

Clause 44 of Tax Audit Report - Unravelling the Intricacies

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The Format of Form 3CD, being tax audit report as required to be filed under section 44AB of Income tax Act, 1961 (Act) was amended vide Notification No. 33-2018 dated 20th July, 2018. Few new clauses were introduced for reporting one of which was clause 44, which requires furnishing break-up of total expenditure of entities registered or not registered under GST in a specific format, as given hereunder: -

| Sl. No. | Total amount of Expenditure incurred during the year | Expenditure in respect of entities registered under GST | | | | Expenditure relating to entities not registered under GST |
|---------|------------------------------------------------------|---------------------------------------------------------|-------------------------------------------------------|---------------------------------------|--------------------------------------|-----------------------------------------------------------|
| | | Relating to goods or services exempt from GST | Relating to entities falling under composition scheme | Relating to other registered entities | Total payment to registered entities | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

[Clause 44]

2. This Clause 44 along with clause 30C of the Tax Audit Report was deferred till 31st March, 2022 vide various notification since its inception. However, the same has now become applicable for reporting purpose, for all Tax Audit Reports furnished on and after 1st April, 2022.

Accordingly, for Tax Audit Reports furnished for Financial Year 2021-22 relevant to assessment year 2022-23, both the Clauses 44 and 30C have now become applicable.

DILEMMA IN REPORTING - CLAUSE 44

3. It is pertinent to understand that one of the prime purpose of Tax Audit Reporting is to enable the Assessing Officer with certain preliminary information, as required pursuant to Rule 6G(2) of the Income Tax Rules and more commonly known as Form 3CD, which enable him/her to assess the income of the Assessee based on the relevant information furnished and audited by the Independent Tax Auditor.

As per para 1.4 of the Guidance Note on Tax Audit Report issued by ICAI, the objective of tax audit reporting is also to facilitate the administration of tax laws by a proper presentation of accounts before the tax authorities and considerably save the time of Assessing Officers in carrying out routine verifications so as to save the time of the Assessing Officers for attending to more important and investigational aspects of a case.

However, every requirement of the Tax audit reporting should have a purpose which assist the tax auditor as well as the Assessee, to understand the requirement for its effective compliance and reporting.

4. On analysis of the new reporting there is no reference as to the purpose of such reporting in the Tax Audit Report and how the same would assist the Assessing Officer to assess the income of the Assessee or for what purpose such information may be used by the tax authorities.

5. Further looking at the '**Guidance Note Tax Audit (Revised 2022)**' issued by Institute of Chartered Accountants of India on 19th August, 2022, the same also does not contain any reference of why such reporting has been called for but since it is now a statutory requirement, the same would-be required to be furnished in the Tax Audit Report.

Decoding Reporting under Clause 44

Since there is lack of clarity on purpose of reporting and absence of any guidance from tax authorities on how to extract and report the relevant information under Clause 44, Guidance Note issued by ICAI may be referred along with broad understanding on how the relevant information may be extracted from various available sources for due reporting purpose.

Sources data for extracting relevant information

For the purpose of furnishing the relevant information under clause 44 of the Tax Audit Report, the Assessee need to keep the following information ready for extracting relevant information: -

- Books of account
- Financial Statements
- GST2A/2B/3B
- AIS and other relevant records

REPORTING UNDER EACH COLUMN OF TABLE UNDER CLAUSE 44

Column 1 & 2

| Sl. No. | Total amount of Expenditure incurred during the year |
|---------|------------------------------------------------------|
| 1 | 2 |

Posers

1. Whether expenditure head wise or consolidated figure should be reported?

Looking at the title of the reporting requirement of Clause 44, it specifies to furnish 'total amount of expenditure incurred during the year' and not head wise / nature wise amount of expenditure.

Considering the same, it seems more appropriate, to furnish the total amount of expenditure as a single line item, instead of providing head wise or nature wise, which would already be available in the Financial Statements furnished along with the tax audit report.

2. Whether both capital and revenue expenditure need to be provided or only which is appearing in the Statement of Profit and Loss?

The word expenditure generally includes both capital and revenue expenditure and hence both should be considered for the purpose of reporting. This is also confirmed by the Guidance note issued by Institute of Chartered Accountants of India.

In addition to above, it would also be logical to ensure that the data reported in this clause also reconciles with the information already available on the Assessee GST portal, inclusion of capital expenditure is must since GST 2A/2B (one of the source information used for extracting details of clause 44 reporting) does not bifurcate between revenue and capital expenditure since it is generated based on supply of good or services.

The tax auditor must keep his working papers ready containing in reconciliation of amount shown under Column 2 of Clause 44 of the tax audit report duly reconciled with the books of account / Financial Statements.

Column 3, 4, 5 & 6

| Expenditure in respect of entities registered under GST | | | |
|---------------------------------------------------------|-------------------------------------------------------|---------------------------------------|--------------------------------------|
| Relating to goods or services exempt from GST | Relating to entities falling under composition scheme | Relating to other registered entities | Total payment to registered entities |
| 3 | 4 | 5 | 6 |

Posers

3. How to extract information for reporting relevant details under column 3, 4, 5 and 6?

There may be different approach to extract information from the different source of documents referred above, depending upon which source of information is more accessible and gives more accurate data from the Assessee Company perspective.

One of the approaches could be to extract relevant information from already available information from the GST portal and reconcile the same with the books of account.

For the same, the Assessee may extract the details of supply from the GST 2A which contains list of all the supplies made during the year which includes both revenue / capital expenditures and then reconciles the same with the books of account and prepare its working for reporting.

Alternatively, the Assessee may extract details from its books of account and then reconcile it with the GST returns, if all the requisite information is properly captured by the Assessee in its books of account.

It is important to mention that there is no direct reference of reconciling the data furnished under Clause 44 with the GST returns but it is also important to note that the data should not be in disagreement with the GST returns and in case the same is, necessary reconciliation should be on record with the Assessee and the tax auditor.

The tax auditor must ensure that whatever working is prepared by the Assessee, it should be reconciled with the books of account and the tax audit report must contain necessary remarks / clarification to explain the basis of reconciliation, wherever required.

4. How to extract information of supply of goods or services exempt from GST i.e., Column 3?

As per Section 2(47) of the Central Goods and Service Tax Act, 2017 defines exempt supply as follows:

“exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under the Integrated Goods and Services Tax Act, and includes non-taxable supply;”

Further non-taxable supply” has been defined in section 2(78) of the CGST Act, 2017 as follows:

“non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act”

Considering above, all supplies which are exempt and made by a registered vendor needs to be populated in Column 3 of the table.

It may be possible that the relevant details may not be readily available by the Assessee, depending upon at what level such details are maintained by it on day to day basis, the tax auditor may add a suitable remark / note in the tax audit report.

5. How to extract information of vendors registered under composite scheme i.e., Column 4?

In case of supply from vendors registered under the composite levy scheme, the Assessee may not have captured its GSTIN details in their accounting software and hence it may be difficult to extract details of transactions with such vendors.

Due to such, it may be possible that the same may get included in Column 7, as supply from unregistered vendor or in Column 5 as supply from registered vendors and hence depending upon the facts of the case, the tax auditor should mention a suitable remark / note in its Tax Audit Report with regard to the same.

6. Whether total payment to be mentioned in the column 6 or reporting is to be done on accrual basis?

Since the purpose of reporting is to give details of expenditure from registered and unregistered vendors, it would not be correct to show information on payment basis, especially in cases where the books of

account are maintained on accrual basis.

Accordingly, the aggregate of column 3, 4 and 5 should be shown in Column 6 of the table.

Column 7

| |
|-------------------------------------------------------------------------|
| <p>Expenditure relating to entities not registered under GST</p> |
| Empty space for content |
| <p>7</p> |

Posers

7. Whether Column 7 is arithmetic difference between column 2 and 6?

Practically Column 7 in general would be the difference between Column 2 and 6, since the purpose of the clause is to bifurcate the total expenditure reported in Clause 2 into two main buckets i.e. expenditure with GST registered vendors and expenditure with vendors not registered under GST. Accordingly, it can be said that column 7 is the difference between column 2 and 6.

However, the tax auditor should keep the relevant working papers and reconciliation to substantiate the figures reported in the clause.

Other Posers

8. Whether non-cash items should be considered as part of expenditure for Column 2 reporting like depreciation / loss of sale of fixed assets etc.?

The reporting requirement of Clause 44 is to provide details of expenditure from GST registered vendors and unregistered vendors. Non cash items like depreciation / loss on sale or discard of property plant & equipment / unrealized losses / impairments or the like are expenditure not in the nature of supply and hence should not form part of any Column from 3 to 7.

Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7. For example, "Services by an employee to the employer in the course of or in relation to his employment" is neither supply of goods nor supply of service and hence need not be reported.

However, the tax auditor must include such non-cash items in its working paper to reconcile the total expenditure recognised during the year and report only those expenditure which are in the nature of supply in Clause 44.

9. Whether expenditure on which RCM is applicable should be included for reporting purpose?

There may be cases where a vendor is rendering services to the Assessee and his services are covered under RCM and hence may not raise a taxable invoice on the Assessee. However, such vendor may still be registered under GST since he may be rendering other services which may not be covered in RCM and hence may have a GST registration.

As per the requirement of the clause, expenditure needs to bifurcated between registered and unregistered vendor in GST and not whether the expenditure is covered under RCM or otherwise. Accordingly, such expenditure should be covered in column 3-6, as the case may be.

However, the Assessee may not have captured the registration details of the vendor covered in RCM in their accounting software. The tax auditor under such a scenario may provide appropriate note in their tax audit report as to how such transactions have been included / excluded from reporting in Clause 44.

10. Whether expenditure including GST or excluding GST to be reported in clause 44?

Technically the word total expenditure means expenditure which is revenue or capital. If the Assessee has taken ITC on expenditure, the amount of such ITC cannot be considered as expenditure since is it not claimed as such. On the other hand, if the Assessee does not take ITC or there are cases of ineligible ITC and are charged to Statement of Profit and Loss, the same may be considered as expenditure since ITC is not claimed and such ITC is recognised either as revenue or capital expenditure by the Assessee.

The tax auditor under such a scenario may provide appropriate note in their tax audit report with regard to inclusion / exclusion of ITC in Clause 44.

11. What if relevant details are not furnished by the Assessee for reporting purpose?

Relevant extract of Guidance Note issued by Institute of Chartered Accountants of India, is reproduced hereunder which addresses the issue: -

"If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate."

Considering above, the tax auditor must give suitable remark under observation tab of the Form 3CA / CB of the report clarification the non-furnishing of relevant information under Clause 44.

Suggested note (Illustrative) for such disclosure / disclaimer

"We have been informed by the Assessee that the statistical information required under Clause 44 of the Tax Audit Report has not been maintained in the absence of any statutory requirement under Goods and Service Tax statute. Further the standard accounting software used by the Assessee is not configured to generate any report in respect of such historical data in absence of any prevailing statutory requirement regarding maintenance of requisite information in this clause."

In view of above we are unable to verify and report the desired information in this clause."

CONCLUSION

12. Clarity is needed with regard to the purpose which enables to understand the requirement in more

detail and assist is furnishing more relevant and useful data.

13. The annual GST reconciliation already contains the relevant information where due reconciliation of expenditure with GST returns is already being conducted.

The Income tax authorities need to clarify whether the Assessee need to be over burdened with additional requirement of a new reconciliation which prima facie does not have any connection with the income assessment of the Assessee.

14. The details furnished under clause 44 may come with a number of disclaimer / remarks which may not serve the purpose for which the same is called for.

Each Assessee may have different limitation considering data extraction, software limitation, reconciliation with records etc. and hence the efforts may outweigh the results.

15. Currently it is not known how various statutory authorities would use such information reported in Clause 44 in time to come which may further increase the compliance cost and litigation at the Assessee's end.

16. Lots of training is required especially in case of small and medium enterprise which have limited and semi-skilled staff. Such technical data extraction and reconciliation with the books of account and GST returns is a highly time consuming and cumbersome procedure for both the Assessee and the Tax Auditor.