

## **Seven Reporting Clauses in Tax Audit Report (Form 3CA/CB read with 3CD) causing Dilemma & Hardships for Tax Auditor & Auditee, if Tax Audit Due Date for AY 2020-21 remains 31.12.2020**

All of us know that presently the Tax Audit due date for AY 2020-21 is 31.12.2020 and the due date for filing of Returns of Income in such tax auditable cases u/s 139(1) of the Income Tax Act, is 31.1.2021.

Inspite of numerous Representations requesting for an extension in the said due date of Tax Audit, from several reputed Professional Bodies including the ICAI, till date the Finance Ministry has not announced any thing in this regard.

Everybody is talking about the need for extension in the Tax Audit Due Date due to the unprecedented disruption caused by corona pandemic, which is indeed a justified justification for an extension.

However, apart from corona disruption, there is one, far more plausible, genuine and real justification for the extension of the said Tax Audit due date from the existing 31.12.2020 to atleast 31.1.2021, which is the due date for filing of ITR in such tax auditable cases.

In this Taxalogue, I am discussing atleast Seven (7) Reporting Clauses in the Tax Audit Report (Annexure Form 3CD), which requires reporting by the Tax Auditor on certain specified compliances by the tax auditee uptill the due date of filing of return of income u/s 139(1) of the Income Tax Act.

Therefore, the current statutory framework, mandating the due date of Tax Audit for the AY 2020-21 as 31.12.2020 and the due date of filing of ITRs u/s 139(1) in such tax auditable cases as 31.1.2021, is resulting in some grave paradoxical inconsistencies, wherein the Tax Auditor is required to report on the stipulated compliances by the tax auditee in his Tax Audit Report, even before the stipulated permissible due date of those compliances.

**These Seven (7) Reporting Clauses in the Tax Audit Report's Annexure Form 3CD are discussed as under:**

**1. Clause 8a:** The Taxation Laws (Amendment) Act, 2019 has inserted two new sections 115BAA and 115BAB w.e.f AY 2020-21 and has made consequential amendments to section 115BA, 115JB and section 92BA, giving the option to the corporate entities for availing the benefit of lower corporate tax rate of 22% plus surcharge in case of existing corporate entities and 15% plus surcharge in case of new manufacturing corporate entities incorporated on or after 1.10.2019.

Such an option can be exercised by the corporate entities uptill the due date of filing of return of income u/s 139(1) for the AY 2020-21, i.e. 31.1.2021.

However, Clause (8a) in Form 3CD requires the Tax Auditor to report as to whether the auditee has opted for the taxation regime u/s 115BAA or 115BAB, as the case may be, or not.

So, presently either the auditee is compelled to exercise this option on or before 31.12.2020 thus making the legislative mandate of exercise of this option uptill

31.1.2021 redundant and meaningless or the Tax Auditor is faced with the dilemma of uncertain and speculative reporting.

**2. Clause 18:** Clause 18 requires reporting on the adjusted WDV of fixed assets if the auditee has adopted option of lower rate of taxation u/s 115BA/115BAA. The newly inserted sub-clauses in clause 18 are:

(ca)	Adjustment made to the written down value u/s115BAA	Rs.....
(cb)	Adjusted written down value	Rs.....
(c)	Depreciation allowable	Rs.....
(d)	Written down value at the end of the year	Rs.....

In order to avail the concessional corporate tax rate u/s 115BA/115BAA/115BAB, the auditee is required to forego certain deductions and brought-forward additional unabsorbed depreciation, which are otherwise allowable to it under various sections like 10AA, 32(1)(ia), 32AD, 33AB, 33ABA,35, 35AD, 35CCC 35CCD.

The Taxation Laws (Amendment) Act, 2019 has given the time-period to the taxpayers to exercise such option u/s 115BA/115BAA/115BAB uptill the due date of filing of ITR u/s 139(1) which is 31.1.2021 for the AY 2020-21.

So, presently either the auditee is compelled to exercise this option on or before 31.12.2020 thus making the legislative mandate of exercise of this option uptill 31.1.2021 redundant and meaningless or the Tax Auditor is faced with the dilemma of uncertain and speculative reporting.

The value of Adjustment to be made to the written down value u/s 115BA/115BAA as stated in clause (ca) is equal to the amount of unabsorbed additional depreciation as at 1st April 2019 which is required to be carried forward to the AY 2020-21. The other figures in the remaining clauses would depend upon the amount of adjustment in clause (ca).

The figures would vary depending upon whether the option u/s 115BA/115BAA has been exercised or not and for which the due date is 31<sup>st</sup> January 2021, but which needs to be reported by the Tax Auditor on 31.12.2020.

**3. Clause 20 (b)** requires the reporting on details of contributions received from employees for various funds as referred to in section 36(1)(va) by the employer and not deposited by the **due date**.

Currently the revenue authorities are interpreting the 'due date' to be the due date as provided in the Provident Fund Act i.e. deposition of employees contribution to provident fund by 15<sup>th</sup> day of the month next to the month of receipt of such contribution by the employer.

However, in several judgements of the Hon'ble High Courts like 'CIT vs. Aimil Ltd (2010) 188 Taxman 265 (Delhi) and Vinay Cements (SC), it has been held that the 'due date' should be considered as the due date of filing of ITR for that assessment year.

**4. Clause 21(b)(i)(B)** requires the reporting on details of payments on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.

This reporting clause has some very serious and dire consequences for the auditee in his/her assessment as the expenses reported under this clause are disallowed to the extent of 30% if TDS on such expenses has not been deposited by the auditee uptill the due date of filing of ITR, which is 31.1.2021 for the AY 2020-21.

Therefore, the tax-auditor can't report on the TDS deposition compliance on 31.12.2020, when the prescribed due date of such compliance in the Income Tax Act is 31.1.2021 for the AY 2020-21.

**5. Clause 26(B)** requires reporting on allowability of certain expenditure on payment basis u/s **43B** of the Income Tax Act.

Under section 43B certain expenditure are allowed on payment basis if they are made on or before the date of filing of the ROI u/s 139(1).

Therefore, the tax-auditor can't report on the eligibility of such expenditure as an allowable expenditure, on 31.12.2020, when the prescribed due date for the eligibility of such expenditure in the Income Tax Act is 31.1.2021 for the AY 2020-21.

**6. Clause 32(a)** requires reporting on details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Sl. No.	Assessment year	Nature of loss/ Allowance	Amount as returned	All losses/ allowances not allowed under section 115BAA	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA	Amounts as assessed	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

In order to avail the concessional corporate tax rate u/s 115BA/115BAA/115BAB, the auditee is required to forego certain deductions and brought-forward additional unabsorbed depreciation, which are otherwise allowable to it under various sections like 10AA, 32(1)(iia), 32AD, 33AB, 33ABA,35, 35AD, 35CCC 35CCD.

The Taxation Laws (Amendment) Act, 2019 has given the time-period to the taxpayers to exercise such option u/s 115BA/115BAA/115BAB uptill the due date of filing of ITR u/s 139(1) which is 31.1.2021 for the AY 2020-21.

So, presently either the auditee is compelled to exercise this option on or before 31.12.2020 thus making the legislative mandate of exercise of this option uptill 31.1.2021 redundant and meaningless or the Tax Auditor is faced with the dilemma of uncertain and speculative reporting.

**7. Clause 33** requires section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA):

Section under which deduction is claimed	Amounts admissible as per the provision of the Income-tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf
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In order to avail the concessional corporate tax rate u/s 115BA/115BAA/115BAB, the auditee is required to forego certain deductions which are otherwise allowable to it under various sections like 10AA, 32(1)(iia), 32AD, 33AB, 33ABA,35, 35AD, 35CCC 35CCD.

The Taxation Laws (Amendment) Act, 2019 has given the time-period to the taxpayers to exercise such option u/s 115BA/115BAA/115BAB uptill the due date of filing of ITR u/s 139(1) which is 31.1.2021 for the AY 2020-21.

So, presently either the auditee is compelled to exercise this option on or before 31.12.2020 thus making the legislative mandate of exercise of this option uptill 31.1.2021 redundant and meaningless or the Tax Auditor is faced with the dilemma of uncertain and speculative reporting.

Therefore, in view of the above discussed real, valid and concrete reasons and justification for the desired extension in the Tax Audit Due Date for AY 2020-21 to atleast 31.1.2021, the concerned Law-Making Authorities are requested to do the needful to avert the otherwise inevitable paradoxical reporting inconsistencies in the Tax Audit Report due to the tax audit reporting due date of 31.12.2020 and the ITR filing due date of 31.1.2021.