



# **NATIONAL CONFERENCE ON INCOME TAX & TAX AUDIT (VIRTUAL) ICAI - WIRC**

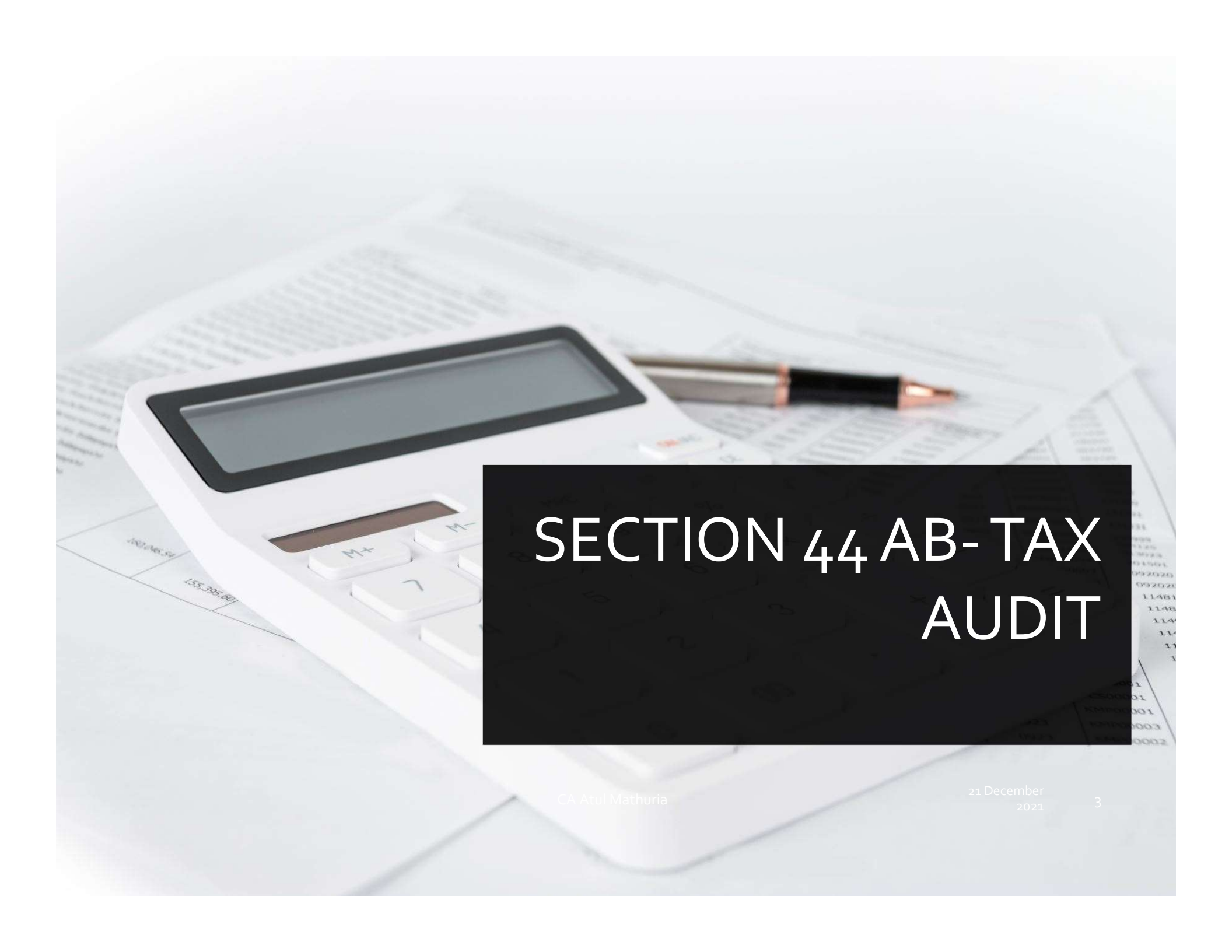
**Overview of Tax Audit Provisions – Legal Issues in  
Applicability of Tax Audit u/s. 44AB, 44AD and 44ADA in  
presumptive Taxation Cases**

**CA Atul Mathuria**

21<sup>st</sup> December 2021

# PROPOSED COVERAGE

- Overview of Tax Audit Provisions
- Legal Issues in Applicability of Tax Audit u/s. 44AB and in Presumptive Taxations u/s. 44AD and 44ADA
- Calculation of Limits w.r.t. recent amendments as applicable for the AY2021-22



# SECTION 44 AB-TAX AUDIT

# SECTION 44AB – TAX AUDIT

Tax Audit Provisions are applicable to:

- If Gross Receipts / Turnover exceeds the prescribed limit, in case of :
  - Business
  - Profession
- In case of a person who wants to declare income below the Presumptive Tax Limit

# SECTION 44AB – TAX AUDIT

Various Clauses under which Tax Audit is to be carried out:

- 1) Business (44AB(a)) – Turnover over above Rs. 1 Crore (Rs. 10 Crores in certain cases if less than 5% of the total Receipts and Payments are in Cash)
- 2) Profession (44AB(b)) – Receipts over Rs. 50 lacs

## SECTION 44AB – TAX AUDIT

When Taxable Income is Declared below  
Presumptive Tax Rates

- 3) Business (44AB(c)) – Who declares income less than prescribed limit prescribed u/s. 44AD, 44AE (Goods Carriage), 44AF (Retail Business), 44BB (NR in Exploration of Mineral Oil etc. and 44BBB (Foreign Company in Civil Construction etc.)
- 4) Profession (44AB(d)) – Declaring income less than prescribed limit of 50% u/s. 44ADA

## SECTION 44AB – TAX AUDIT

- 5) Business (44AB(e)) – Provisions of Section 44AD(4) are applicable (Who has opted out of the presumptive tax scheme) (If provision of 44AD(4) is applicable and the income exceeds the maximum amount not chargeable to tax in the previous year)

# APPLICABILITY OF TAX AUDIT W.E.F. AY 2021-22

- Section 44AB – Amendments w.e.f. 01 April 2021 (AY 2021-22)
- Proviso to 44AB (a) – Conditional increase of limit from Rs. 1 crore to Rs. 10 crore
  - Aggregate of all amounts received **including** Sales/ Turnover / Gross Receipt in cash – Does not exceed 5% of said amount, **and**
  - Aggregate of all payments made **including** expenditure in cash – Does not exceed 5% of said amount
- No Change in limit for Professionals – 50 Lakhs



## SECTION 44AB – PURPOSE

- The main purpose of Tax Audit is to ensure that the assessee does not claim deductions which are not allowable under the Act and that his taxable income is properly determined.
- The “Business” should be a business which yields income taxable under the Act

## LEGAL PROPOSITIONS

- It is a well settled principle of law that statutory provisions must be read in the context and purpose for which the said provisions are enacted
- Section 44AB falls within the set of provisions which deal with computation of business income – contained in Part IV-D for the purpose of determining business income which is taxable under the head “Income from Business or Profession”

## LEGAL PROPOSITIONS

- If some income/ receipts/ turnover is excluded from the tax net or it does not play any role in determining the proper **taxable business income**, then such income/ receipts/ turnover need not be subject matter of the Tax Audit
- Any provision has to be read in the spirit and for the purpose for which it is enacted
- One need to be very clear as to whether an Activity is Business or Profession to determine the limits for Tax Audit. E.g. Doctor vis a vis a Hospital. One of the main source to determine is reference to Sec. 44AA

# WHAT IS SALES/ TURNOVER / GROSS RECEIPTS?

- Terms Sales, Turnover and Gross Receipts are not mutually exclusive and shall be taken together
- Is mainly dependent on the nature of business and method of maintenance of books of accounts
- Manner in which Books of Accounts are maintained is very important
- Whether GST / Excise Duty etc. should be included in Sales / Gross Receipt?
- Sales and Receipt not connected with the Business should be excluded

# WHAT IS SALES/ TURNOVER / GROSS RECEIPTS?

- If a person has trading receipts of Rs. 80 lacs and brokerage and commission of Rs. 40 lacs – Whether Covered?
- - Yes
- Turnover in Business Rs. 80 lacs and Income from Profession Rs. 40 lacs – Whether Covered?
- – No
- Whether the following should be included / excluded while calculating the Gross Receipts / Turnover?
  - Discounts
    - Trade Discount at the time of sales - No
    - Cash Discount - Yes
    - Special Discount – e.g. Festival or Bulk Discount - No
    - Turnover Discount - Yes

# WHAT IS SALES/ TURNOVER / GROSS RECEIPTS?

- Whether the following should be included/ excluded in calculating the Gross Receipts/ Turnover?
  - Sales Return
    - In the same year - No
    - In the next year – Disputable, generally no
  - Sale of Assets etc. - No
  - Sale of Scrap, By-product, Spares, Stores - Yes
  - Interest and Dividend received on Surplus Fund - No
  - Interest received on Late Payment – Generally Yes
  - Re-imburement of Expenses – Generally No
  - Advances Received - No
  - Bad Debts - No

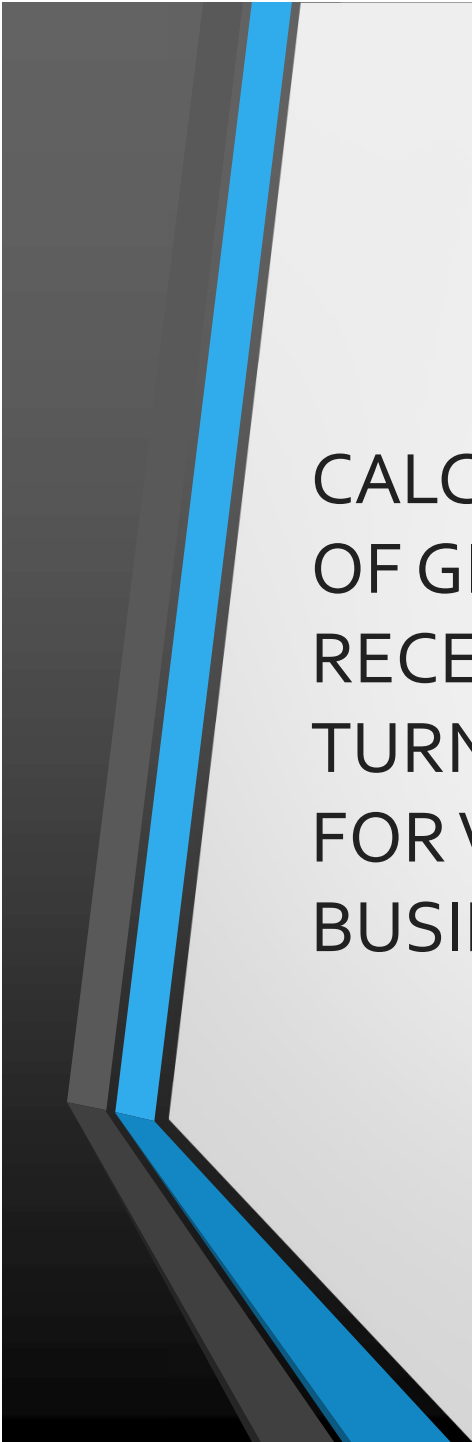
# WHICH RECEIPTS TO BE INCLUDED

- In case of a Person having more than one Proprietary Concern – Aggregate Turnover / Receipts from all such businesses
- In case of Income Liable to tax under any other head of income – like Rent, Salary, Capital Gains, Income from Other Sources – Not to be included for calculating “Turnover”

# CALCULATION OF GROSS RECEIPTS/ TURNOVER FOR FOLLOWING BUSINESSES

- Agents
  - For Undisclosed Principals
  - Consignment Agent
- Contractors
  - With Material
  - Cost Plus Contract
- Money Lender / Finance Business
- Agriculturist
- Stock Brokers





## CALCULATION OF GROSS RECEIPTS/ TURNOVER FOR VARIOUS BUSINESSES

- Builders and Developers – Completion Method or % Completion Method – Impact of Work in Progress and Closing Stock
- Insurance Agents
- Clearing and Forwarding Agents
- Investment Company – Stock in Trade vs. Investments (Capital Assets)

# CALCULATION OF GROSS RECEIPTS/ TURNOVER FOR VARIOUS BUSINESSES

- Shares & Security Traders
- Investors
- F & O
- Activities of Institutions having income Exempt like Section 10(23B)
- Travel Agent
- Housing Societies
- Online Portals like Amazon, Flipkart etc.

## AMENDMENTS - AY 2021-22

- Section 44AB – Amendments w.e.f. 01 April 2021 (AY 2021-22)
- Proviso to 44AB (a) – Conditional increase of limit from Rs. 1 crore to Rs. 10 crores
  - Aggregate of all amount received **including** Sales/Turnover/ Gross Receipt in cash – Does not exceed 5% of said amount , **and**
  - Aggregate of all payments made **including** expenditure in cash – Does not exceed 5% of said amount
- No Change in limit for Professionals – 50 Lakhs

# AMENDMENTS - AY 2021-22

## ➤ What is the Meaning of the Word Cash ?

- Proviso - ***It has been 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***
- Not in "Cash"
  - Account Payee Cheque or Draft
  - Electronic Transfer – Net Banking
  - Digital Transfer – Debit Card, Credit Card, UPI, Wallets, PayTM etc.)

## AMENDMENTS - AY 2021-22

### ➤ What is the Meaning of the Word Cash ?

- Whether adjustment by Journal Entry qualifies?
  - There are conflicting judgements for some other sections
  - The purpose of "A/c Payee" is to ensure identity of the Payer
  - Journal entry ensures the above purpose of "identity"
  - Even in the stringent sections of FERA / FEMA of receipt of Foreign Exchange, RBI has clarified that netting of amount by way of Journal Entry is permitted
  - Therefore, since the definition of "Cash" being negative, i.e. cheque or draft not being account payee is in cash, Journal entry should not be an issue
- Even a barter system should not be an issue

# AMENDMENTS

## - AY 2021-22

- What is the **Meaning** of the Word **Including**?
  - Even includes item other than Sale and Purchase
    - Sale of Scrap, Stores and Spare parts
    - Sale of Raw material
    - Direct cash deposited in bank account by Customer

# AMENDMENTS

## - AY 2021-22

- What is the **Meaning** of the Word **Including**?
- Cash introduced / withdrawn by partners
  - Withdrawals / Deposits from bank
  - Loans accepted or repaid
  - Debtors / Creditors transactions ?
  - Sale /Purchase of Fixed Assets ?

## APPLICABILITY TO PARTNER OF A FIRM

- Section applies to Every person carrying on business or profession.
- Definition – “Every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed .....”
- Distinction between carrying on business and income assessed under head of Profit and Gains of Business or Profession”
- A Partnership Firm is not a separate legal entity, but it is certainly a separate taxable entity
- In case of a partnership business, it is the business of the partnership firm carried on by the partnership that is to be considered and not the business carried on by a partner.



## APPLICABILITY TO PARTNER OF A FIRM

- Receipt of Interest and Remuneration by partner, in fact, cannot be treated as turnover or business receipt “in the course of carrying on business” by the recipient partner.
- Such receipts are out of the business carried on by the Partnership Firm and the partner is not carrying on, vis a vis the business of the partnership firm, a separate business of his own.
- In case of any Deeming Fictions, the meaning has to be restricted to the purpose for which it is created

## APPLICABILITY TO PARTNER OF A FIRM

- If it is presumed that Remuneration and Interest paid to Partner is taxable under the head “Profit and Gains of the Business and Profession” and is liable to Tax Audit, it may lead to absurd situation
- In such a scenario, can a Partner claim that he would offer only 50% of such income u/s. 44ADA as taxable income in his hand?
- Kolkata ITAT decision in case of Sagar Dutta vs. DCIT (2013), one PWC Partner, penalty u/s. 271B was levied for not getting accounts audited u/s. 44AB

## OTHER PROVISIONS APPLICABLE

- TDS Implications
  - TDS Provisions are generally not applicable to some persons like Individual, HUF, AOP, BOI
  - However, once a person is liable to Tax Audit, TDS provisions would be applicable in the succeeding year
  - Whether TDS provisions would be applicable in case of Tax Audit carried out for not offering tax as per Presumptive Tax Rates?
  - Various TDS sections talk only about limit of Rs. 1 crore and 50 lacs. What about the increased limit of Rs. 10 crores?
- Penalty u/s. 271B would be payable in case a person fails to get accounts tax audited, subject to Section 273B

A white calculator is positioned on a stack of books. The background is a solid dark blue color. A black rectangular box is overlaid on the right side of the image, containing the text 'PRESUMPTIVE TAXATION' in white, bold, uppercase letters.

# PRESUMPTIVE TAXATION

## PRESUMPTIVE TAXATION

- Presumptive Taxation means tax on income which is considered to be liable to tax as against actual income which may be liable to tax
- It is voluntary in nature, at the option of the Assessee and not compulsory
- The purpose of its introduction was to reduce the tax burden and to provide relief from the tedious work of maintenance of books and records to small tax assesses

## PRESUMPTIVE TAXATION

- Not required to maintain regular books of accounts
- They can declare the income at a prescribed rate
- Are exempted from auditing requirements

A blue pen with a silver nib is positioned diagonally across the top left of the page. The background is a light blue document featuring a bar chart with several blue bars of varying heights. A black rectangular box is overlaid on the right side of the page, containing the text 'SECTION 44AD' in white.

# SECTION 44AD

## SECTION 44AD

For Businessmen to pay tax on Presumptive basis

- An Eligible Assessee
- Engaged in Eligible Business
- Turnover / Gross Receipt is less than Rs. 2 Crore
- Turnover / Gross Receipt is less than Rs. 10 Crores in certain cases (w.e.f. A.Y. 2021-22)
- Tax @ 8% of the Turnover / Gross Receipt
- Tax @ 6% of the Turnover / Gross Receipt if the amount is received by A/c Payee Cheque or Draft, or by Electronics mode
- Need to pay the entire Tax liability as Advance tax on or before 15<sup>th</sup> March and no need to pay first 3 instalments i.e. in June, Sept and December
- No other Expenses will be allowed or disallowed to such person



## SECTION 44AD

- What is the Tax liability u/s. 44AD in case of Total Turnover Rs. 1.80 crores in which Gross Receipt by way of Electronic means is 1.20 crs?
- @ 6% on Rs. 1.20 crs. = Tax Rs. 7.20 lacs
- @ 8% on Rs. 0.60 lacs = Tax Rs. 4.80 lacs
- Total Tax Rs. 12 lacs

# S 44AD – ELIGIBLE ASSESSEES

An Eligible Assessee means:

- Resident
  - Individual
  - HUF
  - Partnership Firms

Non Eligible Assessee:

- Non Resident
- LLP
- Company
- AOP / BOI etc.
- Who has claimed deduction under Sections 10A, 10AA, 10B, 10BA
- Deduction under Sections 80HH to 80 RRB

## S 44AD – ELIGIBLE BUSINESS

An Eligible Business means:

- Any business, except:
  - Any Profession (as referred to in Section 44AA)
  - Plying, hiring or leasing goods carriage (referred to in Section 44AE)
  - Income by way of Commission or Brokerage
  - Any Agency Business
- Turnover / Gross Receipts not exceeding Rs. 2 Crores.

## SECTION 44AD (4)

- From AY 2017-18, once a taxpayer opts for this scheme than he will have to follow the same scheme for 5 years
- If a person opt outs of the Scheme at any time before end of the 5 years, he would not be eligible to claim benefit of this section for next 5 years
  - E.g. If a persons offers tax @ 8% for AY 2017-18, AY 2018-19 and AY 2019-20
  - However, he offers tax at lower rate in AY 2020-21 (of course with Tax Audit)
  - He **cannot** take benefit of 8% tax rate for next five years i.e. for AY 2021-22 till AY 2025-26
  - He can decide afresh to take advantage only in AY 2026-27.

## SECTION 44AD (4)

- If a person has always been declaring income below the prescribed limit of 8% / 6% and now wants to start taking benefit of this scheme, he is free to enter at any time
- Similarly, if a person was not eligible i.e. his Gross Receipt / Turnover was above the limit prescribed under this section, he can opt for the scheme if his Gross Receipt / Turnover now falls within the prescribed limit
- However, in case if the Gross Receipt / Turnover exceeds the eligible limit of Rs. 2 Crores, he would be automatically become non eligible for the Scheme.

## SECTION 44AD (4)

- 44AD(4)- Where an **eligible assessee declares profit for any previous year** in accordance with the provisions of this section **and he declares profit** for any of the five assessment years relevant to the previous year succeeding such previous year **not in accordance with the provisions of sub-section (1)**, he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has **not been declared in accordance with the provisions of sub-section (1)**
- 44AD(1) ..... in the case of an **eligible assessee** engaged in an eligible business, a sum equal to 8% / 6% of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" .

## SECTION 44AD (4)

- If a person has opted for this Scheme for 6 years i.e. up to AY 2022-23, the above limitation would not apply (unless the section is amended again) This means, he can exit in AY 2023-24 and re-enter in AY 2024-25
- Question is – What happens if a persons opts for the Scheme in year 1, in year 2, is thrown out of the scheme due to the fact that the Turnover exceeds Rs. 2 crs limit and in year 3, his turnover is less than 2 crs?

## SECTION 44AD (5) (FROM A.Y. 2017-18)

- If a person is eligible to take advantage of Presumptive Tax u/s. 44AD (Eligible Assessee)
- To whom is sub section 44AD(4) applicable to, i.e. he offers tax lower than the Presumptive Tax, voluntarily, within 5 years, **And**
- His **total income exceeds the maximum amount which is not chargeable to tax**

In that case

- He will have to maintain books as per Sec. 44AA
- And will have to get his books of accounts audited as provided under section 44AB.



SECTION  
44AD  
(5)(FROM  
A.Y. 2017-18)

- What is the meaning of **total income exceeds the maximum amount which is not chargeable to tax**
- What happens in case of a Partnership Firms which incurs Loss ?

# APPLICABILITY OF SECTION 44AD(4) AND 44AD(5) - EXAMPLES

Let us understand the meaning of Section 44AD(4) and 44AD(5) in better way by some examples:

## Example 1:

Facts:

- Individual - Gross Receipt Rs. 80 lacs for AY 2021-22
- Presumptive income @ 8% is Rs. 6.40 lacs
- Tax paid @ 8% from AY 2017-18 till 2020-21
- Wants to declare taxable income as Rs. 5.00 lacs for AY 2021-22

**Question:** Whether Accounts have to be maintained and Books need to be tax audited u/s. 44AB?

# APPLICABILITY OF SECTION 44AD(4) AND 44AD(5) - EXAMPLES

## Example 1:

### Reply:

Yes. As per Section 44AD(4), he has opted out of the presumptive taxation before 5 years and his total income exceeds the maximum amount which is not chargeable to tax as mentioned u/s. 44AD(5)

Will not be eligible to pay tax @ 8% / 6% for next five assessment years i.e. from AY 2022-23 till 2026-27

# EXAMPLES

## Example 2:

### Facts:

- Individual - Gross Receipt Rs. 80 lacs for AY 2021-22
- Presumptive income @ 8% is 6.40 lacs
- Has started new business this year only (AY 2021-22)
- Wants to declare taxable income as 5.00 lacs

**Question:** Whether Accounts has to be maintained and Books needs to be tax audited u/s. 44AB?



# EXAMPLES

## Example 2:

### Reply:

- Section 44AB is not applicable, since the Gross Receipt is below Rs. 1 Crs.
- Section 44AD(4) / (5) are not applicable, since never opted for Presumptive tax and therefore is not coming out of it voluntarily
- However, since the he wants to declare taxable income less than 8%, Section 44AD(1) is applicable and will have to maintain books of accounts and also get it Tax Audited

# EXAMPLES

## Example 3:

### Facts:

- Individual - Gross Receipt Rs. 1.50 crs for AY 2021-22
- Presumptive income @ 8% is 12.00 lacs
- Tax paid @ 8% from AY 2017-18 till 2020-21
- Wants to declare taxable income as 8.00 lacs

**Question:** Whether Accounts has to be maintained and Books needs to be tax audited u/s. 44AB?

# EXAMPLES

## Example 3:

### Reply:

- Section 44AB is applicable, since the Gross Receipt is above Rs. 1 Crs.
- However, since his turnover is below Rs. 2 crs., he is eligible to opt for presumptive taxation @ 8% / 6% u.s 44AD(1)
- As per Section 44AD(4), he has opted out of the presumptive taxation before 5 years and his total income exceeds the maximum amount which is not chargeable to tax as mentioned u/s. 44AD(5)
- Will not be eligible to pay tax @ 8% / 6% for next five assessment years i.e. from AY 2022-23 till 2026-27

# SECTION 44AD – HIGHER INCOME

- Can you declare income higher than 6% / 8%?
- Yes, at the option of the Assessee
- Why a person would declare higher income?
- Whether Higher Income will result into higher Capital Balance for a person?
- Exempt Income like PPF Interest
- Income Taxable like Deemed Dividend
- Depreciation Provision
- Deductions like Salary Standard Deduction, Rent Income 30% Deduction





# SECTION 44ADA

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21 December  
2021

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## SECTION 44ADA

For Professionals to pay tax on Presumptive basis

### ➤ Eligible Persons

- Resident
  - Individual
  - Partnership Firm

➤ LLP is not eligible

➤ Engaged in Eligible Profession (Ref Section 44AA)

➤ Turnover / Gross Receipt up to Rs. 50 lacs

➤ Tax @ 50% of the Gross Receipt or higher

➤ A professional **can opt in and opt out of the scheme in any year as per his choice**, unlike restrictions u/s. 44AD to a businessmen

## SECTION 44ADA

- No further expenses would be either allowed or disallowed
- Depreciation is not allowed as separate expense
- However, for calculation of WDV of any asset used in such business shall be calculated as if depreciation as per Section 32 is claimed and has been actually allowed for any future purposes like:
  - Calculation of allowance of Depreciation if a person opts out of this scheme
  - Calculation of Capital Gains in case of sale or disposal of such asset

## SECTION 44ADA

- Just like 44AD, the tax liability has to be paid by way of Advance Tax on or before 15 March
- There is no need to pay the first 3 instalments of advance tax in June, Sept and December
- There is no need to maintain Books of Accounts, as required under Section 44AA



# SECTION 44AA



# SECTION 44AA

Compulsory maintenance of Books of Accounts if Gross Receipts / Sales / Turnover exceeds certain limit by the following persons:

- Medical
- Legal
- Engineering
- Architectural
- Accountancy
- Technical Consultancy
- Interior Decoration
- Authorized Representative
- Company Secretary
- Film artist
- Any other profession which may be notified by CBDT







# QUESTIONS

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