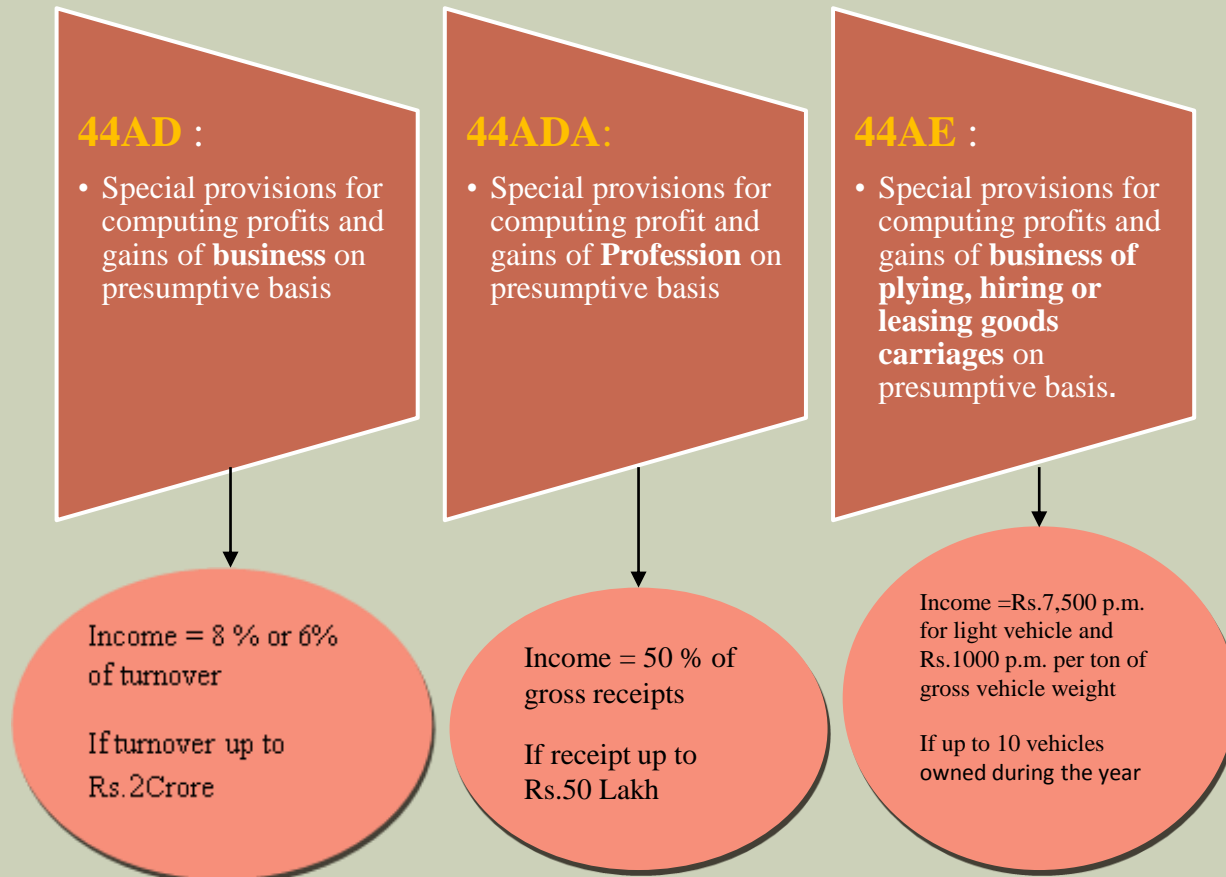


A 360° APPROACH TO
PRESUMPTIVE TAXATION

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DETAILS OF PRESUMPTIVE TAXATION SCHEME

- For small taxpayers the Income Tax Act has framed three presumptive taxation schemes as given below:



PROVISIONS OF SEC 44AB

AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION

■ Every person –

44AB(a)

carrying on business shall,

- if his total sales, turnover or gross receipts,
- as the case may be,
- in business exceed or exceeds
- one crore rupees in any previous year

■ 44AB(b)

- carrying on profession shall,
- if his gross receipts in profession
- Exceed fifty lacs rupees
- in any previous year; or

PROVISIONS OF SEC 44AB

AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION

■ 44AB(c)

- carrying on the business shall,
- if the profits and gains from the business are deemed to be the profits and gains of such person
- under section 44AE or section 44BB or section 44BBB,
- as the case may be,
- and he has claimed his income to be lower than the profits or gains
- so deemed to be the profits and gains of his business,
- as the case may be, in any previous year; or

■ 44AB(d)

- carrying on the profession shall,
- if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and
- he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and
- his income exceeds the maximum amount
- which is not chargeable to income-tax in any previous year; or

PROVISIONS OF SEC 44AB

AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION

■ 44AB(e)

- carrying on the business shall,
- if the provisions of sub-section (4) of section 44AD are applicable in his case and
- his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,
- get his accounts of such previous year audited by an accountant before the specified date and
- furnish by that date the report of such audit
- in the prescribed form duly signed and
- verified by such accountant and
- setting forth such particulars as may be prescribed

AMENDMENT IN TAX AUDIT PROVISIONS

- The Finance Act, 2021 has increased the threshold limit of turnover for tax audit u/s 44AB **from Rs.5 crores to Rs.10 crores** where cash transactions do not exceed 5% of total transactions. This amendment will take effect from 1st April 2021 and will, accordingly, apply in relation to the assessment year 2021-22. Thus, the higher limit of turnover will take effect from F.Y. 2020-21 itself.
- The Finance Act, 2021 has added a new second proviso to section 44AB(a) which is reproduced below-

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

OBSERVATIONS REGARDING THE INCREASED THRESHOLD LIMIT FOR TAX AUDIT UNDER SECTION 44AB –

1.

- The amendment is carried out only in section 44AB and no amendment has been made in section 44AD. Thus, the turnover limit of 2 crores for opting Section 44AD shall continue

2.

- All the payments or receipts including capital introduction, drawings, receipt and repayment of loans, purchase of fixed assets, etc. shall be considered. Even taxes paid in cash shall be included for the calculation.

3.

- It is not pointed out who will certify the margin of transactions in cash mode of 5%. It appears that assessee himself shall declare the percentage of receipts in cash and non-cash mode.

4.

- This increased threshold limit for Tax Audit is applicable for a business entity only and the threshold limit for Tax Audit for a professional shall continue to be at Rs.50 lacs even if more than 95% of the transactions are in digital mode.

DISCUSSION ON NEW PROVISO ON THE SUBJECT MATTER OF DEEMED CASH FOR TURNOVER PURPOSE:

Turnover above Rs. One crore and up to Rs. 10 crores

No Audit- If cash receipts are up to 5% of total receipts **and** the cash payments are up to 5 % of total payments.

Audit Required- If cash receipts exceeds 5% of total receipts **or** the cash payments exceeds 5% of total payments.

ISSUES WHILE COMPUTING THE LIMIT OF 5% CASH TRANSACTIONS

1. Capital Contribution: When an Individual/sole proprietor introduces capital in his business in cash, then the same shall not be included in the total receipts in cash of the assessee. This is for the simple reason that one cannot transact with himself.

- However, the notified ITR forms do not follow this principle. It requires that all the cash receipt of the business including capital contribution should be considered in determining the 5% cash transactions limit.
- However, in case of partnership firms, the situation is different since a firm is assessed as a separate person under income tax law and is considered distinct from its partners. To clarify, if a firm receives any capital contribution in cash from any partner, it shall be counted towards the limit of 5%.

2. Direct cash deposit into bank account by customers: In this case, it will be included in cash transactions. Even if the assessee debits the bank account in his books, it will be regarded as a cash transaction since the account is ultimately settled in cash.

ISSUES WHILE COMPUTING THE LIMIT OF 5% CASH TRANSACTIONS

3. Capital Expenditure: All the payments in cash are included whether it is paid for revenue expenditure or capital expenditure. There is no differentiation provided in the law.

4. Capital Receipt/Exempt Income: All receipts include receipts of capital nature and also the exempt income for e.g. Agricultural Income.

5. Adjustment by book entry: In a case where a person is a customer as well as vendor of the assessee. The debtors' amount is set-off with the amount payable to the same person/vendor. Since no cash is involved in settling the due amount, this will be considered as non-cash transactions.

6. Cash deposited and Cash Withdrawals from bank account: Cash deposit and the cash withdrawals from the bank account amounts to contra entry or transactions with self and hence are excluded for computing the 5% cash limit.

EXAMPLE:

- Mr. X, is into business and has turnover of less than Rs.10 crores during the financial year 2020-21. The following transactions in FY 2020-21 are hereunder:

- A. Calculation of Total Receipts:

Particulars	CASH	CHEQUE	TOTAL
Cash Sales	100	380	480
Receipt from debtors	20	1300	1320
Loan receipts	-	200	200
Total	120	1880	2000

- B. Calculation of Total Payments

Particulars	CASH	CHEQUE	TOTAL
Payment of expenses	81	519	600
Payment to creditors	-	1080	1080
Loan payments	-	120	120
Total	81	1719	1800

EXAMPLE:

- C. Computation of percentage of cash receipts & payments

Particulars	TOTAL (A)	CASH (B)	% in cash (B/A *100)
Receipts	2000	120	6
Payments	1800	81	4.5%

In his case, though the payment made in cash during the year does not exceed 5% of total payments, the percentage of cash receipts exceeds the limit of 5%. In this case Mr. X is fulfilling only one condition of payments and the condition in case of receipts is not fulfilled. To take the benefit of this section he has to follow both the conditions.

DIFFERENT SITUATIONS UNDER WHICH THE BOOKS OF ACCOUNTS ARE TO BE AUDITED UNDER SECTION 44AB OF THE ACT

Sr. No.	Person	When required to get accounts audited in terms of section 44AB	Clause of section 44AB
1.	Every person carrying on profession referred to in section 44AA(1) profits from which are assessable on presumptive basis under section 44ADA	If he claims his profits and gains from such profession are lower than 50% of his gross receipts for the previous year in question and his total income exceeds the maximum amount which is not chargeable to income-tax in any previous year	Clause (d)
2.	Every person carrying on profession [other than those covered by clause (d) of section 44AB]	If his total gross receipts from profession exceed Rs.50 lacs in any previous year	Clause (b)
3.	Every person who derives income of the nature referred to in section 44B or section 44BBA	Section 44AB does not apply to such person & hence no need to get accounts audited u/s 44AB	2nd proviso to section 44AB
4.	Every person carrying on business profits of which are assessable on presumptive basis under section 44AE or section 44BB or section 44BBB	If he claims his profits and gains from such business are lower than the amount deemed to be profits and gains under the said section	Clause (c)

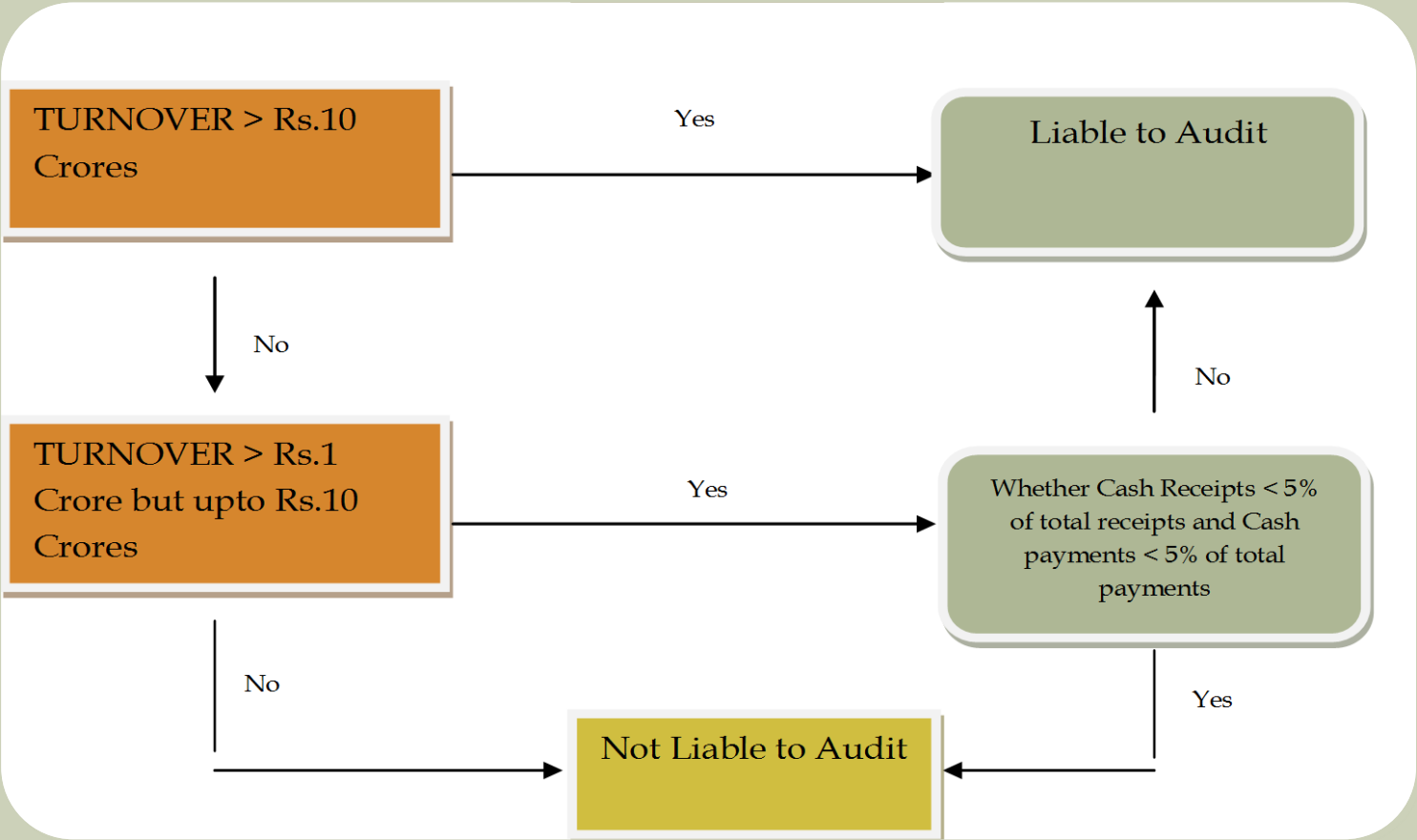
DIFFERENT SITUATIONS UNDER WHICH THE BOOKS OF ACCOUNTS ARE TO BE AUDITED UNDER SECTION 44AB OF THE ACT

5.	Every person carrying on business where the provisions of section 44AD(4) are applicable in his case	<p>If his total income exceeds the maximum amount which is not chargeable to income-tax in any previous year</p> <p>Section 44AB shall not apply to the person who declares profits and gains for the previous year in accordance with section 44AD(1) and his total sales, turnover or gross receipts, as the case may be, in business does not exceed Rs.2 crore [first proviso to section 44AB]</p>	Clause (e) first proviso
6.	Every person carrying on any agency business	If his total sales, turnover or gross receipts , as the case may be, in business exceed or exceeds Rs.1 crore in any previous year	Clause (a)
7.	Every person carrying on business who is earning income in the nature or commission or brokerage	If his total sales, turnover or gross receipts , as the case may be, in business exceed or exceeds Rs.1 crore in any previous year	Clause (a)
8.	Every person carrying on profession referred to in section 44AA(1) who is also carrying on any business	Gross receipts of profession and business not to be clubbed for computing the limits of Rs.1 crore [clause (a)] and/or Rs.50 lacss [clause (b)]. Account of profession to be audited if clause (b) or (d) of section 44AB applies. Accounts of business to be audited if total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds Rs.1 crore in any previous year since section 44AD is not applicable to person carrying on profession referred to in section 44AA(1)	Clause (a)

DIFFERENT SITUATIONS UNDER WHICH THE BOOKS OF ACCOUNTS ARE TO BE AUDITED UNDER SECTION 44AB OF THE ACT

9.	<p>Every "eligible assessee" (as defined in section 44AD) carrying on "any eligible business" (as defined in section 44AD) turnover of which exceeds Rs.2 crores in any previous year, and proviso to sec 44AB(a) not applicable.</p> <p>Both payment and receipt in cash does not exceed 5% of the total receipts and payment respectively</p> <p>Either payment or receipt in cash exceeds 5% of the total receipts and payment respectively</p>	<p>Assessee not eligible to opt for section 44AD. Therefore, he must get his accounts audited in terms of section 44AB(a) since his turnover exceeds Rs.2 crores and thus exceeds Rs.1 crore limit in clause (a)</p> <p>Audit u/s 44AD not applicable if total sales, turnover or gross receipt from business during the previous year does not exceed Rs.10 crore</p> <p>If total sales, turnover or gross receipt from business during the previous year exceeds Rs.1 crore</p>	<p>Clause (a)</p> <p>Proviso to Clause (a)</p> <p>Clause (a)</p>
10.	<p>Every assessee who is not an "eligible assessee" as defined in section 44AD i.e. LLPs, companies, AOPs, BOIs, AJs</p>	<p>If total sales, turnover or gross receipts , as the case may be, in business exceed or exceeds Rs.1 crore in any previous year</p>	<p>Clause (a)</p>
11.	<p>Every non-resident assessee not covered by section 44AE or 44B or 44BB or 44BBA or 44BBB</p>	<p>If total sales, turnover or gross receipts , as the case may be, in business exceed or exceeds Rs.1 crore in any previous year</p>	<p>Clause (a)</p>

AUDIT OF ENTITIES ENGAGED IN COMMISSION, BROKERAGE AND AGENCY BUSINESS



APPLICABILITY OF TAX AUDIT IN FOLLOWING CASES:

A trust/association/institution carrying on business may enjoy exemptions as the case may be under sections 10(21), 10(23A), 10(23B) or section 10(23BB) or section 10(23C) or section 11. A co-operative society carrying on business may enjoy deduction under section 80P. Such institutions/associations of persons will have to get their accounts audited and to furnish such audit report for purposes of section 44AB if their turnover in business exceeds the prescribed limit (Presently Rs.100 lacs w.e.f. A.Y. 2013-14).

Only Agriculture Income (Tax Audit Not Applicable) But an agriculturist, who does not have any income under the head "Profits and gains of business or profession" chargeable to tax under the Act and who is not required to file any return under the said Act, need not get his accounts audited for purposes of section 44AB even though his total sales of agricultural products may exceed the prescribed limit (Presently Rs.100 lacs w. e. f. A.Y. 2013-14)

CONCEPT & MEANING OF TURNOVER

■ Meaning of turnover

The term “turnover” has been understood for the purpose of Section 44AB to mean:

- ❑ The aggregate amount for which sales are effected or services rendered by an enterprise. In case the assessee has opted for inclusive method of accounting and the sales price are inclusive of sales tax and excise duty, then no adjustment in respect thereof should be made for considering the quantum of turnover.
- ❑ Trade discounts can be deducted from sales but not the commission allowed to third parties. In case assessee is following the practice of crediting the Excise duty and / or sales tax recovered separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, then the same will not be included in the turnover.
- ❑ Sales of scrap shown separately under the heading ‘miscellaneous income’ will form part of turnover.

CONCEPT & MEANING OF TURNOVER

- Applying the above generally accepted accounting principles, a few typical cases may be considered:
 - Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.
 - Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.
 - Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.
 - Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.
 - Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year.

TURNOVER IN CASE OF SPECULATIVE TRANSACTIONS

- In a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note.
- The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the *difference amount is 'turnover'*.
- In the case of an assessee undertaking speculative transactions there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction.
- Further, amount paid on account of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences.
- Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB, whether the differences are positive or negative.

TURNOVER IN CASE OF NON-SPECULATIVE TRANSACTIONS

■ Determination of turnover in case of F&O is one of the important factors for every individual for the Income Tax purpose. F&O is also considered as non-speculative as these instruments are used for hedging and also for taking/giving delivery of underlying contract. Turnover must be firstly calculated, in the manner explained below:

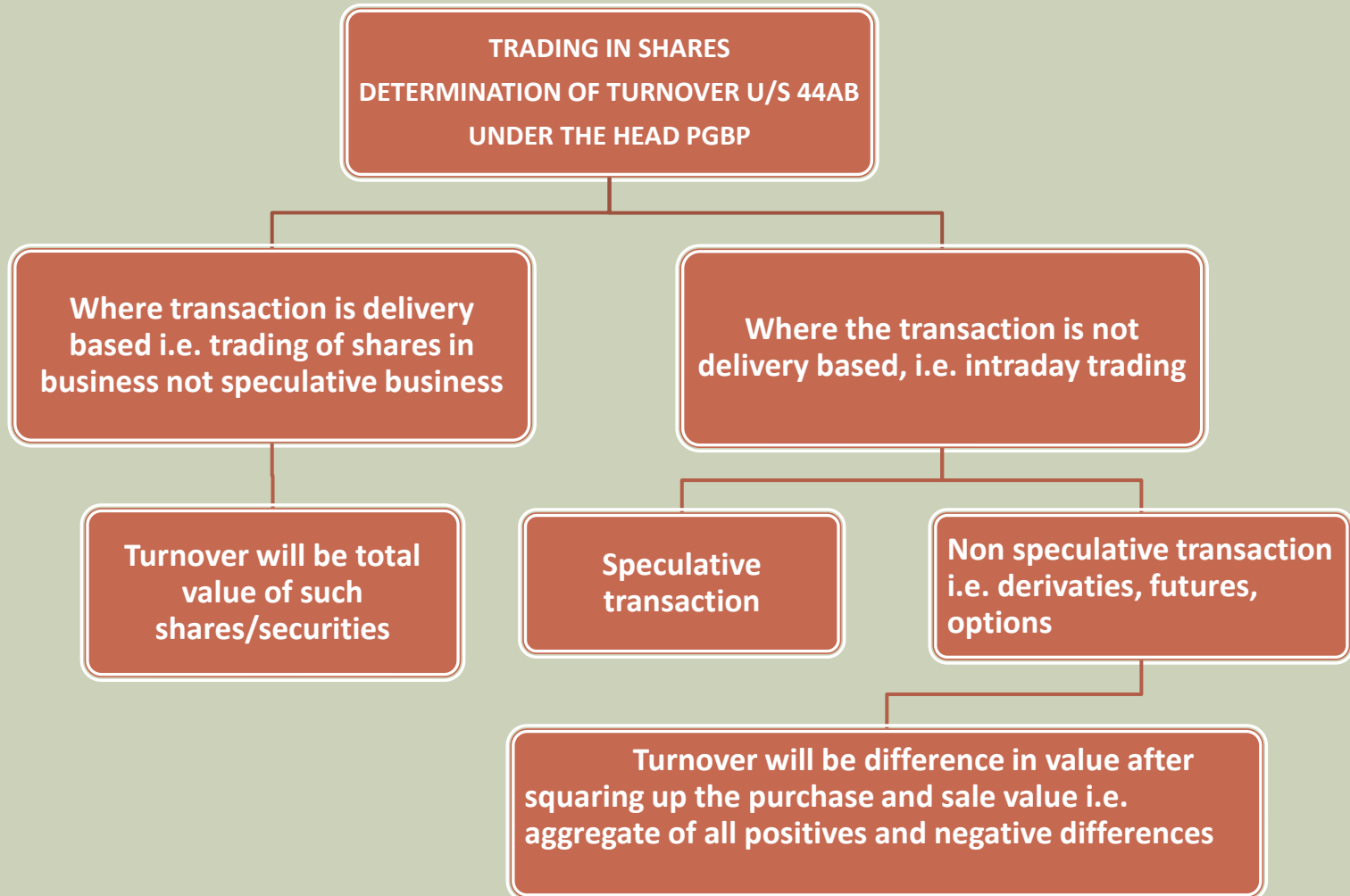
1. The **total of positive and negative** or favorable and unfavorable differences shall be taken as turnover.

2. **Premium received** on sale of options is to be included in turnover.

3. In respect of any **reverse trades** entered, the **difference** thereon shall also form part of the turnover.

Here, it makes no difference, whether the difference is positive or negative. All the differences, whether positive or negative are aggregated and the turnover is calculated.

DETERMINATION OF TURNOVER IN CASE OF TRADING IN SHARES



EXAMPLES ON MEANING OF TURNOVER OR GROSS RECEIPTS

- **Treatment of discounts:** Trade discount should be excluded from 'sales' or 'turnover' for purpose of qualifying limit u/s. 44AB that discounts are allowed in sales bills themselves or at the time when payment were made by the parties to the assessee and the discount amounts are properly recorded in the assessee accounts.
- **Receipts from Job Work :** "It may be noticed that "sales", "turnover" or "gross receipts" are not words of art used in relation to any individual transaction independently, but have been used as "sales", "turnover" or "gross receipts". The expression 'total' qualifies all the other three expressions viz. 'sales', 'turnover' and 'gross receipts'." So, job work receipts have to be clubbed to the total turnover.
- **Turnover for a chit fund:** Subscription amount collected by the foreman of a chit fund from subscribers is on capital account and thus not part of turnover/ gross receipts/ sales for the purpose of Sec. 44AB.

EXAMPLES ON MEANING OF TURNOVER OR GROSS RECEIPTS

- **Income of a nursing home, whether professional or business income:** Activities of a nursing home constitute business and not profession – “activities of the nursing home”...constitute business activity, and ITAT Rejects Revenue’s contention that activities of assessee-firm constitute a vocation/ profession.
- **For Leasing transactions:** Value of lease rentals or interest on lease financing should be forming part of receipts for computation of limits.
- **For Hire purchase transactions:** The sale on hire purchase is completed when the borrower exercises his option to purchase. When the option is exercised, the price of the equipment sold will be considered as turnover. During the hire purchase period, the hire charges received shall form part of gross receipts. Installments towards principal repayment to be excluded.
- **A clearing and forwarding agent:** Not to include reimbursement of customs duty and other charges collected by an agent.

SEC. 44AA-MAINTENANCE OF ACCOUNTS BY CERTAIN PERSONS CARRYING ON PROFESSION OR BUSINESS

- **Maintenance of books of account by 'specified (including notified) professionals'**

Section 44AA(1) prescribes for compulsory maintenance of such books of accounts and other documents which will enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. sub-section (1) applies to the followings-

- A person carrying on a legal profession.
- A person carrying on a medical profession.
- A person carrying on engineering or architectural profession.
- A person carrying on the profession of accountancy.
- A person carrying on the profession of technical consultancy.
- A person carrying on the profession of interior decoration.
- Any other profession as notified by the Board. The CBDT has notified the following professions u/s 44AA(1) of the Act.

PRESCRIBED BOOKS OF ACCOUNT AND DOCUMENTS TO BE KEPT AND MAINTAINED UNDER SECTION 44AA(3) READ WITH RULE 6F

- The prescribed books of account and other documents under Rule 6F(2) are as follows:
 - a cash book;
 - a journal, if the accounts are maintained according to the mercantile system of accounting;
 - a ledger;
 - carbon copies of bills, whether machine numbered or otherwise serially numbered wherever such bills are issued by the person and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him. However, an exception is provided where the amount of the bill or receipts is less than Rs.25; and
 - original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs.50, payment vouchers prepared and signed by the person. However, the requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.

CONDITIONS FOR NON-SPECIFIED PROFESSIONS AND BUSINESS U/S 44AA(2)

- If the business or profession is newly set up in the previous year-

In case of Individual or HUF	(i) if income from the business or profession likely to exceed Rs.2,50,000 in the previous year, or
	(ii) if total sales, turnover or gross receipts from the business or profession likely to exceed Rs.25,00,000 in the previous year
In case of other persons	(i) if income from the business or profession likely to exceed Rs.1,20,000 in the previous year, or
	(ii) if total sales, turnover or gross receipts from the business or profession likely to exceed Rs.10,00,000 in the previous year.

CONDITIONS FOR NON-SPECIFIED PROFESSIONS AND BUSINESS U/S 44AA(2)

■ In any other case-

In case of Individual or HUF	(i) if income from the business or profession exceeds Rs.2,50,000 in any one of 3 years immediately preceding the previous year or
	(ii) if total sales or gross receipts from the business or profession exceed Rs.25,00,000 in any one of 3 years immediately preceding the previous year.
In case of other persons	(i) if income from the business or profession exceeds Rs.1,20,000 in any one of 3 years immediately preceding the previous year or
	(ii) if total sales or gross receipts from the business or profession exceed Rs.10,00,000 in any one of 3 years immediately preceding the previous year.

Nature of Business or profession	Category of Taxpayer	Threshold limit for Income	Threshold limit for Gross Turnover or Receipt
Specified Profession	Any	-	Mandatory in every case except when presumptive taxation scheme under Sec. 44ADA is opted by the assessee.
Non-Specified Professions	Individual or HUF	Rs.2,50,000	Rs.25 Lakh in any of the 3 year immediately preceding the previous year.
Non-Specified Professions	Others	Rs.1,20,000	Rs.10 lakh in any of the of the 3 years immediately preceding the previous year.
Business	Individual or HUF	Rs.2,50,000	Rs.25 lakh in any of the 3 years immediately preceding the previous years.
Business	Other	Rs.1,20,000	Rs.10 lakh in any of the 3 years immediately preceding the previous years.
Presumptive Tax Scheme Under Sec.44AD	Resident Individual or HUF	Rs.2,50,000	Taxpayer opted for scheme in any of last 5 previous year but not opt for in current year.
Presumptive tax scheme under section 44ADA	Resident Assessee	-	Taxpayer claims that his profits computed under Section 44ADA and total income exceeds the maximum exemption limit.

PRESUMPTIVE TAXATION SCHEME SECTION 44AD

- **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.

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 of **Good 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 “notwithstanding 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.
- 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

ISSUE OF DISALLOWANCE U/S 40

- 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.

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 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 of Good Luck Kinetic v. ITO (2015) 58 relating to disallowance u/s 43B have considered two points:
 - Amplitude of non-obstante clause
 - 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 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.
- In 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.

MEANING OF ELIGIBLE ASSESSEE

■ 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)

■ Non Eligible Assessee under Sec.44AD of the Act

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

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 :
 - his gross receipts during the year do not exceed Rs.1 Crore.
 - 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
 - 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.
- Commission or brokerage includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person:
 - for services rendered (not being professional services), or
 - for any services in the course of buying or selling of goods, or
 - in relation to any transaction relating to any asset, valuable article or thing, not being securities.

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.

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.

**Ms. SURBHI AGARWAL V. PRINCIPAL COMMISSIONER OF INCOME TAX-2 -Jaipur
ITAT**

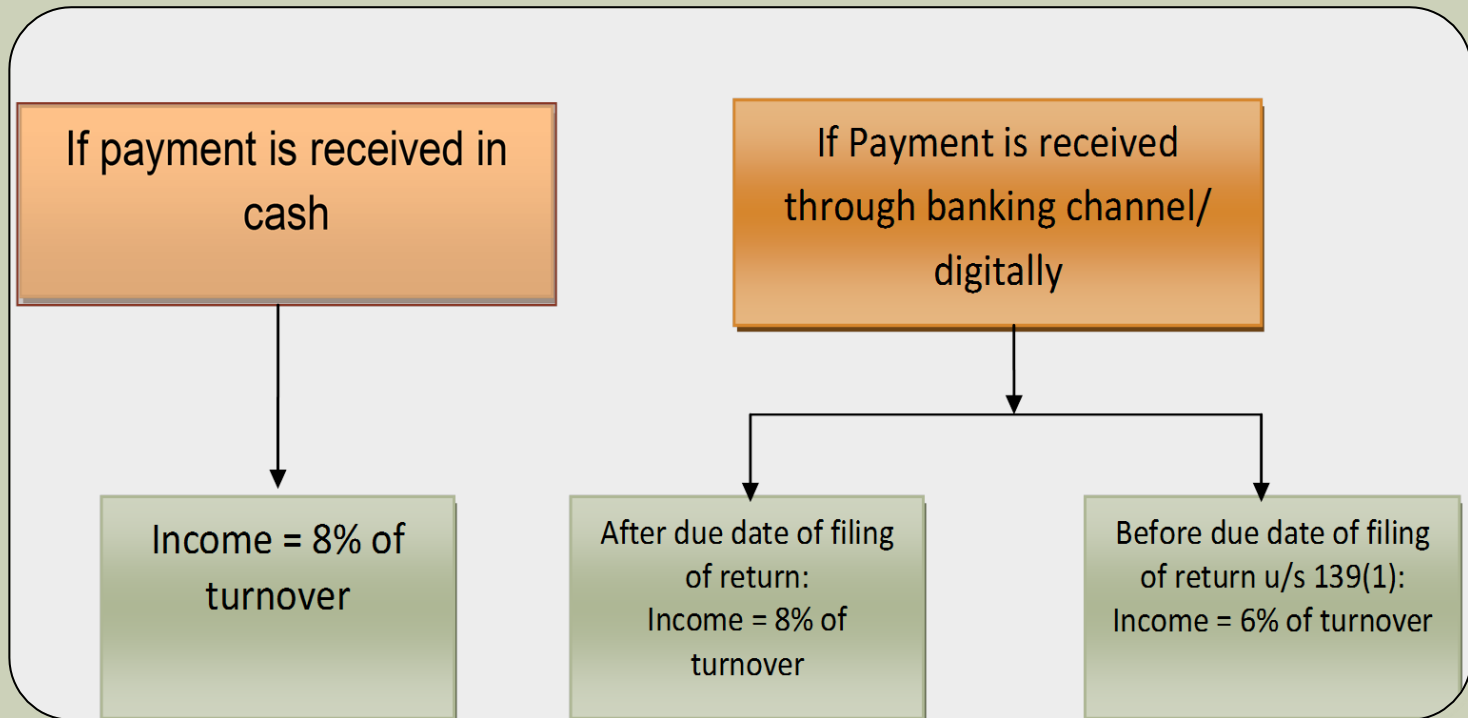
- The Id. A/R of the assessee has submitted that the case of the assessee is covered under section 44AD of the Act as the turnover of the assessee is Rs.85 lacs which is not exceeding the limit provided under section 44AD. The Id. A/R further submitted that the assessee has declared profit of Rs.7.64 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.

- 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 Id. 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.
- 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.

MEANING OF WORDS 'CLAIMED TO HAVE BEEN EARNED BY THE ELIGIBLE ASSESSEE'

- By the introduction of the words “**claimed to have been earned by the eligible assessee**” 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

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

Particular	100% Cash Turnover	80% Digital Turnover	100% Digital Turnover
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

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.

Example: Mr. X is running a Printing Press. His gross receipts from this business during year is Rs.85,00,000 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.

SECTION 44AD (4): CONSEQUENCES OF OPTING OUT OF THE SECTION 44AD(1)

The **provisions of Sec. 44AD(4)** 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).

PROVISIONS OF SECTION 44AD (5):

- **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.

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 Lacs, 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.

EXCEPTIONS TO THE PROVISIONS OF SECTION 44AD(4) & SEC. 44AD(5)

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.

EXCEPTIONS TO THE PROVISIONS OF SECTION 44AD(4) & SEC. 44AD(5)

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 assessee 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.

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 years for 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.

INTERESTING ISSUE 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.

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44ADA

■ Eligible Profession:

Meaning of “Professional services”

- “Professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA(1) of the Act.
- Section 44AA(1) prescribes for compulsory maintenance of such books of accounts and other documents which will enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. Sub-section(1) applies to the followings-
 - A person carrying on a legal profession.
 - A person carrying on a medical profession.
 - A person carrying on engineering or architectural profession.
 - A person carrying on the profession of accountancy.
 - A person carrying on the profession of technical consultancy.
 - A person carrying on the profession of interior decoration. Any other profession as notified by the Board. The CBDT has notified the following professions u/s44AA(1) of the Act.

WHETHER A MODEL CAN OPT THE PROVISIONS OF SEC 44ADA ?

- In the case of **DCIT (TDS) Vs Kodak India (P) Ltd. (ITAT Mumbai)** the issue under consideration is whether the services, the modeling, rendered by Ms. Katrina Kaif constitutes professional service and the fee paid to her for modeling with the purpose of marketing of the camera products of the assessee liable for TDS u/s 194J?
- Undisputedly, Ms. Katrina Kaif has received the said fee not in connection with production of a cinematographic film and the same received admittedly for modeling. She has not received the sum for acting in an autographic Film. Receipts for all modeling and acting skills of an individual do not attract the said section 194J, unless, they are part of the production of a cinematographic film. In the original sense of the modeling, the same may be a profession and the receipts earned by such models may be professional receipts. But the fact is that modeling is not a defined or notified profession either in the Income Tax Act, 1961 or in the Notifications, In fact, there are many such un-notified professions and as such ones cannot be brought under the provisions of section 194J of the Act. In the instant, admittedly, the services rendered have nothing to do with the production of a cinematographic film. Further, before parting with the order, it is pertinent to mention that a person can have many skills i.e acting skills in Films, modeling skills for display of merchandise, singing skills etc. and such person can make earning out of such skills. It is not that total earning of that person in lieu of services rendered must attract the provisions of section 194J of the Act. Therefore, the taxable receipts u/s 194J of the Act are services-specific and not person specific. Therefore, the impugned payments made by the assessee to Matrix India on behalf of Ms. Katrina Kaif do not attract the provisions of section 194J of the Act.
- A model can't opt the provisions of sec 44ADA of the Act on his income from modeling as a model is not a specified professional for the purposes of sec44ADA of the Act.

APPLICABILITY OF PROVISIONS OF SEC 44ADA IN CASE TDS HAS BEEN DEDUCTED U/S 194J

- **Shri Arthur Bernard Sebastine Pais V. Deputy Commissioner Of Income-Tax, CPC, Bengaluru - Bangalore ITAT (2019).** In this case TDS was deducted u/s 194J. The assessee had offered income under 44AD. There was CPC mismatch and was assessed under sec 44ADA. The ITAT held that fees of technical services as enumerated in section 194J is a very broad term which encompasses any services in the nature of managerial, technical or consultancy services. Though the deduction of tax on fees paid to Assessee has been done u/s 194J as mandated by the Act, the services rendered by the Assessee do not fall under section 44AA(1) which is a pre-condition to tax the receipts @ 50% on presumptive basis under section 44ADA. The Assessee cannot be said to be providing technical consultancy as mentioned in section 44AA(1) of the Act.
- **Example:** An Individual who is doing financial consultancy business and the service receiver while he is paying service charge, he is deducting TDS u/s 194J. Whether he can offer income u/s 44ADA? – Sec. 44ADA will be applicable only to the Notified Professions. It is an inclusive definition, it doesn't cover financial consultancy business, hence he can't offer income u/s 44ADA. – Notifications No. SO-18[E] dated 12.01.1977, No. SO 2675 dt.25.09.1992 and S.O. 385[E] dt.04.05.2001

ELIGIBLE ASSESSEE: ALL THE THREE CONDITIONS SHOULD BE SATISFIED:

1. Resident assessee being an individual or a partnership firm other than a limited liability partnership

2. engaged in notified profession u/s 44AA(1)

3. Total gross receipts \leq 50 lakhs

- **No further deduction would be allowed: Section 44ADA(2)** :Under the scheme, the assessee will be deemed to have been allowed the deductions under section 30 to 38. Accordingly, no further deduction under those sections shall be allowed.
- **Written down value of the asset: Section 44ADA(3)** :The written down value of any asset used for the purpose of the profession of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in respect of depreciation for the relevant assessment years.
- **Option to claim lower profits: Section 44ADA(4)**: An assessee may claim that his profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under section 44ADA(1); and if such total income exceeds the maximum amount which is not chargeable to income-tax, he has to maintain books of account under section 44AA and get them audited and furnish a report of such audit under section 44AB.

PARTNER'S SALARY, REMUNERATION, INTEREST EVEN THOUGH CHARGED UNDER THE HEAD AS INCOME FROM BUSINESS OR PROFESSION CAN BE TAXED U/S 44ADA IN THE HANDS OF THE INDIVIDUAL PARTNER HAVING PROFESSIONAL INCOME

- A question comes to our mind that whether the provisions of Section 44ADA shall be applicable to the remuneration and other receipts by a partner from a professional services firm?
- In this connection, it is to be noted that the Income Tax Act, 1961 vide Section 40(b) states that the firm is eligible to claim remuneration as deduction to the extent specified therein and such remuneration is deductible in hands of the firm. The balance amounts are subjected to tax as profits in the hands of the firm. In other words, the eligible remuneration is deductible in the hands of firm and taxable in hands of partners, the remainder (profit) is taxable in hands of the firm and exempted in the hands of partners u/s 10(2A).
- Whether the remuneration and other income received from the firm can be called as 'gross receipts' for the purposes of Section 44ADA. Whether the share of profits of a partner can be considered as gross receipts for the purpose of Section 44ADA?
- The Mumbai Bench of the Income Tax Appellate Tribunal in the case of: ACIT v. India Magnum Fund (81 ITD 295) held that in order to trigger the provisions of Section 44AB, there should be first computation of profits and gains of business or profession i.e. computation of total income as per Section 4. As the income exempt under Section 10 does not form part of the total income, such exempt income cannot be subjected to the provisions of Section 44AB. Consequently, one may argue that share of partners profit which is exempt under section 10(2A) would not be considered for the purposes of the gross receipts This view is also supported by the guidance note issued by The Institute of Chartered Accountants of India on tax audit. As per the guidance note, gross receipts exclude partner's share of profit which is exempt u/s 10(2A).

WHETHER OPTION OF SEC 44ADA OPTIONAL OR MANDATORY?

- Further, one more question that is to be answered is whether the provision of Section 44ADA is optional or mandatory, that is to say, is it mandatory for the partner whose gross receipts is less than Rs.50 lacs to apply the provisions of Section 44ADA or is it optional. Once the gross receipts are less than Rs.50 lacs the partner has to mandatorily offer 50% of such gross receipts for tax. In a case, where the partner thinks his expenditure is more than 50% or want to offer lower amounts of gross receipts for tax, he should then get his books of accounts audited as per provisions of sub-section (4) of Section 44ADA.

RADIOLOGY & PATHOLOGICAL LABORATORY RUN BY A PHYSICIAN (M.D./ M.B.B.S. NOT SPECIALIZED IN RADIOLOGY OR BIO-CHEMISTRY) WILL BE CONSIDERED AS PROFESSION OR BUSINESS FOR LIMITS OF TAX AUDIT?

- S. 2(13) of the Income-tax Act, 1961 defines 'business' which includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The word 'business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. While S. 2(36) of the Act defines 'profession' to include vocation. The Supreme Court in **CIT vs. Manmohan Das (deceased) [59 ITR 699]** has held that, the expression 'profession' involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of the commodities. So, from the facts of the case it is clear that radiology and pathology operated by a doctor who is not specialized would be a business. This view is supported by the Guidance Note on Tax Audit u/s. 44AB of the Income-tax Act, 1961, issued by the Institute of Chartered Accountants of India.

PRESUMPTIVE TAXATION IN CASE OF PARTNERSHIP FIRMS

- Resident Partnership Firms are eligible to opt for presumptive taxation u/s 44AD or 44ADA or 44AE. Sec 44AD and 44AE were amended in 1997 w.e.f. 01/04/1994 to allow remuneration and interest to partners (subject to conditions and limits specified in section 40(b)) after determination of profits as per sec 44AD or 44AE. However, by Finance Act, 2016, second proviso to Section 44AD(2) has been omitted which provided for deduction under section 40(b) with regard to the salary and interest to partners. However, sec 44AE has not been amended. Hence, remuneration and interest to partners will not be allowed in sec 44AD of the Act. However, remuneration and interest to partners will be allowed if income is declared u/s 44AE. The provisions of sec 44ADA of the Act are silent for the allowance remuneration and interest on capital to partners. The professional firms can take this benefit as is explained in the following example.

PRESUMPTIVE TAXATION IN CASE OF PARTNERSHIP FIRMS

- **Example :** RSK & Associates, a firm of Chartered Accountants provides the following information:

Receipts	Net Profit	50% of receipt	Allowability of remuneration
Rs.40,00,000	Rs.20,00,000	Rs.20,00,000	No remuneration and interest will be allowed as expense.
Rs.40,00,000	Rs.24,00,000	Rs.20,00,000	Remuneration and interest can be allowed up to Rs.4,00,000, subject to sec 40(b)
Rs.40,00,000	Rs.18,00,000	Rs.20,00,000	Sec 44ADA not applicable as profit is claimed to be less than 50% of receipts. RSK & Associates will be required to get their books of account audited u/s 44AB(d). Remuneration may allowed as per sec 40(b).

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AE

- **Assessee engaged in the business of plying, hiring or leasing such goods carriages can opt for presumptive income in certain cases [section 44AE(1)]:**

Notwithstanding anything to the contrary contained in sections 28 to 43C:

- in the case of an assessee,
- who owns not more than ten goods carriages at any time during the previous year and
- who is engaged in the business of plying, hiring or leasing such goods carriages,
- the income of such business chargeable to tax under the head “ Profits and gains of business or profession” shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of section 44AE (2)

The provisions of section 44AE (1) shall not apply in the following circumstances:

- (i) If such person owns more than ten goods carriages at any time during the previous year.{Section 44AE(1)}
- (ii) If such person owns not more than ten “goods carriages” at any time during the previous year but is not engaged in the business of plying, hiring or leasing of such goods carriage.
- (iii) If such person is not covered by any of the above conditions and but who declares lower profits and gains than the profits and gains specified in sub- section (1) and (2) of section 44AE as income from such goods carriages

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AE

- **Benefit of section 44AE is available to all the categories of taxpayers:**

Individual, HUF, firm, company, etc., who are engaged in the business of plying, hiring or leasing of goods carriages and who does not own more than 10 goods vehicles at any time during the year. Person opting for section 44AE would not be required to get the books of accounts audited even if turnover exceeds the limit of Rs.1 Cr or 2 Cr.

- **No turnover limit**

The tax audit Limit is only applied on number of vehicle, so gross receipts may even exceed audit limits, still if opt for 44AE then no need for audit.

Example: A transport contractor having 6 trucks is having gross receipts of Rs.105 Lacs for the F.Y. 2020-21. Is he liable for the tax audit?

- Section 44AB does not contain any condition for tax audit of assessee engaged in transport operations (of goods) where the gross receipt exceeds Rs.100 lacs. Only where the assessee offers income below the presumptive limit prescribed in section 44AD or section 44AE, the accounts have to be audited under section 44AB.
- Only where the assessee offers income below the presumptive limit given in section 44AE irrespective of the quantum of receipt, the accounts have to be audited under section 44AB.

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AE

- **Section 44AE operates on the basis of “ownership” and not on the basis of “usage”:** Even if the truck is not put to use, still income has to be offered u/s 44AE. It will include an owner by way of hire purchase or where the goods carriage has been taken on installments, even if whole or part of the amount is to be paid. The meaning of ownership period during which the goods vehicle is owned by the assessee, in the previous year. Part of the month would be considered as a full month. Thus even if any vehicle is idle/ not being used or sent on repairs–income shall be deemed earned. It is further to be noted that if due to lockdown in the country the goods carriers remain idle, even then they will be charged to tax. Also, if the goods vehicles have been impounded by the transport authorities/ police department, even then income will be charged to tax.
- **Payment of advance tax:** There is no concession as regards payment of advance tax & taxpayers covered by section 44AE will be liable to pay advance tax. [Benefit of payment of advance tax in one installment by 15th March is available only to taxpayers covered by section 44AD & 44ADA.

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AE

- **Presumptive amount of income to be computed:** The presumptive income computed above is the final income and no further expenses will be allowed or disallowed. Separate deduction towards other business expenses like salary, depreciation etc. will not be admissible. Written down value of any asset used in such business shall be calculated as if depreciation u/s 32 is claimed and has been actually allowed. However, taxpayers can claim deduction under chapter VI-A like deduction u/s 80C, 80D etc. No disallowance can be made u/s 40, 40A, 43B etc. for the taxpayers who have opted section 44AE.
- **Allowability of remuneration:** Where the assessee is a partnership firm, the remuneration & interest on capital to the partners can further be claimed as deduction subject to conditions & limit specified u/s 40(b). In case of presumptive scheme of taxation u/s 44AD and sec 44ADA, deduction towards interest & remuneration to partners is not available. However, it is not so in section 44AE.

PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AE

- **Benefit of set off and carry forward: Sec 70-80 will be applicable to the deemed income:** The brought forward losses of this business or any other business and current year losses from other businesses & other heads shall be allowed to be set off from the deemed income subject to rules framed under the Income Tax Act, 1961 for “set off and carry forward” of losses.
- **Non allowance of depreciation and unabsorbed depreciation:** Since depreciation and carry forward of unabsorbed depreciation is covered by Sec 32, depreciation shall not be allowed from the deemed Income, however a notional depreciation is provided in the Block to arrive at the opening WDV of the next year.
- **Deduction u/s 80C to 80U** will be given from GTI of the assessee even from the deemed income included in the GTI.

MINIMUM INCOME TO BE OFFERED FOR TAXATION U/S 44AE: 1988) WHICH READS AS UNDER:

- **For heavy goods vehicle**, income shall be an amount equal to **Rs.1,000/-** per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher;
- **For other than heavy goods vehicle**, income shall be an amount equal to **Rs.7,500/-** for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

CONCEPT OF UNLADEN WEIGHT :

- No meaning or definition is specifically given for “unladen weight” in section 44AE. However, in Motor Vehicles Act the concept of “unladen weight” has been attached to a vehicle or a trailer whereas the concept of “gross vehicle weight” has been attached with goods carriages (the total weight of the vehicle and load certified).
- It is but obvious that in case of any normal goods carriage, the gross vehicle weight is going to be more than “unladen weight” of the vehicle. The word “as the case may be” used in section 44AE means that either gross vehicle weight or unladen weight need to be taken for computing income. Where gross vehicle need to be used and where unladen weight need to be used is not provided in section 44AE. The word used in section 44AE to some extent conveys the idea that either the gross vehicle weight would be applicable or unladen weight would be applicable. The wording used in section 44AE conveys that both the weight cannot be simultaneously applicable.
- If definition of “heavy goods vehicle” in Section 44AE would have been same as in Motor Vehicle Act 1988, no disputes or confusion would have been there. The concept of unladen weight in the motor vehicle Act is attached with Tractor, road roller.
- While drafting Section 44AE, words “tractor and road roller” as available in the definition of heavy goods vehicle in the Motor Vehicle Act 1988 is not taken but the word “unladen weight” is duly taken. In my view, there appears to be an error as unladen weight is not attached to the “goods carriage” but attached to “tractor and road roller”.
- It is to be noted here that section 44AE is applicable for “Goods carriage” and in my view “Tractor or Road Roller” are not goods carriage.

CAN ASSESSEE APPLY SEC 44AE SELECTIVELY ON SOME TRUCKS?

- Sec 44AE does not permit the assessee to apply the provisions of this section on some of the truck while he claims the income from the others as per the books prepared. Thus this section applies to all the trucks owned by the assessee. He may opt for or out of the provisions of this Section for all the trucks.

Dy. CIT v. C.P. Kunhimammed(2005) 94 ITD 278 (Cochin-Trib)

- The assessee having 3 lorries, 2 of them are old and the one being new, wanted to claim the benefit of section 44AE for 2 lorries and normal income scheme for the new lorry.
- The Tribunal held as below: “There is no provision which enables an assessee to apply the provisions of section 44AE in the case of some lorries and to go for regular assessment on the basis of books of account in respect of the remaining lorries. As plying hiring or leasing the goods carriages is treated as a separate business, all the lorries owned by the assessee form part of the said business and the tax treatment of all those lorries needs to be an uniform manner.”

IS JCB A GOODS CARRIAGE?

Gaylord Constructions v. Income-tax Officer

- The contention of the assessee is that JCB is analogous to goods carrier and the provisions of section 44AE are applicable. The Assessing Officer rejected the contention of the assessee as in the opinion of the Assessing Officer JCB is an earth mover machinery, cannot be equated with goods carrier like lorries and trucks.
- The ITAT held -In the case of JCB, the principal function is not carriage of goods. In our opinion, by no stretch of imagination, JCB can be termed as "goods carriage". We, therefore, hold that the income from JCBs cannot be computed by applying section 44AE of the Act.
- **No benefit of income below the basic exemption limit** : Contrary to the provisions of sec 44AD and sec 44ADA of the Act, the assessee has to get its books audited if he declares his income below the benchmarks given and his taxable income does not exceed the basic exemption limit.

Example: a truck owner having 2 trucks, each having 15 ton gross weight, offering rs.600 per ton per month.

Total income = $600 * 15 * 2 * 12 = \text{rs.}2,16,000$. is he liable for tax audit?

- Under section 44AE, if profits offered are less than the prescribed limits, tax audit is applicable even if the income is below the non-taxable limits.

- **Example:** Mr. X owns 8 goods carriage vehicles, 3 of which have unladen weight of 15MT, 18MT and 20MT and the rest are below 12MT capacity. The vehicle with 20MT was purchased on 22/07/19 and was used only from 21/01/2020.

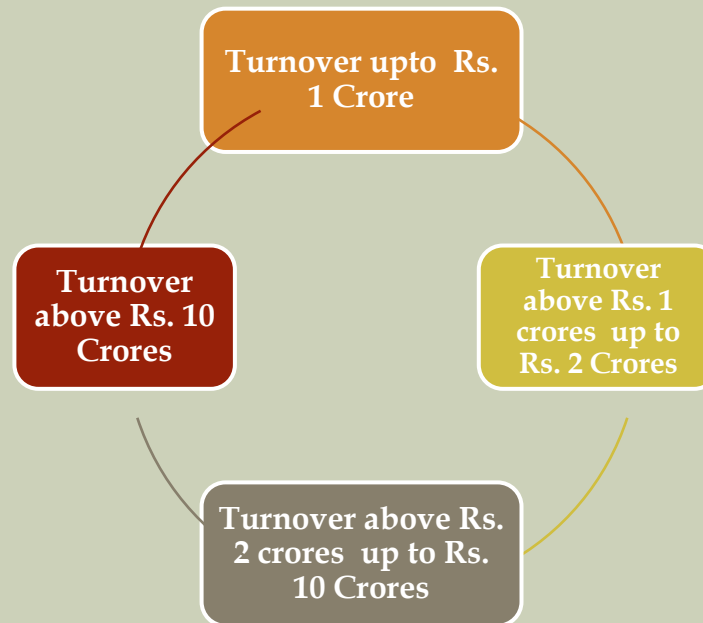
Vehicle	Gross Weight in Kg	Presumptive Income Per Month in Rs.	No. of Months	Total Presumptive Income in Rs.
1	7500	7500	12	90000
2	7500	7500	12	90000
3	7500	7500	12	90000
4	7500	7500	12	90000
5	7500	7500	12	90000
6	15000	15000	12	180000
7	18000	18000	12	216000
8	20000	20000	9	180000
Total Business Income				1026000

INTERPLAY OF SEC 44AA, 44AB AND 44AD OF THE INCOME TAX ACT,1961

We can divide our study in the following 4 parts:

- A. When business turnover is upto Rs.1 crore
- B. When business turnover is exceeding Rs.1 crore but upto Rs.2 crores
- C. When business turnover exceeding Rs.2 crore but upto Rs.10 crores
- D. When business turnover exceeding Rs.10 crores

These all four categories can be shown as under



A. WHEN BUSINESS TURNOVER IS UPTO RS.1 CRORE

- If a person is having turnover/ gross receipts up to Rs.1 crore, clause (a) of Sec 44AB will not be applicable. If the person is declaring profits as per sec 44AD(1), he will not be required to get his books of accounts audited. If in case he is declaring profits less the 8% of turnover (6% in case of sale is through banking channels), then we have to check two more conditions:
 - Whether in any of the preceding previous years, the person has declared profits as per sec 44AD.

AND

- Whether the income of the person exceeds the basic exemption limit.
- If both the above conditions are satisfied, then the person is required to get books of accounts audited. In case any of the condition is not satisfied or both the conditions are not satisfied, then the person would not be required to get the books of accounts audited.

(a) A PERSON WHO HAS STARTED A NEW BUSINESS

- It is a very interesting issue in which an assessee who has started a new business during the previous year and he is unable to decide whether to opt for sec 44AD of the Act or not. If he decides to avail the benefits of sec 44AD, then he has to declare profits at the rate of 8% or 6% of turnover or at higher rate as specified in sec 44AD. Then he shall neither be required to maintain books of account nor required to get them audited. In case, he decides to not opt for sec 44AD, the situation will be entirely different.
- In this regard, it is to be noted that the assessee who has not declared profits u/s 44AD in any of the preceding previous years and he has not failed to declare profits in subsequent 5 years as per sec 44AD. The assessee who has started his business in the previous year has not satisfied the conditions of sec 44AD(4) of the Act. Hence the assessee will not be required to get his books of account audited in first year of business if his turnover is below Rs.1 crore during the previous year. However, he will be required to maintain books of accounts as per 44AA(2)(ii) if in case of individual/ HUF turnover is likely to exceed Rs.25 Lacs or his profits are likely to exceed Rs.2.5 Lacs.
- Therefore, assessee who has started a new business would not be required to get books of accounts audited even if he is declaring profits below 8% or 6% because the condition that in earlier previous year he has declared income as per sec 44AD is not satisfied. The income may be below taxable limit or higher than that.

(b) IF AN ASSESSEE WHO HAS NEVER OPTED THE PROVISIONS OF 44AD

- In this case if an assessee who has never opted the provisions of sec 44AD of the Act will not be required to get his books of accounts audited if his turnover is below Rs.1 crore even if he is declaring profits below 8% or 6% of turnover, because sec 44AD(4) of the Act is not applicable in his case. Two of the 3 conditions mentioned on combined analysis of sec 44AA(2), 44AB(e) and 44AD(4) are not satisfied in this case i.e. assessee has not declared income u/s 44AD in any previous year and assessee has not failed to opt sec 44AD in subsequent 5 years. It does not matter whether the income is below the basic exemption limit or higher than the basic exemption limit. This will be applicable for the person not only in the first year, rather in later years also. If in later years he has not declared income u/s 44AD even once, he would not be required to get books of accounts audited even his profits are below the rates provided in sec 44AD provided turnover is below Rs.1 crore.

A.Y.	Turnover (Rs.)	Income/ Profits	Maintenance Accounts of	Audit of Books
2016-17	1,35,00,000	4,00,000	Yes	Yes 44AB(a)
2017-18	2,50,00,000	5,50,000	Yes	Yes 44AB(a)
2018-19	1,25,00,000	3,00,000	Yes	Yes 44AB(a)
2019-20	80,00,000	3,25,000	Yes 44AA(2)(i)	No
2020-21	50,00,000	1,75,000	Yes 44AA(2)(i)	No
2021-22	75,00,000	4,25,000	Yes 44AA(2)(i)	No

From the above table it is clear that under this situation, assesseees 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 year.

(c) A PERSON WHO HAS OPTED FOR SEC 44AD(1) IN ANY OF THE PREVIOUS YEAR AND IN SUBSEQUENT 5 PREVIOUS YEARS, DECLARES PROFITS TO BE LOWER THAN THE 8% OR 6% OF TURNOVER:

- In such a situation, if a person who has opted presumptive taxation in the previous year and he can opt for the same in the current year also. But in case he does not want to opt the provisions of presumptive taxation, he will be liable to maintain books of accounts and get them audited under section 44AB(e) of the Act
- In previous year 2018-19, the person has opted out of sec 44AD(1). Therefore in next 5 previous years i.e. upto P.Y. 2023-24, he is compulsorily required to get books of account audited u/s 44AD(e) irrespective of profits declared. It is to be noted that in P.Y. 2020-21, the income of the assessee is below the taxable income, the person is not required to get his books of accounts audited.

Previous Year	Turnover (in Lacss)	Profit %	Whether cash Receipts/Payments up to 5% of total receipts/ payments	Whether income above basic exemption limit	Whether audit required?
2017-18	80	9%	Yes	Yes	No
2018-19	75	5%	No	Yes	Yes [Sec 44AB(e)]
2019-20	62	10%	Yes	Yes	Yes[Sec44AB(e)]
2020-21	48	4%	Yes	No	No
2021-22	99	7%	No	Yes	Yes [Sec 44AB(e)]

Note- The exemption from audit if cash receipts are upto 5% of total receipts and cash payments are up to 5% of total payments is not applicable if turnover is upto 1 crore. The proviso for exemption from audit is given below the clause (a) of Sec 44AB i.e. only in cases where turnover is above Rs.1 crore. The method of receipts and payments is irrelevant if the turnover is less than or equal to Rs.1 crore

(d) NO AUDIT IS REQUIRED IF TURNOVER IS UP TO RS.1 CRORE AND TAXABLE INCOME IS BELOW EXEMPTION LIMIT

The assessee is bound to get the books of accounts audited, if the following two conditions are satisfied:-

- a.** Earlier assessee has declared income u/s 44AD in any previous year and assessee do not declare income as per sec 44AD in any of next 5 A.Y.s in which he first declared income as per sec 44AD.
- b.** The total income of the assessee exceeds the maximum amount which is not chargeable to income tax
 - To claim the benefit of above sec 44AD(5), firstly we have to see the meaning of total income. As per sec 2(45) of the Act, Total income means the total amount of income referred to in section 5 computed in the manner laid down in the Act. Thus total income for the purpose of Sec 44AD(5) would be determined as under :
 - i) Income from all heads of income be aggregated after adjusting for brought forward losses, unabsorbed depreciation, etc. and after excluding exempt incomes;
 - ii) From the resultant, amount eligible for deduction under Chapter VI-A will be deducted.
 - iii) Balance will be total income for the purposes of section 44AD(5)
 - If the total income is below the maximum amount not chargeable to tax in the case of assessee then the assessee will not be required to maintain books and get them audited if he declares profit from eligible business lower than that deemed under section 44AD.
 - Further, if any individual/HUF has incurred loss, then also there is no need to maintain books and to get them audited

(e) NO AUDIT OF A PERSON OTHER THAN RESIDENT INDIVIDUAL/HUF/PARTNERSHIP FIRM

- 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 there:
 - gross receipts during the year does not exceed Rs.1 Crore,
 - they report profit lower than the presumptive rate of 6 percent or 8 percent as the case may be, and
 - their taxable income exceeds maximum amount of taxable income not chargeable to tax.

(f) 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 assessee 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(1) and have earned any income as commission or brokerage, then he can file income with lower profits without getting its books of account audited.

B. WHEN BUSINESS TURNOVER IS EXCEEDING RS.1 CRORE BUT UPTO RS.2 CRORE

(a) New business started during the previous year

- In such a situation, if a person has cash receipts and payments less than 5% then by virtue of the proviso to sec 44AB(a), he is not required for tax audit. But if his cash receipts and payments from business are more than 5% then he is liable for audit under section 44AB(a) of the Act. In both the cases, he has to maintain the books of account . It is also open to the person who has turnover upto Rs.2 crores to declare profits @8% or 6% of the turnover. In such a situation that person will not be liable for audit and maintenance of books of accounts.

Example: Mr. X has started a new business in P.Y. 2020-21 and has turnover of Rs. 1.5 crore. Whether he will be liable for audit u/s 44AB?

- If the cash receipts and payments from business of Mr. X are more than 5% then he is liable for audit under section 44AB(a) of the Act. Since his turnover is upto Rs. 2 crores he has a option to declare profits @8% or 6% of the turnover. In such a situation that person will not be liable for audit and maintenance of books of accounts. If the cash receipts and payments from business of Mr. X are less than 5% then he will not be liable for audit.

(b) A person who has opted presumptive taxation during any of the previous year

- In such a situation, if a person who has opted presumptive taxation in the previous year and he can opt for the same in the current year also. But in case he does not want to opt the provisions of presumptive taxation, he will be liable to maintain books of accounts and get them audited under section 44AB(e) of the Act. It does not matter whether his transactions are less than or more than 95% in any mode other than cash. In this connection, it is to be noted that the proviso to section 44 AB(a) is not applicable to section 44AB(e) of the Act.

Example: Mr. X is engaged in a business of trading of goods. During FY 2019-20 relevant to AY 2020-21, he reported Total turnover of the business as Rs.1.45 Crore, entire sales were made in cash. Mr. X computed profit from the aforesaid business to be Rs.6.80 Lakh 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. X is required to get his accounts audited u/s 44AB ?

- Mr. X is required to get his accounts audited u/s 44AB(e) of the Act as he had claimed profit from business less than deemed income u/s 44AD i.e., actual income of Rs.6.80 Lakh is less than deemed income of Rs.11.6 Lakhs (8% of 1.45 Crore). Whereas, total income of assessee for the FY 2019-20 exceeds the maximum amount not chargeable of tax. {Section 44AD(5)}
- Also, Mr. X Shall not be allowed to avail the benefit of presumptive taxation for next 5 assessment years as well i.e., AY 2021-22 to AY 2025-26 as he was eligible for opting for presumptive taxation u/s 44AD for A.Y. 2020-21 but had not opted for the same [Section 44AD(4) r.w.s. 44AB(e)].

(c) A person who has not opted presumptive taxation in any of the previous year

- If a person who has not declared profits u/s 44AD in any previous year and for the current financial year he does not want to opt the provisions of the presumptive taxation then he would be liable for audit under sec 44AB(a) of the Act. If he wants to opt the provisions of presumptive taxation then he is not liable to maintain books of accounts and get them audited.

(d) A person having income below the basic exemption limit

- In such a scenario, the following situations may emerge

If a person who has declared profits u/s 44AD in any of the preceding previous year, and he does not want to opt the provisions of presumptive taxation for the current year. His total income is below the exemption limit, even then the audit would be conducted as per the provisions of sec 44AB(a). In such a situation, he can take the benefit of proviso to section 44AB(a).

- If a person who has failed to opt the provisions of presumptive taxation under section sec 44AD(1) and his income is above the basic exemption limit, then he will be required to get his books of accounts audited u/s sec 44AB(e) even if he declares profits above 8% or 6% of turnover.

(e) A Person who has received commission during the year

- A restriction under section 44AD(6) of the Act has been imposed that a person receiving any commission or brokerage cannot opt for the provisions of presumptive taxation. If it is the first year of business and the person receives any commission then he cannot opt the benefits of presumptive taxation. That person will have to get his books of accounts audited under section 44AB(a) of the Act. In such a case, the assessee can avail the benefit of proviso to the section 44AB(a) of the Act.
- 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.

(f) Professional firms falling under this category whether they are 95 or not have audit and accounts because the proviso is applicable to sec 44AB(a) of the Act.

- This can be understood with the help of an example. Mr. X has started business on 01.04.2019.

Previous Year	Turnover (in Lacss)	Profit %	Whether cash Receipts/Payments up to 5% of total receipts/ payments	Whether income above basic exemptio n limit	Whether audit required?
2019-20	150	5%	Yes	Yes	No [Proviso to sec 44AB]
2020-21	140	5%	No	No	Yes [44AB(a)]
2021-22	120	10%	Yes	Yes	No
2022-23	175	4%	No	No	Yes [44AB(a)]
2023-24	175	4%	Yes	yes	Yes [44AB(e)]

C. When business turnover exceeding Rs.2 crore but upto Rs.10 crore

- As per the proviso to section 44AB (a), in cases where the aggregate cash receipts and aggregate cash payments made during the year from business does not exceed 5% of total receipt and total payment respectively the assessee is not liable to get his books of accounts audited under section 44AB(a) if his turnover does not exceed Rs.10 crores. However if the less than 95% of the business transactions is done through banking channels, the assessee is liable to get his books of accounts audited. This provision is only applicable if the assessee is engaged in a business and not in a profession. A person engaged in a profession is liable to get his books of accounts audited under section 44AB(b) if his turnover exceeds Rs.50 Lakhs.

D. When business turnover exceeding Rs.10 crore

- A person engaged in business whose turnover exceeds Rs.10 crores is liable to get his books of accounts audited under section 44AB even if more than 95% of the business transactions is done through banking channels. It is to be noted that the proviso to section 44AB(a) is only applicable to a person engaged in a business. A person engaged in a profession is liable to get his books of accounts audited under section 44AB(b) if his turnover exceeds Rs.50 Lakhs.

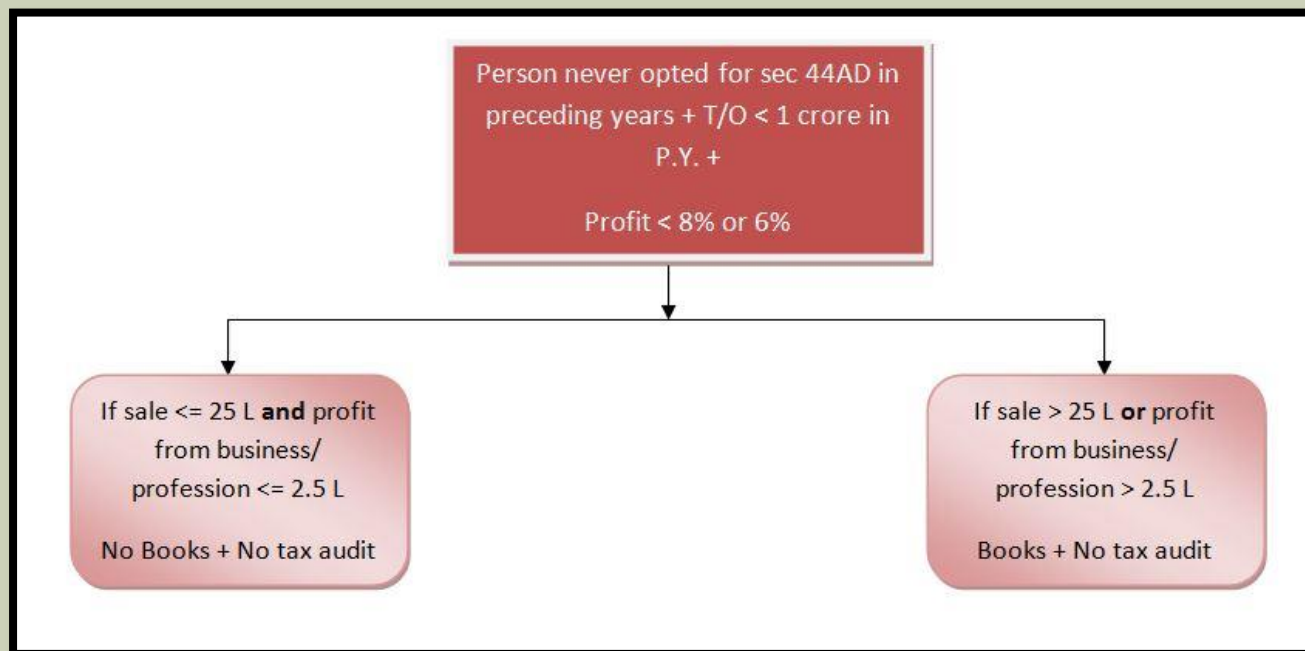
COMPREHENSIVE TABLE COVERING ALL SITUATIONS IN THE INTERPLAY OF SEC 44AA, 44AB AND 44AD:

Case	Turnover	Whether total income below exemption limit	Whether cash receipts/ payments upto 5% of total receipts/ payments	Whether opted for Sec 44AD in any of the preceding year	Rate of profits declared as %age of turnover	Whether required to maintain books u/s 44AA(2)	Whether required to get books of accounts audited
A (a)	Up to Rs.1 crore	Yes	Irrelevant	No	8%	Note 1	No
(b)	Up to Rs.1 crore	No	Irrelevant	Yes	4%	Yes	Yes
(c)	Up to Rs.1 crore	Yes	Irrelevant	No	4%	Note 1	No
(d)	Up to Rs.1 crore	No	Irrelevant	Yes, But opted out from Sec 44AD in any of the preceding 5 years	10%	Yes	Yes u/s 44AB(e)
(e)	Up to Rs.1 crore	Yes	Irrelevant	Yes	4%	Note 1	No
B (a)	Rs.1 crore- Rs.2 crores	No	Yes	No	5%	Yes	No [Proviso to Sec 44AB(a)]
(b)	Rs.1 crore- Rs.2 crores	Yes	No	Yes	5%	Yes	Yes u/s 44AB(a)

COMPREHENSIVE TABLE COVERING ALL SITUATIONS IN THE INTERPLAY OF SEC 44AA, 44AB AND 44AD:

(c)	Rs.1 crore- Rs.2 crores	Yes/ No	No	Yes	9%	Yes	No
(d)	Rs.1 crore- Rs.2 crores	No	No	Yes, But opted out from Sec 44AD in any of the preceding 5 years	10%	Yes	Yes u/s 44AB(e)
(e)	Rs.1 crore- Rs.2 crores	Yes	No	Irrelevant	5%	Yes	Yes u/s 44AB(a)
C (a)	Rs.2 crores- Rs.10 crores	Irrele vant	Yes	Irrelevant	Irrelevant	Yes	No [Proviso to Sec 44AB(a)]
(b)	Rs.2 crores- Rs.10 crores	Irrele vant	No	Irrelevant	Irrelevant	Yes	Yes, Sec 44AB(a)
D	Above Rs.10 crores	Irrele vant	Irrelevant	Irrelevant	Irrelevant	Yes	Yes

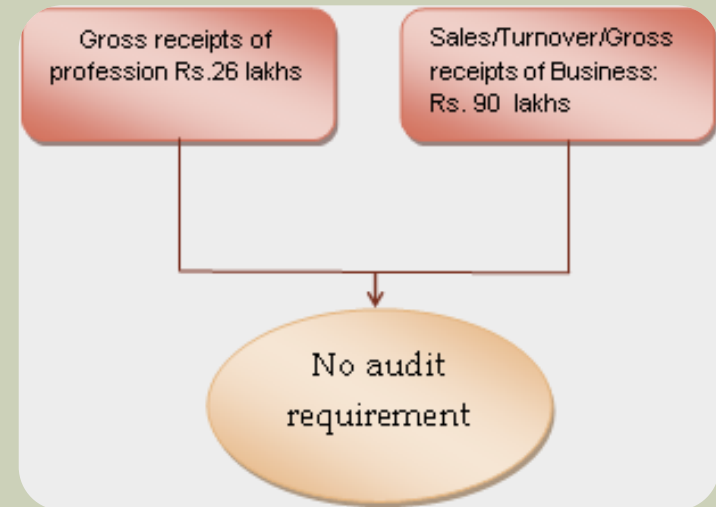
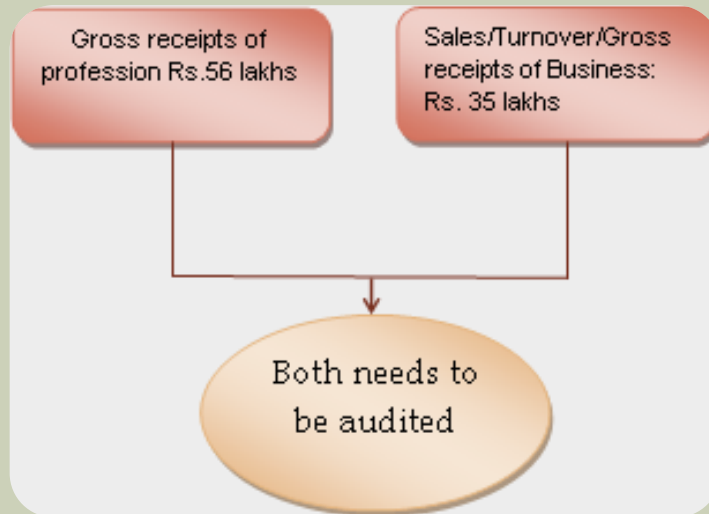
- From combined study of sec 44AA, 44AB and 44AD, we can conclude:



APPLICABILITY OF TAX AUDIT AND PRESUMPTIVE TAXATION IN CASE A PERSON IS CARRYING ON BOTH BUSINESS AND PROFESSION

- **Case where the receipts from any of his business or profession are exceeding the limits specified under Sec 44AB**
- In such a case if his professional receipts are, say, rupees fifty six lacs but his total sales, turnover or gross receipts in business are, say, rupees thirty five lacs, it will be necessary for him to get his accounts of the profession and also the accounts of the business audited because the gross receipts from the profession exceed the limit of rupees fifty lacs. If however, the professional receipts are, say, rupees twenty six lacs and total sales turnover or gross receipts from business are, say, rupees ninety lacs it will not be necessary for him to get his accounts audited under the above section, because his gross receipts from the profession as well as total sales, turnover or gross receipts from the business are below the prescribed limits.

■ Para 5.20 of Guidance Note of ICAI



- A person who is running an eligible business can opt to pay tax under the presumptive taxation scheme as per sec 44AD. However, his gross receipts or turnover should not exceed Rs.2 crores during the year and depending upon the nature of receipts, the tax will be charged on 8% or 6% on the turnover. If a person is carrying on profession, then a specific provision 44ADA can be opted by him for payment of tax on a presumptive basis. The person should be an eligible assessee as per sec 44ADA and his gross receipts or Turnover during the year should not exceed Rs.50 lacs. 50% of the above Turnover will be subject to tax under 44ADA. But in some cases an assessee is doing both business and profession simultaneously.
- It is often seen that architects/interior designers [profession referred in Section 44AA(1)] also supply material, labour, etc. under their own name or carry on such contractor business in addition to the profession referred above. So, in such cases, these persons cannot avail the benefit of Section 44AD for contractor business or for turnover from supply of material because they are also engaged in profession as referred above and such profession is outside the purview of this scheme as referred to in subsection (6) of section 44AD. Same will be the case of doctors/medical professionals who are providing medical, nursing home, medical consultation (OPD) services and in addition to that are also carrying on business activities like medical supplies, supply of surgical goods etc.

Example: Mr. X is a medical practitioner, having clinic and medical shop. His turnover/gross receipts are as under:

Fees from Profession - Rs.40 lacs

Sales in medical Shop- Rs.70 lacs

Advise whether sec 44AB / 44ADA is applicable to him.

■ Every person -

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ; Or

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

■ In the present case tax audit is not applicable as the gross receipts from profession and sales from business is below threshold limits specified u/s. 44AB(b) and 44AB(a).

WHETHER A PARTICULAR ACTIVITY CAN BE CLASSIFIED AS 'BUSINESSES' OR 'PROFESSION' WILL DEPEND ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

- The term "business" is defined in section 2(13) of the Act, as under: "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The word 'business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only. Whether a particular activity can be classified as "business" or "profession" will depend on the facts and circumstances of each case. Barendra Prasad Roy v ITO[1981]129ITR295(SC) Sec 2(36) defines profession to include vocation. The profession is not defined under the Act except in section 44AA (1) for maintenance of Books of account which are listed as under: - The expression "profession" involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale, of commodities. SC has stated "The expression 'profession' involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale, of commodities." • CIT Vs. Manmohan Das (Deceased)[1966]59ITR699(SC), • CIT Vs. Ram Kripal Tripathi [1980]125ITR408(All).

- From the reading of the above section, it is clear that a person who is a specified professional cannot opt sec 44AD of the Act, but there is no bar for such persons to opt sec 44ADA on their professional income .It is to be noted that in sec 44ADA of the Act there is no restriction regarding the opting for presumptive taxation. It is important to know the intent of the law makers. If such professions or other specified businesses as referred in Section 44AD(6) were also provided, by way of an exception, in the definition of “eligible business” along with the business referred in Section 44AE, instead of subsection (6) then such professions and specified businesses would have been able to avail the benefit of Section 44AD in respect of businesses like contractor business, medical supplies, patient room rent, etc. as now it will also fall under “eligible business”

Example: Whether the following persons would be considered to be engaged in business or profession for the purposes of Section 44AD and Section 44ADA

- Mr. A is a yoga teacher
- Mr. B is cost accountant
- Mr. C is a Chartered Accountant engaged in running coaching classes is business or profession
- Mr. D is a software developer who prepares and sells computer software to companies.
- Mr. E is an astrologer

Mr. A	Yoga teacher is not a specified under section 44AA(1). So income from yoga classes would be considered as business income and he shall be eligible for section 44AD if his turnover is less than Rs.2 crores.
Mr. B	Cost accountant is not a specified profession under section 44AA(1). So his income would be considered as business income and he shall be eligible for section 44AD if his turnover is less than Rs.2 crores.
Mr. C	Income from coaching classes run by a Chartered Accountant is a return from professional activity. Profession includes vocation and teaching is a vocation
Mr. D	Preparing a software and selling the same to others is a business activity. In this case the professional skills are utilised for commercial purposes.
Mr. E	An Astrologer is not a specified under section 44AA(1). So income of Astrologer would be considered as business income and he shall be eligible for section 44AD if his turnover is less than Rs.2 crores.

- **Conclusion:** In the nutshell we can conclude that the provisions of Section 44AD would be applicable on person having business income or professional income from non-specified professionals under section 44AA(1). There are two different schools of thought regarding income of non-specified professionals.
- **First School of Thought-** Sec 44ADA of the Act deals with professional income of persons specified u/s 44AA(1) of the Act. Sec 44AD(6) restricts application of sec 44AD to specified professionals u/s 44AA(1). No restriction has been provided under section 44AD regarding the professions not specified u/s 44AA(1). Hence, the professions not specified u/s 44AA(1) are also eligible for availing benefit of sec 44AD of the Act.
- **Second School of Thought-** Some professionals are of the view, that though sec 44AD(6) does not restrict non-specified professionals, but they are not eligible to claim the benefit of declaring profit at the rate of 8%/ 6% of their receipts. Rather, they should maintain proper books of accounts and declare their income accordingly.
- Due to the above divergent views, some clarification from Central Board of Direct Taxes is required in this regard.

INTERPLAY OF SEC 44AD AND 44ADA OF THE ACT

- In a case, where a person carries on both business and profession, he can opt the presumptive taxation in case of his professional income u/s 44ADA of the Act and he cannot opt the presumptive taxation on his business income by virtue of sec 44AD(6) of the Act. It implies that a person who carries on both business and profession cannot opt sec 44AD and 44ADA of the Act simultaneously. Following are some of the practical scenarios which might arise where a person will be engaged in both business and profession
- **Person A** is a doctor carrying on his medical practice (eligible u/s 44AA) and simultaneously selling medicines (business u/s 44AD)
- **Person B** is an architect engaged in providing blueprints to buildings (eligible u/s 44AA) and simultaneously selling cement (business u/s 44AD)
- **Person C** is engaged in interior decoration (eligible business u/s 44AA) and simultaneously selling other fashionable household items (business u/s 44AD) an eligible assessee as per sec 44ADA and he will be carrying an eligible business u/s 44AD.
- **Person D** is a teacher (not eligible u/s 44AA) and simultaneously has a book publishing business (business u/s 44AD).
- **Person E** is a teacher (not eligible u/s 44AA) and simultaneously has a bakery (business u/s 44AD).

Person	Business Turnover	Gross Receipts of Profession	Total	Type of Profession	Is Sec. 44AD Applicable?	Is Sec. 44ADA Applicable?
A.	60 Lacs	35 Lacs	0.95 Cr	44AA	No	Yes
B.	2.85 Cr	32 Lacs	3.17 Cr	44AA	No	No
C.	75 Lacs	65 Lacs	1.4 Cr	44AA	No	No
D.	90 Lacs	35 Lacs	1.25 Cr	Non 44AA	Yes	No
E.	1.60 Cr	45 Lacs	2.05 Cr	Non 44AA	No	No

Now let us discuss the reason for applicability/ non applicability of Sec. 44AD/ 44ADA in the above cases :

- **Person A** - The gross receipts from business as well as from profession are below the threshold limit of Sec. 44AD/44ADA but still he is only eligible for presumptive taxation U/s 44ADA because as per section 44AD (6), a person who is a specified professional cannot opt sec 44AD, but there is no bar for such persons to opt for sec 44ADA on their professional income. It is to be noted that in sec 44ADA there is no restriction regarding the opting for presumptive taxation.
- **Person B** - The gross receipts from business exceed the threshold limit of Sec 44AD but the professional receipts are within the specified limits. But still it cannot opt for Sec. 44ADA because it will be necessary for him to get his accounts of the business and also the accounts of the profession audited because the gross receipts from the business exceed the limit of 2 Cr.
- **Person C** - The professional receipts exceed the threshold limit of Sec 44ADA of the Act but the business receipts are within the specified limits. But still it cannot opt for Sec. 44AD of the Act because as per section 44AD (6) of the Act, a person who is a specified professional cannot opt sec 44AD of the Act.
- **Person D** - Both the gross receipts from business and the professional receipts are within the limits specified under section 44AD/44ADA of the Act. But it can only opt for presumptive under section 44AD of the Act and not under Sec. 44ADA of the Act because the profession is not a specified profession as per section 44 AA(1) of the Act. He is entitled to opt sec 44AD of the Act on the total turnover of Rs. 1.25 crores.
- **Person E** - Both the gross receipts from business and the professional receipts are within the limits specified under section 44AD/44ADA. But it cannot opt for presumptive taxation under section 44AD /44ADA because the profession is not a specified profession as per section 44 AA(1) . Also the combined receipts from the business and non-specified profession exceed the threshold limit. Let us discuss this point in detail.

PRESUMPTIVE TAXATION DOES NOT CREATE A PRIVILEGED CLASS OF TAXPAYERS

- There is a misconception in the mind of business as well as professional community that if a person opts the provisions of presumptive taxation, then he is free to enjoy the difference between the actual profits and the presumptive profits. It is to be noted that the provisions of presumptive taxation are enacted to facilitate computation of total income and filing of return of income. It does not give a license to the assessee to declare lower income despite the assessee having a higher income. The law is not creating a privileged class out of such assessees, but only is providing a window of concession for a limited purpose. It is to be noted that whenever the law provides any concession for its rigors, the observance and satisfaction of the qualifying criteria are presumed and section 44AD would not operate to curtail the scope of section 2(24) read with section 5 of the Act. The assessee must keep in mind that where they admittedly earn a higher income, they would be liable to be assessed on that basis and presumptive profits shall have no application. The assessee is legally bound to return higher income if the same is higher than the benchmark given. To understand this concept, first of all we have to study the relevant portion of the section 44AD and 44ADA which are relevant.

- From the study of the above three sections, one thing is apparent that under section 44AD and Section 44ADA, an assessee can declare the presumptive profits or an higher amount of profits as claimed by the assessee. These two profits may be less than the actual profits. In this context we must understand that under presumptive taxation there are three kinds of profits- Firstly presumptive profits, secondly the profits claimed to have been earned by the assessee and thirdly the actual profits of the business. If the assessee declares minimum presumptive profit then he is not required to maintain books of accounts and get them audited. But if we see the provisions of section 44AE, which gives only two options to the assessee which is- presumptive profits or actual profits- whichever is higher.. The lawmakers have very rightly enacted the provisions of section 44AD and section 44ADA with the words “as claimed to have been earned by assessee”. If the lawmakers had used the words actual profits-as given in section 44AE then the purpose of section 44AD and section 44ADA shall be defeated because to compute the actual profits the assessee must maintain books of accounts. However, it can be easily seen that the phrase, “*whichever is higher*” is absent in the amended section 44AD which is a distinctive feature of the amended section 44AE. In sec 44AD and sec 44ADA the word “or as the case may be” which has been defined in legal lexicon as ‘whichever the case may be’.

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 free to enjoy the gap between presumptive profits and actual profits. 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 him to make such addition. Further, the words used are “higher income claimed to have been earned by the assessee”. It is to be clarified 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 statute, he is not entitled to do so. Another pertinent point is that if 8 per cent of gross receipts are 'deemed' income of the assessee, the remaining 92 per cent are also 'deemed' expenditure of the assessee. Meaning thereby that actual expenditure may not be 92 per cent of gross receipts, only for the purposes of taxation, it is considered to be so. To take it further, it can be said that the expenditure may be less than 92 per cent or it may also be more than 92 per cent of gross receipts. It means that the assessee has incurred the expenditure of 92 percent for earning the presumptive profits of 8 percent. The point to be noted is that 92 percent has been expended and 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

CASE 1. WHEN ACTUAL PROFITS IS LESS THAN PRESUMPTIVE PROFITS

- In this case if the assessee wants to opt for the actual profits then he has to maintain books of accounts and get them audited. On the other hand if the assessee opts for presumptive profits then he is not required to maintain books of accounts.
- Now, a question arises that if an assessee opts for presumptive taxation, when the actual profits are less than presumptive profits, then the actual profit will be added in the capital account of the assessee. In this context it is to be noted that he has opted the provisions of presumptive taxation to avoid the maintenance of books of accounts and its audit. His capital account will be credited with the actual profits earned by him during the year. The reason is very simple that the system of presumptive taxation does not override the system of actual accounting. Presumptive taxation is a method to compute the profits and gains in a simpler manner for taxation purposes and not for maintenance of books.

- **Example:** Mr. A has turnover of Rs.1.2 Cr for the FY 20-21 and his actual profits is Rs.5,20,000. But in such a case his presumptive profit will be 9,60,000. The assessee opts for presumptive taxation and declares his income @8%. In his books of accounts, the profits amounting to Rs.5,20,000/- will be credited to the capital account. Though, he will declare profits of Rs.9,60,000 in his return of income, the profits in books will be Rs.5,60,000 only.

CASE 2: WHEN ACTUAL PROFITS ARE MORE THAN PRESUMPTIVE PROFITS

- There may be situation when assessee is earning profit more than presumptive taxation profits. In such a situation if an assessee declare profit under presumptive tax then @ 8% or 6% as the case maybe, AO can assess correct income on the basis of investment if they have sufficient documentary evidence which may be available during survey, search & assessment proceeding. AO can bring to tax the higher income in such cases.
- In this case, there will be two situations which will depend on whether the assessee is maintaining books of accounts or not. If he is maintaining books of accounts, then he is obliged to declare actual profits which are higher than the profits at presumptive rate. He cannot take the benefit of declaring lower profits, in spite of higher actual profits in books of accounts.
- Second situation is where the assessee is not maintaining books of accounts. In this case, the assessee has the option to declare profits at the presumptive rate or higher profits than that. Since, the books of accounts are not maintained, actual profits would not be available. The rates specified under sections- 6% or 8% or 50% are the benchmarks. The assessee can claim higher profits than these rates. If assessee declares profits at the rate of 10% of receipts, also implies that 90% of the receipts have been expended (ITAT Chandigarh in case of Nand Popli vs DCIT). The AO cannot question the expenditure upto 90% of receipts. However, some taxpayers are of the view that If they declare their savings and investment more than the amount of profits declared in their return. If the assessee has declared profits at the rate of 10% of receipts, he can deposit or make investment upto 10% of receipts only. The reason being, the assessee has claimed that he has expended 90% of the receipts. The AO cannot question the expenditure upto 90%, but he has right to assess the investment over and above the declared profits as income.

- **Example:** A doctor has gross receipts of Rs.45 Lacs. He has declared profits u/s 44ADA amounting Rs.24 Lacs. In actual, he has earned Rs.30 Lacs. He invested Rs.30 Lacs in an FDR. Whether he can claim that he has deposited the actual profits and the AO has no right to question since he has declared profits under presumptive scheme.
- The assessee cannot make investment of more than the declared profits. If he has declared 24 Lacs as profits, also implies that he has expended Rs.21 Lacs (Rs.45 Lacs - Rs.24 Lacs). In this case, the AO can make an addition of Rs.6 Lacs. Further, the assessee should have declared 30 Lacs as his profits, since the actual profits are known and are higher than the presumptive profits.

FROM ABOVE DISCUSSION, FOLLOWING POINTS CAN BE CONCLUDED

- An assessee filing the return of income is under an obligation to offer its correct and true income in accordance with the provisions of the Act.
- The presumptive scheme of taxation allows taxpayers to offer income higher than the prescribed rate. In short, it is the minimum rate u/s 44AD which has to be considered and higher income option is open for the taxpayers which have to be used if taxpayers have higher income.
- The powers of the AO are very wide & exhaustive. AO can assess correct income on the basis of investment if they have sufficient documentary evidence which is very much possible during survey, search & assessment proceeding. AO can bring to tax the higher income in such cases
- Though the presumptive scheme of taxation is introduced with an aim to relieve the taxpayers from the requirements of maintaining the books of accounts, however, it doesn't not relieve the taxpayers from justifying its investment sources. In short, it may not be taken as a permission to show lower income even if taxpayers are earning higher income.
- The concept of making disclosure in the ITR forms with respect to few Balance Sheet data in income tax returns seems to have been introduced with this concept only.
- Not offering true or correct income may even result in the application of section 69, 69A or section 69C of the Act if the investment or the expenditure is in excess of the returned income.
- Section 44AD does not give a license to the assessee to declare lower income despite the assessee having a higher income

INVOCATION OF SECTION 68 IF ASSESSEE IS OPTING FOR PRESUMPTIVE TAXATION

- The basic edifice of presumptive scheme u/s 44AD is assessee would not be called to maintain books under the Act and get them audited if profit shown by assessee is otherwise in accordance with prescription of section 44AD of the Act. But maintaining books of account is *sine qua non* for making addition under section 68. Since section 44AD does not obligate assessee to maintain books, provisions of section 68 could not be invoked where assessee had filed return of income under provisions of section 44AD without maintaining books of account.

The pre-requisites for invoking the provisions of section 68 are-

- (i) any sum is found credited in the books of an assessee.
- (ii) the assessee offers no explanation about the nature and source thereof.
- (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory.

MEANING OF BOOKS OF ACCOUNTS

- The “**books or books of account**” have been defined in section 2(12A) of the Act. The same reads as under :-
- *“2(12A) books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;”*
- The definition of books under the Act is inclusive. A perusal of the definition shows that the same does not include bank passbook or bank statement. A conjoint reading of above provisions would thus lead to the conclusion that the addition under section 68 can be made only where any amount is found credit in the books as defined under section 2(12A) of the Act maintained by the assessee.

WHETHER BANK PASS BOOK IS CONSIDERED TO BE BOOKS OF ACCOUNTS?

- It is to be noted that a bank passbook is not considered as books of account due to following reasons:
 - The relationship between the banker and the customer is one of debtor and creditor and not a trustee and beneficiary.
 - It is only a copy of the constituent's account in the books maintained by the bank.
 - It is not as if the pass book is maintained by the bank as an agent of the constituent.
 - Nor can it be said that the pass book is maintained by the bank under the instructions of the constituent.
- Balance sheet and profit and loss accounts are not Books of account. They are just byproducts
- Loose sheet or loose papers are not books of account.

INVOCATION OF SECTION 69C IF ASSESSEE IS OPTING FOR PRESUMPTIVE TAXATION

- If assessee opts for presumptive taxation it cannot claim any deduction of any expenditure including Depreciation. Since no deduction is allowed the AO is not permitted to add back the income as unexplained expenditure. It is to be noted that the provisions of section 69C of the Act are very clear that wherever the assessee fails to explain about the source of certain expenditure incurred during the year, the same may be deemed to be the income of the assessee.
- The crucial words in section 69C for the purposes of present appeal are 'any financial year an assessee has incurred any expenditure'. But can one say on the facts and circumstances of the present case that the assessee has 'incurred' any expenses. From an analysis of section 44AD it has already been held that the assessee had not incurred the expenses to the extent of 92 per cent of the gross receipts. Therefore, in the present case, the provisions of section 69C cannot be applied. Asking the assessee to prove to the satisfaction of the Assessing Officer, the expenditure to the extent of 92 per cent of gross receipts, would also defeat the purpose of presumptive taxation as provided under section 44AD or other such provision.

INVOCATION OF SECTION 69C IF ASSESSEE IS OPTING FOR PRESUMPTIVE TAXATION

- Since the scheme of presumptive taxation has been formed in order to avoid the long drawn process of assessment in cases of small traders or in cases of those businesses where the incomes are almost of static quantum of all the businesses, the Assessing Officer could have made the addition under section 69C, once he had carved out the case out of the glitches of the provisions of section 44AD. No such exercise has been done by the Assessing Officer in this case.

COMPILATION OF JUDICIAL PRONOUNCEMENTS

- **[TS-8499-ITAT-2019(Cochin)-0]** Section 44AD exempts the assessee from maintenance of books of accounts, and asking assessee to prove to the ao's satisfaction expenditure to the extent of 92% of gross receipts/ deposit would defeat the purpose of presumptive taxation u/s 44AD or other such provision; ITAT rules in assessee's favour, notes the contradiction: if the income is estimated, how could the expenditure component on the basis of said income be considered to have been 'actually incurred'? It is only presumption that 92% of gross receipts was incurred as expenditure; ITAT holds that section 69A of the act cannot be applied as neither AO nor CIT(A) have given any reason as to why section 44AD is not applicable;
- **[TS-6983-ITAT-2019(Kolkata)-0]** Presumptive taxation u/s 44AD - can addition be made u/s 68 when income/ profit is estimated - neither AO nor CIT(A) have given any reason as to why s. 44AD is not applicable; ITAT holds that AO cannot examine statement of accounts in such cases, or make additions towards undisclosed purchases, undisclosed expenditure, undervaluation of closing stock, etc. The turnover declared by the assessee is accepted by the revenue, and such additions go against the spirit of the act

COMPILATION OF JUDICIAL PRONOUNCEMENTS

- **[TS-6380-ITAT-2019(DELHI)-0]**- cash deposit during demonetization period - ITAT: insufficient evidence to consider sales as bogus or to make addition of cash in hand - ITAT notes that assessee, a small trader, declared return of income under presumptive provisions u/s 44AD and case was selected under limited scrutiny for cash deposit during demonetization period from 09.11.2016 to 30.12.2016; the fact that during assessment, the assessee submitted a copy of his balance-sheet does not prove that the assessee maintained books of account; AO made addition u/s 68 on account of unexplained cash credits due to bogus sales; on appeal, CIT(A) restricted addition to the extent of cash in hand, which was considered as unaccounted; ITAT ruled in assessee`s favour and delete the entire addition, notes that “if there is no creditor in the books of account and no books of account have been maintained, there is no question of considering it to be cash credit”; assessee had filed details of sales & purchase before AO giving names, telephone number and address of parties; held that if the AO had any doubt, he could have made direct inquiry; ITAT held that there was no justification to consider the assessee’s sales to be bogus or to make addition of cash in hand as per details submitted; AO did not bring any sufficient evidence on record to justify the addition;
- **[Ts-8316-itat-2019(hyderabad)-o]** merely because of cash deposits in bank account during demonetization period (nov-dec 2015), cash in hand as on 31-03-2016 cannot be doubted - ITAT notes that assessee is engaged in money lending business and therefore cannot be expected to be without any cash in hand at the end of the relevant assessment years (ays); the assessee has been showing closing balance of cash in hand even for the earlier ays and sundry debtors were shown in the balance sheet ended 31st march, 2015,

- Hence cash flow statement demonstrates the sources of the funds with the assessee; ITAT further notes that the return of income filed by Assessee has been accepted by the Department and was not picked up for scrutiny; ITAT deletes the addition, holds that cash in hand of as on 31-03-2016 cannot be doubted;
- **[TS-8936-ITAT-2017(Mumbai)-0]** ITAT upholds CIT(A)'s order, sets aside addition u/s 69 for cash deposits in bank account; AO treated the deposits as unexplained investment, as return of income was filed in ITR-2 wherein there is no option for offering income u/s 44AD, and had also offered income under the head income from other sources; the CIT(A) deleted the addition by observing that *merely because option to offer income u/s 44AD is not present in Form ITR-2 was no reason for rejecting the appellant's return*; the CIT(A) applied presumptive rate of tax of 8% on cash deposited; ITAT notes that AO, in the preceding AY 2010-11, has accepted the assessee's aforesaid claim and the CIT(A)'s finding that cash deposits are from his cosmetics and merchandise business, set aside addition u/s 69; ITAT cautions assessee that **"he should not take advantage of his ignorance by repeatedly committing same mistake. If he intends to avail the benefit of presumptive tax u/s 44AD, he has to comply with requirement of the relevant statutory provisions"**

COMPARATIVE STUDY OF SECTION 44AD AA ADA AND 44AE

PARTICULAR	44 AD	44 ADA	44 AE
Eligible Assessee	Individual/HUF/Firm (Other than LLP)	Resident assessee being an individual or a partnership firm other than a limited liability partnership	Any person
Eligible Business	Any Business except 44 AE	Profession referred in 44AA	Plying, hiring or leasing good carriages
Applicability	Turnover or gross receipts should not exceed 2 Crores. Person should not be engaged in agency business or in commission or brokerage or Profession referred in 44 AA	Gross receipts should not exceed 50 Lacs.	No. of vehicles own should not exceed 10 at any time during the previous year
Presumptive Income	8% or 6%	50 %	7500/Month or part of the month 1000 Per Ton.
Interest and Remuneration	Not allowed	Not allowed	Allowed
Applicability of 44 AB	If 44AD(4) get attracted and Total Income Basic Exemption	Income offered is less than 50% and total income exceeds Basic Exemption limit	Income offered is less than the presumptive Income
Higher Income	Claimed to have been earned	Claimed to have been earned	Actually Claimed to have been earned
Advance tax	Applicable	Applicable	Silent Applicable
Number of installments	100% in the last installment	100% in the last installment	Silent all 4 installments
Applicability to Non-Resident	Not applicable	Not applicable	Applicable

Thank You

In case of any doubt or query, readers are requested to approach the author at ca.rskalra@yahoo.com. Author requests for the suggestion and feedback from the readers for making it better.

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