

# PRACTICAL APPROACH TO PRESUMPTIVE TAXATION



## SECTION 44AD

### FOR BUSINESSES

TURNOVER < ₹2 CRORES

8% of Gross Turnover/Gross Receipts  
6% for Digital Receipts



## SECTION 44ADA

### FOR PROFESSIONALS

SERVICES < ₹50 LAKHS

Net Income to be 50%  
of the Gross Receipts



## SECTION 44AE

### FOR TRANSPORTERS

OWNED GOODS VEHICLES < 10

Per Month:  
₹7,500 (Light Goods Vehicle)  
₹1,000 Per Ton Per/Vehicle (Heavy Goods Vehicle)

**BY: CA R.S. KALRA**

## ABOUT THE AUTHOR

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Born in a humble middle-class family in Jalandhar (Punjab) in 1962, Ravinder, an avid academic turned every obstacle into opportunity through sheer hard work, graduated in Bachelors of Commerce from DAV College, Jalandhar. After graduation he stepped into nonetheless a rigorous course of accountancy from Institute of Chartered Accountants of India and simultaneously done his Masters of Commerce from Himachal Pradesh University. All of this did not fulfill his appetite for knowledge he moved on to add another feather in his hat by doing Bachelors of Law.

Kicked off his career as a practicing Chartered Accountant, enlightened and awakened the masses on the taxation matters by writing articles in various leading newspapers and journals.

Climbing the ladder at a steady pace to scale mountainous heights and be at the helm of professional affairs with dignity made an unconditional contribution to the profession being Vice- Chairman of Jalandhar Branch of NIRC of ICAI from 1995-1998, Chairman Jalandhar branch of NIRC of ICAI for the year 2008-2009, Member Regional Tax Advisory Committee of CBDT, New Delhi, Member Direct Tax Committee of ICAI for the Year 2011-2012, Special Invitee Direct Tax Committee of ICAI for the Year 2012-2013, Member Indirect Tax Committee of ICAI for the Year 2013-2014, Member Board of Studies of ICAI of 2014-15, Senate Member of Guru Nanak Dev University, Amritsar from 01.07.2014 to 30.06.2016, Special Invitee of Committee on Economic, Commercial Laws & WTO, and Economic Advisory of ICAI for the Year 2017-2018..At present he is on the panel of authors of Tax Guru.

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# CHAPTER 1

## Introduction

A dream of every tax assessee is to have a simpler and fair tax regime. The Tax Reforms Committee led by Dr. Raja Chelliah had recommended an “Estimated Income Method” for small taxpayers in order to facilitate better tax compliance giving a window to convert the said dream into reality. In our country, where small businesses, unorganized sectors and services are hard-to-tax, it is imperative that there exist presumptive schemes for such sectors wherein maintaining books of accounts is a gargantuan task. The outcome of the recommendation led to the birth of presumptive taxation schemes in Direct tax. One of the key provisions in the presumptive taxation is Section 44AD of the Income Tax Act, 1961 ('the Act') - Special Provisions for computing business income on a presumptive basis, which was introduced by virtue of Finance Act 1994, wherein the concept of taxing an assessee by a method of estimating income from its business was introduced especially for small businesses, contractors and goods carriers. .

As per the amendments through Finance (No. 2) Act 2009 with effect from 01-04-2011, i.e. I.T.A.Y. 2011-12, the scope is yet widened and a large number of assesseees are covered under the net of presumptive income. As per this Act, Sec. 44AF is deleted and Sec. 44AD has been amended and is recast. In the Memorandum Explaining the Provisions of the Finance (No.2) Bill, 2009, while amending provisions of Sec. 44AD, it has been stated as under :-

- (a) There has been a substantial increase in small business.
- (b) A large number of business and service providers in rural and urban areas who earn substantial income are outside tax net.
- (c) Introduction of presumptive tax provisions would help a number of small business to comply with the taxation provisions.
- (d) A presumptive income scheme lowers the compliance cost and also reduces the burden on the tax machinery.

In India there is need of consolidated tax system where Direct Tax, Indirect Tax and Property Tax are collected in a single window. With introduction of GST, it is time to encourage assesseees in small and unorganized sectors to pay their fair share of taxes, a combined tax system factoring both GST and Direct Tax would be the need of the hour as it will indeed live up to “One Nation, One Tax” slogan. Alternatively a separate chapter for taxing presumptive incomes may be introduced under the Act, so as to avoid any interpretation issues. With the focus of the current Government being to promote Ease of Business in India and also to bring lot of small time assesses into the tax bracket for the first time, presumptive taxation scheme is a wonderful tool which caters to the needs of the Government

### **Why presumptive basis was introduced?**

- Under Income tax act provisions, a person engaged in business or profession is required to maintain regular books of account and further, he has to get his accounts audited.
- To give relief to small taxpayers from this tedious work, the Income-tax Act has framed certain “Special provisions for computing profit and gains on presumptive basis under sections 44AD, 44ADA and 44AE.
- A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account and also from getting the Accounts audited etc.,

## **Presumptive taxation scheme**

This is a system to calculate your tax on an estimated income or profit. It gets very difficult for a small taxpayer to keep a track and maintain a copy of all invoices of his sales and expenses. Some of the taxpayers are also required to maintain the books of accounts and get their accounts audited. Moreover, it is very difficult for a small taxpayer to do so many things for the purpose of computation of Income. So as to ease the process of computation of Income, the system of Presumptive Taxation wherein the Income would be computed as certain percentage of turnover, sales or percentage.

Presumptive taxation system reduces the compliance cost and the administrative burden. However, it is important to note that whether the taxpayer opts for the Presumptive Scheme of Taxation or for the normal scheme of Taxation, the rates of tax applicable would remain on the same. It is only the manner of computation of Income on which the tax is levied and several legal compliances will change depending on the scheme opted for. Moreover, the taxpayer is free to decide whether he intends to opt for the Scheme of Presumptive Taxation or opt for the Scheme of Normal Taxation. The taxpayer can opt for any scheme as per his wish.

## DETAILS OF PRESUMPTIVE TAXATION SCHEME

For small taxpayers the Income Tax Act has framed three presumptive taxation schemes as given below:

### 44AD :

- Special provisions for computing profits and gains of **business** on presumptive basis

Income = 8 % or  
6% of turnover

If turnover up to  
Rs. 2Crore

### 44ADA:

- Special provisions for computing profit and gains of **Profession** on presumptive basis

Income = 50 % of  
gross receipts

If receipt up to Rs.  
50 Lakh

### 44AE :

- Special provisions for computing profits and gains of **business of plying, hiring or leasing goods carriages** on presumptive basis.

Income =Rs. 7,500 p.m.  
for light vehicle and Rs.  
1000 p.m. per ton of  
gross vehicle weight

If up to 10 vehicles  
owned during the year



## CHAPTER 2

### Provisions of Sec 44AB

Sec 44AB states the provisions related to tax audit of certain entities. A tax audit is an independent examination of books of account by a chartered accountant. The chartered accountant conducting tax audit gives his observations, findings and qualifications in form 3CA/ 3CB. The provisions of Sec 44AB are as:

**44AB.** Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;

**Provided that in the case of a person whose-**

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent. of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. of the said payment, this clause shall have effect as if for the words “one crore rupees”, the words “five crore rupees” had been substituted; or’;

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [section 44AE](#) or [section 44BB](#) or [section 44BBB](#), as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under [section 44ADA](#) and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(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,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

**Provided** that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of [section](#)

44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

**Provided further** that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

**Provided also** that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

*Explanation.—For the purposes of this section,—*

- (i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;
- (ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means **date one month prior to** the due date for furnishing the return of income under sub-section (1) of section 139.

### Assessee required to get accounts audited on Compulsory Basis

Different Taxpayers	When Covered by the provisions of Compulsory Audit u/s 44AB
A person carrying on Business (Clause(a) of sec. 44AB)	If the total sales, turnover or gross receipt in business exceed or exceeds Rs.1 crore in any previous year.
A person carrying on Profession (Clause(b) of sec.44AB)	If his gross receipts in profession exceed Rs.50 lakh in any previous year.
A person covered u/s 44AE, 44BB or 44BBB (Clause (c) of sec. 44AB)	If such person claims that the Profits and gains from the business are lower than the profits and gains computed under these Sections (irrespective of his turnover).
A person covered u/s 44ADA (Clause (d) of sec. 44AB)	If such person claims that the Profits and gains from the profession are lower than the profits and gains computed under this Section and his income exceeds the maximum amount not chargeable to income tax in any previous year.
A person covered u/s 44AD (Clause (e) of sec. 44AB)	If the provisions of Section 44AD(4) are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

The above table shows the different situations under which the books of accounts are to be audited under section 44AB of the Act.

**a) Where accounts are audited under companies Act:** then it will be sufficient if the accounts are audited under such law before the specified date (30th October) and assessee obtains a report from a chartered accountant in the prescribed form under Income Tax Act.

**b) Where accounts are audited under any other provisions of the Income Tax Act 1961:** Where a person is required to get his accounts audited under any other law, then it shall be sufficient compliance with the provisions of this section if such person gets the accounts audited under such other law before the specified date and furnish by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

**c) Report of audit of accounts to be furnished under section 44AB.**

Rule 6G.

(1) The report of audit of the accounts of a person required to be furnished under section 44AB shall,

(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA:

(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No.3CB.

(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.

Tax auditor shall furnish tax audit report online by using his login details in the capacity of 'chartered accountant. Taxpayer shall also add CA details in their login portal. Once audit report is uploaded by tax auditor, same should either be accepted/rejected by taxpayer in their login portal. If rejected for any reason, all the procedures need to be followed again till the audit report is accepted by the taxpayer.

### **1. How to calculate the gross receipt or turnover?**

Applicability of tax audit under section 44AB depends upon gross receipts, sales or turnover of an assessee, so the first and foremost thing is their calculations.

As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of 'Turnover' shall be the aggregate amount for which sales are affected by an enterprise.

Total Turnover/ Gross Receipts – (Not defined in the Act)- ICAI “Guidance Note on Terms Used in Financial Statements” , the expression “Sales Turnover” (Item 15.01) has been defined.

### **Significance of word Gross Receipts.**

Method of Accounting applicable to Section 44AD. As per this section the assessee has an option to choose either Mercantile or cash method of Accounting.

Total Turnover is the amount received / receivable from clients in respect of sales of Previous Year.

Gross Receipts are the amounts received from clients for the services provided or to be provided and does not include the value of material supplied by the client. Total Turnover/Gross Receipts-ICAI

What are the receipts which **forms** part of Turnover –

- 1) GST, excise duty, Cess, and other Levy, if included in the Invoices / bills raised. (Depending on the Method of accounting followed by the assessee)
- 2) Sales of unusables empties and Packages.
- 3) Service Charges charged for delivery

What are the receipts which **does not form** part of Turnover –

- 1) Sale of Property, Plant and equipments
- 2) Advance received from customers, deposits Received or retention money.
- 3) Any Security, retention or other deposit obtained from employees.
- 4) Interest Income or other similar receipts
- 5) Value of Inventory

Transactions of buying and selling units is a speculative activity ( future goods-unascertainable) where no physical delivery is taken or given – the amount of transactions as noted in the contract notes cannot be taken as turnover .

- Turnover in Speculative Transactions

The value of the sale transactions of commodity carried out through MCX without taking delivery could not be considered as “Turnover” for the purpose of section 44AB

- Where share broker does not sell goods of its constituents as his own and only charges commission for bringing two parties together to transactions of sale and purchase of shares, such transactions cannot amount to ‘sale, turnover or receipt’ of share broker himself within meaning of Sec. 44AB.

- **Turnover in certain cases:**

- i. **Kachha Arahtias Vs Pacca Arahtias**

Whether in cases where an agent affects sales/turnover on behalf of his principal, such sales/turnover has to be treated as the sales/turnover of the agent for the purpose of section 44AB?

As there is no uniform pattern followed by the commission agents, consignment agents, brokers, kachha arahtias and pacca arahtias dealing in different commodities in different parts of the country, Board issued a circular- Refer Circular No. 452, dated 17th March- 1986

kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB.

A pacca arahtia raises bill on his own. The relation between him and his constituent is substantially that between the two principals, so the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.

- ii. **Commission earned from Advertising agency** was to be Turnover and not the entire value of service. Sale on principal to principal basis : Gas Cylinders Agency, - “the agreement clearly indicated that the appellant was appointed as a distributor on principal to principal basis for sale of gas cylinders to consumers. ... Consequently, the sale of gas cylinders was liable to be included on the turnover of the appellant.”
    - iii. **Treatment of discounts** : Trade discount should be excluded from ‘sales’ or ‘turnover’ for purpose of qualifying limit u/s. 44AB; that discounts are allowed in sales bills themselves or at the time when payment were made by the parties to the assessee and the discount amounts are properly recorded in the assessee’s accounts.
    - iv. **Receipts from Job Work** : “It may be noticed that "sales", "turnover" or "gross receipts" are not words of art used in relation to any individual transaction independently, but have been used as "sales", "turnover" or "gross receipts". The expression 'total' qualifies all the other three expressions viz. 'sales', 'turnover' and 'gross receipts'." So, job work receipts have to be clubbed to arrive the total turnover.
    - v. **Turnover for a chit fund** : Subscription amount collected by the foreman of a chit fund from subscribers is on capital account, and thus not part of turnover/ gross receipts/ sales for the purpose of Sec. 44AB.
    - vi. **Income of a nursing home, whether professional or business income** : Activities of a nursing home constitute business and not profession – “activities of the nursing home...constitute business activity, and ITAT Rejects Revenue’s contention that activities of assessee-firm constitutes a vocation/ profession.

- vii. Income-tax Act contains section 145A which provides for inclusion of taxes, cess, etc. in the value of sale, purchase and inventory. However, the purpose of this provision is limited to calculation of income taxable under the head 'Profits and Gains from Business or Profession'. Whether this provision can be applied for calculation of 'Turnover' (or sales) for the purpose of Section 44AA, 44AB, 44AD and 44ADA has been a matter of disagreement between the revenue and taxpayer.

In case of an assessee who has opted for **Composition Scheme** under GST Act, the tax is not to be recovered from the customer and it is debited to the Statement of profit & loss as an indirect expense. Thus, amount of GST paid by an assessee should not form part of his gross turnover. In case of other assesseees, as GST is charged from the customer and it is recognized separately in the books of accounts, it is not clear whether the amount of GST shall be included in the turnover for the purpose of calculation of taxable income only (as provided by Section 145A) or for every other provision which has a reference to 'turnover'. Unless the CBDT clarifies its stand on this matter, it would be appropriate to ignore the amount of GST while calculating the gross turnover or gross receipts because of following reasons:

- a) Section 145A begins with "For the purpose of determining the income chargeable under the head "Profits and gains of business or profession" which makes this provision inapplicable for other purposes.
- b) If GST recovered from customer is credited to Current Liability Accounts (Output CGST or Output IGST or Output SGST) and payments to the authority are also debited to the said separate account, these should not form part of turnover shown in profit and loss account.
- c) Inclusion of GST in the turnover would have the cascading effect, i.e., presumptive income shall also be computed on the component of GST which is never treated as income of the assessee.

### **How many tax audit reports a Chartered accountant can Sign? Specified Number of Tax Audit Assignments**

The council of Institute of Chartered Accountants of India in its 331st meeting held on 10th to 12th February 2014 has increased number of tax audits to 60 from 45 with effect from 1<sup>st</sup> April 2014

#### **Tax Audit conducted during the Financial Year**

Any No. of Branches, of the same concern – One Tax Audit Assignment

Head Office & Branch Offices of a concern – One Tax Audit Assignment

Tax Audit u/s 44AD, 44AE, 44BB & 44BBB is excluded from the above limit

#### Firm of CAs – Each partner 60 Tax Audit Assignments

It is to be noted that a Chartered Accountant in practice can conduct 60 tax audits relating to an assessment year. The ICAI had clarified that audit prescribed under any statute which requires the assessee to furnish an audit report in the form as prescribed under section 44AB of the Income-tax Act, shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in section 44AB of the Income-tax Act. The ICAI has modified the guidelines on August 23, 2018 to provide that the audits conducted under Section 44AD, 44ADA and 44AE of the Income-tax Act (Presumptive Taxation Schemes) shall not be considered for the purpose of reckoning the 'specified number of tax audit assignments'

## CHAPTER-3

### Provisions of Sec 44AA

**Sec 44AA** of the Act requires certain persons to maintain books of account. The provisions of this section read with Rule 6F of the Income Tax Rules, 1962 relate to maintenance of books by assessee as well as prescribe the list of books to be maintained. The provisions of Sec 44AA are as:

**44AA.** (1) *Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.*

(2) *Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—*

- (i) if his income from business or profession exceeds one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year; or*
- (ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed ten lakh rupees, during such previous year; or*
- (iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or*
- (iv) where 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,*

*keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act:*

**[Provided** *that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "one lakh twenty thousand rupees", the words "two lakh fifty thousand rupees" had been substituted :*

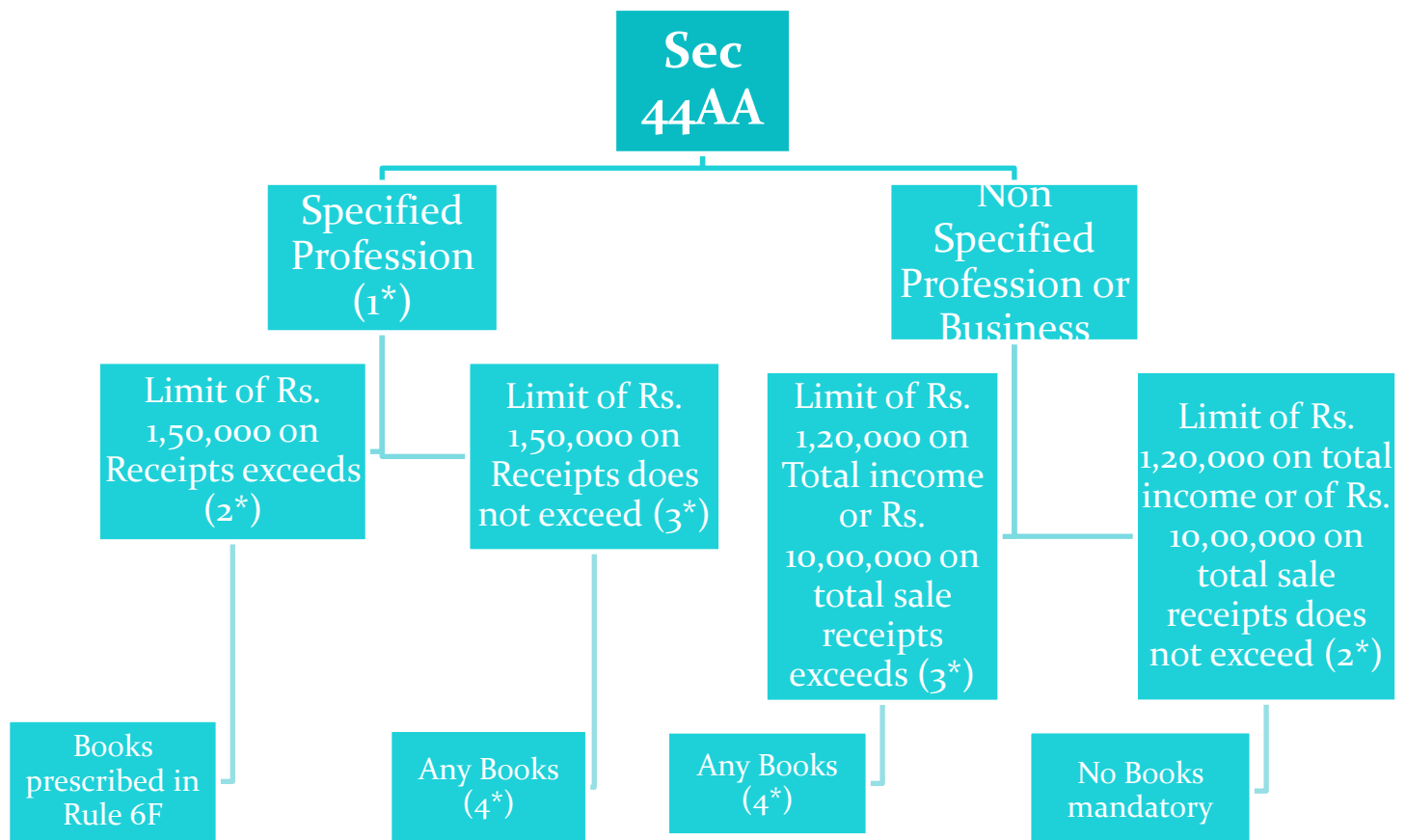


**Provided further** that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted.]

(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.

Persons carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist are required to maintain books of account if their gross receipts exceed Rs. 1,50,000 in all the three years preceding the previous year. The provisions of sec 44AA of the Act can be explained with the help of following presentation:



## Notes to above presentation

Limit of Rs.1,20,000/- for Total Income & Rs.10,00,000/- for total sale receipts enhanced to Rs.2,50,000/- & Rs.25,00,000/- respectively in respect of Individuals/ HUF

### Note:

(1\*) specified person: legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession

(2\*) In all of the three years immediately preceding the P.Y. or where the business/profession has been newly set up in the P.Y., then such P.Y.

(3\*) In any one of the three years immediately preceding the previous year, or, where the business/profession has been newly set up in the previous year, then such P.Y.

(4\*) Any books: means the books so as to enable the AO to compute his total income in accordance with the provisions of this Act.

Assessee shall also keep and maintain such books of account & other documents as may enable the AO to compute his total income in accordance with the provisions of this Act where:

1. Profits and gains from business are deemed to be profits and gains of assessee u/s 44AE, 44BB, 44BBB and the assessee has claimed his income to be lower than the profits or gains so deemed, or

2. Profits and gains from the business are deemed to be the profits and gains of assessee u/s 44AD and he has claimed such income to be lower than the profits and gains so deemed and his income exceeds the maximum amount which is not chargeable to income-tax.

However, in respect point 2 above, w.e.f. AY 2017-18, the assessee shall keep/maintain such books of account & other documents, if the provisions of Sec. 44AD(4) are applicable {i.e. withdrawal of benefit u/s 44AD for next 5 A.Y.(s)} and his income exceeds the maximum amount which is not chargeable to income-tax. [as amended by Finance Act, 2016]

### Penalty under Section 271A:

Rs.25,000 if the assessee does not confirm to the conditions of the said section.

## CHAPTER-4

### Provisions of Section 44AD:

**4AD.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

**Provided** that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account<sup>53</sup> [or through such other electronic mode as may be prescribed] during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(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.

(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.

*Explanation.—For the purposes of this section,—*

(a) "eligible assessee" means,—

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. - Deductions in respect of certain incomes" in the relevant assessment year;

(b) "eligible business" means,—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.

#### **A. Meaning of terms used in sec 44AD(1)**

To understand the provisions of sec 44AD(1) of the Act, we must study the meaning of following terms:

##### **1. Eligible assessee:**

1) Resident Individual

2) Resident Hindu Undivided Family

3) Resident Partnership Firm (not a Limited Liability Partnership Firm as defined under LLP Act, 2008)

Note: While explaining the meaning of eligible assessee, a rider also provided in **Explanation (a) to Sec. 44AD** for eligibility i.e.

##### **NON – ELIGIBLE ASSESSEES UNDER SEC. 44AD**

**Explanation (a) to sec. 44AD** provides the following are not covered under these provisions:

- An Individual / HUF / a Partnership Firm who is a resident and claiming deduction under chapter III of the Act section 10A, 10AA, 10B, 10BA relating to units located in FREE Trade Zone, Hardware & Software Technology Park etc. OR

- Claiming deduction under Chapter VI-A Part-C (deductions in respect of certain Incomes) i.e. Sections 80HH to 80RRB.

**SO- THE FOLLOWING ARE NOT COVERED U/s 44AD**

- Individual /HUF who is not Resident
- Association of Person
- Firm having non-resident Status.
- A local Authority
- A co-operative Society
- LLP both Indian as well as Foreign
- Companies both Domestic and Foreign company
- Every Artificial Juridical Person

**2. Eligible business:** The presumptive taxation scheme under section 44AD covers all small businesses with total turnover/ gross receipts of up to 2 crores (except the business of plying, hiring and leasing goods carriages covered under section 44AE). Sub- sec. (6) of sec. 44AD states that “ the provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to-

- (i) a person carrying on profession as referred to in sub section (1) of section 44AA ;
- (ii) a person earning income in the nature of commission or brokerage ;
- (iii) A person who is carrying on any agency business.

(Note : An insurance agent cannot adopt the presumptive taxation scheme of section 44AD)

**Eligible Business- COVERED**

So Eligible Business includes :

- Manufacturing
- Trading
- Wholesale

- Retail
- Job Work
- Service business
- Speculative/ Non speculative.

## **ASSESSEE AND SEVERAL BUSINESSES**

The provisions of Sec. 44AD of the Act apply to an 'Assessee'. Hence when a person carries on several businesses, viz. wholesale and/or retail and or manufacture, the turnover or gross receipts of all the businesses are to be considered for the purposes of this section. Whether separate books or combined books are maintained by the assessee is not material. Combined turnover or gross receipts of all the businesses would form the basis for calculation of presumptive income.

**Example:** Mr. Harjot Singh, A Resident individual, is carrying on three eligible business, the turnover of which is as under –

Business A (Rs.145 Lac)

Business B ( Rs.35 Lac)

Business C ( Rs.25 Lac).

Whether he can opt for sec 44AD?

The Answer is NO because turnover of eligible business exceeds Rs.2 Crores. It is to be noted that when we take when we take combined turnover of three businesses, it exceeds Rs. 2 crore. Hence, the assessee is not eligible for sec 44AD of the Act.

**Example:** Mr. Harjot Singh, a Resident individual, is carrying on two businesses, the turnover of which is as under –

Business A (Eligible Business) Rs.70 Lakhs

Business B (Transport u/s 44 AE) Rs.8 Lakhs

Section 44AD and 44AE both are applicable. In the above said case, turnover of both the business shall not be clubbed and both the business shall be chargeable to tax u/s 44AD and 44AE of the Act respectively.

**Example:** A Person doing brokerage business who have received brokerage for Rs. 90,00,000 and declaring income @ 5% of Rs.4,50,000. Should his books of Accounts be audit u/s 44AB since he is offering income less than 8%?

Ans. Audit u/s 44AB is applicable if he is declaring income lower than the rate specified u/s 44AD. But, section 44AD is not applicable to Agency, Commission and Brokerage. Hence, he can declare income less than 8%.

**Example:** An Eligible Assessee is engaged in trading business of goods both in his own name and also as a consignee for another person. The Total Sales amount to Rs.1.30 Crores, Turnover Details are as follows:

Own Business Turnover = Rs.90 Lakhs

Consignment Sales Turnover = Rs.40 Lakhs

Whether Assessee can opt for Presumptive income computation or not?

For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e. Rs.90 Lakhs. Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.1 Crore. Consignment Commission can be offered at any rate (Even below 8%), provisions of Sec.44AD will not govern the commission income.

**3. Presumptive Rate of Income:** The presumptive rate of income would be 8% of total turnover or gross receipts.

However, Proviso to sub-section (1) provides that the presumptive rate of 6% of total turnover or gross receipts will be applicable in respect of amount which is received

- By and account payee cheque or
- By an account payee bank draft
- By use of electronic clearing system through a bank account OR through such other electronic mode as may be prescribed.

During the previous year or before the due date of filing of return under section 139(1) in respect of the previous year.

However the assessee can declare in his return an amount higher than presumptive income so calculated, claimed to have been actually earned by him.

- ✓ **Other Electronic Prescribed by CBDT:** The Central Board of Direct Taxes has prescribed **other electronic modes** to provide for the followings as an acceptable electronic mode of payments-

- (a) Credit Card;
- (b) Debit Card;
- (c) Net Banking;
- (d) IMPS (Immediate Payment Service);
- (e) UPI (Unified Payment Interface);
- (f) RTGS (Real Time Gross Settlement);
- (g) NEFT (National Electronic Funds Transfer), and
- (h) BHIM (Bharat Interface for Money) Aadhaar Pay”.

For this purpose, a new Rule 6ABBA with the heading ‘**Other electronic modes**’ is introduced in the Income Tax Rules, 1962. This rule has been given a retrospective effect and will come into force from 01- 09-2019 even though the notification was issued on 29-01-2020.

This proviso to sub-section (1) has been inserted w.e.f. 01/04/2017 to promote digital transactions. The government has offered incentive to the seller for accepting payment by banking channels or digital means by allowing lower rate of income. This was particularly necessary to encourage digital transactions after demonetization.

Assessee accepting payment through account payee cheque/ account payee draft or ECS through bank or other electronic mode can declare income at 6 % of turnover/ sales or gross receipts. However, the payment must be received before the due date of filing of return.

**Example:** Mr. Arshdeep Singh, an individual carrying business of laptops has a Turnover of Rs. 80 Lakhs during the F.Y. 19-20. He has received the payments as

Rs.60 Lakh in cash

Rs.10 Lakh by account payee cheque during the previous year

Rs. 4 Lakh by ECS through bank account upto 31<sup>st</sup> July 2019

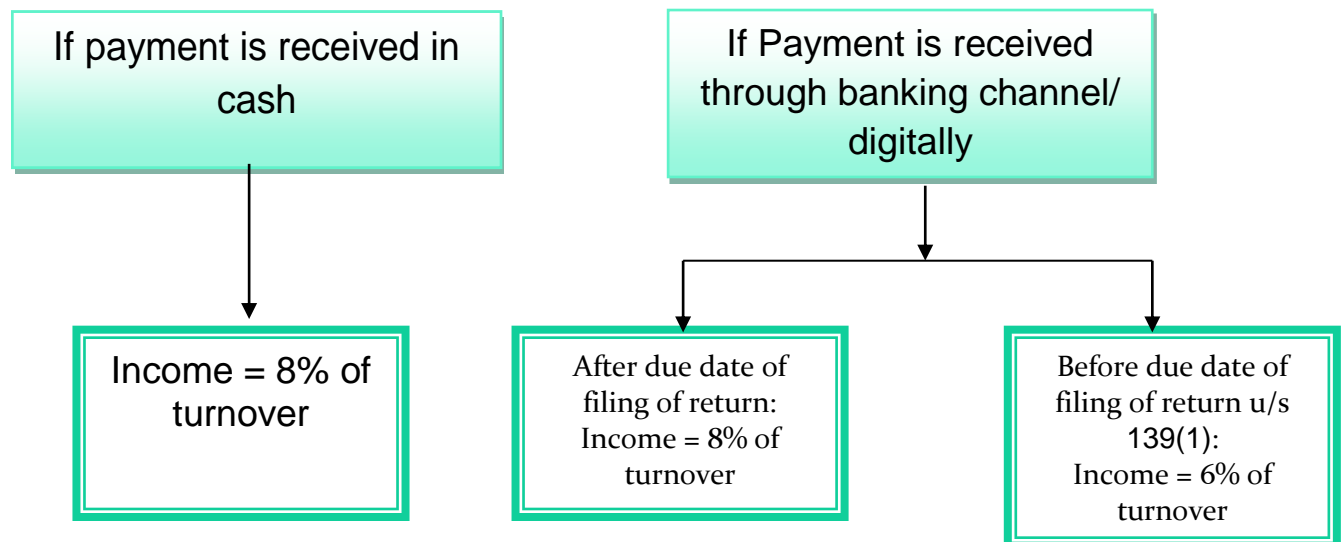
Rs. 6 Lakh has not been received yet.

Now, since the TO is below Rs.2 Cr, he has the option of availing benefits of section 44AD. Mr. Arshdeep Singh can exercise this option and declare income as

8% of Rs.66,00,000 (60 Lakh + 6 Lakh)	5,28,000
6% of Rs. 14 Lakh (10 Lakh + 4 Lakh)	84,000
Total income from PGBP	6,12,000



## Computation of Income under Section 44AD



### **Benefit of the reduction of deemed profit rate under Section 44AD of the Income-tax Act to taxpayers who will accept digital payments**

Section 44AD of the income tax Act, 1961 provides that if taxpayer is engaged in the any eligible business and having a turnover of Rs. 2 crore or less ,its profits are deemed to be 8 per cent of the total turnover or gross receipts.

in order to achieve the government's mission of moving towards a cash-less economy and to provide incentive small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8 per cent under Section 44AD of the Act to 6 per cent in respect of the amount of total turnover or gross receipts received through banking channels digital means.

However, the existing rate of deemed profit of 8 per cent referred to in Section 44AD of the Act, shall continue to apply in respect of the total turnover or gross receipts received in cash.

The benefit to traders and small businesses is explained in following different scenarios considering FY 2020-21:

Particular	100% Cash Turnover	80% Digital Turnover	100% Digital Turnover
<b>Total Turnover</b>	1.90 Crore	1.90 Crore	1.90 Crore
<b>Cash Turnover</b>	1.90 Crore	38 Lakh	NIL
<b>Digital Turnover</b>	NIL	1.52 Crore	1.90 Crore
<b>Profit on Cash Turnover @ 8%</b>	15.20 Lakh	3.04 Lakh	NIL
<b>Profit on Digital Turnover @ 6%</b>	NIL	9.12 lakh	11.40 Lakh
<b>Total Profit</b>	15.20 Lakh	12.16 Lakh	11.40 Lakh
<b>Tax Payable under New Regime</b>	201240	122928	107120
<b>Tax Saving</b>	NIL	78312	94120

From the above table, it is clear that if an assessee makes his transactions in cash on a turnover of Rs. 1.90 crore, then his income under the presumptive scheme will be presumed to be Rs. 15.20 Lakh at the rate of 8 per cent of turnover, his total Tax Liability under new tax regime will be Rs. 201240. However, if an assessee shifts to 100 percent digital transactions and his profit will be presumed to be Rs. 11.40 Lakh at the rate of 6 per cent of turnover, his total Tax Liability under new tax regime will be Rs.107120. It is to be noted that by adopting digital system i.e.non cash system.he will save income tax of Rs.94120.00

## Lower Rate of Income in Different Scenarios

As per the proviso to 44AD(1), income can be declared as 6% of the turnover if the payment is received digitally or through banking channel before the due date of return filing u/s 139(1). However, many a times due date for return filing is extended or sometimes it may happen that assessee files his return after due date or he has filed return earlier than the due date. We shall discuss here whether the assessee can claim 6% of turnover as his income under these scenarios.

### Case 1- Due date of return filing is extended

The due date of return filing u/s 139(1) is extended by the Income Tax Department due to different reasons such as natural calamities, pandemic, technical glitches etc. The extended date becomes the due date u/s 139(1) of the Act for that assessment year. Therefore, any payment received through banking channel/ digitally up to the extended due date u/s 139(1) of the Act shall be eligible for claiming 6% of turnover as income.

**Example:** Suppose the due date for filing return u/s 139(1) for the A.Y. 2019-20 has been extended to August 31, 2019. An eligible assessee who has received payment

through account payee cheque, account payee draft, ECS through banking channel or other prescribed modes up to 31/08/2020 shall be eligible for declaring profits at the rate of 6% of turnover.

**Case 2- If the assessee files his return after the due date of return.**

The proviso to sec 44AD(1) of the Act requires payment to be received up to due date of return filing. Any payment received even digitally/ through banking channel after the due date of return filing shall not be eligible for lower rate of income i.e 8% of turnover or higher shall be assumed as income.

**Example:** Suppose the due date for filing return u/s 139(1) for the A.Y. 2019-20 is July 31, 2019 and the assessee files his return on Dec 26, 2019. Whether receipts through banking channel/ digitally up to Dec 26, 2019 will be eligible for claiming 6% of turnover as profits?

The receipts through banking channel/ digitally up to July 31, 2019 shall be eligible for claiming 6% of turnover as profits. The payments received after the due date i.e 31/07/2019 shall not be eligible for lower rates and these payments received after the due date of filing return will not be given the benefit of 6% of turnover .

**Case 3- If the assessee files his return before the due date of return.**

When the assessee files his return before the due date u/s 139(1) of the Act, he would have considered the facts on the date of filing of return and not assumed the facts beyond that date. The receipts through banking channel/ digitally up to date of return filing are considered for lower rate of income and the amount not received yet shall be considered for 8% of turnover as profits. The interesting issue here is what about the payments received through banking channel/ digitally after the date of return filing but before the due date of return filing. Whether these will be considered for 8 % of turnover or 6% of turnover as profits? If 6% is to be considered whether the return can be revised? Let us understand this with help of an example.

**Example:** Mr. Raj has a turnover of Rs. 80 Lakh for the A.Y. 2019-20. The due date of return filing is July 31, 2019. He files his return on May 15, 2019. He has received the following payments by account payee cheque:

Up to 31/03/2019 –	Rs. 50,00,000
Up to 15/05/2019 –	Rs. 15,00,000
From 16/05/2019 to 31/07/2019	Rs. 10,00,000
Received after 31/07/2019	Rs. 5,00,000

Mr. Raj has filed return on 15/05/2019. Till that date, payments to the extent of Rs.65,00,000 has been received by account payee cheque. Mr. Raj can declare profits from business as:

6% of Rs. 65,00,000	= Rs. 3,90,000
8% of Rs. 15,00,000 (80L – 65L)	= Rs. 1,20,000
Total profits	= Rs. 5,10,000

Mr. Raj has received Rs. 10,00,000 after date of return filing but before due date of return filing. Mr. Raj can not claim 6% of Rs. 10,00,000 as profits by revising the return. There is no doubt that the return can be revised u/s 139(5) before the end of assessment year or up to completion of assessment whichever is earlier. But, as per the provisions of sec 44AD of the Act, the income claimed by Mr. Raj in his income tax return will be final and subsequently by revising return, the same cannot be reduced.

The assessee has to maintain complete records about the receipts from customers, whether they are received in cash or through banking channel/ digitally and whether they are received up to due date of return filing or not. Further, the record maintenance is for two financial years. Maintenance of all these records is a cumbersome task for a small business person. It is also against the basic object of presumptive taxation which is to make the taxation system simple, easy and hassle-free for small taxpayers. There is a need to create a balance between the object of less-cash economy and creating 'ease of doing' business environment.

**4. The Section 44AD(1) begins with “Notwithstanding Anything to contrary contained in section 28 to 43C”**

Section 44AD of the Act begins with a non-obstante clause “(1) Notwithstanding anything to the contrary contained in sections 28 to 43C”... Therefore by virtue of the non-obstante clause, Section 44AD of the Act has a superior position vis-à-vis the other provisions of the Income Tax Act. Nevertheless, Section 44AD(2) of the Act also specifically mentions that any deductions allowable under Section 30 to 38 shall be deemed to have been given full effect. Therefore, there are no specific deductions available for the assessee opting for presumptive taxation under Section 44AD of the Act.

Therefore, Section 44AD (1) determines the taxability by invoking a deeming clause. Further, the section is titled as “Special provision for computing profits and gains of

business on presumptive basis". Hence one may infer that Section 44AD is a self-contained code by its own means devoid of Section 28 to 43C as both chargeability and computation are embedded in it. Having inferred that Section 44AD(1) is a separate code by itself wherein it determines the profit computation without referring to Section 29 of the Act, Section 44AD(2) of the Act specifically mentions that the deduction allowable under Section 30 to 38 of the Act are deemed to have been allowed. Such a provision, prima facie appears unnecessary especially considering that Section 44AD (1) begins with a non-obstante clause "(1) Notwithstanding anything to the contrary contained in sections 28 to 43C" which on a literal reading specifies that Section 44AD will override all the other provisions relevant for computing profits and gains from business i.e., Sections 28 to 43C of the Act, even if the same are contrary.

It is to be noted here that the non-obstante clause stresses on the term **contrary**. However, a similar non-obstante clause employed in the newly inserted Section 44ADA of the Act (Special provision for computing profits and gains of profession on presumptive basis), mentions "Section 44ADA. (1) Notwithstanding anything contained in sections 28 to 43C". On a comparison of Section 44AD and Section 44ADA of the Act, the term 'contrary' is absent in the latter section. Now a question arises that whether the term 'contrary' used in Section 44AD is superfluous. However it does not appear to be superfluous since the proviso to Section 44AD(2) prior to Finance Act 2016 amendment, specifically mentioned that while determining the income deemed to be profits and gains of business under Section 44AD of the Act, deduction under Section 40(b) shall be allowed subject to the limits specified.

Therefore, Section 44AD of the Act which appears to be a separate self-contained code, specifically uses the term contrary in its non-obstante clause so as to enable the eligible assessee to avail the deduction under Section 40(b) of the Act prior to Finance Act 2016.

The new Section 44ADA of the Act does not provide for any deduction while determining the presumptive profits and this may be considered the reason for the absence of the word contrary in the non-obstante clause.

It means section 28 to 43C of Income Tax Act, 1961 is not applicable on eligible assessee carrying on eligible business. Hence, no disallowance / no deemed income under Section 40(a), 40A, 40A(3), 40A(3A), 41 can be made. It has been specifically provided that if the taxable income is to be calculated at eight percent of turnover or gross receipts, then in that case provisions of section 28 to 43C are not to be taken into consideration for the purpose of computing taxable income. It is pertinent to note whether any adverse inference can be drawn by which any amount that would have been added, while calculating taxable income, such amount can be added while calculating income on presumptive basis. By exclusion clause in respect of section 28 to 43C it seems that no disturbance can be made on account of provisions of sec 28 to 43C if the total income is arrived at on the presumptive basis.

**Example:** Mr. Y has claimed bad debts written off of Rs. 50,000 in year 2014-15. In P.Y. 2019-20 he has recovered Rs. 30,000. Separate addition of bad debts recovered may not be made if the profits are declared under presumptive taxation scheme.

- **Issue on Disallowance U/S 43B**

A very interesting issue on the disallowance u/s 43B of the Income Tax Act, 1961 has been considered by Panaji Tribunal in case of Good Luck Kinetic v. ITO (2015) 58. The Tribunal held that 44AD starts with “notwithstanding anything to the contrary contained in Sec. 28 to 43C” whereas section 43B starts with the words “notwithstanding anything contained in any other provisions of this Act”. The non-obstante clause in Sec. 43B has far wider amplitude. Hence, disallowance could be made by invoking the provisions of Sec. 43B.

This is because the said provisions u/s 28 to 43C are provisions relating to the computation of business income of the Assessee. However, a perusal of the provisions of Sec. 43B shows that the said provision is a “restriction” on the allowance of a particular expenditure representing statutory liability and such other expenses, claimed in the profit and loss account unless the same has been paid before the due date of filing the return.

Further, the non-obstante clause in Sec. 43B has far wider amplitude because it uses the words “notwithstanding anything contained in any other provisions of this Act”. Therefore, even assuming that the deduction is permissible or the deduction is deemed to have been allowed under any other provisions of this Act, still the control placed by the provisions of Sec. 43B in respect of the statutory liabilities still holds precedence over such allowance. This is because the dues to the crown has no limitation and has precedence over all other allowances and claims. The disallowance made by the AO by invoking the provisions of Sec. 43B of the Act in respect of the statutory liabilities are in order even though the Assessee’s income has been offered and assessed under the provisions of Sec. 44AF of the Act.

Therefore, considering the view held by the aforesaid Tribunal, addition/ disallowance can be made u/s 43B even though the income has been declared u/s 44AD, 44ADA or 44AE.

**Example:** Mr. Dawar, having turnover of Rs. 70,00,000 declared profit at 8% amounting to Rs. 5,60,000. He has not deposited employer’s share of EPF of Rs. 25,000 up to due date of return filing. Also, he has not paid bonus amounting to Rs.40,000 to his employees. Whether addition can be made u/s 43B if Mr. Dawar opts for sec 44AD?

Yes, addition can be made u/s 43B even if income is declared u/s 44AD. In this case the income will be assessed as:

Profits declared u/s 44AD	Rs. 5,60,000
<b>Add-Disallowances u/s 43 B</b>	
EPF not deposited upto due date of return filing	Rs. 25,000
Bonus not paid upto due date of return filing	Rs. 40,000
Assessed Income	Rs. 6,25,000

- **Issue of disallowance u/s 40**

Sec 40 begins with “Notwithstanding anything to the contrary in sections 30 to 38” It is to be noted that Section 40 is clothed in a negative language and it says that certain amounts shall not be deducted while computing income under the head “profits & gains of business or profession. whereas section 44AD begins with “notwithstanding anything to the contrary contained in sec 28 to 43C”. On analysis of both the sections, the amplitude of non-obstante clause of section 44AD is higher than the non-obstante clause of section 40. Section 40 relates to disallowance of certain expenses due to non-deduction of TDS or non-deduction/ non-payment of equalisation levy, remuneration/ interest by firm to partners in excess of allowed etc.

Therefore, these expenses would not be disallowed even if TDS has not been deducted. However, the assessee may be deemed as assessee in default as per section 201 as sec 44AD override provisions of section 28 to 43C but not the provisions of TDS.

**Example:** Mr. Saurav declaring income u/s 44AD has made payment of interest to non-resident. However, no TDS has been deducted. Whether the expense will be disallowed u/s 40(a)?

The interest expense will not be disallowed as sec 44AD overrides sec 40(a). The assessee was required to deduct TDS as per sec 195. Although, he has not deducted the TDS, expense will not be disallowed. However, he may be considered as assessee in default as per sec 201 and other penal provisions may be applicable as sec 44AD does not override TDS provisions. This issue is discussed in detail later in this book.

- **Issue of disallowance u/s 40A**

Sec 40A relates to disallowance related to excess payment of related party, cash payment to a person in excess of Rs. 10,000 in a day, payment to unapproved fund, mark to market losses etc. The comparison of sec 44AD and 40A is very interesting and different from sec 43B and sec 40. Sec 40A overrides all the other provisions of PGBP.

The section begins with “The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act relating to the computation of income under the head “Profits and gains of business or profession”. The non-obstante clause of this section seems to override provisions of sec 44AD. However, the Panaji Tribunal in case of Good Luck Kinetic v. ITO (2015) 58 relating to disallowance u/s 43B have considered two points:

- i) Amplitude of non-obstante clause
- ii) Payment to crown i.e statutory dues

The provisions of sec 40A are not related to statutory dues and such other dues. It just imposes restrictions on payments and disallows amount which is not paid as per the provisions of the Act. It is also to be noted that provisions of sec 40A of the Act are with regard to allowability of expenditure which has been actually incurred and claimed by the assessee from sec 30 to 38 of the Act. Therefore, if the assessee declares income as per the provisions of sec 44AD of the Act, no disallowance shall be made u/s 40A of the Act.

**Example** : If any person opting for **sec 44AD** has made cash purchases worth Rs. 15,000 no disallowance can be made u/s 40A(3), even if the cash payment to a person exceeds Rs. 10,000 in a day. Cash payment to transporter in excess of Rs. 35,000 in a day shall not be disallowed.

Similarly, disallowance u/s 40A for excess payment to relatives cannot be made. No addition u/s 41 can be made.

- **Issue of Section 43CA vs. Section 44AD**

It is a very special case which also try to disturb the scope of sec 44AD of the Act. To understand this concept, we must see the sec 43CA of the Act, which reads as under:

*“ where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

**Provided** that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing



*profits and gains from transfer of such asset, be deemed to be the full value of the consideration."*

It is to be noted that section 44AD starts with "Notwithstanding anything to the contrary contained in sections 28 to 43C...." meaning thereby, indirectly, section 44AD is subject to section 43CA. This is not correct position of law. It is to be noted that the open ended coverage of section 44AD(1) is puzzling since sale of immovable property held as stock in trade governed by section 43CA is not brought within the provisions of section 44AD. Section 44AD starts with non-obstante clause by saying that the provisions would prevail over sections 28 to 43C of the Act. The applicability of the section is however optional. Only when the taxpayer opts for the provisions of section 44AD, it would prevail over the provisions of sections 28 to 43C. Now a question arises, whether the provisions of sec 43CA of the Act are applicable in case of presumptive tax. In this connection it is to be noted that both these sections i.e.44AD and 43CA of the Act are deeming sections. A legal fiction is created only for a definite purpose and is limited to that purpose and should not be extended beyond it. It should be within the framework of the purpose for which it is created. Deemed to be is not an admission that it is in reality, rather it is an admission that it is not in reality what it is deemed to be.

'The meaning of total turnover/ gross receipts has not been defined u/s 44AD of the Act. But if we carefully read the provisions of sec 44AD(1), the words used are total turnover of such business. This means the assessee has to take actual turnover or gross receipts' and not the deemed turnover or receipts. Further, the terms 'total sales, turnover or gross receipts' are fiscal facts and cannot include deeming fiction created by section 43CA which categorically apply only 'for the purpose of computing profits and gains from transfer of asset' and is meant for taxing sale of immovable assets held as stock in trade where value adopted for stamp duty purposes by State Government authorities is more than 110% of the consideration. Similarly, new provision of section 43CA should not apply in cases governed by section 44AD for assessment of presumptive profits on sale of land/building.

**Example:** Mr. X is engaged in business of sale and purchase of property. He sells a property for Rs. 10,00,000. The stamp duty value of the same is Rs. 15,00,000. His total turnover other than is property is Rs. 60,00,000. What will be his total turnover?

The stamp duty value of the property is more than 110% of consideration i.e Rs. 11,00,000 (110% of 10,00,000). If Mr. X opts for sec 44AD Rs. 10,00,000 will be added in turnover as sec 43CA is not applicable in case income is declared u/s 44AD. The total turnover will be Rs. 70,00,000.

If Mr. X not opts for sec 44AD, Rs. 15,00,000 will be added in turnover. His total turnover will be considered as Rs. 75,00,000.

## **5. Meaning of words 'claimed to have been earned by the eligible assessee'**

The section has been amended for the benefit of the assessee and the words claimed to have been earned by the eligible assessee. By the introduction of these words in section 44AD(1), the legislature shows his intention to accept specified income as returned income even if higher sum is earned by eligible assessee unless it is claimed by assessee in his Income Tax Return. The word "Claim" signifies the right of assessee, and it is not an obligation of the assessee. The distinction between Right and obligation is very necessary here. The language of section 44AD(1) requires claims to have been made by an assessee for returning higher income. If there is no claim made by assessee in return for higher income, there is no higher income. The assessee, who has opted presumptive taxation system, is under no obligation to explain individual entry of cash deposit in bank unless such entry has no nexus with gross receipts.

### **[CIT v. Surinder Pal Anand [2010] 192 TAXMAN 264 (PUNJ. & HAR.)**

**Example**– Mr. Sham is carrying on business. The Turnover is Rs.90 Lacs. The profit as per his books or calculation is Rs.9 Lakhs. However, he opts to return the income under section 44AD @ 8% i.e. Rs.7.20 lacs. Now a question arises regarding the power of AO to assess the difference of 1.8 lacs as undisclosed income. In this case Mr. Sham has claimed the income of Rs.7.20 lac as in his return of income as his claim. The assessee is free to exercise this option at his will. Legally he is given the option by the statute and such an option cannot be equated with obligation cast upon the assessee. There is a definite difference between OPTION and OBLIGATION and an Option granted to the assessee cannot be construed to be his obligation when his actual income is more than 8% of Turnover. The AO cannot make any addition on this count as there is no provision under the Act permitting to make such addition. Further, the words used are "higher income claimed to have been earned by the assessee". It is to be clarified that if the assessee has not made a claim in the Return of Income regarding any higher income, it implies there is no claim for Higher Income made by assessee. AO cannot claim that the assessee has earned higher income, because under the statute, he is not entitled to do so.

- B. No further deduction would be allowed: Section 44AD (2)**- All deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed. However, Deduction u/s 80C to 80U will be given from GTI of the assessee even from the deemed income included in the GTI.

**Illustration:** Mr. Prince is running a Printing Press. His gross receipts from this business during year is Rs. 85,00,000 and declared income as per the provisions of section 44AD. After computing the income @ 8% of such gross receipts, he wants to claim further deduction on account of depreciation on the press building. Can he do so as per the provisions of section 44AD?

As per the provisions of section 44AD, from the net income computed at the prescribed rate, i.e., @ 8% of sales or gross receipts from the eligible business during the previous year, an assessee is not permitted to claim any deduction or any business expense from such income. Thus, in this case Mr. Shan cannot claim any further deduction from the net income of Rs. 6,80,000 i.e., @ 8% of gross receipts of Rs. 85,00,000.

C. **Written down value of asset:Section 44AD (3):** The WDV of any asset of such business shall be deemed to have been calculated as if the assessee has claimed and had been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

It is to be noted that if an assessee who has opted for presumptive taxation system, then any deduction allowable under sections 30 to 38 shall be deemed to have been already given effect to and no further deduction under those sections shall be allowed. It is to be noted that deduction for depreciation which is allowed u/s 32 shall be deemed to be allowed. Therefore, current year depreciation as well as **unabsorbed depreciation** i.e. brought forward depreciation shall not be allowed. However, WDV of the block of assets shall be calculated as if the depreciation has been allowed.

Sec 44AD overrides sec 28 to 43 C but does not override chapter VI. Therefore, current year losses & brought forward losses can be set off against deemed income. The same was held by ITAT, Pune in the case of DCIT v. Sunil M. Kankariya [2008].

**Example:**

Mr. Y has turnover of Rs. 50,00,000 for the P.Y. 2019-20. He has declared profits at the rate of 8% amounting to Rs. 4,00,000. He has bought machinery worth Rs. 12,00,000 on 15/04/2019. He has loss from house property of Rs. 75,000. Can he deduct depreciation of Rs.1,80,000 (15% of Rs.12,00,000) and set off loss from the above profit of Rs.4,00,000?

No, depreciation shall not be reduced from the above profits. It is deemed that depreciation has been already claimed and allowed. The closing WDV as on 31/03/2020 shall be Rs. 10,20,000 (12,00,000 – 1,80,000).

Mr. Y shall be allowed to set off the loss of Rs. 75,000. The total income will be Rs.3,25,000 (4,00,000 – 75,000).

**EXAMPLE:**

Mr. Ashmeet Singh is engaged in the business of Civil Construction undertakes small government projects. He received the following amounts by way of contract receipts:

Particulars	Rs.
Towards contract work for supply of labour	80,00,000
Value of materials supplied by Government	15,00,000
Gross receipts	95,00,000

Mr. Ashmeet Singh paid Rs. 40,00,000 to labour in cash. He has brought forward loss and unabsorbed depreciation of the discontinued business Rs.55,000 and Rs. 25,000 respectively. Compute income under the head "PGBP" assuming that he opts for section 44AD.

**Solution:**

Particulars	Rs.
Presumptive income under section 44AD [Rs. 80,00,000 x 8%]	6,40,000
Less: unabsorbed depreciation	Nil
Less: Business loss brought forward u/s 72	(55,000)
Business Income	5,85,000

**Notes:**

(1) As per para 31.1 of the circular no. 684 of CBDT dated 10-06-1994, gross receipts are the amount received from the clients for contract and will not include the value of material supplied by the client.

(2) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Therefore, question of disallowance in respect of labour payment of Rs. 40,00,000 in cash under section 40 A(3) does not arise.

(3) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Since depreciation is governed by section 32(2), it cannot be adjusted while computing income under section 44AD of the Act. But brought forward business loss is governed by section 72, same shall be adjusted against presumptive income computed under section 44AD.

**EXAMPLE:** RSK & Co. a partnership firm engaged in the manufacturing business has a gross receipt of Rs.59,00,000 from such business. The partnership deed provides for payment of salary of Rs.20,000 p.m. to each of the partners i.e. C and K. The firm uses machinery for the purpose of its business and the WDV of the machinery as on 1.04.2016 is Rs.2,00,000. The machinery is eligible for depreciation @15%. Compute the profits from the business for the assessment year 2017-18, if firm opts for the scheme under section 44AD and has received the following amount by account payee cheques:

1. Rs.25,00,000 till 31.3.17
2. Rs.6,00,000 between 31.3.17 and 31.7.17
3. Rs.5,00,000 after 31.7.17

**Solution:**As per section 44 AD the profits will be computed as under:

1.	6% of gross receipts of ₹31,00,000 i.e. the amount received till the due date of filing the return u/s 139(1)	₹1,86,000
2.	8% of gross receipts of ₹28,00,000	₹2,24,000
		₹4,10,000

No deduction will be allowed on account of depreciation.

The WDV of the machinery for next year shall be taken as ₹1,70,000 (2,00,000 – 15% of ₹2,00,000) assuming as if depreciation has been allowed.

**D. Section 44AD (4): Consequences of opting out of the section 44AD(1):**• 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 5 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).

The above provision postulates as the following:

- a. The assessee should have declared profit as per section 44AD for any previous year; and
- b. The assessee should have declared profit not in accordance with section 44AD in any of the five assessment years succeeding the previous year in which profit was declared as per section 44AD as per condition (a).

If above two conditions are satisfied, such assessee shall not be eligible to claim the benefits of Section 44AD for five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD as given in condition (b) above.

Further from plane reading of the provision, it is understood that the restrictions provided in sub-section (4) shall not be applicable to the assessee having business income for the first time during the financial year 2016-17 and declare income below the limits prescribed under sub-section (1) of section 44AD for the AY 2017-18.

- E. **Section 44AD (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.

Sub Section 5 will be applicable if following conditions are satisfied.

- a. An eligible assessee to whom the provisions of sub-section (4) are applicable; and
- b. The total income of that assessee has exceeded the maximum amount which is not chargeable to income-tax.

In other words, sub-sections (4) and (5) are mutually inclusive. Provisions of sub-section (4) shall not be applicable to an assessee who never opted for the scheme in any of the earlier previous years, as it provides that the eligible assessee should have declared profits as per section 44AD for any previous year. Under this situation, assessee who have never ever opted for the scheme till the AY 2016-17 can enjoy the benefits by showing lesser profits for the subsequent assessment years.

## Controversial Issue - Needs CBDT Clarification

The amendment was brought by Finance Act, 2016 wef 01/04/2017. The government is discouraging taxpayers from misusing the scheme and constantly changing their option often. If any assessee opts for presumptive taxation, he has to continue it for 5 years and if he wants to opt out, he will be barred from resuming presumptive taxation for a period of 5 years. There is an important issue which emerges for reckoning the period of 5 years. Amendment to section 44AD (i.e., new sub section (4) and (5) is applicable from 01/04/2017 i.e., from Assessment Year 2017-18. Now, question arises regarding the counting of the continuous 6 assessment years for the purpose of sub section (4). Will it be done initially from the Assessment Year 2017-18 itself or even the options exercised in the earlier years can also be counted? Another important question is, if the person has continuously opted for 5 years period in the past then the provision of 5 years restrictions will not be there as the sub section *means that if a person has opted for 44AD for 5 years period continuously then no 5 years restrictions would be there if assessee decides to opt out. The issues are controversial and it would be in the interest of the masses if the CBDT clarifies it suitably.*

For example, Ashmeet claims to be taxed on presumptive basis under Section 44AD for AY 2019-20, he offers income on basis of presumptive taxation scheme. However, for AY 2020-21, he did not opt for presumptive taxation Scheme. In this case, he will not be eligible to claim benefit of presumptive taxation scheme for next five Assessment years i.e. from AY 2021-22 to 2025-26.

Further, he is required to keep and maintain books of account and he is also liable for tax audit as per section 44AB from the AY in which he opts out from the presumptive taxation scheme if his total income exceeds the maximum amount not chargeable to tax.

This can be explained with the help of following table:

Assessment Year	Turnover	Rate of Profit	Whether Total Income more than Basic exemption	Whether Section Applicable			Remarks
				44AA	44AB	44AD	
2018-19	3.00 Crore	7%	Yes	Yes	Yes	No	A
2019-20	1.20 Crore	9%	Yes	No	No	Yes	B
2020-21	85 Lakh	5%	Yes	Yes	Yes	No	C
2021-22	75 Lakh	10%	Yes	Yes	Yes	No	D
2022-23	1.20 Crore	4.5%	No	Yes	Yes	No	E
2023-24	88 Lakh	4.5%	No	No	No	No	F
2024-25	92 Lakh	6%	Yes	Yes	Yes	No	G
2025-26	95 Lakh	9%	Yes	Yes	Yes	No	H
2026-27	2.50 Crore	6%	Yes	Yes	Yes	No	I

Remarks	Explanation
A	Turnover exceeding 1 Crore and hence,he is liable to keep books of account & Audit 44AB(a).
B	Since, Ashmeet opted 44AD, he is not required to maintain books and not required to get audited u/s 44AB
C	Since, Asmeet fails to opt sec 44AD.The benefit of section 44AD shall not be available to the assessee for A.Y. 2021-22 to 2025-26. Therefore he is liable to keep books of account & Audit u/s 44AB(e).
D	Ashmeet is liable to keep books of account & Audit u/s 44AB(e).
E	Ashmeet is liable to keep books of account & Audit u/s 44AB(a).
F	Ashmeet is not liable to maintain books of account and not required to get them audited u/s 44AB(e).
G	Ashmeet is liable to keep books of account & Audit u/s 44AB(e).
H	Ashmeet is liable to keep books of account & Audit u/s 44AB(e).
I	Ashmeet is liable to keep books of account & Audit u/s 44AB(a).



From the perusal of the above table, it is clear that if in any Previous Year, Mr.Ashmeet fails to opt the provisions of Section 44AD(4) of the Act, then for the next 5 Previous Years he will not be eligible to claim the benefit u/s 44AD of the Act. In such case, he will be required to maintain the books of account and he will also be liable for tax audit as per section 44AB from the AY in which he opts out from the presumptive taxation scheme if his total income exceeds the maximum amount not chargeable to tax. From the above table, it can also be concluded that the period of five years shall be counted next to the year when assessee opts not to avail the benefits of sec 44AD of the Act. .After the expiry of five years, this cycle again will start from the year in which he opts to adopt the provisions of sec 44AD of the Act.

### **Books of Accounts**

An assessee having turnover up to Rs. 2 crore and opting for sec 44AD is not required to maintain books of accounts. As provided in section (5) of 44AD the eligible assessee who claims to be taxed on presumptive basis is not required to maintain books of account as provided in section 44AA. If the turnover is below Rs. Two crores and opting for sec 44AD, audit u/s 44AB is not required. However, if the turnover is exceeding Rs. Two crores, the assessee is outside the ambit of section 44AD, as provided in section 44AD. It will be interesting to note that the presumption of income is to work on the basis of the turnover or gross receipts. The question would be if the books are not maintained how the turnover would be proved? Therefore, when the income is computed as per the provisions of section 44AD, it would be necessary to prove for the assessee the figure of turnover or gross receipts. Which records are to be maintained will depend upon the type of the business of the eligible assessee. Figures adopted under GST Act provisions would be good evidence. Copies of invoices issued may also be maintained as evidence of turnover. If the correct turnover or gross receipts is not ascertainable from the records maintained, it is likely that the same may be estimated by the Assessing Officer in absence of proper records of turnover or gross receipts. Therefore it would be necessary for the eligible assessee to maintain such records with evidences so that the turnover or gross receipts can be conclusively proved.

## Chapter-5

### Applicability of provisions of sec 44AA, 44AB and 44AD when turnover is up to Rs. 1 crore

Broadly speaking, provisions of Section 44AD of the Act are applicable to Resident Individual or HUF or Partnership Firm engaged in the business other than specified (excluded) business whose total turnover/ gross receipts are Rs.2 Crores or less. Such an assessee is given an option to file presumptive income return. The assessee filing presumptive or higher income return would enjoy the relaxation of not getting its accounts audited u/s 44AB even if total sales / turnover / gross receipts exceed Rs. 1 Crore. If such an assessee files below presumptive income return, barring certain situations, it will have to get its accounts audited even if total sales / turnover/ gross receipts are / is Rs. 1 Crore or less. It is also to be noted that if an assessee does not opt for presumptive taxation system, then he is required to maintain books of accounts and get tax audit done u/s 44AB(a) of the Act if his turnover is exceeding 1 crore and if turnover is upto 1crore,he is required to maintain books of account and get tax audit done u/s 44AB(e) of the Act. But there are certain situations in which assessee is either not required to maintain books or get its audit done u/s 44AB of the Act.

1. A person who has started a new business
2. If an assessee who has never opted the provisions of 44AD
3. If taxable income of the assessee is below exemption limit

Before discussing the above cases, first of all we must see the following sections of Income Tax Act, 1961.

**44AA.** (2) *Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—*

- (i) *if his income from business or profession exceeds one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year; or*
- (ii) *where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed ten lakh rupees, during such previous year; or*
- (iii) *where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB, as the case may be, and the assessee has claimed his income to be lower than the*

*profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or*

*(iv) where 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,*

*keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act:*

## **ANALYSIS OF SEC44AA(2) OF THE ACT**

Sec 44AA(2) requires persons carrying on business to maintain books of accounts in certain cases. If a person is carrying on business, he is required to maintain books if his turnover exceeds Rs. 10,00,000 **or** his profits from business exceeds Rs. 1,20,000 in any of the three preceding years. Either of the condition satisfied will require person to maintain books because the word 'or' is used between the conditions. If any condition is satisfied in one or more years out of the three years preceding the previous year shall be required to maintain the books.

In case a new business is started during the previous year, if the turnover is likely to exceed Rs. 10,00,000 or profit is likely to exceed Rs. 1,20,000 in such previous year, assessee is required to maintain books of accounts for that previous year.

If an assessee is declaring profits lower than the rate of profits specified in sec 44AE, or 44BB or 44BBB, then the assessee is required to maintain books.

In respect of sec 44AA(2)(iv) of the Act, w.e.f. AY 2017-18, the assessee shall keep/maintain such books of account & other documents, if the provisions of Sec. 44AD(4) are applicable {i.e. withdrawal of benefit u/s 44AD for next 5 A.Y.(s)} and his income exceeds the maximum amount which is not chargeable to income-tax. [as amended by Finance Act, 2016].

As per sec 44AD(4), the assessee has declared profits as per sec 44AD(1) in any previous year and in the next 5 years he has failed to opt sec 44AD, then the assessee is not allowed to opt sec 44AD in the subsequent 5 years after the year in which he failed to opt sec 44AD. The assessee will be required to maintain books if sec 44AD(4) is applicable and his income exceeds the basic exemption limit.

Sec 44AA(2)(iv) can be summarized as:

- a) The assessee is not eligible for presumptive taxation u/s 44AD for subsequent 5 years , due to opting of presumptive taxation u/s 44AD in any previous year and not opting sec 44AD in any of subsequent 5 consecutive Assessment years.
- b) His income exceeds the basic exemption limit.

**Note:** Limit of Rs.1,20,000/- for Total Income & Rs.10,00,000/- for total sale receipts enhanced to Rs.2,50,000/- & Rs.25,00,000/- respectively in respect of Individuals/ HUF

**44AB(e)** *Every person 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*

### **Analysis of Sec 44AB(e) of the Act**

It is to be noted that u/s 44AB(e) an assessee is required to get his books of account audited who is carrying on the business and is not eligible to claim presumptive taxation under Section 44AD for 5 subsequent years due to opting for presumptive taxation in one tax year and not opting for presumptive tax for any of the subsequent 5 consecutive years provided his income exceeds maximum amount not chargeable to tax.

The two conditions for applicability of Sec 44AB(e) can be summarized as:

- a) The assessee is not eligible for presumptive taxation u/s 44AD for subsequent 5 years , due to opting of presumptive taxation u/s 44AD in any previous year and not opting sec 44AD in any of subsequent 5 consecutive Assessment years.
- b) His income exceeds the basic exemption limit.

### **Sec 44AD(4)**

*44AAD(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).*

### **ANALYSIS of Sec 44AD(4) of the Act**

The above provision postulates as the following:

- a. The assessee should have declared profit as per section 44AD for any previous year;  
**and**
- b. The assessee should have declared profit not in accordance with section 44AD in any of the five assessment years succeeding the previous year in which profit was declared as per section 44AD as per condition (a).

**44AD(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.

### Analysis of Sec 44AD(5) of the Act

Sub Section 5 will be applicable if following conditions are satisfied.

- a. An eligible assessee to whom the provisions of sub-section (4) are applicable; and
- b. The total income of that assessee has exceeded the maximum amount which is not chargeable to income-tax.

In other words, sub-sections (4) and (5) are mutually inclusive. Provisions of sub-section (4) shall not be applicable to an assessee who never opted for the scheme in any of the earlier previous years, as it provides that the eligible assessee should have declared profits as per section 44AD for any previous year. Under this situation, assessee who have never ever opted for the scheme till the AY 2016-17 can enjoy the benefits by showing lesser profits for the subsequent assessment years.

On combined analysis of 44AA(2)(iv), 44AB(e) and 44AD(4) we can interpret that u/s 44AB(e) those assessee are required to get their books audited whose

- a. Total income exceeds basic exemption limit.
- b. Earlier assessee has declared income u/s 44AD in any previous year.
- c. Even being eligible, assessee do not declare income as per sec 44AD in any of next 5 A.Ys in which he first declared income as per sec 44AD.

#### 1. A person who has started a new business

It is very interesting issue in which an assessee who has started a new business during the previous year and he is unable to decide whether to opt for sec 44AD of the Act or not. If he decides to avail the benefit of sec 44AD, then he has to declare profits at the rate of 8% or 6% of turnover or at higher rate as specified in sec 44AD. Then he shall neither be required to maintain books of account nor required to get them audited.

In case, he decides to not opt for sec 44AD, the situation will be entirely different. He has not declared profits u/s 44AD in any of the preceding previous years. Further, he has not failed to declare profits in subsequent 5 years as per sec 44AD. 2 of the 3

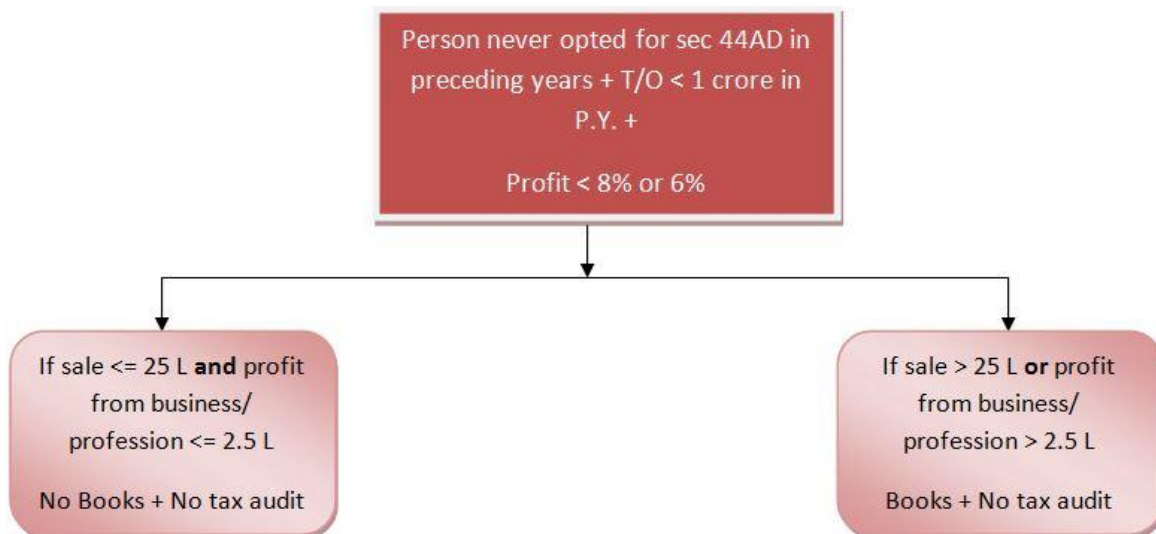
conditions discussed above for audit u/s 44AB(e) are not satisfied. The assessee will not be required to get his books of account audited in first year of business if his turnover is below Rs. 1 crore and he not opts for sec 44AD in such previous year. However, he will be required to maintain books of accounts as per 44AA(2)(ii) if in case of individual/ HUF turnover is likely to exceed Rs. 25 Lakh or his profits are likely to exceed Rs. 2.5 Lakh.

Therefore, assessee who has started a new business would not be required to get books of accounts audited even if he is declaring profits below 8% or 6% because the condition that **in earlier previous year he has declared income as per sec 44AD** is not satisfied. The income may be below taxable limit or higher than that.

Example: Mr. Vijay has started a new business in F.Y. 2019-20. He is not opting for sec 44AD

Turnover (Rs.)	Income/ Profits	Maintenance of Accounts	Audit of Books
20,00,000	1,50,000	No	No
20,00,000	3,00,000	Yes (profits exceeds Rs. 2.5 L)	No
50,00,000	3,25,000	Yes	No
50,00,000	1,75,000	Yes	No

From combined study of sec 44AA, 44AB and 44AD, we can conclude:



## 2. If an assessee who has never opted the provisions of 44AD

In this case if an assessee who has never opted the provisions of sec 44AD of the Act will not be required to get his books of accounts audited if his turnover is below Rs. 1 crore even if his declaring profits below 8% or 6% of turnover because sec 44AD(4) is not applicable in his case. Two of the 3 conditions mentioned on combined analysis of sec 44AA(2), 44AB(e) and 44AD(4) are not satisfied in this case i.e. assessee has not declared income u/s 44AD in any previous year and assessee has not failed to opt sec 44AD in subsequent 5 years. It does not matter whether the income is below the basic exemption limit or higher than that.

This will be applicable for the person not only in the first year, rather in later years also. If in later years he has not declared income u/s 44AD even once, he would not be required to get books of accounts audited even his profits are below the rates provided in sec 44AD provided turnover is below Rs. 1 crore.

### Example:

A.Y.	Turnover (Rs.)	Income/ Profits	Maintenance of Accounts	Audit of Books
2016-17	1,35,00,000	4,00,000	Yes	Yes 44AB(a)
2017-18	2,50,00,000	5,50,000	Yes	Yes 44AB(a)
2018-19	1,25,00,000	3,00,000	Yes	Yes 44AB(a)
2019-20	80,00,000	3,25,000	Yes 44AA(2)(i)	No
2020-21	50,00,000	1,75,000	Yes 44AA(2)(i)	No
2021-22	75,00,000	4,25,000	Yes 44AA(2)(i)	No

From the above table it is clear that under this situation, assessee who have never ever opted for the scheme till the AY 2016-17 can enjoy the benefits by showing lesser profits for the subsequent assessment year.

## 3. No audit is required if turnover is up to Rs. 1 crore and taxable income is below exemption limit

From the reading of provisions of the sec 44AD(5), it is concluded that there are two conditions of sec 44AD(5) of the Act. The first is regarding applicability of provisions of sec 44AD(4) of the Act and the second is that the income of assessee is more than the basic exemption limit. These both conditions are connected with word “and”. These two conditions must be fulfilled simultaneously. If the assessee fails to fulfill any one condition or both, then the assessee is not required to maintain books of account and not to get the accounts audited.

In other words, we can say that the assessee is bound to get the books of accounts audited, if the following two conditions are satisfied:-

- a. Earlier assessee has declared income u/s 44AD in any previous year and assessee do not declare income as per sec 44AD in any of next 5 A.Ys in which he first declared income as per sec 44AD.
- b. The total income of the assessee exceeds the maximum amount which is not chargeable to income tax

To claim the benefit of above sec 44AD(5), firstly we have to see the meaning of total income. As per sec 2(45) of the Act, Total income means the total amount of income referred to in section 5 computed in the manner laid down in the Act. Thus total income for the purpose of Sec 44AD(5) would be determined as under :

- i) Income from all heads of income be aggregated after adjusting for brought forward losses, unabsorbed depreciation, etc. and after excluding exempt incomes;
- ii) From the resultant, amount eligible for deduction under Chapter VI-A will be deducted.
- iii) Balance will be total income for the purposes of section 44AD(5)

If the total income is below the maximum amount not chargeable to tax in the case of assessee then the assessee will not be required to maintain books and get them audited if he declares profit from eligible business lower than that deemed under section 44AD.

Further, if any individual/HUF has incurred loss, then also there is no need to maintain books and to get them audited.

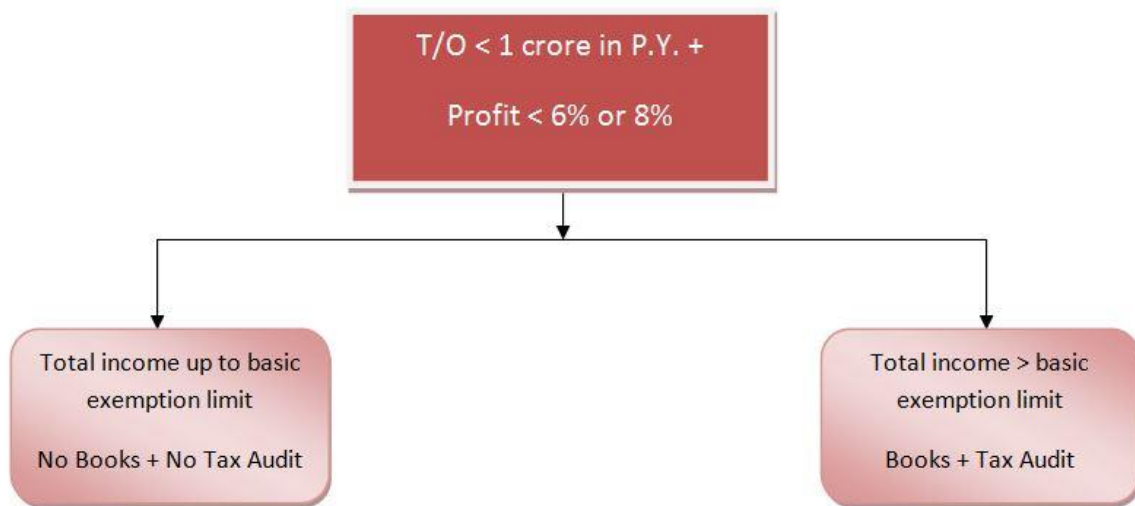
It is to noted that above exemption can be claimed only by individual or HUF and not in case of partnership firm as partnership firm do not avail any basic exemption limit , hence ,Tax Audit u/s 44AB is applicable. These provisions can be presented in tabular form as under:



Income from Eligible business	Total Income Exceeds Basic Exemption Limit	Applicability of sec 44AD	Applicability of sec 44AA	Applicability of sec 44AB
> 8% of Turnover	Yes	Yes	No	No
= 8% of Turnover	Yes	Yes	No	No
< 8% of Turnover	Yes	No	Yes	Yes
< 8% of Turnover	No	No	No	No

**Example :** Mr. Fancy aged about 52 years runs a grocery shop. He sells goods on cash basis only. For the P.Y. 2019-20, he provides the following information. He has no income other than profits from his shop. Whether Mr. Fancy will be required to get books of account audited?

Case	Sale/Receipts	Net Profit	8% of Sale	Whether Audit Applicable?
1	Rs. 80,00,000	RS.4,00,000	Rs.6,40,000	Yes, because profit lower than 8% of sale and his total income exceeds basic exemption limit.
2	Rs. 60,00,000	Rs.2,25,000	Rs.4,80,000	No, because his total income is less than basic exemption limit of Rs.2,50,000 even though profits are less than 8% of sale.
3	Rs.1,40,00,000	Rs.1,75,000	Rs.11,20,000	Yes, because sale has exceeded Rs. 1 crore. therefore, this case is covered u/s 44AB(a) and not 44AB(e). It is to be noted that limit u/s 44AB(a) is Rs. 1 crore and not Rs.2 crore. However, if the assessee having turnover up to Rs. 2 crore opts for sec 44AD, then he will not be required to get his books audited.
4	Rs. 70,00,000	Rs.9,00,000	Rs.5,60,000	No, as he has declared profits more than the 8%.



## CHAPTER-6

### Presumptive Taxation Scheme under Section 44ADA

The Scheme of Presumptive Taxation for Professionals was introduced under Section 44ADA in the Finance Act 2016 and is applicable from Financial Year 2016-17 onwards.

#### **Need for Introduction of Section 44ADA**

Before 2016, the benefits of Presumptive Taxation were only given to Businesses under Section 44AD and to Transporters under Section 44AE. Specified professionals were specifically kept out of this scheme of Presumptive Taxation.

As Professionals were specifically kept out of the scheme of Presumptive Taxation, the only option available for Professionals was to compute their Income under the normal system of taxation. These professionals were also required to maintain all books of accounts, maintain a copy of invoices for all expenses and in some cases – they were also required to get their Tax Audit conducted.

So many complexities ended up discouraging the professionals from filing income tax returns. So as to simplify the taxation for Professional, the Presumptive Taxation for Professionals was introduced under Section 44ADA in Finance Act 2016 which is applicable from Financial Year 2016-17 onwards.

#### **Section 44ADA has FOUR sub sections**

**Section 44ADA (1)** – Chargeability and scope

**Section 44ADA (2)** – Deductions deemed have been already given full effect under sec 30 to 38

**Section 44ADA (3)** – Depreciation deemed to have been allowed – issue of computation of short term capital gain – issue of set off of unabsorbed depreciation

**Section 44ADA (4)** – Consequences if sub-section (1) is not followed – applicability of section 44AA(1) and section 44AB

#### ***The section 44ADA is as follows:***

**44ADA.** (1) Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh

rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) 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 (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

**Eligible Profession:** The presumptive taxation scheme under section 44ADA for estimating the income of an assessee:

- who is engaged in any profession referred to in section 44AA(1) such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette; and
- whose total gross receipts does not exceed fifty lakh rupees in a previous year,

**Profession referred to u/s 44AA(1): Every person carrying on:**

- ✚ Legal
- ✚ Medical
- ✚ Engineering or
- ✚ Architectural profession or
- ✚ the profession of accountancy or
- ✚ technical consultancy or
- ✚ interior decoration or
- ✚ any other profession as is notified by the Board in the Official Gazette

**Other notified professions:**

- (a) The profession of authorized representative; and
- (b) the profession of film artist (actor, cameraman, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer)—Notification : No. SO 17(E), dated 12-1-1977
- (c) the Profession of Company Secretary—Notification : No. SO2675, dated 25-9-1992
- (d) the Profession of Information Technology—Notification : No.SO 385(E), dated 4-5-2001.

**Example:** An Individual who is doing financial consultancy business and the service receiver while he is paying service charge, he is deducting TDS u/s 194 J. Whether he can offer income u/s 44ADA? – Sec. 44ADA will be applicable only to the Notified Professions. It is a inclusive definition, it doesn't cover financial consultancy business, hence he can't offer income u/s 44ADA. – Notifications No. SO-18[E] dated 12.01.1977, No. SO 2675 dt.25.09.1992 and S.O. 385[E] dt.04.05.2001

**Meaning of authorised representative-**

Explanation to Rule 6F

Authorised representative means a person who represents any other person, on payment of any fee or remuneration before any Tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy.

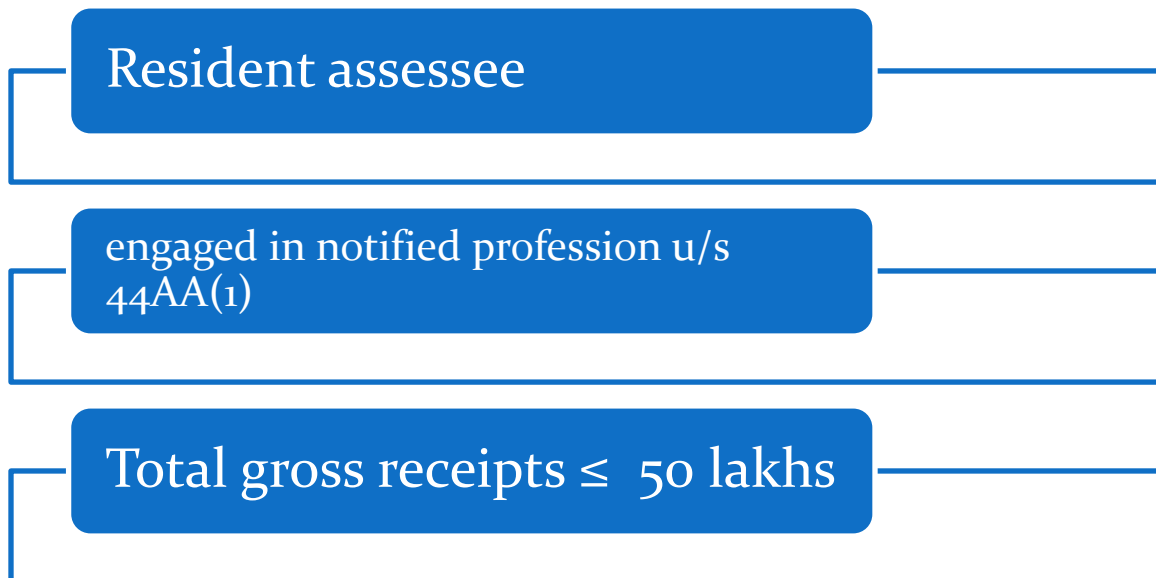
**Eligible Business-Financial consultancy**

**EXAMPLE :** An Individual who is doing financial consultancy business and the service receiver while he is paying service charge, he is deducting TDS u/s 194 J. Whether he can offer income u/s 44ADA?

**A.** No. Sec. 44ADA will be applicable only to the Notified Professions. It is a inclusive definition, it doesn't cover financial consultancy business, hence he can't offer income u/s 44ADA.

**Presumptive rate of income:** Presumptive rate of income would be a sum equal to 50% of the total gross receipts, or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee.

**Eligible Assessee:** All the three conditions should be satisfied:



**No further deduction would be allowed: Section 44ADA(2)** : Under the scheme, the assessee will be deemed to have been allowed the deductions under section 30 to 38. Accordingly, no further deduction under those sections shall be allowed.

**Written down value of the asset: Section 44ADA(3)** :The written down value of any asset used for the purpose of the profession of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in respect of depreciation for the relevant assessment years.

**Maintenance of books of accounts and audit:**

A very interesting issue is that whether a professional who has opted presumptive system of taxation has to maintain books of account also. To resolve this issue firstly we have to see the provisions of section 44AA(1) of the Act given earlier in this book.

From the perusal of above section, it is clear that it is mandatory for the professional who is covered under Section 44ADA to maintain books of accounts even though he has opted for the presumptive taxation scheme. Although, the Memorandum to the **Finance Bill, 2016** provides that an assessee opting for Section 44ADA would not be required to maintain books of account under Section 44AA(1), the same has not

been brought out clearly in the Section 44AA. Section 44AA is silent in relation to the assessee who is covered by Section 44ADA. Moreover the provisions of Sec 44ADA overrides sec 28 to 43C and not sec 44AA of the Act. Hence, on combined reading of 44AA(1), 44AA(3) read with Rule 6F, **the specified professionals would need to maintain books of account even if they opt for section 44ADA.**

However, as per the FAQs on presumptive taxation issued by Income Tax Department provides that if assessee declares income u/s 44ADA, there is no need to maintain books of account. The FAQ issued is provided here

“If a person adopts the presumptive taxation scheme of section 44ADA, then he is required to maintain books of account as per section 44AA?”

In case of a person engaged in a specified profession as referred in sections 44AA(1) and opts for presumptive taxation scheme of sections 44ADA, the provision of sections 44AA relating to maintenance of books of account will not apply. In other words, if a person opts for the provisions of sections 44ADA and declares income @50% of the gross receipts, then he is not required to maintain the books of account in respect of specified profession.”

From the above FAQ it can be concluded that person opting for sec 44ADA would not be required to maintain books of account. However, the FAQs do not have any legal backing and it may change in future.

**Option to claim lower profits:Section 44ADA(4):** An assessee may claim that his profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under section 44ADA(1); and if such total income exceeds the maximum amount which is not chargeable to income-tax, he has to maintain books of account under section 44AA and get them audited and furnish a report of such audit under section 44AB.

#### **Issues related to Sec 44ADA:**

- **Applicability of Section 44ADA to a partner of firm receiving remuneration and/or interest from the firm**

A very interesting is that whether the provisions of Section 44ADA shall be applicable to the remuneration and other receipts by a partner from a professional services firm? In this connection, it is to be noted that the Income Tax Act, 1961 vide Section 40(b) states that the firm is eligible to claim remuneration as deduction to the extent specified therein and such remuneration is deductible in hands of the firm. The balance amounts are subjected to tax as profits in the hands of the firm. In other words, the eligible remuneration is deductible in the hands of firm and taxable in hands of partners, the

remainder (profit) is taxable in hands of the firm and exempted in the hands of partners u/s 10(2A).

Hence, in the hands of the partner, the following will be the impact:

1. Remuneration which was allowed as deduction in firm will be taxable
2. Profit which was taxed in the hands of the firm will be exempt.

Now a question arises whether the remuneration and other income received from the firm can be called as 'gross receipts' for the purposes of Section 44ADA. Whether the share of profits of a partner can be considered as gross receipts for the purpose of Section 44ADA? The Mumbai Bench of the Income Tax Appellate Tribunal in the case of: ACIT v. India Magnum Fund (81 ITD 295) held that in order to trigger the provisions of Section 44AB, there should be first computation of profits and gains of business or profession i.e. computation of total income as per Section 4. As the income exempt under Section 10 does not form part of the total income, such exempt income cannot be subjected to the provisions of Section 44AB. Consequently, one may argue that share of partners profit which is exempt under section 10(2A) would not be considered for the purposes of the gross receipts This view is also supported by the guidance note issued by the Institute of Chartered Accountants of India on tax audit. As per the guidance note, gross receipts exclude partner's share of profit which is exempt u/s 10(2A).

We are of the opinion that the provisions of Section 44ADA is applicable either for an individual or partner in a profession firm. This is also supported by certain judicial pronouncements (though not directly on the said issue) in the case of **SagarDuttavs DCIT (ITAT Kolkata)** and Usha A Narayanan vs Deputy Commissioner of Income Tax (ITAT Kolkata). The following is evident from the above judgments:

1. In both the judgments, the tax payers were chartered accountants in partner capacity in a firm.
2. Both of them have received remuneration, salary, interest on capital and others more than the threshold limit specified under Section 44AB.
3. The department is of the view that since the gross receipts (remuneration, salary, interest on capital and others) were in excess of threshold limits specified under Section 44AB, the tax payers would have got their books of accounts and audited.
4. Since the tax payers failed to do so, the department has levied penalty under Section 271B amounting to .5% of the receipts.
5. The tax payers contention was that they were not carrying any profession in individual capacity but they were acting as partner and hence tax audit requirements does not attract.

Both the Tribunals relying on Amar Ganguly judgment, stated that the tax audit will be applicable despite the individual is receiving amounts from firm. Hence, such amounts



being in excess of threshold limit, the books of accounts need to be audited and confirmed the penalty.

**Our Inference from the above judgments:**

Based on the above judgments, the question that whether the salary, remuneration, profit, interest on capital and others received by partner from a partnership firm can be called as gross receipts for the purposes of 44ADA is answered in positive. If such amounts are not to be called as gross receipts, then there is no requirement for the Tribunals to state that such individuals would fall under ambit of Section 44AB.

In light of the above, the amounts received from the firm can be considered as gross receipts and accordingly provisions of Section 44ADA will be applicable. Hence, the benefit of 50% of gross receipts offering to income tax is possible.

Further, one more question that is to be answered is whether the provision of Section 44ADA is optional or mandatory, that is to say, is it mandatory for the partner whose gross receipts is less than 50 lakhs to apply the provisions of Section 44ADA or is it optional. Once the gross receipts are less than Rs 50 lakhs, the partner has to mandatorily offer 50% of such gross receipts for tax. In a case, where the partner thinks his expenditure is more than 50% or want to offer lower amounts of gross receipts for tax, he should then get his books of accounts audited as per provisions of sub-section (4) of Section 44ADA.

## CHAPTER-7

### Presumptive Taxation Scheme under Section 44AE

**Section 44AE** is as follows:

**44AE.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

[(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—

- (i) being a heavy goods vehicle, shall be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher;
- (ii) other than heavy goods vehicle, shall be an amount equal to seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.]

(3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.

(4) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

(6) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower

than the profits and gains specified in sub-sections (1) and (2), and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.

(7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.

*Explanation.—For the purposes of this section,—*

*[(a) the expressions "goods carriage", "gross vehicle weight" and "unladen weight" shall have the respective meanings assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);*

*(aa) the expression "heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;]*

*(b) an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.*

<b>Applicable to</b>	<b>Any assessee (Firm, Company, Individual etc) whether resident or non-resident.</b>
<b>Business</b>	Engaged in the business of plying, leasing or hiring goods carriage. –  <ul style="list-style-type: none"> <li>• Must be the owner, this section does not apply to the lessee</li> <li>• It will include an owner by way of hire purchase or where the goods carriage has been taken on installments, even if whole or part of the amount is to be paid</li> </ul>
<b>Applicability</b>	To a person not owning more than 10 goods carriage at any time during the year
<b>Deemed Income ( For any goods vehicle )</b>	<ul style="list-style-type: none"> <li>▪ Heavy goods vehicle: [capacity &gt; 12MT GVW] – 1000/MT p.m.</li> <li>▪ Other: Rs 7500 p.m. for every month or part of month</li> </ul> <p>(Example: 7 months 3 days will be 8 months) during the period when the assessee owns the vehicle (includes owners by way of hire purchase)</p>

**All other deduction deemed to be allowed: [Section 44AE(3)]** The assessee will be deemed to have been allowed the deductions under sections 30 to 38. Accordingly, the written down value of any asset used for the purpose of the business of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in .

**Salary and interest to partners is allowed:** Where the assessee is a firm, the salary and interest paid to its partner are allowed to be deducted subject to the conditions and limit specified under section 40(b).

**No disallowance:** since no expenditure is allowed as a deduction thus for an assessee covered by the provisions of Sec 44AD or AE, there will be no disallowance u/s 43B, 40A(2), 40A(3) or 40a

**Advance Tax:** Such an assessee covered by Sec 44AE has no special provision under advance tax and will thus be required to pay advance tax on all four dates prescribed u/s 211

**Computation of WDV:** Since depreciation and carry forward of unabsorbed depreciation is covered by Sec 32, depreciation shall not be allowed from the deemed Income, however a notional depreciation is provided in the Block to arrive at the opening WDV of the next year

**Sec 70-80 will be applicable to the deemed income:** The brought forward losses of this business or any other business and current year losses from other businesses & other heads shall be allowed to be set off from the deemed income subject to rules framed under the Income Tax Act for “set off and carry forward” of losses

**Deduction u/s 80C to 80U** will be given from GTI of the assessee even from the deemed income included in the GTI.

**Turnover not relevant:** There is no condition on turnover for the applicability of Sec 44AE, thus where the assessee owns less than or equal to 10 trucks throughout the year then it can opt for Section 44AE even if the gross receipts or turnover is more than 60 lacs.

**Can assessee apply Sec 44AE selectively on some trucks? CIT v Kunhimohammed [2005] (HC):** Sec 44AE does not permit the assessee to apply the provisions of this section on some of the truck while he claims the income from the others as per the books prepared. Thus this section applies to all the trucks owned by the assessee. He may opt for or out of the provisions of this Section for all the trucks.

**(i) Opts for Sec 44AE:** for an assessee covered by this section there is no requirement to maintain Books of accounts(Sec 44AA) or to get the audit done (Sec 44AB)

**(ii) Where assessee opts out and claims lower income:** Assessee can claim that his income is less than presumptive income u/s 44AE and in that case he will have to maintain books of accounts and he gets his books of accounts audited only if the income is more than the minimum exemption slab

**Example:** turnover is 45 Lacs Expenditure as per Sec 30-38 is 42 Lacs. Income is 3 lacs

Income as per Sec 44AE = 360,000

Thus in this case the assessee may opt out and declare income of 3 lacs will compulsorily be covered by Sec 44AA & Sec 44AB

**Example:** turnover is 45 Lacs Expenditure as per Sec 30-38 is 44 Lacs. Income is 1 lacs

Income as per Sec 44AE = 360,000

Thus in this case the assessee may opt out and declare income of 1 lacs it will compulsorily be covered by Sec 44AA & Sec 44AB

**Can the assessee claim higher income?** The assessee can declare a higher income by opting out of the provisions of Sec 44AE. In such a case the income will be computed as per rules given u/s 28 – 44.

**Example:** turnover is 45 Lacs Expenditure as per Sec 30-38 is 41 Lacs. Income is 4 lacs

Income as per Sec 44AE = 360,000

Thus in this case the assessee may opt out and declare income of 4 lacs it will not be covered by Sec 44AA & Sec 44AB

**Example:** Mr A owns 8 goods carriage vehicles, 3 of which have unladen weight of 15MT, 18MT and 20MT and the rest are below 12MT capacity. The vehicle with 20MT was purchased on 22/07/19 and was used only from 21/01/2020

Vehicle	Gross Weight in Kg	Presumptive Income Per Month in Rs.	No. of Months	Total Presumptive Income in Rs.
1	7500	7500	12	90000
2	7500	7500	12	90000
3	7500	7500	12	90000
4	7500	7500	12	90000
5	7500	7500	12	90000
6	15000	15000	12	180000
7	18000	18000	12	216000
8	20000	20000	9	180000
<b>Total Business Income</b>				<b>1026000</b>

## CHAPTER-8

### Combined Study of Section 44AB with Section 44AD

Currently, businesses having turnover of more than one crore rupees are required to get their books of accounts audited by an accountant. In order to reduce the compliance burden on small retailers, traders, shopkeepers who comprise the MSME sector, the Finance Act 2020 has raised the limit of audit by five times the turnover threshold for audit from the existing Rs. 1 crore to Rs. 5 crores. It is also to be noted that this amendment is applicable for F.Y. 2019-20 i.e for the A.Y. 2020-21

Further, in order to boost less cash economy, it has been provided that the increased limit for mandatory tax audit shall apply only to those businesses which carry out less than 5% of their business transactions in cash. But in this connection, following points are to be noted

1. This threshold limit for the applicability of mandatory tax audits is applicable to business entity only and limit for a professional assessee shall continue to be at Rs. 50 lacs even if he receives entire consideration in non-cash mode.
2. It is not provided that who will certify the margin of transactions in cash mode of 5 percent. It appears that the assessee is himself requiring declaring the percentage of receipt in cash mode and non-cash mode.
3. The provision to increase the turnover limit for a mandatory tax audit is amended to benefit the MSME sector.
4. The amendment is carried out only in section 44AB. No amendment is made in section 44AD and thus the turnover limit of Rs. 2 crores shall continue. Suppose an assessee is having a turnover of 180 lacs for the financial year 2020-21 and all the transactions of business are by non-cash modes. The net profit of the assessee is Rs.7 lacs which is less than 6% of turnover of the assessee. Now as per the provisions of sec 44AD, the assessee is required to maintain books of account and get them audited u/s 44AB of the Act.
5. The term 'aggregate of all receipts and aggregate of all payments' is very wide and covers not only the receipts and payments on account of turnover or sales but all other business transactions. Capital introduction, receipt and repayment of a loan, etc., partners' drawings, payment of freights, etc. Even payment of taxes made in cash will come within the purview of cash transactions.

It can be better understood with the help of following table.

<b>Turnover</b>	<b>Cash Payments ≤ 5%</b>	<b>Cash Receipts ≤ 5%</b>	<b>Net Profit</b>	<b>Audit u/s 44AB</b>
<b>6 crores</b>	Yes	Yes	6%	Yes
<b>4.5 crores</b>	Yes	Yes	7%	No
<b>3 crores</b>	Yes	No	5%	Yes
<b>1.8 crores</b>	Yes	Yes	6%	Yes
<b>1.5 crores</b>	Yes	Yes	5%	Yes



## Comparative Study of Section 44AD, 44AE and 44ADA

PARTICULARS	44AD	44AE	44ADA
<b>Applicable to whom</b>	Resident Individuals/ HUF/ Firm(Not LLP)	Any person, Resident or non Resident, who is owner of trucks or other goods carriage	Professionals covered u/s 44AA
<b>Applicability</b>	Turnover ≤ Rs. 2 Crores	Person not owning number of trucks >10 at any time during relevant PY	Receipts ≤ Rs. 50 Lakhs
<b>Deemed Income</b>	8% of Turnover; 6% in case of Non-cash Turnover (Cheque or other Electronic mode)	Rs. 7500 per month ( or part of month) GVW > 12 MT (1000/MT per month or part of month)	50% of Receipts
<b>Expense allowed</b>	None	Section 40(b)	None
<b>Rate of Tax</b>	As Applicable	As Applicable	As Applicable
<b>44AA/44AB</b>	Not Applicable	Not Applicable	Not Applicable
<b>Year to Year Option</b>	No; Once opts out then not available for 5 years	Yes	Yes

## Chapter-9

### Penalty for failure to get accounts Audited- Section 271B

If the assessee fails to get his accounts audited or furnish a report of such audit u/s 44AB,

- a flat penalty u/s 271B shall be attracted:  
½% of total Sales, turnover or gross receipts in business / profession  
Or  
Sum of Rs. 150,000 (w.e.f.1-4-2011) (prior to that max. penalty was Rs. 1 Lac)  
(Whichever is less)
- No penalty shall be imposed u/s 271B, if assessee proves that there was reasonable cause for such failure. [Section 273B]

#### **Reasonable Causes**

- a. Resignation of tax auditor and consequent delay;
- b. Bona fide interpretation of the 'turnover' based on expert advice;
- c. Death or physical inability of the partner in charge of the account
- d. Labor problems such as strike, lock-out for a long period, etc;
- e. Loss of accounts because of fire, theft, etc., beyond the control of the assessee;
- f. Non-availability of accounts on account of seizure;
- g. Natural calamities, commotion, etc.

#### **Few Notable Case Laws**

- No penalty under Section 271B by ITO exceeding Rs. 10,000 in absence of prior approval of Joint Commissioner. SagarDuttaVs. CIT, [2014] 44 taxmann.com 311 (Calcutta)
- Held that no penalty is imposable u/s 271B for non-compliance with the provisions of Sec. 44AB on the ground that the returns were filed belatedly. Penalty is leviable only if the assessee fails to get his accounts audited and obtain a report. CIT v. Apex Laboratories Pvt. Ltd. [2010] 320 ITR 498 (Mad)
- For purpose of Sec. 44AB turnover of all businesses carried on by assessee has to be considered but provisions of Sec. 271B can be applied only in respect of that business,

accounts of which have not been audited and not in respect of accounts which have been audited. Asst. CIT v. Smt. Bharti Sharma [2011] 44 SOT 230 (Del.)

- Where assessee, an advertising agent, was under bona fide belief that commission income earned by him was not in excess of limits prescribed under section 44AB and, thus, he was not required to get books of account audited, impugned penalty order passed under section 271B deserved to be set aside. Manoj S. Gugale vs. ITO [2017] 80 taxmann.com 193 (Pune – Trib.). Also see Off-shore India Ltd. Vs. DCIT [2017] 167 ITD 0635 (Kol.- Trib.)

ITAT Lucknow has held that penalty under section 271B for failure to get accounts audited and furnish tax audit report u/s 44AB cannot be levied simultaneously along with penalty u/s 271A

These appeals are preferred by the assessee against the consolidated order of the Id. CIT(A) on a common ground that the Id. CIT(A) has erred in confirming the penalty levied under section 271B of the Income-tax Act, 1961 (hereinafter called in short "the Act"). During the course of hearing of the appeals, the Id. counsel for the assessee has invited our attention that the Assessing Officer initiated penalty proceedings under section 271A and 271B of the Act. Since the Assessing Officer has levied penalty under section 271A of the Act, penalty under section 271B of the Act cannot be levied on account of non-auditing of the accounts. In support of his contention, the Id. counsel for the assessee has placed reliance upon the judgment of the jurisdictional High Court in the case of CIT vs. Bisauli Tractors, [2007] 165 Taxman 1 (All). During the course of hearing, a specific query was raised from the Id. counsel for the assessee as to what happened with regard to the penalty initiated under section 271A of the Act. In response thereto, the Id. counsel for the assessee could not furnish satisfactory reply with regard to the levy of penalty under section 271A of the Act. He has, however, submitted that he has no information with regard to the levy of penalty under section 271A of the Act. On the basis of the assessment order he can simply say that penalty under section 271A of the Act was initiated. In the absence of complete details with regard to the levy of penalty under section 271A of the Act, we are of the view that let the matter be sent back to the file of the Assessing Officer with a direction to verify whether penalty under section 271A of the Act was levied or not, if levied, what was the fate of it. If penalty under section 271A of the Act is levied against the assessee, penalty under section 271B of the Act cannot be levied. With this direction, we restore the matter to the file of the Assessing Officer. Accordingly the appeals of the assessee are allowed for statistical purposes.

## CHAPTER-10

### TAX DEDUCTED AT SOURCE AND ADVANCE TAX

➤ **Obligation of compliance of TDS provisions:**

It is to be noted that the provisions for presumptive taxation override only sec 28 to 43C and not the provisions of TDS. Therefore, assessee declaring income u/s 44AD, 44ADA or 44AE is liable to deduct TDS. e.g. Every 'person' is required to deduct TDS u/s 192 if the estimated salary exceeds the maximum amount not chargeable to tax. Any individual paying salary of Rs. 8,50,000 p.a. would be required to deduct TDS even though he is declaring income u/s 44AD.

Further, sec 194A, 194C, 194H, 194I and 194J have been amended by Finance Act, 2020.

Now, individual or HUF having turnover/ gross receipts of more than Rs. 1 crore in case of business and more than Rs. 50 Lakh in case of profession during the preceding financial year shall be required to deduct TDS under the above sections. Earlier in sec 194A, 194H, 194I and 194J it was mentioned that if the turnover/ receipts exceed the monetary limits specified u/s 44AB in the preceding financial year. In sec 194C, it was if individual or HUF was liable for audit under clause (a) or (b) of section 44AB in the preceding financial year.

Effect of amendment: The persons having turnover of more than Rs. 1 crore but less than Rs. 2 crore and declaring income u/s 44AD would be required to deduct TDS under the above sections.

**Example:**

Mr. A has a turnover of Rs. 1,25,00,000 in the P.Y. 2018-19. In F.Y. 2019-20 he paid interest of Rs. 25,000. Whether Mr. A has to deduct TDS u/s 194A if he declares income u/s 44AD?

Yes, Mr. A will be required to deduct TDS u/s 194A as his turnover in the preceding F.Y. is above Rs. 1 crore. The interest amount is above Rs. 5,000. Hence, Mr. A will be required to deduct TDS even if income is declared u/s 44AD otherwise he will be deemed as assessee in default as per sec 201. However, he does not deduct TDS, no disallowance of expense will be made as per sec 40(a).

**EXAMPLE :** In case of eligible assessee being a Firm which offers income under the presumptive income scheme and does not maintain books of accounts, where it is liable to deduct TDS from interest, contract work, salary etc. then whether it has to deduct tax at source at the time of payment only?

Ans: A firm doing eligible business under section 44AD though not maintaining books is fully covered under the provisions of TDS like section 194A, 194C etc. and is liable for

deducting tax at the time of credit to the account of payee (liability to pay arises) or payment thereof to the payee whichever is earlier.

➤ **Obligation of compliance of Advance Tax provisions:**

Further, since the presumptive taxation regime has been extended for professionals also, the eligible assessee is now required to pay advance tax by 15th March of the financial year.

**Section 211(1)(b):** an assessee who declares profits and gains in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA, as the case may be, to the extent of the whole amount of such advance tax during each financial year on or before the 15th March:

**Section 234B:** The provisions of sec 234B(1) are as

*Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.*

Interest u/s 234B is charged if an assessee fails to deposit at least 90% of the total tax liability as advance tax. If advance tax is not deposited up to 31<sup>st</sup> March of P.Y. interest is charged @ 1% p.m. or part thereof up to the date of payment of such tax.

**Section 234C(1)(b) :** The provisions of sec 234C(1)(b) are as

*an assessee who declares profits and gains in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA, as the case may be, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income*

If advance tax in case of assessee covered u/s 44AD and 44ADA is not paid up to 15<sup>th</sup> March, the assessee shall be liable to pay interest u/s 234C @ 1%.

Proviso to 211(1) says any amount paid by way of advance tax on or before 31st day of March shall also be treated as advance tax paid during the financial year ending on that day.

**Note:** As per section 208: advance tax shall be payable if tax liability is Rs. 10,000 or more.

**Example:** Dr. Deepak is a cardiologist having gross receipts of Rs. 45,00,000 for the P.Y. 2019-20. He declares his income u/s 44ADA. Compute his advance tax liability and interest u/s 234B and 234C if (a) he deposits advance tax on 20<sup>th</sup> March (b) if he does not deposit advance tax.

The tax payable by Dr. Deepak is Rs. 5,07,000 which is more than Rs. 10,000. Hence, he is required to deposit his entire advance tax liability on or before 15<sup>th</sup> March 2020. If he deposits 90% or more of his advance tax liability before 31<sup>st</sup> March of the P.Y., no interest u/s 234B would be charged. However, if advance tax is not deposited up to 31<sup>st</sup> March of P.Y. interest is charged @ 1% p.m. or part thereof up to the date of payment. Interest u/s 234C will be charged @1% if advance tax is not deposited on or before 15<sup>th</sup> March of the P.Y.

In case (a) he deposited advance tax on 20<sup>th</sup> March 2020, no interest will be charged u/s 234B. However, interest u/s 234C will be charged @ 1% of Rs. 5,07,000 = Rs.5,070

In case (b) he has not deposited advance tax. Interest u/s 234C will be charged @ 1% of Rs. 5,07,000 = Rs. 5,070. Interest u/s 234B will be charged @ 1% p.m. or part thereof up to the date of payment. Suppose, return is filed and tax is paid on 20<sup>th</sup> July 2020, interest u/s 234B will be Rs. 20,280 (1% p.m. for four months, Rs. 5,07,000 \* 1% \* 4 months).

## Chapter- 11

### Miscellaneous Topics

#### 1. Presumptive Taxation in case of Partnership firms

Resident Partnership Firms are eligible to opt for presumptive taxation u/s 44AD or 44ADA or 44AE. Sec 44AD and 44AE were amended in 1997 w.e.f 01/04/1994 to allow remuneration and interest to partners (subject to conditions and limits specified in section 40(b)) after determination of profits as per sec 44AD or 44AE. However, by Finance Act, 2016, second proviso to Section 44AD(2) has been omitted which provided for deduction under section 40(b) with regard to the salary and interest to partners. However, sec 44AE has not been amended. Hence, remuneration and interest to partners will not be allowed in sec 44AD and 44ADA. However, remuneration and interest to partners will be allowed if income is declared u/s 44AE.

**Example :** RSK & Associates, a firm of Chartered Accountants provides the following information:

Receipts	Net Profit	50% of receipt	Allowability of remuneration
Rs.40,00,000	Rs.20,00,000	Rs.20,00,000	No remuneration and interest will be allowed as expense.
Rs.40,00,000	Rs.24,00,000	Rs.20,00,000	Remuneration and interest can be allowed up to Rs. 4,00,000, subject to sec 40(b)
Rs.40,00,000	Rs.18,00,000	Rs.20,00,000	Sec 44ADA not applicable as profit is claimed to be less than 50% of receipts. RSK & Associates will be required to get their books of account audited u/s 44AB(d). Remuneration may allowed as per sec 40(b).

## 2. Applicability of sec 69C in case where the assessee has adopted presumptive tax system

The basic edifice of presumptive scheme u/s 44AD is assessee would not be called to maintain books under the Act and get them audited if profit shown by assessee is otherwise in accordance with prescription of section 44AD of the Act. Now a question arises whether these deposits in bank can be transformed as unexplained cash credit u/s 68 of the Act.

Firstly section 68 is a deeming fiction and same needs to be interpreted in felicitous words from a ITAT verdict *that deeming fiction relates to that branch of jurisprudence which needs to be narrowly watched , zealously regarded and never to be pressed beyond its true limits.*

Secondly section 68 requires existence of books and actual credit therein which are jurisdictional fact and without any books and without any credit therein, section 68 can't be pressed dearer to revenue due to its castigating. In other words when a deeming fiction like section 68 is applied it is not allowable to deem that books are there or credit is there when same is otherwise lacking ex-facie. If deeming within deeming provision is allowed then it may lead to absurdity.

To resolve this issue, firstly we have read the provisions of Sec 44AD of the Act. Sec 44AD reads as

“44AD (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :”

The provisions of the above section are quite unambiguous to the effect that in case of an eligible business based on the gross receipts/total turnover, the income under the head ‘profits & gains of business’ shall be deemed to be @ 8% or any higher amount. The first important term here is ‘deemed to be’, which proves that in such cases there is no income to the extent of such percentage, however, to that extent, income is deemed. It is undisputed that ‘deemed’ means presuming the existence of something which actually is not. Therefore, it is quite clear that though for the purpose of levy of income tax 8% or more may be considered as income, but actually this is not the actual income of the assessee. This is also the purport of all provisions relating to presumptive taxation.

Putting the above analysis, in converse, it can be easily inferred that the same is also true for the expenditure of the assessee. If 8% of gross receipts are ‘deemed’ income of the assessee, the remaining 92% are also ‘deemed’ expenditure of the assessee. If the



income component is estimated, how the expenditure component on the basis of said income can be considered to have been 'actually incurred' and it is only presumption that an amount of 92% of gross receipts was incurred by the assessee as expenditure. It means that actual expenditure may not be 92% of gross receipts, only for the purposes of taxation, it is considered to be so. To take it further, it can be said that the expenditure may be less than 92% or it may also be more than 92% of gross receipts. The crucial words in the said section are 'any financial year an assessee has incurred any expenditure'. But can we say on the facts and circumstances of the case that the assessee has 'incurred' any expenses.

From an analysis of section 44AD of the Act contained hereinabove, we have noted that the assessee had not incurred the expenses to the extent of 92 % of the gross receipts. Therefore, the provisions of section 69C of the Act cannot be applied. Asking the assessee to prove to the satisfaction of the Assessing Officer, the expenditure to the extent of 92% of gross receipts, would also defeat the purpose of presumptive taxation as provided under section 44AD of the Act or other such provision. Since the scheme of presumptive taxation has been formed in order to avoid the long drawn process of assessment in cases of small traders or in cases of those businesses where the incomes are almost of static quantum of all the businesses, the Assessing Officer could have made the addition under section 69C of the Act, once he had carved out the case out of the glitches of the provisions of section 44AD of the Act. This view has been taken by CHANDIGARH BENCH Of ITAT in Nand Lal Popli v. Deputy Commissioner of Income-tax Central Circle-II, Chandigarh IT APPEAL NOS. 1161 & 1162 (CHD) OF 2013 [ASSESSMENT YEARS 2007-08 AND 2009-10]

## Chapter- 12

### Compilation of Judicial Pronouncements

- 1. [TS-8499-ITAT-2019(Cochin)-O]** - Section 44AD exempts the assessee from maintenance of books of accounts, and asking assessee to prove to the AO's satisfaction expenditure to the extent of 92% of gross receipts/ deposit would defeat the purpose of presumptive taxation u/s 44AD or other such provision; ITAT rules in assessee's favour, notes the contradiction: if the *income is estimated, how could the expenditure component on the basis of said income be considered to have been 'actually incurred'*? *It is only presumption that 92% of gross receipts was incurred as expenditure*; ITAT holds that section 69A of the Act cannot be applied as neither AO nor CIT(A) have given any reason as to why Section 44AD is not applicable;
- 2. [TS-6983-ITAT-2019(Kolkata)-O]** - Presumptive taxation u/s 44AD – can addition be made u/s 68 when income/ profit is estimated – *neither AO nor CIT(A) have given any reason as to why s. 44AD is not applicable*; ITAT holds that AO cannot examine statement of accounts in such cases, or make additions towards undisclosed purchases, undisclosed expenditure, undervaluation of closing stock, etc. *The turnover declared by the assessee is accepted by the Revenue, and such additions go against the spirit of the Act*
- 3. [TS-6380-ITAT-2019(DELHI)-O]** - Cash deposit during demonetization period - ITAT: Insufficient evidence to consider sales as bogus or to make addition of cash in hand – ITAT notes that *Assessee, a small trader, declared return of income under presumptive provisions u/s 44AD and case was selected under limited scrutiny for cash deposit during demonetization period from 09.11.2016 to 30.12.2016*; The fact that during assessment, the assessee submitted a copy of his balance-sheet does not prove that the assessee maintained books of account; AO made addition u/s 68 on account of unexplained cash credits due to bogus sales; On appeal, CIT(A) restricted addition to the extent of cash in hand, which was considered as unaccounted; ITAT ruled in Assessee's favour and delete the entire addition, notes that *"If there is no creditor in the books of account and no books of account have been maintained, there is no question of considering it to be cash credit"*; Assessee had filed details of sales & purchase before AO giving names, telephone number and address of parties; held that if the AO had any doubt, he could have made direct inquiry; ITAT held that there was no justification to consider the assessee's sales to be bogus or to make addition of cash in hand as per details submitted; AO did not bring any sufficient evidence on record to justify the addition;

4. **[TS-8316-ITAT-2019(Hyderabad)-O]** - *Merely because of cash deposits in bank account during demonetization period (Nov-Dec 2015), cash in hand as on 31-03-2016 cannot be doubted* – ITAT notes that assessee is engaged in *money lending business and therefore cannot be expected to be without any cash in hand* at the end of the relevant assessment years (AYs); The assessee has been showing closing balance of cash in hand even for the earlier AYs and sundry debtors were shown in the Balance Sheet ended 31st March, 2015, hence cash flow statement demonstrates the sources of the funds with the assessee; ITAT further notes that the return of income filed by Assessee has been accepted by the Department and was not picked up for scrutiny; ITAT deletes the addition, holds that cash in hand of as on 31-03-2016 cannot be doubted;

5. **[TS-8936-ITAT-2017(Mumbai)-O]** - ITAT upholds CIT(A)'s order, sets aside addition u/s 69 for cash deposits in bank account; AO treated the deposits as unexplained investment, as return of income was filed in ITR-2 wherein there is no option for offering income u/s 44AD, and had also offered income under the head income from other sources; the CIT(A) deleted the addition by observing that *merely because option to offer income u/s 44AD is not present in Form ITR-2 was no reason for rejecting the appellant's return*; the CIT(A) applied presumptive rate of tax of 8% on cash deposited; ITAT notes that AO, in the preceding AY 2010-11, has accepted the assessee's aforesaid claim and the CIT(A)'s finding that cash deposits are from his cosmetics and merchandise business, set aside addition u/s 69; ITAT cautions assessee that ***“he should not take advantage of his ignorance by repeatedly committing same mistake. If he intends to avail the benefit of presumptive tax u/s 44AD, he has to comply with requirement of the relevant statutory provisions”***

## About the Book

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Tax laws are a part of the dynamic laws which always keep changing.

Not only amendment but its interpretation and meaning also keeps changing, making it imperative for the taxpayers to keep a constant track of it on an ongoing basis.

The **book 'Practical Approach to Presumptive Taxation'** is a mobile guide for the taxpayers.

All the sections are well explained with the help of examples and illustrations. It is an attempt to keep the taxpayers updated as well as informed and provides all the information related to Presumptive taxation in summarized as well as simple manner.

In case of any doubt or query, readers are requested to approach the author at [ca.rskalra@yahoo.com](mailto:ca.rskalra@yahoo.com). Author requests for the suggestion and feedback from the readers for making it better.

Thanks for Reading.

- CA R.S. KALRA

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