

SERIES ON AUDITS- PUNE BRANCH OF WIRC, ICAI

Tax Audit & Presumptive Taxation

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06th September, 2023

Relevant Legal Provisions

History of Presumptive Taxes

- Presumptive taxation was introduced by Finance Act 1994 by way of two sections – section 44AD and section 44AE- Circular no. 684 dated 10th June 1994.
- Started with Civil construction to retail businesses to all businesses from 2009.
- Section 44ADA was inserted via Finance Act 2016 in the Act to provide for estimating the income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA.
- The Intention - to provide relief to small tax payers from burden of maintaining books of account, ease of doing business and saving time, efforts and money of the small tax payers.

Section 44AD- Provisions.....1

- **Sub section (1) –**

- Notwithstanding provisions from Section 28 to 43C
- Eligible Assessee having Eligible Business – 8% of profits on total receipts from business.
- or a sum higher claimed to have been earned
- shall be deemed to be Profits and Gains from PGBP.

- **Provision:**

If the total T/O or gross receipts received by a/c payee cheque or bank draft or use of ECS through a bank account during PY or before 139(1) due date – 8% can be reduced to 6%.

Section 44AD- Provisions.....2

- **Sub section (2)**

Deductions from sec 30- 38 – cannot be claimed further and deemed to be allowed.

- **Sub section (3)**

The WDV to be deemed to be calculated and allowed for respective years.

Section 44AD- Provisions.....3

- **Sub section (4):**

Where an eligible assessee declares profit as per the provisions and declares profit for any 5 succeeding assessment years not as per provisions of SS.(1),

He shall not be eligible to claim the benefit of this section for 5 Ays subsequent to the said AY.

- **Sub section (5)**

Notwithstanding anything above, an eligible assessee to whom SS.(4) applies **and** total income exceeds maximum amount not chargeable to tax,

shall be required to maintain books of account as per 44AA(2) and get them audited u/s. 44AB

Section 44AD- Provisions.....4

- **Sub section (6):**

Exceptions to the applicability of section:

- (i) Person carrying on profession as per section 44AA(1)
- (ii) Person earning commission or brokerage income.
- (iii) Person carrying on any agency business.

- **Explanations:**

Eligible Assessee – Individual, HUF, Partnership Firms being resident and who has not claimed deductions u/s. 10A, 10AA, 10B, 10BA or deductions under chapter VIA- Heading C.

Eligible Business - Any business except business of plying, hiring, or leasing of goods carriages as per Sec 44AE and whose total turnover in PY is 2 crores.

Section 44AD- Provisions.....5

Provisions inserted after Explanation by Finance Act 2023 (w.e.f: AY 2024-2025):

First - where the amount or aggregate receipts during the PY in cash, is less than 5 per cent of the total turnover or gross receipts of such PY – 2 crores limit to get enhanced to 3 crores.

Second -for the purposes of the first proviso, the receipt of amount by a non account payee cheque or bank draft, shall be deemed to be the receipt in cash.

Section 44AD- Business excluded (as per CBDT E-filing validation rules)

Annexure A - List of codes not eligible for section 44AD

Code	Sub-Sector
9005	General commission Agent
14001	Software development
14002	Other software consultancy
14003	Data processing
14004	Database activities and distribution of electronic content
14005	Other IT enabled services
14006	BPO services
14008	Maintenance and repair of office, accounting, and computing machinery
16001	Legal profession
16002	Accounting, book-keeping, and auditing profession
16003	Tax consultancy
16004	Architectural profession
16005	Engineering and technical consultancy
16007	Fashion designing
16008	Interior decoration
16009	Photography
16013	Business and management consultancy activities
16018	Secretarial activities
16019_1	Medical Profession
16020	Film Artist

Section 44AD- Business excluded

18001	General hospitals
18002	Specialty and super specialty hospitals
18003	Nursing homes
18004	Diagnostic centers
18005	Pathological laboratories
18010	Medical clinics
18011	Dental practice
18012	Ayurveda practice
18013	Unani practice
18014	Homeopathy practice
18015	Nurses, physiotherapists, or other para-medical practitioners
18016	Veterinary hospitals and practice
18017	Medical education
18018	Medical research
18019	Practice of other alternative medicine
18020	Other healthcare services
20010	Individual artists excluding authors
20011	Literary activities
20012	Other cultural activities N.E.C.

Section 44ADA- Provisions1

- **Sub section (1):**

- Notwithstanding provisions from section 28 to 43C;
- in case of Resident Individual, Partnership Firm, LLP;
- engaged in professions referred in section 44AA(1) ;
- gross receipts is less than Rs. 50 lakhs in PY;
- 50% of such receipts to be deemed as profits or;
- a sum higher claimed to have been earned in PY

Proviso 1: where the amount or aggregate receipts during the PY in cash, is less than 5 per cent of the total turnover or gross receipts of such PY – 50 lakhs limit to get enhanced to 75 lakhs.

Proviso 2- the receipt of amount by a non account payee cheque or bank draft, shall be deemed to be the receipt in cash (**with effect from AY: 2024-25**).

Section 44ADA- Provisions...2

- **Sub section (2):**

Deductions u/s. 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.

- **Sub section (3):**

WDV of any asset -shall be deemed calculated- as if the assessee had claimed and had been actually allowed the deduction

- **Sub section (4):**

An assessee claiming that his profits are lower than 50% **and** total income exceeds the maximum amount – to maintain as per Sec. 44AA and get them audited u/s. 44AB

Section 44ADA- Provisions...3

- Professions included:
 - Legal
 - Medical
 - Engineering
 - Architectural
 - Accountancy
 - Interior decoration
 - Authorised Representative before any court of law
 - Film Artist
 - Company secretary,
 - Information Technology;
 - Any other profession so notified by govt.

Section 44AA- Maintenance of Books of Account

- Every person carrying on legal, medical, engineering or architectural profession or any other profession as is notified by the Board in the Official Gazette- shall keep and maintain such books of account.
- Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—
 - If his income from B&P > 1,20,000 or his total sales, turnover or gross receipts > 10 lakh rupees in any one of the three years immediately preceding the previous year; or
 - the profits and gains from the business are deemed u/s. 44AE or 44BB or 44BBB - assessee has claimed his income to be lower than the profits or gains.
 - 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.

Section 44AB- Audit of Accounts

(a) if his total sales, turnover or gross receipts, as the case may be, in business exceed Rs. 1 crore- in any previous year.

Provision added:

Tax Audit limit u/s. 44AB increased from 1 crore to 10 crores subject to following conditions:

- Aggregate of all receipts including amount received for sales, turnover or gross receipts during the PY, in cash does not exceed the 5% of the said amount.
- Aggregate of payments including amount incurred for expenditure in cash during the PY does not exceed the 5 % of the said payments.

Section 44AB- Audit of Accounts

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

(c) Carrying on business if the profits and gains deemed u/s. 44AE or 44BB or 44BBB, and claimed income lower than the deemed profits and gains of his business in any previous year; or

(d) carrying on the profession shall, if the profits and gains deemed to be u/s. 44ADA and claimed income to be lower than deemed to be the profits and gains and his income exceeds the maximum amount which is not chargeable to income-tax in PY; 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,

Section 44AB- Audit of Accounts

Provisions:

First – Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA (w.e.f 01.04.2024)

Second - 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;

Third - 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.

ISSUES and CASE STUDIES

What is 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)*.

What is Turnover/ Gross receipts?

- The term "turnover" is a commercial term and it should be construed in accordance with the method of accounting regularly employed by the assessee - section 145(1).
- The Central Sales Tax Act, 1956 defines "Turnover" as follows: "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 this Act and rules made there under.
- Discounts and returns can be reduced from turnover.

What is Turnover in case of Derivatives/ F & O?

- Tax Audit Guidance Note by ICAI of 2023, specifies it as under:
 - (i) The total of favourable and unfavourable differences in case of squared off transactions 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, then such net profit should not be separately included.

What is aggregate receipts and payments?

- All receipts and payments in relation to business of the assessee.
- Will opening and closing balances be included?
- Contra entries to be excluded from calculation
- Whether advances received to be included ?
- Whether capital receipts and payments to be included?
- Loans received and paid to be included ?
- Total cash register and bank register needs to be considered.
- One needs to maintain a detailed record of receipts and payments and cash transactions – Ironical ?

Case Study No.1

- Ms. H is a Doctor by qualification and runs a clinic where she earns Rs. 40 lakh as consultancy income. She also sells medicines from the same clinic and her turnover out of that is 1.20 crore. Whether she can show income under section 44AD and 44ADA both ?
- Will answer change if the pharmacy sales is 4.5 lakh so overall income is less than 50 lakh?
- Is section 44AD qua assessee or qua income ?
- Can He chose as which section is beneficial to him and offer income accordingly?
- Will the answer differ if she is not a qualified Doctor but a B-pharm graduate ?

Case Study No.2

Mr. I has business turnover of Rs. 1.8 crore. The cash turnover from above is Rs. 1 crore and rest is through banking channels. His actual profits after deducting expenses is Rs. 1 crore. Can Mr. I offer profit of 8% and 6% respectively as per section 44AD?

- Are presumptive sections mandatory or optional to the assessee?
- How will assessee know the profits are more than 8%/6% if not maintaining books of account ?
- Constitutionality of sections
- In the above case, Mr.I has paid certain professional fees of Rs.40,000, is he required to deduct tax at source?

Case Study No.3

M/s. J is a partnership firm of architects having turnover of Rs.48 lakh and has loss from F & O trading. Can the firm offer profits u/s. 44ADA?

- What would be the scenario when the partnership firm is into some other business but having only F & O loss during the year ?
- In the second scenario, will the answer differ if assessee had only F & O business ? Would audit become mandatory u/s. 44AB

Case Study No.4

Ms. K is a practising Chartered Accountant and also teaches in colleges on contract basis. She has received Rs.30 lakh from practice and teaching fees of Rs.15 lakh.

- Will the turnover of professional receipts u/s. 44ADA be Rs. 30 lakh or Rs.45 lakh.
- If she was a partner and received remuneration and interest of Rs.10 lakh, can that be included in the gross receipts calculation? (ITA No. 2135/Kol/2008, ITA No. 692/Kol/2012, CIT v. Ramniklal Kothari - 74 ITR 57 (SC), 168 *Taxman* 43).
- Is the firm to be considered as doing profession or the partner ? 430

Case Study No. 5

Sub section (4), of section 44AD has mandated carrying out tax audit if the presumptive tax is not opted for continuous 5 years.

Q1. Ms. L has opted for section 44AD in AY: 2019-20. In AY: 2020-21, her business turnover is 3 crore, will she have to conduct tax audit u/s. 44AB(e) of the Act.

Q2. If she has turnover of Rs. 90 lakh in AY: 2020-21, but she also has started other business and has income from commission of Rs. 15 lakh, will she have to do tax audit u/s. 44AB (e) ?

Case Study No. 6

Mr. A has following income:

Eligible business u/s. 44AD – turnover Rs. 1 crore

Non eligible business – turnover Rs. 1.2 crores

Profession u/s. 44ADA – Rs. 45 lakhs

Profession other than u/s. 44ADA – Rs. 55 lakhs.

How will the tax audit be carried out in the above case of multiplicity of businesses ?

Different scenarios under the new T/O limit

- When the turnover is less than 1 crore – No Audit
- When the turnover is between 1 crore to 2 crore and cash receipts and payments more than 5% but profit offered more than 8% No Audit under any section.
- When the turnover is between 2/3 crore to 10 crore, cash receipts and payments less than 5% but profit offered at a rate lower than 6/8% - No Audit under any section.
- When the turnover is less than 2 crore and profit shown at rate lower than 6%/8% - Whether Tax Audit required u/s. 44AB (e).

THANK YOU !!!

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