

PRESUMPTIVE TAXATION

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Section 44AB : Audit of accounts of certain person carrying on business or profession in any previous year:

- a) Where either total sales , turnover or gross receipts from business exceeds Rs1.00 Crore.
- b) Where gross receipts from profession exceeds Rs50.00 Lakhs .
- c) Where lower profits are offered to tax other than the deemed profits as computed u/s 44AE, u/s 44BB and u/s 44BBB.
- d) Carrying on profession where offering lower income in comparison to deemed income u/s 44ADA and total income is exceeding the maximum amount not chargeable to tax .
- e) Carrying on business and covered u/s 44AD(4) and total income is exceeding the maximum amount not chargeable to tax.

EXAMPLE:

Mr.X has business income –Rs90.00 Lakhs and Income from Profession Rs.40.00 Lacs. Does Tax Audit u/s 44AB applicable? **Answer: NO.**

Non Applicability to Assess covered u/s 44AD:

Sec 44AB does not apply to the assessee whose Turnover / Sales/Gross receipts does not exceed Rs2.00 Crores

Budget 2020 – Increase in Threshold to Rs.5.00 Crores:

The threshold limit for audit of an assessee who is engaged in business has been increased to Rs.5.00 Crores under the following conditions;

- (i) Aggregate of all cash receipts during the previous year does not exceed 5% of such receipt , and
- (ii) aggregate of all cash payments during the previous year does not exceed 5% of such payment.

Note:

1. The term aggregate of all receipts and aggregate of all payments is very wide and covers not only the receipts and payments on account of Turnover or Sales but also other business transactions like Capital Introduction, Receipts and repayment of loans, Partners drawings, Ordinary business receipts and payments including taxes etc.
2. It is not pointed out who will certify the margin of transactions in cash mode of 5% . It appears that assessee himself shall declare the percentage of receipts in cash and non cash mode.
3. The benefit of increasing threshold limit of Tax Audit to Rs.5.00 Crores seems to have less practical relevance.

► **Whether the Amendment brought by FA,2020 is applicable retrospectively?**

Yes.

It is trite law that where a provision is curative or merely declaratory / clarificatory of provisions of law shall be applied retrospectively.

- Allied Motors Pvt Ltd Vs. ITO (1997) 224 ITR 677 (SC).
- CIT Vs. Gold Coin Health Food Pvt Ltd (2008) 304 ITR 308 (SC).
- CIT Vs. Calcutta Export Co (2018) 404 ITR 654 (SC).
- CIT Vs. Ansal Landmark Township Pvt Ltd (2015) 377 ITR 635 (Del.HC).

CASE LAW:

In absence of income from business or profession tax audit report u/s 44AB is not required.

- Ghai Construction vs. State of Maharashtra (2009) 184 Taxman 52 (Bom. HC)
- CIT vs. Market Committee, Sirsa (2012) 210 Taxman 20 (P&H. HC)

Section 44AD: Presumptive Taxation- Applicable to Business:

- Notwithstanding anything to the contrary in section **28 to 43C** , in the case of an **eligible assessee** engaged in **eligible business** with turnover or gross receipts less than Rs.2.00 Crores can declare his taxable business income (PGBP) as :
 1. *6% of his digitally received turnover or gross receipts ; and
 2. 8% of his remaining turnover or gross receipts.
- The 6% or 8% is the minimum rate and declaration of business income below this limit will cause the taxpayer to maintain books of account to justify his lower business income. He would also be required to file **tax audit report** if his total income exceeds the maximum amount not chargeable to income tax . (In AY 2020-21 for normal taxpayer it is Rs.2.50 Lakhs).

**Digitally means – Money received through an account payee cheque , account payee bank draft, RTGS/NEFT/ECS/Debit or Credit Card/IMPS during the previous year or before the due date specified u/s 139(1) for filling income tax return.*

Meaning of Notwithstanding:

Non obstante clause "notwithstanding anything" is something appended to a section in the beginning with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provisions of the Act mentioned in the non obstante clause. Non obstante clause used in a section is to avoid the operation and effect of all contrary provisions mentioned in the Act.

- Woodward Governors India (P.) Ltd Vs. CIT (2002) 253 ITR 745 (Del.HC).
- Vishin N. Khanchandani Vs. Vidya Lachmandas Khanchandani.(2000) 246 ITR 306 (SC).
- R.M Adaikalavan & Ors. Vs. State of Tamilnadu. (1998) 230 ITR 663 (Madras.HC).

Who is Eligible Assessee for Section 44AD ?

- i. Resident Individual (ii)Resident HUF (iii) Resident Partnership Firm (Not Limited Liability Partnership Firm).
- ii. Further, the above 3 taxpayers shall not claim any deduction under section 10A/10AA/10B/10BA or under section 80HH to 80RRB .

Eligible Business for Section 44AD .

1. Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE ;
and
2. Whose total turnover or gross receipts from all businesses in the previous year does not exceed Rs2.00 Crores.

Opting Presumptive Taxation for at least 5 Years. [Sec 44AD(4)].

Once a tax payer opts for this scheme than it would be beneficial for him to file his next five years income tax return in the same scheme only. (Applicable from the FY 2016-17 , AY 2017-18)

But

If he decides to OPT-OUT of the scheme in any of the next 5 years than he will be **DISALLOWED** from this scheme for the next subsequent 5 years.

EXAMPLE:

Particulars	AY	Turnover/ Receipts	Business Income
Mr.X opted to file return u/s 44AD	2017-18	Rs.1.80 Cr	Rs.14.50 Lakhs
	2018-19	Rs.1.50 Cr	Rs.13.00 Lakhs
Normal Tax Return on opting out of the scheme u/s 44AD*	2019-20	Rs1.20 Cr	Rs.9.00 Lakhs

*He will be **DISALLOWED** to file income tax return under presumptive taxation scheme for next 5 assessment years starting from AY 2020-21 to AY 2024-25.

Not only this

If his total income exceeds the maximum amount chargeable to tax income –tax [In AY 2020-21 for normal taxpayer it is Rs2.50 Lakhs] than as per Sec 44AD(5).

- 1.He has to keep and maintain books of accounts u/s 44AA(2) and
- 2.He will also be required to get his accounts audited u/s 44AB.

Who is not eligible for Sec 44AD?

A person carrying on profession covered u/s 44AA(1). (Legal, Medical, Engineering, Architecture, Interior Decorator, Accountancy, Technical Consultant etc).

A person earning income in the nature of commission or brokerage .

A person carrying on any agency business .

Example:

Mr. X aged about 50 years runs a grocery shop. He provides the following information for the FY 2019-20. He has no other income except earning from shop. Whether Mr.X will be required to get his books of account audited?

Case	Sale/Receipts	Net Profit	8% Sales	Whether Audit Applicable
1	Rs.80,00,000/-	Rs.4,50,000/-	Rs.6,40,000/-	Yes. Note-1.
2	Rs.60,00,000/-	Rs.2,25,000/-	Rs.4,80,000/-	No. Note-2.
3	Rs.1,40,00,000/-	Rs.1,75,000/-	Rs.11,20,000/-	Yes. Note-3.
4	Rs.70,00,000/-	Rs.9,00,000/-	Rs.5,60,000/-	No.Note-4

Note:1. Yes. His books of account shall be audited as he is declaring profit less than 8% u/s 44AD.[u/s 44AB (d) & (e)].

Note:2. No. His books of account shall not be audited as his total income is less than maximum exemption limit that is Rs2.50 Lakhs. [u/s 44AB (e)].

Note:3. Yes. His books of account shall be audited as he is having Sale/Turnover exceeding Rs.1.00 Crores even declaring profit less than maximum exemption limit. [u/s 44AB (a)].

Note:4. No. His books of account shall not be audited as his declaring profit more than 8% .[u/s 44AD]

Points to Remember:

1. ***No Further Deduction:*** Once the assessee opts to file his return in reference to Sec 44AD, all the deductions allowable in Sec 30 to 38 shall be deemed to have been allowed. That means , no further deduction would be allowable from the income u/s 44AD.
2. ***Depreciation Deemed to be Allowed:*** While calculating income u/s 44AD , the assessee shall be deemed to have been allowed depreciation under section 32 from WDV.
3. ***Relief from Maintenance of Books of Accounts:*** The assessee opting to file return with reference to Sec 44AD , neither required to maintain books of account u/s 44AA not get them audited u/s 44AB. This is the actual motto behind section 44AD to reduce the burden of small assessee for maintaining books of account.
4. ***Option to Claim Lower Profits:*** Where the Assessee whose income is exceeding the basic exemption limit (Rs.2.50 Lakhs in normal case) wants to declare profit lower than Sec 44AD , he will be required to maintain books of account u/s 44AA and also get them audited u/s 44AB.
5. ***Advance Tax:*** The Assessee who are eligible to file their return with reference to Sec 44AD and also come under the category of advance tax payers shall pay the whole advance tax till 15th March of relevant financial year.

CASE LAWS:

- ❑ **While computing income of assessee u/s 44AD , the assessing officer does not have power to assesses any thing in excess of returned income where returned income is either 8% or more than 8% on gross receipts / sale consideration.**
 - Abhi Developers Vs. ITO (2007) 12 SOT 444 (Ahd.Trib).
 - CIT Vs. Nitin Soni(2012) 207 Taxman 332 (All.HC)
 - Mohan Kumar Agarwal Vs. ITO . ITA NO: 1750/Kol/2018. Order dated 08/05/2019.
- ❑ **No disallowance can be made u/s 40A(3),40(a)(ia), 36(1)(va),43B when business income is declared u/s 44AD.**
 - ITO Vs. Mark Constructions (2007) 53 SOT 22 (Kol.Trib).
- ❑ **Unpaid amount as given u/s 43B stands disallowed even business profit was declared u/s 44AD because of the wording used in sec 43B as ‘Notwithstanding anything contained in any other provisions of this Act’ .**
 - Good Luck Kinetic Vs.ITO (2015) 69 SOT 416 (Panjai.Trib).
- ❑ **Unabsorbed depreciation can not be adjusted u/s 32(2) from business profit computed u/s 44AD , however assessee is entitled to set off Brought Forward Business Loss u/s 72.**
 - DCIT Vs. Sunil M. Kankariya (2008) 112 ITD 170 (Pune.Trib).

❑ **Partner's Salary, Remuneration, Interest even though charged under the head as income from ' Business or Profession ' can not be taxed u/s 44AD in the hands of the individual partner.**

❑ Mr. A.Anand Kumar Vs. ACIT . ITA NO: 573/Chny/2018 . Order Dated 30/09/2019.(Chennai Trib)

❑ **Assessee can be asked to explain the Turnover or Gross Receipts declared by him while opting for Presumptive Taxation. Non explanation declared Turnover or Gross Receipts may be held as Unexplained Income.**

• Syed Khalid Saifullah Vs. ITO . ITA NO: 4744/Del/2016.Order dated 24/02/2020.

• Sanjeev Sablok Vs. ITO . ITA NO: 147/RAN/2018.Order dated 29/08/2019.

❑ **Assessee declared profit under presumptive basis and Turnover / Gross Receipts was accepted by AO , cash deposits in the bank up to maximum of Turnover/Gross Receipts can not be held as unexplained income.**

• CIT Vs. Surinder Pal Anand (2010) 192 Taxman 264 (P&H HC)

• Nanda Pal Lal Popli Vs. DCIT (2016) 160 ITD 413 (Chd.Trib)

• Thomas Eapen Vs. ITO (2020) 180 ITD 74 (Cochin Trib)

➤ **Section 44ADA: Presumptive Taxation- Applicable to Profession:**

Notwithstanding anything to the contrary in section 28 to 43C , in the case of an assessee **Resident in India** engaged in profession referred to in sec 44AA(1) whose gross receipts do not exceeds Rs.50.00 Lakhs can consider his taxable income from profession (PGBP) as 50% of his gross receipts.

➤ **Profession covered u/s 44AA(1):**

Legal, Medical, Engineering, Architectural , Profession of Accountancy, Technical Consultancy, Interior Decoration, Authorised Representatives, Film Artists, Certain Sports related persons, Company Secretaries, Information Technology.

➤ **EXAMPLE :** Mr. X is a doctor by profession and is also selling Medicines . Can he opt for section 44AD and section 44ADA simultaneously.

Two Possibilities: Yes OR No.

❖ **CASE LAW:**

Partner's Salary, Remuneration, Interest even though charged under the head as income from ' Business or Profession ' can be taxed u/s 44ADA in the hands of the individual partner having professional income. That means receipts from CA firm exceeds Rs50.00 Lakhs audit report is compulsory.(Ex: Individual CA is in receipt of Salary, Remuneration etc. from CA Firm).

- Usha A Narayanan Vs. DCIT . ITA NO: 703/Kol/2012 . Order Dated 25/03/2013.(Kol. Trib).
- Sagar Dutta Vs. DCIT (2014) 45 taxmann.com 575 (Kol.Trib).

Points to Remember for both the Sections 44AD and 44ADA.

1. **No Further Deduction:** Once the assessee opts to file his return in reference to Sec 44ADA, all the deductions allowable in Sec 30 to 38 shall be deemed to have been allowed. That means, no further deduction would be allowable from the income u/s 44ADA.
2. **Depreciation Deemed to be Allowed:** While calculating income u/s 44ADA, the assessee shall be deemed to have been allowed depreciation under section 32 from WDV.
3. **Relief from Maintenance of Books of Accounts:** The assessee opting to file return with reference to Sec 44ADA, neither required to maintain books of account u/s 44AA nor get them audited u/s 44AB. This is the actual motto behind section 44ADA to reduce the burden of small assessee for maintaining books of account.
4. **Option to Claim Lower Profits:** Where the Assessee whose income is exceeding the basic exemption limit (Rs.2.50 Lakhs in normal case) wants to declare profit lower than Sec 44ADA , he will be required to maintain books of account u/s 44AA and also get them audited u/s 44AB.
5. **Advance Tax:** The Assessee who are eligible to file their return with reference to Sec 44ADA and also come under the category of advance tax payers shall pay the whole advance tax till 15th March of relevant financial year.

Section 44AE of the I.T Act,1961: Special provision for computing profits and gains of business of plying , hiring or leasing goods carriages.

Notwithstanding anything to the contrary contained in sections 28 to 43C where an assessee is engaged in the above mentioned business then the income of such business shall be deemed to be the aggregate of the profits and gains from all the goods carriages (up to a maximum of 10) owned by him during the previous year .

Computation Mechanism:

Part –I:

If assessee owns a ‘ heavy good vehicle’*: The profit shall be an amount equal to Rs.1000/- per ton of gross vehicle weight or unladen weight , as the case may be for every month or part of a month during which the heavy goods vehicle is owned by the assessee during the previous year, **Or**

An amount claimed to have been actually earned from such vehicle. **whichever is higher.**

Part –II:

If assessee owns a ‘ light good vehicle’*: The profit shall be an amount equal to Rs.7500/- for every month or part of a month during which the light goods vehicle is owned by the assessee in the previous year, **Or**

An amount claimed to have been actually earned from such vehicle. **whichever is higher.**

***’Heavy goods vehicle’** means any goods carriage the gross vehicle weight of which exceeds 12,000 kgs.

EXAMPLE:

- 1. Mr. X is engaged in the business of leasing goods carriages. He owns 8 goods carriages (capacity 14 tons each). He owned in for 6.5 months. Actual Income Rs7,00,000/-.**

Deemed income : $8 \times 14 \times \text{Rs.}1000/- \times 7 = \text{Rs}7,84,000/-$. Actual income Rs7,00,000/-.
Hence deemed income u/s 44AE is Rs7.84,000/- being the higher .

- 2. Suppose the actual income is Rs.8,00,000/-.**

Deemed income u/s 44AE is the actual income Rs.800,000/- being higher .

- 3. Suppose X owns two additional light weight vehicle and used for 3months 10 days.**

Deemed income : $2 \times \text{Rs}7,500/- \times 4 = \text{Rs}60,000/-$. Actual Income Rs.50,000/-. Hence deemed income u/s 44AE is Rs.60,000/- being higher.

- 4. Mr. X is engaged in the business of leasing goods carriages. He owns 8 goods carriages (capacity 14 tons each), owned in for 8 months 10 days and 2 light weight vehicle owned for 3months 20 days. Actual Income Rs10,00,000/-.**

Deemed Income: $(8 \times 14 \times \text{Rs}1,000/- \times 9) + (2 \times \text{Rs}7,500/- \times 4) = \text{Rs}10,68,000/-$.
Hence deemed income is Rs.10,68,000/- being higher.

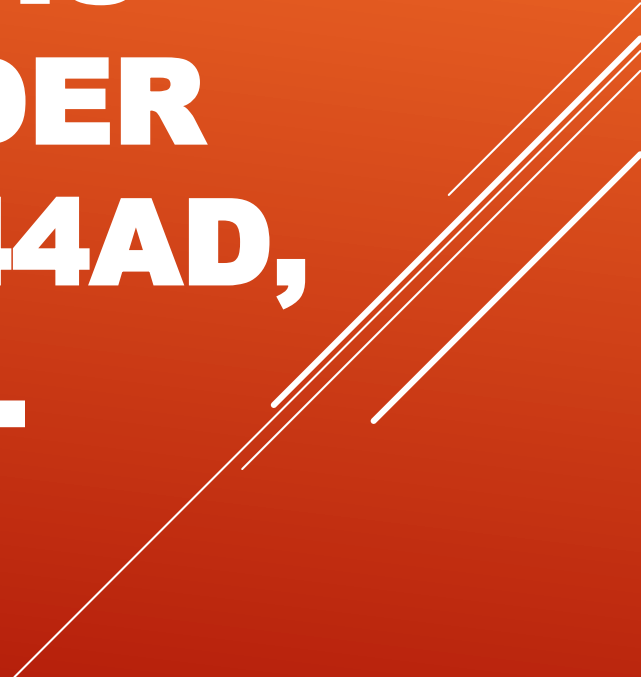
Points to Remember:

1. **No Further Deduction:** Once the assessee opts to file his return in reference to Sec 44AE, all the deductions allowable in Sec 30 to 38 shall be deemed to have been allowed. That means , no further deduction would be allowable from the income u/s 44AE.
2. **Depreciation Deemed to be Allowed:** While calculating income u/s 44AE, the assessee shall be deemed to have been allowed depreciation under section 32 from WDV.
3. **Relief from Maintenance of Books of Accounts:** The assessee opting to file return with reference to Sec 44AE, neither required to maintain books of account u/s 44AA not get them audited u/s 44AB. This is the actual motto behind section 44AE to reduce the burden of small assessee for maintaining books of account.
4. **Option to Claim Lower Profits:** Where the Assessee wants to declare profit lower than Sec 44AE , he will be required to maintain books of account u/s 44AA and also get them audited u/s 44AB.
5. **Advance Tax:** The Assessee who are eligible to file their return with reference to Sec 44AE and also come under the category of advance tax payers shall pay the advance tax during the financial year as applicable to normal tax payer .
6. **Any Person:** This section applies to any person may be resident or non resident.
7. **Deduction to Partnership Firm:** Salary, Remuneration, interest paid to partners shall be allowed u/s 40(b).

CASE LAW:

- ❑ **Where an assessee owns 11 goods carriage any point of time during the previous year he is not entitled to declare income under section 44AE even if one goods carriage is under repair.**
 - M.Rajendran Vs. ITO (2014) 65 SOT 42 (Chennai. Trib).
- ❑ **Sec 44AE does not permit an assessee to apply provisions of sec 44AE in case of some lorries and to go for the regular assessment on the basis of books of account in respect of remaining lorries.**
 - CIT Vs. C.P. Kunhimohammed (2005) 94 ITD 278 (Cochin. Trib).
- ❑ **Once assessee is declaring income u/s 44AE it shall be assumed that depreciation was duly provide on the used goods carriage.**
 - ITO Vs. S.Rajendran (2007) 15 SOT 26 (Cochin. Trib).
- ❑ **Criteria for declaring presumptive taxation u/s 44AE is nos. of goods carriage not more than 10 Nos hence AO can not ask to explain the Turnover or Gross Receipts.**
 - Shri Natthi Singh Vs. ITO . ITA NO: 451/JP/2018.Order dated 06/11/2018.
 - Shri Bijoy Shribastab Vs. ITO . ITA NO: 605/Kol/2013.Order dated 23/05/2018.
- ❑ **Assessee has the potential to opt for presumptive basis the same can be opted at any stage.**
 - Nishikant T.Patne Vs. ACIT (2013) 36 taxamnn.com 640 (Pune.Trib)
 - Kesharbhai Ghamarbhai Choudhary Vs.ITO (2011) 141 TTJ 94 (Ahd.Trib)
 - Inam Ahmad Vs. ITO .ITA No: 7784/Del/2017. Order dated 27/06/2018.
 - Pawa Industries (P.) Ltd Vs. ITO (2017) 80 taxmann.com 365 (Del.Trib)

**BUDGET 2020 MAKES
MANDATORY DEDUCTION OF
TDS EVEN IF ASSESSEE IS
DECLARING INCOME UNDER
PRESUMPTIVE BASIS U/S 44AD,
U/S 44ADA & U/S 44AE.**



❑ **Earlier up to FY 2019-20:**

Earlier towards deduction of TDS u/s 194A,u/s 194I,u/s 194H,u/s 194J etc condition was that if the assessee was liable to Tax Audit either under clause (a) or under clause (b) of section 44AB in the immediately preceding financial year .

❑ **After Budget,2020 From FY 2020-21:**

In the Budget 2020 clause (a) or (b) of section 44AB was substituted by Rs.1.00 Crores in the case of business or Rs50.00 Lakhs in the case of profession.

❑ **Effect of Budget,2020 from FY 2020-21:**

Even though towards Tax Audit u/s 44AB the Turnover or Gross Receipts is Rs.2.00 Crores for the Sec 44AD but from FY 2020-21 deduction of TDS is mandatory where the Turnover has exceeded Rs.1.00 Crore in the immediately preceding financial year.

❑ **EXAMPLE:**

Mr. X's Turnover was Rs1.20 Crores from business and declared profit u/s 44AD.He paid Rs.35,000/- as Audit Fee.

❑ **For FY 2019-20.**

He is not liable to deduct TDS because he was not covered under clause (a) of Sec 44AB.

❑ **For FY 2020-21.**

- He has to deduct TDS u/s 194A because his Turnover in the immediately preceding FY2019-20 is exceeding Rs.1.00 Crores.
- Non deduction of TDS there may not be 30% disallowance u/s 40a(ia) because Sec 44AD is overriding Sec 40a(ia) however he has to be held as defaulter u/s 201 & u/s 201(1A).
- Assessee (Deductor) may produce Form 26A so as to avoid disallowance u/s 40a(ia) and not to be treated as defaulter u/s 201.

❑ **CASE LAWS:**

• **Hindustan Coca Cola Beverages Pvt Ltd Vs. CIT (2007) 293 ITR 226 (SC):**

Once deductee recipient of income confirmed that tax was duly paid on income received from dedector , no further tax shall be demanded from the assessee (deductor).

• **CIT Vs. Punjab Infrastructure Board (2016) 76 taxamnn.com 365 (P&H HC):**

Assessee (Deductor) shall be entitled to interest u/s 201(1A) even if tax was deposited by the deductee.

THANK YOU !

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