

Presumptive Taxation

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About CA. Deepak Bholusaria

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- Mr. Deepak Bholusaria is a commerce graduate and fellow member of the Institute of Chartered Accountants of India.
- He has also completed various certificate courses of ICAI on Indirect taxes, Blockchain, Information Systems Audit and Valuation.
- A seasoned professional, author, speaker, public figure and YouTuber with 23+ years of experience.



What is presumptive taxation?

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What is presumptive taxation?

- Presumptive taxation allows you to pay your tax based on *presumptive* income.
- On in other words, you don't really need to estimate your income by deducting your expenses from revenue.
- You can simply take a percentage of your total revenue and pay tax on that.
- Or a specified amount based on capacity etc is computed as income.

Key provisions related to presumptive taxation

Key presumptive sections

Sl. #	Section	Particulars	Deemed Income in brief
1	44AE	Business of Plying, hiring or leasing goods carriages.	HV – Rs. 1000 Per ton, p.m., per vehicle (PV) Other than HV – 7500 p.m., PV
2	44BB	<i>Business of exploration, etc of mineral oils.</i>	<i>10% of the aggregate amount</i>
3	44BBB	<i>Business of civil construction etc in certain turnkey power projects</i>	<i>10% of the amount paid or payable</i>
4	44AD	Profits and gains of business on presumptive basis.	6% / 8% of total turnover or gross receipt
5	44ADA	Assessee is engaged in profession referred to in Sec 44AA(1)	50% of the total gross receipt

Other connected provisions

Sl. #	Section	Particulars
1	44AA	Maintenance of accounts by certain persons carrying on profession or business.
2	44AB	Audit of accounts of certain persons carrying on business or profession.

Requirement to maintain books

44AA – General rule

- Before we jump to presumptive taxation, it is important to understand requirements of maintenance of books of accounts.

Provisions	Types of persons	Books of accounts
44AA(1)	Persons engaged in specified profession	Mandatory to prepare books of accounts irrespective of TO or application of 44ADA
44AA(2) s.c. (i) & (ii)	Persons engaged in non-specified professions or businesses	Income from b/p > 2.40 Lacs for Ind/HUF; or Income from b/p > 1.20 Lacs for others; or TO from business > 10 lacs; or TO from profession > 4 lacs <i>Old business</i> – Avg. for last 3 years <i>New business</i> – Likely for the year

44AA - Exceptions to general rule

Provisions	Types of persons	Books of accounts
44AA(2)(iii)	Assessee has opted for presumptive scheme of taxation for an AY 44AE 44BB 44BBB	Not mandatory to maintain books of accounts if opted. Else mandatory
44AA(2)(iv)	<ul style="list-style-type: none">- Assessee had opted 44AD- In any 1 of 5 subsequent year opt out of 44AD. Lets says "t"- then for next 5 years, Lets says "t+1" to "t+5" <i>Plus</i> Total Income > threshold	Mandatory even if TO is less 10 lacs

Profession

“Profession”

includes
vocation

- “Profession” involves occupation requiring **purely intellectual or manual skill**. *CIT vs. Manmohan Das (1966) 59 ITR 699 (SC)*
- The main difference between ordinary commercial business and profession lies in the amount of knowledge or skill employed in carrying it on though that may not be the sole criterion *P. Stanwill & Co. Vs. CIT (1952) 22 ITR 316 (All)*
- It is of the essence of a profession that the profits should be dependent mainly upon the **personal qualification** of the person by whom it is carried on *William Esplen, Son & Swainston, Limited vs. Commissioners of Inland Revenue (1919) 2 KB 731*
- The word “profession” implies professed attainment of special knowledge as distinguished from mere skill. It involves labour, skill, education and special knowledge. Despite this distinction, if any, professional activity is carried on tinged with a commercial character, then it may amount to business. *Income Tax Officer vs Ashalok Nursing Home (P) Ltd. (2006) 103 TTJ Delhi 820*

Specified Profession Section 44AA(1)

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- Legal
- Medical
- Engineering
- Architecture
- Accountancy
- Technical Consultancy [*Not technical service*]
- Interior Decoration
- Authorised Representative
- Film Artists
- Company Secretary

- Information technology professional, including
 - Sports persons
 - Umpires & Referees
 - Coaches & Trainers
 - Team physician and physiotherapist
 - Event Manager
 - Commentators
 - Anchors
 - Sports Columnists
- Section 44AA, does not define or restrict “professional services” per se.

Authorized representative

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

Film Artists – Rule 6F

“film artist” means any person engaged in his professional capacity in the production of a cinematograph film whether produced by him or by any other person, as-

- an actor,
- cameraman,
- a director, including an assistant director;
- a music director, including an assistant music director;
- an art director; including an assistant art director;
- a dance director, including an assistant dance director,
- editor, singer, lyricist, story-writer, screen-play writer, dialogue writer and dress designer.



What about
Stunt Artist
and Voice
Over Artists?

What is technical service?

- Skycell Communicatios Ltd. (2001) 251 ITR 53 (Madras HC)
 - *Legislature has not set our with precision as to what would constitute ‘technical’ service to render it “technical service”*
 - *“technical” as per Oxford Dictionary is adjective*
 - *The popular meaning associated with ‘technical’ is involving or concerning applied and industrial science.*
- Payment for services using technology is not payment for technical services (*Estel communications*)
- Section 194J would have application only when technology or technical knowledge or person is made available to other and not mere technical systems and/or services are rendered.

Fee for technical Services

Explanation 2 to section 9(1)(vii) defines

“**Fee for technical services**”, to means –

Any consideration (including lump sum consideration)

- for the rendering of any:

- Managerial

- Technical or

- Consultancy services

(including the provision of services of technical or other personnel)

⇒ ‘Technical services’ is a wider term than Technical consultancy

Are these professions?

- Nurse
- Nursing homes
- Hospitals
- Teachers
- Accountants (not CA)
- IRP
- Actuary
- a qualified CA who provides services through his consulting firm, without CoP.
- Advertising (*explanation to section 194J*)

Section 44AE

- Assessee must own* ≤ 10 goods carriages
- He must be engaged in business of plying, hiring or leasing such goods carriages

Presumptive Income -

Type of Goods Carriage	Presumptive Income
Heavy Goods Vehicle (i.e. Gross Vehicle Weight > 12 tonne)	Rs. 1000 per tonne / p.m. / HGV
Light Goods Vehicle (i.e. Gross Vehicle Weight ≤ 12 tonne)	Rs. 7500 p.m. / LGV

44AE – vis-à-vis 44AB/44AA

Choice	Applicability of 44AB/44AE
Assessee opts for 44AE	No applicability
Assessee opts out of 44AE	Mandatory irrespective of turnover for this business

☞ Option to opt 44AE is on year to year basis

44AE – Key provisions

- **General**
 - Override Section 28 to 43A
 - Deemed deduction u/s 30 to 38
 - Salary / Interest to partner deductible from presumptive income (in contrast to section 44AD)
- An assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.
- Scheme available even to Companies and LLP and even Non-residents

Case
study

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Case study on 44AE

- Assessee engaged in the business of plying, hiring or leasing such goods carriages
- He owns 9 goods carriage (3 heavy, 2 light)
- His TO from this business is Rs. 2.5 Cr, maximum receipt is in cash.
- He has opted for 44AE
- Assessee wants to know, if he is required to get his books audited u/s 44AB?

Section 44ADA

- Applies only to Resident assessee
- Only those assessee who are engaged in specified profession u/s 44AA(1) are eligible
- Presumptive Income:

Turnover from specified profession	Presumptive Income
Upto Rs. 50 Lacs	50% of Turnover or GrossReceipt

44ADA – vis-à-vis 44AB/44AA

Choice	44AB	44AA
Assessee opts out of 44ADA	Mandatory irrespective of turnover	Applicable
Assessee opts for 44ADA	Not required	Applicable <i>See 44AA(1)</i>

- ☞ Option to opt 44ADA is on year to year basis
- ☞ If TO > 50 lacs, no applicability of 44ADA

44ADA – Key provisions

- **General**
 - Override Section 28 to 43C
 - Deemed deduction u/s 30 to 38
 - Deemed WDV / Depreciation u/s 32
 - No benefit of additional salary / interest to partner deductible from presumptive income (in contrast to section 44AE)
- Scheme not available to Companies
- Can LLP avail 44ADA?

Section 44AD

Bare Provisions of 44AD

- *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"

- Where an eligible assessee declares profit for any previous year
- in accordance with the provisions of this section (i.e. 44AD) *(lets call it “t”)*
- 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) *(t+1 of 5)*
- 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 subsection (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 subsection (2) of section 44AA and
- get them audited and furnish a report of such audit as required under section 44AB.

- 2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of subsection (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.

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 6 two crore rupees.

Key provisions of 44AD

- Applies only to
 - Individual
 - HUF
 - Partnership firm (LLP is excluded)
- Must not be claiming deduction u/s 10B, BA, or deduction under any provisions of Chapter VIA under the heading “*C. - Deductions in respect of certain incomes*” in the relevant assessment year;
- a person carrying on specified profession u/s 44AA(1) not eligible

44AD – Which business?

- All businesses are eligible, except
 - the business of plying, hiring or leasing goods carriages referred to in section 44AE (even if not opted for 44AE)
 - Total turnover of eligible business \leq 2 crore
 - a person earning income in the nature of commission or brokerage;
 - a person carrying on any agency business.

44AD – Presumptive Income

<i>Condition</i>	<i>Presumptive Income</i>
<p>total turnover or gross receipts which is received by</p> <ul style="list-style-type: none">• an account payee cheque or• an account payee bank draft or• use of electronic clearing system through a bank account <p>• during the previous year; or</p> <p>• before the due date specified in sub-section (1) of section 139 in respect of that previous year.</p>	<p>Minimum 6% of eligible turnover from eligible business</p>
<p>Any other kind of receipt</p>	<p>Minimum 8% of TO</p>

44AD – vis-à-vis 44AB/44AA

Sl#	Choice	44AB + 44AA
1	Assessee does not opt for 44AD at all	Mandatory irrespective of turnover
2	Assessee opts for 44AD for first time	Not required Not required
3	Once opted, he opts out in any 1 out of 5 years	
	- First year of opting out	Mandatory irrespective of turnover
	- Next 5 years after opting out	Mandatory irrespective of turnover + Can not opt 44AD
	- 6 th year onwards	Can again opt for 44AD at his choice. See Sl # 1

- **General**
 - Override Section 28 to 43C
 - Deemed deduction u/s 30 to 38
 - Deemed WDV / Depreciation u/s 32
 - No benefit of additional salary / interest to partner deductible from presumptive income (in contrast to section 44AE)
- **Scheme not available to Companies**

Circular no. 10/2017, dated 23rd March, 2017

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

Answer: *** the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme ***.

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

- An Individual assessee carrying on trading business of small machinery which is used for the manufacturing company. The total turnover of such assessee from such business is Rs. 8 Cr. He also satisfies the twin conditions of the proviso clause. It means he is out of sec 44AB and he is not required to get his accounts audited.
- Since the books of the assessee is not required to be audited, whether the department will accept the profit declared by the assessee.
- *If the answer to the above question is affirmative, can it be said that return has been filed under presumption?*
- *If it is under presumption, at what rate the profit should be declared?*

- The question may arise that is there any timeline to receive the money or making the payment.
- For example: if an individual assessee sold some good during the year and the payment not received on or before 31st March, whether, that sales to be taken while calculating 5%.
- What if, he receives such payment after 31st March but before filing of return u/s 139(1).

- First year of business 2020-21
- Total Turnover 92 Lakhs
- Profit declared More than 8%/6%
- Whether assessee can apply 44AD?
- What if assessee declares profit less than 8%/6%?
- Whether your answer would be different if this is not the first year of business of the assessee?

- Previous year 2018-19 profit declared as per 44AD and filed return of presumptive taxation.
- Previous year 2019-20 turnover was 2.5 crore and tax audit was done u/s 44AB and return filed accordingly.
- Previous year 2020-21, turnover is less than 1 crore and assessee wants to declare profit as per 44AD.

- Previous year 2018-19 profit declared as per 44AD and filed return of presumptive taxation.
- Previous year 2019-20 turnover was 1.5 crore and assessee opted out from 44AD and went for tax audit u/s 44AB and return filed accordingly.
- Previous year 2020-21, turnover is less than 1 crore and assessee wants to declare profit as per 44AD.
- What if all the receipts and payments during the year are through banking channel?

- A doctor is in practice and he was **selling medicine** too.
- His income from fees was Rs. 45 Lakhs and receipts from sale of medicines was Rs. 56 Lakhs. Considering the total receipt increases 1 crore rupees, he approached you for advise regarding tax audit and posed the following questions before you:
 1. Is his entire revenue to be subjected to Sec 44ADA offering 50% as taxable income?
 2. Whether he needs to maintain separate set of books of accounts for practice and sale of medicine.
 3. Can he avail 44AD and 44ADA for the respective source of Income.
 4. Would your answer be different if the income from medical fees is 56 lakhs and sale of medicine is 45 lakhs.

- An individual assessee carrying on business of readymade garments, he is authorised dealer of “DacTech” cement and having “Indian oil” petrol pump. The turnover from each business is Rs 75 lakhs.
- Whether the tax audit is applicable on the assessee?
- What if the revenue from petrol pump exceeds 2 crore and from other business it is 75 lakhs each.
- What if the dealership of “DacTech” cement is on commission basis?

Section 44AB

Sec 44AB. Every Person -

(a) Carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs. 1 Cr in any previous year.

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

*(a) aggregate of **all amounts** received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed 5% of the said amount; and*

*(b) aggregate of **all payments** made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said payment,*

this clause shall have effect as if for the words “1 Cr”, the words “10 Cr” had been substituted:

- Since the proviso clause (a) consists the term “aggregate of all amounts received including amount received for sales”, it means received from the previous years receivables shall also be counted while calculating the aggregate of all amount received.
- Whether loan receipt will also be included in this amount?
- Whether capital receipt will also be included in this amount?

- Similarly, the proviso clause (b) consists the term “aggregate of all payments made including amounts incurred for expenditure”, it means amount paid towards the previous years payables shall also be counted while calculating the aggregate of all payment made.
- Whether repayment of loan will also be included in this payment?
- Whether expenses incurred towards purchase of capital assets or making investment will also be included in this payment.

- Turnover of Mr. A in the FY 2020-21 is Rs. 7 Cr. out of which cash receipts is Rs. 70 Lakh and receivable is 1 Cr. He also get a loan of Rs. 10 Cr from bank.
- Whether Mr. A is eligible for proviso clause of sec 44AB(a)?
- Whether your answer would be different if the sales amount is Rs. 12 Cr and the receivable is Rs. 3 Cr. considering the other facts remain same.
- What would be the position if the sales during the year is 9 Cr and he also received Rs. 2 Cr. from the preceding years receivable. Considering the other facts remain same.

- Turnover of Mr. A in the FY 2020-21 is Rs. 7 Cr. out of which cash receipts is Rs. 32 Lakh and receivable is 1 Cr.
- Out of receipt of Rs. 6 Cr, one of the debtors of Rs. 1 Cr is creditor of Rs. 50 Lakh of Mr. A and such account were netted off and Rs. 50 Lakh paid to Mr. A by cheque as the final balance amount.
- Whether Mr. A is eligible for proviso clause of sec 44AB(a)?

Sec 44AB. Every Person -

- b) Carrying on profession shall, if his gross receipts in profession exceeds 50 lakh rupees in any previous year.

- c) Carrying on the business shall, if the profit and gain from the business are deemed to be the profits and gain of such person u/s 44AE, 44BB or 44BBB as the case may be, and has claimed his income to be lower than the profits or gain of his business in the previous year.

d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person u/s 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in the PY.

e) carrying on the business shall, if the provisions of s/s (4) of sec 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in the PY.

Provided that this section *shall not apply* to the person, who *declares* profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Proviso to section 44AB

Provided also that

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

Situation	Business A TO	Business B TO	Profession TO
A	50	43	54
B	50	70	42
C	50	43	42
D	50	120 (44AD)	54
E	75	120 (44AD)	49 (44ADA)

- get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :
- "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income u/s 139(1).

What is Turnover?

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- Turnover under Companies Act:

Sec 2(91) turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during the financial year.

- Revenue under ICDS:

Revenue is the gross inflow of cash, receivables, or other consideration arising in the course of ordinary activities of a person from the sale of goods, from the rendering of services or both.....

- Sale of ABC Pvt Ltd during FY 2020-21 is Rs. 90 lakh and GST on such sales is Rs. 16.20 lakh. The total turnover including GST is RS. 106.20 lakh.
- What is the turnover?

The “*Guidance Note on Terms Used in Financial Statements*” published by the Institute, the expression “Sales Turnover”

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

- The words '*Sales*', '*Turnover*', '*Gross receipts*' are commercial terms and they should be construed in the commercial sense and in accordance with the normal rules of accountancy.
- Accordingly, 'Turnover' and 'Gross receipts' mean gross in-flow of cash receivables and other considerations arising in the course of ordinary activities of an enterprise from the sale of goods or from the rendering of services to the buyer or client.

- It is well settled that the term sales, turnover and gross receipts have to be interpreted, with reference to the items which go into profit and loss account of a concern and that this has to be ascertained, based on the method of accounting regularly employed by the assessee.
- Items of receipts which are capital in nature do not go into the profit and loss account and are not turnover

- Neither the term 'goods' nor 'turnover' is defined in the Act. In general, turnover is meant to be the sale proceeds of the goods sold. In other words, commercially it would mean the amount of money turned over or drawn in a business, in a given time.
- Since the term 'turnover' is not specifically defined in the Act, nor specifically for the purpose of section 44AB, its meaning should be taken as commercially and commonly understood.

- POCM to be followed (even for service contract)
- Retention money to be included in revenue and cannot be excluded.
- Incidental income like interest income cannot be deducted from borrowing cost.

- **AMENDMENT TO THE ACT**

43CB. (1) *The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145*

Are these part of gross business receipts for 44AB/44AD?

- *Perizad Zorabian Irani v PCIT, Mumbai – WP No. 1333/2021- Bombay High Court – dated 09.03.2022:*

Share of profit of a partner of a firm exempted u/s 10(2A)

- *Anandkumar Vs CIT 278 Taxmann 342 (Madras HC)*

Interest, remuneration received by Partner from partnership firm (*Where the assessee is not carrying on any business independently*) but is only a partner in a firm interest and salary received by the assessee cannot be constructed as business income under section 28(v) and, consequently, he is not eligible to opt for section 44AD with respect to interest and remuneration earned from partnership firm

Are these part of gross business receipts for 44AB?

- Write back of amounts payable to creditors and/or provisions for expenses or taxes no longer required.

Underlying principle for reimbursements

- If the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts (back to back)
- But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts.

- Delhi ITAT in the case of *Brij Lal Goyal (2004) 88 ITD 413* held that the word accounts have not been defined.
- Therefore, in view of Sec 34 of the Indian Evidence Act, the term accounts should be understood as accounts which are maintained in the regular course of business alone should be considered for computing the limit.

Speculative and F&O transactions

Para 5.14 of ICAI's Guidance Note

- No delivery transactions.
- The contract is squared up by paying difference, which could be positive (profit) or negative (loss)
- Entry made in books only for difference, not for full value of contract notes.
- ICAI's GN- The aggregate of both positive and negative values is to be treated as "turnover" for section 44AB purpose.
- Growmore Exports Ltd*. – *The view of ICAI does not appear to be correct view. No turnover was effected at all by the assessee and hence was not liable to get the accounts audited under Section 44AB of the Act*

Such transactions are completed without the delivery of shares or securities. These are also squared up by payment of differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia.

Such transactions to be clubbed for computing TO –

- i) Total of favourable and unfavourable differences
- ii) Premium received on sale of options
- iii) Difference in respect of reverse trades entered

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

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

Types of persons

Citation

While computation income u/s. 44AD AO does not have the power to assess any thing in excess of return income if the income is returned at 8% of total receipt / consideration

Abhi Developers Vs.
ITO
(12 SOT 444) (Ahd)

No addition can be made on the ground that the assessee of was not able to explain discrepancies in account in account book

CIT Vs. Nitin Soni
(207 Taxman
332)(All)

Where the assessee is not carrying on any business independently but is only a partner in a firm interest and salary received by the assessee cannot be constructed as business income under section 28(v) and, consequently, he is not eligible to opt for section 44AD with respect to interest and remuneration earned from partnership firm.

Anandkumar
Vs
CIT

278 Taxmann 342
(Madras HC)

Types of persons

Citation

Income from JCB cannot be computed by applying Sec. 44AE as JCB is not use for carriage of goods

Gaylord Construction
Vs.
ITO
(175 Taxman 99)(Koch.)

If assessee owns eleven goods carriages, one of them is under repair and has not been operated, he is not entitled to presumptive taxation u/s. 44AD

M. Rajendram
Vs.
ITO
65 SOT 42(Che.)

Section 44AD of the Income-tax Act, 1961 - Civil construction business - Assessment year 2005-06 - Whether once under special provision of section 44AD, exemption from maintenance of books of account has been provided and presumptive tax at rate of 8 per cent of gross receipt itself is basis for determining taxable income, assessee is not under any obligation to explain individual entry of cash deposit in bank unless such entry has no nexus with gross receipts

Surinder Pal Anand
192 Taxman 264 (P&H) v.

- Assessee, running a hardware store, filed its return declaring net profit of 0.99 per cent of turnover
- Assessing Officer found that turnover of assessee's business was more than Rs. 1 crore but assessee had failed to get accounts audited under section 44AB –
- He applied provisions of section 44AD and estimated business profit at 8 percent of assessee's turnover –
- Accordingly, certain addition was made to assessee's income –
- Whether, on facts, Assessing Officer could have ventured into estimation only after rejecting books of account of assessee and thereafter make best judgment assessment under section 144?
- **Held, yes - Whether since Assessing Officer had gone for estimation of income without rejecting books of account of assessee, impugned order passed by him was to be set aside**

Open House



**Thanks for your
time!**

Contact us

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