

Latest Development & Specific issues in Finalization of Audit for FY 2014-2015



LUNAWAT & CO.

Chartered Accountants

10th July 2015, Rohini

CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA

AGENDA

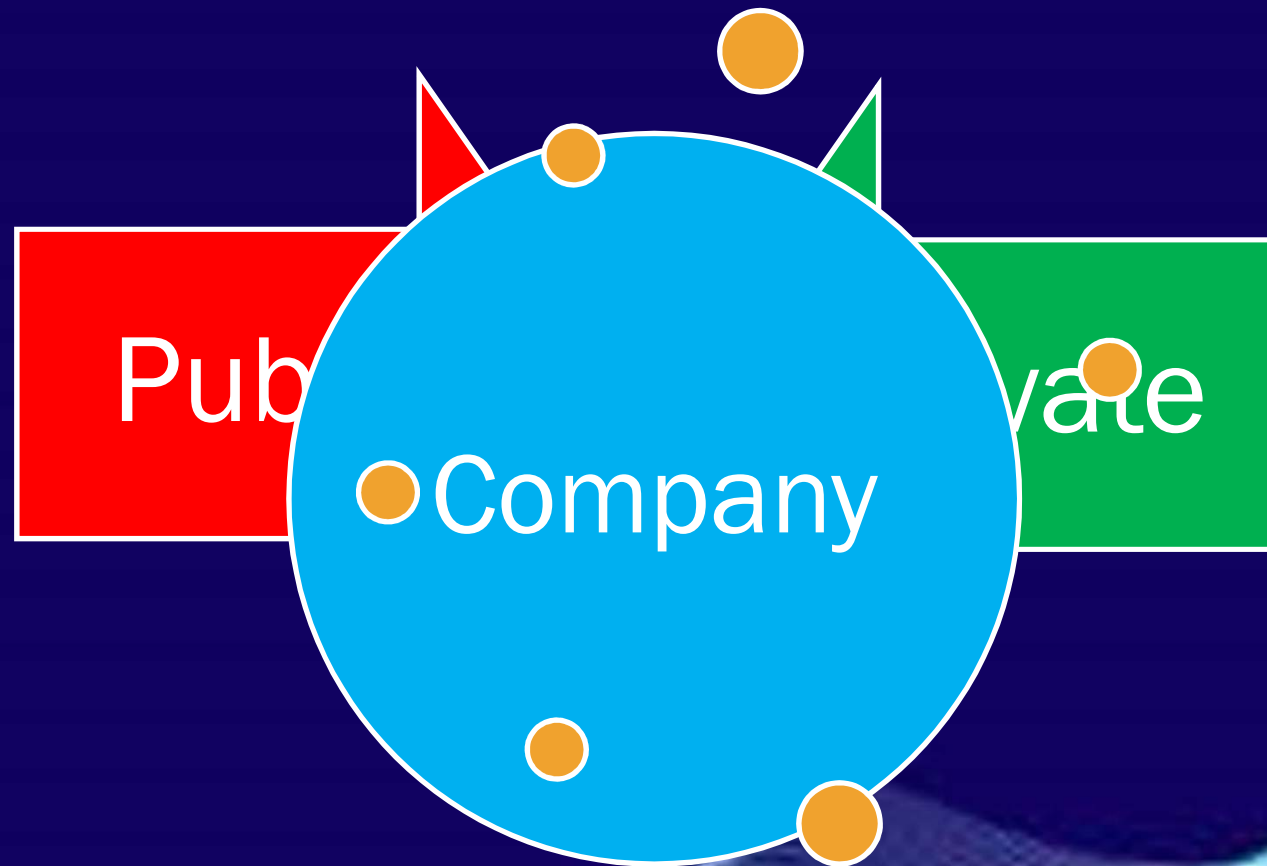
- ✗ **Companies Amendment Act 2015**
- ✗ **MCA notification for Private companies**
- ✗ **Filing of Resolutions**
- ✗ **Financial Statements**
- ✗ **Depreciation**
- ✗ **Audit**
- ✗ **Auditor under Income Tax Laws**
- ✗ **Fraud**



?????

- ✗ **Why so many Seminars on Companies Act 2013?**
- ✗ **What has changed so drastically?**
- ✗ **Why is management not worried but Professionals are a feared lot?**
- ✗ **How to overcome the fear?**
- ✗ **What should Auditors take care of while finalising Audits of Companies for FY 2014-15**







COMPANIES (AMENDMENT) ACT 2015

- ✘ Omitting requirement for **minimum paid up share capital**, and consequential changes. (For ease of doing business)
- ✘ Making **common seal** optional, and consequential changes for authorization for execution of documents. (For ease of doing business)
- ✘ Prescribing specific **punishment for deposits** accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission)

COMPANIES (AMENDMENT) ACT 2015

- ✗ Prohibiting public inspection of **Board resolutions** filed. (To meet corporate demand)
- ✗ Including provision for writing off **past losses/depreciation** before declaring dividend for the year. (This was missed in the Act but included in the Rules).
- ✗ Rectifying the requirement of **transferring equity shares** for which unclaimed/unpaid dividend has been transferred to the **IEPF** even though subsequent dividend(s) has been claimed. (To meet corporate demand)

COMPANIES (AMENDMENT) ACT 2015

- ✘ **Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for latter category also to be made in the Board's Report. (Demand of auditors)**
- ✘ **Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (Provided under Rules but included as a matter of abundant caution).**

COMPANIES (AMENDMENT) ACT 2015

- ✘ **Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and ease)**
- ✘ **Replacing 'special resolution' with 'OR' for approval of related party transactions by non-related shareholders. (Meet problems faced by large stakeholders who are related parties)**
- ✘ **Exempt related party transactions between holding companies and wholly owned subsidiaries from requirement of approval of non-related shareholders. (corporate demand)**

COMPANIES (AMENDMENT) ACT 2015

- ✘ **Bail restrictions** to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry & ED)
- ✘ **Winding Up cases** to be heard by 2-member Bench instead of a 3-member Bench. (Removal of an inadvertent error)
- ✘ **Special Courts** to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations).

MCA NOTIFICATION FOR PVT. COS

| S. No. | Provision | Proposal |
|---------------|-----------------------------|--|
| 1 | 2(76)(viii) | Related party – holding, subs.... Shall not apply w.r.t. s. 188 |
| 2 | 43 & 47 | Shall not Apply where MOA of Pvt. Co. so provides (Kind of Shares) |
| 3 | 62(1)(a) & 62(2) | Proviso added - in case 90%, of members of pvt. Co. give their consents in writing or in electronic mode, periods < those specified shall apply |
| 4 | 62(1)(b) | Shall apply except that instead of special resolution, ordinary resolution would be required |
| 5 | 67 | Restrictions on purchase by co. or giving of loans by it for purchase of its shares - Shall not apply to pvt. companies - <ul style="list-style-type: none">• in whose share capital another body corporate has invested any money;• if borrowings of such a co. from banks or FIs or any body corporate is < twice its capital or Rs. 50 Crs, whichever is lower; & it is not in default in repayment of such borrowings at time of making transactions. |

MCA NOTIFICATION FOR PVT. COS

| S. No. | Provision | Proposal |
|--------|------------------------|--|
| 6 | 73(2) (a) (b) | Shall not apply to Pvt. Cos. if they accept monies from their members: <ul style="list-style-type: none">• not exceeding 100% of aggregate of capital & free reserves, and• which inform the details of such monies to ROC. |
| 7 | 101 to 107 & 109 | Shall apply unless <ul style="list-style-type: none">- otherwise specified in respective sections or- unless articles of the private company otherwise provide. |
| 8 | 117 (3) (g) | Shall not apply – 179 (3) |
| 9 | 141(3)(g) | For private companies - 20 Companies other than OPC, DC, small companies & Pvt. Cos. capital < 100 Crs. |
| 10 | 160 | Shall not apply (right of a person other than retiring directors to stand for directorship) |
| 11 | 162 | Shall not apply (appointment of directors to be voted individually) |

MCA NOTIFICATION FOR PVT. COS

| S. No. | Provision | Proposal |
|--------|---|---|
| 12 | 180 | Shall not apply |
| 13 | 184(2) | Disclosure of Interest - Shall apply with exception that interested director may participate in such meeting after disclosure of his interest |
| 14 | 185 | Shall not apply to Private companies - <ul style="list-style-type: none">• in whose share capital other body corporate has not invested any money.• if borrowings of such a company from banks or FIs or any body corporate is less than twice of its paid up share capital or Rs. 50 Crs, whichever is lower; and• such a company has no default in repayment of such borrowings subsisting at time of making transactions under this section. |
| 15 | 2 nd Proviso S. 188 (1) | Shall not apply. (Related Party Transaction) – interested member can vote |
| 16 | Section 196, sub-section (4) & sub-s. (5) | Shall not apply (MD Remuneration) |

FILING RESOLUTIONS



RESOLUTIONS TO BE FILED WITH ROC

- ☐ **Special Resolutions**
- ☐ **Resolutions agreed by all members of Co., but which if not so agreed would not have been effective unless passed as SR**
- ☐ **Board resolution or agreement relating to appointment, renewal or variation in terms of appointment of MD**
- ☐ **Resolutions agreed by any class of members of Co., but which if not so agreed would not have been effective unless passed by specified majority or otherwise in some particular manner**

RESOLUTIONS TO BE FILED WITH ROC

- ❑ **Resolutions passed u/s 180 (a) & (c) i.e.:**
 - ❑ To sell, lease or otherwise dispose whole or substantially whole of undertaking.
 - ❑ To borrow money in excess of paid up capital and free reserves other than temporary loans
 - ❑ **w.e.f. 12.9.13 – Late filing – F – Co - 5 L - 25 L, OLD F – 1 L – 5 L**
- ❑ **Voluntary winding up resolutions u/s 304**
- ❑ **Others u/s 179 (3)**



BOARD RESOLUTIONS [179(3)]

- ☐ To make calls on shareholders in respect of money unpaid on their shares;
- ☐ To authorise Buy-back of securities u/s 68;
- ☐ To issue securities, including debentures, whether in or outside India;
- ☐ To approve amalgamation, merger or reconstruction;
- ☐ To take over a Company or acquire a controlling or substantial stake in another company.



BOARD RESOLUTIONS [179(3)] [NOT FOR P. COS]

- ☐ **To borrow monies;**
- ☐ **To invest the funds of the company**
- ☐ **To grant loans or give guarantee or provide security in respect of loans**
- ☐ **To approve FS and Board's Report;**
- ☐ **To diversify the business of the Company;**
- ☐ **To make political contribution**
- ☐ **To appoint or remove KMP**
- ☐ **To note appointment / removal of 1 level below KMP**



BOARD RESOLUTIONS [179(3)] [NOT FOR P. COS]

- **To appoint internal auditor and secretarial auditor**
- **To take note of disclosure of director's interest and shareholding**
- **To buy, sell investments (other than trade investments), constituting 5% or more of the paid up share capital & free reserves of investee co.**
- **To invite or accept or renew public deposits;**
- **To approve quarterly, half yearly & annual FS**
- **Filing after date with additional fee – penalty of Rs. 5 L – 25 L**



AUDIT





FINANCIAL STATEMENTS

- **Financial Year – 31/3**
- **Financial Statement includes -notes on B/s, Profit & Loss statement, Cash Flow**
- **Cash Flow for all except OPC, SC, DC.**
- **Small Company Definition - Clarified**
- **Shall give true and fair view.**
- **Shall be in form of Schedule III.**
- **To disclose impact of pending litigation on its financial position**



FINANCIAL STATEMENTS

- ✗ **Has to be AS compliant:**
 - + **FS to disclose deviation from AS**
 - + **Reason for deviation**
 - + **Financial effect arising of deviation**
- ✗ **Non- compliance**
 - + **MD,**
 - + **WTD incharge of finance**
 - + **CFO**
 - + **Any other person charged by Board**
 - + **If no one – all directors**
 - + **Imprisonment upto 1 yr or F – 50 k to 500 k or both**



FINANCIAL STATEMENTS

- ✗ **To disclose in FS full particulars of:**
 - + **Loan given;**
 - + **Investment made;**
 - + **Guarantee given; or**
 - + **Security Provided.**
 - + **Purpose for which loan or guarantee or security is proposed to be utilised by recipient of loan or guarantee or security [186(4)]**
- ✗ **Non- Compliance – Fine on company**
 - + **Min Rs.25 K; Max. Rs.500K**
 - + **On OI D - Imp up to 2 yrs; or Fine -Min. Rs.25 K; Max. Rs.1 L; or both**



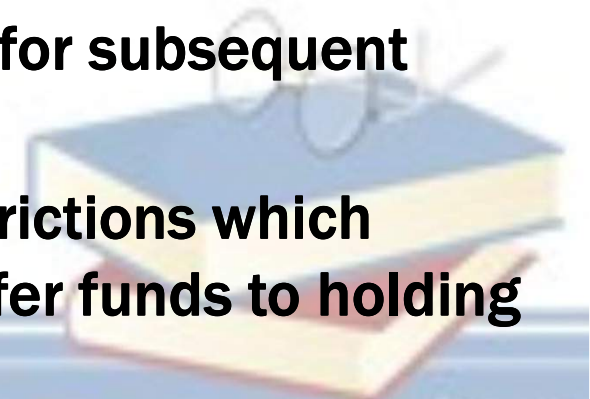
FINANCIAL STATEMENTS

- ✖ **Contribution during the year to National Defence Fund [183(2)]**
- ✖ **Amount contributed to Political Party and name of party [182(3)]**
- ✖ **Non- Compliance – Fine on company**
 - + **Upto 5 times amount contributed**
 - + **On OLD - Imp up to 6 months; and Fine – upto 5 times of amount contributed**



CONSOLIDATED FINANCIAL STATEMENTS

- ✘ **One or more subsidiaries – CFS – Intermediary Subs. not required. No exemption if Foreign Co.**
- ✘ **Subsidiary shall include associate co. & Joint Venture – exemption if no subsidiary till 31.3.15**
- ✘ **Statement to be filed in AOC-1 – of CFS not FS**
- ✘ **In case not required to prepare CFS under AS – just comply with Schedule III - Para 11 of AS 21**
 - ✘ **Control intended is temporary – held for subsequent disposal**
 - ✘ **Operates under severe long-term restrictions which significantly impair its ability to transfer funds to holding**



APPLICABILITY OF ACCOUNTING STANDARDS

- ✖ **Companies (Indian Accounting Standards) Rules 2015**
- ✖ **Two Standards:**
 - + Indian Accounting Standards (Ind As)
 - + Companies (Accounting Standards) Rules 2006
- ✖ **Ind AS Optional for all w.e.f. 1st April 2015**
- ✖ **If prepare then for comparison for 31st March 2015 too.**
- ✖ **If prepared voluntary, then mandatory thereafter**
- ✖ **Not mandatory for insurance, banking & NBFC**



FILING OF FS

- ✗ **To be filed with ROC in Form AOC -4 within 30 days of AGM – To be certified by CA only**
- ✗ **Notified Companies in XBRL**
- ✗ **After 300 days –**
- ✗ **Fine on**
 - + **Company – 1k p. d > 10 L;**
 - + **MD, etc in charge by Board- if no one – all directors**
 - ✗ **Imp. upto 6mnths or**
 - ✗ **Fine – 1L k to 5L or Both**



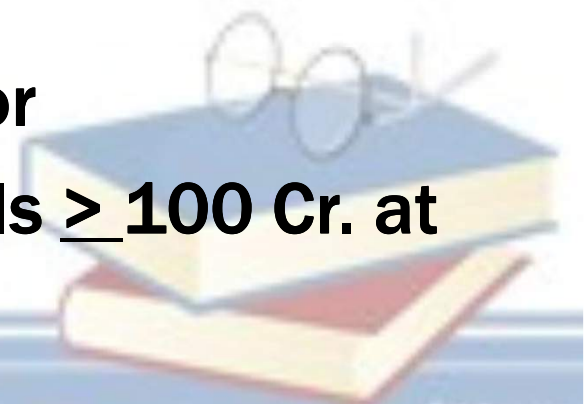
INTERNAL AUDIT

✖ **Listed company. In case of unlisted public Co:**

- + Capital \geq 50 Cr. in preceding FY; or
- + Turnover \geq 200 Cr. in preceding FY; or
- + Outstanding loans from banks or PFIs \geq 100 Cr. At any point of time in preceding FY; or
- + Outstanding deposits \geq 25 Cr. at any point of time in preceding FY;

✖ **Private Co:**

- + Turnover \geq 200 Cr. in preceding FY; or
- + Outstanding loans from banks or PFIs \geq 100 Cr. at any point of time in preceding FY





CLASSIFICATION OF ASSETS

1. **Buildings**
2. **Bridges, Culverts, bunders, etc.**
3. **Roads**
4. **Plant & Machinery**
5. **Furniture & Fixture**
6. **Motor Vehicles**
7. **Ships**
8. **Aircrafts & Helicopters**
9. **Railway sidings, Locomotives, Rolling Stocks, Tramways...**



CLASSIFICATION OF ASSETS

- 10. Ropeway Structures**
- 11. Office Equipment**
- 12. Computers and Data Processing Units**
- 13. Laboratory Equipment**
- 14. Electrical Installations and Equipment**
- 15. Hydraulic Works, Pipelines & Sluices**
- × 12 Industry Specific Rates**
- × Double shift – increase by 50%, triple shift – 100% - reduction in useful life**
- × 100% on assets below 5K – ??? – Co Policy**



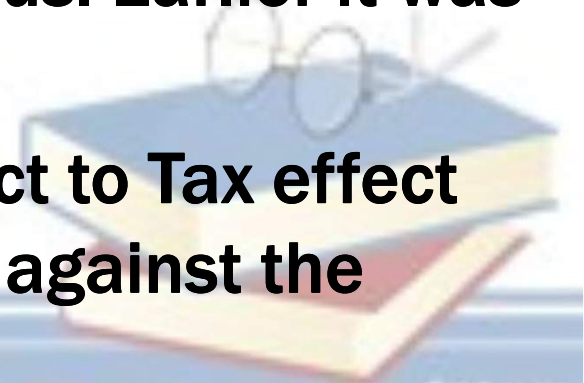
USEFUL LIVES

- ✘ The useful live of asset is period over which an asset is expected to be available for use or the no of production unit expected to be obtained
- ✘ No rate for Intangible assets (except toll) – AS
- ✘ Useful lives changed Eg:–
 - + Factory Building from 58 Yrs to 30 Yrs:
 - + General FF– 15 to 10; Motor Car - 10 to 8
 - + Plant & Mach. General – 20 to 15;
 - + Laptop, computer - 6 app to 3
- ✘ On commencement – would be depreciated over remaining useful life; Where - Nil –trf to Surplus



SCHEDULE II – [29.8.2014]

- ✖ A Company can adopt different useful life; or
- ✖ Different Residual Value
- ✖ In such case
 - + Disclose difference in FS and
 - + Provide justification duly supported by technical advice.
- ✖ If asset's useful life as on 31.3.2015 is Nil, Co. has an option to transfer the balance to Surplus. Earlier it was mandatory.
- ✖ In case of transfer to surplus give effect to Tax effect of expenses/income adjusted directly against the reserves



RATES OF DEPRECIATION

× **SLM**

× **WDV**

× **$R = \{1 - (s/c)^{1/n}\} \times 100$**

+ **Where R = Rate of Depreciation (in %)**

+ **n = Remaining useful life of asset (in years)**

+ **s = Scrap value at the end of useful life of the asset**

+ **c = Cost of the asset/Written down value of the asset**



COMPONENT ACCOUNTING

- ✘ **Component accounting voluntary w.e.f. 1.4.14 & mandatory w.e.f. 1.4.15. When to account?**
 - + **Significant cost; and**
 - + **Different useful lives from remaining parts of asset.**
- ✘ **Materiality is important. Say - 10% of original cost of the asset as a threshold.**
- ✘ **Also to consider impact on retained earnings, current yr PL & future PL (when part replaced)**
- ✘ **If a component may have material impact from either perspective, said component will be material and require separate identification**

COMPONENT ACCOUNTING

✘ How to determine??

- + Break up cost provided by the vendor
- + Cost break up given by technical expert
- + Current replacement cost of component of related asset & applying same basis on historical cost

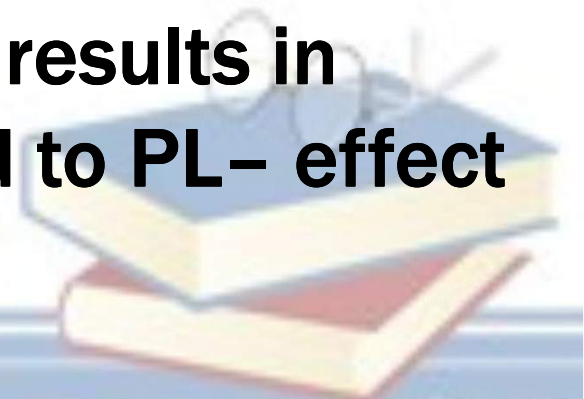
✘ Example - A Building may be split up into -

- + Structural design
- + Elevators
- + Heating system
- + Water system
- + Electrical system



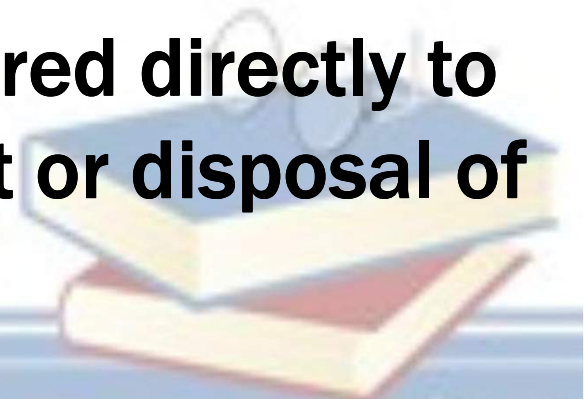
CHANGE IN METHOD

- ✖ If required by statute; or
- ✖ For compliance of AS; or
- ✖ If change would result in a more appropriate presentation of FS
- ✖ If change is made – recalculate it from date of asset put to use.
- ✖ It is a change in Accounting Policy.
- ✖ As per AS-6, if change in method results in surplus / deficit to be transferred to PL– effect to be quantified and disclosed.



REVALUED ASSET

- ✗ **1956 – on historical cost only.**
- ✗ **ICAI guidance note - Treatment of Reserve Created on Revaluation of Fixed Assets**
- ✗ **2013 - on historical cost or the amount substituted for the historical cost**
- ✗ **ICAI guidance note not applicable now.**
- ✗ **AS 10 allows amount standing to the credit of revaluation reserve to be transferred directly to the general reserve on retirement or disposal of revalued asset**



A large, colorful stack of books, with the text "Lunawat & Co." overlaid in blue at the top. The books are stacked in a way that shows their spines and edges, with various colors like green, purple, brown, and red visible. The text is in a stylized, italicized font.



OTHER SERVICES BY AUDITOR

✕ Auditor not to provide other services directly or indirectly to the company or its holding company or subsidiary company:

- + Accounting and book keeping services;
- + Internal audit;
- + Design and implementation of any financial IS;



OTHER SERVICES BY AUDITOR

- + Actuarial services;
- + Investment advisory services;
- + Investment banking services;
- + Rendering of outsourced financial services;
- + **Management services;**
- + Others Prescribed



OTHER SERVICES BY AUDITOR

- ✗ **Other services restriction in case of firm applies to:**
 - + **Audit firm itself**
 - + **Any of its partners**
 - + **Its parent, subsidiary or associate entity**
 - + **Any other entity in which the firm or any of its partners has significant influence / control , or whose name / trade mark / brand, is used by firm or any of its partners**
- ✗ **Compliance to be made by 31.03.2015**



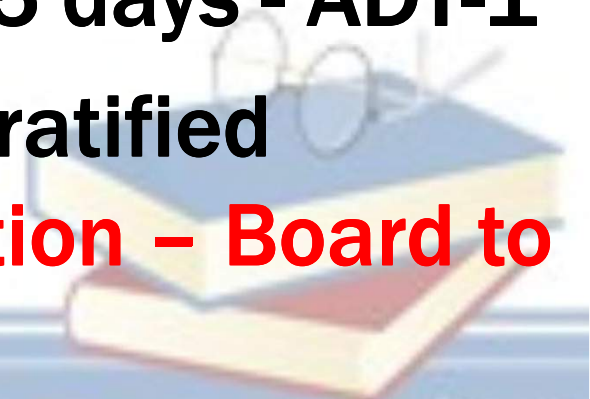
OTHER SERVICES BY AUDITOR

- ✕ **Other services restriction in case of individual applies to:**
 - + himself or
 - + through his relatives or
 - + any other person connected or associated with such individual or
 - + through any other entity whosoever, in which such individual has significant influence or control or whose name, trade mark, or brand is used by such individual.



APPOINTMENT

- ✗ **1st appointment to be within 30 days by Board, if not then members in 90 days in EGM**
- ✗ **Appointment of auditor at 1st AGM. To hold office till conclusion of its 6th AGM. To appoint:**
 - + **An individual, or**
 - + **A firm including LLP**
- ✗ **Co to inform auditor & ROC in 15 days - ADT-1**
- ✗ **Appointment for 5 Years - to be ratified annually at AGM – Non Ratification – Board to appoint**



AUDITOR UNDER INCOME TAX

- ✗ **S. 288**
- ✗ **Disqualified in Companies Act =
Disqualified under Income tax Act**
- ✗ **CA in practice (can represent)**
- ✗ **Other than Co:**
 - + **Is holding any security of or interest in assessee–
Relative Rs. 1 L**
 - + **Is indebted to the assessee– Rs. 1 L**
 - + **Has given a guarantee /provided security – 1 L**



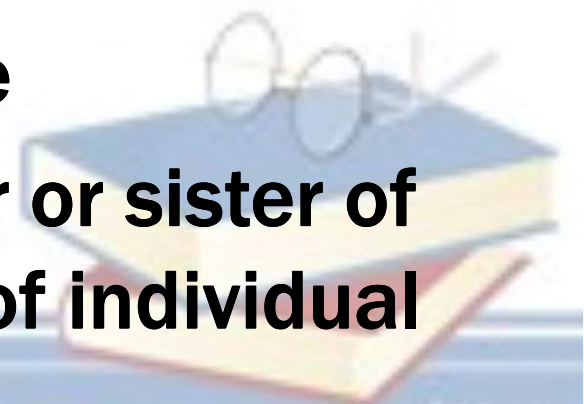
DISQUALIFICATION – INCOME TAX

- + Assessee himself**
- + Partner of firm, or member of association or family;**
- + Person referred to in section 13;**
- + Person who is competent to verify return u/s 139/140;**
- + Relative of any of above person**
- + Officer or employee of assessee;**
- + Individual who is a partner, or who is in employment, of an officer or employee of assessee;**
- + Person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction**



RELATIVE – INCOME TAX AUDITOR

- ✗ **Spouse of the individual;**
- ✗ **Brother or sister of the individual;**
- ✗ **Brother or sister of the spouse of the individual;**
- ✗ **Any lineal ascendant or descendant of the individual;**
- ✗ **Any lineal ascendant or descendant of the spouse of the individual;**
- ✗ **Spouse of a person referred above**
- ✗ **Any lineal descendant of a brother or sister of either the individual or of spouse of individual**

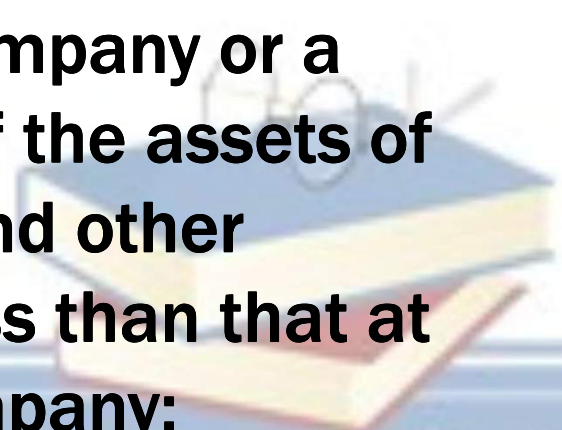


DISQUALIFICATIONS – TAX AUDITOR

- ✗ A person or a firm who, whether directly or indirectly, has business relationship with assessee. i.e., any transaction entered into for commercial purpose except:
 - + In nature of professional services permitted
 - + In the **ordinary course of business of co.** at ALP like
 - ✗ sale of products or
 - ✗ services
 - + To **auditor, as customer, in the ordinary course of business**, by companies engaged in business of telecommunications, airlines, hospitals, hotels & such other similar businesses



AUDITOR TO INQUIRE – 143(1)

- ✗ **Only to be reported when any comments required**
 - ✗ **Whether loans and advances made by co. on basis of security have been properly secured and whether terms on which they have been made are prejudicial to the interests of the company or its members;**
 - ✗ **Whether transactions of co. which are represented merely by book entries are prejudicial to interests of co.;**
 - ✗ **Where Co. not being an investment company or a banking company, whether so much of the assets of Co. as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;**
- 

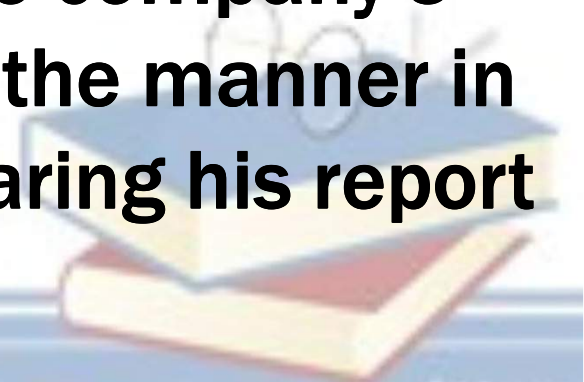
AUDITOR TO INQUIRE – 143(1)

- ✘ Whether loans and advances made by the company have been shown as deposits;
- ✘ Whether personal expenses have been charged to revenue account;
- ✘ Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:



AUDIT REPORT – 143(3)

- ✖ Whether he has **sought and obtained** all the information.....
- ✖ Whether, proper books of a/c as required by law have been kept ...& proper returns adequate for purposes of his audit have been received from branches not visited by him
- ✖ Whether the report on a/cs of any branch office audited by a person other than the company's auditor has been sent to him and the manner in which he has dealt with it in preparing his report



AUDIT REPORT – 143(3)

- ✖ **Whether B/S & PL are in agreement with books of accounts and returns**
- ✖ **Whether FS comply with Ass**
- ✖ **Observation or comments on financial transactions or matters which may have adverse effect on functioning of the company**
- ✖ **Whether any director is disqualified u/s 164(2)**
- ✖ **Any qualification, reservation or adverse remark relating to maintenance of accounts and other matters connected therewith.**
- ✖ **Reasons for negative or qualified report**



INTERNAL FINANCIAL CONTROL- IFC

- ✦ Voluntary for Auditor to report on adequacy of **IFC** & operating effectiveness of such controls – for 2014-15 but **mandatory for Director Report**
- ✦ IFC means policies & procedures adopted by co. for ensuring orderly & efficient conduct of its business, including:
 - ✦ Adherence to company's policies,
 - ✦ Safeguarding of its assets,
 - ✦ Prevention and detection of frauds and errors,
 - ✦ Accuracy and completeness of the accounting records,
 - ✦ Timely preparation of reliable financial information

AUDITING STANDARDS

- ✖ Auditor to comply with auditing standards
- ✖ NFRA to notify auditing standards. Till NFRA does – as by ICAI
- ✖ Total 37 SAs

| SA. No. | Sub-division | No. |
|---------|--|-----|
| 100-199 | Introductory Matters | 0 |
| 200-299 | General Principles & Responsibilities | 9 |
| 300-499 | Risk Assessment and Response to Assessed Risks | 6 |
| 500-599 | Audit Evidence | 11 |
| 600-699 | Using Work of Others | 3 |
| 700-799 | Audit Conclusions and Reporting | 5 |
| 800-899 | Specialized Areas | 3 |

DOCUMENTATION

- ✗ Have checklists, tell articles to cross verify
- ✗ Seniors to cross verify
- ✗ Take necessary certificates / representation from management
- ✗ External Confirmations
- ✗ Ensure Compliance of ASs
- ✗ Ensure all applicable regulatory compliances including Companies Act, 2013
- ✗ Comply with SAs
- ✗ Work not documented is work not done.



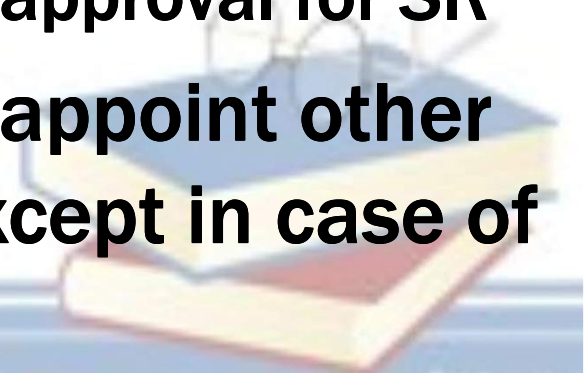
RESIGNATION

- ✗ Auditor may resign before his term.
- ✗ To file a statement with ROC in ADT-3 as well as the Co. within 30 days, indicating reasons
- ✗ In case of Government companies to be filed with CAG too.
- ✗ Non compliance – fine on auditor:
 - + Minimum – 50K
 - + Maximum - 500K



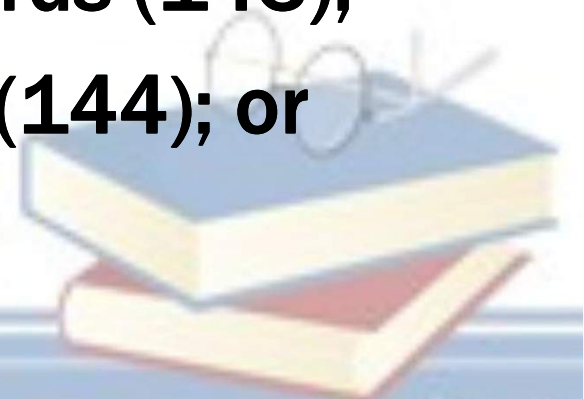
REMOVAL BEFORE TERM

- ✗ **Removal before term**
 - + **Special Resolution; and**
 - + **Prior CG approval – application in ADT-2 within 30 days of Board resolution & filing fee to be paid:**
 - ✗ **OPC & small - < 25 L – 1000; 25 – 50 L – 2500**
 - ✗ **Others - < 25 – 2000; 25 to 50 L – 5000; 50L to 5 Cr – 10000; 5 Cr to 10 Cr – 15000; above 10 Cr - 20000**
 - + **Reasonable opportunity of hearing to be given**
 - + **Co. to hold GM within 60 days of CG approval for SR**
- ✗ **Special notice required at AGM to appoint other auditor than the retiring auditor except in case of rotation**



PENALTIES (147)

- ✖ **General – Co - Fine 25 K to Rs. 500K;
OID – imp upto 1 yr or fine 10k to 100k
or both**
- ✖ **Auditor – Fine - 25k to 500 k if**
 - + **Wrong appointment (139);**
 - + **Incorrect contents of audit report & non-compliance of auditing standards (143);**
 - + **Rendering prohibited services (144); or**
 - + **Fail to sign audit report (145)**



PENALTIES (147)

- ✗ **Imprisonment up to 1 yr **and** fine from 1 L to 25 L in case there is intention to deceive:**
 - + **Company; or**
 - + **Shareholders; or**
 - + **Creditors; or**
 - + **Tax authorities.**
- ✗ **Where he is convicted for above, then liable to:**
 - + **Refund the remuneration received to the company;**
 - + **Pay damages to co, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his report.**



PENALTIES (147)

- ✖ **When it is proved that partner or partners of the audit firm has or have acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the co. or its directors or officers, then liability of the firm jointly and severally for civil as well as criminal liability**
- ✖ **Penalties by NFRA**
- ✖ **Can ABC & Co. being statutory auditors issue Form 15CB certificate related to co?**
- ✖ **If yes, what is to be done?**



PENALTIES (147) – THE SAVING GRACE

- ✘ **In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud (Rule 9)**



FRAUD

Lunawat & Co.



DEFINED (447)

- ✗ Any act or omission,
- ✗ Concealment of fact or
- ✗ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ✗ With the intent to deceive or to gain undue advantage to injure the interest of
 - + Company, or
 - + Shareholders, or
 - + Creditors, or
 - + Any other person (whether or not there is any wrongful gain or loss).



PUNISHMENT

- ✗ Imprisonment not less than 6 months to 10 years
- ✗ + Fine not be less than amount involved in the fraud which may extend to 3 times.
- ✗ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.



FALSE STATEMENT (448)

✗ If any person makes a false statement in any:

- + Return
- + Report
- + Certificate
- + FS
- + Prospectus
- + Other document under this Act
 - ✗ Is false in any material particulars, knowing it to be false
 - ✗ Omits any material fact knowing it to be material

✗ Action u/s 447



FRAUDULENTLY INDUCING PERSON TO INVEST MONEY

- ✘ Any person who, either knowingly or recklessly makes any **statement, promise or forecast** which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into:
 - + any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities;
 - + any agreement, purpose / pretended purpose of which is to secure a profit to any of parties from yield of securities or by reference to fluctuations in value of securities; or
 - + any agreement for, or with a view to **obtaining credit facilities** from any bank or financial institution,
- ✘ shall be liable for action u/s 447. (36)



SUMMARIZE..

- ✖ **Resolutions**
- ✖ **Share Capital, Deposits, Loans**
- ✖ **Committees including CSR**
- ✖ **Financial Statements**
- ✖ **Schedule II**
- ✖ **Internal Auditor**
- ✖ **AS and SA Compliances**
- ✖ **New Engagement Letter**
- ✖ **New Audit Report**
- ✖ **Documentation**





**INCREASE YOUR
VALUE**



Together ...we shall make it....

Thank You!



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