

Tax Audit : Analysis of Specific Clause Under Form 3CD



Vision: "To be the most reputed, independent Chartered Accountants firm delivering quality services to our clients while providing a work environment where our firm members evolve professionally and can be responsible members of our community."

Mission: "Exceeding the expectation of our clients by consistently rendering quality services and becoming one of the top consulting firms in India."

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** under **Income-Tax Act, 1961**.

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 **10 Crore, introduced in Finance Act, 2021, (w.e.f. AY 2021-22)** 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

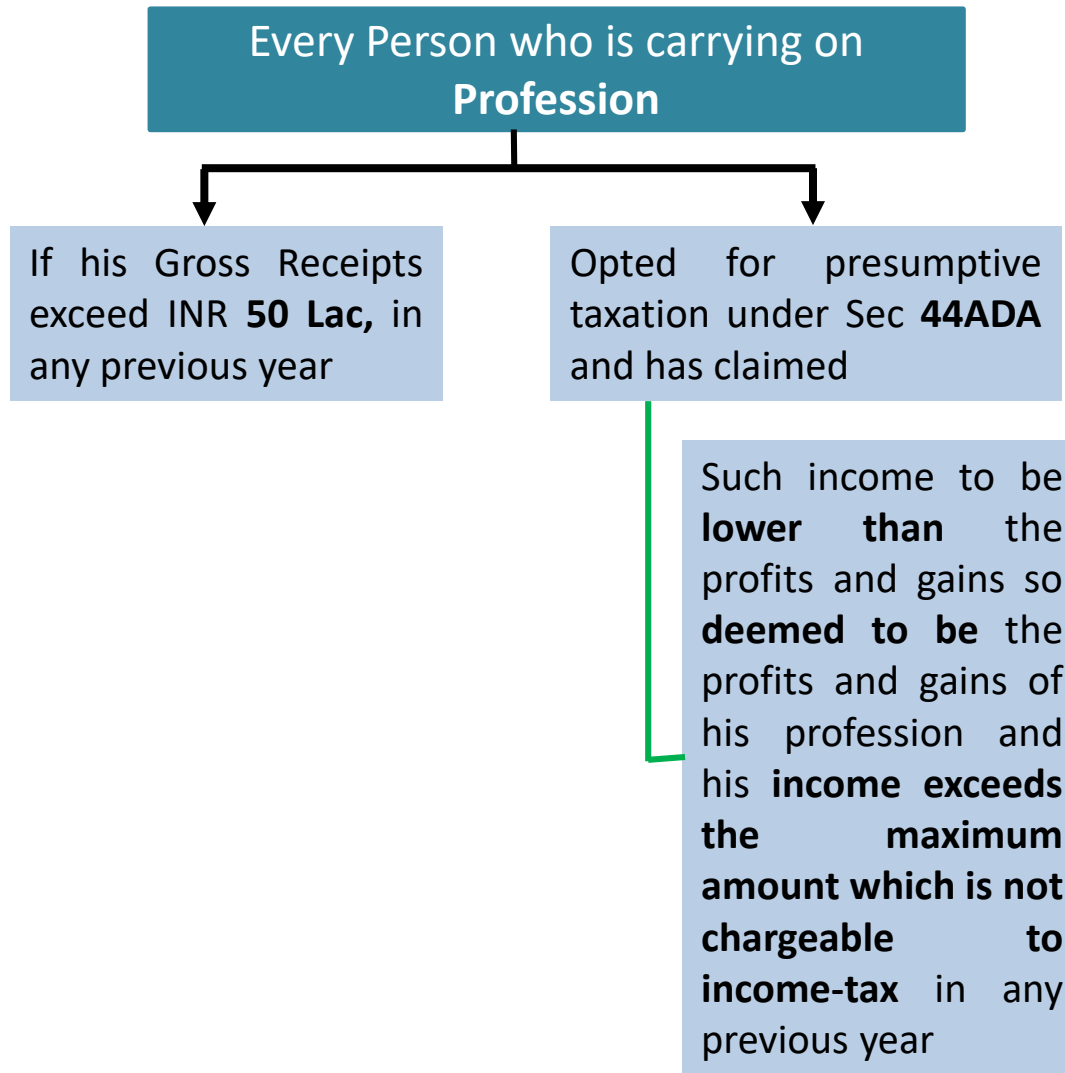
Opted for presumptive taxation under Sec **44AD** or **44AE** or Sec **44BB** or Sec **44BBB** and has claimed

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

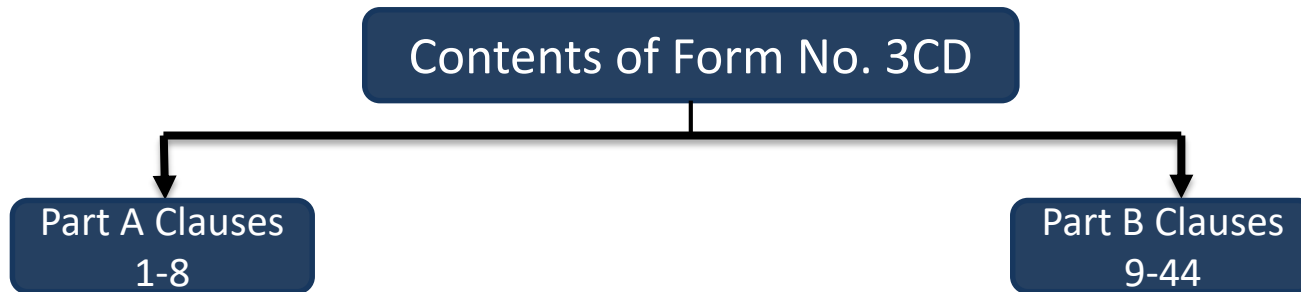
Sec 44AD(4) : assessee who previously opted for **Sec 44AD(1)** opts out of **Sec 44AD(1)** and declares profit for any of the relevant five assessment years to the previous year succeeding such previous year in which he opts for **Sec 44AD(1)**, shall not be eligible to claim the benefit of Sec 44AD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

Applicability of Tax Audit as per Section 44AB



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

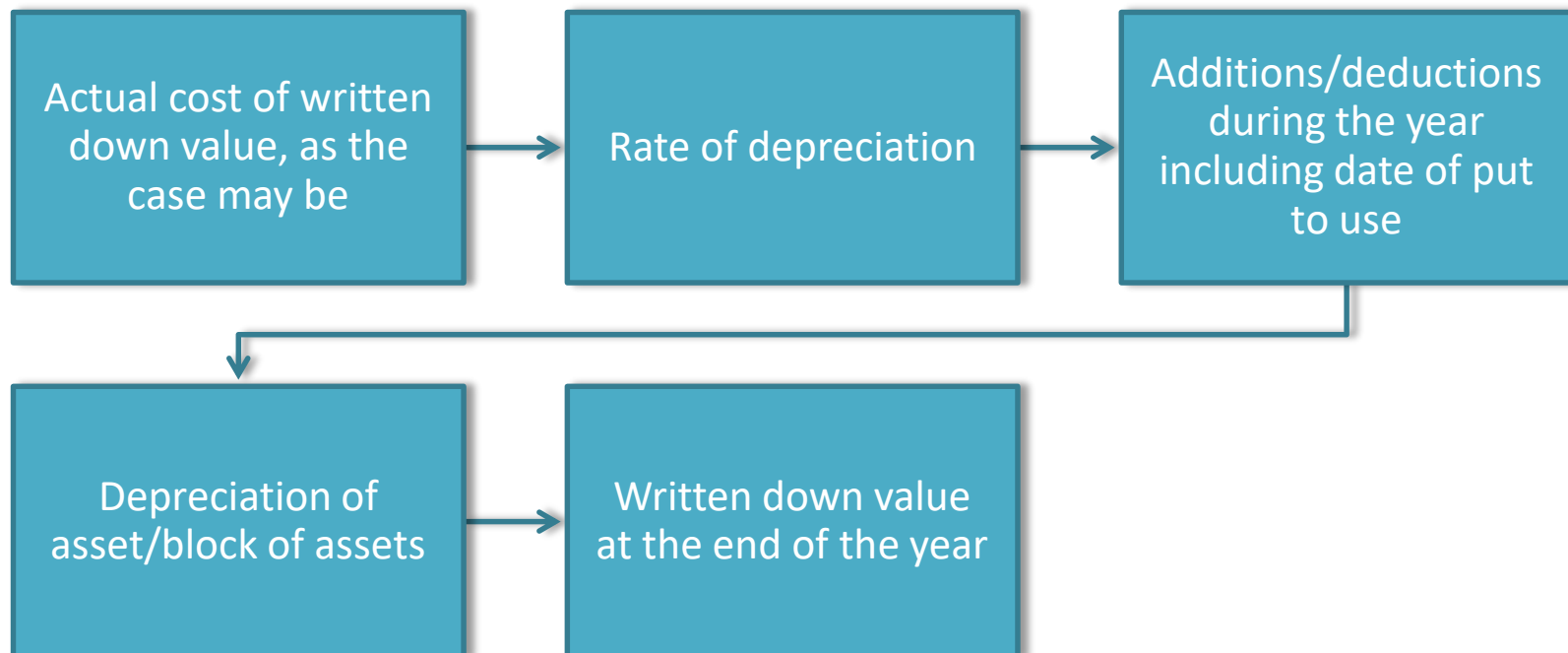
By Assessee

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

Clause 18- Particulars of Depreciation Allowable as per the Act

The Income Tax Act prescribes depreciation to be charged as per the '**block of assets system**' subject to certain conditions. This clause checks that the depreciation has been arrived at correctly.



Clause 20 – Payment of Bonus/Commission & Employers' contribution to Various Funds



(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

- The assessee would be allowed a deduction only if it was available exclusively in relation to the services rendered by him.

(b) Details of contribution received from employees for various funds as referred to in section 36(1)(va)

- These funds include superannuation funds created for the benefit of the employee. Contribution shall be allowed as deduction only if they are made within the due date as specified in the applicable law.

Clause 21- Amount of Deduction Inadmissible in Terms of Sec 14A

- There are expenses of such nature that they may be fully disallowed or allowed based on fulfilment certain conditions.
- Following expenses are disallowed -



- a) Any tax duty, cess or fees payable by assessee under any law.
- b) Employers' contribution to PF/Superannuation fund/Gratuity fund or any other fund for welfare of employees.
- c) Any expense of capital nature.
- d) Any personal expenses.
- e) Interest on loan for CAPEX till put to use.
- f) Remuneration to partners not admissible.
- g) Advertisement expenses in documents of political parties.
- h) Cash payments exceeding INR 10,000.
- i) TDS not deducted.
- j) Expense on exempt income or income under presumptive basis.

Clause 23- Particulars of Payments Made to Persons Specified Under Sec 40A(2)(b)

This section basically disallows expenditure incurred by way of payment to specified persons (relatives) if the assessing officer finds them to be excessive in nature.

40A(2)(b)	Where the assessee is	Persons referred to in clause (b)
(i)	Individual	any relative of the assessee;
(ii)	Company, firm, AOP, HUF	any director, partner, or member or any relative of such director, partner or member;
(iii)	Carrying on business or profession	any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;
(iv)	Carrying on business or profession	a company, firm, AOP or HUF having a substantial interest* in the business or profession of the assessee or any director, partner or member of such company, firm, AOP or HUF or any relative of such director, partner or member or any other company carrying on business or profession in which the first mentioned company has substantial interest*;
(v)	Carrying on business or profession	a company, firm, AOP or HUF of which a director/ partner / member, has a substantial interest* in the business or profession of the assessee; or any director/ partner / member of such company, firm, AOP or HUF or any relative of such director, partner or member;
(vi)	Any person who carries on a business or profession	All of the above

Clause 25- Any Amount of Profit Chargeable to Tax Under Sec 41 and Computation Thereof.

This section relates to deemed profits arising out of -

When deduction has been allowed in an earlier year in respect of an expenditure but assessee has received some benefit in the current year, then it will be chargeable to tax under this section.

Asset has been sold by an assessee engaged in the power generation and distribution and such sale consideration exceeds the written down value.

Where an asset used in scientific research has been sold for a consideration greater than its original cost.

Where a bad debt that was allowed earlier is subsequently recovered or amount withdrawn from special reserve on which deduction was claimed earlier

Where such amounts/benefits as above have been received even after the closure of business.

Clause 26- Certain Expenditures to be Claimed Only on Actual Payment

Tax Duties to Govt.



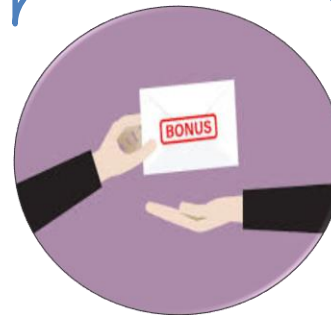
Railways
(For use
of railway
assets)



Interest to
Banks and
Financial
institutions



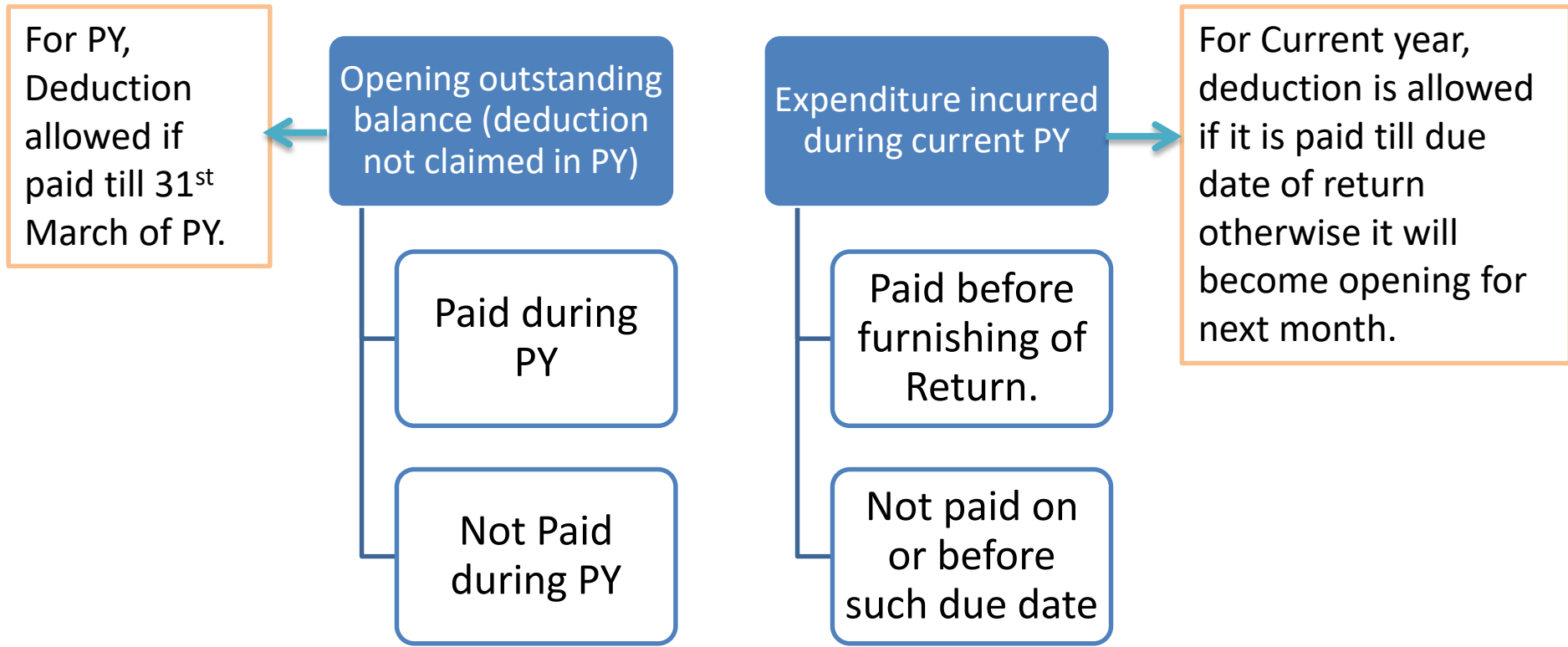
Bonus or
commission
to
employees



Contribution to
PF/ESIC/
Super
Annuation
Funds/Gratuity



Clause 26- Certain Expenditures to be Claimed Only on Actual Payment



Clause 31 – Acceptance/Repayment of Loan/Deposit/Specified Sum

Section 269SS

(a) For each loan or deposit of an amount exceeding the limit specified in this Sec taken or accepted during the PY

(b) For each specified sum in an amount exceeding the limits specified in the Sec taken or accepted during the PY

Section 269T

(c) For each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in sec.

(d) For each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in sec received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account

(e) For each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in sec received by a cheque or bank draft which is not an account payee cheque or account payee bank draft

Clause 31 – Acceptance/Repayment of Loan/Deposit/Specified Sum

Section 269ST



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graph TD; A[Section 269ST] --> B["(ba) For 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 occasion from a person otherwise than by a cheque or bank draft or use of electronic clearing system."]; A --> C["(bb) For 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 occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft"]; A --> D["(bc) For 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 occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account"]; A --> E["(bd) For 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 occasion to a person, made by a Cheque or bank draft, not being an account payee cheque or an account payee bank draft"]; style B fill:#e6f2ff,stroke:#333,stroke-width:1px; style C fill:#e6f2ff,stroke:#333,stroke-width:1px; style D fill:#e6f2ff,stroke:#333,stroke-width:1px; style E fill:#e6f2ff,stroke:#333,stroke-width:1px;
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(ba) For 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 occasion from a person otherwise than by a cheque or bank draft or use of electronic clearing system.

(bb) For 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 occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft

(bc) For 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 occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account

(bd) For 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 occasion to a person, made by a Cheque or bank draft, not being an account payee cheque or an account payee bank draft

Clause 34 - Tax Auditors to Comment on the Overall Tax Deducted at Source (TDS) Compliances by the Tax Payers



Clause 34 of the Tax Audit Report (Form 3CD) requires Tax Auditors to comment on the overall Tax Deducted at Source (TDS) compliances by the tax payers. In accordance with the guidelines issued by ICAI on this clause, the auditors ask for a reconciliation of Financial statements with the TDS returns.



If the reconciliation is not given, the auditors usually qualify stating "As the information furnished is not reconciled to the books of account, we are unable to comment on the completeness of the same along with the consequent impact, if any, on clause 21(b)."



The reconciliation requires clients to provide auditors with transaction-wise details of expenses on which tax has been deducted and those expenses on which tax has not been deducted. Against the expenses where tax has not been deducted a reasoning is required to be given so that the auditors can judge whether disallowance u/s 40(a)(i)/40(a)(ia) is required or not.

Clause 34 - Tax Auditors to Comment on the Overall Tax Deducted at Source (TDS) Compliances by the Tax Payers

Whether assessee has complied with Chapter XVII-B regarding Deduction of TDS, & payment thereof to Gov. [Sub-Clause (a)]

Disclosures required, if not complied with-

1. Tax deductible and not deducted at all.
2. Shortfall on account of lesser deduction.
3. Tax deducted late.
4. Tax deducted but not paid to Gov. Before last day of P.Y or due date for TDS deducted in march month of P.Y

Clause 34(a)

Reporting on compliance with TCS provisions along with TDS provisions

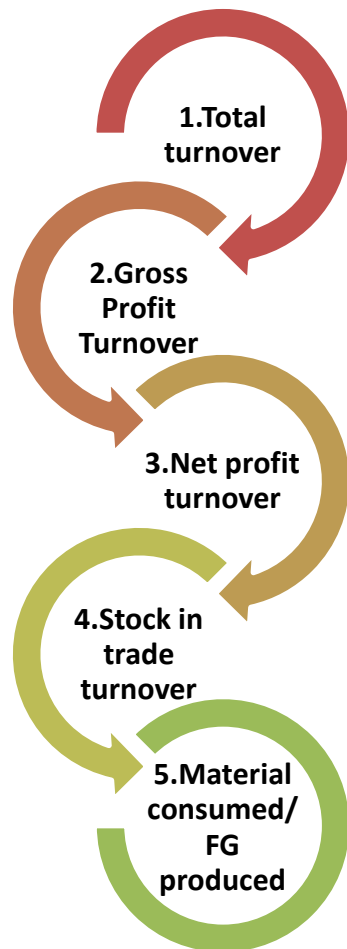
Clause 34(b)

the tax auditor shall report on the compliance by the assessee with provisions of furnishing of TDS or TCS statements with in prescribed time.

Clause 34(c)

the tax auditor shall report on the compliance by the assessee with provisions of furnishing of TDS or TCS statements with in prescribed time.

Clause 40 - Details regarding Turnover, Gross Profit, etc., for the Previous Year and Preceding Previous Year



Points to be Considered-

- Calculation of such ratios would not be applicable for persons engaged in profession/ service industry.
- The ratios have to be given for business as a whole and not product wise
- All ratios to be disclosed in terms of value only.
- Net profit here refers to Net profit before tax or after tax.
- Calculations are also to be stated, if such calculations are stated in FS, reference shall be made to same.



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Thank You!!

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