

# Applicability of Sec 44AB – Tax Audit

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## Tax Audit - Meaning



Audit is the **independent examination** of financial information of any entity, whether **profit** oriented or not, and irrespective of its **size** or **legal form**, when such an examination is conducted with a view to **express an opinion** on the **financial statements**.

There are various types of audits prescribed under different laws like company law requires a company audit, cost accounting law requires a cost audit, etc.

**Tax Audit** refers to the **independent verification of the books of accounts of the assessee to form an opinion on the matters related to taxation compliances carried out by the assessee.**

## Objective of Tax Audit



- ❑ To ensure books of accounts are maintained properly and in correct manner also the same has been certified by a tax auditor;
- ❑ To ensure that total income and deductions are claimed accurately and to the best of everyone's knowledge;
- ❑ Report observations/discrepancies noted by tax auditor after examining the books of account;
- ❑ Tax audit report enables tax authorities in verifying the correctness of income tax returns filed by the taxpayer. Calculation and verification of total income, claim for deductions etc. also becomes easier.

# Applicability of Tax Audit as per Section 44AB

Every Person who is carrying on **Business**

Total sales, turnover or gross receipts exceeds INR **1 Crore** in any previous year

Total sales, turnover or gross receipts exceeds INR **5 Crore**, introduced in Finance Act, 2020, (w.e.f. AY 2020-21) provided that

Aggregate of all amounts received during the previous year, in cash, does not exceed **5%** of the said amount, **AND**

Aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed **5%** of the said payment

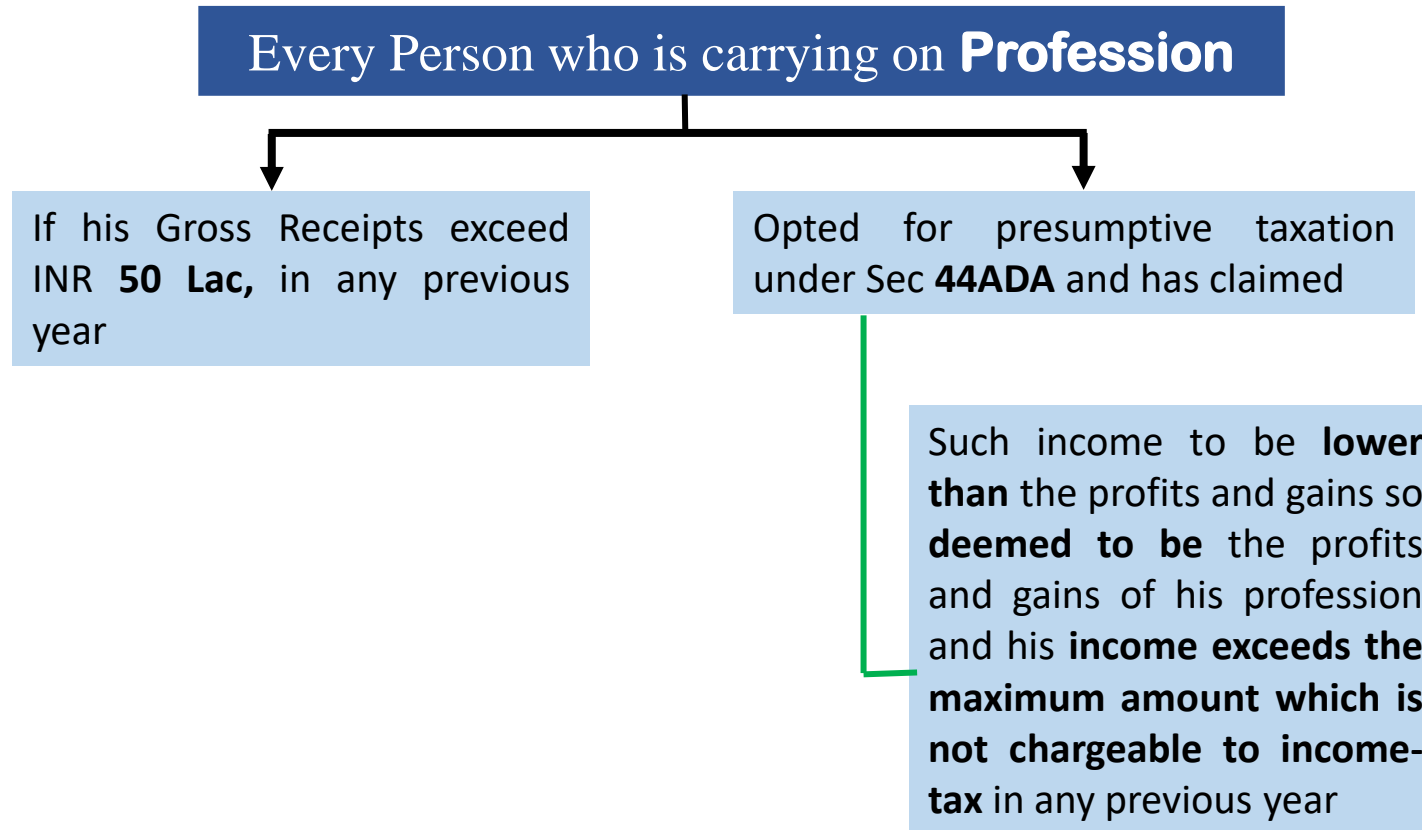
Opted for presumptive taxation under **44AE** or Sec **44BB** or Sec **44BBB** and has claimed

Income to be **lower than** the profits or gains so **deemed to be** the profits of his business as the case may be, in any previous year

The provisions u/s **44AD(4)** are applicable in his case and his **income exceeds the maximum amount which is not chargeable to income-tax** in any previous year

Sec **44AD(4)** : assessee who previously opted for Sec **44AD(1)** opts out of Sec **44AD(1)** and declares profit for any of the relevant five assessment years to the previous year succeeding such previous year in which he opts for Sec **44AD(1)**, shall not be eligible to claim the benefit of Sec **44AD** for five assessment years.

## Applicability of Tax Audit as per Section 44AB



## Inapplicability of Tax Audit as per Section 44AB

This section shall not apply to the person

- Declares profits and gains for the previous year in accordance with the provisions of Sec 44AD(1) -@ **6% or 8%** of his gross receipts, total sales or turnover and-
- His total sales, turnover or gross receipts in the relevant PY does not exceed **INR 2 Crore**

Derives income of the nature referred to in section **44B** or section **44BBA**, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later

## Turnover for the purpose of Section 44AB

Turnover is not defined in the Income Tax Act, thereby leading to different interpretations. As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of **Turnover shall be the aggregate amount for which sales are effected by an enterprise.**

For determining Turnover u/s 44AB we need to consider following points :-

- **Trade Discount:** This is generally allowed in the sales invoice. It can be **deducted** from turnover;
- **Cash Discount:** This 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;
- **Turnover Discount:** This 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;
- **Special Rebate:** This **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;
- **Returned Goods:** 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;





## Turnover for the purpose of Section 44AB (Continued...)

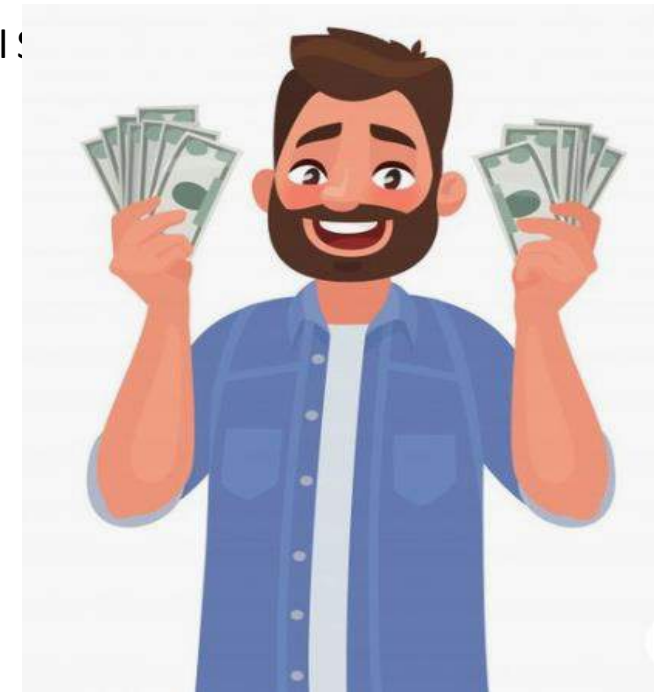
- **Sale Proceeds of Scrap:** Sales of scrap shown separately under the heading 'miscellaneous income' will have to ***be included*** in turnover;
- **Sale Proceeds of Fixed Assets:** This would ***not form part of turnover*** since these are not held for resale;
- **Sale Proceeds of Any Investment:** Sale proceeds of property held as investment property will ***not form part of turnover***. Similarly sale proceeds of any shares, securities and debentures etc. which are held as investment will ***not form part of turnover***. However *if shares, securities, debentures, etc are held as stock in trade*, the sale proceeds there from will ***form part of turnover*** for the purpose of tax audit;
- **Commission on Sales:** Commission on sales included in the sales payable to the consignee/third person ***should not be deducted*** from the figure of turnover.

## Gross Receipts for the purpose of Section 44AB

The term "gross receipts" is not defined in the Act. As per 'Guidance Note on Terms Used in Financial Statements', will include all receipts whether in cash or in kind arising from carrying on a profession.

The following items of income and/or receipts would be covered by the term "gross receipts"

- **Cash Assistance:** Whether received or receivable by any person against exports under any scheme of the Government. It can be **deducted**;
- **Reimbursement of Expenses:** Expenses reimbursed (e.g. packing, forwarding, freight 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 gross receipt;
- The aggregate of **Gross Income by way of interest** received by the money lender can be **included** in gross receipt;
- **Sale proceeds of Scrap, wastage etc.** should **not be included in receipt** unless treated as part of sale or turnover;
- **Advance received and forfeited from customers** should be **included** in receipt;
- The **Net exchange rate difference** on export sales during the year alike Reimbursement of expenses case;



## Gross Receipts for the purpose of Section 44AB ( Continued...)

- **The value of any benefit or perquisite**, whether convertible into money or not, arising from business or the exercise of a profession is **part of** receipt;
- **Insurance claims** – **part of** receipt except for fixed assets.

### The following items of income and/or receipts would not be covered by the term "gross receipts"

- **Sale proceeds of fixed assets** including advance forfeited;
- **Sale proceeds** of assets held as **investments**;
- **Rental Income, Income by way of interest, Dividends on shares** *unless* the same is assessable as business income;
- **Reimbursement of customs duty and other charges** collected by a clearing agent;
- Dividends on shares except in the case of an assessee dealing in shares;
- **Reimbursement of expenses incurred on behalf of the client** by Travelling Agent e.g. payments to the airlines, railways etc. unless the agent is conducting a package tour and charges a **consolidated sum** for facilities;
- **Reimbursement of advertising charges recovered** by Advertising Agent unless the agent books the advertisement space in bulk and recovers the charges from **different clients**;
- **Share of profit of a partner of a firm** in the total income of the firm excluded from his total income u/s **10(2A)** of the Income-tax Act;
- **Write back of amounts payable to creditors** and/or provisions for expenses or taxes no longer required.

# Who can perform Tax Audit ?

A chartered accountant as defined in **Sec 2(1)(b)** of the Chartered Accountants Act, 1949 who holds a valid certificate of practice.

But does not include

A company

Who is disqualified from being an auditor as per Companies Act, 2013.

Others

i. The assessee himself or the members in case of assessee being AOP, HUF or Firm

ii. In case of trust or institution, the author or trustee or any person making substantial contribution

iii. In case of any other person other than i and ii, a person competent to verify the return

iv. Any relative of person referred to in i, ii, & iii

v. An officer or employee of the assessee

vi. An individual who is a partner or who is in employment of an officer or employee of the assessee

vii. An individual who or his relative or partner –

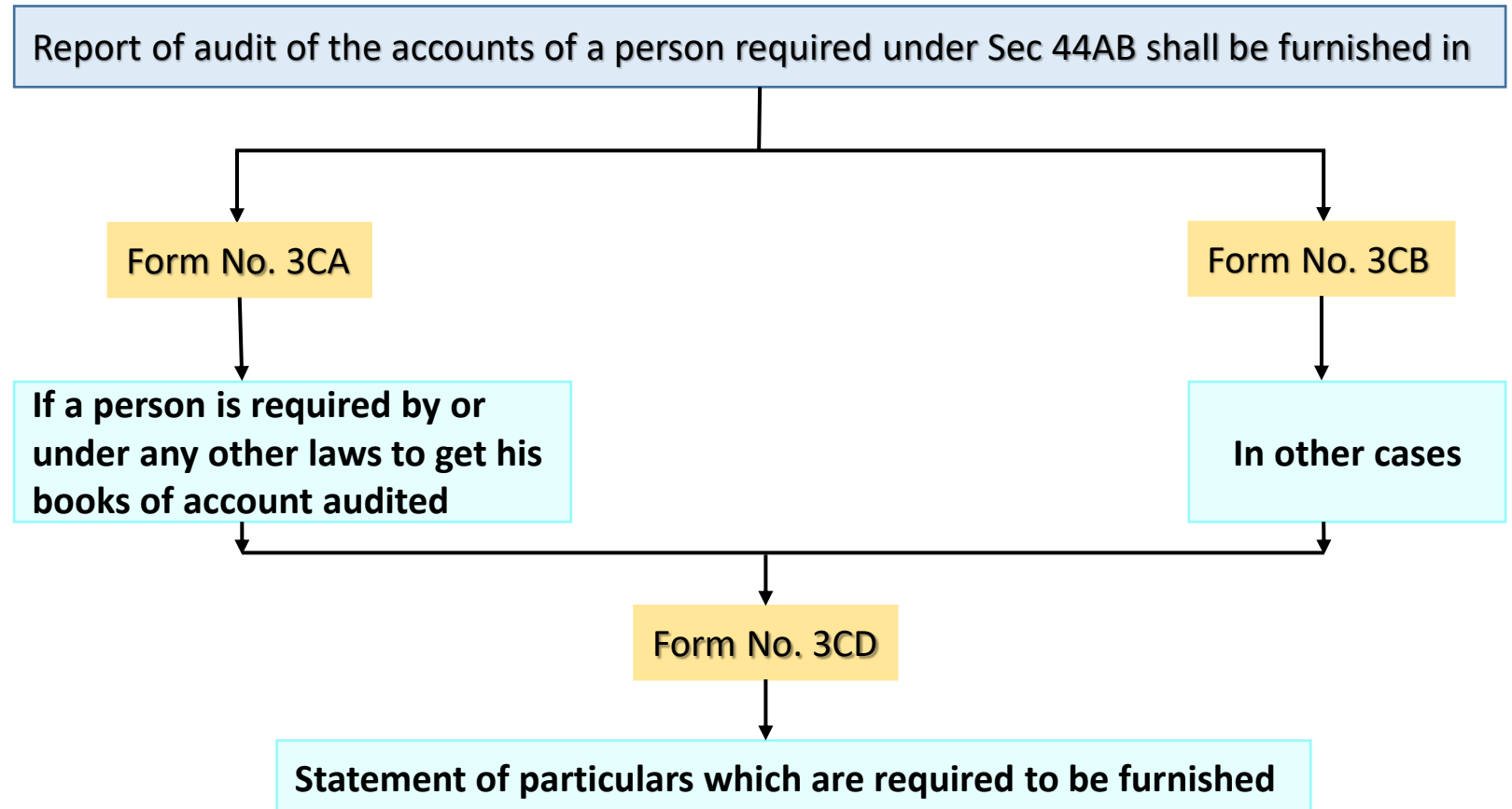
- Holds interest/security in the assessee, provided relative can hold up to **INR 1 Lac**
- Is indebted to the assessee, provided relative can be indebted up to **INR 1 Lac**
- Has given guarantee or provided security to the assessee for a third party.

viii. A person directly or indirectly having business relationship with the assessee of the nature specified

ix. A person convicted for fraud and a period of 10 years has not been elapsed from date of conviction.

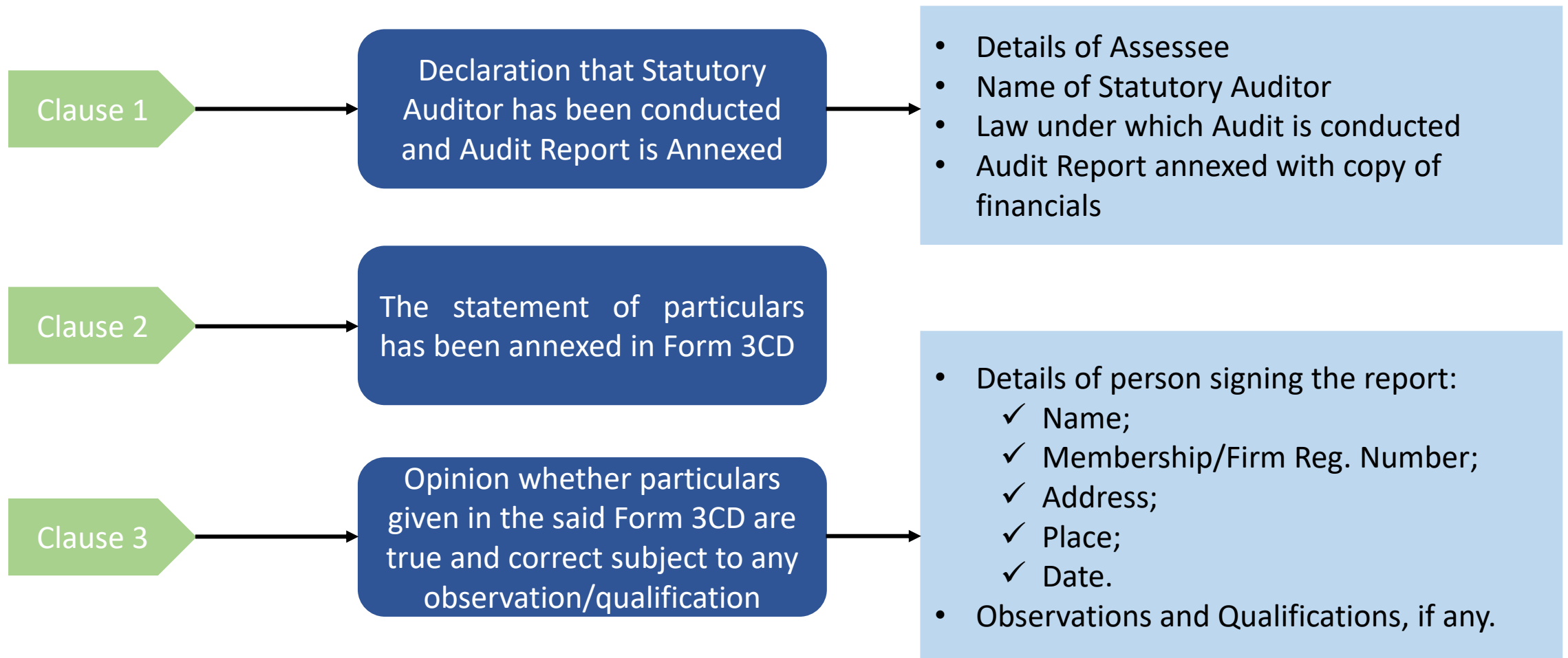


## Rule 6G – Reports under Section 44AB



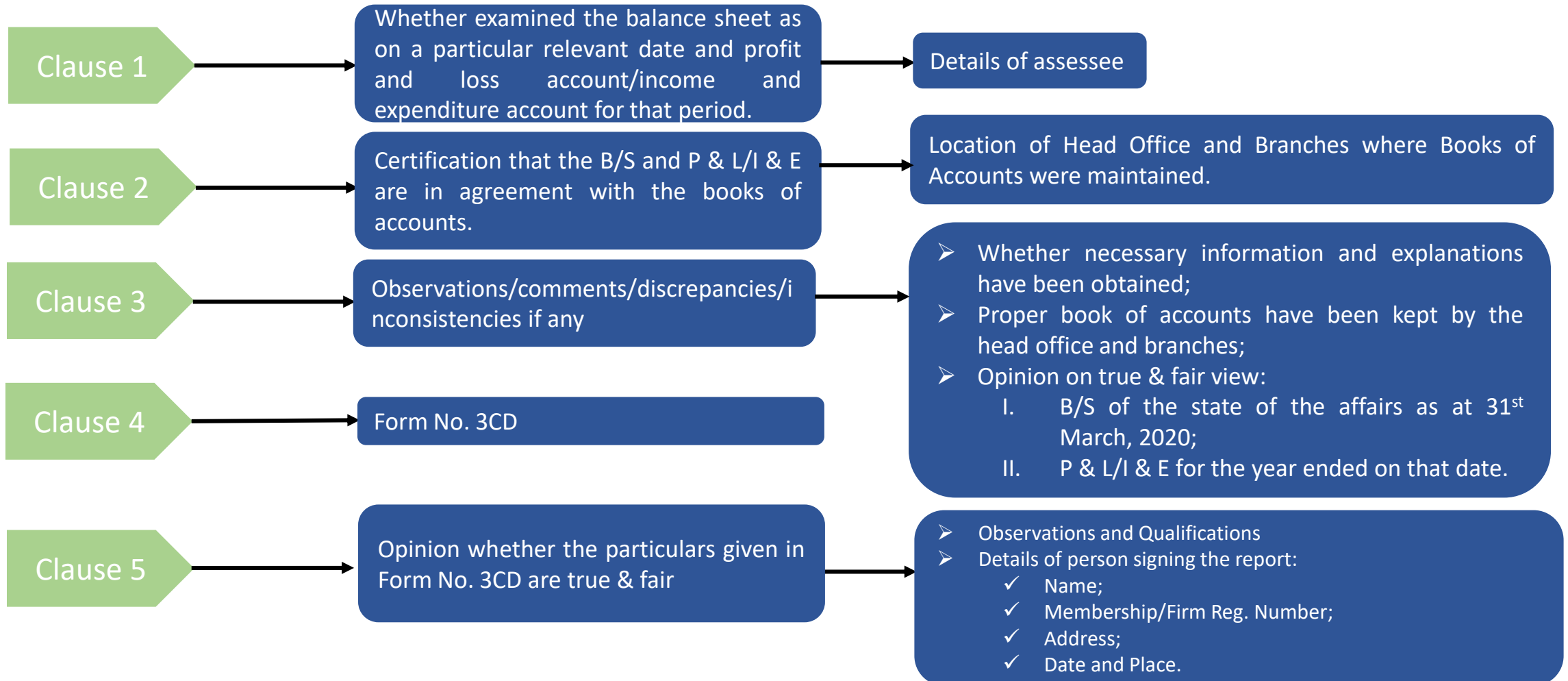
# Form No. 3CA

Where the accounts of the business or profession of a person haven been audited under any other law



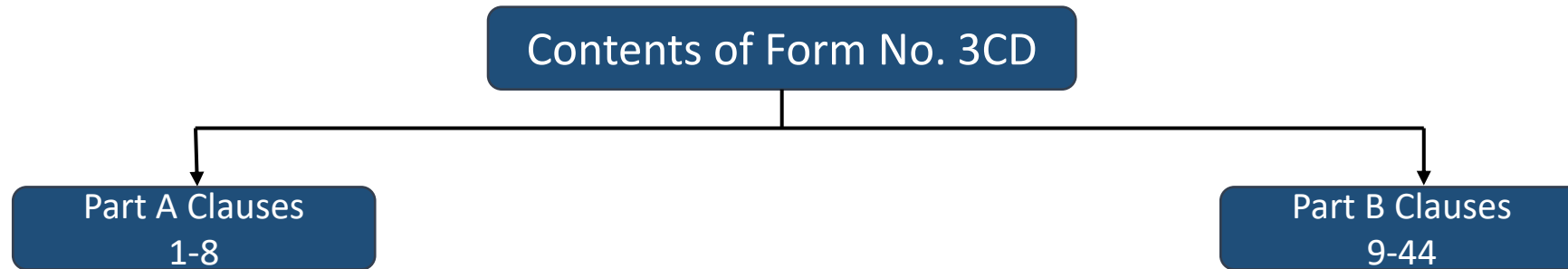
# Form No. 3CB

For person who carries on business or profession but not required by or under any other law to get his accounts audited



## Form No. 3CD

The Statement of Particulars given in Form No. 3CD as annexure to the audit report contains **forty four clauses**. The tax auditor has to report whether the particulars are true and correct. The same is to be annexed to the reports in Forms 3CA and 3CB.



- The tax auditor should obtain from the assessee, the statement of particulars in this Form duly authenticated by him.
- The assessee should take into consideration the general principles while preparing the statement of particulars:
  - ✓ He can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars
  - ✓ In case of a conflict of judicial opinion on any particular issue, he may refer to the view which has been followed while giving the particulars
  - ✓ The Accounting Standards, Guidance Notes, Standards on Auditing issued by the Institute of Chartered Accountant of India from time to time should be followed.



# Procedure

## By Auditor

- Obtains Details from Assessee to fill Form No. 3CD
- Prepares Form No. 3CA/3CB as the case may be
- Generates XML File from Offline Utility Affixed with DSC
- Login to IT e-filing portal and file the Forms

## By Assessee

- Before the auditor can file the XML, the auditor must be added as professional by the assessee.
- After the Forms have been filed the assessee has to approve it from their IT e-filing Login

# Due Date of Filing Tax Audit

A person covered by **Sec 44AB** should get his accounts audited and should furnish the audit report by

Up to Assessment Year 2019-20:  
on or before the **due date** for  
furnishing the return of income  
**u/s 139(1)**

**30<sup>th</sup> September** of the  
assessment year

If Transfer Pricing  
Provisions are Applicable:  
**30<sup>th</sup> November** of the  
assessment year

w.e.f. Assessment Year 2020-21:  
on or before **one month prior**  
**to the due date** for furnishing  
return of income **u/s 139(1)**  
which is **31<sup>st</sup> October, 2020**

**30<sup>th</sup> September** of the  
assessment year

**Due date** for furnishing return  
of income u/s **139(1)** where  
**Transfer Pricing** provisions  
are applicable which is **30<sup>th</sup>**  
**November, 2020.**

**31st October** of the  
assessment year

Due to Covid-19 situation, the government in a press conference dated 13<sup>th</sup> May, 2020 announced that the income tax return filing (ITR) deadline for FY 2019-20 for all persons has been **extended from 31<sup>st</sup> July, 2020 & 31<sup>st</sup> October, 2020 to 30<sup>th</sup> November, 2020** and tax audit report due date from **30<sup>th</sup> September, 2020 to 31<sup>st</sup> October, 2020.**

# Penalty

**Sec 271B For Assessee** – Failure to get the accounts audited or furnish report of audit under Sec 44AB in respect of any previous year or years relevant to an assessment year attracts penalty



0.5% of the total sales, turnover or gross receipts in business or of gross receipts in profession

Whichever is less

INR 1.5 Lac

**Sec 273B – No Penalty** is imposable on the assessee for the above failure if he proves that there was reasonable cause of the above said failure. The onus of proving reasonable cause is on the assessee

**Sec 271J** – The person in default, who can be a chartered accountant, merchant banker or registered valuer will be levied with a penalty of INR **10 Thousand** for each incorrect report or certificate.

*Thank  
you*

