

FAQs ON PRACTICAL ISSUES IN 44AA – 44AD

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S. 44 AA

1. Who are the persons that are required to compulsorily maintain books of account ?

Every person carrying on legal, medical, engineering or architectural profession, or profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the CBDT are mandatorily required to keep and maintain such books of account and documents as may enable the AO to compute his total income in accordance with the provisions of the I.T. Act.

Authorised representatives, Film Artists, Company Secretaries and Profession of Information and Technology have been notified by the CBDT as notified professions.

2. What are the prescribed books of account and documents to be kept and maintained under S.44AA(3) by person carrying on specified profession ?

Rule 6F prescribes books of account to be maintained by specified persons.

6F(2) – professionals

- a) Cash book
- b) Journal, in case of mercantile system of accounting.
- c) Ledger
- d) Carbon copies of bills serially numbered in case of bills or receipts of Rs. 25/- and more
- e) Original Bills and receipts in respect of expenditure. Payment vouchers in case of bills and receipts not issued and the expenditure do not exceed Rs. 50/- (Vouchers may not be prepared if the cash book mentioned contains adequate particulars in respect of expenditure incurred.)

‘Cash book’ means a record of all cash receipts and payments, kept and maintained from day to day and giving the cash balance in hand at the end of each day or at the end of a specified period not exceeding a month.

6F(3)-Medical Professional's- in addition to above-

- a) A daily case register in Form No. 3C
- b) Inventory Register of stock of drugs, medicines and other consumable accessories.

3. Where are the specified books of account and other documents to be kept ?

Rule 6F(4) states that **for other than those relating to a previous year which has come to an end** the specified books of account and other documents shall be kept and maintained by the person at the place where he is carrying on the profession or, where the profession is carried at multiple places, at the principal place of his profession.

Where person keeps and maintain separate books in respect of each place of profession carried on, such books and other documents may be kept and maintained at the respective places.

4. For what period should the books of account etc to be kept ?

Rule 6F(5)- w.e.f 4-2-2002 the specified books of account shall be kept and maintained for a period of six years from the end of the relevant assessment year.

However, if assessment is reopened u/s 147 within period specified in section 149, then all books and documents which were kept and maintained at the time of reopening shall be retained till the reopened assessment is completed.

5. Whether persons carrying on a non-specified profession or carrying on business are required to compulsorily maintain books of account ?

Every person carrying on business or a profession (not a specified profession) whose total income exceeds Rs.1,20,000 or his total sales/gross receipts from such business or profession exceeds Rs. 10,00,000 in any of the 3 years immediately preceding the relevant previous year.

In case of newly setup business books of account required to be maintained if it is likely to exceed the above mentioned limits.

No specific books and records are specified for the category. However they have required to maintain such books of account and other documents as may enable the assessing officer to compute their taxable income under Income Tax Act.

6. Will the non maintenance of stock register by an assessee carrying on business amount to contravention of S.44AA ?

No books of account were specified by CBDT for the above class of persons. S.44AA provides assessee shall maintain such books of account as will enable the Assessing Officer to compute his business income. **Sujan Singh vs AO (2007) 110TTJ(ASR) 818 & ITO v Dinesh Paper Mart 70 ITD 274 (Nag).**

7. Will the person carrying on a specified profession whose gross receipt does not exceed Rs.1,50,000 in any one of three preceding previous years be required to maintain books of account ?

Every person carrying on a specified profession is required to maintain books of account to enable the Assessing Officer to compute the total income irrespective of his gross receipts in all the three preceding previous years exceed Rs.1,50,000. However if his gross receipts in all the three preceding previous years exceed Rs.1,50,000 or if it is a new profession and it is likely to exceed Rs.1,50,000 in that previous year shall be liable to maintain specified books of account as per Rule 6F.

8. Are assesses covered under S. 44AD & 44AE required to maintain books of account ?

An assessee carrying on a business and covered u/s 44AD, 44AE claims that the income from the said business is lower than the deemed profits or gains computed under the above relevant sections, then the assessee shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute the total income in accordance with provisions of I.T. Act.

w.e.f AY 2011-12, where profits and gains of assessee from business are deemed to be profits and gains of the assessee under section 44AD and claims such income to be lower than the deemed profits and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year, he shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income.

9. What are the consequences of failure to keep accounts ?

S.271A prescribes penalty provisions for failure to keep and maintain books of account, etc., and also for not retaining them for the prescribed period. The quantum of penalty imposable is Rs.25,000.

In **Mehta Parvesh v ITO (1998) 60 TTJ 278 (Del –Trib)** and in **ITO v. Papelal Gaur (1994) 49 TTJ (Nag-Trib) 126** it was held that No penalty can be levied if it is possible for the assessing officer to compute the total income based upon the documents though the books of account were not maintained.

In **C.H. Aboobacker Haji v. ITO (2007) 109 TTJ (Coch-Trib) 408**, it was held that the assessing officer cannot come to the conclusion that he was unable to compute the income of the assessee due to the non-maintenance of the day book and ledger without completing the assessment. Hence penalty u/s 271A cannot be levied unless the assessment is completed.

Summary of 44AA:

Category	Applicable Persons	Books to be maintained
Cat "A"	Specified Professions- Gross Receipts does not exceed Rs.1,50,000 in any of the 3 preceding years	Such books of accounts as may enable the AO to compute the total income. No books prescribed.
Cat "B"	Specified Professions- Gross Receipts exceed Rs.1,50,000 in all the 3 preceding years	Books as prescribed in Rule 6F to be maintained.
Cat "C"	Non Specified profession or business- if income does not exceed Rs. 1,20,000 AND the total turnover does not exceed Rs.10,00,000 in ALL the 3 preceding years.	No need to maintain any books.
Cat "D"	Non Specified profession or business- if income exceeds Rs. 1,20,000 OR the total sales, turnover or gross receipts exceed Rs.10,00,000 in any of the 3 preceding years. And also includes assesses covered u/s 44AD and 44AE.	No books prescribed by the board. But should maintain the books so as to enable the AO to compute the total income.

10. Who are the persons who are compulsorily required to get their accounts audited ?

According to S. 44AB, every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed Rs.100 Lacs (Rs.60 Lacs upto A.Y. 2012-13) 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.

In case of a person carrying on profession, the provisions are applicable if his gross receipts in profession exceed Rs.25 Lacs (Rs.15 Lacs upto A.Y. 2012-13) in any previous year.

Further, if any person who is carrying on the business and covered u/s 44AE, 44BB or 44BBB and claims that his income from the said business is lower than the deemed profits and gains shall have to get his accounts audited.

Similarly, every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person u/s 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business 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 be audited.

CEILING ON TAX AUDITS

11. What is the ceiling for Number of tax audit assignments that can be accepted by a CA ?

- A. As per Notification dated 13.12.1989 published in Part III section 4 of the Gazette of India dt. 04.02.1989 bearing No. 1-CA(7)/3/88 Explanation 1, In the case of a CA in practice or a proprietary firm, 30 tax audit assignments, in a financial year, whether in respect of corporate or non corporate assesses. In the case of a firm of CAs in practice, 30 tax audit assignments per partner in the firm, in a financial year whether in respect of corporate or non corporate assesses.

The limit of 30 tax audits has been enhanced to 45 in the ICAI Central Council's 268th meeting held from 30th April to 2nd May 2007.

12. Whether audit of branches are counted separately for the ceiling ?

- A. As per the above mentioned notification, Explanation 4 states the audit of the H.O. and branch office of a concern shall be regarded as one tax audit assignment. As per explanation 5 the audit of one or more branches of the same concern by one CA in practice shall be construed as only one tax audit assignment.

13. When audit for F.Y. 2011-12 and F.Y. 2012-13 are conducted during September 2013, whether both are counted for the ceiling for the no. Of audit assignments during F.Y. 2013-14.

- A. As per the Notification mentioned above, a CA in practice shall be deemed to be guilty of professional misconduct, if he accepts more than 45 tax audit assignments in a financial year.

As per explanation 2 of the above mentioned notification“ in computing the specified number of tax audit assignments each year's audit would be taken as a separate assignment.

14. Whether audit u/s 44AB (c) and (d) i.e. 44AD & 44AE audits are counted for the ceiling of audit assignments ?

- A. As per para 9.16 of Guidance Note on Tax Audit u/s 44AB of the Income Tax Act, a member of the institute in practice shall be deemed to be guilty of professional misconduct if he accepts in a financial year more than 30 tax audit assignments or such other limit as may be prescribed by ICAI from time to time u/s 44AB. Further, as per a council decision, audits of accounts of persons carrying on business covered by sections 44AD, 44AE or 44AF or 44BB or 44BBB is not included in the aforesaid limit.

15. How the ceiling is computed in respect of CA partnership firms where the partner is also a partner in another CA firm.

- A. As per the 2nd proviso to the Notification, where any partner of the firm is also a partner of any other firm or firms of CAs in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partners shall not exceed the specified number of tax audit assignments in the aggregate.
As per the 3rd proviso to the Notification, where any partner of a firm of CAs in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the “specified number of tax audit assignments” in the aggregate

16. Whether Tax audit is applicable for commission Agents. What does CBDT Circular No. 452 clarify ?

A. *The CBDT has advised that so far as kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtias. A pacca arahtia is not, in the proper sense of the word, an agent or even del credere agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various court pronouncements, the following principals of distinction can be laid down between a kachha arahtia and a pacca arahtia :*

(i) a kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as a principal as regards his constituents.

(ii) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituents.

(iii) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.

(iv) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.

(v) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.

(vi) The kachha arahtia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agent's charges and certain out of the pocket expenses, whereas, a pacca arahtia has a personal interest of his own when he enters into a transaction.

(vii) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.

The above distinction between a kachha arahtia and pacca arahtia may also be relevant for determining the applicability of section 44AB in cases of other type of agents. In the case of agents whose position is similar to that of kachha arahtia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahtia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB of the Income Tax Act .

17. An educational institution not for profit motive having Rs.100.0 Lacs of Gross Receipts is whether liable for tax audit ? What will be the situation if the Gross Receipts exceed Rs.100.0 Lacs ? What will be the effect if it is a Coaching Centre ?

A. *It is found that the provision of section 44AB shall be applicable only to certain persons who fulfil the following conditions:*

- (i) must be a person under the Income Tax Act.*
- (ii) must carry on business or profession.*
- (iii) must maintain books of account.*
- (iv) whose profits or gains are from business or profession.*
- (v) whose profits or gains are computable under Chapter IV.*
- (vi) whose objects are to earn profit/gain from business/profession and income is taxable or loss allowable under the Act.*
- (vii) whose income to be lower than the profits or gains so deemed under sections 44AD, 44AE and 44AF.*

Where income of assessee is exempt under section 10, then it is not required to obtain audit report under section 44AB and is thus not liable for penalty under section 271B as was held in Asstt. CIT v. India Magnum Ltd. (2002) 81 ITD 295 (Mum-Trib)

In Case the Gross Receipts exceed Rs.100.0 Lacs the institution needs to obtain registration either under section 12A of the income tax act or under section 10(23)(c)(vi). In case the institution is registered u/s 12A then audit report in Form 10B has to be filed and in case the institution is registered u/s 10(23C)(vi) then audit report in Form 10BB has to be filed.

If the institution happens to be a coaching centre run for profit motive, then audit u/s 44AB needs to be carried out by a Chartered Accountant.

18. Mr. X, an individual has a sole proprietorship firm having turnover of Rs.110.0 Lacs for the financial year 2012-13 and his taxable income is Rs.1,20,000. Is it mandatory for him to file the return of income for the A.Y. 2011-12. What will be the situation if he incurs loss consisting of business loss of Rs.1,00,000 and Depreciation loss of Rs.50,000 ?

A. Para 6.1 of the revised Guidance Note on tax audit issued by the ICAI states that even if the income of a person is below the taxable limit laid down in the relevant Finance Act of a particular year, he will have to get his accounts audited and to furnish such report under section 44AB, if his turnover in business exceed Rs.100.0 Lakhs.

The existing provisions under sections 139(6A) and 271B allow interpretation contrary to the legislative intent of getting the accounts audited by the specified date. With a view to set the controversies at rest, the provisions of sections 44AB, 139 and 271B have been recast so as to make them effective. The provisions of section 44AB have been amended to ensure that tax audit is completed by the specified date and the audit report is furnished by that date irrespective of the fact that the return of income has been furnished or not by that date. However, the return whenever furnished shall be accompanied by a copy of the audit report and proof of filing the same by the specified date.

Wherever the audit report has been furnished before filing of the return, non furnishing of a copy of such report along with the return of income will only be a defect under section 139(9) which can be rectified.

Consequential amendments have been made in section 271B to provide penal action for not getting the accounts audited or failure to furnish the audit report by the specified date. These amendments take effect from 1-7-1995.

No where it has been mentioned that the return shall be filed by an assessee who gets his books of account audited u/s 44AB. But as per section 139, a company, firm needs to mandatorily file its return of income irrespective of the income.

19. A transport contractor having 6 trucks is having gross receipts of Rs.105.0 Lacs for the F.Y. 2010-11. Is he liable for the tax audit ?

- A. Section **44AB** does not contain any condition for tax audit of assessees engaged in transport operations (of goods) where the gross receipt exceeds Rs.100 lakhs. 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**.

*The thrust of section 44AE for computing income in the case of assessees engaged in the business of plying, hiring or leasing goods carriages is the number of vehicles and not the aggregate of receipts. In the absence of a provision similar to that of proviso to section 44AD (1) even where the assessee has aggregate annual receipt exceeding Rs.100 lakhs the accounts need not be audited under section 44 AB so long as the assessee offers income as per the presumptive quantum prescribed in section 44AE. 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**.*

20. Mr. A is running a business and his sales for the F.Y. 2012-13 is Rs.97.00 Lacs. He had interest income of Rs.3.00 Lacs and Rental receipts of Rs.2.00 Lacs and Dividend income of Rs.1.00 Lac. During the year there was a sale of fixed assets for Rs.5.00 Lacs. Is he liable for the tax audit ?

- A. As per Guidance note on tax audit issued by the ICAI, the term “gross receipts” is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. However, following observations of the ICAI are noteworthy.

Items of income not forming part of the term “gross receipts in business”

- (a) Sale proceeds of fixed assets
- (b) Sale proceeds of assets held as investments
- (c) Rental income unless the same is assessable as business income
- (d) Dividends on shares except in the case of an assessee dealing in shares
- (e) Income by way of interest unless assessable as business income
- (f) Reimbursement of customs duty and other charges collected by a clearing agent
- (g) In the case of a travelling agent, the amount received from the clients for payment to the airlines, railways, etc., where such amounts are received by way of reimbursement of expenses incurred on behalf of the client. If, however, the travel agent is conducting a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts. Similar is the case in respect of advertising agent.

Thus the principle to be applied is that if the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts. But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts as per para 5.12

In view of the above, Mr. A is not liable for tax audit as his turnover has not reached Rs.100.0 Lacs.

21. Mr. B is having three businesses during the financial year 2012-13. One is a retail business having sales of Rs.80.0 Lacs. He is owning 7 trucks from which receipts were Rs.30.0 Lacs. The other business wholesale and the gross receipts are Rs.35.0 Lacs. Mr. B wants to opt u/s 44AD for the first business and u/s 44AE for the second business. Advice Mr. B whether he is liable for tax audit. What will be the position in case the other business (wholesale) gross receipts are only Rs.15.0 Lacs?

A. In cases where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the limit of Rs.100.0 Lacs as laid down in this section has been exceeded or not. However where the business is covered by sections 44AD and 44AE and the assessee opts to be assessed under the respective sections the turnover thereof shall be excluded.

Section 44AB provides that every person carrying on business shall if his total sales turnover or gross receipts, in business exceed Rs.100.0 Lacs in any previous year get the accounts of previous year audited. If a proprietor carries on multiple businesses the combined turnover of which exceed Rs.100.0 Lacs then such a proprietor will be required to get his accounts audited as the limit will apply with reference to assessee and not with reference to businesses.

Before introduction of new section 44AD, there were presumptive taxation in respect of 44AF, 44AD and 44AE. If the assessee having turnover more than 60.0 Lacs including the turnover/gross receipts from businesses falling under the category of 44AF, 44AD and 44AE, and if he opts to declare the deemed profits from such businesses, then the turnovers belonging to the presumptive taxation will not be considered for the purpose of arriving at the turnover for audit u/s 44AB.

As per the amended section 44AD only the business u/s 44AE, person earning income in the nature of commission or brokerage or a person carrying on any agency business and a person carrying on profession as referred to in sub-section (1) of section 44AA are not eligible businesses and the turnover from all other businesses (excepting profession, agency, commission or brokerage and 44AE business if assessee opts under presumptive taxation) needs to be clubbed together for arriving at the turnover limit specified u/s 44AB.

In view of the above, Mr. B is liable for tax audit as the total turnover exceed Rs.100.0 Lacs even after opting for presumptive taxation for income from owning and hiring of trucks under section 44AE. If the gross receipts of the third business are Rs.15.0 he is not liable for tax audit provided he agrees for an estimated profit of 8% on the aggregate of 1st and 3rd business else liable to tax audit u/s 44AB(d)

In case the third business is not a business but profession he will still be liable for audit as the professional receipts have exceeded Rs.25.0 Lacs. If the receipts from profession are only Rs.15.0 Lacs he will not be liable for the audit provided he declares 8% on the turnover of the first business and declares the deemed profits u/s 44AE for the trucks.

22. Mr. Y's sales during the F.Y. 2012-13 is Rs.101.0 Lacs which includes Rs.2.50 Lacs of VAT amount collected. Is he liable for Tax Audit ?

- A. *The answer to the question whether VAT collected can be included in the sales for the purposes of section 44AB lies in the method of accounting followed by the assessee. If the VAT collected is included, in the sales then the same will be included. But if the VAT collected is credited to a separate VAT account and payment made to authorities is debited directly to VAT account the the VAT collected may not be included in sales for the purposes of section 44AB.*

23. To whom the tax audit is not applicable ?

Section 44AB prima facie is applicable only if the assessee has business or profession and the income therefrom is chargeable to tax. Where the income from business or profession is not chargeable to tax then the provisions of section 44AB cannot be applied. Chapter III of the Income Tax Act, 1961, deals with incomes which will not form part of the total income of the assessee. Following are the incomes in respect of which section 44AB will not be applicable.

- (i) *Agricultural income [Section 10 (1)]*
- (ii) *Any income received by an individual as member of HUF [Section 10(2)]*
- (iii) *Share income of a partner from the firm [Section 10(2A)]*
- (iv) *Income of any authority constituted in India by or under any law for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both [Section 10(20A)].*
- (v) *Any institution, trust or a society registered under Societies Registration Act, 1860 for the purpose of development of khadi or village industries or both and not for purposes of profit to the extent the income is attributable to the business of production, sale or marketing of khadi or products of village industries [Section 10 (23B)]*
- (vi) *Educational institutions and hospitals not substantially financed by the government even if the aggregate annual receipt exceeds Rs. 40 lakhs provided such institutions are not run for the purpose of profit and are intended to serve solely educational or medical treatment purposes as the case may be. [Section 10(23C) (iiia) and (iiiae)].*
- (vii) *A mutual fund registered under the Securities and Exchange Board of India Act, 1992 and such other mutual fund set up by a public sector bank or a public financial institution as notified by the Central Government (Section 10(23D). Asstt.CIT v. India Magnum Fund (2002) 27 DTC 864 (Mum-Trib) : (2002) 81 ITD 295 (Mum-Trib).*
- (viii) *Exchange Risk Administration Fund set up by public financial institution either jointly or separately as the Central Government may notify in the official gazette. [Section 10(23E)]*
- (ix) *Any income of Credit Guarantee Fund Trust for Small Scale Industries being a trust created by the Government of India and SIDBI for a period of five years from the assessment year 2002-03 to 2006-07. [Section 10(23EB)]*
- (x) *Income of venture capital companies or venture capital funds covered by section 10(23FB).*
- (xi) *Income of any corporation established by the Central government for the purpose of promoting the interest of the members of a minority community. [Section 10(26 BB)]*

- 24. Mr. P is having turnover of Rs.120.0 Lacs during the F.Y. 2010-11. He had not maintained the books of account. Whether both the penalties u/s 271A and 271B attracts? Advice.**

Maintenance of accounts is envisaged under section 44AA and on failure to do so the assessee shall be guilty and liable to be penalised under section 271A. Even after maintenance of books of account the obligation of the assessee does not come to an end. He is required to do something more, i.e., by getting the books of account audited by an accountant. But when a person commits an offence by not maintaining the books of account as contemplated by section 44AA the offence is complete. After that there can be no possibility of any offence as contemplated by section 44AB and therefore, the imposition of penalty under section 271B is erroneous.

In view of the above, only penalty u/s 271A can be levied. However the income may be estimated by the AO.

- 25. XYZ & Co., a partnership firm had commenced the business during the F.Y. 2012-13. The purchases during the year are 200.0 Lacs. Sales during the year are Rs.80.0 Lacs. Is the firm liable for tax audit ?**

- A. In the “Guidance Note on Terms Used in Financial Statements” published by the ICAI, the expression “Sales turnover” has been defined as under:** The aggregate amount for which sales are effected or services rendered by an enterprise. The terms **gross turnover** and **net turnover** (or gross sales and net sales) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts.

Similarly, the following note appears under the heading “sales” in the Statement on Auditing Practices” issued by the ICAI

Sales include sales of all products manufactured by the company including by-products. It is customary to show sales of scrap, etc., under the heading “Miscellaneous Income”. It is important to remember that no adjustment should be made in the Sales Account which does not relate to sales. Similarly adjustment in respect of sales tax and/or excise duty should not normally be made in the Sales Account. Trade discount is a valid deduction from sales but not commission allowed to third parties on sales to customers.”

The Lordship Mrs.Sujata v. Manohar and D.P.Wadhwa J.J dismissed the special leave petition filed by the Department against the judgment dated 27/03/1996 of the Bombay High Court in ITA No. 924 of 1995, whereby the High Court rejected the reference application of the Department on the question whether the Tribunal was right in holding that the return filed by the assessee on 30th October, 1991, for the A.Y. 1991-92 was in time as it was under obligation to get its accounts audited in view of its purchases being in excess of Rs. 40 lakhs and turnover connoted Sales or Purchases?[Chief CIT v. Vijay Maheshwari HUF C.C. No. 7819 of 1997 (228 ITR 157 (SC))].

- 26. What is meant by turnover, sales & gross receipts ? What is the turnover for a person dealing in shares and derivatives for the purpose of S.44AB.**

The word sales , turnover and gross receipts are commercial terms and they should be construed in commercial sense and in accordance with the normal rules of accountancy.

The section refers to the assessee’s total sales, turnover or gross receipts. They should not be of anyone else. If the assessee makes sale and receives the sale price for and on behalf of another, then such a sale may not be taken into account for determining the limit of Rs.100.0 Lacs. (For example assess acting as an agent of another person).

The sales, turnover or gross receipts should be in business of the assessee. If the sale or a receipt is not connected with the business, it is not to be taken into account for determining the limit of Rs.100.0 Lacs.

Sales, turnover and gross receipts are not mutually exclusive concepts

For considering the limit of Rs.100.0 Lacs all the three items i.e. sales, turnover and gross receipts should be taken together and not each item separately. The expression gross receipt is wide enough to include sale proceeds and consideration for rendering services. For example, if an assessee effects sales of Rs.95.0 Lacs on his own and he effects sales as the agent of a third party from which he derives gross commission of Rs.10 Lacs, then the gross receipts would be Rs.65.0 Lacs and he would be covered by this section.

As per para 5.11 of the Guidance Note on Tax Audit, the turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined in the following manner:

Speculative transaction : A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. Thus, 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 doing 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 difference. 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.

Derivative, Future and Options: Such transactions are completed without the delivery of shares or securities. These are also squared up by payment of differences. The contract notes are issued for the full value of the asset purchased or sold but entries in the books of account are made only for the differences. The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia. The turnover in such types of transactions is to be determined as follows:

- (i) The total of favourable and unfavourable differences shall be taken as turnover.
- (ii) Premium received on sale of options is also to be included in turnover.
- (iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.

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

27. The following activities whether fall under business or profession ?

- (a) Advertising Agents
- (b) Travel Agent
- (c) Courier
- (d) Nursing Home
- (e) Insurance Agent
- (f) Stock & Share broking
- (g) Money lending
- (h) Recruiting Agent
- (i) Person engaged in preparing computer software programming

A. As per para 4.4 of Guidance Note on Tax Audit issued by ICAI, the above activities fall under the category of Business.

28. Mr. S a Cine Artist has receipts of Rs.27.0 Lacs during the F.Y. 2012-13 as a Cine Actor. He is having a business and his gross receipts during that year are Rs.62.0 Lacs. Is he liable for audit u/s 44AB. What will be your answer in case if his receipts as an Actor are Rs.11.0 Lacs and his gross receipts from business are Rs.54.0 Lacs.

A. *A question may arise in the case of an assessee carrying on business and at the same time engaged in a profession as to what are the limits applicable to him under section 44AB for getting the accounts audited. In such case if his professional receipts are, say rupees 27.0 lacs but his total sales turnover or gross receipts in business are, say rupees 32.0 lacs, it will be necessary for him to get his accounts of the business audited because the gross receipts from the profession exceed the limit of rupees 25.0 lacs. If however, the professional receipts are, say, rupees 21.0 lacs and total sales turnover or gross receipts from business are say, rupees 84.0 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 as per the Guidance Note on Tax audit issued by ICAI.*

29. Mr. C is having turnover of Rs.62.0 Lacs during the F.Y. 2011-12. During the F.Y. 2012-13 his turnover is Rs.98.0 Lacs. He made a payment of interest to Mrs. C amounting to Rs.2,00,000 during the year. Is he liable to deduct tax u/s 194A ? What will be the position if the turnover during F.Y. 2011-12 is Rs.59.0 Lacs and turnover during F.Y. 2012-13 is Rs.102.0 Lacs ?

A. *Proviso to sub-section 1 of S.194A states that "Provided that an individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section."*

In view of the above mentioned proviso, TDS needs to be made by Mr. C for the F.Y. 2012-13 as the turnover during F.Y. 2011-12 is Rs.62.0 Lacs which exceeded the limit prescribed u/s 44AB.. In case the turnover for the F.Y. 2011-12 is Rs.59.0 Lacs, TDS need not be made though the turnover during the F.Y. 2012-13 exceeded the limit prescribed u/s 44AB (applicable only for Individuals and HUF).

44AD & 44AE

30. What are the salient features of S.44AD ?

The Salient features of S.44AD are

- a. The scheme is applicable only to an Individual, a HUF or partnership firm who is a resident and not applicable to LLP, a company assessee or AOP/BOI etc and also not applicable to non residents and not ordinarily residents. It shall also not be applicable to the eligible assessee availing deductions u/s 10A, 10AA, 10B, 10BA and any provision of Chapter VI-A with deductions in respect of certain incomes.
- b. The scheme is applicable to all the businesses excepting business covered under section 44AE which has maximum gross turnover/gross receipts of Rs.100 Lacs.
- c. Either 8% of the total turnover or gross receipts or 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.
- d. Any deduction allowable under sections 30 to 38 shall be deemed to have been already given effect to and no further deduction under these sections shall be allowed. However, where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed as per the limits specified in section 40(b).
- e. The WDV value of any asset shall be deemed to have been calculated as if the depreciation is actually allowed.
- f. Assessee opting for the above scheme shall be exempt from payment of advance tax.
- g. Assessee opting for the above scheme shall be exempt from maintenance of books of accounts required u/s 44AA.

31. Mr. X has turnover of Rs.100 Lacs. He informs that his income is only Rs.1,20,000. Whether he needs to 1. maintain the books of account 2. Audit his accounts 3. Furnish the return of income. In case if he does not maintain books of account, does not get his accounts audited and does not furnish the return of income, what will be the consequences ?

Upon plain reading of sections 44AA (2) (iv), 44AB (d) and 44AD(5) and from some of the experts view ***“that an assessee with turnover below 100 Lacs, who shows an income below the presumptive rate prescribed under the provisions, will in case his total income exceeds the taxable limit, be required to maintain books of accounts as per section 44AA(2) and also get them audited and furnish a report of each such audit as required under section 44AB”***. Basing upon the above consideration in respect of the above case, he is not required to maintain books of account, not required to get audit of his accounts and not required to furnish the return of income. **(This opinion is not authentic and please do not base upon this opinion for decision making)**

32. Mr. Z is having 8 Goods carriage vehicles. He wants to opt 4 vehicles u/s 44AE and get audit for the other 4 vehicles. Advise him.

A. *In Dy. CIT v. C.P.Kunhimohammed (2005) 94 ITD 278 (Cochin-Trib), a similar issue was discussed. 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 in a uniform manner.

In view of the above decision, it is possible to say that the assessee cannot claim 44AE method of income determination for 3 lorries and regular method of computation for the other 4 lorries, which are engaged in transport contract.

However, if the assessee has two separate geographic locations of business engaged in transport and there is complete identity between these two businesses with no intermixing, interlacing of funds then it is possible to claim presumptive income scheme for one transport business with some lorries and another transport business on regular basis. However, the basic condition that the assessee should not own more than 10 lorries needs to be satisfied, otherwise the benefit of section 44AE cannot be availed of at all.

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