 'AK' Pvt. Ltd. The premises belongs to 'AK' Pvt. Ltd. who takes out insurance and also makes security arrangements. The proceeds of all sales made by various stall owners are collected by 'AK' Pvt. Ltd. At the end of every week 'AK' Pvt. Ltd. makes up the sales account of each stall owner and after deducting charges/commission at the agreed rate remits the balance amount to each stall owners. The total turnover on the above basis works out to about Rs. 3 crores. However, the income of 'AK' Pvt. Ltd. from charges/commission recovered from the stall owners is Rs. 30 lakhs. Is 'AK' Pvt. Ltd. Liable to get its accounts audited under section 44AB?

Disclaimer:

20. Form 3CB expressing opinion on true & fair view - whether could it be modified to include disclaimer as per Para 19 of SA 700 in regard to preparation of accounts by the assessee and scope of audit.

Relying on the work of statutory auditor

21. A tax auditor does not agree with the treatment given in the audited financial statements in respect of (i) personal expenses, (ii) capital expenditure, (iii) valuation of stock-in-trade (iv) method of accounting or (v) other matters covered in Form No. 3CD. If the statutory auditor has not qualified his audit report on these matters, can the tax auditor qualify his report in Form No. 3CA and make appropriate comments in Form No. 3

Appointment:

22. (a) X is appointed as Tax Auditor for the March 31, 2008, whether it is necessary to communicate with previous auditors?
- (b) If he has communicated with previous tax auditor Y and who has objected that he can not accept the tax audit as Y's professional fee for consultancy is outstanding. Should X accept the audit?

Qualifying Audit Report:

23. If the quantity details shown as per the stock records do not tally with the quantity of closing stock stated in the statement submitted to the bankers (hypothecation account) should the tax audit qualify this report?

Clause 7:**Change in Partner's profit sharing ratio:**

24. Whether change in remuneration of a partner without changing profit sharing ratio should be furnished?
25. Clause prescribes for indication of assessee's of partners of firm or members of AOP and their profit sharing ratios – whether at the end of the year or during entire previous year?

Clause 9:**Books of Account:**

26. In case where stock records are not properly maintained by the assessee due to big volume of operations e.g. particularly in case of retail trade how should the tax auditor report on such imperfect records maintained by the assessee
27. A Company maintained its books of account on Computer and after completion of accounts takes a print out for Audit. The books are audited on the basis of this print out and some post audit corrections are carried out by the company. After correction the said company takes out another final print out on which there is no indication that audit was carried out since there are no checking marks. The first print out carrying audit marks is not preserved by the company. How would the auditor be able to satisfy others that the accounts are audited?

Clause 11:**Method of Accounting:**

28. a) Should a change in an accounting policy be considered as change in the method of accounting employed?
- b) In the case of a concern where previous year's accounts are not audited the tax auditor gives the following note.

“Although previous year's accounts are not audited, as per information and explanations given to us, there is no change in the method of accounting employed”

Is the above note appropriate?

- c) Where stock is valued at market price being lower than the cost, should excise duty be added thereon for the purpose of complying with section 145A?

Clause 12:

Valuation of Closing Stock:

- 29.. Where an assessee is following cash system of accounting, should he account for the closing stock or alternatively, can the entire purchases be claimed as an expenses?
30. Is effect of MODVAT (CENVAT) is to be given while giving effect under section 145A? Is it possible there may be profit or loss under section 145A? If yes, please give few instances. Why our guidance note on Tax is silent on WIP for section 145A?
31. Liability on closing stock of finished goods are provided The goods are yet in the godown. There is a fire and goods are destroyed. Is the assessee required to include the amount of excise duty in the valuation of stock for the purpose of section 145A?
32. During the year after announcement of AS-2 as mandatory, Modvat has been excluded for the purpose of valuation of opening stock though Modvat portion was considered for valuation of closing stock of last year. Since clause 12(b) asks for details of deviation, if any, from section 145A, should the deviation for valuation of opening stock be given? Alternatively please clarify whether this issue is covered in clause 11(d).
33. (a) While giving effect of deviation from section 145A, as per the Guidance Note excise duty payable on finished goods has to be covered in the information related to section 43B i.e. it is allowable as deduction on payment basis. Kindly elaborate
- b) Subsequent to the year end but before furnishing of return, excise duty of an amount which is more than the payable amount, has been paid. However all the items which formed part of the closing stock has not been cleared.
34. How to value closing stock in VAT scenario u/s. 145A?

Clause 13:

Amounts not credited to the Profit & Loss Account:

35. Nowadays many companies are organizing foreign tours for their dealers if they achieve targeted sales. In such situations either the proprietor or the partner of the dealer firm or

the director of the dealer company may avail of the foreign tour, What are the duties of the tax auditor in this regard.

36. In case of an individual assessee certain incomes are exempt like
- a) share of profit from partnership firm – exempt u/s. 10(2A)
 - b) income of minor children exempt u/s. 10(32)
- should such income also be disclosed under clause 13(d)
37. A duty drawback claim of the assessee on December 09,2010 is accepted by the department on March 28,2011, but the letter is received on April 10,2011. Would it made a difference if the letter was dated April 15,2011. In both cases, the claim is not accounted for by the assessee following the accrual system of accounting.
38. A builder raises escalation claims of Rs. 25 Lacs. The agreement with flat owners also contains as escalation clause. Yet the builder does not account for the escalation, on the ground that flat owner may at a time dispute the claim. What should the Tax Auditor do?
39. Mr. A is a technocrat carrying on a profession of providing certain specialized technical know how which assists in manufacture certain cosmetics products. He enters into an agreement with cosmetic manufacturing company not to share such know-how with any of their competitors in consideration of lump-sum compensation of Rs. 25/- lacs to be received. The said company has not signed any formal agreement but has issued a letter confirming the payment of the compensation which is not yet received. What could be the reporting requirements in this case?.

Clause 14:

Particulars of Depreciation:

40. A Revolver purchased in the personal name of director of Hindustan Security Force Pvt. Ltd. for his self protection but payment is made by the Co.
- i) Whether it is to be capitalized or it is revenue expenditure?
 - ii) If it is to be capitalized, under which block of assets it will come? Whether license fee etc. will have also to be capitalized?
 - iii) What will be the rate of depreciation?
 - iv) How to determine date on which it is put to use?

41. Please clarify the basis upon which depreciation will be allowed under cash system . Will it be allowed on full cost or will it be limited to the actual payment made during the relevant previous year?
42. (a) In the circumstances where depreciation has not been claimed in the accounts and is not likely to be claimed in the return also, should the tax auditor state the particulars of depreciation under clause 14 or not?
- (b) Whether four wheeler & two wheeler assets are considered under same block or not, as the rate depreciation 15% ? In case of partnership firm carrying on business purchased motor cycle of Rs. 50,000/- and car of Rs. 6,00,000/- can it be shown under the same block?
- (d) Under Explanation 10 to section 43(1) any subsidy received from Government towards an asset should be reduced from the cost of the asset. What is the position if in a given case, a subsidy of Rs. 3/- lacs is received during the year (against a claim made few years ago) in respect of an asset with a present WDV of Rs. 2/- lacs? Indicate the treatment to be accorded to the excess subsidy of Rs. 1/- lac over the WDV.
43. X Ltd. Purchased a plant (rate of depreciation 15%) on May 10,2009 for Rs. 1/- lacs was put to use on January 10,2011. Tax Auditor is required to comment as per 3CD as correct depreciation allowable under I.T. Act for accounting year 2010-11 and 2011-12. Which of the following depreciation is correct
- (a) For accounting year 2009-10 Rs. 15000/- as acquired on May 10 2009 and put to use for more than 180 days.
- (b) No depreciation for the accounting year 2009-10 as it is not put to use.
- (c) Full depreciation in accounting year 2010-11, i.e. Rs. 15,000/-
44. X Ltd. A civil construction contractor constructed dam, building etc., purchased additional machinery, can it claim additional depreciation for the accounting year 2011-12?

Clause 17:

General (Penalty/Fine etc.):

45. The Guidance Note says that “the tax auditor while reporting under this clause is not required to express any opinion as to allowability or otherwise of the amount of penalty or fine of violation of law. He has only to give details of such items as have been charged in the accounts”.

However, unless allowability or otherwise is decided (may not be reported), reporting on certain matters may not be possible e.g. deduction under chapter VIA, allow ability of remuneration to partners, etc., which are based on computation of taxable income. Please comment.

46. Advance given in cash Rs. 50,000/- in earlier years and this year it was adjusted against expenses, whether S. 40A(3) would be applicable?

47. A builder purchased a piece of land worth of Rs. 10/- lacs, whose business is to develop, construct and sale the property paid registration fee in cash to sub registrar, whether provisions of section 40A(3) are applicable.

48. Cash deposited directly in the account of payee whether section 40A(3) is applicable?

49. Cross and account payee cheque received by adhatiya who makes payment on behalf of principal whether he has to make payment by account payee cheque?

50. Payment to transporter in cash in excess of Rs. 35,000/- for single bill and no TDS has been deducted whether it is disallowable u/s. 40A(3) S. 40(a)(ia) or both?

51. Delayed charges paid to creditors whether TDS is required to be deducted? Whether incentive received for earlier payment can be adjusted against delayed charges? Whether inadmissible amount would be on net or total? If net amount of interest payable is less than Rs.5,000/- whether provision of S. 194A are applicable? If assessee is made payment of interest on loan and has also received interest on loan from the same party, whether TDS is to be made on gross or net u/s. 194A?

52. TDS deducted but deposited during the same previous year with interest whether to be reported under clause 17(f) or under clause 27?

53. In case of proprietor concern income tax paid debited to P & L A/c. whether it is required to be reported under clause 17(b) as personal expenses?
54. What will be the reporting requirements in the following cases?
- i. Penalty of Rs. 300/- for a traffic offence.
 - ii. Interest for delayed payment of sales tax
 - iii. Payment of Rs. 1/- lac to antisocial elements for protection to a Construction site
55. A proprietor was doing business upto January 31,2010 and on February 01,2010 he converted his business into partnership firm, wherein he was one of the partner. For assessment year 2010/11 there was two returns one was of proprietary concern and another was of a firm and both were liable for tax audit. Under proprietary concern certain payments were disallowed in the assessment year 2010/11 for non deduction of TDS. Now, in the assessment year 2011/12 the firm has deducted the tax and paid the same to the Government .Whether the firm is entitled to claim deduction for the said expenses in the assessment year 2011/12
56. Clause 17(1) requires to show amount of deduction inadmissible in terms of S. 14A. While as per S.14A (2), AO has to determine inadmissible amount. Please clarify.

Clause 17A:

57. A Newly inserted clause requires to disclose amount of interest inadmissible u/s. 23 of MSMEDA, 2006. How to calculate disallowance of interest if no information is available with the auditee in respect of amount due to the creditors in MSMEDA?

Clause 18:

58. Payment of relative against purchase of fixed assets whether to be reported under section 40A (2) (b) of the Act.

Clause 21:

Disallowance u/s. 43B:

- 59.(a) Please clarify whether profession tax liability should be reported u/s. 43B?

(b) An assessee who is required to deduct Provident Fund of his employees as well as employees of the contractors, whether entire amount is to be disclose u/s, 43B or only the amount which is payable to its own employees?

(c) If employers and employees PF contribution made before due date of filing Return of income is allowable?

Clause 24(a)

Loan and Deposit accepted:

60. Where a loan or deposit is not accepted by means of account payee cheque will Penalty is attracted?
- 61.. If the opening balance of a loan is Rs. 1,00,000/-, interest credited during the previous year Rs. 24,000/- and the closing balance is Rs. 1,24,000/-, what are the reporting requirements under clause 24(a)? If interest is not credited and opening and closing loan balance is Rs. 1, 00,000 should we give details?
62. A person is carrying on the business as a sole proprietary concern. He has taken certain loans in his individual name and routed them in the concern through his capital account. The concern is paying interest on these loans and debiting such interest to its profit and loss account.
63. Creditor of goods of Rs. 1/- lakh converted into loan on his request by passing journal entry whether there is any violation of S. 269SS, whether it is to be reported?

Clause 24(b):

Loan/deposit repaid:

64. In case of a partnership/proprietary concern loans from family members are taken and payments like life insurance premium advance tax/MTNL bills etc. are directly paid from firm's accounts by an account payee cheque in name of LIC/RBI/MTNL. Would this tantamount to repayment made otherwise than by account payee cheque?
65. Assessee is not able to repay a vehicle loan taken from bank. Bank notifies to take the possession of the vehicle. Assessee's friend makes payment of loan by cheque on behalf of the assessee to help him. Whether such repayment of loan be considered as "otherwise

than by account payee cheque or account payees bank draft” resulting in contravention of section 269T?

66. During the year audit, one partner has transferred his part of the capital to his daughter Rs. 5/- lacs and credited the same to loan account of his daughter on which interest has been paid @ 12% p.a. Whether auditor is required to report u/s 269SS or u/s. 269T?

Clause 26:

Deduction under chapter VIA:

67. In case of proprietary concern liable for tax audit, is the tax auditor is required to comment under this clause with respect to donation u/s. 80G, medical u/s. 80D ? Would answer defer if such income is credited in the books of account subject to tax audit?

Clause 27:

Tax deducted at source:

68. Is the tax auditor responsible for reporting professional tax deducted from salary paid to employees but not paid?

Clause 28:

Quantitative details

- 69 Whether this clause is applicable to a firm of Builders and Developers? If yes
- i) Whether a firm of Builders and Developers will be treated as trading concern or Manufacturing concern for the purpose of this clause?
 - ii) How the quantitative details will have to be furnished?.

- 70 Is it necessary for an assessee rendering technical consultancy services to give quantity details of raw materials such as tracing papers, drawings, designs etc.?

Clause 32:

Accounting ratio:

71. According to ‘Guidance note on Tax Audit’ issued by the Institute the ratios under this clause is to be calculated only for assessee who are engaged in manufacturing or trading activities:

- i) Whether a firm of Builders & Developers will be treated as “Manufacturer” or “Trader” for the purpose of this clause?
- ii) If this clause is applicable to a firm of Builders & Developers?
 - a) How turnover will be determined where the construction of the building is not completed and the assessee is estimating gross profit @ 18% of construction cost and other project cost incurred during the year. The firm adds estimated gross profit to construction cost and other project cost and carries it forward to next year as work in progress. The entry of sale of flats will be accounted only on completion of the building

Whether work in progress as calculated above will be treated as turnover to calculate ratios under the clause.

There is no limit to human ingenuity and there could be many more “issues on tax audit”. I would be enlightened to have from the participants.
