

Practical Issues in
S.44AD / 44ADA/ 44AE
(Including Audit u/s.
44AB) of the I.T Act

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PRESUMPTIVE PROVISIONS

PRIMARY PROVISIONS

- SECTION 44AD
- SECTION 44ADA
- SECTION 44AE

ALLIED PROVISIONS

- SECTION 44AA
- SECTION 44AB
- SECTION 40(a), 40A, 43B
- SECTION 68/69 SERIES
- TDS PROVISIONS
- PENALTY PROVISIONS

Basics of Sec 44AD

- **Who can avail ?** - Eligible assessee engaged in eligible business
- **What is eligible business ?** - "eligible business" means,—
 - (i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and
 - (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees

Basics of Sec 44AD

- **Who is eligible assessee?** - "eligible assessee" means,—
 - (i) an individual, HUF or a partnership firm, who is a resident, but not a LLP and
 - (ii) who has not claimed deduction u/s 10A, 10AA, 10B, 10BA or Chapter VIA under the heading "*C. - Deductions in respect of certain **incomes***" in the relevant assessment year;

Basics of Sec 44AD

- **Who cannot avail this section?**

(6) The provisions of this section, **notwithstanding anything contained in the foregoing provisions**, shall not apply to—

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or
- (iii) a person carrying on any agency business.

Inserted by FA 2012 w r e from 1-4-2011

Basics of Sec 44AD

- **How much to offer ?**

- a sum equal to **eight per cent** of the total turnover or gross receipts or
- a sum **higher than the aforesaid sum** claimed to have been earned

- **Any exception?**

- A sum equal to **six per cent**, if received in banking channel before the due date u/s. 139(1)

Basics of Sec 44AD

- **Any other conditions?**

Ss. (2) Deduction u/s 30 to 38 shall be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

Ss. (3) The WDV of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

Basics of Sec 44AD

- **What if the income not offered as specified in Ss (1)?**

From A Y 2017-18 onwards

(4) Where an eligible assessee **declares profit** for any previous year in accordance with the provisions of this section and he **declares profit for any of the five assessment years** relevant to the previous year succeeding such previous year **not in accordance with the provisions of sub-section (1)**, he shall **not be eligible to claim** the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

Prior to AY 2017-18

(4) The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.

Basics of section 44AD

From A Y 2017-18 onwards

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee **to whom the provisions of sub-section (4) are applicable** 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 sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Upto AY 2016-17

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee **who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1)** 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 sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- **Whether audit u/s. 44AB is mandatory because the income from eligible business is less than 8/6% (w.e.f AY 2017-18)?**
- *Sec 44AB - Every person,—*
 - (a), (b), (c), (d),.....*
 - (e) carrying on the business shall, if the provisions of **sub-section (4) of section 44AD are applicable** in his case 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 audited by an accountant before the specified date and furnish by that date the report of such audit.....*

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S commenced his lodging business.
- His turnover & income details during the first two years were as follows

Particulars	Turnover	Income
First year	70 lakhs	3.5 lacs (5%)
Second year	90 lakhs	4.5 lacs (5%)

- Whether sec 44AB is applicable to him for the first two years?

- Sec 44AD –

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr.S engaged in lodging business, gives the following details:

Asst Year	Turnover	Busi. Income	%	Audit u/s
2016-17	80.00 lacs	4.00 lacs	5%	44AB
2017-18	82.00 lacs	4.10 lacs	5%	44AB
2018-19	84.00 lacs	4.20 lacs	5%	44AB
2019-20	90.00 lacs	4.50 lacs	5%	44AB
2020-21	94.00 lacs	4.70 lacs	5%	44AB
2021-22	60.00 lacs	2.40 lacs	5%	????

- Whether Mr S required to get his accounts audited since the income is less than 8/6% of its turnover (Assume, he has no other Income)

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S gives following information about his lodging business

Asst year	Turnover	Busi.Income	%	Section applied
2018-19	50.00	4.00	8%	44AD(1)
2019-20	58.00	5.80	10%	44AD(1)
2020-21	70.00	8.40	12%	44AD(1)
2021-22	50.00	3.50	5%	????

- He is eligible for deduction of Rs.1.5 lacs u/s. 80C
- He has no other income
- Whether sec 44AB is applicable to him?

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- M/s. S & co (firm) gives following information about its lodging business

Asst year	Turnover	Busi.Income	%	Section applied
2018-19	50.00	4.00	8%	44AD(1)
2019-20	58.00	5.80	10%	44AD(1)
2020-21	70.00	8.40	12%	44AD(1)
2021-22	50.00	(-) 2.50	(-) 5%	????

- Whether sec 44AB is applicable to this firm?

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Business Income	%	Section Applied
2018-19	80.00 Lacs	6.80 Lacs	8.5%	S.44AD(1)
2019-20	150.00 Lacs	13.50 Lacs	9.0%	S.44AD(1)
2020-21	210.00 Lacs	16.80 Lacs	8.0%	S.44AB(a)
2021-22	90.00 Lacs	7.20 Lacs	8.0%	???

- Whether the assessee can opt for sec 44AD in AY 2021-22???

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2018-19	80 Lacs	8.00 Lacs	10.0%	S.44AD(1)
2019-20	150 Lacs	7.50 Lacs	5.0%	S.44AD(4) & 44AB
2020-21	210 Lacs	21.00 Lacs	10.0%	S.44AB(a)
2021-22	90 Lacs	7.20 Lacs	8.0%	???

- Whether the assessee can opt for sec 44AD in AY 2021-22??

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2020-21	80 Lacs	8.00 Lacs	10.0%	S.44AD(1)
2021-22	70 Lacs	4.20 Lacs	6.0%	???

- During the FY 2020-21, Mr. S also took agency business and made Turnover of Rs.20 lacs (profit – 2%)
- Whether Mr S is liable for audit of his accounts as per sec 44AD (4) r w s 44AB(e) of the Act for AY 2021-22???

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2020-21	80 Lacs	8.00 Lacs	10.0%	S.44AD(1)
2021-22	70 Lacs	4.20 Lacs	6.0%	???

- During the FY 2020-21, Mr. S also received a commission of Rs.10000/- in connection with a land deal.
- Whether Mr S is liable for audit of his accounts as per sec 44AD (4) r w s 44AB(e) of the Act for AY 2021-22???

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2020-21	80 Lacs	8.00 Lacs	10.0%	S.44AD(1)
2021-22	70 Lacs	4.20 Lacs	6.0%	???

- During the FY 2020-21, Mr. S also commenced his consultancy practice (after completion of his M Sc (Comp. Science) and earned Rs.1,00,000/-
- Whether Mr S is liable for audit of his accounts as per sec 44AD (4) r w s 44AB(e) of the Act for AY 2021-22??

Issues relating to Sec 44AD (audit – Ss (4) & Ss (5))

- Mr. S engaged in lodging business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2020-21	140 Lacs	14.00 Lacs	10.0%	S.44AD(1)
2021-22	105 Lacs	6.03 Lacs	6.0%	???

- During the FY 2020-21, Mr. S ensured that his cash receipts/payments were less than 5% of total receipts/payments
- Whether Mr S is liable for audit of his accounts as per sec 44AD (4) r w s 44AB(e) of the Act for AY 2021-22??

Issues relating to Sec 44AD (eligibility – Ss (1) & Ss (6))

- **Whether professional can avail sec 44AD(1)?**
- Section applies to eligible business
 - Business defined in sec 2(13)
 - Profession defined in sec 2(36)
- Eligible business does not include profession referred to in sec 44AA (1) only.
- Sec 44AA(1) – deals with specified and notified profession (11 profession)
- Sec 44AA(2) – deals with business or **profession not being a profession referred to in sub-section (1)**
- So, can profession falling under 44AA(2) avail 44AD(1)??

Profession specified u/s. 44AA(1) Vs Code prescribed – Others

Sector	Sub-Sector	Code	44AD	44ADA	44AE
PROFESSIONS	Advertising	16006	√	X	X
	Auctioneers	16010	√	X	X
	Business brokerage	16011	X	X	X
	Market research and public opinion polling	16012	√	X	X
	Labour recruitment and provision of personnel	16014	√	X	X
	Investigation and security services	16015	√	X	X
	Building-cleaning and industrial cleaning activities	16016	√	X	X
	Packaging activities	16017	√	X	X
	Other professional services n.e.c.	16019	√	X	X

Issues relating to Sec 44AD (eligibility – Ss (1) & Ss (6))

- **Whether the person owning more than 10 goods carriages can avail the benefit of sec 44AD?**
 - "eligible business" means,—
 - (i) any business **except the business of plying, hiring or leasing goods carriages referred to in section 44AE;**
 - **Form Vs Act**
- **Whether partner receiving interest & salary from firm can avail the benefit of sec 44AD?**
 - Investing in partnership is not amounting to “business”
 - **Tara Devi Behl 218 ITR 541 (P&H)**
 - As a corollary, sec 44AD shall not be applicable for the income by way of interest / salary received from firm
 - **A Anand Kumar – Mad HC**

Issues relating to Sec 44AD (eligibility – Ss (1))

- Can a non-resident avail the benefit of sec 44AD?
- Can a LLP or AOP or BOI or company avail the benefit of sec 44AD?
- Can sec 44AD be availed for one out of many eligible business ?

Issues relating to Sec 44AD (eligibility – Ss (1))

- Mr. Q is engaged in retail trade and money lending business
- His turnover and profits for the first year of business are as under

Particulars	Turnover	Net Profit	% of NP to TO
Money lending	Rs.25 Lacs	Rs.5 Lacs	20%
Retail Trade	Rs.50 Lacs	Rs.3 Lacs	6%
Total	Rs.75 Lacs	Rs.8 Lacs	10.67%

- He would like to go u/s. 44AD for money lending (offering 8%) and u/s. 44AB for retail trade (offering 6%).
- Can he do so?

Other Controversies in sec 44AD

- Doubting the business/turnover
- Onus to prove the expenditure
- Claim of partner's remuneration & interest
- Applicability of other provisions such as
 - Sec 40A(3)
 - Sec 40(a)(ia)
 - Sec 43B
 - Sec 68/69 series
 - Sec 269SS/269T/269ST
- Quantum considered for source
- Will be discussed after discussing sec 44ADA/sec 44AE

Basics of Sec 44ADA

- **Who can avail?**

- Status – Individual & Firm (other than LLP)
- Residential status - Resident
- Nature of activity – profession **(specified u/s 44AA(1))**

- **How much to offer?**

- 50% of gross receipts or
- Such higher sum claimed to have been earned

Basics of Sec 44ADA

- **What are other conditions?**

Ss. (2) Deduction u/s 30 to 38 shall be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

Ss. (3) The WDV of any asset used for the purpose of the profession 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.

Basics of Sec 44ADA

- **What if the income not offered as specified in Ss (1)?**
 - Maintain books of account – sec 44AA (1)
 - Get the books audited u/s. 44AB (d) (only if the total income exceeds basic limit)

Profession specified u/s. 44AA(1)

- legal,
- medical,
- engineering or
- architectural profession or
- the profession of accountancy or
- technical consultancy or
- interior decoration or

any other profession as is notified by the Board in the Official Gazette

- Authorized representatives
- Film Artists ([No. 17\(E\) - Dated: 12-1-1977 – IT](#))
- Company Secretaries ([No. S.O.2675 - Dated: 25-9-1992 – IT](#)) and
- Information technology ([No. 385\(E\) - Dated: 4-5-2001 – IT](#))

Analysis of sec 44ADA

- Section applies to **resident assessee only**
- Section applies to only **firm (other than LLP) and Individual (FA 2021)**
- Section does not apply to all professionals – it applies to only professionals specified u/s. 44AA(1) –
 - Sec 44AA(2) - Every person carrying on business or **profession not being a profession referred to in sub-section (1)** shall
 - **Form provides for non-specified professionals – see next few slides**

Profession specified u/s. 44AA(1) Vs Code prescribed – Medical – Part 1

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	General hospitals	18001	X	√	X
	Speciality and super speciality hospitals	18002	X	√	X
	Nursing homes	18003	X	√	X
	Diagnostic centres	18004	X	√	X
	Pathological laboratories	18005	X	√	X
	Independent blood banks	18006	√	X	X
	Medical transcription	18007	√	X	X
	Independent ambulance services	18008	√	X	X
	Medical suppliers, agencies and stores	18009	√	X	X
	Medical clinics	18010	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Medical – Part 2

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	Dental practice	18011	X	√	X
	Ayurveda practice	18012	X	√	X
	Unani practice	18013	X	√	X
	Homeopathy practice	18014	X	√	X
	Nurses, physiotherapists or other para-medical practitioners	18015	X	√	X
	Veterinary hospitals and practice	18016	X	√	X
	Medical education	18017	X	√	X
	Medical research	18018	X	√	X
	Practice of alternative medicine	18019	X	√	X
	Other healthcare services	18020	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Accountancy, Consultancy

Sector	Sub-Sector	Code	44AD	44ADA	44AE
PROFESSIONS	Accounting, book-keeping and auditing profession	16002	X	√	X
	Tax consultancy	16003	X	√	X
	Fashion designing	16007	X	√	X
	Photography	16009	X	√	X
	Business and management consultancy activities	16013	X	√	X
CULTURE AND SPORT	Individual artists excluding authors	20010	X	√	X
	Literary activities	20011	X	√	X
	Other cultural activities n.e.c.	20012	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Information technology

Sector	Sub-Sector	Code	44AD	44ADA	44AE
COMPUTER AND RELATED SERVICES	Software development	14001	X	√	X
	Other software consultancy	14002	X	√	X
	Data processing	14003	X	√	X
	Database activities and distribution of electronic content	14004	X	√	X
	Other IT enabled services	14005	X	√	X
	BPO services	14006	X	√	X
	Maintenance and repair of office, accounting and computing machinery	14008	X	√	X
	Cyber café	14007	√	X	X
	Computer training and educational institutes	14009	√	X	X
	Other computation related services n.e.c.	14010	√	X	X

Analysis of sec 44ADA (Contd..)

- All deductions shall be deemed to be claimed and allowed in full
 - Firm – partners interest and remuneration deemed to be allowed already
- Profit on sale of assets – block becoming negative – shall not be included in the presumptive income

Issues relating to Sec 44ADA (Audit u/Ss(4) r w s 44AB(d))

- Mr. A is a practicing advocate.
 - His annual Gross receipts – Rs.10 lacs
 - His net profit from profession was Rs. 4.0 lacs
 - He has loss from house property of Rs.1.25 lacs and deduction u/s 80C – Rs.0.75 lacs
 - Examine the applicability of sec 44AB / sec 44ADA
- Every person,—
 - (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section **44ADA** and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

Issues relating to Sec 44ADA (Audit u/Ss(4) r w s 44AB(d))

- Mr. HS is a practicing advocate.
 - His annual Gross receipts – Rs.60 lacs
 - His net profit from profession was Rs. 20 lacs
 - Both cash receipts/ payments are less than 5% of total receipts/ payments respectively
 - Examine the applicability of sec 44AB
- Sec 44AB - Every person,—
 - (a) Carrying on business shall
 - Provided*** that
 - (b) carrying on profession shall, if **his gross receipts in profession** exceed fifty lakh rupees in any previous year; or

Issues relating to Sec 44ADA (Audit u/Ss(4) r w s 44AB(d))

- Dr R is a medical practitioner, having clinic and medical shop.
- His turnover/gross receipts are as under:
 - Fees from Profession – Rs. 40 lacs
 - Sales in medial Shop – Rs. 70 lacs
- He would like to offer
 - a) Rs.20 lacs as income from profession u/s 44ADA (50%)
 - b) Rs.5.6 lacs as income from pharmacy u/s. Sec 44AD (8%)
- Can he do so??
- **Form Vs Act**

- Sec 44AD –
(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—
 - (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) a person earning income in the nature of commission or brokerage; or
 - (iii) a person carrying on any agency business.

Basics of Sec 44AE

- **Who can avail?**

- Status – no restriction
- Residential status – no restriction
- Nature of activity - engaged in the business of plying, hiring or leasing such goods carriages,
- Additional condition - **owns not more than ten goods carriages at any time** during the previous year

- **How much to offer?**

- **heavy goods vehicle**, Rs.1000/- per ton of **gross vehicle weight or unladen weight** for every month or part of a month
- **other than heavy goods vehicle**, Rs.7,500 for every month or part of a month

or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

Basics of Sec 44AE

- **What are other conditions?**

Ss. (3) Deduction u/s 30 to 38 shall be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. (Where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.)

Ss. (4) The WDV of any asset used for the purpose of the profession 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.

Basics of Sec 44AE

- **What other benefits if the income offered as specified in Ss (1) & Ss(2)?**
 - No need to maintain books of account – sec 44AA(2)
 - No need to get the accounts audited – sec 44AB(a)
 - Turnover & income of this business would not be included for the purpose of sec 44AA & 44AB
- **What if the income not offered as specified in Ss(1) & (2)**
 - Maintain books of account – sec 44AA (2)
 - Get the books audited u/s. 44AB (c) (even if the total income does not exceed basic limit)

Definitions used in sec 44AE

- *Explanation.*—For the purposes of this section,—
 - (a) *the expressions "goods carriage", "gross vehicle weight" and "unladen weight" shall have the respective meanings assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);*
 - (aa) *the expression "heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;*

Definition used in sec 44AE

Under Income tax Act

- *"heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;*

Under Motor Vehicle Act

- 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.

Meaning of words – MV Act 1988

- "goods carriage" means any **motor vehicle constructed** or adapted for use **solely for the carriage of goods**, or any motor vehicle not so constructed or adapted when used for the carriage of goods
- "gross vehicle weight" means in respect of any vehicle the **total weight of the vehicle and load certified and registered** by the registering authority as permissible for that vehicle;
- "unladen weight" means the **weight of a vehicle or trailer** including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body

Clarification of CBDT - F.No.225/233/ 2019/ITA-II dt 14-08-2019

- All **goods carriage** vehicle whose **gross vehicle weight** exceeds 12.000 kilograms, the profits and gains from each goods carriage for the purposes of section 44AE of the Act shall be at the rate of **Rs. 1000/- per ton of gross vehicle weight** for every month or part of the month.
- However in respect of a **tractor or a road-roller**. where the **gross vehicle weight is not applicable, and unladen weight** exceeds 12,000 Kilograms. the profits and gains from each **goods carriage** for the purposes of section 44AE of the Act shall be at the rate of **Rs. 1000:- per ton of unladen weight** for every month or part of the month.

Analysis of Section 44AE

- All type of assesseees can avail the benefit of this section – including LLP, AOP, BOI, Ltd Company
- Interplay between section 44AE and Section 115JB and normal provisions
- Consider the case of A Ltd – owning three lorries (Not heavy goods carriages) through out the year
Income Tax
- U/s. 44AE–3*7500PM*12mts- Rs.2,70,000/- Rs.84,240/-
- Under Normal Provisions - Rs.2,20,000/- Rs.68,640/-
- Under section 115JB - Rs.5,00,000/- Rs.78,000/-

Analysis of section 44AE

- Section does not have any turnover restrictions.
- It has restrictions on the number of vehicles **owned by** the assessee at any time during the previous year
 - **Status of the vehicles taken on lease or hire- to include or exclude??**
 - Form vs Act – owned, hired or leased
- Assessee owns not more than 10 vehicles – but few more taken on lease / hire.
 - **To avail presumptive income u/s.44AD???**
 - Form Vs Act – Code prescribed

Analysis of sec 44AE – code prescribed

Sector	Sub-Sector	Code	44AD	44ADA	44AE
RENTING OF MACHINERY	Renting of land transport equipment	08001	√	X	√
TRANSPORT & LOGISTICS SERVICES	Packers and movers	11002	√	X	√
	Freight transport by road	11008	√	X	√
	Forwarding of freight	11010	√	X	√
	Receiving and acceptance of freight	11011	√	X	√
	Cargo handling	11012	√	X	√
	Other Transport & Logistics services n.e.c	11015	√	X	√

Issues in relation to sec 44AE (Ss (1) & (2) r w Ss (7) & sec 44AB(c))

- Mr. A owns 2 goods carriages (gross vehicle weight is less than 12 tons).
- His net profit from the business during the FY 2020 – 21 was Rs. 1,50,000/-
- He did not want to show income as per sec. 44AE (@ Rs.7500*12*2 – Rs.1,80,000/-
- He does not have any other income during the year
- Is he required to get the accounts audited if he chooses to offer income of Rs.1.5 lacs instead of Rs.1.8 lacs?

Issues in relation to sec 44AE

- M/s A & Co (firm) owning lorries furnishes the following details

Particulars	Amount/nos.
Turnover	Rs.120 lacs
No of vehicle owned (GVW > 12 tonnes)	10
Income u/s. 44AE - $(7500*10*12)$	Rs. 9 lacs
Income as per books (before int & Salary)	Rs. 12 lacs
Interest and remuneration to partners	Rs. 4 lacs

- Discuss about the applicability of sec 44AB/44AE

Analysis of section 44AE

- Depreciation shall also be considered as allowed in full and WDV shall be arrived at accordingly
 - Profit on sale of lorries, subject to block becoming negative chargeable u/s. 50
 - Such profit cannot be considered as part of presumptive income
- If the income claimed is less than the quantum prescribed in Ss(2), maintenance of books u/s.44AA & audit u/s. 44AB required.
 - If the income claimed is less but books not maintained, or not audited – consequences?
 - Can the income be enhanced - Can penalty be levied - Can both be done
 - SHRI NATTHI SINGH VERSUS ITO - 2018 (11) TMI 634 - ITAT JAIPUR

Other Issues in Sec 44AE

- Whether the assessee can choose this section only for few vehicles and for rest of other vehicles claim lower profits by maintaining accounts, etc?
 - CP. Kunhimohamed – 2004 (12) TMI 313 (ITAT Cochin)
- Whether the section would apply even if the turnover crosses the limit of Rs.1 Crore
 - ANIL RAMGOPAL MALI – 2009 (12) TMI 583 (ITAT Pune)
- When ONLY one truck is owned and used for own business but occasionally let on hire (income being very meagre) S.44AE applicable
 - Northern Services & Supply Co P Ltd – 2016 (10) TMI 222 ITAT KOLKATA

Presumptive cases – comparative study

Particulars	Sec 44AD	Sec 44ADA	Sec 44AE
Residential status	Resident only	Resident only	Resident & NR
Status of assessee	INDL. HUF, Firm (Other than LLP)	INDL, Firm (other than LLP)	No restrictions
When %/sum not offered, Sec 44AB applies	Only when income exceeds basic limit & Ss (4) applies	When income exceeds basic limit	Whether or not income exceeds basic limit
In case of firm, allowability of Partners' salary & interest	Deemed to be allowed	Deemed to be allowed	From the presumptive income, fresh claim allowed

Common issues / controversies for sec 44AD/44ADA /44AE

- Sections prescribed only minimum income to be offered – It does not restrict offering of additional amount over and above the amount or % specified
 - Advisable to report actual income
 - In case of mismatch of investment, sec 115BBE may be applied.
- Deposits in Bank account - Applicability of section 68
 - MOHD. AKBAR - 2016 (6) TMI 494 - ITAT HYDERABAD
 - SRI SHAIK ZAMEER, KOVUR (V) & (M) - 2018 (5) TMI 1484 - ITAT HYDERABAD
 - INDRANI DEVI - 2019 (3) TMI 376 - ITAT PATNA
 - MOHAN KUMAR AGARWAL - 2019 (6) TMI 1365 - ITAT KOLKATA
 - SH. AMIT JAIN - 2019 (8) TMI 1314 - ITAT AGRA
 - SRI. GIRISH V. YALAKKISHETTAR - 2020 (1) TMI 1111 - ITAT BANGALORE
 - SHRI KOKKARNE PRABHAKARA – 2020 (9) TMI 536 ITAT BANGALORE
 - DINESHKUMAR VERMA - 2021 (1) TMI 13 - ITAT MUMBAI

Common issues for sec 44AD/44ADA /44AE

- Deposit in bank account is less than gross receipts and Existence of Business accepted
- Whether section 69/69A can be applied?
- Whether to prove each credit ?
- Whether to prove nexus for each credit ?
- Whether only a part of it can be taxed u/s. 69?

Common issues for sec 44AD/44ADA /44AE

- NAND LAL POPLI - 2016 (6) TMI 883 - ITAT CHANDIGARH
- MR. PRADEEP JAIN - 2019 (6) TMI 300 - ITAT DELHI
- SHRI THOMAS EAPEN - 2019 (11) TMI 1240 - ITAT COCHIN.
- SMT. KIRAN VALLABHAI AHIR - 2020 (4) TMI 329 - ITAT SURAT
- SYED MAQSOODULLA - 2020 (12) TMI 332 - ITAT BANGALORE
- SMT. SRIDEVI RAVI - 2020 (12) TMI 665 - ITAT CHENNAI
- SH. VIRENDER KUMAR - 2021 (4) TMI 154 - ITAT JAIPUR
- SHRI SORABH KUMAR - 2021 (7) TMI 9 - ITAT DELHI
- SHRI SARDARI LAL - 2021 (9) TMI 881 - ITAT AMRITSAR

Common issues / controversies for sec 44AD/44ADA /44AE

- Deposits in bank is more than Gross receipts offered and Existence of business accepted
- For the excess, whether sec 69/69A can be applied?
- Can 8/6% be applied for excess ?
- Can opening balance be taken for source?
- If the “A” maintains
 - Books and proves credit other than turnover, can addition be made?
 - Cash flow and justifies the credit with confirmation, can addition be made ?
- If the “A” claims, without supporting document that
 - Advance from customer deposited?
 - Previous year cash withdrawal was deposited?

Common issues / controversies for sec 44AD/44ADA /44AE

- SMT. KIRAN VALLABHAI AHIR - 2020 (4) TMI 329 - ITAT SURAT
- SM. HONEY RAHULAN - 2020 (6) TMI 242 - ITAT COCHIN
- MR. M.A. SIDDIQUE, MR. MOHAMMED SAFWAN - 2020 (8) TMI 835 - ITAT BANGALORE
- SHRI KOKKARNE PRABHAKARA - 2020 (9) TMI 536 - ITAT BANGALORE
- SHRI MOHIT MUNDRA - 2020 (10) TMI 282 - ITAT JAIPUR
- SHRI. MOHAMMED SHARAQ - 2021 (4) TMI 451 - ITAT BANGALORE

Common issues / controversies for sec 44AD/44ADA /44AE

- Deposits in bank not disclosed in ITR – Receipt have no nexus with the business – Sec 69/69A can be applied
 - JHAMTANI JAIRAM RAMCHAND - 2021 (3) TMI 715 - ITAT PUNE
- Can addition be made for non-confirmation of creditors / debtors balance
 - SHAILENDRA SINGH BHADAURIA VERSUS ITO - 2015 (10) TMI 2561 - ITAT LUCKNOW
 - SHRI BHARAT PATODIA - 2021 (8) TMI 758 - ITAT MUMBAI
 - SHRI VIKRANT JAYANT SANKHE - 2020 (11) TMI 467 - ITAT MUMBAI

Common issues / controversies for sec 44AD/44ADA /44AE

- Having accepted the income u/s. 44AD/ADA/AE,
 - can the assessee be asked to prove that balance amount was spent?
 - SYED KHALID SAIFULLAH - 2020 (4) TMI 818 - ITAT DELHI
 - SRI. GIRISH V. YALAKKISHETTAR - 2020 (1) TMI 1111 - ITAT BANGALORE
 - SHRI THOMAS EAPEN - 2019 (11) TMI 1240 - ITAT COCHIN
 - Can the assessee be asked to prove expenses incurred, cash found on the date of survey etc? – Else, can ad hoc disallowance made?
 - SHRI ALKESH PATNI - 2021 (4) TMI 101 - ITAT JAIPUR
 - SHRI VIKRANT JAYANT SANKHE - 2020 (11) TMI 467 - ITAT MUMBAI

Common issues / controversies for sec 44AD/44ADA /44AE

- Can there be following disallowance after accepting presumptive income?
 - Disallowance for personal purposes u/s. 38
SHRI RAM KARAN YADAV - 2018 (9) TMI 1090 - ITAT JAIPUR
 - Unabsorbed depreciation loss u/s. 32(2)
SUNIL M. KANKARIYA - 2007 (1) TMI 242 - ITAT PUNE-B
 - Unabsorbed business loss u/s. 72(2)
 - Disallowance u/s 40A(3)
BV. PRABHU - 2010 (1) TMI 882 - ITAT, BANGALORE

Common issues for sec 44AD/44ADA/44AE

- Can there be following disallowance after accepting presumptive income?
 - Disallowance u/s. 40(a)(i)(a)
 - BV. PRABHU - 2010 (1) TMI 882 - ITAT, BANGALORE
 - JAHARLAL MUKHERJEE - 2015 (8) TMI 1155 - ITAT KOLKATA
 - SHRI BIPINCHANDRA HIRALAL THAKKAR - 2021 (5) TMI 890 - ITAT SURAT
 - Disallowance u/s. 43B
 - GOOD LUCK KINETIC - 2015 (6) TMI 648 - ITAT PANAJI

Common issues for sec 44AD/44ADA/44AE

- Section 44AD on share trading business
 - SHRI RAHUL KASHYAP - 2019 (2) TMI 898 - ITAT DELHI
- As per sec 44AD, in case of share (derivative) business, can the officer ignore the loss and estimate 8/6% on Gross turnover?
 - NIRANJAN JATA - 2020 (1) TMI 1018 - ITAT CUTTACK
- Amount available as source for investment - Profit declared plus depreciation allowable
 - SHRI BHARAT BHUSHAN – 2020 (5) TMI 167 ITAT BANGALORE

Common issues for sec 44AD/44ADA/44AE

- Applicability of TDS provisions
 - 194A, 194H, 194I, 194J, 194C – limit rationalised in FA 2020
- Applicability of penalty provisions
 - sec 269SS/269T/269ST (when books are not maintained)
 - Section 271A
 - Section 271B
 - Section 271A and sec 271B

THANK YOU