INDORE BRANCH OF CIRC OF ICAI

NEWSLETTER

SEPTEMBER, 2021 • Price ₹ 20

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अमृत महोत्सव

Why GST Department Is Not Right In Asking Commercial Place For GST Registration?

CA. Abhishek Raja Ram
Delhi

In any tax system registration is the most fundamental requirement for identification of tax payers ensuring taxcompliance in the economy. Registration of any business entity under the GST Law implies obtaining aunique number from the concerned tax authorities for the purpose of collecting tax on behalf of the governmentand to avail Input tax credit for the taxes on his inward supplies. Without registration, a person can neither collecttax from his customers nor claim any input tax credit of tax paid by him.

Under GST, registrations need to be taken State-wise, i.e. there are no centralized registrations under GST. A business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States. Further, within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business (PPoB) and other branches asadditional place(s) of business (APoB). However, a business entity having separate business verticals in a Statemay obtain separate registration for each of its business verticals otherwise a given PAN based legal entity wouldhave one registration number – Goods and Services Tax Identification Number (GSTIN) per State.

GST Act stipulates that any supplier of goods, services or both must register as a GST Act if their aggregateturnover of more than Rs. 20 lakhs in a year (Rs.10 lakhs in Special Category States) have to obtain GSTregistration. If the supplier is only supplying goods, then threshold limit is Rs. 40 lakhs in a year (Rs.20 lakhs inSpecial Category States) subject to the condition that State has opted for this higher threshold limit. However, Asper the section 24 of CGST Act 2017 , certain categories of persons shall be compulsorily required to beregistered under GST, even if their aggregate turnover is below specified exemption limit and are exempted fromGST registration under section 22(1) – section 24(1) of CGST and SGST Act.

Small businesses with turnover less than 20lakhs can voluntarily register under GST. Voluntary registration provides option to a person to take GST registration even though he is not liable for GST registration undersection 22 or section 24 of CGST Act, 2017 or SGST/UTGST Act, 2017. Section 25(3) allows for voluntaryregistration under GST, "A person, though not liable to be registered under section 22 or section 24 may gethimself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply tosuch person."

GST REGISTRATION PROCEDURE:

Procedure for registration is governed by section 25 of the CGST Act read with Chapter III – Registration ofCentral Goods and Services Tax (CGST) Rules, 2017. Relevant provisions of CGST Rules, 2017 have beenincorporated at the relevant places. Further, special provisions have been provided for registration of casualtaxable person and non-resident taxable person under section 27. Concept of deemed registration has beenelaborated under section 26.

General documents needed for GST Registrations are:

- Documents
- PAN and Aadhaar of applicant
- Proof of business registration
- Identity and address proof of promoters
- Address proof of business
- Bank account proof
- Digital signature
- Letter of authorization

CORONA & WORK FROM HOME:

Though the number of people working partially or fully remote has been on the rise for years now, the COVID-19pandemic may have pressed the fast-forward button on this trend. COVID-19 has lead to more and moreemployees working from home (WFH). COVID-19 also created many entrepreneurs or small businesses to startwork from home. People are loving Work from Home because of flexible schedule, the ability to work from anylocation, and no more commuting to name a few.

Due to Corona pandemic small business owners work

from home at least part of the time. But there is problem inGST while getting your business registered with GST Department.

GST DEPARTMENT VIEW ON RESIDENTIAL ADDRESS:

GST Department, particularly State Department Officers still live-in mindset of Sales Tax era. During Sales TaxRegistrations in some states there was requirement of Commercial Address for Sales Tax Registrations. WhenVAT (Value Added Tax) was introduced generally the registration form all over states had two addresses to befilled one was for Residential Address and another one was Commercial Address. Some State VAT Officersstarted demanding commercial address and started rejecting applications on residential address. GST wasimplemented on 1st July'2017 and GST Registration was online. GST Registration Procedure is governed bySection 25 Act and Rule 8 & Rule 9 Rules. Requirement of Commercial Address for GST Registration is notmentioned in GST Laws or any Circular / Notification / Instructions. But then also some State Officers aredemanding Commercial Address for GST Registration.

Whether business can be carried from Residential Unit was matter before **West Bengal Tax Tribunal in case ofPuspa Lohia vs Sales Tax Officer, Durgapur Range [(2009) 21 VST (Tri.) (WB) / (2007) 9 TMI 588 (WBTT)] /(2009) 12 STM 702 (WBTT)] ?**

Department made a visit to the registered premises of the assessee and cancelled the Registration on theground that assessee had no office room to carry on **her business and had no godown or warehouse and herdeclared place of business was a residential premises.** Aggrieved by this Cancellation assessee contestedand matter went to West Bengal Tax Tribunal.

Assessee asserted that she carried on business at the premises recorded in the registration certificate, maintained records in the office which was also maintained at the said premises, and that she also kept goodsimported by her at the said premises. She contended that section 24 of the WB VAT Act, 2003 does not requireher to have godown or warehouse and that no restrictions are imposed by the WB VAT Act, 2003 for carrying onbusiness from residents.

Department countered that the place of business is residential place. No office room nor any godown are foundthere. The place of business is a dwelling house.

Assessee submitted that the taxation law does not require maintenance of godown for obtaining registration certificate and no restrictions have been imposed by sales tax law for maintenance of office and for carrying onbusiness at residential premises.

Section 2(29) of the WB VAT Act, 2003 provides, "place of business" means any place "where a dealer has setup a business of selling or purchasing goods or a place from where a dealer sells any goods or where he keeps accounts, registers or documents, including those in the form of electronic records relating to sales or purchasesof goods or execution of works contract and digital signature certificate granted under sub-section (4) of section35 of the Information Technology Act, 2000 (21 of 2000), relating to his business, and includes any place wherethe dealer processes, produces or manufactures goods or executes works contract and any warehouse of suchdealer".

West Bengal Tax Tribunal held that, **"Where business is carried from Residential Unit and the dealer hadnot declared any godown, warehouse or separate office, cancellation of certificate of registration on that ground alone not justified."**

NEED OF COMMERCIAL ADDRESS: UNJUST DEMAND

Thus, need of Commercial Address was not there even in VAT Laws. If we recall registration requirements of VATLaws, they could be as follows:

- Registration fees ranging from Rs. 500/- to Rs. 1,500/-
- Security Amount and Later on Additional Security
- Location Map
- Introduction by already registered dealer or Advocate or CA

These are not demanded today in GST Laws then why Commercial Address is demanded? Corona Pandemichas done huge loss to mankind both in terms of loss of human life and economy. But "Work from Home" is newnorm, and it will continue forever now whether there is corona or not. GST Department need to understand thisbasic thing and stop demanding Commercial Address. They should stop rejecting Applications for GSTRegistration for non-submission of Commercial Place. Alternatively, Government could issue some SOP's in thismatter or issue clarification on the same.

Tags: goods and services tax, GST, GST Registration

Presumptive Taxation scheme
Section 44AD of Income Tax Act

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

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 percent", 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 prescribed] during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

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

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

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

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

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.

Explanation.—For the purposes of this section,—

(a) "eligible assessee" means,—

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

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

(b) "eligible business" means,—

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

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

We can decode the provisions of section 44AD(1) of the Act, by dividing the said section into following parts:

A) Not withstanding anything to the contrary contained in sections 28 to 43C…

Section 44AD of the Act begins with a non-obstante clause "(1) Notwithstanding anything to the contrary contained in sections 28 to 43C"… Therefore by virtue of the non-obstante clause, Section 44AD of the Act has a superior position vis-à-vis the other provisions of the Income Tax Act 1961. Nevertheless, Section 44AD(2) of the Act also specifically mentions that any deductions allowable under Section 30 to 38 shall be deemed to have been given full effect. Therefore, there are no specific deductions available for the assessee opting for presumptive taxation under Section 44AD of the Act.

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

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

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

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

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

Example: Mr. X has paid Rs.15,000 for purchase of goods in cash. Can disallowance be made u/s. 40A(3).

Ans– No disallowance can be made under section 40A(3) for the same.

Example: Mr. X has paid Rs.38,000 to transporter for freight in cash. Can disallowance be made u/s. 40A(3)?

Ans- No disallowance can be made under Section 40A(3).

Example: Mr. X has contributed certain sum to national Laboratory which qualifies for deduction under section 35(2)(AA). Can deduction be claimed u/s. 35(2)(AA)?

Ans– No, if he chooses section 44AD he will not eligible for benefit of this section.

Example: Mr. Y has claimed bad debts written off of Rs.50,000 in year 2014-15. In P.Y. 2019-20 he has recovered Rs.30,000.

Ans- Separate addition of bad debts recovered may not be made if the profits are declared under presumptive taxation scheme.

Example: A Firm engaged in the business of warehousing as mentioned u/s 35AD & total receipts doesn't exceed Rs.200. Can he opt for Claim u/s 44AD?

Ans- Yes, the assessee who engaged in the business of warehousing u/s35AD can claim the benefits of Section 44AD. Since restrictions put via explanation to Section 44AD doesn't apply to Section 35AD business. However, it is interesting to note that such person can't claim the deductions u/s35AD since section 44AD overrides Section **35AD.**

Issue on Disallowance U/S 43B

A very interesting issue on the disallowance u/s 43B of the Income Tax Act,1961 has been considered by Panaji Tribunal in case ofGood Luck Kinetic v. ITO (2015) 58. The Tribunal held that 44AD starts with "notwithstanding anything to the contrary contained in Sec. 28 to 43C" whereas section 43B starts with the words "not withstanding anything contained in any other provisions of this Act". The non-obstante clause in Sec. 43B has far wider amplitude. Hence, disallowance could be made by invoking the provisions of Sec. 43B.

This is because the said provisions u/s 28 to 43C are provisions relating to the computation of business income of the Assessee. However, a perusal of the provisions of Sec. 43B shows that the said provision is a "restriction" on the allowance of a particular expenditure representing statutory liability and such other expenses, claimed in the profit and loss account

unless the same has been paid before the due date of filing the return.

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

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

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

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

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

An important Issue X & Co. a partnership firm opts for Section 44AD during the Previous Year 2019-20 fails to pay interest of Rs.5 Lacs to the scheduled Bank. Assessing Officer while making the Assessment U/s 143(3) enhanced the assessment by Rs.4 Lacs by invoking the disallowances U/s 43B be a Non-Obstante Clause. The Firm paid such interest during the Previous Year 2020-21 & claim allowances of such Interest while filing the ROI. Assessing Officer disallows the Interest contending that Section 44AD(2) restricts the assessee claims of any expenditure U/s 30 to 38 & Interest Expenditure is governed as per Section 36. Comment on the action of the Assessing Officer.

The Action of the Assessing Officer is not as per the law. Once the disallowances of interest were attracted U/s 43B the same will be allowed as per Section 43B itself. It means normally interest expenditure is allowed U/s 36 read with Section 43B on the payment basis if it is payable to the scheduled Bank. If Assessee fails to pay the interest then such interest will be disallowed as per Section 43B. Further, the proviso to Section 43B allows such expenditure during the Previous Year in which it is paid. Therefore, in the given case the Assessee firm is eligible to claim the Deduction of the Interest since such allowances are as per Section 43B & not as per Section 36. If Interest paid is further disallowed it will tantamount to Double Taxation.

Issue of disallowance u/s 40

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

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

Example: Mr. X declaring income u/s 44AD has made payment of interest to non-resident. However, no TDS has been deducted. Whether the expense will be disallowed u/s 40(a)? The interest expense will not be disallowed as sec 44AD overrides sec 40(a). The assessee was required to deduct TDS as per sec 195. Although, he has not deducted the TDS, expense will not be disallowed. However, he may be considered as assessee in default as per sec 201 and other penal provisions may be applicable as sec 44AD does not override TDS provisions.

SECTION 44AD/ 44ADA r.w. SECTION. 40(a)(ia)

In **ITO v. Mark** Construction [2012] 23 taxmann.com 398 (Kolkata) the assessee engaged in civil construction disclosed profits exceeding 8% by opting for section 44AD provisions. In the assessment, the Assessing Officer called for books of account of the assessee and the assessee took a plea that the income was offered under section 44AD and hence maintenance/production of books of account was not compulsory. The Assessing Officer made addition of Rs.32,62,140 by invoking section 40(a)(ia). The tribunal held that since the assessee has disclosed profits more than 8% of the gross receipts, no disallowance under section 40(a)(ia) could be made.

No TDS default disallowance u/s. 40(a)(ia) for assessee opting presumptive basis taxation u/s 44AD

Surat ITAT in the case of Shri Bipinchandra Hiralal Thakkar

[TS-539-ITAT-2020(SUR)]rules in favour of assessee-individual [who offered income to tax on presumptive basis u/s. 44AD @

8% on gross turnover), deletes TDS default disallowance u/s 40(a)(ia) for AY 2013-14; Noting that assessee made interest payments on unsecured loans and job work expenses without deducting TDS u/s 194A/194C, AO made disallowance u/s. 40(a)(ia); However, ITAT refers to the non-obstante" clause at the beginning of section 44AD overriding the provisions of sections 28 to 43C; Relies on the judgement of SMS Bench Kolkata in the case of Jaharlal Mukherjee, wherein it was held ..the provisions of section 44AD of the Act overrides all other provisions contained in section 28 to 43C. Admittedly, the provisions of section 40(a)(ia)of the Act falls within this range of sections 28 to 43C of Chapter-XVII B of the I.T. Act." ; Rejects Revenue's stand that the dues to the crown has no limitation and has precedence over all other allowance and claims", opines that provisions of section 44AD have been enacted by the Legislature/Crown to provide benefit to small businessmen in terms of cost savings.

Issue of disallowance u/s 40A

Sec 40A relates to disallowance related to excess payment of related party, cash payment to a person in excess of Rs.10,000 in a day, payment to unapproved fund, mark to market losses etc. The comparison of sec 44AD and 40A is very interesting and different from sec 43B and sec 40. Sec 40A overrides all the other provisions of PGBP. The section begins with "The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act relating to the computation of income under the head "Profits and gains of business or profession". The non-obstante clause of this section seems to override provisions of sec 44AD. However, the Panaji Tribunal in case ofGood Luck Kinetic v. ITO (2015) 58 relating to disallowance u/s 43B have considered two points:

I) Amplitude of non-obstante clause

ii) Payment to crown i.e. statutory dues

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

Interplay of Section 43CA vs. Section 44AD

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

43CA.

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

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:

[Provided further that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent", the words "one hundred and twenty per cent" had been substituted, if the following conditions are satisfied, namely:—

(i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;

(ii) such transfer is by way of first time allotment of the residential unit to any person; and

(iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.]

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed] on or before the date of agreement for transfer of the asset.

[Explanation.—For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of

another household.] It is to be noted that section 44AD starts with "Notwithstanding anything to the contrary contained in sections 28 to 43C…." meaning thereby, indirectly, section 44AD is subject to section 43CA. This is not correct position of law. It is to be noted that the open ended coverage of section 44AD(1) is puzzling since sale of immovable property held as stock in trade governed by section 43CA is not brought within the provisions of section 44AD.

Section 44AD starts with non-obstante clause by saying that the provisions would prevail over sections 28 to 43C of the Act. The applicability of the section is however optional. Only when the taxpayer opts for the provisions of section 44AD, it would prevail over the provisions of sections 28 to 43C. Now a question arises, whether the provisions of sec 43CA of the Act are applicable in case of presumptive tax. In this connection it is to be noted that both these sections i.e.44AD and 43CA of the Act are deeming sections. A legal fiction is created only for a definite purpose and is limited to that purpose and should not be extended beyond it. It should be within the framework of the purpose for which it is created. Deemed to be is not an admission that it is in reality, rather it is an admission that it is not in reality what it is deemed to be.

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

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

The stamp duty value of the property is more than 110% of consideration i.e. Rs.11,00,000 (110% of 10,00,000). If Mr. X opts for sec 44AD Rs.10,00,000 will be added in turnover as sec 43CA is not applicable in case income is declared u/s 44AD. The total turnover will be Rs.70,00,000. If Mr. X not opts for sec 44AD, Rs.15,00,000 will be added in turnover. His total turnover will be considered as Rs.75,00,000.

In the case of an eligible assessee engaged in an eligible business 1) To claim the benefits of Section 44AD twin requirements must be satisfied. First, the assessee must be an Eligible Assessee who runs the eligible business. If Assessee is eligible one but who runs the business which is ineligible the benefits of Section 44AD couldn't opt for such ineligible business.

2) The definition of the eligible business is given in explanation (ii) to Section 44AD. Which includes all business whose total turnover/ gross receipts during the previous year doesn't exceed Rs.2 Crores as an eligible business except the business of Plying/hiring/ leasing goods carriages as referred to in Section 44AE

3) It means even if the turnover of Business of Plying/Hiring/Leasing of Goods carriage etc. is below Rs.2 Crores it will not cover U/s 44AD at any cost.

Meaning of Eligible assessee:

1) Resident Individual
2) Resident Hindu Undivided Family
3) Resident Partnership Firm (Except an Limited Liability Partnership Firm as defined under LLP Act, 2008)

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

Non Eligible Assessee under Sec.44AD of the Act

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

- An Individual / HUF / Partnership Firm who is a resident and claiming deduction under chapter III of the Act section10A, 10AA, 10B, 10BA relating to units located in FREE Trade Zone, Hardware & Software Technology Park etc. OR
- Claiming deduction under Chapter VI-A Part-C (deductions in respect of certain Incomes) i.e. Sections80HH to 80RRB.

The following are not covered u/s 44AD

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

Example: A Partnership Firm X & CO. is involving in manufacturing of leather and it is offering income u/s 44AD each year. Now, it converts its business to LLP. Whether it can continue to offer income u/s 44AD?

The Presumptive Taxation scheme of Section 44AD provides that it can be adopted only by Individual, HUF and Partnership Firm and not LLP. So, it cannot offer presumptive income u/s 44AD since it has converted into LLP.

Example: Mr. X an Individual, who is offering income u/s 44AD each year, became a non-resident in the previous year 2018-19

relevant to assessment year 2019-20. Whether he can continue to offer presumptive income u/s 44AD?

The Presumptive Income u/s 44AD will be applicable only to the resident individual. Non-Resident cannot avail the benefit u/s.44AD.

Can income be offered under 44AD when one Partner is Non Resident?

As per Provision of Section 44AD, only a Resident Partnership Firm is an eligible assessee u/s 44AD partnership firm is a resident in India if then control and management of its affairs wholly or partly situated within India during the relevant previous year. Thus, the firm can opt for taxation u/s 44AD provided control and management of its affairs wholly or partly situated within India during the relevant previous year.

It is noteworthy that an assessee except resident individual/HUF/ Partnership Firm eligible u/s 44AD, such as company or a LLP shall not be required to get its accounts audited u/s 44AB of the act, even if :

1. his gross receipts during the year do not exceed Rs.1 Crore.
2. he reports income lower than the deemed profit under the presumptive rate of tax at 6 per cent or 8 per cent as the case may be, and 3. his taxable income exceeds maximum amount of taxable income not chargeable to tax.

Meaning of Eligible Business

The term has been defined under Explanation to subsection 6 of Section 44AD as under; "eligible business" means,—

- Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

Whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.'

The presumptive taxation scheme under section 44AD covers all small businesses with total turnover/ gross receipts of up to 2crores (except the business of plying, hiring and leasing goods carriages covered under section 44AE).

Restrictions to opt the provisions of presumptive taxation u/s 44AD (6) of the Act

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.

As per the provisions of sub-section 6 of section 44AD, if an assessee has earned any income from specified activities such as commission, then provisions of section 44AD shall have no bearing on such assessee.

It is to be noted that meaning of words "**Commission or brokerage**" is same as given for the purpose of section 194H of the Act. Commission or brokerage includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person:

1. for services rendered (not being professional services), or
2. for any services in the course of buying or selling of goods, or
3. in relation to any transaction relating to any asset, valuable article or thing, not being securities.

Thus an assessee can't opt the provisions of sec 44AD.

So Eligible Business includes:

- Manufacturing
- Trading
- Wholesale
- Retail
- Job Work
- Service business
- Speculative/ Non speculative.

Assessee and Several Businesses

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

Example: Mr. X A Resident individual, is carrying on three eligible businesses, the turnover of which is as under –

Business A (Rs.145 Lac)

Business B (Rs.35 Lac)

Business C (Rs.25 Lac)

Whether he can opt for sec 44AD?

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

Example: A Person doing brokerage business who have received brokerage for Rs.90,00,000 and declaring income @ 5% of Rs.4,50,000. Should his books of Accounts be audit u/s 44AB since he is offering income less than 8%? Ans. Audit u/s 44AB is applicable if he is declaring income lower than thereafter specified u/s 44AD. But, section 44AD is not applicable to Agency, Commission and Brokerage. Hence, he can declare income less than 8%.

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

Own Business Turnover = Rs.90 Lacss

Consignment Sales Turnover = Rs.40 Lacss

Whether Assessee can opt for Presumptive income computation or not?

For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e. Rs.90 Lacss. Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.1 Crore. Consignment Commission can be offered at any

rate (Even below 8%), provisions of Sec.44AD will not govern the commission income.

Can assessee opt for Sec. 44AD and Sec. 44AE together?

Now a question arises that whether an assessee can take the benefit of sec 44AD and sec 44AE together. To resolve this issue when we have to see the provisions of sec 44AD which reads –"…an eligible assessee engaged in an eligible business… 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…"It clearly lays down that sec 44AE is not eligible business and it does not make the assessee ineligible to take the benefit of sec 44AD.The business covered under 44AE is not mentioned in 44AD(6), but only excluded from definition of "Eligible Business". So these two provisions can be claimed simultaneously

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

Business A (Eligible Business) Rs.70 Lacss

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

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

B) A sum equal to eight percent of the total turnover or gross receipts of the assessee in the previous year on account of such business…

The minimum rate of the profit is 8% on Total Turnover or Gross Receipts of the Assessee. Now, the question arises what does Total Turnover or Gross Receipts means?

For the calculation of Total Turnover or gross receipts reference of section 145 & Section 145A must be given. Section 145 of the Income Tax Act, 1961 deals with the method of accounting to be followed by the assessee. It gives an option to the assessee that while calculating the income under the head Business/Profession assessee may opt for Cash system or accrual system of accounting. This is the reason Section 44AD also gives reference to the word Gross Receipts with intent to cover those cases where assessee follows the cash system of accounting. Gross Turnover means without including any purchase cost & any other direct or indirect cost. It should be the Gross revenue which is received or to be received by the assessee from the sale of goods or services.

Therefore where the Purchase of Goods or services & other expenditures are inclusive of taxes or not is not a matter of concern for the assessee who is covered by Section 44AD. However, whether tax, duties, cess, etc. which is collected by the Assessee covered u/s 44AD should be part of turnover or not is a matter of consideration. As per Section 145A(ii), the valuation of goods or services shall be adjusted including the amount of any tax, duty, cess, or fess by whatever name called….. It means CGST/SGST/IGST etc. collected from the buyer by the assessee should also become part of the Gross Turnover. There are divergent views on this point.

C). ….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"…

It is to be noted that in Section 44AD, the assessee must have to declare a minimum of 8% of the Gross turnover or gross receipts as his deemed income. However, Section 44AD(1) further gives an option to the assessee to claim more than 8% in his return of Income. It means it is the option given to the assessee & not to the Revenue to presume higher income of the assessee while making an assessment.

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- The ld. A/R of the assessee has submitted that the case of the assessee is covered under section 44AD of the Act as the turnover of the assessee is Rs.85 lacs which is not exceeding the limit provided under section 44AD. The ld. A/R further submitted that the assessee has declared profit of Rs.7.64 lacs which is 8.99% of the turnover. Therefore, even if there is a payment in cash which is hit by the provisions of section 40A(3), once the case of the assessee is covered under section 44AD and assessee has declared more than 8% of profit on the said turnover, then no further disallowance is called for.
- The ld. D/R has submitted that the assessee has not filed the return of income under section 44AD of the Act but the income declared in the return of income as per the books of account maintained by the assessee. Therefore, the assessee cannot take the plea of section 44AD even if the turnover of the assessee is less than the limit provided under the said provision.
- Tribunal held -Once the assessee has filed the return of income declaring the income based on the business results shown in the books of account then the AO is required to examine the correctness of the return of income and claim of the assessee in the context of business results shown as per the books of account.
- Merely because the turnover of the assessee for the year under consideration is less than the limit provided under section 44AD, would not preclude the ld. PCIT to exercise his jurisdiction under section 263 regarding violation of provisions of section 40A(3) of the Act. Thus 44AD has to be 'claimed'.
- Once income declared as per books of accounts, assessee cannot claim that since turnover is within limits of 44AD, therefore disallowances u/s 40A (or others) would not apply.

Meaning of words 'claimed to have been earned by the eligible assessee'

The section has been amended for the benefit of the assessee and the words claimed to have been earned by the eligible assessee. By the introduction of these words in section

44AD(1), the legislature shows his intention to accept specified income as returned income even if higher sum is earned by eligible assessee unless it is claimed by assessee in his Income Tax Return. The word "Claim" signifies the right of assessee to the extent to opt between actual profits and presumptive profits. It is further to be noted that to claim the profits upto presumptive rate is the right of the assessee and if the actual profits are more than the presumptive profits then it is an obligation of assessee to declare the actual profits to the department. In other words, the scheme of presumptive taxation provides both right- to the extent of presumptive profits and obligation to the extent of actual profits. It cannot be said that if an assessee who has opted for presumptive taxation is not liable to produce the evidence of the actual profits shown by him. The distinction between Right and obligation is very necessary here. The language of section 44AD(1) requires claims to have been made by an assessee for returning higher income. If there is no claim made by assessee in return for higher income, there is no higher income. The assessee, who has opted presumptive taxation system, is under no obligation to explain individual entry of cash deposit in bank unless such entry has no nexus with gross receipts

Example– Mr. Sham is carrying on business. The Turnover is Rs.90 Lacs. The profit as per his books or calculation is Rs.9 Lacs. However, he opts to return the income under section 44AD @ 8% i.e. Rs.7.20 lacs. Now a question arises regarding the power of AO to assess the difference of Rs.1.8 lacs as undisclosed income. In this case Mr. Sham has claimed the income of Rs.7.20 lac as in his return of income as his claim. The assessee is free to exercise this option at his will. Legally he is given the option by the statute and such an option cannot be equated with obligation cast upon the assessee.There is a definite difference between OPTION and OBLIGATION and an Option granted to the assessee cannot be construed to be his obligation when his actual income is more than 8% of Turnover. The AO cannot make any addition on this count as there is no provision under the Act permitting to make such addition. Further, the words used are "higher income claimed to have been earned by the assessee". It means that if the assessee has not made a claim in the return of Income regarding any higher income, it implies there is no claim for higher Income made by assessee. AO cannot claim that the assessee has earned higher income, because under the statue, he is not entitled to do so. Another pertinent point is that if 8% of profits have been declared, then 92% of the receipts have been expended. This amount is neither saved nor invested. AO can make addition if he is having sufficient evidence that the difference between actual profits and presumptive profits have been invested. In other words, the assessee cannot invest the difference between the actual profits and declared profits in any asset.

D). …….Provided that this sub-section shall affect as if for the words "eight percent", the words "six percent" 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 prescribed] during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year…….

The presumptive rate of income would be 8% of total turnover or gross receipts. However, Proviso to sub-section (1) provides that the presumptive rate of 6% of total turnover or gross receipts will be applicable in respect of amount which is received

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

During the previous year or before the due date of filing of return under section 139(1) in respect of the previous year. It is to be noted that the payment should have been received by an account payee cheque or an account payee bank draft. The payment received by crossed cheque shall be treated as cash payment received. In this connection it is to be noted that the difference between crossed cheque and account payee cheque is that the crossed cheque is being endorsed in favour of a person other than the drawee making it difficult to trace the constituent of the money. Keeping this idea in mind, the crossed cheques are not being considered payment as other than cash. This payment will be treated as cash.

However the assessee can declare in his return an amount higher than presumptive income so calculated, claimed to have been actually earned by him.Therefore here we can see that instead of adopting the accrual method, we have to focus on **actual receipt** of the sum.

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

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

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

This proviso to sub-section (1) has been inserted w.e.f. 01/04/2017 to promote digital transactions. The government has offered incentive to the seller for accepting payment by

banking channels or digital means by allowing lower rate of income. This was particularly necessary to encourage digital transactions after demonetization.

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

Example: M/s ABC, a partnership firm, is engaged in the trading business of readymade garments. Its turnover for the previous year 2020-21 is Rs.1,10,00,000. It follows mercantile system of accounting. It has received the amount of its turnover in the following manner

Amount of turnover	Mode of Receipt	Period of receipt of payment
70,00,000	Account payee cheques	01.04.2020-31.03.2021
15,00,000	Crossed cheques	01.04.2020-31.03.2021
10,00,000	RTGS (2,00,000 received on 25.5.2021)	
10,00,000	Cash (whole amount received during the P.Y. 2020-21)	01.04.2020-31.03.2021

Rs.5,00,000 is not received by the firm till the due date of filing return of income for the current previous year. The profits and gains as per the books of account maintained as per section 44AA is RS.6,80,000. What would be the total income of the firm for A.Y.2021-22, if it wishes to make maximum tax savings without getting its books of accounts audited?

Solution:

M/s ABC is eligible for presumptive taxation as per Sec 44AD, since his turnover is upto 2Cr.

Presumptive PGBP income = Turnover/ Gross Receipt x 8% but if turnover or gross receipt is received by account payee cheque/DD/ECS upto due date of return of return filing u/s 139(1) and the PGBP Income = Turnover/ Gross Receipts x 6%.

M/s ABC have not got the books of a/c audited so they can opt for presumptive taxation.

Income 7,20,000 i.e. [(6% of 80,00,000) +(8% of 30,00,000)]

Amount received through account payee cheque or ECS before the due date of filing

= 70,00,000+10,00,000

= 80,00,000

Profit chargeable to tax under presumptive taxation

PARTICULAR	AMOUNT
8% of Rs.30,00,000 (10 Lacs + 15 Lacs+ 5 Lacs)	4,80,000
6% of Rs.80 Lacs (70 Lacs + 10 Lacs)	2,40,000
Total income from PGBP	**7,20,000**

Note: It is to be noted that amount received through crossed cheque will be treated as cash.

Example: Mr. X, an individual carrying business of laptop Turnover of Rs.80 Lacs during the F.Y. 19-20. He has received the payments as:

Rs.60 Lacs in cash

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

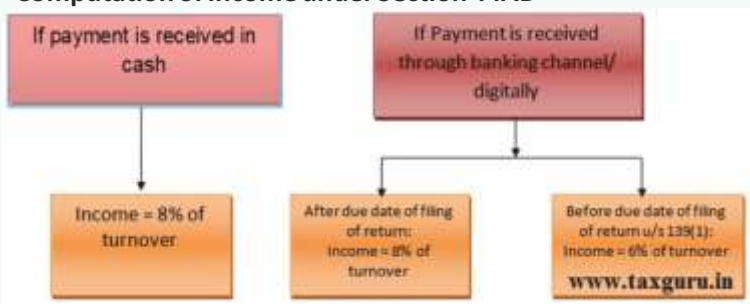
Rs.4 Lacs by ECS through bank account upto 31 July 2019

Rs.6 Lacs has not been received yet.

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

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

Computation of Income under Section 44AD



Benefit of the reduction of deemed profit rate under Section 44AD of the Income Tax Act, 1961 to taxpayers who will accept digital payments

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

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

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

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

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

From the above table, it is clear that if an assessee makes his transactions in cash on a turnover of Rs.1.90 crore, then his income under the presumptive scheme will be presumed to be Rs.15.20 Lacs at the rate of 8 per cent of turnover, his total Tax Liability under new tax regime will be Rs.2,01,240. However, if an assessee shifts to 100 percent digital transactions and his profit will be presumed to be Rs.11.40 Lacs at the rate of 6 per cent of turnover, his total Tax Liability under new tax regime will be Rs.107120. It is to be noted that by adopting digital system i.e. non cash system. He will save income tax of Rs.94,120

Lower Rate of Income in Different Scenarios

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

Case 1- Due date of return filing is extended

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

Example: Suppose the due date for filing return u/s 139(1) for the A.Y. 2020-21 has been extended to August 31, 2020. An eligible assessee who has received payment through account payee cheque, account payee draft, ECS through banking channel or other prescribed modes up to 31/08/2020 shall be eligible for declaring profits at the rate of 6% of turnover.

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

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

Example: Suppose the due date for filing return u/s 139(1) for the A.Y. 2020-21 is July 31, 2020 and the assessee files his return on Dec 26, 2020. Whether receipts through banking channel/ digitally up to Dec 26, 2020 will be eligible for claiming 6% of turnover as profits?

The receipts through banking channel/ digitally up to July 31, 2020 shall be eligible for claiming 6% of turnover as profits. The payments received after the due date i.e. 31/07/2020 shall not be eligible for lower rates and these payments received after the due date of filing return will not be given the benefit of 6% of turnover .

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

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

Example: Mr. X has a turnover of Rs.80 Lacs for the A.Y. 2020-21. The due date of return filing is July 31, 2020.

He files his return on May 15, 2020. He has received the following payments by account payee cheque:

Up to 31/03/2020 = Rs.50,00,000

Up to 15/05/2020 = Rs.15,00,000

From 16/05/2020 to 31/07/2020 =Rs.10,00,000

Received after 31/07/2020 =Rs.5,00,000

Mr. X has filed return on 15/05/2020. Till that date, payments to the extent of Rs.65,00,000 has been received by account payee cheque. Mr. X can declare profit from business as:

6% of Rs.65,00,000 = Rs.3,90,000

8% of Rs.15,00,000 (80L – 65L) = Rs.1,20,000

Total profits = Rs.5,10,000

Mr. X has received Rs.10,00,000 after date of return filing but before due date of return filing. Mr. X can claim 6% of Rs.10,00,000 as profits by revising the return. There is no doubt that the return can be revised u/s 139(5) before the end of assessment year or up to completion of assessment whichever is earlier. ITAT Delhi has held in the case of PAWA INDUSTRIES PVT LTD. VS. ITO, ITAT DELHI, 2017 it was held that if an assessee who was eligible for opting the scheme of presumption forgets to take the benefit of same can apply for revising the return to declare a lesser income and therefore file a revised return cannot be denied the benefit available to him.

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

No further deduction would be allowed:

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

Illustration: Mr. X is running a Printing Press. His gross receipts from this business during year is Rs.85,00,00 and declared

income as per the provisions of section 44AD. After computing the income @ 8% of such gross receipts, he wants to claim further deduction on account of depreciation on the press building. Can he do so as per the provisions of section 44AD?

As per the provisions of section 44AD, from the net income computed at the prescribed rate, i.e., 8% of sales or gross receipts from the eligible business during the previous year, an assessee is not permitted to claim any

deduction or any business expense from such income. Thus, in this case Mr. Shan cannot claim any further deduction from the net income of Rs.6,80,000 i.e., @ 8% of gross receipts of Rs.85,00,000.

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

It is to be noted that if an assessee who has opted for presumptive taxation system, then any deduction allowable under sections 30 to 38 shall be deemed to have been already given effect to and no further deduction under those sections shall be allowed. It is to be noted that deduction for depreciation which is allowed u/s 32 shall be deemed to be allowed. Therefore, current year depreciation as well as unabsorbed depreciation i.e.

brought forward depreciation shall not be allowed. However, WDV of the block of assets shall be calculated as if the depreciation has been allowed.

Sec 44AD overrides sec 28 to 43C but does not override chapter VI. Therefore, current year losses & brought forward losses can be set off against deemed income. Unabsorbed depreciation cannot 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.

The same was held by ITAT, Pune in the case of DCIT v. Sunil M. Kankariya [2008].

Current year losses and brought forward losses can be set off against deemed income, because it's under Sec72. It was held in this case. In this case, the assessee was Transporter and 44AE was applicable. He had claimed benefit of unabsorbed depreciation.

Held – Unabsorbed depreciation carry forward having been provided in Section 32(2) in different manner and Section 72 deals with losses other than losses due to depreciation.

The area of operation and the manner of carry forward of these two types of losses in these two provisions are different and distinct

Example: A partnership firm consisting of three partners X, Y and Z is engaged in the business of manufacturing and selling toys.

Turnover of the business for the year ended 31st March, 2021 amounts to ₹ 95 lacs (received in cash). Bad debts written off in the books are ₹ 75,000. Interest at 12% is provided to partner Z on his capital of ₹ 6 lacs as authorized by the partnership deed.

The firm had business loss of ₹ 50,000 and unabsorbed depreciation of ₹ 1,50,000 carried forward from Assessment Year 2020-21. The firm did not pay tax under presumptive tax system in assessment year 2020-21. The firm opts for presumptive taxation under section 44AD for Assessment Year 2021-22.

Compute the income of the firm chargeable under the head "Profits and gains of business or profession."

Answer :

Computation of income of the firm chargeable under the head "Profits and Gains of business or profession" Particulars

	₹
Presumptive income under section 44AD (8% of ₹ 95 lacs) **[See Note 1]**	7,60,000
Less: Brought forward business loss under section 72 **[See Note 3]**	50,000
Income of the firm chargeable under the head **"Profits and Gains of business or profession"**	**7,10,000**

Notes: –

(1) A partnership firm falls within the definition of "eligible assessee" under section 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ₹ 200 lacs. In this case, since the turnover of the business of the firm is ₹ 95 lacs, it falls within the definition of "eligible business" and therefore, the firm is eligible to opt for presumptive taxation under section 44AD. 8% of the total turnover would be deemed to be the business income of the firm.

(2) As per section 44AD(2), all deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed Accordingly, no deduction shall be allowed for bad debts since the same is deductible under section 36(1)(vii) and similarly unabsorbed depreciation is not deductible since the same is deductible under section 32(2).

(3) Further, business loss can be set-off against current year business income as per section 72.

Example:

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

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

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

EXAMPLE:

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

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

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

Solution:

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

Notes:

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

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

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

EXAMPLE: RSK & Co. a partnership firm engaged in the manufacturing business has a gross receipt of Rs.59,00,000 from such business. The partnership deed provides for payment of salary of Rs.20,000 p.m. to each of the partners i.e. C and K. The firm uses machinery for the purpose of its business and the WDV of the machinery as on 1.04.2019 is Rs.2,00,000. The machinery is eligible for depreciation @15%. Compute the profits from the business for the assessment year 2020-21, if firm opts for the scheme under section 44AD and has received the following amount by account payee cheques:

1. 25,00,000 till 31.3.2020
2. 6,00,000 between 01.04.2020 and 31.7.2020
3. 5,00,000 after 31.07.2020

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

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

No deduction will be allowed on account of depreciation.

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

Section 44AD (4): Consequences of opting out of the section 44AD(1):

Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and the declares profit for any of the 5 assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section(1).

The above provision postulates as the following:

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

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

It means that if a person has opted for a presumptive scheme of taxation u/s 44AD in any one year then he has to remain in the umbrella of section 44AD for the next 5 years. If he goes out of the umbrella of section 44AD in any one of the subsequent 5 years then such person cannot take the shelter in the umbrella of section 44AD for next 5 years thereafter (i.e., such person has to remain out of Section 44AD for 6 years in continuation).

Section 44AD (5): Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

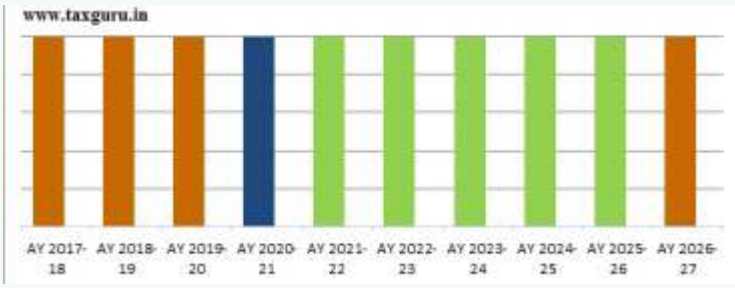
It is to be noted that the basic exemption limit of Rs.2,50,000 is to be considered in case of an assessee who has not attained the age of 60 years during the previous year and Rs.3,00,000 is basic exemption limit for senior citizens and Rs.5,00,000 is for super senior citizens who are of 80 years or above. In this connection it is to be noted that rebate u/s 87 A is the tax rebate and it comes into play once the tax liability after the basic exemption limit is computed. Hence for the purposes of section 44AD(5) is of no relevance. Since the relevance of rebate u/s 87A will arise only when the total income of the assessee increased beyond Rs.2,50,000. If the case of the assessee is covered u/s 44AD(5) & his total income exceeds the maximum amount not chargeable to the Income Tax he is subject to Tax Audit.

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

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

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

The working of the above provisions can be explained with the help of the following diagram:



Example: Mr. X commenced his business during FY 2019-20 relevant to AY 2020-21. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs.85 Lacss, entire sales were in cash. Mr. X computed profit from the aforesaid business to be Rs.2.30 Lacs which was his sole income during the year. Whether Mr. X is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Firstly, Mr. X is not required to get his accounts audited u/s 44AB of the Act his total income for the FY 2019-20 is less than maximum amount not chargeable to tax even if he had claimed profit from business less than deemed income u/s 44AD i.e., actual income of Rs.2.30 Lacs is less than deemed income of Rs.6.8 Lacss (8% of 85 Lacs). (Section 44AD(5)]

However, Mr. X is required to maintain such books of account and other documents as may enable the AO to compute his total income in accordance with Second proviso to section 44AA(2) of I.T. Act, 1961 as his total turnover is more than limit of Rs.25 Lacs.

Example: Mr. X commenced his business during F.Y. 2019-20 relevant to AY 2020-21. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs.85 Lacss, the entire sales were made in cash. Mr. X computed profit from the aforesaid business to be Rs. 2.90 Lacs which was his sole income during the year. Whether Mr. X is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Firstly, Mr. X is not required to get his accounts audited u/s 44AB of the Act as he had claimed profit from business less than deemed income u/s 44AD i.e. actual income of Rs.2.90 Lacs is less than deemed income of Rs.6.8 Lacs (8% of 85 Lacs). However the provision of section 44AD(4) shall not be applicable as this is his first year of business. [Section 44AD(4)]

Also, Mr. X is required to maintain such books of account and other documents as may enable the AO to compute his total income in accordance with the provisions of this Act, as his total turnover is more than limit of Rs.25 lacs prescribed under second proviso to section 44AA(2) of I.T. Act, 1961.

Example: Mr. X commenced his business during FY 2020-21 relevant to AY 2021-22. He was engaged in a business of trading of goods. He reported total turnover of the business during the year as Rs.95 Lacss, entire sales were made in cash. Mr. X computed loss from the aforesaid business to be Rs.3.90 Lacs which was his sole income during the year. Whether Mr. X is required to maintain books of accounts in accordance with provisions of section 44AA and whether he has to get his accounts audited u/s 44AB?

Firstly, Mr. X is not required to get his accounts audited u/s 44AB of the Act, he claimed profit from business less than deemed income u/s 44AD i.e. actual loss of Rs.3.90 Lacs is less than deemed income of Rs.7.6 Lacs (8% of 95 Lacs). However the provision of section 44AD(4) shall not be applicable as this is first year of business. [Section 44AD(4)]

Also, Mr. X is required to maintain such books of account and other documents as may enable the AO to compute his total income in accordance with the provisions of this Act, as his total turnover is more than limit of Rs.25 Lacs prescribed under second proviso to section 44AA(2).

Exceptions to the provisions of section 44AD(4) & Sec. 44AD(5)

From the perusal of the study of the above sections, we have noted that once an assessee fails to opt the provisions of presumptive taxation, then that assessee cannot opt for these provisions for the next five years and he has to maintain the books and get them audited. But there are certain cases in which the assessee fails to opt the provisions not by his own option but is not eligible to opt for presumptive taxation due to increase in turnover or receipt of any commission. It is to be noted that the word option means when a person has more than one choice. But in the following cases, the assessee has no option but only compulsion.

1. Assessee has not opted for presumptive taxation because of ineligible business

If a person has opted for presumptive taxation during previous years and due to increase in turnover over 2 crores during the current year, he is ineligible to opt the provisions of sec 44AD(1) of the Act. His business is an not eligible assessee u/s 44AD of the Act being total turnover is more than Rs.2 Crore. [Section 44AB(a) r.w.s. 44AD(1)] It is pertinent to note that person is not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available in subsequent assessment years also.

Turnover of Mr. X for the F.Y. 2019-20 was Rs.74 Lacss. He has opted for Sec 44AD in that year. In the F.Y. 2020-21, his turnover was Rs.2.5 crores(in cash) He was required to maintain books of accounts and get them audited u/s 44AB. Now the question arises whether he can avail the benefit of Sec 44AD from F.Y. 2021-22?

Mr. X's turnover in the F.Y. 2020-21 was Rs.2.5 crores. He was required to get his books of accounts audited. Mr. X is required to get his accounts audited u/s 44AB(a) of the Act as he reported

total turnover exceeds the limit of Rs.1 Crore as prescribed u/s 44AB{a) of the Act as he doesn't satisfy the condition of 95% of total receipts and expenses to be incurred in electronic mode. Whereas his business is not an eligible assessee u/s 44AD of the Act, as his total turnover is more than Rs.2 Crore. [Section 44AB(a) r.w.s. 44AD(1)]

It is pertinent to note that Mr. X was not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available insubsequent assessment years. There was no option to MR. X to opt for the provisions of presumptive tax and he has to break the chain of sec 44AD by the operation of law and not on his own will. The requirement for continuously declaring profits u/s 44AD is not violated. The link is not broken due to compulsory applicability of Sec 44AB(a). Therefore, he can avail the benefit of Sec 44AD from F.Y. 2021-22.

Example:–Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported Total turnover of the business as Rs.2.25 Crore (50% of total sales were made in cash). Mr. A computed profit from the aforesaid business to be Rs.6.80 Lacs which was his sole income during the year. During FY 2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB for FY 2019-20?

Solution: Mr. A is required to get its accounts audited u/s 44AB(a) of the Act as assessee reported total turnover exceeds the limit of Rs.1 Crore as prescribed u/s 44AB(a) of the act as he doesn't satisfy the condition of 95% oftotal receipts and expenses to be incurred in electronic mode. Whereas his business is not an eligible assessee u/s 44AD of the act being total turnover is more than Rs.2 Crore. [Section 44AB(a) r.w.s. 44AD(1)] It is pertinent to note that being Mr. A was not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available in subsequent assessment years.

Example: – Mr. A is engaged in a business of trading of goods. During FY 2019-20, he reported total turnover of the business as Rs.2.25 Crore (complete sales and payments were made in electronic mode). Mr. A computed profit from the aforesaid business to be Rs.6.80 Lacs which was his sole income during the year. During FY

2017-18 and FY 2018-19, he opted for presumptive taxation scheme u/s 44AD. Whether Mr. A is required to get his accounts audited u/s 44AB for FY 2019-20?

Solution: Mr. A is not required to get its accounts audited u/s 44AB of the Act as he has reported total turnover is within limit of Rs.10 Crore as prescribed u/s 44AB(a) of the Act whereas his business is not an eligible assessee u/s 44AD of the Act being total turnover is more than Rs.2 Crore. [Section 44AB(a) r.w.s. 44AD(1)] It is pertinent to note that being Mr. A was not eligible to claim presumptive taxation for the year, he will not be covered by the provisions of section 44AD(4) and option to opt for presumptive taxation u/s 44AD(1) will be available in subsequent assessment years.

2. Assessee has not opted for presumptive taxation because of commission income

As per the provisions of sub section 6 of section 44AD, if an assessee has earned any income from specified activities such as commission, then provisions of section 44AD shall have no bearing on such assessee .In such a case, the assessee is not entitled to opt the provisions of sec 44AD.If ,in a year, the chain of sec 44AD is broken due to the receipt of commission ,that will not be considered as the assessee has gone out of the umbrella of sec 44AD.The asseessee is entitled to opt for sec 44AD in subsequent years.

It can be implied that where an assessee has turnover less that threshold specified u/s 44AB(a) and have earned any income as commission or brokerage, then he can file income with lower profits without getting its books of account audited.

Turnover of Mr. X for the F.Y. 2019-20 was Rs.74 Lacss. He has opted for Sec 44AD in that year. In the F.Y. 2020-21, his turnover was Rs.60 Lacss. Besides this turnover, his commission receipts were Rs. 5,000. He could not opt for Sec 44AD as per the provisions of Sec 44AD(6). Whether he can avail the benefit of Sec 44AD from F.Y. 2021-22?

Mr. X was having commission income in the F.Y. 2020-21 and was not eligible for Sec 44AD. As per the provisions of Sec 44AD(6), a person cannot opt for Sec 44AD, if he is having commission income. He has not opted out of Sec 44AD on his own, rather he was not eligible by the operation of law. Hence he can opt for Sec 44AD in the F.Y. 2021-22.

Example: Mr. X a proprietorship Firm engaged in the business of wholesale of Grocery Items & having a turnover of Rs.0.70 Crores during the Previous Year 2018-19. During the Previous Year 2019-20, he started an agency business for metro milk& earned a net commission of Rs.70 Lacs apart from the Gross Turnover of Rs.50 Lacs for his main business i.e. trading of grocery items. This contract was only for 1 Year. During the Previous Year 2020-21, the agency contract got over & the Gross Turnover from trading of grocery items was Rs.1.4 Crores. Can he opt for Section 44AD during the Previous Year 2020-21?

- The restrictions that assessee couldn't opt for Section 44AD for the five years will be applicable only when he declares the profits lower than the 8%/6%.
- If because of any other reasons, he couldn't be able to opt for Section 44AD, then restrictions of Section 44AD(4) shouldn't impose. Since 44AD(4) gives the reference of Section 44AD(1) only & it also uses the word ''Profit not as per Section 44AD(1)'' i.e. percentage of rate.
- The assessee is not eligible to opt for section 44AD in the previous year 2019-20 since he is earning income like commission which is totally out of Section 44AD. Even for his trading business, he can't opt for Section 44AD.
- But he can opt for section 44AD during the Previous Year 2020-21.

Controversial Issue – Needs CBDT Clarification

The amendment was brought by Finance Act, 2016 w.e.f 01/04/2017. The government is discouraging taxpayers from misusing the scheme and constantly changing their option often. If any assessee opts for presumptive taxation, he has to continue it for 5 years and if he wants to opt out, he will be barred from resuming presumptive taxation for a period of 5 years. There is an important issue which emerges for reckoning the period of 5 years. Amendment to section 44AD (i.e., new sub section (4) and (5) is applicable from 01/04/2017 i.e., from Assessment Year 2017-18. Now, question arises regarding the counting of the

continuous 6 assessment yearsfor the purpose of sub section (4). Will it be done initially from the Assessment Year 2017-18 itself or even the options exercised in the earlier years can also be counted?

Another important question is, if the person has continuously opted for 5 years period in the past then the provision of 5 years restrictions will not be there as the sub section means that if a person has opted for 44AD for 5 years period continuously then no 5 years restrictions would be there if assessee decides to opt out. The issues are controversial and it would be in the interest of the masses if the CBDT clarifies it suitably.

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

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

Assessment Year	Turnover	Rate of Profit	Whether Total Income more than Basic exemption	Whether Section Applicable			Remarks
				44AA	**44AB**	**44AD**	
2018-19	3.00 Crore	7%	Yes	Yes	Yes	No	A
2019-20	1.20 Crore	9%	Yes	No	No	Yes	B
2020-21	85 Lacs	5%	Yes	Yes	Yes	No	C
2021-22	75 Lacs	10%	Yes	Yes	Yes	No	D
2022-23	1.20 Crore	2%	No	Yes	Yes	No	E
2023-24	1.5Crore	9%	Yes	Yes	Yes	No	F
2024-25	92 Lacs	6%	Yes	Yes	Yes	No	G
2025-26	95 Lacs	9%	Yes	Yes	Yes	No	H
2026-27	2.50Crore	6%	Yes	Yes	Yes	No	I

Remarks Explanation

A Turnover exceeding Rs.1 Crore and hence, he is liable to keep books of account & Audit 44AB(a).

B Since, Mr. X opted 44AD,he is not required to maintain books and not required to get audited u/s 44AB

C Since, Mr. X fails to opt sec 44AD.The benefit of section 44AD shall not be available to theassessee for A.Y. 2021-22 to 2025-26. Therefore he is liable to keep books of account & Audit u/s 44AB(e).

D Mr. X is liable to keep books of account & Audit u/s 44AB(e).

E Mr. X is liable to keep books of account & Audit u/s 44AB(a). If his cash receipts is up to 5% of total receipts and his cash payments is up to 5% of total payments, then he is not liable to audit under sec 44AB(a). Further, he is not liable to audit u/s 44AB(e), as his total income is less than the basic exemption limit.

F Mr. X is liable to maintain books of account and required to get them audited u/s 44AB(e).If his cash receipts is up to 5% of total receipts and his cash payments is up to 5% of total payments, even then he is liable to audit under sec 44AB(e), as the proviso to Sec 44AB(a), which provides exemption from audit is applicable only to sec 44AB(a) and not Sec 44AB(e).

G Mr. X is liable to keep books of account & Audit u/s 44AB(e).

H Mr. X is liable to keep books of account & Audit u/s 44AB(e).

I Mr. X is liable to keep books of account & Audit u/s 44AB(a).

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

An assessee having turnover upto Rs.2 crore and opting for sec 44AD is not required to maintain books of accounts. As provided in section (5) of 44AD the eligible assessee who claims to be taxed on presumptive basis is not required to maintain books of account as provided in section 44AA. If the turnover is below Rs.2 crores and opting for sec 44AD, audit u/s 44AB is not required. However, if the turnover is exceeding Rs.2 crores, the assessee is outside the ambit of section 44AD, as provided in section 44AD. It will be interesting to note that the presumption of income is to work on the basis of the turnover or gross receipts. The question would be if the books are not maintained how the turnover would be proved? Therefore, when the income is computed as per

the provisions of section 44AD, it would be necessary to prove for the assessee the figure of turnover or gross receipts. Which records are to be maintained will depend upon the type of the business of the eligible assessee. Figures adopted under GST Act, 2017 provisions would be good evidence. Copies of invoices issued may also be maintained as evidence of turnover. If the correct turnover or gross receipts is not ascertainable from the records maintained, it is likely that the same may be estimated by the Assessing Officer in absence

of proper records of turnover or gross receipts. Therefore it would be necessary for the eligible assessee to maintain such records with evidences so that the turnover or gross receipts can be conclusively proved.

While computing income of assessee u/s 44AD, the assessing officer does not have power to assesses anything 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.

Interesting issues in Sec. 44AD

No presumptive taxation benefit u/s 44AD to partner on interest, remuneration from firm

This issue has been decided by Hon'ble Madras High Court In Anandkumar [TS-690-HC-2020(MAD)]Mr. A. Anandkumar (Assessee) is an individual, who had received remuneration and interest from partnership firms during subject AY 2012-13. While filing the return, assessee had applied the presumptive rate @8% u/s 44AD. Revenue noted that assessee was not doing any business independently but was only a partner in the firms. Moreover, as assessee had no turnover and receipts on account of remuneration and interest from the firms could not be construed as gross receipts mentioned u/s 44AD. Therefore, Revenue denied the benefit of Sec.44AD and brought to tax the entire amount of remuneration and interest from the firms. The assessment order was confirmed by CIT(A) and Chennai ITAT.

Aggrieved, assessee filed appeal before the Madras HC.

HC upholds ITAT order and denies presumptive taxation benefit u/s 44AD to assessee-partner on interest, remuneration from firm.

Key Observations of the HC:

1. At the outset, HC notes that Sec.44AD is a special provisions and 4 aspects to be noted in Sec.44AD are that (1) the assessee who claim such a benefit of the presumptive rate of tax should an eligible assessee as defined in Clause (a) of the explanation to Sec.44AD, (2) he should be ngaged in an eligible business as defined in Clause (b) of Section 44AD and (3) 8% of the presumptive rate of tax is computed on the total turnover or gross receipts.
2. HC observes that the assessee who is an individual in the instant case is not carrying on any business. Therefore, the remuneration and interest received by the assessee from the partnership firm cannot be termed to be a turnover of the assessee [individual].
3. Likewise, HC holds that remuneration & interest does not qualify as gross receipts. Accepts Revenue's submission that in the statement issued by the ICAI on the Companies (Auditors report) Order 2003, the word term is defined as the aggregate amount for which sales are effected or services rendered by an enterprise.
4. Notes that in the present case the assessee has not done any sales nor rendered any services but has been receiving remuneration and interest from the partnership firms which amount has already been debited in the profit and loss account of the firms. Thus holds that the revenue was right in their contention that remuneration and interest cannot be treated as gross receipt.
5. Further concurs with ITAT's observation that remuneration and interest received from a firm, to the extent eligible u/s 40(b), would be considered as 'profits and gains from business or profession' of the recipient-partner, however that by itself would not translate such remuneration and interest, to gross receipts or turnover of business independently carried on by the partner.
6. Also refers to CBDT circular 5/2010 enhancing the threshold under the provisions of Sec.44AD from 1Cr to 2Cr. States that intention is clear that it was made taking note of the fact that there has been substantial increase in small businesses who earns substantial income are outside the tax-net.
7. Lastly, also refers to sub-section (2) of Sec.44AD which states that any deduction allowable u/s 30 to 36 is deemed to be given full effect and conspicuously section 28(v) has not been included which deals with any interest, salary, bonus, commission or remuneration by whatever name called, due to or received by, a partner of a firm.

Now let us consider the case of a partnership firm which is engaged in eligible business as per section 44AD and whose turnover is say Rs.80 lacs in the preceding Financial Year 2020-21 and which shows Net loss from business of Rs.50,000/- after providing interest and salary to partners. Is this firm required to get the accounts audited under section 44AB read with section 44AD of the Income Tax Act'1961?

The answer is '**No**' because if we read section 44AD carefully, the audit is required where profits are less than 8% or 6% of the gross receipts or turnover and the income exceeds maximum amount not chargeable to tax.

Since, the firm is taxed at an income starting from Rs.1, therefore the maximum amount not chargeable to tax is nil.

In case of loss, since there is no income, therefore, it does not exceed the maximum amount not chargeable to tax and so the second condition mandating tax audit u/s 44AB r/w section 44AD is not satisfied and therefore the assessee is not required to get the accounts audited u/s 44AB. If its case falls under 44AD(4) then firm is liable to

Tax Audit u/s44AB(e) provided if it earned any positive income

However, in the case of losses, the firm is not required to gets its accounts audited u/s44AB(e) assuming turnover of firm is less than 1 Cr.

If Turnover is more than 1 Cr then even in the case of loss the Firm is subject to Tax Audit u/s44AB(a) & the above limits shall be read as Rs.10 Crores provided other conditions laid down by **Finance Act,2020** have been complied with.

It can be concluded with regard to firm that in case section 44AD(4) attracts they are always subject to Tax Audit u/s 44AB provided they earn positive income.

From the above it can be concluded that a firm having zero income of less is not liable for tax audit under section 44AB. It does not make any difference that the loss is after deducting the salary and interest to partners.