FREQUENTLY ASKED QUESTION ON SECTION 44AD

Question 1 :

Whether all persons can opt for Section 44AD?

Answer :

Only an individual, HUF or a partnership firm (but not LLP) are eligible to opt for Section 44AD. However all of these persons must be resident in India and can't claim deductions under Sections 10A, 10AA, 10B, 10BA or 80HH to 80RRB.

In other words, non-resident individuals, HUFs and partnership firms cannot opt for this Section. Similarly any individual, HUF or a partnership firm who although resident but wants to claim deduction under Sections 10A, 10AA, 10B, 10BA or 80HH to 80RRB are not eligible to take advantage of Section 44AD.

Question 2 :

Whether person claiming deductions under Section 80C, 80D, 80E, 80G and 80U can take advantage of this Section?

Answer :

Benefit of this section cannot be availed by a person who wants to claim deductions under Sections 80HH to 80RRB. Since Section 80C, 80D, 80E, 80G and 80U are outside this chain of Sections (i.e. Sections 80HH to 80RRB), deduction under above sections cannot be denied.

Question 3 :

Whether all type of businesses and professions are covered under Section 44AD?

Answer :

Professions are not covered under Section 44AD. However, Section is applicable to all businesses except the business of plying, hiring or leasing goods carriages referred to in Section 44AE. All type of businesses whether business of civil construction or any other business is now covered under this Section. Upto Assessment Year 2010-11 retail business was covered under Section 44AF. Section 44AF has now been deleted and retail business is now covered under this Section.

Question 4 :

Whether wholesale businesses are also covered under section 44AD?

Answer :

Since Section 44AD is applicable to all businesses except the business of plying, hiring or leasing goods carriages referred to in Section 44AE, there is no doubt that this section is also applicable to wholesale businesses.

Question 5 :

What amount of profit an assessee is required to declare in order to take benefits of this section?

Answer :

A sum equal to 8% of the total turnover or gross receipts is required to be declared as income under the head “Profits and gains from business or profession”. However, a higher sum may also be declared.

Question 6 :

What are the benefits available to an assessee who opts for this section?

Answer :

Assessee is not required to maintain any books of account. However, as per Section 139(9) assessee is required to disclose the amounts of turnover (or gross receipts), gross profit, expenses and net profit of the ***business or profession*** and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

Question 7 :

Whether assessee opting under this section is not required to get his accounts audited as per the provisions of Section 44AB?

Answer :

Benefits of this Section can be availed by those whose total turnover or gross receipts in the previous year does not exceed an amount of sixty lakh rupees, the limit contemplated by Section 44AB. If assessee’s turnover or gross receipts in the previous year exceeds sixty lakh rupees he is required to get his accounts audited as per the provisions of Section 44AB and consequently he must maintain his books as per provisions of Section 44AA.

Question 8 :

If an assessee has more than one business, whether the limit of ₹ 60 lakh should be applied businesswise and not by aggregating the turnover of all businesses of the assessee?

Answer :

The limit of ₹ 60 lakh should be applied businesswise and not by aggregating the turnover of all businesses of the assessee.

For Example, assessee has 3 businesses namely retail trade, civil construction and catering business and the turnover during the P.Y. of these businesses are 45 lakhs, 65 lakhs and 50 lakhs respectively. In this case, Section 44AD is applicable in respect of his retail trade business and catering business, but not in respect of civil construction business (since the turnover of this business exceeds ₹ 60 lakhs). His income from retail trade business would be ₹ 3.60 lakhs (i.e., 8% of ₹ 45 lakhs) and his income from catering business would be ₹ 4 lakhs (i.e., 8% of ₹ 50 lakhs). He is not required to maintain books of account for retail trade and catering business. However, since he cannot avail presumptive taxation scheme in respect of civil construction business, he has to maintain books of account under Section 44AA and get them audited under section 44AB.

Question 9 :

What are the consequences if an assessee covered under this section declares his business income less than 8% of the total turnover or gross receipts?

Answer :

An eligible assessee who claims that his profits and gains from the business are lower than 8% of the total turnover or gross receipts **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 Section 44AA and get them audited as required under Section 44AB.

In other words, if an eligible assessee claims that his profits and gains from the eligible business are lower than 8% of the total turnover or gross receipts, it would not make him liable to maintain books of account under Section 44AA or get the same audited under Section 44AB unless his total income exceeds the maximum amount which is not chargeable to income-tax. If his total income does not exceed the maximum amount which is not chargeable to income-tax, the requirement of maintaining books of accounts under Section 44AA and having the same audited under Section 44AB would not arise.

Question 10 :

Whether assessee covered under this section is required to make advance payment of income-tax?

Answer :

The provisions of Chapter XVII-C (i.e. Advance Payment of Tax) shall not apply to an eligible assessee in so far as they relate to the eligible business (i.e. all businesses except the business of plying, hiring or leasing goods carriages referred to in Section 44AE).

In other words, eligible assessee would be relieved from the requirement of advance tax payments. It would be sufficient compliance if eligible assessee pays his tax while filing his return of income.

Question 11 :

Whether assessee covered under this section is required to comply with the provisions of tax deduction and collection at source?

Answer :

Provisions of Chapter XVII-B (i.e. TDS) is applicable to assessee falling under this section. Consequently they are required to make deduction of income-tax wherever required.

Question 12 :

Whether deduction under Section 30 to 38 can be claimed from the business income required to be declared under this section?

Answer :

All deductions under Section 30 to 38 (including depreciation), shall deemed to have been already allowed and no further deduction is allowed under this Section. However, in the case of a firm, the normal deduction in respect of salary and interest to partners under Section 40(b) shall be allowed.

Question 13 :

Whether capital gains from sale of depreciable assets arising to an assessee falling under this section shall be computed by deducting cost of acquisition directly from the full value of consideration since depreciation was not separately allowed to him?

Answer :

The WDV of any asset shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years. Therefore from full value of consideration not the original cost but WDV of the asset shall be deducted to arrive at the amount of capital gains.

Question 14 :

What is the prescribed form of return of income under Rule 12 of Income-tax Rules, 1962 for assessee falling under Section 44AD?

Answer :

Rule 12 of Income-tax Rules, 1962 (Vide Notification No. S.O. 693(E) dated 5th day of April, 2011) has prescribed Form No. ***" ITR-4S"*** for filing income-tax return for assessees falling under Section 44AD & 44AE. This form has been also given a nickname **"Sugam"**.

Question 15 :

What is the due date of filing income-tax return for the assessee falling under this Section?

Answer :

As per Explanation 2 to Section 139(1), due date of filing income-tax return for the assessee falling under this Section is 31st July, 2011 for assessment year 2011-12. However, where the assessee is a *"working partner"* in a firm (whose accounts are required to be audited under any law) due date shall be 30th September, 2011.

ILLUSTRATIONS ON SECTION 44AD

Illustration 1 : Find out the net income in the cases of A (35 years) and B (30 years) (both are cloth traders at Siliguri, West Bengal) for the assessment year 2011-12 from the following data :

	A	B
Sales turnover	60,00,000	90,00,000
Less : Expenses		
Cost of goods sold	54,00,000	81,00,000
Depreciation	15,000	22,500
Other expenses	4,80,000	7,20,000
Business income	1,05,000	1,57,500
Other income	7,500	45,000
Public provident fund contribution	60,000	90,000

Solution : In the cases of A income shall be computed under Section 44AD as his turnover does not exceed ₹ 60 lakh. In the case of B, however, the normal provisions of the Act will be applicable :

	A	B
Business income (8% of ₹ 60 lakh in the case of X)	4,80,000	1,57,500
Other income	7,500	45,000
Gross total income	4,87,500	2,02,500
Less : Deduction under Section 80C	60,000	90,000
Total income / Net income	4,27,500	1,12,500

Illustration 2 : X & Co., a firm, is engaged in the business of civil construction (turnover of financial year 2010-11 being ₹ 37,80,000). It wants to claim the following deduction :

Salary and interest to partners [as permitted by Section 40(b)]	60,000
Salary to employees	4,90,000
Depreciation	2,70,000
Cost of material used	25,90,000
Other expenses	3,45,000
Total	37,55,000
Net profit (₹ 37,80,000 minus ₹ 37,55,000)	25,000

Determine the net income of X & Co. for the A.Y. 2011-12 assuming that (a) taxable income from other business is ₹ 1,90,000, (b) LTCG is ₹ 40,000 and (c) the firm is eligible for a deduction of ₹ 5,000 u/s 80G.

Solution :

Income from business of civil construction (8% of ₹ 37,80,000)		3,02,400
Less : Expenses :		
Salary and interest paid to partners as permitted by Section 40 (b)	60,000	
Other expenses (Except salary and interest to partners, no other expenditure is deductible)	Nil	60,000
Income from civil construction		2,42,400
Other business income		1,90,000
Profits and gains from business or profession		4,32,400
Capital gains (LTCG)		40,000
Gross total income		4,72,400
Less : Deduction under Sections 80C to 80U		5,000
Total income / Net income		4,67,400