

Practical Aspects of Tax Audit including Clause 44



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Shared at

Prayagraj Branch of CIRC of ICAI

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LEGISLATION FOR AY 2022-23

S. 44AB

- Business – exceeds Rs. 1 Crore / 10 Crores
- Profession – exceeds Rs. 50 L
- Business u/s 44AE /44BB /44BBB; income < deemed profits;
- Profession u/s 44ADA; deemed profit < 50% & TI > MANCT
- Business u/s 44AD (4) & TI > MANCT

Rule 6G

- Prescribing the Forms for Report u/s 44AB

Form 3CA

- Report in case of a person who is required to get his A/cs audited under any law

Form 3CB

- Report in any other case

Form 3CD

- Particulars as required in Form 3CA or Form 3CB

S. 271B

- Penalty $\frac{1}{2}\%$ maximum Rs. 1.50 L

APPLICABILITY OF 44AD(44ADA) / 44AB

**Mr. A started Mfg – 1st Yr - Turnover (all cash)
– 150L; NP – 8 L; TI - 8.50 L**

- AD - No
- AB - Yes

**Ms. B - Trading - Turnover (all cash) – 90L; NP -
10L; Doctor– Fee – 45 L; NP- 25 L; TI -32L**

- AD – No
- ADA - Yes
- AB - No

**Ms. C – Trading Turnover (all cash)– 80L
NP – 4 L; TI- 3 L**

- AD – No
- AB - No

**Mr. D - Trading; Turnover (all cash) - 95L;
Commission – 6 L; NP- 15L; TI - 14L**

- AD - No
- AB - Yes

SECTION 44AD ESSENTIALS

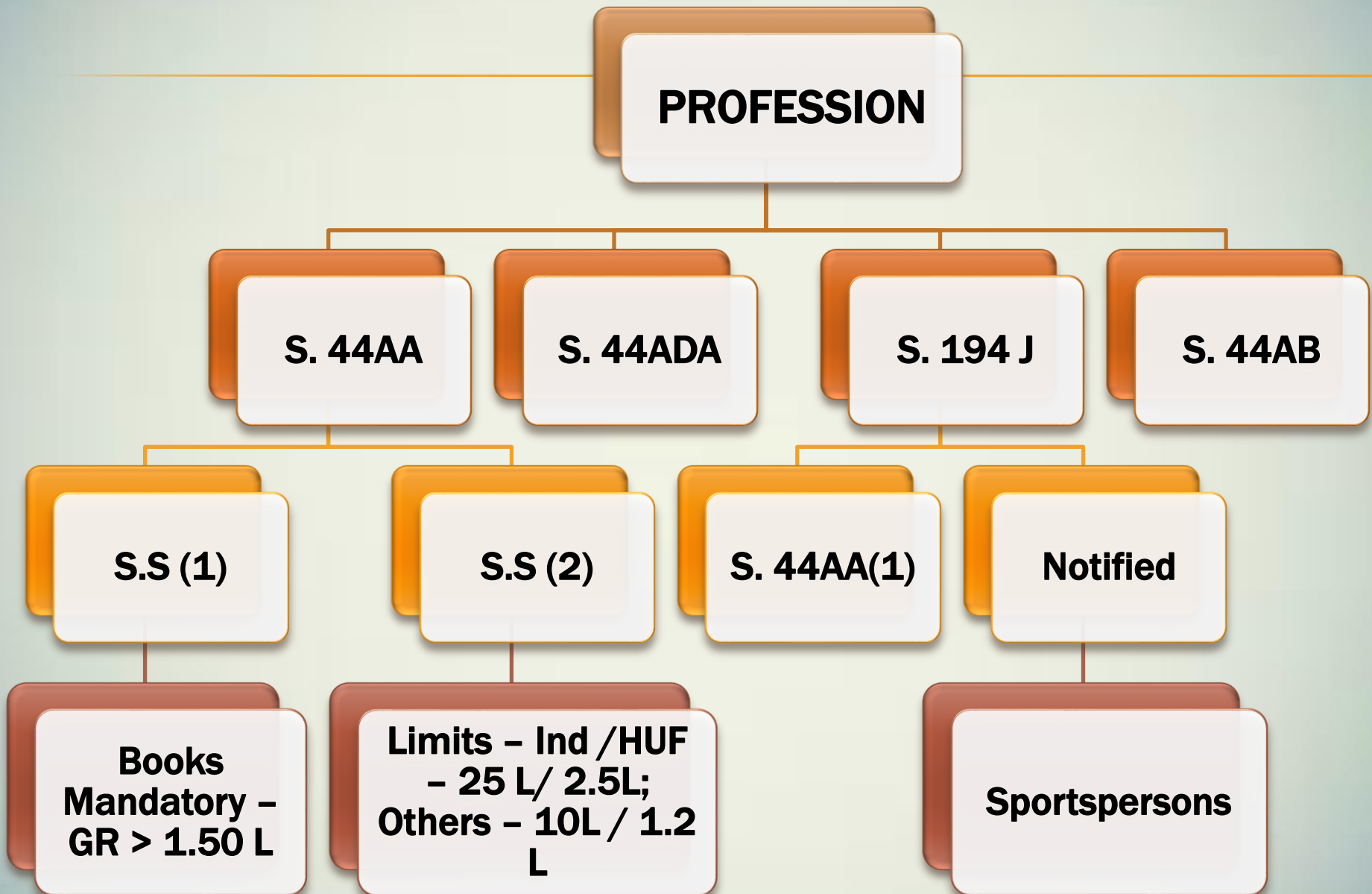
- **Should be eligible assessee**
 - **Ind., HUF, Firm (except LLP); and**
 - **No s. 10A, 10AA, 10B, 10BA & Chp VIA Part C**
- **Should be doing eligible business**
 - **Any except 44AE; and**
 - **Turnover < 2 Crs**
- **Section not applicable to a person carrying:**
 - **Profession u/s 44AA(1)**
 - **Commission or brokerage**
 - **Agency business**
- **Deemed profit 8% / 6% or more**
- **Commensurate with fund flow!!!**

SECTION 44ADA ESSENTIALS

- **Applicable to Individual, HUF, Firm (excluding LLP)**
- **Should be engaged in profession – section 44AA(1) read with rule 6F**
- **Gross receipt < 50 Lakhs**
- **Deemed profit 50% or more**
- **Commensurate with fund flow!!!**

PROFESSION – S. 44ADA

- **Section 44AA (1) read with Rule 6F**
 - **Legal**
 - **Medical**
 - **Engineering**
 - **Architectural**
 - **Accountancy**
 - **Technical Consultancy**
 - **Interior Decoration**
 - **Authorised Representative**
 - **Company Secretary**
 - **Film Artist, actors, cameramen, editor.....**
 - **Information Technology**



44AB(a)

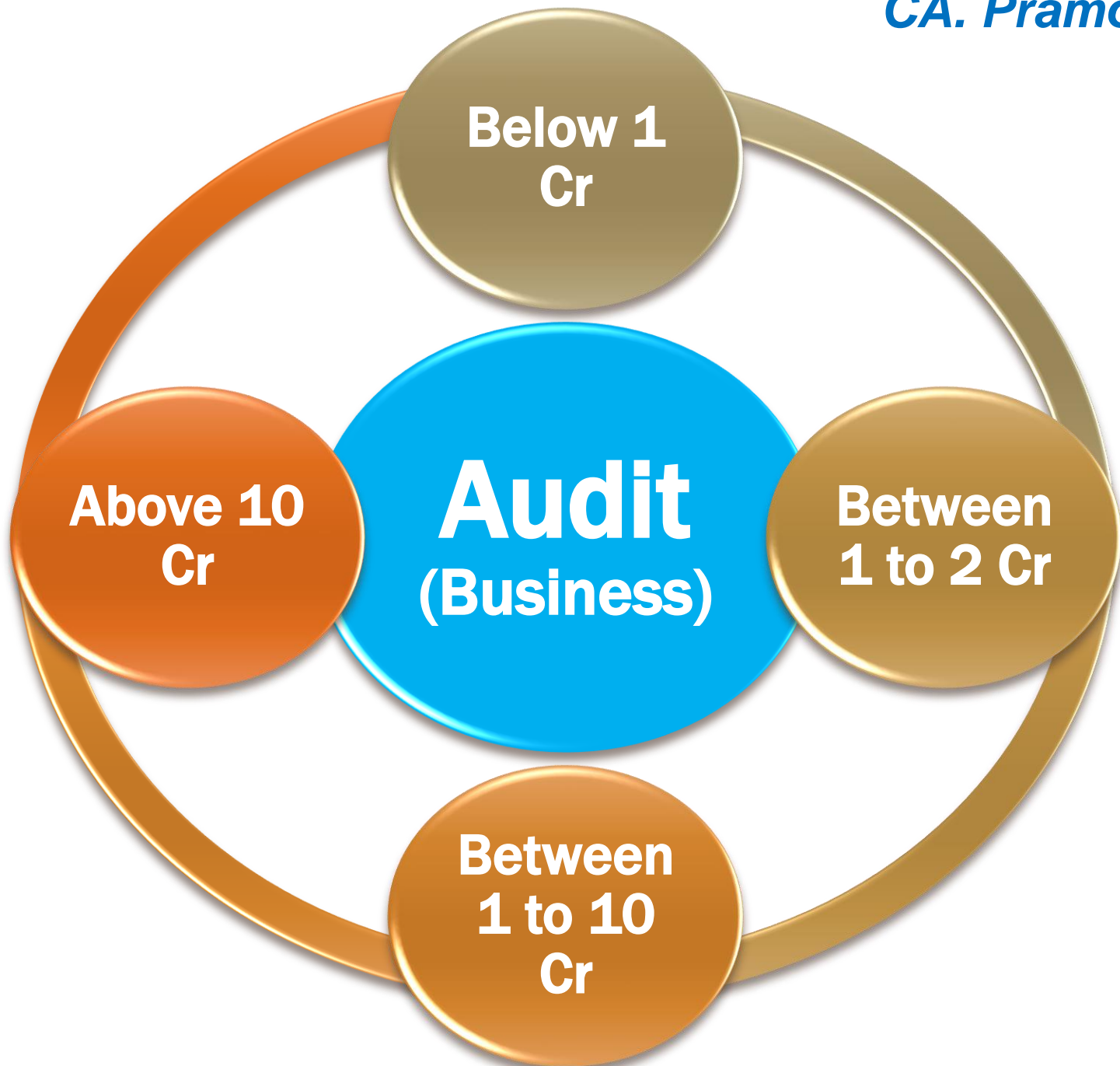
- ✖ **Limit 1 Cr /10 Cr !!**
- ✖ **Limit of 10 Cr Only if:**
 - + **Aggregate of all amounts received in cash do not exceed 5% of said amt.**
 - + **AND**
 - + **Aggregate of all Payments made in cash do not exceed 5% of said payment**

44AB(a) ???

- ✗ **Payments all by banking channels**
- ✗ **Receipts:**
 - + **6 Crs sales out of which 20 Lacs in Cash**
 - + **Proprietor introduces capital – 25 Lacs in cash**
 - + **Loans received– 50 Lacs by NEFT**
 - + **Is tax audit u/s 44AB required?**
 - + **Yes, as total receipts - 675 L ; cash – 45L**
- ✗ **Is it mandatory or optional??**
 - + **Mandatory - Part I (1) of 2nd schedule**
- ✗ **Non -A/c Payee Cheque/ Draft - Cash**

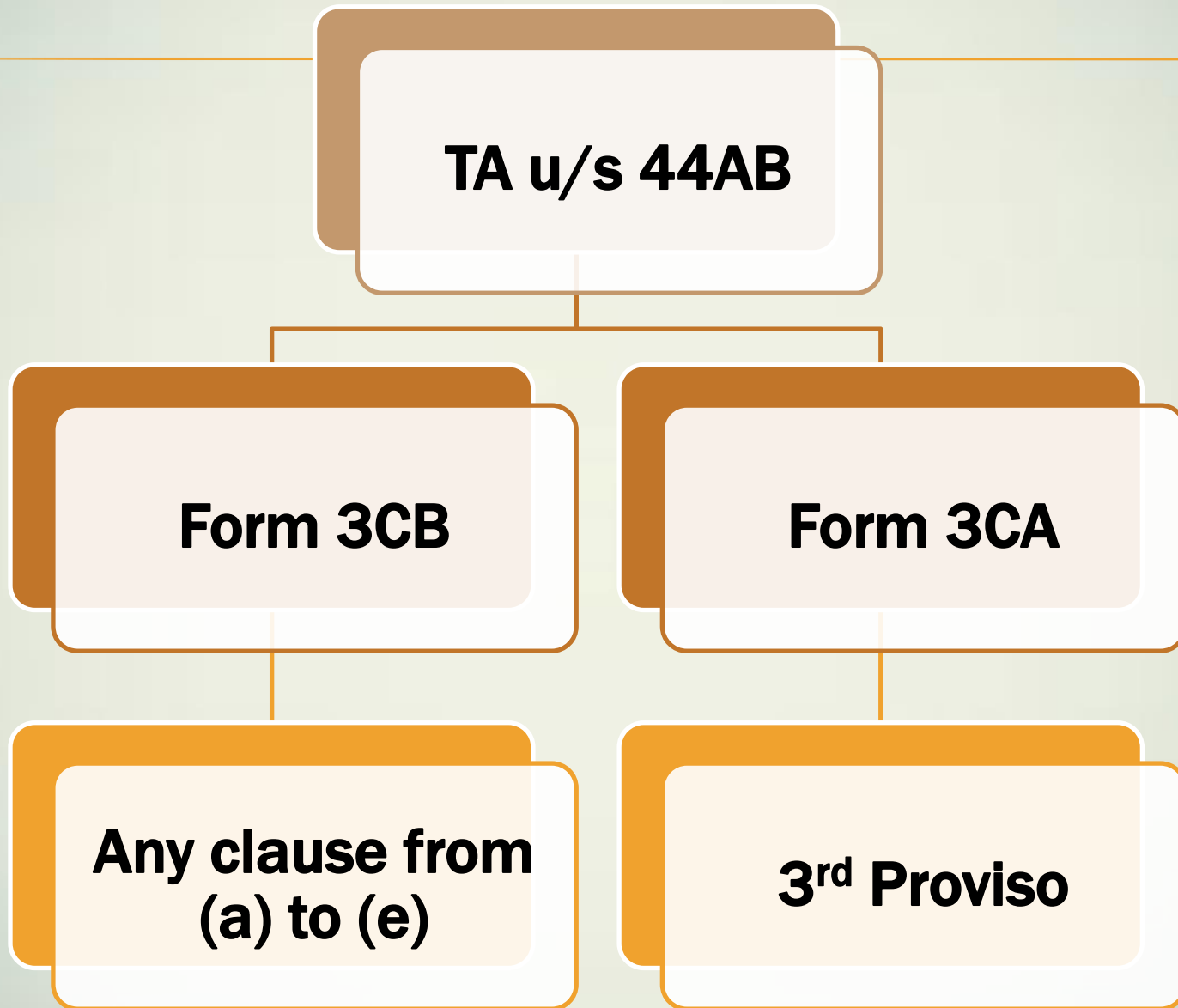
PRESUMPTIVE INCOMES

S. No.	Section	Nature of Activity	Less than Deemed Profits	Provisions for Audit	Audit Provision
1	44AD	Business	If availed 44AD & not availed in any of next 5 years, then for next 5 years - Audit	44AD(4)/(5)	44AB(e)
2	44ADA	Profession	Audit	44ADA(4)	44AB(d)
3	44AE	Goods Carriage	Audit	44AE(7)	44AB(c)
4	44B	Shipping of NR	Not Allowed	Nil	Nil
5	44BB	Exploration of Mineral Oils by NR	Audit	44BB(3)	44AB(c)
6	44BBA	Operation of Aircraft by NR	Not Allowed	Nil	Nil
7	44BBB	Turnkey Power Projects by FC	Audit	44BBB(2)	44AB(c)



???

**Are
Financial Statements
Audited during Tax
audit of
Proprietorship /
Partnership Firm?**



???

- ✖ **Are Notes to the accounts prepared for Non-Corporates?**
- ✖ **What is disclosed in it?**
- ✖ **Are Accounting Standards applicable to Non-corporates?**
- ✖ **What if there is non-compliance?**
- ✖ **Where to Report such non-compliance?**

AS APPLICABILITY FOR NON-COMPANIES

- ✖ Effective for Accounting Periods from 1.4.2020
- ✖ Instead of 3 levels.. Now 4 levels

Level	Turnover			Borrowing	
	Existing	Revised		Existing	Revised
I (Large)	> 50 Cr	> 250 Cr		> 10 Cr	> 50 Cr
II (Medium)	1-50Cr	50-250 Cr		1-10 Cr	10-50 Cr
III (Small)	< 1 Cr	10-50 Cr		< 1 Cr	2-10 Cr
IV (Micro)		< 10 Cr			< 2 Cr

MSME DISCLOSURE - NON CORPORATE

- ✘ **“The Entity is a Micro Small and Medium Sized Enterprise (MSME) as per the announcement made by ICAI and has complied with the Accounting Standards insofar as they are applicable to entities falling in Level II or Level III or Level IV, as the case may be.”**
- ✘ **Two year wait period if change from Level I to II or II to III or III to IV**

FORMATS OF FINANCIAL STATEMENTS FOR NON-CORPORATE ENTITIES

BALANCE SHEET

NAME OF THE NON-CORPORATE ENTITY.....
BALANCE SHEET AS AT

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	1	2	3	4
I.	EQUITY AND LIABILITIES			
	(1) Owners' Fund			
	(a) Owners Capital Account			
	(b) Reserves and surplus			
(2)	Non-current liabilities			
	(a) Long-term borrowings			
	(b) Deferred tax liabilities (Net)			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	(c) Other Long Term Liabilities			
	Long-term provisions			
(3)	Current liabilities			
	(a) Short-term borrowings			
	(b) Trade payables:- (A) total outstanding dues of MSME and (B) total outstanding dues of creditors other than micro, small and medium enterprises .			
	(c)Other current liabilities			
	(d)Short-term provisions			
	TOTAL			
II.	ASSETS			
(1)	Non-Current Assets			
	(a) Property, Plant and Equipment & Intangible assets			
	(i) Property, Plant and Equipment			
	(ii) Intangible assets			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	(iii) Capital work-in-progress			
	(iv) Intangible assets under development			
	(b) Non-current investment			
	(c) Deferred tax assets (net)			
	(d) Long-term loans and advances			
	(e) Other non-current assets			
(2)	Current assets			
	(a) Current investments			
	(b) Inventories			
	(c) Trade receivables			
	(d) Cash and bank balances			
	(e) Short-term loans and advances			
	(f) Other current assets			
	TOTAL			

STATEMENT OF PROFIT AND LOSS

Name of the Non-Corporate Entity.....

Statement of Profit and loss for the year ended

(Rupees in.....)

	Particulars	Note	Figures for the current reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	1	2	3	4
I.	Revenue from operations		xxx	Xxx
II.	Other income		xxx	Xxx
III.	Total Income (I + II)		xxx	Xxx
IV.	Expenses			
(a)	Cost of Goods Sold			
(b)	Employee benefits expense		xxx	Xxx
(c)	Depreciation and amortization expense		xxx	Xxx
(d)	Finance Cost		xxx	Xxx
(e)	Other expenses		xxx	xxx

	Particulars	Note	Figures for the current reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	Total expenses		xxx	xxx
V	Profit before exceptional and extraordinary items & tax (III-IV)		xxx	xxx
VI	Exceptional items		xxx	xxx
VII	Profit before extraordinary items and tax (V - VI)		xxx	xxx
VIII	Extraordinary Items		xxx	xxx
IX	Profit before tax (VII- VIII)		xxx	xxx
X	Tax expense:			
(i)	Current tax		xxx	xxx
(ii)	Deferred tax		xxx	xxx
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		xxx	xxx
XII	Profit/(loss) from discontinuing operations		xxx	xxx
XIII	Tax expense of discontinuing operations		xxx	xxx
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		xxx	xxx
XV	Profit/ (Loss) (XI + XIV)		xxx	xxx

MATTERS FOR FS OF NON-CORPORATES

- ✗ List of Trade Receivables / Payables**
- ✗ List of unsecured Loans**
- ✗ Notes to the Accounts**
- ✗ Significant accounting policies**
- ✗ MSMED Act 2006**

FORM 3CA

- ✗ **Total 3 Paras**
- ✗ **Examination of books by auditor included before giving opinion**
- ✗ **Opinion to be given subject to observations / qualifications, no annexures ... Para 3**

FORM 3CB

- ✗ **Total 5 Paras**
- ✗ **Same as Form 3CA except examination of books**
- ✗ **Opinion subject to observations / qualifications to be given:**
 - + **Financial Statements – 3(a)**
 - + **Form 3CD – 5**
- ✗ **SA 700?**

SA 700 – PARA 3(a) – FORM 3CB

× **Assessee's Responsibility** for the Financial Statements and the Statement of Particulars in Form 3CD

1. The **assessee is responsible for the preparation and fair presentation of the financial statements** in accordance with the Accounting Standards issued by the ICAI, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
2. In preparing the financial statements, management is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.
3. Those charged with governance are responsible for overseeing the entity's financial reporting process.

SA 700 – PARA 3(a) – Form 3CB

- ✖ **Tax Auditor's Responsibility**
- ✖ Our objectives are to **obtain reasonable assurance** about whether the financial statements as a **whole are free from material misstatement**, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is **not a guarantee** that an audit conducted in accordance with SAs will **ALWAYS detect a material misstatement** when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these FS

SA 700 – PARA 3(a) – FORM 3CB

- ✘ As part of an audit in accordance with SAs, we exercise professional judgment and maintain professional skepticism throughout the audit.
- ✘ We also:
 - + Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

SA 700 – PARA 3(a) – FORM 3CB

- + Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances.
- + Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- + Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the

SA 700 – PARA 3(a) – FORM 3CB

+ Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- ✘ We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.
- ✘ We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding

SA 700 – PARA 5 – FORM 3CB / PARA 3 – FORM 3CA

2. The **assessee is responsible** for the preparation of the statement of **particulars required to be furnished under section 44AB** of the Income-tax Act, 1961 annexed herewith in **Form No. 3CD** read with Rule 6G(1)(b) of Income Tax Rules, 1962 that give true and correct particulars as per the provisions of the Income-tax Act, 1961 read with Rules, Notifications, circulars etc that are to be included in the Statement.

SA 700 – PARA 5 – FORM 3CB / PARA 3 – FORM 3CA

- ✖ We are also **responsible for verifying the statement of** particulars required to be furnished under section 44AB of the Income-tax Act, 1961 annexed herewith in **Form No. 3CD** read with Rule 6G (1) (b) of Income-tax Rules, 1962. We have **conducted my/our verification of the statement in accordance with Guidance Note on Tax Audit** under section 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.

TYPES OF AUDIT REPORTS

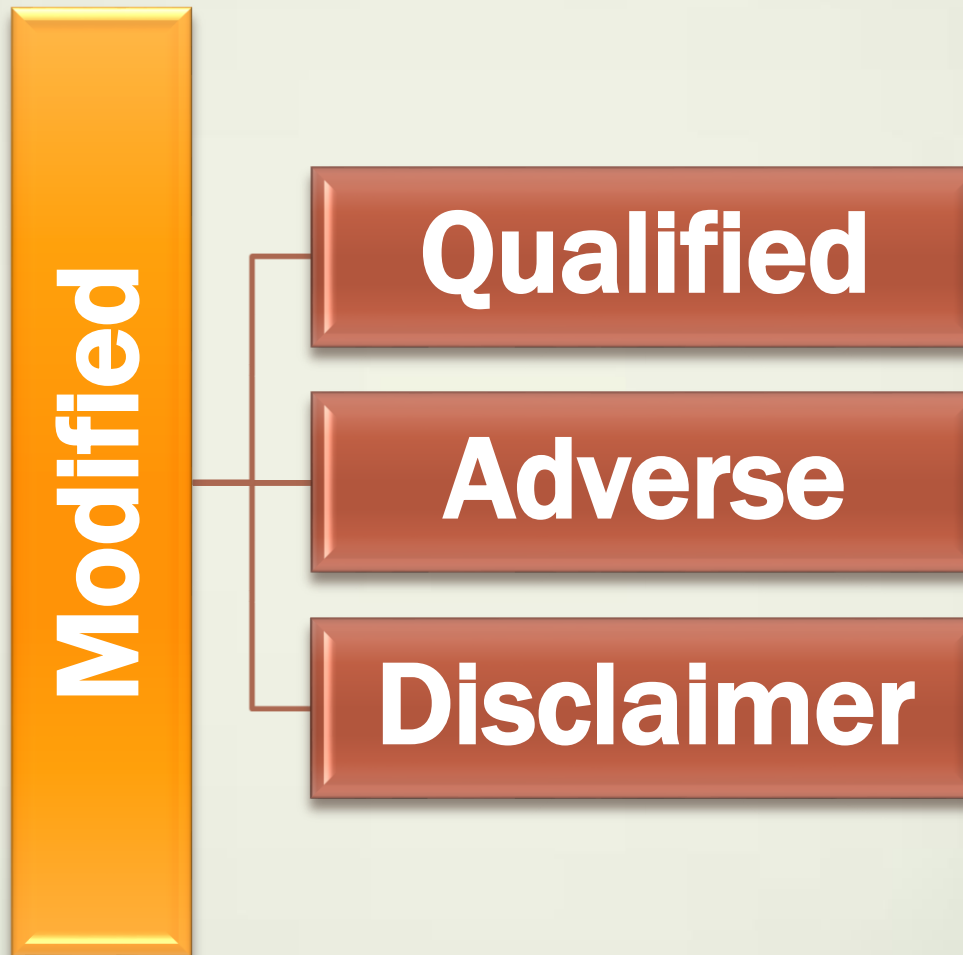


Unmodified



Modified

MODIFIED AUDIT REPORTS



MODIFIED AUDIT REPORTS

	Auditor's judgment about Pervasiveness of the matter	
Nature of Matter	Material but NOT Pervasive	Material AND Pervasive
Financial statements are Materially misstated	Qualified Opinion (...except for...)	Adverse Opinion (...do not present true & fair...)
Unable to obtain Sufficient Appropriate Audit Evidence	Qualified Opinion (...except for...)	Disclaimer of Opinion (...we do not express an opinion...)

CLAUSE 44

2. Break-up of total expenditure of entities registered or not registered under GST:

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

- ✗ Only Expenditure not allowances
- ✗ Capital Expenditure also
- ✗ On Entities !!
- ✗ $3 + 4 + 5 = 6$; $6 + 7 = 2$!!!
- ✗ Prepaid, prior period, partner interest partner remuneration !!!

GN ON TA

- ✗ **From AY 2022-23**
- ✗ **Form 3CD notified vs. Schema**
- ✗ **Hard Copy vs. uploaded copy**
- ✗ **Cl. 16 (d) – Other Income**
- ✗ **Cl. 21 – Contingent Liability**
- ✗ **Cl. 21 [S. 40A(7)] vs. Cl. 26 [S. 43B] – Gratuity**
 - + **S. 40A(7) – provision**
 - + **S. 43B – gratuity fund**

GN ON TA

- ✖ **Cl. 30 C – Impermissible arrangements (GAAR)**
- ✖ **If not available**
 - + **In the absence of access to the books of account & other records of various parties to arrangement & want of elaborate investigations beyond ordinary process of audit involved in determining whether the arrangement is an impermissible avoidance arrangement, and in determining the tax benefit in the assessment year relevant to the previous year under audit arising, in aggregate, to all the parties to the arrangement, we are unable to verify the view of the assessee regarding its/his entrance into any impermissible avoidance agreement as contemplated u/s 96 of the Act, during the PY.**

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Answered By **CA PRAMOD JAIN**

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answers

Q. How I file income tax return

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