

Chartered Accountant's Reports and Certificates under the Income Tax Act, 1961 – A Walk on Tight Rope

By

Milin Mehta, Chartered Accountant, Baroda

Background and Small Synopsis of the Paper

The entry of the Chartered Accountants in the arena of the Certification / Audit under the Income Tax Act, 1961 (“the Act”) started with introduction of issuance of Audit Report U/s. 12 A(b) of the Act and insertion of Rule 17 B and Form 10 B in the Income Tax Rules, 1962 (“the Rules”) with effect from 1st April, 1973. Immediately followed up by introduction of Section 80 HH (5) of the Act, requiring audit of accounts of assesseees other than a Company or a Co-operative society claiming deduction U/s. 80 HH of the Act to get its accounts audited w.e.f. 1.4.1974. This was further followed up by introduction of similar audit report in cases where the Assesseees claimed deduction U/s. 80 J and assesseees other than a company or a co-operative societies were required to obtain report of an accountant w.e.f. 1.4.1976.

The trend of this nature continued and accordingly, the Assesseees which were seeking any benefit of any deduction or exemption were only required to get a report of an Accountant.

Significant Developments in the Role of Accountants

The role of a Chartered Accountant under the Act got major change on introduction of Tax Audit U/s. 44 AB of the Act w.e.f. Assessment Year 1985-86. With introduction of the tax audit two significant departures occurred:

- All Assesseees [irrespective of the fact whether they seek any incentive or not] which were beyond a threshold in their size were required to get their accounts audited and accordingly, were required to get certificate that the financial statements present true and fair view.
- The compilation of information was required to be certified to be true and correct.

Accordingly, the role went on changing and gradually, the certificate / auditors' report for the incentive provisions were further modified for requiring the Accountants to also certify whether the entity is entitled to get the deductions and accordingly all the prescribed terms and conditions are satisfied or not. The Certificate also included actual quantification of the deduction to be certified by the Accountants. This required in depth knowledge of the tax laws including the emerging case laws on eligibility of the business / undertaking to take benefit and also items of income / expenditure to be considered for computing the deduction / incentives. First in this was deduction U/s. 80 HHC and was followed up after a gap for all other deductions.

This was further fortified by complete overhaul of the tax audit provisions, wherein the scope of the tax audit was significantly altered w.e.f. A.Y. 1999-2000. Present tax audit report almost amounts to certifying the computation of total income and expressing opinion on almost all the items of the computation including depreciation, carried forward benefits, deductions, compliances, etc.

A further major departure in the scope of certification came in an indirect manner, wherein the Reserve Bank of India by way of a Press Note dated 17th May, 1988 laid down a procedure for requiring a person

remitting royalty / fees for technical services to obtain a certificate from a CA that tax at the rate of 30 % is deducted and paid to the credit of the Government before remitting the sum. This was followed up by a Circular No. 695 dated 29th November, 1994 issued by the CBDT, in consultation with the RBI, significantly expanding role of the CAs in such foreign remittances. This not only required the CAs to certify the compliance with section 195 but also do an interpretation of complex double tax treaties with various countries and it was solely based on this certificate that the payments were allowed to be remitted by the banking channels. This has since been fortified by way of introduction of Rule 37 BB and Form No. 15 CB, covering all foreign remittances.

Transfer Pricing Provisions introduced with effect from AY 2001-02 are as significant development in the role of the CAs in the tax compliances as was the case of Tax Audits introduced in A.Y. 1985-86. India introduced complex transfer pricing provisions and made a significant departure from international practice by introducing an Accountant's Report on not only the reporting of the related party transactions but its Arm's Length Price [ALP] determination. To top it all, the said provisions are extended to the domestic related party transactions with effect from A.Y. 2013-14. Determination of the price of the transaction borders on subjective assessment by using objective methods. This required completely new set of tools, training and mind set and should not be looked upon as an ordinary certification work. Obligations are far and wide. The scope of certification is very onerous and extreme care is required to be exercised before venturing into this area. However, suddenness of expanding the said provisions to domestic transactions has exposed several CAs, compelling them to get ready for its compliance.

Annexure I, gives a list of certificates or reports required to be issued by an Accountant under the Act, including those which have become redundant today.

Why a Tight Rope Walk

There are different types of certificates and reports under the Act. Scope of each such certificate and report is different. They are not typical audit assignments. These range from interpretation of complex tax provisions to making economic analysis to do a simple compilation of factual data. Pace of changes in law is extremely fast and the changes are happening from several sides simultaneously. The Courts are interpreting the laws differently and taking contrary views with very minute factual differences and in some cases even on the same facts. The views of the courts are followed up with amendments in laws, clarifications or notifications issued by the tax department, either retrospectively or prospectively, throwing question mark on the decisions rendered and putting the matter back to unsettled jurisdiction.

Business environment is changing with maddening pace. This results into ever changing transaction structures, financing structures, entity structures and non-tax legal environment. Each such change has tax implications and would require a person certifying under the tax laws to take a view and certify the same. At several times, the Accountants are unable to concur with the views of the Assessee or its tax advisors / counsels.

The tax authorities have started taking active interest in persecuting the accountants, should there be an error of judgement or lack of care in issuance of certificate / report, though it may be an issue resting on the border line. In view of some of the judgements / rulings, if the Assessee is visited with penalties, there is could be an issue of Assessee's indemnification and it is possible that unless proper care is taken while issuing the certificates or reports for protecting the Accountants, they could be exposed to these risks also. The level of professional indemnity insurance in India is not very high and accordingly the Accountants may be exposed to these liabilities without much protection.

Conclusion

Presently, the Central Government, at the instance of the tax department is putting more and more reliance on the certificates, reports and audits by a Chartered Accountant. The role has also evolved over a period of time and has expanded significantly. Originally, it was restricted only to expressing view on the true and fairness of the financial statements and in some cases [like in case of trust claiming exemption U/s. 12 A] compilation of information without expressing any opinion thereon. The scope expanded in Tax Audit to certifying correctness of the information compiled in Form No. 3CD, where the a tax auditor was required to certify that the information contained in Form No. 3CD is true and correct. The scope further increased, wherein the CAs were called upon to certify correctness of claim of incentive deductions. This therefore did not only include the interpretation of the tax laws for determining the eligibility of an entity / undertaking to claim the deduction, but also to determine the correctness of the amount claimed as deduction. The Scope further had a major boost with introduction of International Transfer Pricing and then Domestic Transfer Pricing Provisions. Under these provisions, the CAs are required to give opinion on a very subjective item of valuation of the transactions between related parties.

As you would observe that the scope has not only expanded, but the quality of certification has also undergone a significant change. To look at this negatively would mean that our work has substantially expanded exponentially and has increased our risk level significantly. To look at positively, which I do, would mean that every time the Government expected the profession to deliver, has actually delivered successfully and to the satisfaction of the Government and their objectives were duly satisfied, encouraging the Government to rely more and more on the profession.

Friends, we have done great in past and I am sure we will continue to pick up the challenge each time it is thrown to us, giving confidence to others that the profession is one on which everyone can rely upon confidently.

While it is great to feel confident about us for the past work done by us, it is also equally important for us to recognize that each challenge thrown to us, requires us to tighten the belt, work harder and smarter and meet the challenges successfully. Successful past is an assurance of similar performance in future, but it is not a guarantee. This, we must all remember while basking in past glory.

All the best.

Certificates / Reports required to be given or issued by a Chartered Accountant under the Income Tax Act, 1961

Sr. No.	Form No.	Rule No.	Section	Purpose	Applicability	Remarks
1	3AA (Report)	5A	32(1)(iia)	To verify and certify the claim of additional depreciation u/s 32(1)(iia)	Not Applicable	The form is not required to be filed from 01.04.2006.
2	3AAA (Audit Report)	5AB	32AB(5)	To verify and certify the deduction claimed u/s 32AB	Not Applicable	No deduction can be claimed u/s 32AB AY 1991-92 onwards
3	3AC (Audit Report)	5AC	33AB(2)	To verify and certify deduction claimed u/s 33AB)	Applicable	
4	3AD (Audit Report)	5AD	33ABA(2)	To verify and certify deduction claimed u/s 33ABA)	Applicable	
5	3AE (Audit Report)	6AB	35D(4) / 35E(6)	To verify and certify deduction claimed u/s 35D and 35E)	Applicable	
6	3BA (Report)	6ABB	36(1)(xi)	To verify and certify deduction claimed u/s 36(1)(xi)	Not Applicable	Section 36(1)(xi) was only applicable for AY: 2000-01.
7	3CA (Audit Report)	6G(1)(a)	44AB	To certify that the particulars given in Form 3CD are true and correct	Applicable	
8	3CB (Audit Report)	6G(1)(b)	44AB	To certify that the particulars given in Form 3CD are true and correct	Applicable	
9	3CD (Statement of particulars)	6G(2)	44AB	To furnish the particulars required u/s 44AB	Applicable	
10	Form 3CE (Audit Report)	6GA	44DA(2)	To verify and certify the accuracy of royalty/ fees for technical service u/s 44DA	Applicable	
11	3CEA (Report)	6H	50B(3)	To verify and certify that the net worth of the undertaking or division has been computed correctly in accordance with provisions of Section 50B	Applicable	
12	3CEB (Report)	10E	92E	To verify and certify that the particulars furnished u/s 92E are true and correct	Applicable	
13	6B (Audit Report)	14A	142(2A)	To certify that the accounts as audited directed Section 142(2A) are true and correct.	Applicable	

14	10AA	18AAAA	80G(5C)(v)	To verify that separate accounts have been maintained as prescribed u/s 80G(5C)(v)	Applicable	
15	10B (Audit Report)	17B	12A(b)	To certify that the Accounts are audited as required by Section 12A(b) and the particulars furnished are correct	Applicable	
16	10BB (Audit Report)	16CC	10(23C)	To certify that the Accounts are audited as required by Section 10(23C) and the particulars furnished are correct	Applicable	
17	10BC (Audit Report)	17CA(12)	-	To certify that the Accounts are audited as required by Rule 17CA(12) and the particulars furnished are correct	Applicable	
18	10C (Audit report)	18B	80HH	To verify and certify the deduction claimed u/s 80HH	Applicable	
19	10CC (Audit Report)	18BB	80HHA	To verify and certify accounts audited to claim deduction u/s 80HHA	Not Applicable	No deduction can be claimed u/s 80HHA AY 2000-01 onwards.
20	10CCA (Audit Report)	18BBA(1)	80HHB	To verify and certify accounts audited to claim deduction u/s 80HHB	Not Applicable	No deduction can be claimed u/s 80HHB AY 2005-06 onwards
21	10CCAA (Audit report)	18BBA(1A)	80HHBA	To verify and certify accounts audited to claim deduction u/s 80HHBA	Not Applicable	No deduction can be claimed u/s 80HHB AY 2005-06 onwards
23	10CCABA (Verification)	18BBA(2A)	80HHC(4) / 80HHC(4C)	To verify and certify deduction claimed u/s 80HHC in respect of sale to SEZ	Not Applicable	No deduction can be claimed u/s 80HHC AY 2005-06 onwards
24	10CCAC (Report)	18BBA(3)	80HHC	To verify and certify deduction claimed u/s 80HHC in respect of sale to export house/ trading house.	Not Applicable	No deduction can be claimed u/s 80HHC AY 2005-06 onwards
25	10CCAD (Report)	18BBA(4)	80HHD	To verify and certify deduction claimed u/s 80HHD in respect of earning in convertible foreign exchange.	Not Applicable	No deduction can be claimed u/s 80HHD AY 2005-06 onwards.

26	10CCAF (Report)	18BBA(7)	80HHE(4)/ 80HHE(4A)	To certify deduction claimed u/s 80HHE in respect of profit from export of computer software etc.	Not Applicable	No deduction can be claimed u/s 80HHE AY 2005-06 onwards
27	10CCAG	18BBA(8)	80HHE(4A)(ii)	To verify deduction claimed u/s 80HHE in respect of profit from export of computer software etc.	Not Applicable	No deduction can be claimed u/s 80HHE AY 2005-06 onwards
28	10CCAH	18BBA(1B)	80HHE(3)(ia)	To verify and certify deduction claimed u/s 80HHE in respect of profit and gains from projects outside India	Not Applicable	No deduction can be claimed u/s 80HHE AY 2005-06 onwards
29	10CCAI (Report)	18BBA(9)	80HHE(4)	To verify and certify deduction claimed u/s 80HHE in respect of profit and gains from export or transfer of film software etc.	Not Applicable	No deduction can be claimed u/s 80HHE AY 2005-06 onwards
30	10CCB (Audit Report)	18BBB	80I(7)/ 80-IA(7)/ 80-IB/ 80-IC	To verify, certify and furnish particulars for deduction to be claimed under section 80I(7)/ 80-IA(7)/ 80-IB/ 80-IC	Applicable	
31	10CCBA (Audit Report)	18DB	80-IB(7A)	To verify, certify and furnish particulars for deduction to be claimed under section 80-IB(7A)	Applicable	
32	10CCBB (Audit Report)	18DC	80-IB(7B)/ (14)	To verify, certify and furnish particulars for deduction to be claimed u/s 80-IB(7B)/ (14)	Applicable	
33	10CCBBA (Audit Report)	18DE	80-ID(3)(iv)	To verify, certify and furnish particulars for deduction to be claimed u/s 80-ID	Applicable	
34	10CCBC (Audit Report)	18DD	80-IB(11B)	To verify, certify and furnish particulars for deduction to be claimed u/s 80-IB(11B)	Applicable	
35	10CCBD (Report)	18DDA	80-IB(11C)	To verify, certify and furnish particulars for deduction to be claimed u/s 80-IB(11C)	Applicable	
36	10CCC	18BBE(3)	-	To verify and certify the amounts pertaining to highway projects as in Rule 18BBE.	Applicable	
37	10CCF (Report)	19AE	80LA(3)	To verify and certify deduction claimed u/s 80LA in respect of Income of Offshore banking units and International Financial Service Centre	Applicable	
38	10DA (Report)	19AB	80JJAA	To verify and certify deduction claimed u/s 80JJAA	Applicable	

39	26A	31ACB	201(1)	To certify the declaration of payee as required u/s 201(1)	Applicable	
40	27BA	37J	206C(6A)	To certify the declaration of payee as required u/s 206C(6A)	Applicable	
41	29B (Report)	40B	115JB	To verify and certify that the book profits have been computed in accordance with provisions of section 115JB	Applicable	
42	29C (Report)	40BA	115JC	To verify and certify that the adjusted total income and Alternate Minimum Tax has been computed in accordance with provisions of Ch. XII-BA of the Income Tax Act.	Applicable	
43	56F	16D	10A	To verify and certify deduction claimed u/s 10A	Not Applicable	No deduction can be claimed u/s 10A AY 2012-13 onwards
44	56G	16E	10B	To verify and certify deduction claimed u/s 10B	Not Applicable	No deduction can be claimed u/s 10B AY 2012-13 onwards
45	56H	16F	10BA	To verify and certify deduction claimed u/s 10BA	Not Applicable	No deduction can be claimed u/s 10B AY 2010-11 onwards
46	58B	11-O(2)	35AC	To verify and certify the amount of expenditure eligible for deduction u/s 35AC	Applicable	
47	62 (Verification)	9C	-	To verify that the particulars given by the Principal of Amalgamating company under Rule 9C are correct	Applicable	
48	63	12B(2)	-	To verify that the income earned and distributed to unitholders by UTI under Rule 12B is correct	Applicable	
49	63A	12B(3)	-	To verify that the income earned by mutual fund and distributed to unitholders under Rule 12B is correct	Applicable	
50	64	12C	115U	To verify that the income earned and distributed to investors under Rule 12C is correct	Applicable	
51	15CB (Certificate)	37BB	195 (6)	To verify the withholding taxes from payment to non-residents	Applicable	

