

## **PRESUMPTIVE TAXATION FOR BUSINESS OR PROFESSION UNDER SECTION 44 AD AND SECTION 44 ADA OF INCOME TAX ACT, 1961**



CA Jatin Furia  
Email : jatin.furia@gmail.com

### **Presumptive Taxation under Section 44AD**

To give relief to small sized taxpayer, the income tax act incorporated scheme of presumptive taxation. Under this scheme of Section 44AD and Section 44ADA, the taxpayers are exempted from maintaining books of account and getting it audited.

A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account and also from getting the accounts audited.

### **Eligible Assessee:**

The presumptive taxation scheme of section 44AD can be adopted by following person :

- i. Resident Individual;
- ii. Resident Hindu Undivided Family;
- iii. Resident Partnership firm (Except LLP).

The scheme cannot be adopted by a Non-resident, Body of Individual, Association of Person, Limited Liability Partnership or Company.

The Scheme cannot be adopted by a person who has made any claim towards deductions under Section 10A/10AA/10B/10BA or under sections 80HH to 80RRB in the relevant year.

### **Eligible Business:**

The persons in any businesses except following are not eligible for the benefit of the given relief:

- 1) the business of plying, hiring or leasing goods carriages referred to in Section 44AE;
- 2) a person who is carrying on any agency business (Section AD(6));
- 3) a person who is earning income in the nature of commission or brokerage (Section AD(6)). For example Insurance agents earn income by way of commission and, hence, they cannot adopt the presumptive taxation scheme of section 44AD ;
- 4) a person carrying on profession as referred to in section 44AA(1) is not eligible for presumptive taxation scheme (Section AD(6)).

So Eligible Business includes :

- Manufacturing
- Trading
- Wholesale
- Retail
- Job Work
- Service business
- Speculative/ Non speculative

The presumptive taxation scheme of section 44AD can be opted by the eligible persons, if the total turnover or gross receipts from the business do not exceed Three Crore Rupees where the amount or aggregate of the amounts received by the eligible assessee during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year and also that the receipt of amount or aggregate of the amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash. In other words, if the total turnover or gross receipt of the business exceeds Three Crore Rupees then the scheme of Section 44AD cannot be adopted.

The Finance Act, 2023 revised presumptive taxation limits under Section 44AD for FY 2023-24 (AY 2024-25) from Two Crore Rupees to Three Crore Rupees.

### **How to calculate the gross receipt or turnover?**

Applicability of tax audit under section 44AB depends upon gross receipts, sales or turnover of an assessee, so the first and foremost thing is their calculations. As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of 'Turnover' shall be the aggregate amount for which sales are affected by an enterprise.

Total Turnover/ Gross Receipts - (Not defined in the Act)- ICAI —Guidance Note on Terms Used in Financial Statements , the expression—Sales Turnover (Item 15.01) has been defined.

As per this Section, the assessee has an option to choose either Mercantile or cash method of Accounting. Total Turnover is the amount received / receivable from clients in respect of sales of Previous Year. Gross Receipts are the amounts received from clients for the services provided or to be provided and does not include the value of material supplied by the client.

### **What are the receipts which forms part of Turnover :**

- 1) GST, excise duty, Cess, and other Levy, if included in the Invoices / bills raised. (Depending on the Method of accounting followed by the assessee):
- 2) Sales of unusables empties and Packages;
- 3) Service Charges charged for delivery.

**What are the receipts which does not form part of Turnover :**

- 1) Sale of Property, Plant and Equipments;
- 2) Advance received from Customers, Deposits received or Retention money;
- 3) Any Security, retention or other deposit obtained from employees;
- 4) Interest Income or other similar receipts;
- 5) Value of Inventory.

Transactions of buying and selling units is a speculative activity (future goods unascertainable) where no physical delivery is taken or given – the amount of transactions as noted in the contract notes cannot be taken as turnover.

The value of the sale transactions of commodity carried out through MCX without taking delivery could not be considered as Turnover for the purpose of Section 44AB.

Where share broker does not sell goods of its constituents as his own and only charges commission for bringing two parties together to transactions of sale and purchase of shares, such transactions cannot amount to sale, turnover or receipt of share broker himself within meaning of Section 44AB.

When a person carries on several businesses, viz. wholesale and/or retail and or manufacture, the turnover or gross receipts of all the businesses are to be considered for the purposes of this section. Whether separate books or combined books are maintained by the assessee is not material. Combined turnover or gross receipts of all the businesses would form the basis for calculation of presumptive income.

In case Section 44AD and 44AE both are applicable. In the above said case, turnover of both the business shall not be clubbed and both the business shall be chargeable to tax u/s 44AD and 44AE of the Act respectively.

**Example :**

An Eligible Assessee is engaged in trading business of goods both in his own name and also as a consignee for another person. The Total Sales amount to Rs.1.30 Crore, Turnover Details are as follows:

Own Business Turnover = Rs.90 Lakh

Consignment Sales Turnover = Rs.40 Lakh

Whether Assessee can opt for Presumptive income computation or not?

For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e. Rs.90 Lakh. Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.1 Crore. Consignment Commission can be offered at any rate (Even below 8%), provisions of Section 44AD will not govern the commission income.

### Manner of computation of taxable business income :

In case of a person adopting the provisions of section 44AD, income is computed on presumptive basis at the rate of 8% of the turnover or gross receipts of the eligible business for the year.

In order to promote digital transactions and to encourage small unorganized business to accept digital payments, section 44AD is amended with effect from the Assessment Year 2017-18 to provide that income shall be computed at the rate of 6% instead of 8% if turnover/ gross receipt is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return under section 139(1).

Mode of Receipt	Presumptive Rate of Turnover
Cash	8%
Other than Cash i.e. Digital Payment/ account payee cheque/ account payee bank draft / electronic clearing system through a bank account / through such other electronic mode	6%

Hence, in case of a person adopting the provisions of section 44AD, income will not be computed in normal manner as discussed earlier (i.e., Turnover **less** Expenses) but will be computed @ 6% or 8%, as the case may be, of the turnover or gross receipt.

However, a person may voluntarily disclose his business income at more than 8% or 6%, as the case may be, of turnover or gross receipt.

The Central Board of Direct Taxes has prescribed other electronic modes to provide for the followings as an acceptable electronic mode of payments:

- a) Credit Card;
- b) Debit Card;
- c) Net Banking;
- d) IMPS (Immediate Payment Service);
- e) UPI (Unified Payment Interface);
- f) RTGS (Real Time Gross Settlement);
- g) NEFT (National Electronic Funds Transfer), and
- h) BHIM (Bharat Interface for Money) Aadhaar Pay.

For this purpose, a new Rule 6ABBA with the heading Other electronic modes is introduced in the Income Tax Rules, 1962. This rule has been given a retrospective effect and will come into force from 1st September 2019 even though the notification was issued on 29th January 2020.

### **Presumptive income computed as per the prescribed rate is the final income and no further expenses will be allowed or disallowed:**

In case of the presumptive taxation scheme of Section 44AD, the provisions of allowance/disallowances as provided for under the Income-tax Act will not apply and income computed at the presumptive rate of 6% or 8% will be the final taxable income of the business. In other words, the income computed as per the prescribed rate will be the final taxable income of the business and no further expenses will be allowed or disallowed.

While computing income as per the provisions of section 44AD, separate deduction on account of depreciation is not available. However, the written down value of any asset used in such business shall be calculated as if depreciation as per Section 32 is claimed and has been actually allowed.

Section 40 begins with "Notwithstanding anything to the contrary in Sections 30 to 38". It is to be noted that Section 40 is clothed in a negative language and it says that certain amounts shall not be deducted while computing income under the head "profits & gains of business or profession", whereas Section 44AD begins with "notwithstanding anything to the contrary contained in Section 28 to 43C".

On analysis of both the sections, the amplitude of non-obstante clause of Section 44AD is higher than the non-obstante clause of Section 40. Section 40 relates to disallowance of certain expenses due to non-deduction of TDS or non-deduction/ non-payment of equalisation levy, remuneration/ interest by firm to partners in excess of allowed etc.

Therefore, these expenses would not be disallowed even if TDS has not been deducted. However, the assessee may be deemed as assessee in default as per Section 201 as Section 44AD override provisions of Section 28 to 43C but not the provisions of TDS.

**Example:** Mr. Saurav declaring income u/s 44AD has made payment of interest to non-resident. However, no TDS has been deducted. Whether the expense will be disallowed u/s 40(a)?

The interest expense will not be disallowed as sec 44AD overrides sec 40(a). The assessee was required to deduct TDS as per sec 195. Although, he has not deducted the TDS, expense will not be disallowed. However, he may be considered as assessee in default as per sec 201 and other penal provisions may be applicable as sec 44AD does not override TDS provisions.

The provisions of Section 40A are not related to statutory dues and such other dues. It just imposes restrictions on payments and disallows amount which is not paid as per the provisions of the Act. It is also to be noted that provisions of Section 40A of the Act are with regard to allowability of expenditure which has been actually incurred and claimed by the assessee from Section 30 to 38 of the Act. Therefore, if the assessee declares income as per the provisions of Section 44AD of the Act, no disallowance shall be made u/s 40A of the Act.

### **Income higher than presumptive Income:**

The presumptive income is the minimum income to be offered for tax. If an assessee claims that he has earned a higher income, he must offer such higher income earned o tax.

### **Income lower than presumptive income :**

If an assessee has actually earned income lesser than the presumptive income, he may still opt to pay tax on the basis of presumptive income.

However, if he opts to declare lower income (higher than the minimum amount not chargeable to tax), he must maintain books of account and get the same audited as per Section 44AB.

In that case, he would not declare presumptive income. Hence, he will not be eligible to claim benefit of section 44AD for another five assessment years thereafter. In other words, presumptive tax Scheme will not be applicable for all those five years. He will have to compute his income as per Sections 28 to 43C and comply with requirements of maintaining books and audit thereof under sections 44AA and 44AB, respectively.

E.g. If in A.Y. 2022-23 and 2023-24 the Assessee declared income u/s. 44AD and in A.Y. 2024-25 he opts out of this presumptive taxation scheme (as his profit is lower than 8%) and files return by maintaining books of account u/s. 44AA, then he shall not be eligible to presumptive taxation scheme under 44AD till A.Y. 2029-30.

Further, he is required to keep and maintain books of account and he is also liable for tax audit as per Section 44AB from the AY in which he opts out from the presumptive taxation scheme. If his total income exceeds maximum amount not chargeable to tax.

### **Payment of Advance tax :**

Person opting for the presumptive taxation scheme under Section 44AD is liable to pay whole amount of advance tax on or before 15<sup>th</sup> March of the previous year. If he fails to pay the advance tax by 15<sup>th</sup> March of previous year, he shall be liable to pay interest as per Section 234C. Any amount paid by way of advance tax on or before 31<sup>st</sup> day of March shall also be treated as advance tax paid during the financial year ending on that day.

### **Lower Rate of Income in Different Scenarios :**

As per the proviso to 44AD(1), income can be declared as 6% of the turnover if the payment is received digitally or through banking channel before the due date of return filing u/s 139(1). However, many a times due date for return filing is extended or sometimes it may happen that assessee files his return after due date or he has filed return earlier than the due date, whether the assessee can claim 6% of turnover as his income under these scenarios.

#### **Case 1- Due date of return filing is extended**

The due date of return filing u/s 139(1) is extended by the Income Tax Department due to different reasons such as natural calamities, pandemic, technical glitches etc. The extended date becomes the due date u/s 139(1) of the Act for that assessment year. Therefore, any payment received through banking channel/ digitally up to the extended due date u/s 139(1) of the Act shall be eligible for claiming 6% of turnover as income.

### Case 2- If the assessee files his return after the due date of return

The proviso to Section 44AD(1) of the Act requires payment to be received up to due date of return filing. Any payment received even digitally/ through banking channel after the due date of return filing shall not be eligible for lower rate of income i.e 8% of turnover or higher shall be assumed as income.

**Example:** Suppose the due date for filing return u/s 139(1) for the A.Y. 2022-23 is 31<sup>st</sup> July 2022 and the assessee files his return on 26<sup>th</sup> December 2022. Whether receipts through banking channel/ digitally up to 26<sup>th</sup> December 2022 will be eligible for claiming 6% of turnover as profits? The receipts through banking channel/ digitally up to 31<sup>st</sup> July 2022 shall be eligible for claiming 6% of turnover as profits. The payments received after the due date i.e 31<sup>st</sup> July 2022 shall not be eligible for lower rates and these payments received after the due date of filing return will not be given the benefit of 6% of turnover.

### Case 3- If the assessee files his return before the due date of return

When the assessee files his return before the due date u/s 139(1) of the Act, he would have considered the facts on the date of filing of return and not assumed the facts beyond that date. The receipts through banking channel/ digitally up to date of return filing are considered for lower rate of income and the amount not received yet shall be considered for 8% of turnover as profits. The interesting issue here is what about the payments received through banking channel/ digitally after the date of return filing but before the due date of return filing. Whether these will be considered for 8 % of turnover or 6% of turnover as profits? If 6% is to be considered whether the return can be revised?

**Example:** Mr. Raj has a turnover of Rs. 80 Lakh for the A.Y. 2022-23. The due date of return filing is 31<sup>st</sup> July 2022. He files his return on 15<sup>th</sup> May 2022. He has received the following payments by account payee cheque:

Up to 31 <sup>st</sup> March 2022	Rs. 50,00,000
Up to 15 <sup>th</sup> May 2022	Rs. 15,00,000
From 16 <sup>th</sup> May 2022 to 31 <sup>st</sup> July 2022	Rs. 10,00,000
Received after 31 <sup>st</sup> July 2022	Rs. 5,00,000

Mr. Raj has filed return on 15<sup>th</sup> May 2022. Till that date, payments to the extent of Rs.65,00,000 has been received by account payee cheque. Mr. Raj can declare profits from business as:

6% of Rs. 65,00,000 = Rs. 3,90,000

8% of Rs. 15,00,000 (80L - 65L) = Rs. 1,20,000

**Total profits = Rs. 5,10,000**

Mr. Raj has received Rs. 10,00,000 after date of return filing but before due date of return filing. Mr. Raj can claim 6% of Rs. 10,00,000 as profits by revising the return. There is no doubt that the return can be revised u/s 139(5) before the end of assessment year or up to completion of assessment whichever is earlier. But as per the provisions of Section 44AD of the Act, the income claimed by Mr. Raj in his Income Tax Return will be final and subsequently by revising return, the same cannot be reduced.

The assessee has to maintain complete records about the receipts from customers, whether they are received in cash or through banking channel/ digitally and whether they are received up to due date of return filing or not. Further, the record maintenance is for two financial years.

### **Presumptive Tax for Professionals Under Section 44ADA**

The presumptive taxation scheme of section 44ADA is designed to give relief to small taxpayers engaged in specified profession

#### **Eligible Assessee:**

- i. An Individual,
- ii. Partnership firm (Other than LLP who is resident in India and engaged in a profession referred to in sub-section (1) of section 44AA.

A person resident in India engaged in following professions can take advantage of presumptive taxation scheme of section 44ADA:

- 1) Legal;
- 2) Medical;
- 3) Engineering or architectural;
- 4) Accountancy;
- 5) Technical consultancy;
- 6) Interior decoration;
- 7) Any other profession as notified by CBDT.

The Finance Act, 2021 has amended provisions of Section 44ADA to define eligible assessee. w.e.f. Assessment Year 2021-22, the benefit of Section 44ADA is eligible only in case of assessee who is an:

- a) Individual; and
- b) Partnership firm other than a Limited Liability Partnership as defined under clause (n) of sub-section (1) of Section 2 of Limited Liability Partnership Act, 2008

Engaged in Profession referred to in sub-section (1) of Section 44AA and gross receipts in the previous year does not exceed an amount of Seventy Five lakh rupees where the amount or aggregate of the amounts received by the eligible assessee during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year and also that the receipt of amount or aggregate of the amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash. (50% of Total Gross Receipts or more and No Deductions will be applicable u/s 30 to 38.

The Finance Act, 2023 revised presumptive taxation limits under Section 44ADA for FY 2023-24 (AY 2024-25) from Fifty Lakh Rupees to Seventy Five Lakh Rupees.

### **Manner of computation of taxable income**

In case of a person adopting the provisions of Section 44ADA, income will be computed on presumptive basis, i.e. @ 50% of the total gross receipts of the profession. However, such person can declare income higher than 50%.



In other words, in case of a person adopting the provisions of Section 44ADA, income will not be computed in normal manner but will be computed @50% of the gross receipts.

A person who adopts the presumptive taxation scheme is deemed to have claimed all deduction of expenses. Any further claim of deduction is not allowed after declaring profit @50%.

While computing income as per the provisions of section 44ADA, separate deduction on account of depreciation is not available.

However, the written down value of any asset used in such profession shall be calculated as if depreciation as per Section 32 is claimed and has been actually allowed.

### **Payment of Advance tax :**

Any person opting for the presumptive taxation scheme under section 44ADA is liable to pay whole amount of advance tax on or before 15<sup>th</sup> March of the previous year. If he fails to pay the advance tax by 15<sup>th</sup> March of previous year, he shall be liable to pay interest as per section 234C.

### **Maintenance of books of account :**

In case of a person engaged in a specified profession as referred in section 44AA(1) and opts for presumptive taxation scheme of section 44ADA, the provision of section 44AA relating to maintenance of books of account will not apply. In other words, if a person opt for the provisions of section 44ADA and declares income @50% of the gross receipts, then he is not required to maintain the books of account in respect of specified profession.

### **Provisions to be applied if a person does not opt for the presumptive taxation scheme of section 44ADA and declares his income from profession at lower rate (i.e. less than 50%)**

A person can declare income at lower rate (i.e. less than 50%), however, if he does so, and his income exceeds the maximum amount which is not chargeable to tax, then he is required to maintain the books of account as per the provisions of section 44AA and has to get his accounts audited as per section 44AB.

### **Tax Audit Limit for Professionals :**

Gross receipt Limit for Previous Year	Profit (in %)	Is tax audit Applicable?	Tax Audit Section
More than 50 Lakh	Any	Applicable	Section 44AB (b)
Up to 50 Lakh	50% or More (Section 44ADA)	No	Not Applicable
Up to 50 Lakh	Less than 50% (Section 44ADA)	Applicable	Section 44AB (d)

