

Handbook on Estimated Income Scheme under Income-tax Act, 1961

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Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi



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Foreword

The Direct Taxes Committee (DTC) of the Institute of Chartered Accountants of India (ICAI) is one of the important Committees of the ICAI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time for various legislative amendments and issues concerning direct taxes. One of the main activities of the Committee is to disseminate knowledge and honing skills of the membership in the area of direct taxation.

I am happy to note that the Direct Taxes Committee of ICAI has now taken an initiative to issue a Handbooks covering various procedural aspects of taxation of presumptive income and is bringing out “**Handbook on Estimated Income Scheme under Income-tax Act, 1961**” with an objective to provide a basic understanding of the topic. The handbook explains the concepts/ procedures relating to presumptive taxation in an easy-to-understand lucid language and it aimed at updating the knowledge base of members in a simple and concise manner.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee, CA. Raj Chawla, Vice-Chairman, Direct Taxes Committee and all other members of the Committee who have worked sincerely for bringing out this handbook in a timely manner. I am confident that this publication will be a useful resource for the members.

Date: 06.02.2023

Place: New Delhi

CA. (Dr.) Debashis Mitra

President, ICAI

Preface

Despite the fact that the profession of Chartered Accountancy has diversified in many ways, practice in the area of direct taxation is still one of the important areas for the Chartered Accountants. Our members keep themselves abreast with taxation laws and have attained commanding heights in this area.

To give relief to small taxpayers from the tedious job of maintenance of books of account and getting the books of account audited, the Income tax Act has framed the Presumptive Taxation Scheme under sections 44AD, 44ADA and 44AE of the Income Tax Act, 1961. The taxpayer adopting the Presumptive Taxation scheme can declare income at a rate specified in the Income-tax Act 1961.

To provide quick guidance on this matter, and to elaborate the recent changes made in this regard to the members, this handbook would prove to be very useful. It covers the relevant provisions, the case laws, examples, certain practical issues that may be faced. We hope, it would enable the members to better understand the said provisions.

Under the aforesaid circumstances, we at the Direct Taxes Committee thought it fit to bring out this brief publication namely “**Handbook on Estimated Income Scheme under Income-tax Act, 1961**” as a handy tool to assist the fraternity to make proper compliance of the provisions and procedures in more objective manner

We are sincerely thankful to CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket Sunil Talati, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are extremely thankful and appreciate the efforts of CA. Kumudwathi Vemanna who provided valuable inputs for this publication. We are pleased to place on record our sincere gratitude for the involvements and contributions by CA. Cotha S. Srinivas, Central Council Member, ICAI and all the Committee members and our dear Council Colleagues of ICAI. We are

sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the provisions.

CA. Raj Chawla
Vice-Chairman,
Direct Taxes Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Taxes Committee, ICAI

Date: 06.02.2023

Place: New Delhi

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Chapter 1

Introduction

What is Presumptive Taxation/Estimated Income Scheme?

Presumptive taxation involves the use of indirect means to ascertain tax liability, which differ from the usual rules based on the taxpayer's accounts. The term "presumptive" is used to indicate that there is a legal presumption that the taxpayer's income is no less than the amount resulting from application of the indirect method.

Presumptive taxation allows you to pay your tax based on presumptive income. Meaning, you don't really need to estimate your income by deducting your expenses from revenue. You can simply take a percentage of your total revenue and pay tax on that.

In other words, A person adopting the presumptive taxation/ Estimated Income 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.

History of the Estimated Income Scheme

The provisions relating to Estimated Income Scheme / Presumptive Tax Scheme under the Income Tax Act, 1961 are *inter alia*, covered under Sections 44AD, 44ADA, 44AE, 44B, 44BB, 44BBA and 44BBB. In this Publication we have limited our discussion to 44AD and 44ADA.

Estimated Income Scheme was first introduced in Finance Act 1994 based on the recommendations of The Tax reforms committee led by Dr. Raja Chelliah for better tax compliance. Such method of assessment for certain categories of business was prevalent in several countries at that time.

It was introduced to help the small unorganised business entities. Maintaining the books of accounts and Audit of the accounts were exempted for such business entities.

Accordingly, a new sections 44AD and 44AE was inserted in 1994 with a view to provide for a method of estimating the income from the business of civil construction or supply of labour for civil construction work under section 44AD and plying, hiring, or leasing goods carriages under section 44AE.

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Further, In the Income-tax (Second Amendment) Act, 1998, w.r.e.f. 1-4-1997, omitted sub-section (5) and new sub-section (5) was inserted which allowed the assesses to claim lower profit if they maintain the books of accounts as per section 44AA and get account Audited as per section 44AB.

New Section 44AD was Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2011, which made applicable to all eligible assesses carrying on eligible businesses whose gross receipts from the abovementioned business do not exceed Rs. 40 lakhs.

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: -

Special provision for computing profits and gains of business on presumptive basis

The existing provisions of the Income-tax Act, provide for taxation of income on presumptive basis in the case of construction business, income from goods carriages and business of retail trade. Section 44AD prescribes a method of presumptive taxation for assesses engaged in the business of civil construction or supply of labour for civil construction in which a sum equal to eight percent of the gross receipts is deemed to be the profits and gains from business. Section 44AE provides presumptive provisions for the assessee engaged in the business of plying, hiring or leasing upto ten goods carriages in which a prescribed sum per vehicle is deemed to be the presumptive income of the assessee. Section 44AF prescribes a method of presumptive taxation for retail trade, under which the presumptive income is computed at the rate of a sum equal to five per cent of the total turnover.

There has been a substantial increase in small businesses with the growth of transport and communication and general growth of the economy. A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net. Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources. A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and also reduces the administrative burden on the tax machinery.

In the subsequent years, the turnover or gross receipt limit has been increased many times. Currently section 44AD is applicable if the turnover or gross receipt is less than Rs. 2 corers.

From AY 2017-18, to encourage business to receive payments digitally , the Finance Bill 2017 propose to amend section 44AD of the Act to reduce the existing rate of deemed total income of eight per cent to six per cent in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

Further in Finance Act, 2016 Section 44ADA was introduce presumptive taxation for persons having income from profession.

Therefore, Estimated Income Scheme which is also called as presumptive taxation is the tool used by the Government

- a. to promote Ease of Business in India and
- b. to bring small business entries into tax net
- c. which also reduce the administrative cost of tax collection to Government.

Which is win-win situation for both Business entities and Government.

Chapter 2

Relevant Definitions and Meanings

(Taken from Guidance Notes on Tax Audit under section 44AB of the
Income Tax Act, 1961 – AY 2022-23)

A. Meaning of “Business” and “Profession”

The term "business" is defined in section 2(13) of the Act, as under: "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

The word 'business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only - *Barendra Prasad Ray v ITO [1981] 129 ITR 295 (SC)*.

Section 2(36) of the Act defines profession to include vocation.

Profession is a word of wide import and includes "vocation" which is only a way of living. – *Additional CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All)*.

Whether a particular activity can be classified as 'business' or 'profession' will depend on the facts and circumstances of each case.

The expression "profession" involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of commodities. - *CIT Vs. Manmohan Das (Deceased) [1966] 59 ITR 699 (SC)*, *CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All)*.

B. Meaning of total Sales, turnover, gross receipts. The same has been discussed in ICAI Guidance Note to Tax Audit

The terms "sales", "turnover" or "gross receipts" are not defined in the Act, and therefore the meaning of the aforesaid terms has to be considered for the applicability of the section.

The Central Sales Tax Act, 1956 defines "Turnover" as follows:

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“turnover” used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of the Act and rules made there under.

Further, section 8A (1) of the said Act provides that in determining turnover, deduction of sales tax should be made from the aggregate of sales price. The Central Goods and Services Act, defines ‘Turnover’ as under:

Section 2(112) ‘turnover in State’ or ‘turnover in Union territory’ means the aggregate

value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The term "Turnover" has been defined under Section 2(91) of the Companies Act, 2013 as follows:

"2(91) turnover means gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;"

5.4 In the “Guidance Note on Terms Used in Financial Statements” published by the Institute, the expression “Sales Turnover” (Item 15.01) has been defined as under:

“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.

The Guide to Company Audit issued by the Institute in the year 1980, while discussing “sales”, stated as follows:

“Total turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately.

Note (i) The term ‘turnover’ would mean the total sales after deducting therefrom goods returned, price adjustments, trade discount and cancellation

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of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the

corresponding amount should be distinctly shown as a debit item in the profit and loss account.”

The “Statement on the Amendments to Schedule VI to the Companies Act, 1956” issued by the Institute (Page 14, 1976 edition) (replaced with Guidance Note on Revised Schedule VI of the Companies Act, 1956) while discussing the disclosure requirements relating to ‘turnover’ stated as follows: -

“As regards the value of turnover, a question which may arise is with reference to various extra and ancillary charges. The invoices may involve various extra and ancillary charges such as those relating to packing, freight, forwarding, interest, commission, etc. It is suggested that ordinarily the value of turnover should be disclosed exclusive of such ancillary and extra charges, except in those cases where

because of the accounting system followed by the company, separate demarcation of such charges is not possible from the accounts or where the company’s billing procedure involves a composite charge inclusive of various services rather than a separate charge for each service.

In the case of invoice invoices containing composite charges, it would not ordinarily be proper to attempt a demarcation of ancillary charges on a proportionate or estimated basis. For example, if a company makes a composite charge to its customer, inclusive of freight and despatch, the charge so made should accordingly be treated as part of the turnover for purpose of this section. It would not be proper to reduce the value of the turnover with reference to the approximate value of the service relating to freight and despatch. On the other hand, if the company makes a separate charge for freight and despatch and for other similar services, it would be quite proper to ignore such charges when computing the value of the turnover to be disclosed in the Profit and Loss Account. In other words, the disclosure may well be determined by reference to the company’s invoicing and accounting policy and may thereby vary from company to company. For reasons of consistency as far as possible, a company should adhere to the same basic policy from year to year and if there is any change in the policy the effect of that change may need to be disclosed if it is material, so that a comparison of the turnover figures from year to year does not become misleading.”

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The Statement on the Companies (Auditors' Report) Order, 2003 issued by the Institute in April 2004, while discussing the term 'turnover' in paragraph 23 states as follows:

The term, "turnover", has not been defined by the Order. Part II of Schedule VI to the Act, however, defines the term "turnover" as the aggregate amount for which sales are effected by the company. It may be noted that the "sales effected" would include sale of goods as well as services rendered by the company. In an agency relationship, turnover is the amount of commission earned by the agent and not the aggregate amount for which sales are effected or services are rendered. The term "turnover" is a commercial term, and it should be construed in accordance with the method of accounting regularly employed by the company.

Although, Schedule III of the Companies Act, 2013 has replaced the Revised Schedule VI of the Companies Act, 1956 in the year 2014, guidance given herein above with respect to meaning of the term "turnover" is still relevant.

The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. Trade discounts can be deducted from sales but not the commission allowed to third parties. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover. However, sales of scrap shown separately under the heading 'miscellaneous income' will have to be included in turnover.

Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee.

Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts in the light of the above discussion.

Applying the above generally accepted accounting principles, a few typical cases may be considered:

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- (i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.
- (ii) Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.
- (iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.
- (iv) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.
- (v) Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year/s.
- (vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.
- (vii) Sale proceeds of property held as investment property will not form part of turnover.

Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However, if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover.

A question may also arise as to whether the sales by a commission agent or by a person on consignment basis forms part of the turnover of the commission agent and/or consignee as the case may be. In such cases, it will be necessary to find out, whether the property in the goods or all significant risks, reward of ownership of goods belongs to the commission agent or the consignee immediately before the transfer by him to third person. If the property in the goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of the sales/turnover of the commission agent and/or the consignee as the case may be. If, however, the property in the goods, significant risks and reward of ownership belongs to the commission agent and/or the consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover.

Relevant Definitions and Meanings

In this context, it would be useful to refer to the CBDT Circular No.452 dated 17th March 1986, where the Board has clarified the question of applicability of section 44AB in the cases of Commission Agents, Arhatias, etc. The Circular is published in **Appendix IV**.

Share brokers, on purchasing securities on behalf of their customers, do not get them transferred in their names but deliver them to the customers who get them transferred in their names. The same is true in case of sales also. The share broker holds the delivery merely on behalf of his customer.

The property in goods does not get transferred to the share brokers. Only brokerage which is being accounted for in the books of account of share brokers should be taken into account for considering the limits for the purpose of section 44AB. However, in case of transactions entered into by share broker on his personal account, the sale value should also be taken into account for considering the limit for the purpose of section 44AB. The case of a sub-broker is not different from that of a share broker.

C. The turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined in the following manner:

a) **Speculative transaction:** A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference amount is 'turnover'. In the case of an assessee undertaking speculative transactions there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on account of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset, the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as

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the turnover of such transactions for determining the liability to audit vide section 44AB.

b) Derivatives, futures and options: Such transactions are completed without actual delivery of shares or securities or commodities etc. These are squared up by receipts/payments of differences. The contract notes are issued for the full value of the underlined shares or securities or commodities etc. purchased or sold but entries in the books of account are made only for the differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia. The turnover in such types of transactions is to be determined as follows:

- (i) The total of favourable and unfavourable differences shall be taken as turnover.
- (ii) Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, the same should not be separately included.
- (iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.

c) Delivery based transactions: Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sales is to be considered as turnover.

a. Further, an issue may arise whether such transactions of purchase or sale of stocks and shares undertaken by the assessee are in the course of business or as investment. The answer to this issue will depend on the facts and circumstances of each case taking into consideration the nature of the transaction, frequency and volume of transactions etc. For this, attention is invited to the following judgments where this issue has been considered.

- *CIT v. P.K.N. and Co Ltd (1966) 60 ITR 65 (SC)*
- *Saroj Kumar Mazumdar v. CIT (1959) 37 ITR 242 (SC)*
- *CIT v. Suttlej Cotton Mills Supply Agency Ltd. (1975) 100 ITR 706 (SC)*
- *G. Venkataswami Naidu & Co. v. CIT (1959) 351TR 594 (SC)*

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Further, CBDT Circular No.4/2007 dated 15.06.2007, Circular No. 6/2016 dated 29.02.2016 and Letter F.No. 225/12/2016/ITA.II dated 02.05.2016- **Appendix V** may also be referred to.

- b. In case such transactions are for the purposes of investment and income/loss arising therefrom is to be computed under the head 'Capital Gains', then the value of such transaction is not to be included in sales or turnover for deciding the applicability of audit under section 44AB. However, in case such transactions are in the course of business, then the total of such sales is to be included in the sale, turnover or gross receipts as the case may be, of the assessee for determining the applicability of audit under section 44AB.

D. Gross Receipts:

The term "gross receipts" is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. Broadly speaking, the following items of income and/or receipts would be covered by the term "gross receipts in business":

- (i) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
- (ii) Any indirect tax re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995.
- (iii) The aggregate of gross income by way of interest received by the money lender.
- (iv) Commission, brokerage, service and other incidental charges received in the business of chit funds.
- (v) Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.) and if the same is credited to a separate account in the books, only the net surplus on this account should be added to the turnover for the purposes of Section 44AB;
- (vi) The net exchange rate difference on export sales during the year on the basis of the principle explained in (v) above will have to be added;
- (vii) Hire charges of cold storage;
- (viii) Liquidated damages;

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- (ix) Insurance claims - except for fixed assets;
- (x) Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;
- (xi) Gross receipts including lease rent in the business of operating lease;
- (xii) Finance income to reimburse and reward the lessor for his investment and services;
- (xiii) Hire charges and instalments received in the course of hire purchase;
- (xiv) Advance received and forfeited from customers.
- (xv) The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

The following items would not form part of "gross receipts in business" for purposes of section 44AB:

- (i) Sale proceeds of fixed assets including advance forfeited, if any;
- (ii) Sale proceeds of assets held as investments;
- (iii) Rental income unless the same is assessable as business income; Dividends on shares except in the case of an assessee dealing in shares.
- (iv) Income by way of interest unless assessable as business income.
- (v) Reimbursement of customs duty and other charges collected by a clearing agent.
- (vi) In the case of a recruiting agent, the advertisement charges received by him by way of reimbursement of expenses incurred by him.
- (vii) In the case of a travelling agent, the amount received from the clients for payment to the airlines, railways etc. where such amounts are received by way of reimbursement of expenses incurred on behalf of the client. If, however, the travel agent is conducting a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts.
- (viii) In the case of an advertising agent, the amount of advertising charges recovered by him from his clients provided these are by way of reimbursement. But if the advertising agent books the advertisement space in bulk and recovers the charges from different clients, the amount received by him from the clients will not be the same as the

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charges paid by him and in such a case the amount recovered by him will form part of his gross receipts.

- (ix) Share of profit of a partner of a firm in the total income of the firm excluded from his total income under section 10(2A) of the Income-tax Act.
- (x) Interest, remuneration received by Partner from partnership firm (Perizad Zorabian Irani v PCIT, Mumbai – WP No. 1333/2021- Bombay High Court – dated 09.03.2022)
- (xi) Write back of amounts payable to creditors and/or provisions for expenses or taxes no longer required.

Thus, the principle to be applied is that if the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts. But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts. In the case of a professional, the expression "gross receipts" in profession would include all receipts arising from carrying on of the profession. A question may, however, arise as to whether the out-of-pocket expenses received by him should form part of his gross receipts for purposes of this section. Normally, in the case of solicitors, advocates or chartered accountants, such out of pocket expenses received in advance are credited in a separate client's account and utilised for making payments for stamp duties, registration fees, counsel's fees, travelling expenses etc. on behalf of the clients. These amounts, if collected separately either in advance or otherwise, should not form part of the "gross receipts". If, however, such out of pocket expenses are not specifically collected but are included/collected by way of a consolidated fee, the whole of the amount so collected shall form part of gross receipts and no adjustment should be made in respect of actual expenses paid by the professional person for and/or on behalf of his clients out of the gross fees so collected. However, the amount received by way of advance for which services are yet to be rendered will not form part of the receipts, as such advances are the liabilities of the assessee and cannot be treated as his receipts till the services are rendered. question may arise in the case of an assessee carrying on business and at the same time engaged in a profession as to what are the limits applicable to him under section 44AB for getting the accounts audited. In such a case, if his professional receipts are, say, rupees fifty-four lakhs but his total sales, turnover or gross receipts in business are, say, rupees seventy-two lakhs, it will be necessary for him to get his accounts of the profession and also the accounts of the business

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audited because the gross receipts from the profession exceed the limit of rupees fifty lakhs. If, however, the professional receipts are, say, rupees forty-two lakhs and total sales turnover or gross receipts from business are, say, rupees eighty-six lakhs, in these circumstances, gross receipts, turnover etc. from profession or business is not in excess of the limits specified in section 44AB for mandate of audit.

It may, however, be noted that in cases where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore & Rs 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not. However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded. So far as a partnership firm is concerned, each firm is an independent assessee for purposes of Income-tax Act. Therefore, the figures of sales of each firm will have to be considered separately for purposes of determining whether or not the accounts of such firm are required to be audited for purposes of section 44AB. It must also be understood that the issue whether the turnover exceeds the prescribed limit (Presently Rs.1 crore & Rs 10 crore for certain specified cases) in the case of business or the gross receipts exceed the prescribed limit (Presently Rs. 50 lakhs) in the case of profession is to be determined in each year independent of the results obtained in the preceding year or years. Further, this section applies only if the turnover exceeds the prescribed limit according to the accounts maintained by the assessee. If the Assessing Officer wants the assessee to get his accounts audited in cases where the figures of turnover as appearing in the books of account of the assessee do not exceed the prescribed limits, he has no option but to pass an order under section 142(2A) directing the assessee to get his accounts audited from a chartered accountant as may be nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Under section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by, a partner of a firm from such firm shall be chargeable under the head profits and gains of business and profession. However, partner does not do any business

Relevant Definitions and Meanings

independently, but firm was carrying on business in which assessee is only a partner, therefore, remuneration received by assessee from partnership firm cannot be treated as gross receipt/turnover. (Perizad Zorabian Irani v PCIT, Mumbai – WP No. 1333/2021- Bombay High Court – dated 09.03.2022).

Further the following activities have been held to be business:

- (i) Advertising agent
- (ii) Clearing, forwarding and shipping agents - CIT v. Jeevanlal Lalloobhai & Co. [1994] 206 ITR 548 (Bom).
- (iii) Couriers
- (iv) Insurance agent
- (v) Nursing home
- (vi) Stock and share broking and dealing in shares and securities – CIT v. Lallubhai Nagardas & Sons [1993] 204 ITR 93 (Bom)
- (vii) Travel agent.

Chapter 3

Section 44AA related to Maintenance of accounts by certain persons carrying on profession or Business

Since maintenance of books of accounts and Audit is exempted under section 44AD and 44ADA if opted. It is important for us to under the provisions of the Section 44AA related to Maintenance of accounts by certain persons carrying on profession or business and Section 44AB related to Audit of accounts of certain persons carrying on business or profession.

Let's understand Sec 44AA of the Act, read with Rule 6F of the Income Tax Rules, 1962 which relate to maintenance of books. 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*

Section 44AA related to Maintenance of accounts by certain ...

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.*

Let's under the provisions in detail:

For the definition and meaning of Business and profession refer chapter 2.

Following list of professionals are Specified Section 44AA (1)

1. Professional carrying on legal,
2. medical, engineering, or
3. architectural profession or
4. the profession of accountancy or

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5. technical consultancy or
6. interior decoration

Further under Rule 6F and other professions notified thereunder (Notifications No. 1620 SO-18(E) dated 12.1.77, No. 9102SO 2675 dated 25.09.1992 and No.116 SO 385(E), dated 4.5.2001), the following can also be considered as a profession:

1. Authorised Representative
2. Company Secretary
3. Film Artists/Actors, Cameraman, Director including an assistant director; a music director, including an assistant music director, an art director, including an assistant art director; a dance director, including an assistant dance director; Singer, Storywriter, a screen-play writer, a dialogue writer; editor, lyricist, and dress designer,
4. Information Technology Attention is invited to Notification No. 890(E)/2000 dated 26-9-2000.

Therefore, the above 10 professional has been considered as Specified professional under section 44AA (1).

Specified Books of Accounts as per Rule 6F:

As per sub-rule (1) specified professional should maintain specified books of accounts if the gross receipts exceed or likely to exceed Rs. 1,50,000/- in any one of the three years immediately preceding the previous year.

As per sub-rule (2), following are the books of account and other documents to be maintained by specified professional:

- i) a daily cash book;
- ii) a journal, if the accounts are maintained according to the mercantile system of accounting;
- iii) a ledger;
- iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him:

Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees

Section 44AA related to Maintenance of accounts by certain ...

- v) original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person:

Provided that the requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.

Further as per sub-rule 3, a person carrying on medical profession shall, in addition to the books of account and other documents specified in sub-rule (2), keep and maintain the following, namely: --

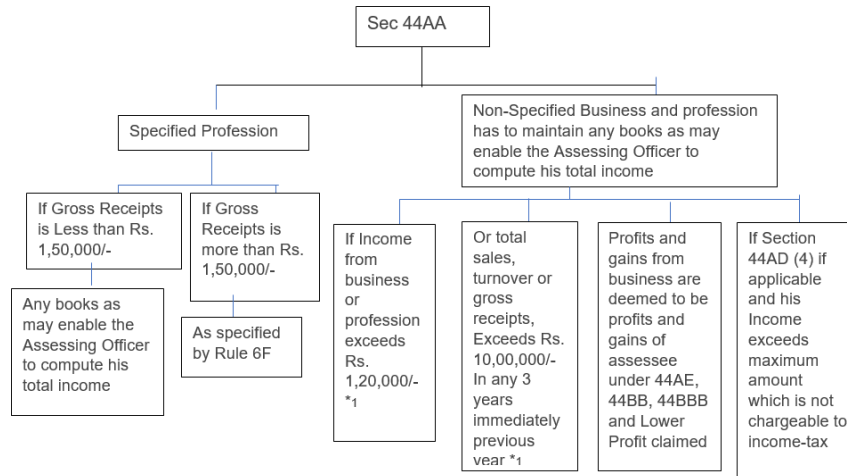
- (i) a daily case register in Form No. 3C.
- (ii) an inventory [under broad heads,] as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

Therefore, specified professional should maintain specified books of accounts if the gross receipts exceed or likely to exceed Rs. 1,50,000/- in any one of the three years immediately preceding the previous year.

Specified professional having gross receipts less Rs. 1,50,000/-, Business and non-specified professional can maintain any books as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

The provisions of sec 44AA of the Act can be explained with the help of following presentation:

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Note: *1

In case of Individual and HUF carrying on Non-specified Business and Profession the limit of Income is Rs. 2,50,000/- or total sales, turnover or gross receipts, Exceeds Rs. 25,00,000/- in any 3 years immediately previous year.

For the meaning of total sale, turnover or gross receipts refer chapter 2.

Penalty for not maintaining the Book of Accounts

As per Section 271A, Assessing Officer or the Commissioner (Appeals) may direct Rs. 25,000/- as penalty, if any person fails to keep and maintain any such books of accounts and other documents as required under section 44AA or the rules made thereunder.

Chapter 4

Section 44AB Audit of accounts of certain persons carrying on business or profession

Section 44AB are the provisions relating to the class of taxpayers who are required to get their accounts audited from a chartered accountant. The audit under section 44AB aims to ascertain the compliance of various provisions of the Income-tax Law and the fulfilment of other requirements of the Income tax. The provisions of Sec 44AB are as:

Audit of accounts of certain persons carrying on business or profession - 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 "[ten] crore rupees" had been substituted:]

[**Provided further** that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; 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

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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;

Section 44AB Audit of accounts of certain persons carrying ...

- (ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means ²¹[date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139.

As per the Provisions of the 44AB (1) following persons are compulsorily required get their books of the accounts get audited.

- a. A person carrying on business, if his total sales, turnover or gross receipts (as the case may be) in business for the year exceed or exceeds Rs. 1 crore.

As per the first proviso of section 44AB if person opts for presumptive taxation scheme under section 44AD the turnover limit applicable to him is Rs. 2 crores.

Further, as per the proviso to Section 44AB (a) the threshold limit, for a person carrying on business, is increased from Rs. 1 Crore to Rs. 10 crores in case when cash receipt and payment made during the year do not exceed 5% of aggregate receipts or aggregate payments, as the case may be.

In other words, if more than 95% of business transactions are done through banking channels the total sales, turnover or gross receipts limit to be considered for audit is Rs. 10 crores.

Further, it may be noted that the proviso clause (a) reads as "aggregate of all amounts received including amount received for sales", it means amount received towards the previous year's outstanding receivables balance and any advance received towards future contract for sale or service shall be included in addition to Amount received towards previous year sales, turnover or gross receipts while calculating the aggregate of all amounts received.

In short, Aggregate of all amount received = Amount received towards previous year sales, turnover or gross receipts + Amount received towards previous year's outstanding receivable balance + Advance received towards future contract for sale or service.

Also, clause (b) reads as "aggregate of all payments made including amounts incurred for expenditure", it means amount paid towards the previous year's payables balance any advance paid again future contract related to expenditure and shall be included in addition to amount paid towards previous year expenditure while calculating the aggregate of all payment made.

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In short, Aggregate of all payments = Amount paid towards previous year expenditure + Amount paid towards previous year's outstanding payable balance + Advance paid towards future contract related to expenditure

For Example:

If Mr A has following transaction during the FY 2021-22

(Amounts are in lakhs)

Turnover (a)	Advance received in FY 2020-21 for the sales of FY 2021-22 (b)	Advance received in FY 2021-22 for the sales of FY 2022-23 (c)	Amount received towards the turnover during AY 2021-22 (d)	Total Receipts for Section 44AB (e) = ((d) + (c) - (b))	Amount received in cash (f)	% of cash receipts will be (f)/(e)
250	10	20	200	210	10	4.76%

In the same way aggregate of payment is calculated:

If Mr A has following transaction during the FY 2021-22

(Amounts are in lakhs)

So, in the above case person need not get his audited as per the proviso to section 44AB (a) since is transaction through cash is less than 5%. That is transaction through banking challan is more than 95%.

Another question which may arise is whether aggregate receipts and aggregate payments includes capital receipts and payments?

Answer is No since the clause (a) of the proviso to section 44AB (a) say amount received for sales, turnover or gross receipts during the previous year and also clause (b) of the proviso to section 44AB (a) say amount incurred for expenditure, therefore, the amount received towards sales and payment made again the expenditure should only be considered.

Advance and Retention Money

Another question which may arise is whether the advance should be considered for calculating total sales, turnover or gross receipts?

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In case of CIT v. Punjab Tractors Co.op. Multipurpose Society Ltd. 234 ITR 105(P&H) it was held that, Deposits or advances received by the assessee became trading receipts when the assessee became entitled to appropriate the same to its income at the time of rendering the service. In the above said case the assessee was following mercantile system of accounting.

In case of A.T.E. Enterprises Private Limited, vs The I.T.O. 2(1)(1), Mumbai, assessee was following cash system of accounting and it was held that, we have considered the rival submissions and perused the record of the case. Section 4 deals with charge of income tax. As per sub-section (2) of Section 4, in respect of income chargeable under sub-section (1), income tax is to be deducted in advance. Income tax is to be charged at the rate or rates fixed for the year by the annual Finance Act. Under this section, the subject of charge is the income of the previous year. Thus, it is evident that mere receipt of amount is not taxable unless the same or the part embedded in that receipt partakes the character of income. Section 5 determines the scope of total income depending upon residential status of the assessee. It prescribes the gamut of total income of an assessee. As per this section, profits are chargeable when it accrues, arise or are received. In the case of Sassoon & Co Ltd. V CIT, 26 ITR 27(SC), the principle laid down was that income can be held to accrue only when the assessee acquired a right to receive that income. Merely because an amount has been entered into in assessee's books, is not conclusive proof that income has accrued. Section 145 deals with method of accounting and is a procedural section. This section cannot be resorted to for taxing a particular receipt unless the receipts come within Section 4 r.w. S.5 partaking character of income. The assessee has to exercise his choice regarding method of accounting to be followed for recording the income. If the assessee has adopted the mercantile system of accounting, then the taxability event of income will arise the moment it accrues irrespective of receipt. However, when accounts are maintained on cash basis, income would be chargeable the moment it is received irrespective of the fact whether the source or from which it was received exist or not. But it is ultimately the income which is taxable and not the whole amount irrespective of the method of accounting, whichever is followed. If an assessee may be required to refund the amount, then it cannot be treated as assessee's income in that particular year. Unless the assessee can exercise his entire rights over a particular receipt, it cannot be said that income has accrued in his favour. No other person should have any charge over that receipt. The dominion over the amount should be of assessee.

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The Cochin Bench of the Tribunal in Asstt. CIT v. Chandragiri Construction Co. [2012] 136 ITD 133/21taxmann.com 167 (Cochin) (TM) has held that the retention money held by the contractee on which has no enforceable right to seek payment, is not assessable to tax at the time of retention. Only when the retention money is released or the contractor has the right to enforce payment of such money as per the terms of the contract, it is assessable to income-tax.

Therefore, the advance received, and retention money held is not taxed unless the assessee can exercise his entire rights over a particular receipt whether he is following cash or mercantile accounting.

But only for computing aggregate gross receipts and aggregate payments for clause (a) and clause (b) of proviso to section 44AB (a) advance needs to be considered.

b. A person carrying on profession, if his gross receipts in profession for the year exceed Rs. 50 lakhs.

It may be note that audit requirement above Rs. 50 lakhs gross receipts are applicable to both specified and non-specified professionals.

Further, the relaxation given for carrying on transaction through banking channel is not given to professional.

c. If the business carried on is the business covered under Section 44AE, 44BB and 44BBB and he claims that the Profits and gains from are lower than the profits and gains computed under said sections respectively.

d. If profession is covered under section 44ADA and claims that the Profits and gains from profession are lower than the profits and gains computed under said Section, and his income exceeds the maximum amount chargeable to income tax in any previous year.

e. An assessee who declares profit for any previous year in accordance with section 44AD and opts out of the presumptive taxation by declaring profit lower than the profit computed as per section 44AD scheme for any of one 5 assessment year relevant to the previous year succeeding such previous year in which he claimed the benefit of 44AD, and his income exceeds the amount which is not chargeable to tax in the previous year.

i.e. If a person opts for presumptive taxation scheme then he is also require to follow the same scheme for next 5 years. If he failed to do so, then presumptive taxation scheme will not be available for him for next 5 years.

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For example, an assessee claims to be taxed on presumptive basis under Section 44AD for 2021-22. However, for AY 2022-23, if 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 AYs, i.e. from AY 2023-24 to 2027-28.

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. Only If his total income exceeds maximum amount not chargeable to tax.

It may be noted that only where the assessee opts for 44AE, 44BB, 44BBB and 44ADA, accounts need to be audited if profit and gains declared is less than the specified presumptive rate in the respective section. Further if assessee has opted section 44ADA, his income should exceed maximum amount chargeable to tax as an additional condition.

When section 44AD is opted audit is applicable, only if the section 44AD (4) is applicable and his income exceeds maximum amount not chargeable to tax. Merely because profit and gains declared is less than the specified presumptive rate will not mandate the assessee to get books of accounts audited under section 44AB.

Provision of section 44AB is not apply to person who divers income of the nature referred to under sections 44B, 44BBA.

If the accounts are required to be audited under any other law, it is sufficient if he gets the accounts audited under other law and submits the specified the report by the specified date.

The form prescribed for audit report under Rule 6G in respect of audit conducted under section 44AB is Form No. 3CB and the prescribed particulars are to be reported in Form No. 3CD. In case accounts audited by or under any other law, the form prescribed for audit report is Form No. 3CA and the prescribed particulars are to be reported in Form No. 3CD. Specified dated for filling the audit report for all categories of assesseees whose accounts are required to be audited is the date one month before the due date for furnishing the return of income under Section 139(1).

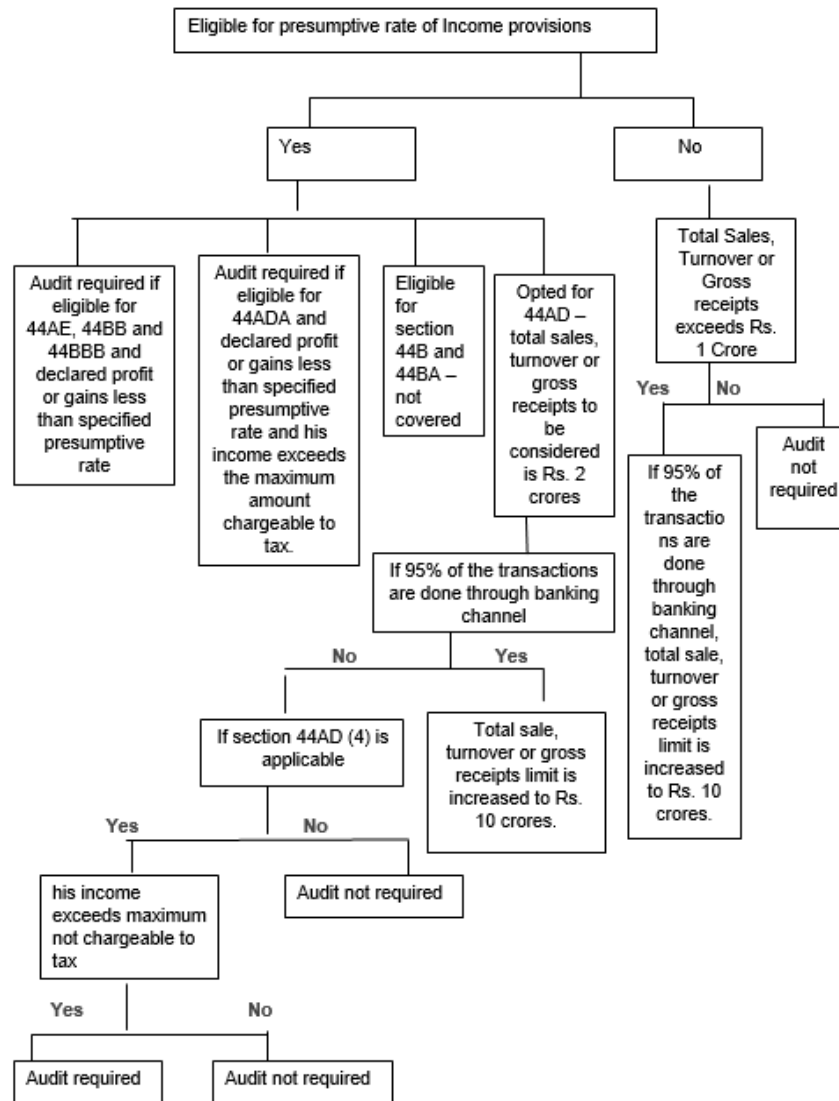
Penalty for not getting the accounts audited:

If the assessee fails to get audit and submit the audit report as required under section 44AB, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross

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receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less can be imposed as penalty by Assessing Officer.

The provisions of sec 44AA of the Act can be explained with the help of following presentation:



Chapter 5

Special provision for computing profits and gains of business on presumptive basis - Provisions of Section 44AD

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" :

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 or through such other electronic mode as may be prescribed²² 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

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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*
- (iii) 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.*

According to 44AD if any eligible assessee carrying on eligible business opted for this provision than the provisions from 28 to 43C are not applicable for the computation of the Income from Profit or Gains from the Business or Profession. Percentage of profit or gains specified in 44AD will be deemed as Income from Business or Profession.

Special provision for computing profits and gains of business ...

Let's understand the provision of Section 44AD in detail.

Who is eligible Assessee?

Eligible Assessee for Section 44AD has been defined in Explanation clause (a) of the section.

As per the Sub-clause (i) of clause (a) eligible assessee means:

Resident assessee who is

1. Individual
2. Hindu undivided Family
3. Partnership firm (not a Limited Liability Partnership Firm as defined under LLP Act, 2008)

Further as per the sub-clause (ii) of clause (a) An Individual / HUF / a Partnership Firm who is a resident, should not claim following deductions to claim the benefit of section 44AD:

- 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)

Therefore, **following are not allowed claim Section 44AD:**

1. Individual/HUF who is Non-Resident
2. Association of Person
3. Firm having non-resident status
4. A local Authority
5. Any type of Company
6. Co-operative Society
7. LLP both resident and non-resident
8. Artificial Juridical person
9. An Individual / HUF / a Partnership Firm who is a resident 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.

10. An Individual / HUF / a Partnership Firm who is a resident claiming deduction under Chapter VI-A Part-C (deductions in respect of certain Incomes)

What is Eligible Business?

Eligible Business for Section 44AD has been defined in Explanation 1 clause (b) of the section. 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.

As per Sub-clause (i) all type of business except the business of plying, hiring or leasing goods carriages referred to in section 44AE, can claim the benefit of section 44AD.

Please refer chapter 2 to understand the definition and meaning business and profession.

Example of Eligible Business covered:

- Any Manufacturing concerns
- Trading Business
- Wholesale Business
- Retail Business
- Job Work
- Speculative/ Non speculative transactions All types service except professional covered under section 44ADA.

Person carrying on Business except the business of plying, hiring or leasing goods carriages referred to in section 44AE, are covered under section 44AD. Person carrying on profession under section 44ADA are excluded specifically under section 44AD (6).

Whether profession other than those covered under section 44ADA are cover under this section or not is not clear from the provisions of section 44AD, we will discuss the same later in this publication.

Business referred in section 44AE:

Further, person carrying on the business of plying, hiring or leasing goods carriage referred to in section 44AE are not eligible. Persons having vehicles less 10 numbers are covered section 44AE. Therefore, a question may arise whether person having more than 10 vehicle is covered in section 44AD. It may be note that section say business referred to section 44AE and not person covered under section 44AE. Therefore, the if the person carry on the business of plying, hiring or leasing goods carriage irrespective of the number of vehicle section 44AD will not be eligible business.

Total turnover or gross receipts

As per Explanation clause (b) sub-clause (ii) to section 44AD, a person whose total turnover or gross receipts for the year exceed Rs. 2 crores cannot adopt the presumptive taxation scheme of section 44AD.

Please refer chapter 2 to understand the meaning of Turnover and Gross Receipts.

It can be summarised as following:

The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. Trade discounts can be deducted from sales but not the commission allowed to third parties. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover. However, sales of scrap shown separately under the heading 'miscellaneous income' will have to be included in turnover.

Applicability of Section 145A:

As per section 145A clause (ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.

This said provision is limited to calculating income taxable under the head 'Profit and Gains from the Business or profession'. Whether this provision

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can be applied for 44AA, 44AB, 44AD and 44ADA has been a matter of disagreement between the revenue and assessee. Let's discuss the same:

If composition scheme is opted by the assessee under GST Act, he can't issue tax invoice. This is because a composition dealer cannot charge tax from their customers. The GST will be paid by composition dealer from his own pocket to Government. Therefore, GST payment to Government will be considered as an expenditure and debited to the Statement of profit & loss. Therefore, amount of GST paid to Government by the composition tax payer will not be included in the sales, Gross turnover and gross receipts.

In other cases dealer will be issuing the tax invoice and GST is will be collected from the customer and usually account under the head GST OUT TAX payable separately in the books of accounts.

Further, ICAI guidance note on Tax Audit it has been clarified as follows:

Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover.

Since there is a disagreement, a clarification is required with regard to the same by Income tax department.

Clubbing Business total turnover or gross receipts

When assessee carries on several business 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

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is not material. Combined turnover or gross receipts of all the businesses would form the basis for calculation of presumptive income.

The Same has be stated in the Guidance Note on Tax Audit by ICAI, which reads as follows:

“It may, however, be noted that in cases where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore & Rs 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not. However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded. So far as a partnership firm is concerned, each firm is an independent assessee for purposes of Income-tax Act. Therefore, the figures of sales of each firm will have to be considered separately for purposes of determining whether or not the accounts of such firm are required to be audited for purposes of section 44AB. It must also be understood that the issue whether the turnover exceeds the prescribed limit (Presently Rs.1 crore & Rs 10 crore for certain specified cases) in the case of business or the gross receipts exceed the prescribed limit (Presently Rs. 50 lakhs) in the case of profession is to be determined in each year independent of the results obtained in the preceding year or years. Further, this section applies only if the turnover exceeds the prescribed limit according to the accounts maintained by the assessee. If the Assessing Officer wants the assessee to get his accounts audited in cases where the figures of turnover as appearing in the books of account of the assessee do not exceed the prescribed limits, he has no option but to pass an order under section 142(2A) directing the assessee to get his accounts audited from a chartered accountant as may be nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Under section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by, a partner of a firm from such firm shall be chargeable under the head profits and gains of business and profession. However, partner does not do any business independently, but firm was carrying on business in which assessee is only a partner, therefore, remuneration received by assessee from partnership firm

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cannot be treated as gross receipt/turnover. (Perizad Zorabian Irani v PCIT, Mumbai – WP No. 1333/2021- Bombay High Court – dated 09.03.2022).”

Examples:

1. Mr. A, a resident individual carrying on two Business, the turnover of which is

Manufacturing Business Rs. 150 lakhs

Trading Business Rs. 50 lakhs

In this case both the business income should be clubbed. Therefore, the Total turnover or gross receipts is Rs. 200 lakhs.

However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD, 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded. So far as a partnership firm is concerned, each firm is an independent assessee for purposes of Income-tax Act.

2. Mr. A, a resident individual carrying on two Business, the turnover of which is

Business A (Eligible Business u/s 44AD) Rs.60 Lakhs

Business B (Transport u/s 44 AE) Rs.80 Lakhs

In the above said case, turnover of both the business shall not be clubbed. Each business is eligible to opt the presumptive rate of income under respective 44AD and 44AE of the Act.

Advance and retention money:

As discussed, in the previous chapter 4 in the page no 26 to 27 advance and retention money shall not be included in calculating total turnover or gross receipts.

Applicability of ICDS:

It has been clarified in the Circular No 10/2017 [F.NO.133/23/2016-TPL] Dated 23.03.2017 in Question 3 which reads as:

Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE,44ADA, 44B, 44BB, 44BBA, etc. of the Act?

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Answer: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme.

For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the gross receipts or turnover, as the case may be.

Whether section 44AD is applicable to Derivative transaction:

Since the section 44AD has not excluded derivative transaction. Person can opt for the section 44AD if his turnover is less than Rs. 2 crores.

Further, He may not opt for section 44AD and get his accounts audited only if his turnover exceeds Rs. 10 crores since his transactions are usually through banking channel.

Also Profit and Gains from derivative transaction can be declared at 6%, since derivative transaction are usually through banking channel, and he can't claim any deductions of expenses.

Please refer chapter 2 para C - The turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined.

Disadvantage of opting for section 44AD in case of derivative transaction are

- a. once opted for presumptive rate of tax he can't opt out for 5 succeeding 5 years from the previous year in which he opted presumptive rate of tax. Suppose if he opts out, he can't opt for presumptive taxation for next 5 years from the year in which he opted out.
- b. Since he will be declaring the profit if opted for 44AD, he can't carry forward any loss of derivative transactions.

Therefore, in my opinion sometimes it may be beneficial not to opt for section 44AD and not get the accounts audited, if the turnover is less than Rs. 10 crores. Same should be analysed based on the assessee cases.

Presumptive rate specified:

The presumptive rate of income specified is 8% of the total turnover or gross receipts.

For Example : Mr.A has Turnover : 80 Lakhs
Profit : 40 Lakhs
Income reported u/s 44AD : 6.4 lakhs

In the above case Mr. A can declared the profit of Rs. 6.4 lakhs even though he actually earned Rs. 40 Lakhs. Profit or gains declared as per section 44AD will be deemed to be profit or gains from business or profession if section 44AD is opted.

Further As per sub-section (1) provides that the presumptive rate of 6% of total turnover or gross receipts if amount is received By

- Account payee cheque or
- Account payee bank draft
- 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.

The following shall be the other electronic modes for the purposes of proviso to sub-section (1) of section 44AD as per the Rule 6ABBA:

- (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) Aadhar Pay.

To summarise for the payment realised in non-digital transactions presumptive rate of income applicable is 8% of total turnover or gross receipts and presumptive rate of income can be declared at 6% of the

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turnover if the receipts received digitally or through banking channel / digital transactions before the due date of return filing u/s 139(1).

Higher presumptive rate of Income:

If assessee is earning more income than the rate specified under this section. Assessee has an option to declare such higher rate as presumptive tax rate.

The provisions section 44AD reads as “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”

Therefore, section 44AD specifies presumptive rate of Income as 8%/6% as the case may be and also provides option to assessee to declare higher income, if he so likes. There is no limit on such higher percentage. If assessee declares excessively higher income than the normal profit earned by the industry. Assessee's case it may get selected for scrutiny to check whether any money laundering and black money is involved.

For Example : Mr. A has Turnover : 80 Lakhs
Profit : 40 Lakhs

Presumptive rate of income under section 44AD is 6.4 lakhs

Can assessee declare Rs. 40 lakhs under section 44AD?

In the above case Mr. A can declared the profit of Rs. 40 lakhs if the assessee wants, which is higher than 8% presumptive rate of income.

Following are examples of different rate to applied if the receipts are received digitally or through banking channel before the due date of return filing u/s 139(1).

Example:

Mr. A have gross receipts of Rs 1.5 Crore for FY 2017-18 and do not maintain books of accounts. Mr. A has opted for presumptive taxation. During the year Mr. A receives Rs. 70 Lakhs through non-digital transactions (cash payments) and Rs. 80 Lakhs through digital transactions before the specified date of filling return under section 139(1). What will be the income under the head business and profession?

Income under the business and profession:

For non-digital transactions: $70,00,000 * 8\% = \text{Rs. } 5,60,000$

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For digital transactions: $80,00,000 * 6\% = \text{Rs. } 4,80,000$

Income under the head "Business or Profession" will be = Rs 10,40,000

Effect based on the Method of accounting followed on the receipts received before the specified date of filing return under section 139 (1):

Since the method of accounting is not mentioned under section 44AD. Therefore, by applying Provision of the Income Tax Act, the proviso to section 44AD (1) may have following effect in determine total turnover or gross receipts based on the Method of accounting followed.

If the assessee is following cash system of accounting, then whatever payment received till 31st March of the previous year, considered as total turnover or gross receipts of the business.

Example:

Mr. A have Turnover of Rs 1.5 Crore for FY 2017-18 and do not maintain books of accounts but decides to offer income under cash system. Mr. A has opted for presumptive taxation. During the year Mr. A receives Rs. 70 Lakhs through non-digital transactions (cash payments) and Rs. 70 Lakhs through digital transactions before 31st March and Rs. 10 lakhs after 31st March. What will be the income under the head business and profession?

Income under the business and profession:

For non-digital transactions: $70,00,000 * 8\% = \text{Rs. } 5,60,000$

For digital transactions: $70,00,000 * 6\% = \text{Rs. } 4,20,000$

For digital transactions: 10,00,000 received after 31st March is may not be considered for previous year since Mr. A is following cash system of accounting. It will be considered for subsequent previous year.

Income under the head "Business or Profession" will be = Rs 9,80,000

As per the proviso to section 44AB (1), If the assessee is following mercantile system of accounting, for the invoice raised till 31st March of the previous year, receipts realised till the due date of filing the return under section 139(1) is considered for calculating total turnover or gross receipts of the business.

Further, income can be declared as 6% of the turnover if the payment is received digitally or through banking channel / digital transactions before the due date of return filing u/s 139(1).

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If amount is not realised before due date of filling the return of Income under section 139(1), presumptive rate applicable is 8% of total turnover or gross receipts, irrespective the credit terms of the business.

Example:

Mr. A have Turnover of Rs 1.5 Crore for FY 2021-22 and do not maintain books of accounts. Mr. A has opted for presumptive taxation and decides to offer receipts under Mercantile system of accounting. During the year Mr. A receives Rs. 50 Lakhs through non-digital transactions (cash payments) and Rs. 80 Lakhs through digital transactions before 31st March 2022 and RS. 10 Lakhs through non-digital transactions (cash payments) and Rs. 5 Lakhs through digital transactions received before 31st July 2022 and Rs. 5 lakhs were not received before 31st July 2022. What will be the income under the head business and profession?

Income under the business and profession:

For non-digital transactions: $50,00,000 * 8\% = \text{Rs. } 4,00,000$

For digital transactions: $80,00,000 * 6\% = \text{Rs. } 4,80,000$

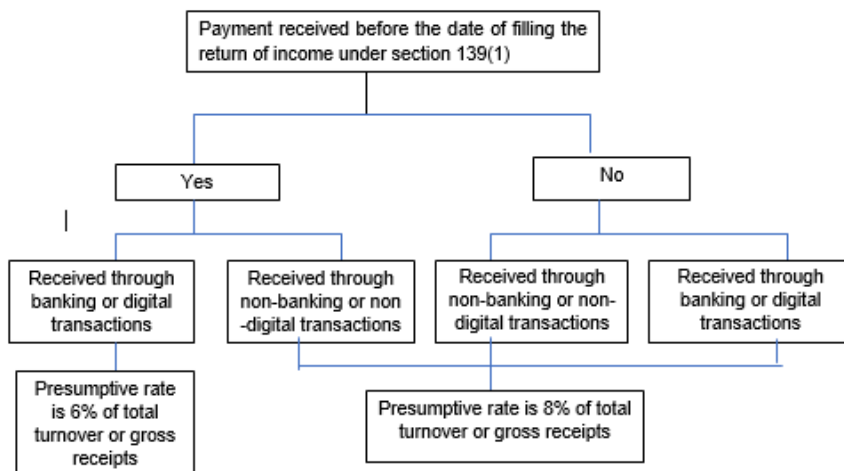
For non-digital transactions: $10,00,000 * 8\% = \text{Rs. } 80,000$

For digital transactions: $5,00,000 * 6\% = \text{Rs. } 30,000$

For digital transactions not received before 31st July $5,00,000 * 8\% = 40,000$

Income under the head "Business or Profession" will be = Rs 10,30,000/-

Presumptive rate can be explained in the following manner:



Date of filing the return:

It is to be noted that, date of filing the return does not have effect on presumptive rate, it is the due date of the filing of the return under section 139(1) which needs to be considered for calculating aggregate of all amounts received though digital challan

For example,

1. If the due of the filing return gets extended, then presumptive rate considered for the receipts received through banking channel or digital transaction till the extended date of return is 6% of the total turnover or gross receipts.

For example, during covid due date for filing return got extended till 31st March 2022, so presumptive rate considered is 6% of the total turnover or gross receipts, for receipts received till 31st March 2022.

2. If the return is filled before the due date of filing the return under section 139(1). If he receives after filing the return, then he can revise the return considering receipts till the due date of filing the return under section 139(1) at 6% of the total turnover or gross receipts as presumptive rate.

For example, if the assessee files return on 15th July and receives receipts after filing the return than he can revise the return consider the receipts received at 6% as presumptive rate till 31st July.

3. If he files, the return after due date of filing the return under section 139(1) then the receipts received till the due date of filing the return under section 139 (1) should be considered at 6% presumptive rate and receipts received after the due date of filing the return under section 139 (1) is considered at 8% presumptive rate.

For example, if return is filed on 15th August, then the receipts received till 31st July is considered at 6% presumptive rate and the receipts realised after 31st July at 8%.

Updated Return under Section 139(8A):

It may be noted that Finance Act,2022 introduced updated return under section 139(8A), such return can't be filed in the following cases:

- (a) return of a loss; or

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- (b) has the effect of decreasing the total tax liability determined on the basis of return furnished under sub-section 139(1) or sub-section 139(4) or sub-section 139(5); or
- (c) results in refund or increases the refund due on the basis of return furnished under sub-section 139 (1) or sub-section 139(4) or sub-section 139(5)

Therefore, updated can also be filed if updated return does not decrease tax liability or increases refund compared to original/revised return.

Rate of presumptive when total turnover or gross receipts of several business clubbed:

Mr. A is engaged in two eligible business and his profit for the year are as follows:

Type eligible Business	Turnover	Net Profit	% of Profit
Business A	100 lakhs	7 lakhs	7
Business B	70 Lakhs	10 Lakhs	14
Total	170 Lakhs	20 Lakhs	11.76

In the above example the assessee can considered total turnover or gross receipts as Rs. 170 lakhs and presumptive rate of income as 11.76% overall. Individual business profit need not be 8% each.

Also, he can declare the profit of 8% on 170 lakhs by opting presumptive rate of income scheme.

Non obstante Clause and Sub-section (2) of section 44AD:

Section 44AD, starts with the words "*Notwithstanding anything to the contrary contained in sections 28 to 43C...*". Where the language of the section contains the term 'notwithstanding anything to the contrary contained in....' that section becomes all pervasive over any other contrary provisions (if any). This clause is known as 'non-obstante clause'. Such clause is used by the Legislature in drafting most exceptional provision. Which means such provisions overrules the other provisions.

Therefore, the provision from the 28 to 43C will not be applicable if presumptive rate of Income is opted.

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Section 29 of the Income tax states how the Income referred to in Section 28 should be computed, is also not applicable. Therefore, all the computation of profits or gains from Business or professional are not applicable.

As per sub-section (2) of 44AD, any deduction allowable under provisions of section 30 to 38 shall be deemed already to be allowed. So, it is presumed the deduction allowable under section 30 to 38 are deemed as allowed while computing presumptive rate of Income under section 44AD.

In case of Commissioner of Income-tax vs. Inter Continental Constructions [2015] 61 taxmann.com 15 (Andhra Pradesh and Telangana) and Sudhakar Pandey vs. ACIT, Mirzapur, U.P, [2022] 135 taxmann.com 290 (Allahabad - Trib.), it was held that “no separate claim of depreciation is allowable in case of estimation of net profit of the assessee then the claim of depreciation is not in accordance with the provisions of law under Income-tax Act”.

The same was held in case of Commissioner (Custom) v. Stoneman Marble [(2011) 2 SCC 758], Vijay K. Talwar v. CIT [(2011) 1 SCC 673]; New Plaza Restaurant v. ITO [309 ITR 259 (HP)]; and Sanjay Oil Cake v. CIT [316 ITR 274 (Gujarat)].

“In the instant cases, when the books of account were rejected, then the assessee is not entitled for the depreciation separately on the same set of books of account which have no value after its rejection. Hence, we modify the impugned order passed by the Tribunal pertaining to the addition and direct that the depreciation will not be allowed when the books of account were rejected, and net profit rate was estimated.”

Therefore, no deduction can be claimed under section 30 to 38 if section 44AD opted.

But In may be noted that, Section 40, 40A and 43B also contains 'non-obstante clause' reading “Notwithstanding anything contained

Therefore, the provisions of section 40 have overriding effect on section from 30 to 38 and 40A and 43B has overriding effect on all other the provisions of the Act whereas section 44AD has overriding effect only on section from 28 to 43C. Therefore, a doubt may raise which provision will be prevailed over the other provisions.

Even the provision of the section 40 to 43C are not applicable. On plain reading the no additions can be made under section 40 to 43C when presumptive rate of Income is opted.

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Section 44AD presumes certain percentage of turnover or gross receipts as income. It is self-contained code by themselves and once opted expenses related to earn such income are not allowed.

This is a specific provision in Income Act, to provide the relief to small taxpayers from this tedious job of maintenance of books of account and getting them audited. Such scheme is framed with an objective to lower the compliance cost and administrative burden in case of such businesses. The person who opts for presumptive taxation scheme can declare his income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account and also from getting them audited.

This is because when the income is presumed at certain per cent of gross receipts, all the expenses directly or indirectly incidental to earning such income are deemed to have been claimed and allowed. No additions can be made to such to income. Otherwise, every purpose of the provision of Section 44AD gets defeated.

Section 43B Vs 44AD

In the case of Good Luck Kinetic v. ITO [2015] 58 taxmann.com 267, it was held

“A perusal of section 44AF clearly shows that the opening words in the said section are 'notwithstanding anything to the contrary contained in sections 28 to 43C'. A perusal of the provisions of section 43B shows that the opening words are 'notwithstanding anything contained in any other provisions of this Act'. As per the provisions of section 44AF admittedly once the presumptive tax provisions are applied, the income of the assessee is fixed at 5 per cent of the total turnover. The non obstante clause in section 44AF is not the only words that call for interpretation. When the presumptive tax rate is applied under section 44AF, the said sum equalling 5 per cent of the total turnover is deemed to be the profit and gains of such business chargeable to tax under the head 'Profits and gains of business or profession'. It only means that the deduction allowable under sections 28 to 43C is deemed to have been already granted to the assessee. This is because the said provisions under sections 28 to 43C are provisions relating to the computation of business income of the assessee.

However, a perusal of the provisions of section 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 same has been paid before the due date of filing the

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return. The statutory liability in the present case has not been paid before the due date of filing the return. Further, the non obstante clause in section 43B has a 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 section 43B in respect of the statutory liabilities still holds precedence over such allowance. This is because the dues to the crown have no limitation and have precedence over all other allowances and claims. In these circumstances, the disallowance made by the Assessing Officer by invoking the provisions of section 43B in respect of the statutory liabilities are in order even though the assessee's income has been offered and assessed under the provisions of section 44AF. [Para 5]"

In the above case the Court has analysed the two non-obstante clauses and The Tribunal has held that

- a. the non-obstante clause having wider amplitude will prevail over the other.
- b. the dues to the crown have no limitation and have precedence over all other allowances or claims.

Further, Tribunal in this case relates to the interpretation of section 43B. The Tribunal has held that, section 43B of the Act is not a section granting the deduction, but only restricting allowance of deduction of particular expenditure on payment basis. As per section 43B deduction will be allowed in year in which actual payment is made. Section 43B of the Act deals with expenses which are already allowed under sections 30 to 37 and such deductions are not determined only by section 43B of the Act. For instance, the deduction for employer's contribution to Provident Fund is dealt with by section 36(1)(iv) of the Act but section 43B only restricts the allowance, if the amount is unpaid.

As such application of section 43B of the Act to presumptive taxation would defeat the basic purpose of bringing the provisions relating to presumptive taxation in the statute book, which was to do away with maintenance of books of account and making the compliance simpler for the small business. If such disallowance is made then the assessee has to maintain the books of accounts.

Section 43B came into effect from 1983 with a non-obstante clause against the whole Act and section 44AF was not a part of the law at that time.

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Section 44AF was brought into the Statute books effective from 1997 containing the **Non obstante Clause which** overrides sections 28 to 43C (which include section 43B). Therefore, it could be presumed that while enacting section 44AF, the legislation was aware of the provision of the section 43B and enacted section 44AF with a non-obstante clause which override section 43B. It may be noted that the law which enacted later will prevail over the law enacted earlier.

Further, presumptive income is the specific provision related to computation of income of small business. Therefore, the presumptive income should be deemed to be income of the assessee after giving effect to all the computational provisions of profits and gains from business and Profession and no further adjustment relating to the section 43B should be permitted. If permitted it defeats purpose enacting the presumptive tax provisions.

Another issue that arises is the disallowances that are made based on section 43B they are to be allowed in the year of actual payment. Whether the same would be allowed on actual payment bases in the subsequent years, over and above the income that is determined on presumptive basis, assuming that the taxpayer opts for presumptive basis of taxation in that subsequent year also. This question is relevant, as the law does not permit any further deduction from the income that is computed on a presumptive basis.

At present section 44AF has been omitted from AY 2011-12. But the same principles can be applied to Section 44AD, 44ADA and 44AE. Therefore, proper clarification is required by the Government and authorities regarding above said matter.

Section 40 Vs 44AD

Sec 40 begins with “Notwithstanding anything to the contrary in sections 30 to 38”.

It is to be noted that Section 40 starts with a negative **Non obstante Clause**, and it says that certain deductions shall not be allowed while computing income under the head profits & gains of business or profession.

Further, Section 40 relates to disallowance of expenses for non-deduction of TDS or non-deduction/ non-payment of equalisation levy, remuneration/ interest by firm to partners in excess of allowed etc.

Whereas section 44AD begins with “Notwithstanding anything to the contrary contained in sec 28 to 43C”.

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It can be argued that Section 40 related to amounts not deductible is not applicable, if presumptive rate is opted. It may be noted that the amount not deductible under section 40 are the expenses allowed under section 30 to 38. If presumptive rate is claimed, deduction of the expenditure under section 30 to 38 are not allowed, and it is presumed the deduction are already allowed. When the expenses itself are not allowed, it can't be again disallowed under section 40.

In case of ITO v. Mark Construction (2012) 23 Taxamn 398 (Kolkata), it was held *"in our opinion, is in accordance with law. In the case of CIT v. Surindra Pal nand [2010] 192 Taxman 264 (Punj. & Har.) the Hon'ble Punjab and Haryana High Court has held that once under the special provision of section 44AD of the IT Act exemption from maintenance of books of account have been provided and the presumptive tax at 8% of the gross receipts itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposits in the bank unless such entries had no nexus with the gross receipts. In the present case though from the details filed by assessee the Id. AO observed that no TDS has been recovered, in our opinion, since assessee has disclosed the profits more than 8% of the gross receipts and there is no dispute in receipt of the gross receipts the addition made by Id. CIT(A) u/s 40(a)(ia) of the IT Act is not sustainable. Therefore, we confirm the action of Id. CIT(A) and dismiss the appeal of the revenue"*.

The same was upheld in case Bipinchandra Hiralal Thakkar v. Income Tax Officer Ward-1(2)6, Surat* [2021] 124 taxmann.com 236 (Surat-Trib.) it was held that:

"We note that assessing officer also took the stand and contended that "the due to the crown has no limitation and has precedence over all other allowance and claims". We note that provisions of section 44AD have been enacted by the Legislature/Crown to provide benefit to small businessmen in terms of cost savings. A small businessman having turnover below the specified limit, say, in assessee`s case the turnover/sales is below one crore rupees, therefore he need not to maintain books of accounts and need not to get the books of accounts audited from a Chartered Accountant, under section 44AB of the Act, this way, there is a cost saving in the hands of the assessee (small businessmen). This benefit (cost saving) has been provided by the Legislature/Crown to the small businessmen in India by enacting the provisions of section 44AD of the Act. Therefore, at the cost of repetition we state that the Legislature/Crown has enacted the provisions of section 44AD

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of the Act with a "non obstante clause". "Notwithstanding anything to the contrary contained in section 28 to 43C ". This goes to prove that the provisions of section 44AD of the Act overrides all other provisions contained in section 28 to 43C of the Act. At this juncture it is also important to note that Article 265 of the Constitution of India lays down that, "No tax shall be levied or collected except by authority of law". The Hon'ble Supreme Court of India has held that the provision under Article 265 of the Constitution of India is applicable not only for levy but also for the collection of taxes and the expression "assessment" within its compass covers both the aspects carried out by the executive functionary [Chottabhai Jethabhai Patel v. Union of India 1962 SCR Supl. (2)]. Therefore, it is required that whole of the process of taxation must follow the procedures which are valid under the law and must adhere to law i.e., substantive one as well as procedural one too. Therefore, in other words it is provided in the Constitution of India that every step should be taken to ensure that levy and collection of the taxes is strictly in accordance with law - not only substantive one but the procedural law, as well. Therefore, we do not agree with the statement of the assessing officer to the effect that "the due to the crown has no limitation and has precedence over all other allowance and claims." The assessee's turnover for the Assessment Year 2013-14 is to the tune of Rs. 92,33,844/- which is below one crore rupees, the threshold limit prescribed u/s 44AD of the Act and the assessee had filed the return of income on presumptive basis u/s.44AD of the Act therefore assessee is entitled to take the benefit of the provisions of section 44AD of the Act. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the assessee is entitled to take the benefit of the provisions of section 44AD of the Act. Based on the above factual position narrated above and precedents applicable to the facts, it is abundantly clear that assessee is not liable to deduct TDS under section 40(a)(ia) of the Act, therefore we delete the addition of Rs. 11,59,064/-. As we have allowed the assessee's appeal on legal ground, therefore all other issues on merits of the additions, in the impugned assessment proceedings are rendered academic and infructuous. "

Based on the above decision we can say that disallowance u/s 40 not attracted while computation income under section 44AD.

Therefore, Assessee is not disallowed 30% of the expenses for not deducting TDS, if the presumptive rate is opted. Assessing office can't invoke the provision of section 40(a)(ia) if the presumptive rate of income is opted.

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For Individuals and HUF, in the finance Act, 2020, w.e.f. 1-4-2020 liability to deduct TDS has been substituted as “has total sales, gross receipts or turnover from business or profession carried on by him exceeding one crore rupees in case of business or fifty lakh rupees in case of profession. “

Before substitution it was for individuals and HUF “ is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid.”

So, TDS Assessing Officer can only issue notice under section 201 related to failure to deduct or pay TDS amount, if the total sales, gross receipts or turnover from business or profession exceeds one crore in case of business or fifty lakhs in case of profession, for individuals and HUF. since the non-absentee clause of Section 44AD does not cover section 201.

In case of partnership firm limit of total sales, gross receipts or turnover is not specified in the Act. Therefore, TDS is deductible from Rs. 1 in case partnership firm.

Section 40A Vs 44AD

Sec 40A relates to disallowance related to

- a. excess payment of related party,
- b. cash payment to a person in excess of Rs. 10,000 in a day,
- c. payment to unapproved fund,
- d. mark to market losses etc.

Section 40A overrides all the other computational provisions of Profit and Gains from Business or Profession.

Therefore, a doubt may raise whether provision of the section 40A has overriding effect on 44AD.

In case of Good Luck Kinetic v. ITO (2015) 58 relating to disallowance u/s 43B Panji Tribunal has considered following as discussed above

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

It may be noted that the provisions of sec 40A are not related to statutory dues or such other dues.

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Further, it can be argued that Section 40A related to Expenses or payments not deductible in certain circumstances, is not applicable, if presumptive rate is opted. It may be noted that the amount not deductible under section 40A are the expenses allowed under section 30 to 38.

If presumptive rate is claimed, deduction of the expenditure under section 30 to 38 are not allowed, and it is presumed the deduction are already allowed. When the expenses itself are not allowed, it can't be again disallowed under section 40A.

Further, in case of ITO Jaipur Vs Rajesh Kumar Gupta, Alwar, Jaipur Bench (SMC) of ITAT dealing with disallowance u/s 40A (3) against income declared u/s 44AF held that *"The presumptive system of tax u/s 44AF starts with non-obstante clause and overrides other provisions. In view thereof, there is no justification in making the addition which is deleted. Since the addition is deleted on merits, there is no need to go into alternative ground. Thus, the appeal of the assessee is allowed."*

From the above we can presume that the section 44AD overrules the provision of the section 40 and 40A even though the section 40 and 40A contains the non-obstante clause.

Applicability Section 115JB Minimum Alternative Tax

Section 115JB is applicable to company therefore the same will not be applicable.

Applicability Section 115JC Alternative Minimum Tax

It may be noted that, section 115JC contains the non obstante Clause which read as "Notwithstanding anything contained in any other provision of this Act". The section 115JC overrides all other provision of the Act. But Section 44AD and 44ADA override only section from 28 to 43C. Therefore, section 115JC will override the provision of section 44AD and 44ADA.

But as per subsection (2) of section 115JC, the provisions of AMT will apply to every non-corporate taxpayer who has claimed

- (i) deduction under section 80H to 80RRB (except 80P),
- (ii) deduction under section 35AD and
- (iii) deduction under section 10AA.

Thus, the provisions of AMT are not applicable to a noncorporate taxpayer who has not claimed any deduction under above discussed sections.

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However, following points should be kept in mind in this regard.

The provisions of AMT shall apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person only if the adjusted total income (discussed later) of such person exceeds Rs. 20,00,000. (Section 115JEE) and he has claimed the benefit of the above said sections.

The provisions of AMT shall apply to every other person (i.e., other than an individual or a HUF or an AOP/BOI or an artificial juridical person) irrespective of its income, if he has claimed the benefit of the above said sections.

Further the provisions of AMT are not applicable to a person who has exercised the concessional tax regime available under section 115BAC or section 11BAD.

It may be noted that if the person has claimed deduction under Chapter VIA Part C and under section 10AA, he will not be eligible to opt for Section 44AD. Whereas the Section 115JC is applicable only deduction is claimed under Chapter VIA part C or under section 35AD or under section 10AA.

Therefore, the provisions section 115JC is not applicable, if section 44AD is opted.

Further, if the person carrying on two business and opt section 44AD for one business and normal provisions for the other business then section 115JC will be applicable for the business for which he has opted section 44AD.

But in case of section 44ADA person claiming deduction is claimed under Chapter VIA part C or under section 35AD or under section 10AA are eligible to opt for section 44ADA. So, when section 44ADA is opted presumptive rate income computed under section 44ADA should be compared with adjusted income computed under section 115JC and whichever is higher will be tax liability.

Salary and interest paid to partners by firm

Further, it may be noted that in the Finance Act, 2016 (w.e.f. 1-4-2017) proviso to sub-section (2) has been omitted which read as follows:

Provided that where the eligible 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.

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Therefore, from 01-04-2017 if the assessee is a firm and opted for 44AD then salary and interest paid to its partners can't be deducted.

Applicability of Section 41 and 43B when 44AD is opted out:

If the assessee opts out of 44AD or the turnover of the assessee exceeds 2 cores in the subsequent previous year and assessee has

- a. paid the amount disallowable under section 43B or
- b. has received amount chargeable to profit under section 41 in the subsequent years related to the previous year opted under section 44AD,

whether such amounts become taxable in the subsequent year is not clarified in the provisions of the Act. Since such expenses are deemed to already allowed and not allowed in actual. Whether such amount needs to be taxed or the deduction to be allowed, is not clear.

Same is the case whether the assessee offered income tax under normal provision of the Act in the previous year and in sequent year opt for presumptive rate of income. What is treatment under section 43B and 41 is not clear. Proper clarification is required in this regard by the authorise/Government.

Section 43CA vs 44AD

Section 43CA relates to taxing sale of immovable assets held as stock in trade if the value of sales of stock in trade is less than the value adopted for stamp duty purposes by State Government authorities. Section 44AD non obstante clause cover section from 28 to 43C. It may be noted that 43CA is not covered in the non obstante cluse of section 44AD. The intention of the legislature to exclude 43CA is not clear which is resulting into multiple interpretations.

One view is that since section 43CA is not covered in non obstante clause of 44AD (1), therefore person having land/building as stock cannot opt for presumptive rate of tax under section 44AD. But no such restrictions has been specified in the Income Tax Act.

Another view cloud be the difference between the stamp duty value and actual sale consideration could be subjected to tax under the normal provisions of the Act, in addition to the presumptive income under section 44AD for the business income for which section 44AD has been opted.

Yet another view could be to add the difference between the actual sales consideration and value of stamp duty of the stock in trade to the turnover / gross receipt and compute presumptive rate of income on such turnover / gross receipts.

Clarification is required regarding this by Government.

Section 14A Vs Section 44AD:

It may be noted that section 14A also contains non obstante clause which reads as “*Notwithstanding anything to the contrary contained in this Act*” so a doubt may arise whether provision of the section 14A will overrule 44AD. If a person opts for section 44AD, income does not become exempted income. The is calculated at specified rate instead applying the normal provision. Therefore, section 14A will not be applicable.

Chapter VI A deduction Vs 44AD:

Person opting for section 44AD can claim Chapter VI A deduction except Chapter VI-A Part-C.

Applicability of provisions of section 68 to 69D:

Cash deposit in the bank accounts and cash credit bank account in the books of accounts was an issue in Scrutiny cases. During the demonisation period it was a major issue. After the introduction of Annual Information Statement, the information is available to Income tax department from banks and also with the inclusion of cash deposits in certain accounts exceeding Rs. 10.00 lakhs in CASS parameters.

Whether Assessing Officer can issue notice based on such information if the assessee has filed return opting presumptive rate of Income?

It may be noted that the Non obstante clause of section 44AD covers only section 28 to 43C, and it does not cover section 68 to 69C. Therefore section 68 to 69C is applicable to section 44AD, 44ADA and 44AE.

Section 68 reads as follows “*Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*”

Section 68 contain the word “where any sum is found credited in the books of an assessee maintained for any previous year “.

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As per section 68 such cash credit should be credited in books of the accounts of the assessee in the previous year. When the assessee offered the income u/s 44AD of the Act, there is no necessity of maintaining any books of account by the assessee. When there are no books of account maintained the question cash credited in the books of account will not arise.

It has given option to the assessee to offer the income under the presumptive basis and the same was opted by the assessee for the assessment year under consideration. Such income will be deemed to be profit and gain of business or profession of the Assessee and no further addition can be made to it.

Further The Assessing Officer is not entitled to make any guesswork and he has to make the assessment with reference to evidence and material brought on record. There must be something more than suspicion to support the assessment. A suspicion, however, strong may not take place for proof of evidence. Therefore, section 68 can't be enforced.

The same was held in the following cases:

- MOHD. AKBAR VERSUS ITO HYD - 2016 (6) TMI 494 - ITAT HYDERABAD
- ITO VERSUS SRI SHAIK ZAMEER, KOVUR (V) & (M) - 2018 (5) TMI 1484 – ITAT HYDERABAD
- INDRANI DEVI VERSUS ITO - 2019 (3) TMI 376 - ITAT PATNA
- MOHAN KUMAR AGARWAL VERSUS ITO - 2019 (6) TMI 1365 - ITAT KOLKATA
- SH. AMIT JAIN VERSUS ITO - 2019 (8) TMI 1314 - ITAT AGRA • SRI. GIRISH V. YALAKKISHETTAR VERSUS ITO - 2020 (1) TMI 1111 – ITAT BANGALORE
- SHRI KOKKARNE PRABHAKARA VERSUS ITO – 2020 (9) TMI 536 ITAT BANGALORE

The Apex Court in the landmark case of Kalekhan Mohd Haneef Vs CIT (1963) 50 ITR 01 (SC) and Roshan Di Hatti Vs CIT (1977) (107 ITR (SC) laid down that the onus of proving the source of sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction and creditworthiness, then the AO must conduct an enquiry, and call for more details before invoking sec.68 of the Act. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the

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investments made, it is open to the revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence that the investment made in the share capital (or any cash credit u/s 68) are genuine borrowings, since the facts are exclusively within the assessee's knowledge".

Further it was held "the Revenue is not precluded from adding unexplained credits as income even if income is estimated on percentage basis. The non-obstante clause in s.44AD overrides only ss. 28 to 43C but not s.68 to s.69D. But then, in respect of bank deposits AO could resort to s.69A only if there is some material on record to show that the deposited amounts do not relate to sales covered by s. 44AD. In other words, the Assessing Officer may treat such deposits as income u/s. 69A only if he takes out the deposits from out of the ambit of s.44AD/44AE. Without such exercise by the Assessing Officer, no such addition could be made"

From the above case law, we can say that the treatment of deposit in the bank account depends on the activities of the Assessee. Assessee needs to prove whether such cash deposit relates to the business or profession carried on by him. If assessee prove that the deposit relates business, then the profit or gains computed under the normal provision or at the presumptive rate is taxed. If the assessee fails to prove the business and that the cash deposit is attributable to business activities. Then such amount can be considered as unexplained cash credit under section 68.

In the case of Smt.S.Sakunthala Sivam Vs ITO [2022] 142 taxmann.com 148 (Madras) assessee had failed the return opting presumptive rate of income under section 44AD and assessee did not let any evidence to establish that nature of her activities was falling within realm of business and impugned cash deposits in her saving account were part and parcel of her turnover, such cash deposits were rightly treated as unexplained investment under section 69.

It may be noted that section 69, 69A, 69C, 69D does require such expenses to be accounted in books of accounts to be considered as unexplained investment, Unexplained money, unexplained expenditure or unexplained amount borrowed or repaid on hundi. Therefore, a doubt arises whether section 69, 69A, 69C, 69D are applicable when the book of accounts is not required to be maintained when the presumptive rate of income is opted.

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In the case of SRI. GIRISH V. YALAKKISHETTAR VERSUS ITO - 2020 (1) TMI 1111 – ITAT BANGALORE, it was held in para 14 “we observe that the Assessing Officer, for making the impugned addition has started with the presumption I.T.A. No. 1750/Kol/2018 Assessment Year: 2012-13 Mohan Kumar Agarwal that an amount to the extent of 92% of the gross receipts is the expenditure incurred by the assessee, which is a totally wrong premise. If the income component is estimated, how the expenditure component on the basis of said income can be considered to have been 'actually' incurred. We must also observe here that this is not a case, where the Assessing Officer has doubted the gross receipts or gross turnover of the assessee. In fact, accepting the same, estimating income @ 8% on the same at presumptive rate, he preferred to make further addition under section 69C of the Act. The argument of the learned D.R. that the turnover of the assessee has been doubted by the Assessing Officer is totally ill-found, in view of the same. “

In Para 17 held “The crucial words in the said section for the purposes of present appeal are 'any previous year' an A.O. has found any sum credited in the books of account of the assessee. But can I say on the facts and circumstances of the present case that the A.O. has found any sum credited in assessee's books of account. Therefore, in the present case, the provisions of section 68 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.”

Therefore, when the income is presumptive on the turnover or gross receipts, expenses also get presumed. Therefore, section 69 to 69D can't be enforced when the turnover or gross receipts has been accepted.

The same was held in the following cases:

- MR. PRADEEP JAIN VERSUS ITO - 2019 (6) TMI 300 - ITAT DELHI
- NAND LAL POPLI VERSUS DCIT - 2016 (6) TMI 883 - ITAT CHANDIGARH
- SHRI THOMAS EAPEN VERSUS ITO - 2019 (11) TMI 1240 - ITAT COCHIN.

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- SMT. KIRAN VALLABHAI AHIR VERSUS ITO - 2020 (4) TMI 329 - ITAT SURAT

Therefore, presumptive rate of Income under sections 44AD, 44ADA or 44AE was introduced to help the small business entities. If such small business entities opt for presumptive rate of income assessee is not required to maintain the books of account and audit of the same. Since the assessee is not required to maintain the books of accounts and in the absence of the book's accounts, assessee is not obliged to explain individual cash deposited made in the bank account or unexplained investment, money, expenditure and repayment of loan. As long as the cash deposit made in the bank account or unexplained investment, money, expenditure and repayment of loan are in nexus with the business or profession of the assessee for which he has opted 44AD, 44ADA or 44AE.

For Example:

Turnover (A)	:	80 Lakhs (A)
Profit (B)	:	40 Lakhs (B)
Income reported u/s 44AD (C)	:	10 lakhs

Now in this case what happened to the remaining profit i.e Rs 30 lakhs (B-C)

In the above case Assessing office can't make addition of Rs. 30 lakhs which is the difference between Actual profit (i.e 40 lakhs) and Income reported under section 44AD (i.e 10 lakhs).

Because once the presumptive rate of income is opted assessee is not required to maintain the books of accounts and get them audited. Income declared as per presumptive rate of income will be deemed to be profit and gain of business or profession of the Assessee for which presumptive rate of income is opted and no further addition can be made to it with regard to such business or profession.

Further no question can be raised about the expenditure incurred. Because when income is presumptive on the turnover or gross receipts, expenses also get presumed.

If such addition is allowed then every purpose enacting the presumptive rate of income gets defeated.

Therefore, when assessee invests Rs. 30 lakhs, Assessing officer can't make addition of the same as unexplained cash deposit made in the bank account or unexplained investment, money, expenditure and repayment of loan, as

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long as the cash deposit made in the bank account or unexplained investment, money, expenditure and repayment of loan are in nexus with the business or profession of the assessee for which he has opted 44AD, 44ADA or 44AE.

Assessing office can make addition of the income which does not have any nexus with the business or profession for which assessee has opted presumptive rate of income.

For example, let assume, in the above example if the assessee has other income of Rs. 10 lakhs in addition to Rs. 40 lakhs (i.e Actual profit form the business or profession for which he has opted section 44AD) and assessee fails declare the other income of Rs. 10 lakhs (which is not arising from the business or profession for which assessee has opted presumptive rate of income).

In such cases assessing officer can make the addition of Rs. 10 lakhs to income as unexplained cash deposit made in the bank account or unexplained investment, money, expenditure and repayment of loan because it arising from other sources which does not have any nexus with the business or profession for which assessee has opted presumptive rate of income.

Discloser of sundry debtors, sundry creditors, stock-in-trade and cash balance in the ITR:

Further in the form of return of income prescribed for assessee opting for presumptive rate of income, there is a space for submitting the particulars of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of previous year. Such assessee need not submit Balance Sheet and profit and loss statement. Further no other details of the assets and liabilities can be submitted.

If the Assessing Officer does not accept his return of income and selects his case for scrutiny, the assessee would be required to explain to his satisfaction, that the source of sundry debtors, stock-in-trade and cash balance were out his returned income.

Further If such amount is from borrowings from third parties or any other source, he has to explain the nature and source of the same. If the assessee fails explain the provisions of sections 69 to 69C would be applicable in his case.

Therefore, it can be concluded that assessee should reconcile his income, sundry debtors, sundry creditors, stock-in-trade and cash balance disclosed in the ITR and investment made by him while filling the return to be on the safer side.

Suggested Records can be maintained to calculate total turnover or gross receipts:

Assessee opting section 44AD and 44ADA is not required to maintain books of accounts. Also, there are no specified records to be maintained for calculating total turnover or gross receipts under section 44AD.

But the burden of proving the turnover or gross receipts is from business or profession for which section 44AD is opted is on the assessee.

Therefore, the person opting for presumptive rate of income may maintain

- a. sale Invoices, sales register and
- b. complete records about the receipts from customers, whether they are received in cash or through banking channel/ digitally.
- c. Complete records of the Payments made towards expenditure in cash or through banking/digital channel.
- d. Details of the sundry Debtors, sundry creditor as on 31st March.
- e. Details of value of stock held as on 31st March
- f. Cash balance on 31st March.
- g. Any other records as deemed necessary.

Applicability Section 115BBE:

If cash deposit made in the bank account or unexplained investment, money, expenditure and repayment of loan does not have any nexus with business or profession for which presumptive rate of income is opted and other income declared in the return submitted, then the same would taxable under section 115BBE at the prescribed special rate of tax as a separate block of income (i.e., 30% plus cess and surcharge) without allowing basic exemption, deductions, allowances, set-off of losses, etc.

Applicability of section 269SS, 269ST and 269T:

It may be noted in the section 269SS, 269ST and 269T maintenance of books of accounts is not a requirement. Therefore, these provisions can be invoked by Assessing Officer if such evidence are found.

Sub-section (3) of 44AD related written Down Value of the asset

As per Sub-section (3) of the section 44AD, written down value of the asset of the 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 for which section 44AD is opted.

Therefore, even though depreciation is not allowed, and it deemed to have been already claimed, the WDV of assets needs to be considered after claiming the depreciation on such assets for the year presumptive rate of income is opted.

For Example: If the Cost of the asset put to use is Rs. 100 and depreciation rate is 10%. Assessee opts for 44AD for 3 years. Then the WDV of the asset is calculated in the following manner:

Year	Depreciation deemed to be claimed	WDV
1 st	10.00	90.00
2 nd	9.00	81.00
3 rd	8.10	72.90

Therefore, WDV at the beginning of 4th year is Rs. 72.90. If the assessee opts out from 44AD, he has to claim depreciation on WDV of Rs.72.90 in the 4th year.

It may be noted that, sub section 3 of section 44AD written value of the asset is mentioned and not the written down value of the block of the assets.

Therefore, if the same asset is issued for 2 businesses. Say one eligible business and other for non-eligible business then calculation of WDV is not clearly specified in the provision. Proper clarification is required in this regard by the authorise and Government.

Short term capital Gain or Loss under section 50:

If the block of asset value becomes zero, then the provision of the section 50 will be applicable. Since the section 44AD overrides only section from 28 to 43C , therefore the other provisions of the Act will be applicable. Therefore section 50 of the income tax becomes applicable and the difference between the sale consideration and WDV can't be considered for presumptive rate of

income, it will be chargeable as short-term capital gain, if the difference is positive otherwise short-term capital loss if the difference is negative.

Depreciation and business loss can be carried forward if section 44AD is opted.

In the previous year which 44AD is opted the income will be always profit and there can't be loss in that previous year. Therefore, the carry forward of depreciation loss or business loss of the previous year in which section 44AD will not arise.

But there can be depreciation or business loss of the year in which section 44AD is not opted.

For example, if section 44AD is opted first time for AY 2020-21 and during the proceeding previous years books were maintained and profit or loss are offered on actual bases then there can be depreciation or business loss to be carried forward to AY 2020-21.

In such case depreciation or business loss can be adjusted with the presumption rate of income and the remaining depreciation or business loss can be carried forward as per the provisions of Chapter VI. Since the non obstante clause of section 44AD is not applicable to Chapter VI expect Chapter VI A Part C.

Sub-section (4) of Section 44AD

Whether person opted for 44AD needs to pay advance tax

It may be noted Sub-section (4) got omitted by amendment in the Finance Act 2016 (w.e.f. 1-4-2017). Sub-section (4) reads as following.

The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.

Also, in section 211 (1) (b) and 234C (1) (b) following was included w.e.f from 1-4-2017

Section 211(1)(b) read 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, to the extent of the whole amount of such advance tax during each financial year on or before the 15th March:"

234C (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

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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:

Further, Section 243B(1) read 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."

Therefore, from 1-4-2017 the advance tax provisions are applicable to person opting for presumptive rate under section 44AD and required to pay onetime Advance tax by 15th March otherwise he is required to pay interest under section 234B and 234C.

The provision related to Chapter XVII-C was omitted and a new provision was inserted, which specifies the restriction to opt for 44AD, which are as following:

- a. the assessee should have declared profit as per section 44AD(1) for any previous year".
- b. The assessee has declared profit and gains less than presumptive rate specified under section 44AD i.e he opts out of section 44AD in any of the five assessment years succeeding the previous year in which profit was declared as per section 44AD(1).
- c. If above two conditions are satisfied, such assessee shall not be eligible to claim the benefits of Section 44AD for subsequent five assessment years from the assessment year in which profit was not declared as per section 44AD.

Therefore, the provision of the section 44AD (4) is not applicable if the assessee starts the new business from the financial year 2016-17. Therefore,

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he can offered lesser profit than the presumptive rate specified in section 44AD (1).

Further, if assessee is carrying on business from long time, then restrictions of sub-section (4) is applicable. This may not be intention of the legislature.

Another view is that only if the Assessee opts out of the section 44AD (1) form the AY 2017-18, then the restriction of the sub-section (4) is not applicable.

Let's understand the provision of sub-section (4) with examples:

Example 1: Mr. A has turnover or gross receipts less than 2 cores and opts out of the section 44AD for the AY 2017-18 by declaring lesser profit than the presumptive rate of profit specified in section 44AD (1).

Assessment year	Wants to opt out for 44AD (1)	Whether eligible to opt for 44AD (1)
2016-17	No	-
2017-18	Yes	Yes
2018-19	Yes	Yes
2019-20	Yes	Yes
2020-21	Yes	Yes
2021-22	Yes	Yes
2022-23	Yes	Yes

Then restriction specified in sub-section (4), i.e. 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, will not be applicable. In this case assessee can opt for section 44AD in any of the assessee year whenever he wants.

Example 2: Mr. A has turnover or gross receipts less than 2 cores and opted for section 44AD (1) for the AY 2017-18 and opted out from AY 2018-19.

Assessment year	Wants opted for 44AD (1)	Whether eligible to opt for 44AD (1)
2017-18	Yes	Yes
2018-19	No	No
2019-20	Yes	No

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2020-21	Yes	No
2021-22	Yes	No
2022-23	Yes	No
2023-24	Yes	No
2024-25	Yes	Yes

Then restriction specified in sub-section (4), i.e. 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, will be applicable. In this case assessee can't opt for section 44AD for the five years from AY 2017-18.

Example 3: Mr. A has following turnover and opted for 44AD in the following manner:

Assessment year	Turnover / Gross receipts	Whether eligible for 44AD
2017-18	1.5 Cores	Yes
2018-19	2.5 Cores	No
2019-20	1.0 Cores	Yes
2020-21	1.9 Cores	Yes

In this case for the AY 2018-19 Mr. A was not eligible for opting for 44AD since his turnover exceeds Rs. 2 Cores. Therefore, the restriction specified in the sub-section (4) will not be applicable. Assessee can opt for 44AD for AY 2019-20.

Sub-section (5) of Section 44AD

Sub-section (5) prescribes satisfaction of two cumulative conditions, if satisfied an eligible assessee must maintain books of account and get them audited; they are-

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

Also Section 44AA (2) (iv) contains the similar provision 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 the

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previous year, is required to maintain books of accounts and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

Section 44AB (e) person carrying on the business shall 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, 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 the previous year.

Therefore, sub-section (5) is applicable only if the sub-section (4) is applicable to the Assessee. So, Sub-sections (4) and (5) are mutually inclusive.

Following are the examples when the provision sub-section (5) will not be applicable because sub-section (4) is not applicable to assessee and the assessee need not maintain book of accounts and get them audited:

1. Assessee has started the new business.
2. Assessee has never opted for Section 44AD (1).
3. Assessee Income does not exceed maximum amount not chargeable to income tax.
4. Assessee has not opted of 44AD (1) in any preceding previous 5 years
5. block of 5 years over from the end the Assessment year in which he opted out from section 44AD (1)

It may be noted the sub-section (5) which read as following was deleted in the Finance Act 2016 (w.e.f. 1-4-2017)

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business 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 (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Therefore, if the assessee declares lesser profit, than the profit and gains specified in sub-section (1) he need not maintain books of account and get

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them audited unless he has opted for sub-section (1) in the earlier previous years or he has opted out of sub-section (1) in any of the five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD (1).

Another cumulative condition to be satisfied for the application of Sub-section (5) is that the total income of that assessee has exceeded the maximum amount which is not chargeable to income-tax. Since and is used both the condition should be satisfied for the application of sub-section (5).

In case of Individual or HUF the maximum amount, which is not chargeable to tax, is total income of Rs. 2,50,000/- for the assessment year. Let's understand with examples:

Type of person	Sub-section (4) is applicable	Total Income in case of individual/HUF	Whether maintenance of book of accounts and Audit required i.e., sub-section (5) is applicable
Individual/HUF	Yes	2,50,000	Yes
Individual/HUF	Yes	1,50,000	No
Individual/HUF	No	2,50,000	No
Individual/HUF	No	1,50,000	No

In case of the firm there are different views with regard to maximum amount not chargeable to tax.

One view is that since there no limit is specified in the provision of the Act, the second condition i.e. "The total income of that assessee has exceeded the maximum amount which is not chargeable to income-tax." is to be ignored. Therefore, in case of the firm only one condition i.e. "An eligible assessee to whom the provisions of sub-section (4) are applicable;" is applicable for determining the applicability of sub-section (5).

Another view is that since the firm has to pay tax only if it has profit. Sub-section (5) becomes applicable only if the firm has profits. Means if the firm has losses or no profit (i.e., profit is zero) then the provisions of the sub-section (5) will not be applicable.

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We can consider the second view as most appropriate resulting in harmonious reading. Let's understand the provision of sub-section (5) with following table:

Type of person	Sub-section (4) is applicable	profit of the firm	Whether maintenance of book of accounts and Audit required i.e., sub-section (5) is applicable
Firm	Yes	1,000	Yes
Firm	Yes	-1,000	No
Firm	Yes	0	No
Firm	No	1000	No
Firm	No	-1,000	No
Firm	No	0	No

Tax Audit Applicability under section 44AD read with 44AB:

As per the Section 44AB (a) audit of the accounts is not required if the turnover does not exceed Rs. 1 crore.

Further as per second proviso to section 44AB assessee need not get his accounts audited

- if the assessee declares the income under section 44AD (1) and
- if the total sales, turnover or gross receipts does not exceed Rs. 2 crores.

As per Section 44AB (e) assessee is required to get his accounts audited only

- a. if the section 44AD (4) is applicable and
- b. his income exceeds the maximum amount not chargeable to tax.

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As per the section 44AD (4), assessee can't claim the benefit of section 44AD (1) if

- a. the assessee has declared profit as per section 44AD for any previous year" and
- b. The assessee has declared profit and gains less than presumptive rate specified under section 44AD i.e he opts out of section 44AD in any of the five assessment years succeeding the previous year in which profit was declared as per section 44AD(1).

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

Further as per section 44AD (5) assessee is required to maintain books accounts and get them audited if

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

Therefore, from the above it can be concluded that audit is not required for the eligible assessee carrying on eligible business under section 44AD, if the total sales, turnover or gross receipts does not exceed Rs. 1 crore even if the assessee declares the profit and gain from the business or profession less than the 6% or 8%, if

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 less than maximum not chargeable to tax.
4. five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is over.
5. Assessee has not opted of 44AD (1) in any preceding previous 5 years

Assessee has option to either get books audited under section 44AB or opt for presumptive rate of income under section 44AD, if

- the assessee's turnover is between Rs. 1 crore to 2 crore and

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- his income chargeable to tax exceeds maximum amount chargeable to tax and
- he has not opted section 44AD in any of the previous year or
- five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is over,
- Assessee has not opted of 44AD (1) in any preceding previous 5 years

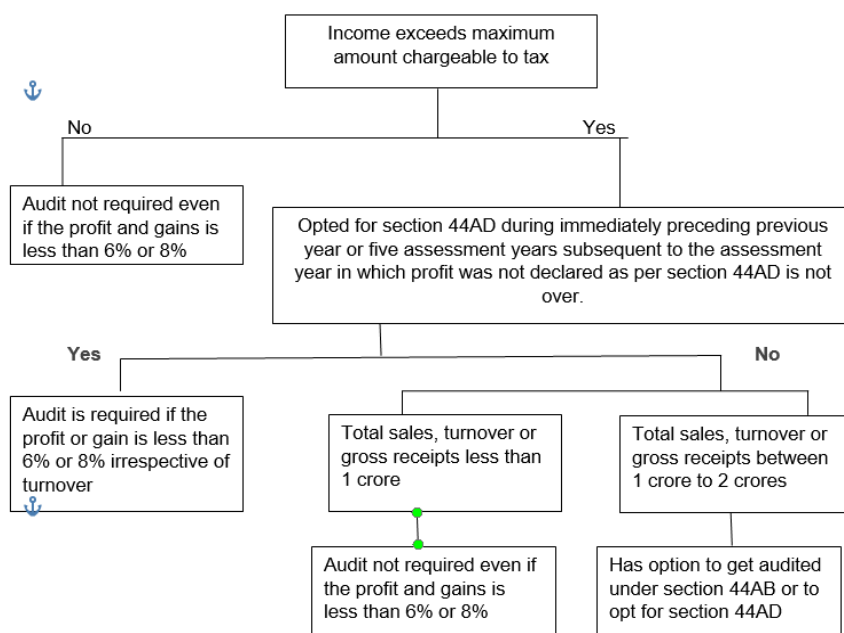
For example:

1. Mr. A income chargeable to tax does not exceed maximum amount chargeable to tax and his turnover does not exceed Rs. 1 crore, he is not required get books audited
 - a. even if the profit and gain is less than 6% or 8% and
 - b. even if he has opted for section 44AD during any five immediately preceding previous year or
 - c. even if five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is not over
2. Mr. A turnover is less than 1 crore and he never opted for section 44AD. Then he need not get his books audited even if his profit is less than 6% or 8%.
3. Mr. A turnover is less than 1 crore and five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is over. Then he need not get his books audited even if his profit is less than 6% or 8%.
4. Mr. A turnover is less than 1 crore, and he has opted for section 44AD during preceding previous year. Then has to get his books audited if his profit is less than 6% or 8%.
5. Mr. A turnover is less than 1 crore and five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is not over. Then has to get his books audited if his profit is less than 6% or 8%.
6. Mr. A turnover is between 1 crore to 2 crores, and he never opted for section 44AD. Then he has option to either get books audited under section 44AB or opt for presumptive rate of income under section 44AD.

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7. Mr. A turnover is between 1 crore to 2 crores and five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is over. Then he has option to either get books audited under section 44AB or opt for presumptive rate of income under section 44AD.
8. Mr. A turnover is less than 1 crore to 2 crore, and he has opted for section 44AD during immediately preceding previous year. Then has to get his books audited if his profit is less than 6% or 8%.
9. Mr. A turnover is less than 1 crore to 2 crore and five assessment years subsequent to the assessment year in which profit was not declared as per section 44AD is not over. Then has to get his books audited if his profit is less than 6% or 8%.

This can be depicted in following manner:



Further, the assessee who are not eligible to claim the benefit of section 44AD, 44AE, 44BB and 44BBB are required to get the books of accounts audited only if the total sales, turnover or gross receipts from the business exceed or exceeds Rs. 1 crore even if they declare profit and gains from business less than the presumptive rate.

If the assessee covered under section 44AE, 44BB and 44BBB, if they declared profit and gains less than the presumptive rates specified in those

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section, they need to get their books of accounts audited even if the turnover is less than Rs. 1 Crore.

Specified professional under section 44AA (1) have to get their book audited

- if their gross receipts exceed or exceeds Rs. 50 lakhs or
- if they are declaring profit or gains from the profession less than the presumptive rate specified under section 44ADA, they need to get their books audited even if the turnover is less than Rs. 50 Lakhs.

Books of accounts requirement under section 44AD read with section 44AA and Section 44AB:

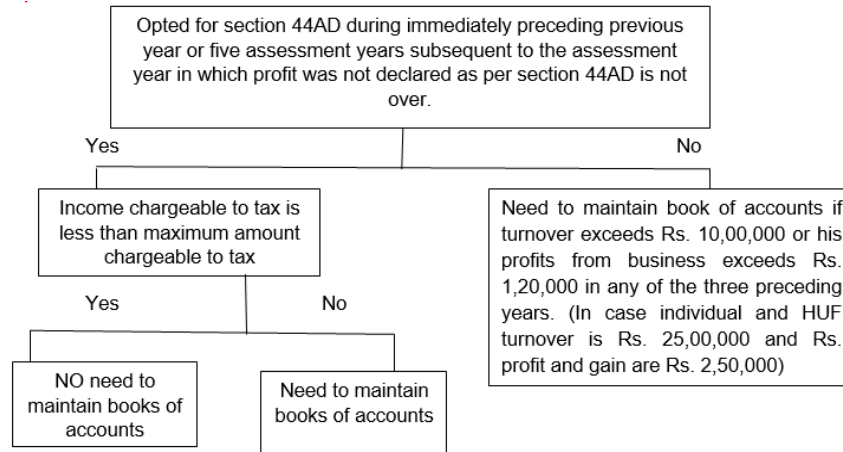
As per the section 44AA (2) (iv) Every person carrying on business or profession [not being a profession referred to in sub-section (1) of section 44AA shall, maintain the books of accounts and other documents,

- a. 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.
- b. In case a new business or profession 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
- c. If an assessee is declaring profits lower than the rate of profits specified in sec 44AE, or 44BB or 44BBB
- d. 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.

Note: in case of individual and HUF need to maintain the books of account if the turnover exceeds is Rs. 25,00,000/- or his profit exceeds Rs. 2,50,000/-.

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This can be depicted in following manner:



Penalty under section 271A and 271B:

If as per the discussion if assessee is required to maintain the books of accounts and get his accounts audited, then the penalty under section 271A and 271B will be applicable. If he not required to maintain the books of accounts and get his accounts audited, then the penalty under section 271A and 271B will be applicable.

Sub-section (6) of Section 44AD

Sub-section (6) provides the list of the persons for whom section 44AD shall not apply. Sub-section (6) contains non obstante clause therefore for the following persons it will considered that provision of sub-section (6) does not exist in the Income Tax Act. Therefore, person carrying on following business can't opt for section 44AD.

- (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.

Presumptive taxation for non-specified professional:

It may be noted that, clause (i) of the covers profession referred to in sub-section (1) of section 44AA not non-specified profession. There is no provision in which the non-specified professional can opt for presumptive rate of Income.

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There are two view possible in case sub-section (6). One view is that person mentioned in sub-section (6) can't opt for section 44AD for the eligible business, if they are carrying on profession covered under section 44AA (1) or earning income in the nature of commission or brokerage or carrying on any agency business. Therefore, only the person carrying on business can opt for section 44AD. The person carrying on non-specified profession is not eligible for section 44AD. Something specifically excluded does not mean something else is included which is not specified.

Another view is sub-section (1) mentions eligible business and there is no mention of profession. Only because in sub-section (6) specified profession is mentioned, it does not mean non-specified professional can opt for 44AD.

Therefore, the second view is more appropriate, since the intention of forming the presumptive taxation scheme is to help small business entities.

The same can be observed in the Business or profession code specified for the ITR. The non-specified professionals are allowed to opt for section 44AD. Below the list of Business or profession code for the ITR:

BUSINESS / PROFESSION CODES FOR ITR FORMS

Sector	Sub-sector	Code	Applicability			
			44AD	44ADA	44AE	Others
Professions	Legal profession	16001	X	√	X	X
	Accounting, book-keeping and auditing profession	16002	X	√	X	X
	Tax consultancy	16003	X	√	X	X
	Architectural profession	16004	X	√	X	X
	Engineering and technical consultancy	16005	X	√	X	X
	Advertising	16006	√	X	X	X

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	Fashion designing	16007	X	√	X	X
	Interior decoration	16008	X	√	X	X
	Photography	16009	X	√	X	X
	Auctioneers	16010	√	X	X	X
	Business brokerage	16011	X	X	X	√
	Market research and public opinion polling	16012	√	X	X	X
	Business and management consultancy activities	16013	X	√	X	X
	Labour recruitment and provision of personnel	16014	√	X	X	X
	Investigation and security services	16015	√	X	X	X
	Building-cleaning and industrial cleaning activities	16016	√	X	X	X
	Packaging activities	16017	√	X	X	X
	Secretarial activities	16018	X	√	X	X

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	Film Artist (applicable from AY 20- 21)	16020	X	√	X	X
	Medical Profession (applicable from AY 20- 21)	16019_1	X	√	X	X
	Other professional services not elsewhere classified	16019	√	X	X	X

Following are the examples to understand the provision of sub-section (6):

1. Mr. A has following Turnover or Gross Receipts

Type of Business	Turnover or Gross Receipts
leasing goods carriages	Rs. 50 lakhs
Agency Business of retail stores	Rs. 10 lakhs
Retail Stores	Rs. 50 Lakhs

If Mr. A has less than 10 vehicles then he can opt for 44AE for leasing goods carriages.

For Agency Business of retail stores, Mr. A cannot opt for 44AD since agency business is specifically excluded in section 44AD. Further he need not get his books audited under section 44AB, since his turnover from agency business is less than 1 crore.

For Retail store business he can opt for 44AD since his turnover from retail store is less than Rs. 2 crores.

2. Mr. A has following Turnover or Gross Receipts

Type of Business	Turnover or Gross Receipts
Manufacturing Business	Rs. 50lakhs
Agency Business of retail stores	Rs. 10 lakhs
Retail Stores	Rs. 50 Lakhs

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In the above case Mr. A cannot opt for 44AD for Agency business of retail stores. In case of Agency business of retail stores his turnover is not exceeding Rs. 1 crore so he need not do the audit.

Further, he can opt section 44AD for Manufacturing business and retail stores. His turnover for section 44AD will be (Rs. 50 + Rs. 50) Rs. 100 lakhs

3. Mr. A has following Turnover or Gross Receipts

Type of Business	Turnover or Gross Receipts
Furniture sale in own name	Rs. 1.5 Crores
Consignment commission for furniture sale	Rs. 1.5 Crore

In the above case Mr. A can opt for 44AD for Furniture sale in own name since turnover is below 2 crores.

For Consignment commission for furniture sale received by him, if more than 95% receipts and payment for previous year to total receipts and payments of the previous year is through banking channel then he need not get audit under section 44AB.

If more than 95% receipts and payment for previous year to total receipts and payments of the previous year is through cash, then he need get audit under section 44AB.

4. Mr. A has following Turnover or Gross Receipts

Type of Business	Turnover or Gross Receipts
Medical Practice	Rs. 40 lakhs
Pharmacy shop	Rs. 50 lakhs

In the above case Mr. A can opt for 44ADA for Medical Practice since his total gross receipts is less than Rs. 50 lakhs.

For Pharmacy shop he can opt for 44AD since turnover is less than 2 crores.

5. Assessee having business income 1.80 cr and income from profession is 0.4 lacs

In the above case whether an assessee can opt under section 44AD for the purpose of business and 44ADA for the purpose of profession, separately?

As per section 44AB assessee needs to get his accounts audited if his sales, turnover or gross receipts exceeds Rs. 1 crore, if his transaction through non-banking/non-digital channel (i.e. through cash) is more than 5%.

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If his transaction through non-banking/non-digital channel (i.e. through cash) is less than 5% of the limit to get audit is Rs. 10 crores.

Also, as per Section 44AD assessee will be eligible to opt section 44AD for business and section 44ADA since his turnover is less than Rs. 2 Crores.

Therefore, if the transactions through non-banking/non-digital channel (i.e. through cash) is more than 5%, then the assessee has option either get his accounts audited or opt for section 44AD since his turnover is between Rs. 1 crore to 2 crores.

With regard to professional income, he has to opt for section 44ADA. If he declares profit or gains less than the presumptive rate specified in the section 44ADA he has to get his accounts audited.

This is because where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (Presently Rs. 1 crore & Rs 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not. However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded.

6. Assessee having business income is 1.60 cr and income from profession is 1 cr

In this case whether assessee is eligible to opt under section 44AD for business

In the above case, with regard to income business assessee can opt for section 44AD or get his accounts audited if the transaction through non-banking/non digital transaction is more than 5%.

If the transaction through non-banking/non digital transaction is less than 5% then the turnover limit for the audit is Rs. 10 crores.

Please refer discussion in example 5 above for more clarity.

With regard to income from profession since the turnover is above Rs. 50 lakhs, he has to get his books of accounts.

Can partner who receives salary and interest from a firm can opt for section 44AD or 44ADA?

Special provision for computing profits and gains of business ...

It may be noted that as per provisions of section 28(v), specifically provide for charging any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm, as income from business and profession.

So, whether such income referred in Section 28(v) can be considered as turnover or gross receipts of business or profession for presumptive rate of income?

In case of Anand Kumar vs. Assistant Commissioner of Income Tax, Circle-2, Salem [2020] 122 taxmann.com 252 (Madras), it was held that, Section 44ADA is a special provision for computing profits and gains of profession on presumptive basis uses the expression 'Total gross receipts'. As already seen in Section 44AD, the words used are 'total turnover' or 'gross receipts' and it pre-supposes that it pertains to a sales turnover and no other meaning can be given to the said words and if done so, the purpose of introducing Section 44AD would stand defeated. That apart, the position becomes much clearer if we take note of sub-section (2) of section 44AD which states that any deduction allowable under the provision of Section 30 to 38 for the purpose of sub-section (1) be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. Thus, conspicuously section 28(v) has not been included in sub-section (2) of section 44AD which deals with any interest, salary, bonus, commission or remuneration by whatever name called, due to or received by, a partner of a firm from such firm.

The same was upheld in case of Perizad Zorabian Irani v PCIT, Mumbai – WP No. 1333/2021- Bombay High Court – dated 09.03.2022, it was held that he is an eligible assessee engaged in an eligible business and such business should have a total turn over or a gross receipt. Admittedly, the assessee who was an individual in that case was not carrying on any business and the remuneration and interest received by the assessee from the partnership firm cannot be termed to be a turn over of the assessee (individual). The court concluded that the Revenue was right in its contention that remuneration and interest from the partnership firm cannot be treated as gross receipt of the assessee.

Also refer page 15 of Chapter 2, the same has been discussed in Guidance Note on Tax Audit issued by ICAI.

Therefore, salary and interest received from a firm can't be considered as turnover or gross receipts under section 44AD.

Chapter 6

Special provision for computing profits and gains of profession on presumptive basis – Provisions of Section 44ADA

Based on the recommendations of Justice Eswar Committee the Finance Act, 2016 inserted section 44ADA in the Finance Act, 2016 (w.e.f. 01-04-2017) to provide for presumptive income determination in respect of professionals.

The EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2016 reads as follows:

38. Introduction of Presumptive taxation scheme for persons having income from profession

38.1 The existing scheme of taxation provides for a simplified presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small taxpayers having income from profession and to facilitate the ease of doing business, the Income-tax Act has been amended to provide for presumptive taxation regime for professionals.

Therefore, the presumptive taxation for the professional was introduced for the first time to simplify the taxation provision for professional.

which reads as follows:

44ADA. (1) Notwithstanding anything contained in sections 28 to 43C, [in case of an assessee, being an individual or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), who is a resident in India, and] 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".

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(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.

Following are the conditions for opting section 44ADA:

1. Person should be
 - individual,
 - HUF and
 - Partnership firm (not a Limited Liability Partnership Firm as defined under LLP Act, 2008)
2. Person should be resident of India.
3. He should be engaged in the profession specified under section 44AA (1).
4. His total gross receipts do not exceed Rs. 50 lakhs.

Therefore, following are not allowed claim Section 44ADA:

1. Individual/HUF who is Non-Resident
2. Association of Person
3. Firm having non-resident status
4. A local Authority
5. Any type of Company
6. Co-operative Society

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7. LLP both resident and non-resident

8. Artificial Juridical person

Following list of professionals are Specified Section 44AA (1)

1. Professional carrying on legal,
2. medical, engineering, or
3. architectural profession or
4. the profession of accountancy or
5. technical consultancy or
6. interior decoration

Further under Rule 6F and other professions notified thereunder (Notifications No. 1620 SO-18(E) dated 12.1.77, No. 9102SO 2675 dated 25.09.1992 and No.116 SO 385(E), dated 4.5.2001), the following can also be considered as a profession:

7. Authorised Representative

As per 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".

8. Company Secretary

9. Film Artists/Actors, Cameraman, Director including an assistant director; a music director, including an assistant music director, an art director, including an assistant art director; a dance director, including an assistant dance director; Singer, Storywriter, a screen-play writer, a dialogue writer; editor, lyricist and dress designer,

10. Information Technology Attention is invited to Notification No. 890(E)/2000 dated 26-9-2000.

It may be noted under section 195J TDS needs to deduct on the professional fee paid. Therefore, all the professional for whom TDS is deductible under section 195J are not eligible to opt for section 44ADA. Only professional referred in section 44AA (1) can opt for section 44ADA.

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Please refer Chapter 2, page no. 12 to understand the meaning of Gross receipts.

Advance received should not include while calculating gross receipts The same has been discussed in Chapter 4 in Page 26 to 27, please refer the same.

Presumption rate of Income as per section 44ADA is 50% of the total gross receipts and such higher rate declared by the assessee.

For Example : Mr.A has Turnover : 80 Lakhs

Profit : 50 Lakhs

Income reported u/s 44AD : 40 lakhs

In the above case Mr. A can declared the profit of Rs. 40 lakhs even though he actually earned Rs. 50 Lakhs. Profit or gains declared as per section 44AD will be deemed to be profit or gains from business or profession if section 44ADA is opted.

Higher presumptive rate of Income:

If assessee is earning more income than the rate specified under this section. Assessee has an option to declare such higher rate as presumptive tax rate.

The provisions section 44ADA reads as “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”

Therefore, section 44ADA specifies presumptive rate of Income as 50% as the case may be and also provides option to assessee to declare higher income, if he so likes. There is no limit on such higher percentage. If assessee declares excessively higher income than the normal profit earned by the industry. Assessee's case it may get selected for scrutiny to check whether any money laundering and black money is involved.

For Example : Mr. A has Turnover : 80 Lakhs

Profit : 50 Lakhs

Presumptive rate of income under section 44AD is 40 lakhs

Can assessee declare Rs. 50 lakhs under section 44AD?

In the above case Mr. A can declared the profit of Rs. 50 lakhs if the assessee wants, which is higher than 50% presumptive rate of income.

Non obstante Clause and Sub-section (2) of section 44ADA:

Section 44ADA, starts with the words "*Notwithstanding anything contained in sections 28 to 43C...*". Where the language of the section contains the term 'notwithstanding anything to the contrary contained in....' that section becomes all pervasive over any other contrary provisions (if any). This clause is known as 'non-obstante clause'. Such clause is used by the Legislature in drafting most exceptional provision. Which means such provisions overrules the other provisions. Therefore, the provision from the 28 to 43C will not be applicable if presumptive rate of Income is opted. Therefore, section 44ADA is self-contained code for computing the profit and gains from profession. No deductions are no additions are made as the provisions of section 28 to 43C. Presumptive rate of Income declared under section 44ADA is considered as income from profession.

Also, as per sub-section (2) no deduction will be allowed under the provisions of section 30 to 38 and such it is presumed that such deduction has already been given full effect.

As per Sub-section (3) of the section 44AD, written down value of the asset of the 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.

Therefore, even though depreciation is not allowed, and it deemed to have been already claimed, the WDV of assets needs to be considered after claiming the deprecation on such assets for the year presumptive rate of income is opted.

Implications and issues related to non obstante clause, sub-section (2) and sub-section (3) has been discussed in detail while discussing the provisions of section 44AD in this publication. The same implications and issues are applicable to section 44ADA. Therefore, please refer chapter 5-page numbers 43 to 63 for understanding these provisions in detail.

Sub-section (4) of the section 44ADA:

Sub-section (4) prescribes satisfaction of two cumulative conditions, if satisfied an eligible assessee must maintain books of account and get them audited; they are-

- a. 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

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- b. whose total income exceeds the maximum amount which is not chargeable to income-tax,

Therefore, as per sub-section (4) of Section 44ADA the specified professional must maintain books of accounts and gets them audited if he declares lower profit and gains than 50% of total gross receipts from such profession.

It may be noted that sub-section (2) of section 44AA do not cover specified professions. Specified professions are covered under sub-section (1) of 44AA. As per sub-section (1) of 44AA read specified professionals must maintain specified books of account as per Rule 6F.

As per Rule 6F specified professional should maintain specified books of accounts if the gross receipts exceed or likely to exceed Rs. 1,50,000/- in any one of the three years immediately preceding the previous year.

Rule 6F has been discussed in detail in the Chapter 3. (Page no 17 to 19) of this publication. Please refer the same.

It may be noted as per section 44AB clause (d) person carrying on the profession specified under section 44ADA and he has claimed such income to be lower than 50% of the total gross receipts and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year has to maintain the books of accounts and gets his books of accounts audited under section 44AB.

But section 44AA does not exempt maintenance of the account, therefore, books of accounts need to maintain by the specified professionals if the gross receipts exceed or likely to exceed Rs. 1,50,000/- in any one of the three years immediately preceding the previous year even if professional opts for section 44ADA and declares 50% of total gross receipts as his professional income.

But Audit of the accounts is required only if he claims his professional income to lower than 50% of total gross receipt and his income exceeds the maximum amount which is not chargeable to tax.

In case of Individual or HUF the maximum amount, which is not chargeable to tax, is Rs. 2,50,000/- total income for the assessment year.

HB on Estimated Income Scheme under Income Tax Act, 1961

Let's understand with example:

Total Gross Receipts	Profit & gains from profession	% Of Profit or gains declared	Total Income	Required to Maintain Book of Accounts	Required to get book of accounts Audited
40 lakhs	20 lakhs	50%	10 lakhs	Yes	No
40 lakhs	10 lakhs	25%	10 lakhs	Yes	Yes
10 lakhs	5 lakhs	50%	2 lakhs	Yes	No
10 lakhs	4 lakhs	40%	3 lakhs	Yes	Yes
10 lakhs	4 lakhs	40%	1.5 lakhs	No	No

In case of the firm there are different views with regard to maximum amount not chargeable to tax.

One view is that since there no limit is specified in the provision of the Act, the second condition i.e., "his income exceeds the maximum amount which is not chargeable to tax." is to be ignored. Therefore, in case of the firm only one condition i.e., "he claims his professional income to lower than 50% of total gross receipts;" for determining the applicability of required of Audit under section 44AB.

Another view is that since the firm has to pay tax only if it has profit. Therefore, sub-section (4) becomes applicable only if the firm has profits. Means if the firm has losses or no profit (i.e., profit is zero) then the requirement of Audit under section 44AB is not applicable even if he declares his professional income to lower than 50% of total gross receipts.

As per me the second view of both is most appropriate resulting in harmonious reading.

Type of person	Total Gross receipts	Profit of the firm	Whether maintenance of book of accounts	Audit required
Firm	40 lakhs	1,000	Yes	Yes
Firm	40 Lakhs	-1,000	Yes	No
Firm	40 Lakhs	0	Yes	No
Firm	1.5 lakhs	1000	No	No
Firm	1.5 lakhs	-1000	No	No

Penalty under section 271A and 271B:

If as per the discussion if assessee is required to maintain the books of accounts and get his accounts audited, then the penalty under section 271A and 271B will be applicable. If he not required to maintain the books of accounts and get his accounts audited, then the penalty under section 271A and 271B will be applicable.

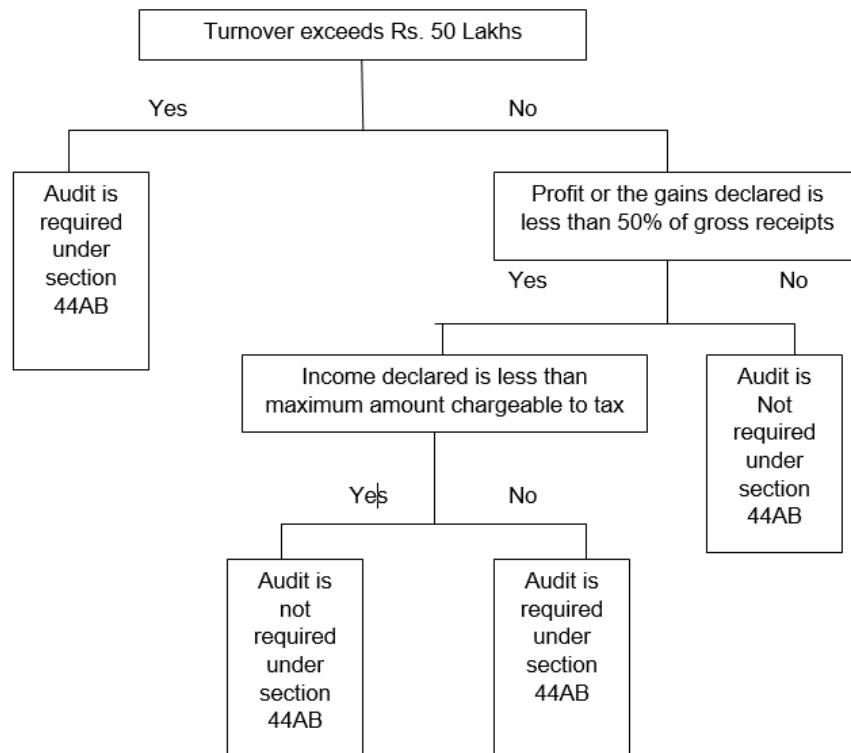
Whehter the person carrying on profession and opting for section 44ADA, can opt for section 44AD if he also carrying on business?

Please refer examples from 4 to 6 in the page no 80 and 81.

Can partner who receives salary and interest from a firm can opt for section 44AD or 44ADA?

The same has been discussed in chapter – 5 page 82 to 83. Please refer.

Provisions of section 44ADA can be depicted in following manner:



Chapter 7 Summary

Section 44AD and 44ADA has been summarised as following for easy reference:

Particular	44AD	44ADA
Applicable to	Individual, HUF and Firm	Individual, HUF and Firm
Business or Profession covered	All Business and non-specified profession except <ul style="list-style-type: none"> • business referred in 44AE, • profession referred in 44AA (1), • Commission or brokerages, • agency business. 	Profession referred in Section 44AA (1)
Turnover or gross receipts limit	Turnover or gross receipts less than Rs. 2 Crores	gross receipts Less than Rs. 50 Lakhs
Presumptive rate	<ul style="list-style-type: none"> • 6% of Turnover or gross receipts (if 95% of the transactions are through banking channel) • 8% of the Turnover or gross receipts (if the cash transaction is more than 95%) 	50% of the Gross Receipts
Expenses Allowed	None	None
Books to be maintained	Any books and other documents which enable the Assessing officer to computation his income	Book has to be maintained as per rule 6F
Requirement of maintenance of books of accounts	Required only if section 44AD (4) is applicable and his income exceeds maximum amount not chargeable to tax	As per rule 6F, required is gross receipts exceeds Rs. 1,50,000/- during

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		preceding 3 previous years.
Audit requirement	Required only if section 44AD (4) is applicable and his income exceeds maximum amount not chargeable to tax	Required if profits or gains declared is less than 50% and his income exceeds maximum amount not chargeable to tax.
Opting out options	Once opted out can't be opted for 5 years	Every year option can be changed.

I thank Ms. Geetha Pentakota for helping me by discussing the provisions whenever I am in doubt.



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