PROVISIONS OF SECTIONS 44AA, AB, AD & AE

Maintenance of accounts by certain persons carrying on profession or business [Section 44AA]

Specified profession :

For the purpose of Section 44AA and Rule 6F legal, medical, engineering, architectural, accountancy, technical consultancy, or interior decoration or any other notified professions (i.e. ***authorised representative***, ***film artist***, company secretary and information technology) are specified professions.

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

"Film Artist" means any person engaged in his professional capacity in the production of a cinematography film, whether produced by him or by any other person as an actor, a cameraman, a director, a music director, an art director, a dance director, an editor, a singer, a lyricist, a story writer, a screen play writer, a dialogue writer, and a dress designer.

Non- specified profession :

A non-specified profession is a profession other than a "specified profession" mentioned above.

Requirement of compulsory maintenance of books of account :

The requirement of Section 44AA and Rule 6F for compulsory maintenance of books of account may be summarized by grouping different taxpayers in the following categories :

Different categories	Taxpayers who come under these categories	Requirement of maintenance of books of account
Category A	Persons carrying on **"specified profession"** if their gross receipts in the profession do not exceed ₹ 1,50,000 in any one of the three years* immediately preceding the previous year (or where the profession has been newly set up in the previous year, his gross total receipts in the profession for that year are not likely to exceed the said amount). ***Where the assessee's gross professional receipts in one of the three years preceding the previous year in question have not exceeded ₹ 1,50,000, the assessee is not required to maintain books of account for that previous year even though such gross receipts have exceeded ₹ 1,50,000 in the other two preceding years - A. Keshava Bhat* v. *ITO* [2001].**	Persons coming under this category are require to maintain such "books of account and other documents" as may enable the Assessing officer to compute their taxable income under the Income Tax Act. The Board has not prescribed specified books of account which should be maintained for the persons falling under this category.
Category B	Persons carrying on **"specified professions"** if their gross receipts in the profession exceed ₹ 1,50,000 in all the three years immediately preceding the previous year (or where the profession has been newly set up in the previous year, his gross total receipts in the profession for that year are likely to exceed the said amount).	Persons coming in this category are required to maintain such books of account as are prescribed by Rule 6F.

Different categories	Taxpayers who come under these categories	Requirement of maintenance of books of account
Category C	Persons carrying on a **“non-specified profession”** ***or any business*** if their income from such profession or business does not exceed ₹ 1,20,000/- and the total sales, turnover or gross receipts thereof are not in excess of ₹ 10,00,000/- in all the three years immediately preceding the previous year (or when the profession or business is newly set up, income or total sales, turnover or gross total receipts are not likely to exceed the said amount).	Persons coming under this category are not required to maintain books of account.
Category D	Persons carrying on a **“non-specified profession”** ***or any business*** if their income from such profession or business exceeds ₹ 1,20,000/- or the total sales, turnover or gross receipts thereof are in excess of ₹ 10,00,000/- in any of the three years immediately preceding the previous year (or when the profession or business is newly set up, income or total sales, turnover or gross total receipts are likely to exceed the said amount).	Persons coming under this category are require to maintain such “books of account and other documents” as may enable the Assessing officer to compute their taxable income under the Income Tax Act. The Board has not prescribed specified books of account which should be maintained for the persons falling under this category.

Specified books of account under Rule 6F :

The board has specified certain books of account under Rule 6F for the persons falling under Category B above. The prescribed books are as follows :

(a) A Cash Book;

(b) A Journal, if the accounts are maintained according to the mercantile system of accounting;

(c) A Ledger.

(d) Carbon copies of ***bills*** (whether machine numbered or, otherwise serially numbered) exceeding ₹ 25 issued by the person and carbon copies or counterfoils of ***receipts*** (whether machine numbered or otherwise serially numbered) issued by the person;

(e) 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 fifty rupees, payment vouchers prepared and signed by the person (preparation of vouchers is not necessary where cash books contain adequate particulars of expenditure).

Apart from the aforesaid books of account and documents, a person carrying on medical profession (i.e. a practitioner of any system of medicine – physicians, surgeons, dentists, pathologists, radiologists, vaids, hakims, etc.) is required to keep the following additional books or documents :

(a) a daily case register in Form No. 3C showing date, patient’s name, nature of professional services rendered (i.e. general consultation, surgery, injection, visit, etc.), fees received and date of receipt; and

(b) an inventory under broad heads, as on the first and the last days of the previous year, of the stock of drugs, medicines, and other consumable accessories used for the purpose of his profession.

The following points also needs consideration :

- The aforesaid books of account and documents (other than those relating to a previous year which has come to an end) should be kept and maintained by the person at the place where he is carrying on the profession or, where the profession is carried on in more places than one, at the principal place of his profession.
- If, however, the person keeps and maintains ***separate*** books of account in respect of each place where the profession is carried on, such books of account and other documents may be kept and maintained at the respective places at which the profession is carried on.
- The aforesaid books of account and documents should be kept and maintained for a period of 6 years from the end of the relevant assessment year.

Audit of accounts of certain persons [Section 44AB]

Who has to get his accounts audited on compulsory basis :

The following persons are required to get their accounts compulsorily audited by a Chartered Accountant :

Different taxpayers	When they are covered by the provisions of compulsory audit under Section 44AB
A person carrying on business	If the total sales, turnover or gross receipts in business for the previous year relevant to the assessment year exceed ₹ 60 lakh.
A person carrying on profession	If his gross receipts in profession for the previous year relevant to the assessment year exceed ₹ 15 lakh.
A person covered under Section 44AD	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these Sections (irrespective of his turnover) *and his income exceeds the maximum amount which is not chargeable to income-tax.*
A person covered under Section 44AE	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these Sections (irrespective of his turnover).

Due date for getting books audited or submission of audit report and Form No. :

Different taxpayers	Audit Form No.	Statement of Particulars	Due date for getting books of account audited	Due date for submission of audit report
In the case of a person who carries on business or profession and who is required by or under any law to get his accounts audited.	Form No. 3CA	Form No. 3CD	30th September of the A.Y.	30th September of the A.Y.
In the case of a person who carries on business or profession but not being a person referred to above.	Form No. 3CB	Form No. 3CD	30th September of the A.Y.	30th September of the A.Y.

Note :

In cases where accounts are required to be audited by or under any other law (as in case of companies and co-operative societies), it is sufficient if accounts are audited under such other law before 30th September of the assessment year and the assessee obtains before the said date, a report of the audit as required under such law and also a report of audit from a chartered accountant in the Forms given above.

Penalty for failure to keep or maintain books of account, documents etc. [Section 271A] :

If a person fails to keep or maintain books of account, document etc. as required under Section 44AA, the Assessing officer may direct that such person shall pay, by the way of penalty, a sum equal to ₹ 25,000/-.

Penalty for failure to get accounts audited or to furnish audit report [Section 271B] :

If any persons to fails to get his accounts audited in respect of any accounting year relevant to an assessment year a report of such audit as required under Section 44AB, the Assessing officer may direct that such person shall pay, by the way of penalty, a sum equal to one-half percent of the total sales, turnover or gross receipts, as the case may be, in the business, or of the gross receipts in the profession, in such accounting year or years, subject to a maximum of ₹ 1 lakh ***(₹ 1.5 lakh from A.Y. 2011-12)***.

Special provision for computing profits and gains of business on presumptive basis [Section 44AD]

❖ Notwithstanding anything to the contrary contained in Section 28 to 43C,

- in the case of an ***"eligible assessee"*** engaged in an ***"eligible business"***,
- a sum equal to 8% of the total turnover or gross receipts of the assessee or, as the case may be, a sum higher as 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 "PGBP".

"eligible assessee" means :

(i) an individual, HUF or a partnership firm, who is a *resident*, but not a LLP as defined under Section 2(1)(n) of the Limited Liability Partnership Act, 2008; and

(ii) who has not claimed deduction under any of the Sections 10A, 10AA, 10B, 10BA or 80HH to 80RRB.

"eligible business" means :

(iii) any business except the business of plying, hiring or leasing goods carriages referred to in Section 44AE; and

(iv) whose total turnover or gross receipts in the previous year does not exceed an amount of sixty lakh rupees*.

***Note :** The limit of Rs. 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 Rs. 60 lakhs). His income from retail trade business would be Rs. 3.60 lakhs (i.e., 8% of Rs. 45 lakhs) and his income from catering business would be Rs. 4 lakhs (i.e., 8% of Rs. 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.

1. ***Section 10A*** **:** Special provision in respect of newly established undertaking in free trade zone, or export processing zone.
2. ***Section 10AA*** *:* Special provision in respect of newly established undertaking in free trade zone who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006.
3. ***Section 10B*** **:** Special provision in respect of newly established hundred percent export oriented undertaking.
4. ***Section 10BA*** **:** Special provision in respect of export of certain article or thing.

❖ 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.

❖ 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 A.Ys.

- 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. 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 their return of income.

- An eligible assessee who claims that his profits and gains from the eligible business are lower than 8% of the total turnover or gross receipts of the assessee **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.

Illustration 1 : Find out the net income in the cases of X (32 years) and Y (28 years) (both are cloth traders at Delhi) for the assessment year 2011-12 from the following data :

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

	X	Y
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

Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages on presumptive basis [Section 44AE]

- Notwithstanding anything to the contrary contained in Section 28 to 43C,
  - in the case of an assessee (i.e. the assessee may be any person and may be a resident or a NR),
  - who ***owns*** not more than 10 ***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 "PGBP" and shall be computed as under :

Type of goods carriage	Income
Heavy goods vehicle	₹ 5,000 for every month (or part of a month) during which the goods carriage is ***owned*** by the taxpayer *or an amount claimed to have been actually earned from such vehicle, whichever is higher*
Other than heavy goods vehicle (i.e. medium and light goods vehicle)	₹ 4,500 for every month (or part of a month) during which the goods carriage is ***owned*** by the taxpayer *or an amount claimed to have been actually earned from such vehicle, whichever is higher*

Notes :

- **"Heavy goods vehicle"** means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which exceeds 12,000 kilograms.
- An assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the ***owner*** of such goods carriage.

- 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.
- 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 A.Ys.

- An assessee may claim lower profits than the profits presumed under Section 44AE if he keeps and maintains such books of account as per Section 44AA and gets his accounts audited as required under Section 44AB.

- The provisions of Section 44AA and 44AB shall not apply* in so far as they relate to the business referred to in Section 44AE and in computing the monetary limits under those Sections, the gross receipts or, as the case may be, the income from the said business shall be excluded [Section 44AE(5)].

  Example : A person has gross receipts of ****65 lakh*** from business of plying, hiring or leasing goods carriages and of ₹ 25 lakh from trading in scrap. Although his total gross receipts are 90 lakhs, he will not be required to have his accounts audited, since his gross receipts after excluding those from the business of plying, hiring or leasing goods carriages are still less than ₹ 60 lakh (i.e. only ₹ 25 lakhs), the limit provided in Section 44AB.

Illustration :

X Ltd. is engaged in the business of carriage of goods. On April 1, 2010 it owns 10 trucks (6 out of which are "heavy goods vehicle"). On May 6, 2010 one of the heavy goods vehicles is sold by X Ltd. to purchase a light goods vehicle on May 10, 2010 which is put to use only from June 17, 2010. Find out the net income of X Ltd. for the assessment year 2011-12 taking into consideration the following data :

Freight collection		8,90,000
Less :		
Operational expenses	6,40,000	
Depreciation as per Section 32	1,90,000	
Other office expenses	15,000	8,45,000
Net profit		45,000
Other business / non-business income		70,000

Solution :

Income under Section 44AE shall be computed as follows :

Type of goods carriages	Period during which trucks are owned	Number of months (including a part of month)	Rate per month	Amount (1) x (3) x (4)
(1)	(2)	(3)	(4)	(5)
Heavy goods vehicles (5 Nos.)	April 1, 2010 to March 31, 2011	12	5,000	3,00,000
Light goods vehicles (4 Nos.)	April 1, 2010 to March 31, 2011	12	4,500	2,16,000
Heavy goods vehicles (1 No.)	April 1, 2010 to May 5, 2010	2	5,000	10,000
Light goods vehicles (1 No.)	May 10, 2009 to March 31, 2010	11	4,500	49,500
			Total	5,75,500

Computation of total income :

Income from carriage of goods	5,75,500
Other incomes	70,000
Total income	6,45,500