

LATEST UPDATES ON TAX AUDIT REPORT

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SMALL CHANGES

- **Clause 4 :**

Registration details under GST are to be Provided

- **Clause 19 and Clause 24 :**

- 1. Details of deduction claimed u/s 32AD**

(15% deduction Incentive for investment in new Plant and Machinery– In notified areas of AP/ Telangana/ Bihar/ West Bengal)

- 2. Amount deemed to be profit U/s 32AD for breach of conditions**

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1. Clause 29A


- a. Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(ix)? (Yes/No)
- b. If yes, please furnish the following details:
 - (i) Nature of income :
 - (ii) Amount thereof:



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- Section 56(2)(ix)

-any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—

- a. such sum is forfeited; and
 - b. the negotiations do not result in transfer of such capital asset;
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2. Clause 29B

- a. Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x)? (Yes/No)
- b. If yes, please furnish the following details:
 - (i) Nature of income
 - (ii) Amount there of



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3. Section 56 (2) (x):

Receipts by Any Person above Rs. 50,000/-

a. Any sum of money, without consideration

b. Any immovable Property:

i. Without consideration

ii. For inadequate consideration

(Difference between Stamp duty value and actual consideration exceeds Higher of Rs.50,000/- or 5% of actual consideration)



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c. Any Other Property:

i. Without consideration

ii. For inadequate consideration

(Difference between FMV and Actual consideration exceeds Rs. 50,000/-)

Exceptions : Gift from relatives, Marriage Gifts, gifts through will / inheritance, etc



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ISSUES

- Stamp Duty value at the time of 'Agreement fixing the amount of consideration' can be taken if consideration or part thereof has been paid through banking channels on or before the date of 'Agreement for transfer'.
 - Availability/certification of such stamp duty value
 - 'Agreement'
- Stamp Duty value- if disputed by assessee- Valuation by DVO/ Registered Valuer
- Clause (c)- Any other property- FMV- How to determine? (Even value of a second hand car/machine purchased will have to be questioned now?) – Definition of Term 'Property'
- Transfer of Shares of unlisted companies and Valuation
- Reporting also under Clause 25- Any other item of income?
- Interpretational issues on the exceptions provided in the section.
(Gift on the occasion of marriage/In contemplation of death of donor)

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4. Clause 30A

- a. **Whether primary adjustment to transfer price, as referred to in sub-section 1) of section 92CE has been made during the previous year? (Yes/No)**
- b. **If yes, please furnish the following details:-**
 - i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
 - ii. Amount (in Rs.) of primary adjustment:
 - iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
 - iv. If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
 - v. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

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5. Clause 30B

- a. Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B?
(Yes/No.)

- b. If yes, please furnish the following details:-
 - i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
 - ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):
 - iii. Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :
 - iv. Details of interest expenditure brought forward as per sub-section (4) of section 94B:

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6. Clause 30C

- a. Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in Section 96, during the previous year? (Yes/No.)**

- b. If yes, please specify:-**
 - i. Nature of impermissible avoidance arrangement:
 - ii. Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:

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7. Clause 31- substituted

7A. Existing Reporting requirements-

Sub clause	Section	Reporting Requirement
a	269SS	Particulars of Loans/Deposits accepted
b	269SS	Particulars of specified sum received
c	269T	Particulars of repayments of Loan Deposit Specified advance.
d	?	Particulars of refund of an advance (Otherwise through banking channel)
e	?	Particular of refund of an advance (By other than A/c payee cheque / DD)

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7B. Additional:

Sub clause	Section	Reporting Requirement
ba	269ST	Particulars of each <u>RECEIPT</u> (By other than A/c payee cheque/ DD)
bb	269ST	Particulars of each <u>RECEIPT</u> (Otherwise through banking channel)
bc	?	Particulars of each <u>PAYMENT</u> (By other than A/c payee cheque/ DD)
bd	?	Particulars of each <u>PAYMENT</u> (Otherwise through banking channel)

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7C. SECTION 269 ST

Prohibition and 100% penalty (u/s 271DA) for receipt of an amount of Rs.2,00,000 or above otherwise than by Account payee cheque /DD/ECS

- a. In aggregate from **a person in a day** or
- b. In respect of a **single Transaction** or
- c. In respect of transactions **relating to one event or occasion** from a person.

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7D. ISSUES

- i. Analysis/ Implications of S. 269ST
- ii. Why reporting of Payment?
- iii. Requirement of filing Form 61A (STR)
- iv. Exemption from reporting in respect of these 4 classes for payment to or by a Government Company, Banking Company, Post Office Saving Bank, Co-op Bank, transactions referred to in S. 269SS etc.
- v. Words 'taken or accepted' replaced by 'repaid / repayments' of making the meaning of clause clear.
- vi. Transaction by journal Entries -269SS/T

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8. Clause 34(b) - substituted-TDS reporting

Existing –

Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time.

If not, please furnish the details:

Now-

Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

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Issues:

- i. Ambiguity removed-
- ii. Verification of all TDS / TCS returns is the new/ additional responsibility
(Guidance Note:Para 59.1 Concept of materiality and audit sampling to be used)
- iii. Reporting of Transport charges / freight- S.194C(6)/ 194C(7) requirement.
- iv. Reporting of cases of non deduction of TDS on account of submission of Form 15G/H



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9. Clause 36A

- a. Whether the assessee has received any amount in the nature of dividend as referred to Section 2(22)(e)? (Yes/No.)
- b. If yes, please furnish the following details:-
 - (i) Amount received (in Rs.):
 - (ii) Date of receipt:

Issue

1. Why reporting of receipt of deemed dividend now, when the taxability is shifted on the payer?
2. Interpretational issues w.r.t. S.2(22)(e)?
3. Reporting under clause 36? DDT

DEEMED DIVIDEND- {SECTION 2(22)}- CONTD

Section 2(22)(e):

- Loan or advance to a shareholder with at least 10% shareholding or to a concern in which such shareholder holds substantial interest (more than 20%) – will be deemed dividend to the extent of accumulated profit on the date of such loan.
- Section 10(34) – Exempts dividends by company which is subjected to DDT as per section 115O.
- DDT Rate is 15% on grossing up effectively it is 17.65%.



DEEMED DIVIDEND- {SECTION 2(22)}- CONTD

Amendments:

- **Section 115-O:** Rate of Tax is 30% (without grossing up).
- **Explanation to Sec. 115-Q removed** to bring the deemed dividend in the ambit of DDT as per section 115-O.



DEEMED DIVIDEND- {SECTION 2(22)}- CONTD

Controversy:

1. Supreme Court in Madhur Housing & Dev Company – In the hands of the shareholder and not in the hands of the concern.
2. Gopal & Sons (HUF) 391 ITR 1(SC) – In the hands of HUF.

Now Resolved.



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10. Clause 42

- a. Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B? (Yes/No)
- b. If yes, please furnish :

Income tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing if	Whether the Form contains information about all details/ furnished transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.
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Issues

- a. Rule 114E: Applicable to Tax Auditable entities**
- b. Rule of aggregation-Exemption.**
- c. Verification of Return– 61A/61B
For entities like bank/ company/
mutual funds – voluminous
work Load.**



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11. Clause 43

- a. Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in subsection (2) of section 286? (Yes/No)
- b. If yes, please furnish the following details:
 - i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
 - ii. Name of parent entity
 - iii. Name of alternate reporting entity (if applicable)
 - iv. Date of furnishing of report



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12. Clause 44

Break up of Total Expenditure

- 1) Sr. No**
- 2) Total Expenditure**
- 3) Expenditure of GST Registered entities**
 - **Relating to exempt goods or services**
 - **relating to composition Entities**
 - **Other registered Entities**
 - **Total of '3' above**
- 4) Expenditure relating to unregistered entities**

Note: These details are also incorporated in ITR 6 to be given where Tax Audit is not applicable

EXISTING POSITION

13A. Applicability of S. 44AD / S. 44AB

Turnover less than Rs 1 crore

13B. S 44AD Summary:

1. Eligible assessee in eligible business – 8% / 6% or Higher sum shall be deemed to be income from business.
2. No further deduction S. 30 to S. 38
3. WDV of fixed Assets to be reduced as if depreciation is claimed and allowed.

EXISTING POSITION

4. Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the **five assessment years** relevant to the previous year succeeding such previous year **not in accordance** with the provisions of sub-section (1), he shall **not be eligible** to claim the **benefit of** the provisions of this section **for five assessment years subsequent** to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1)

5. Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of **Section 44AA** and get them audited and furnish a report of such audit as required under **Section 44AB**

EXISTING POSITION

13C. Section 44AB Summary: Audit required

- a. Business with turnover above Rs. 1 Crore
- b. Profession with gross receipts in profession above Rs. 50 Lakhs
- c. S. 44AE, 44BB, 44BBB : Income claimed to be less than deemed income under the respective section
- d. S. 44ADA – Income from Profession claimed to be less than deemed income U/s 44ADA
- e. **Carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,**

EXISTING POSITION

13D. ISSUES

1. Proviso- Implications of S. 44 AD(4)

Once the turnover is above Rs.1 Cr and not opted section 44AD, then for subsequent five years:

(If turnover less than Rs.2 Crore)

Case falls u/s 44AD(4)

1. Not eligible to take benefit u/s 44AD
2. Section 44AD(5) requires eligible assesseees to maintain and get the books audited even if the profit declared is above 8% / 6%

Note: However, the newly inserted proviso to section 44AB says exactly opposite that audit will not be required in such a case. This will prevail being later law. However books of accounts will still have to be maintained u/s 44AA.

EXISTING POSITION

2. Whether the proviso inserted w.e.f. 01.04.2017 (Finance Act 2017) overrides S. 44AD(4) which came into effect from 01.04.2017 by Finance Act, 2016?
3. New assessee with turnover less than Rs 1 crore – can he remain out of the provisions S.44AD(4) / 44 AB?
4. Old assessee having declared income in the past u/s 44 AD will get caught in to S. 44 AD(4)?
5. Further deduction of salary / interest to partner withdrawn from deemed income.

EXISTING POSITION

6. TDS Provisions – Individuals/ HUF

- a. TDS provisions will have to be complied with, where the turnover is above Rs.1 Crore (but less than Rs.2 Crore) u/s 194A, 194H, 194I, 194J as these provisions say that provisions of TDS will not apply only in cases where the turnover is less than the limit stated in section 44AB(a) or 44AB(b) i.e. less than Rs.1 Crore.
- b. TDS provisions of section 194C will still not have to be complied with since the exemption from that section is for other than those who are liable to audit u/s 44AB(a) or 44AB(b). The new proviso gives exemption from entire section where income declared is above 8% / 6%.

CLAUSE 21 (B)

Disallowance u/s 40(a)/(ia)

Effect of Second Proviso to Section 201(1)/201(1A)

Assessee Shall not be deemed in default if deductee—

- Furnished his return
- The payment is considered by him in his return
- Due Tax thereon has been paid by him.
- Form 26A is obtained from his CA

Date of furnishing return by deductee to be taken as date of payment of TDS for reporting under this clause.



CLAUSE 21 (H)

Disallowance u/s 14A

Expenditure relating to Exempt Income

Provisions of Rule 8D:

- Direct Expenditure
- 1% of annual average of monthly average of exempt investment

Such disallowance shall not exceed the total expenditure claimed by the assessee.

Judicial Trend-

- No expenditure incurred –No disallowance. Cheminvest vs. CITB78 ITR 33 (Delhi High Court) CIT vs. Shivam Motors (230 Taxman 63) (Allahabad High Court)
- Non interest bearing funds more than tax free investments- No disallowance- 284 CTR 409 (Bom), 383 ITR 490 (Kar)



CLAUSE 21 (D)

Disallowance u/s 40A(3)

- Can the auditor take a view that genuine payments like payment of electricity bill in cash is not disallowable under Section 40A(3) based on following judicial pronouncements -
 - M.R. Soap 32 TTJ 505 (Del)
 - Padigela Rajeshwar Ginning Ind. ITA 1137/Hyd/2011
 - Trivedi Corporation (ITA 2844/Ahd/2006)



CLAUSE 20 (B)

Section 2(24)(x) : Delay in Deposit of Employee's Contribution

- Judicial position is unsettled on this issue due to divergent decisions of various High Courts.
- **Favour:** While SLP of department against favourable decision of Rajasthan HC in Rajasthan State Beverages Corporation Ltd.[TS-268-SC—2017] has been dismissed by Supreme Court holding it devoid of merits.
- **Against:** Kerala HC in [TS- 378-HC-2018(KER)] and Gujarat HC in Gujarat State Road Transport Corporation(366 ITR 170)(Guj.)



CLAUSE 17: REPORTING U/S 50C/43CA

Section 50C is held not applicable on rights in various ruling given below:

- **Leasehold rights** — CIT vs. Greenfield Hotels and Estates P Ltd [2016] 389 ITR 68 (Bombay)
- **Tenancy rights** — Fleurette Marine Nouvelle Hatam vs. [TO [2015] 70 SOT 203 (Mumbai - Trib.)
- **FSI and TDR** — ITO vs. Shri Prem Rattan Gupta (1 TA N0.5803/Mam/2009)



CLAUSE 25: REPORTING U/S 41(1)

Remission of cessation of trading liability :

- The auditor is not required to consider any outstanding liability as reportable under this clause merely since it is older than 3 years and limitation period is expired as observed in case of Silver Cotton Mills Co Ltd (254 ITR 728) (Guj.). Similar views have been taken in case of Vartlhamtnn Overseas 343 1TR 408 (Del).



Inclusions / Exclusions from Turnover

- Indirect taxes ????? To be part of turnover or not
GST issue-
- What are inclusions / exclusions from turnover



INCLUSIONS / EXCLUSIONS FROM TURNOVER

Inclusions in Turnover	Exclusions from Turnover
Sale of Scrap/ By product	Indirect taxes if separately charged and accounted for
Sales of Securities if held as Stock	Sale Proceeds of Fixed Assets
Cash Discount	Sale Proceeds of Investments
Commission on Sales	Trade Discount allowed in Invoice / Turnover Discount
Indirect Taxes if included in Sale Price	Ancillary charges like Packing etc if separately identifiable
	Price of Goods Returned
	Price Adjustments
	Special Rebate not being commission

INCLUSIONS / EXCLUSIONS FROM GROSS RECEIPTS

Inclusions	Exclusions
Sale of Scrap Etc if not included in T/o	Sale proceeds of Investments / FA
Advance received and Forfeited	Interest Income
Any cash assistance under Govt Scheme	Income from Investment
Liquidated damage/ Duty draw backs	Share of Profit of a partner
Export Incentives	Liabilities/Provision written back
Insurance claim (Ex Fixed Assets)	Rental Income if not in Inclusions
Profit on sale of Import License	Expenses reimbursed from customer
Interest income for money lender or Banks etc	Value of sale and purchase of securities by brokers on behalf of clients
Dividend for dealer in Securities	
Commission Brokerage received under chit fund business	

INCLUSIONS / EXCLUSIONS FROM GROSS RECEIPTS

Inclusions	Exclusions
Reimbursement of Expenses	
Hire Charges / Installments in case of HP business	
Finance income for Lessor	
Lease rent in case of operating lease	
Hire charges of cold storage	



WHAT IS TURNOVER FOR WHOM

Nature	Turnover
CFA	Reimbursement of customs duty & other charges collected by an agent not part of turnover
Travel Agent where no commission payable by Lines	Amount received from clients for payment to airlines is reimbursement
Advertising agency booking space	Advertising charges recovered not turnover, provided by way of reimbursement [ABP(P) Ltd. v/s. ACIT 23 SOT 28(Kol)]



IF ASSESSEE CARRIES BUSINESS AS WELL AS PROFESSION


- Whether individual limits should apply or combined turnover should be considered. E.g. Gross receipts from profession is 57 Lacs and Sale in business is 75 Lacs . . . How the 44AB will apply ????
- Revised Guidance Note says in such situation as the limit is exceeded in case of Profession, audit needs to be done for Profession as well as Business



- Receipts from profession is 48 Lacs and Business Receipts 80 Lacs . . .No Need to do the audit
- If assessee carries many businesses ??? – the threshold limit is qua business and not qua assessee. *Ast. CIT v Dr. K. Satish Shetty (2009) 310 ITR 366 , Karnataka High Court*
- **ICAI Guidance note however has clarified that in case of more than one business/profession, the turnover needs to be added.**
- **But if t/o exceeded for one business then audit needs to be done for all the businesses**



APPLICABILITY OF AUDIT IN EXEMPT INCOME

- **Agricultural Income** : If Agriculturist does not have any business, then no need for audit even if sale proceeds from Agriculture exceeds 1 Cr.
 - **Trust/AOP/Co-op Soc** : These Assesseees having exempt income u/s 10(21), 10(23A), 10(23B), 10(23BB), 10(23C) or 11 need to get the accounts audited when t/o cross Rs. 1 Cr.
 - Societies availing benefit of 80P also needs to get the accounts audited when exceeded the turnover
 - **Assessee u/s 80IA, 80IB** : As 44AB is general requirement covering overall position of the accounts, Tax audit is an additional requirement to the audit reports under the specific provisions
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CHAMBER OF TAX CONSULTANTS VS UNION OF INDIA & CBDT-ICDS

ICDS	Contradiction of ICDS with Income Tax Act and legal decisions	Amendments made in Income Tax Act in line with ICDS
ICD S-I	<p>Non acceptance of concept of 'Prudence'</p> <p>Marked to market loss in Foreign Currency</p> <p>Derivatives not allowed as per ICDS</p>	<p>Amendment to Sec 36: New clause (xviii)-marked to market loss or other expected loss as computed in accordance with the ICDS-allowed as deduction</p> <p>Amendment to Sec 40A: New sub-section (13)-no deduction or allowance in respect of any marked to market loss or other expected loss, except as allowable under section 36</p>
ICD S-VI	<p>Exchange gain/loss in relation loan taken for a capital asset-Capital receipt – SC in Suttlej Cotton Mills Ltd 116 ITR 1</p>	<p>Insertion of new Sec 43AA: Subject to the provisions of section 43A, any gain or loss from Foreign Exchange Transactions shall be treated as income or loss computed in accordance with the ICDS.</p>

AMENDMENTS IN RELATION TO NOTIFIED ICDS

ICDS	Contradiction of ICDS with Income Tax Act and legal decisions	Amendments made in Income Tax Act in line with ICDS
<p>ICDS-III and ICDS-IV</p>	<p>1.ICDS recognizes retention money as a part of contract revenue as per percentage completion method.</p> <p>2.ICDS does not deduct incidental income from the contract cost-contradictory to supreme court decision in CIT vs. Bokaro Steel Limited.</p> <p>3.ICDS-IV does not recognize contract completion method.</p>	<p>Insertion of new Sec 43CB: Profits arising from a construction contract or a contract for providing services: -determined on the basis of percentage of completion method except for certain service contracts, -the contract revenue shall include retention money, -contract cost shall not be reduced by incidental interest, dividend and capital gains.</p> <p><u>Exceptions:</u> (i) with duration of not more than ninety days -project completion method; (ii) involving indeterminate number of acts over a specific period of time-straight line method.</p>

AMENDMENTS IN RELATION TO NOTIFIED ICDS

ICD S	Contradiction of ICDS with Income Tax Act and legal decisions	Amendments made in Income Tax Act in line with ICDS
ICD S-II and ICD S-VIII	<p>1. Where the assessee regularly follows a certain method of valuation, that will prevail irrespective of provision in ICDS.</p> <p>2. Dissolution of firm and business taken over on going concern- No need to value the inventory at market rate- Shakti Trading Company- 250 ITR 871 SC</p>	<p>Amendment to Sec 145A:</p> <p>(a) the valuation of inventory-at lower of actual cost or net realizable value computed in the manner provided in ICDS.</p> <p>(b) the valuation of purchase and sale of goods or services and of inventory- inclusive of all taxes, duties, cess etc-</p> <p>(c) inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS.</p> <p>(d) inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.</p>

AMENDMENTS IN RELATION TO NOTIFIED ICDS

ICD S	Contradiction of ICDS with Income Tax Act and legal decisions	Amendments made in Income Tax Act in line with ICDS
<p>ICD S-IV and ICD S-VII</p>	<p>1. ICDS requires to recognize income from export incentive in the year of making of the claim if there is 'reasonable certainty' of its ultimate collection which is contradictory to Supreme Court decision in CIT vs. Excel Industries Limited</p> <p>2. ICDS does not allow accrual system for Government Grants..</p>	<p>Insertion of new Sec 145B:</p> <p>a. Interest received by an assessee on compensation or on enhanced compensation-taxed on receipt basis.</p> <p>b. The claim for escalation of price in a contract or export incentives-income of the previous year in which reasonable certainty of its realisation is achieved.</p> <p>c. Subsidy or grant from Government-Taxability can not be postponed beyond the year of actual receipt.</p>

Thank
You!