

## Simplifying Section 44AD of Income Tax Act, 1961

**Q1. What is the objective of Presumptive Taxation Scheme?**

1. To relieve the small taxpayer from maintaining the books of accounts
2. Promoting Tax Compliances
3. Compliance cost reduction

**Q2. What is Section family of Presumptive taxation for RESIDENT?**

- a. Section 44AD - Cover All Business except Commission and agency
- b. Section 44ADA - All Professionals
- c. Section 44AE - Goods Carriers

**Q3. Who are the eligible assessee for section 44AD?**

- a. Resident **Individual**
- b. Resident Hindu Undivided Family
- c. Resident Partnership Firm (not Limited Liability Partnership Firm)
- d. Assessee Declaring Income Minimum as per provision
- e. Assessee *not claiming Special Deductions or Exemptions*

*Resident is as per the section 6 of Income tax Act, 1961*

**Q4. What is Concept of Business?**

Section 2(13) of the Income Tax Act provides that "business" includes any trade, commerce, manufacture, or any adventure or concern in the nature of trade, commerce, or manufacture.

**Q5. Which are the business ineligible for 44AD?**

- a. Business of plying, hiring or leasing of goods carriages referred to in section 44AE.
- b. A person who is carrying on any agency business.
- c. A person who is earning income in the nature of commission or brokerage.
- d. Turnover Not exceeding Limit

**Q6. What is the threshold limit of turnover under 44AD? Which points are to be taken in to consideration?**

*"Explanation (b) (ii) to section 44AD*

*Eligible business means whose total turnover or gross receipts do not exceed 2 crores"*

*Relevant provision/points to be consider while calculating Gross Turnover or receipts*

- a. Income as per section 2(24)
- b. Turnover excluding GST
- c. Exclude Reimbursement
- d. Section 28(iv) "In Kind" Benefit/Perquisite
- e. Sales nexus with Bank Deposits.
- f. Include Exempt Supply or Nil Rate Supply under GST
- g. Excludes Branch Transfers in supply.
- h. Includes Sale of Trading/Manufactured Goods
- i. Include Sale of Services
- j. Exclude Sales of Asset
- k. Exclude Sale of Investment to the extent it is not covered under trading.
- l. *Clubbing the Turnover of All the Businesses registered under One PAN.*

**Q7. How to identify the threshold limit for audit and non-audit?**

Steps	Situation	Applications	Compliances
1	Turnover Upto INR 1 Crores	Non Audit Case	Maintain Books and file the ITR without audit
2	Turnover up to INR 2 Crores	1. Opt for 44AD 2. Else Audit the books	1. If opted 44AD then only ITR 2. If not opted then get the books audited

3	Turnover above INR 2 Crores till 10 Crores	1. Condition of 5% Cash Transaction (Receipt and Payments Respectively) is fulfilled then no need of audit	1. Cash Transaction Conditions satisfied then only file the ITR 2. Else Get the books audited
4	Enhanced Limit of 44AD upto 3 Crores	1. Condition of less than 5% of <b>Cash Receipts</b>	1. File Only ITR

*Cash Transaction includes Capital and Revenue*

**Q8. What is profit % for deemed income?**

Sr No	Particulars	Deemed Income
1	Sales amount Received Digitally or in Kind Benefit	6% of the Sales
2	Sales amount received in cash	8% of the Sales
3	Debtors as on 31 <sup>st</sup> March but recovered till 31 <sup>st</sup> July in CASH	8% of Sales
3	Debtors as on 31 <sup>st</sup> March but recovered till 31 <sup>st</sup> July in Non Cash Mode i.e any Banking mode	6% of the Sales
4	Debtors as on 31 <sup>st</sup> March but not recovered till 31 <sup>st</sup> July	8% of Sales

**Q9. What is concept of DEEMED under Law?**

- Deemed" means to treat something as if it is really something.
- Deemed is necessary to create a Legal Fiction. Legal fiction means to assumed that something is true though it may not be.
- The Supreme Court has held that word "Deemed" means – **Supposed, Considered or Presumed.**
- Deemed Income does not have any **express Source.**
- Legal Fiction should not be given meaning to cause injustice.
- In Legal Fiction – All facts are presumed.

In relevance to 44AD the provision is about deemed Income. It provides for 6% or 8% profit which deemed that 94% or 92% are deemed expense. It means these are presumed to be the expense of the business which is declared the profit u/s 44AD

**Q10. What is Conditions relating to books of accounts?**

*According to sub section (5) of 44AD of Income Tax Act, 1961, those assessee whom subsection (4) is applicable shall require to maintain books of account.*

*Whereas sub section (4) of Section 44AD clearly states that the assessee*

- Who is declaring the income below 6% of 8% and*
- Who has declared Income u/s 44AD for five consecutive assessment year*

*Such assessee Cannot declared the Income u/s 44AD*

**The simple interpretation of the above sub section is, if the assessee eligible to declare the income u/s 44AD is not required to maintain Books of Accounts and get them audited.**

Now only the aspect remain is the onus to prove the gross receipts or turnover for which the assessee need to maintain the Sales Invoices. Further the credits in the Bank Statements shall have nexus with the sales /turnover to justify the Gross Receipts

*In my opinion, the assessee shall maintain the records on single entry principles and prepare the STATEMENT OF AFFAIRS, cash flow and reconcile AIS, 26AS and GST returns if applicable. Apart from need to maintain schedule of fixed asset as the depreciations is deemed to be claimed in the every return u/s 44AD. This will help to arrive at correct WDV in the 6<sup>th</sup> year when the scheme is not eligible.*

**Q11. Whether the section 28 to 43C are applicable to assess declaring income u/s 44AD?**

The provision of Section 44AD starts with "NOTWITHSTANDING ANYTHING CONTRARY CONTAINED IN SEC.28 TO SEC.43C"

*In simple words, it means section 28 to 43C of Income Tax Act, 1961 is not applicable to assesses declaring income u/s 44AD*

- Q12. Whether TDS provision are applicable to the assessee opting Section 44AD?**  
No, as the TDS provision are applicable if the books of accounts are maintained except those where the TDS is deducted without TAN i.e wherever Section 203A is not applicable.
- Q13. Whether the provision of unexplained Income or expenditure i.e 68 & 69 of Income tax Act, 1961 are applicable?**  
In my opinion the provisions which are based on books of accounts shall not attract the provisions of 68 & 69. Few rulings have initiated that the bank statement forms part of books of accounts and therefore 68 & 69 family is attracted. Yet, the Issue is unsettled in the law.
- Q14. Whether the deemed Income u/s 44AD is related with the Cash flow ?**  
Yes, the Deemed Income is co-related with cash flow of an assessee. If the cash outflow of the assessee is exceeding the Deemed Income declared u/s 44AD, then the shortfall shall attract the penal consequences of underreporting.
- Q15. What is block of period for claiming 44AD?**  
Consecutive five Assessment Year subject to fulfillment of the conditions in the provisions. In either case if the condition failed in between the block of 5 years then from that particular year the assessee is not eligible for 44AD for subsequent five years.

*Disclaimer:*

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