



VCAT Student Welfare Committee

Session on Tax Audit and Recent Amendments

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24.08.2018

What's in Today's Session



1. Overview of Tax Audit
2. 3CD Documentation Aspects
3. Clause wise discussion of Form 3CD
4. Recent Amendments in Form 3CD
5. Practical Issues and probable solutions



Overview of Tax Audit

Why Tax Audit



- Introduction
- General Objective
- Specific Objective
- Effectiveness of Tax Audit

What is Form 3CD



- Form 3CD is a form to be submitted along with Audit Report required to be certified by Auditors.
- Form 3CD is a Form in accordance with Rule 6G(2) and section 44AB of the Indian Income-tax Act, 1961.
- Form 3CD contains 45 Clauses (including 9 insertions and 6 amendments to the existing Clause)
- It is required to be attached with Forms 3CA or 3CB, as applicable.

Form 3CA v. 3CB



Date of Audit Report – Statutory Audit Report
Beginning from and ending from date

BS and P&L – Digital Signatures v. Sd/- v. Actual Signatures

What is Form 3CD



- Whether Form 3CA or 3CB the observations or Qualifications relating to 3CD can be tabulated.
- The Form 3CD is basically prepared by the assessee and the auditor is only certifying the particulars and any observations to be given in 3CA or 3CB.
- Form 3CD has to be signed both by Auditor and the Assessee

Approach to Form 3CD

- Form 3CD is to be prepared by the Assessee
- To be authenticated by the Assessee
- TA only to review the contents of Form 3CD
- Details to be furnished
 - Disclosure of facts
 - Expressing of Opinion
 - Allowability/Disallowability

Approach to Form 3CD



- Form No. 3CD – To read the clause
- To read the relevant sections/rules/provisions
- Analyze the issues
- To refer the Guidance Note / Issues on tax audit
- Furnish the necessary / specific information
- Disclose the relevant information in the Online Forms

Due date for 3CA,3CB & 3CD

The due date for filing of tax audit report is September 30th and if the assesseees are having international or specified domestic transactions it is November 30th.

Penalty 271B



Rs.1,50,000 or 0.5% of the Turnover

For non complying with the Section 44AB.

Penalty 271J- New Section

Penalty of Rs,10,000/- on professionals for furnishing incorrect information in statutory report or certificate may be levied by AO or the CIT(Appeals) – w.e.f 1.04.2017

Quick Question



If an eligible assessee has turnover of Rs.40 Lakhs but his income (i.e. profit) is 2 Lakhs. Does he come under the purview of Tax Audit?

Quick Question



The turnover being 40 Lakhs, the presumptive income will be (8% of 40 Lakhs) 3.2 Lakhs. Here the assessee wants to claim an amount lower than 8%. Since the income of Rs. 2Lakhs does not exceed the maximum amount not chargeable to tax he will not come under the purview of Tax Audit.



3CD Documentation

3CD Documentation



ICAI Guidance Note:

“The liability of the tax auditor in respect of tax audit will be the same as in any other audit assignment.”

Standards on Auditing:

SA-200: Documentation, for purposes of this standard, refers to the working papers prepared or obtained by the auditor and retained by him, in connection with performance of his audit.

What to Document



Master Documents

- Tax Audit Engagement Letter
- NOC from previous Auditor, if first time tax auditor
- Tax Audit Management Representation Letter
- Tax Audit requirement questionnaire cum checklist
- Signed financials along with Notes on Accounts of current year and previous year
- Record of Method of sample selection and samples selected

3CD Documentation



Audit not documented

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Audit not done



Practical issues

Clause wise

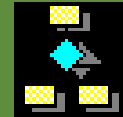


Existing Clauses

Recent Amended Clauses



Microsoft Word
Document



Recent Amended
Clauses



Clause wise analysis of Form 3CD

Issues



A Assessee (individual or HUF) had a turnover of Rs.1 Crore in AY 2018-19, but he computed a business income of Rs.2Lakhs. Assessee has no other source of Income. Whether Assessee is liable for Tax Audit, If Assessee is a Firm?

Issues



- Since Assessee wants to offer income lower than limits specified in section 44AD, Tax Audit is applicable u/s 44AB. But in this case as assessee has no other income and income is computed does not exceed BEL, No Tax Audit is applicable.
- If Assessee has loss from such business, No Tax Audit u/s 44AB is required
- If Assessee is a Firm, there is no basic exemption limit hence, tax audit u/s 44AB is applicable.

Issues



An eligible Assessee is engaged in Trading business of goods both in his own name and also as a consignee for another person. The Total sales amount to Rs. 1.40 Crs, Turnover details are as follows:

Own Business Turnover: Rs.80 Lakhs
Consignment Sales Turnover: Rs.60 Lakhs

Whether Assessee can opt for presumptive income computation or not?

Issues



- For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e Rs .80Lakhs.
- Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.2 Crores.
- Consignment Commission can be offered at any rate (Even below 8%), provisions of Sec .44AD will not govern the commission income .

Issues



An Eligible Assessee is involved in the business of Fuel Filling Station dealership under a PSU's Trade name. His total Sale Turnover during AY 2017-18 is Rs.3 Crores. On which is entitled for a margin of 10%. What amount to be offered as business income by the assessee for AY 2018-19

Issues



- Since, Assessee is acting as an agent to such PSU, such sales represent to that of PSU itself and not the Assessee. (Clarified by CBDT Circular no. 452 dt. 17.03.1986)
- The Assessee business income is the dealer's margin @ 10% on sales made, i.e Rs. 30 Lakhs.
- Since Section 44AD provisions not govern the agency nature of business income tax audit u/s section 44AB is applicable only when such income exceeds Rs. 2 Crores.

Issues



An Eligible Assessee is engaged in Re-insurance business on which he will receive a commission for the sum-reinsured. Such sum re-insured during AY 2018-19 was Rs.2 Crores. He is entitled for a commission of Rs.20 Lakhs. What will be the Turnover of such assessee for AY 2018-19. Also state treatment u/s 44AD.

Issues



- Assessee's business Turnover is Rs.20 Lakhs and not Rs.2 Crores.
- Also as per section 44AD, commission business is specifically excluded from nature of business.
- Hence he may offer income at any rate on such commission income
- Tax Audit u/s 44AB is applicable only when such commission income exceeds Rs.2 Crores.



Recent Amendments to Form 3CD

Amendments to Form 3CD



6 Amendments + 9 Insertions = Total 15 Changes

Earlier 41 Clauses – Revised to 44 but effectively it is 51-1 = 50 Clauses

| Sl. No. | Clause | Summary of Amendments |
|---------|--------|---|
| 1. | 4 | GSTIN to be mentioned |
| 2. | 19 | Amount Admissible u/s 32AD along with other details like Section 32AC , 35... |
| 3. | 24 | Deemed Gains u/s 32AD along with 32AC 33AB, 33ABA and 33AC |
| 4. | 26 | Section 43B(g) (Sum payable to Indian Railways for use of assets. |
| 5. | 31 | Cash Receipts/Payments Rs. > 2 Lakhs U/s 269ST PTE |
| 6. | 34.b | Details of transactions not disclosed in TDS/TCS Returns (Earlier only for late filers) |

Amendments to Form 3CD



| Sl. No. | Clause | Summary of Insertions |
|---------|--------|--|
| 1. | 29A | Advance received on capital asset forfeited u/s 56(2)(ix) |
| 2. | 29B | Income from other source being money/property received with out /inadequate consideration u/s 56(2)(x) |
| 3. | 30A | Primary Adjustments in TP as per Section 92CE(>1CR) |
| 4. | 30B | Limitation of interest deductions for borrowings from an AE up to 30% of EBITDA (such interest > 1Cr) |
| 5. | 30C | Reporting of Impermissible Avoidance Agreement u/s 96. – GAAR |
| 6. | 36A | Dividend Received u/s 2(22)(e) |
| 7. | 42 | Details w.r.t to Form 61, Form 61A and Form 61B |
| 8. | 43 | Country by Country Reporting (CbC) under section 286 (Total Consolidated group revenue > 500Cr) |
| 9. | 44 | Breakup of total expenditure in respect of GST registered & unregistered entities. |

Amendments to Form 3CD



ICAI – Representation to CBDT on revision to Tax Audit Report

2(22)(e) – Suggestion for deletion – Opinion Difference

56(2)(ix) – Tax auditor shall have limited information if the same is not recorded in the books

56(2)(x) – Ambiguity as to whether the same is only applicable to immovable property

92CE(1) – Not possible to report in the year under audit – Modify

94(B) – Non-resident AE or Total Expenditure ?

Form 61/61A/61B – Tedious/Onerous

Amendments to Form 3CD



ICAI – Representation to CBDT on revision to Tax Audit Report

Section 96: GAAR

- Thin line of difference between – Tax Planning v. purposeful tax evasion
- Very Subjective and requires investigation

Clause 34(b) on – e-TDS non –compliance

- Genuine difference of opinion
- Humungous responsibility

Clause 44 – GST Details

- Mid term correction
- Difficult to collate
- GST law is evolving
- Very time consuming
- Capex? Depreciation/ salary/ rates and taxes? Staff welfare? Reimbursements?
- First 3 months

CLARIFICATIONS/ QUESTIONS



THANK YOU

*For any clarification
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