



Section 44AD – An Overall View

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There were many presumptive income schemes for small businessmen carrying on business of civil construction, transport business and retail trade etc. Presumptive schemes were covered under section 44AD, 44AF and 44AE of the Income Tax Act, 1961. The presumptive scheme for retailer u/s 44AF has been withdrawn and presumptive scheme u/s 44AD has been amended with effect from assessment year 2011-12. In other words it can be said that the new Section 44AD has been inserted to replace old Section 44AD and 44AF as new section 44AD and will be applicable to the business which also include retail trade.

The provisions of Section 44AD are applicable only in following certain conditions :-

Eligible Assessee :- The assessee who are Individuals, HUF and partnership firm are only covered by the provisions of Section 44AD. The LLP's, Companies, AOP and AJP are out of the purview of this section. The non-residents Indians are also not eligible assesses for the purpose of Section 44AD. The provisions of this section will also not apply to those assessee who have claimed deduction u/s IOA, 10AA, IOB, 10BA, 80HH to 80RRB in the relevant assessment year.

Eligible Business :- The assessee should be engaged in any business excepting the business of plying, hiring or leasing goods carriages, referred in Section 44AE and the turnover or gross receipt in the previous year of the eligible business should not exceed an amount of Rs.60,00,000/=.

Deemed Income :- The deemed income under this section shall be an amount equal to or higher than 8% of the total turnover or gross receipts of the business. Such amount shall be deemed to be the income charged under the head "Profit and Gains of business

or Profession".

Deduction :- It has been assumed that full effect of deduction U/S 30 to 38 has been given while deeming profit u/s 44AD. Hence, no further deduction is allowed under this section. The WDV of the assets used in eligible business shall be deemed to have been calculated as if the eligible business had been allowed the deduction of depreciation for each of such assessment years. It has been held in **DeIT VS SUNIL M KANKARIYA (2008) 298 ITR (AT) 205 ITAT** that unabsorbed depreciation cannot be set off against the presumptive income.

Remuneration and Interest to Partners :- The Salary, remuneration and Interest to Partners are still allowable subject to limits prescribed under section 40(b).

Maintenance of Books of Accounts :- The eligible assessee under this section are not required to maintain books of accounts under section 44AA of the Income Tax Act 1961, related to eligible business.

Income below deemed rate of 8% :- If the income of the assessee is below 8%, he has to fulfill certain conditions and compliances for that. Those compliances are below:-

1. To maintain books of accounts and other documents as required u/s 44AA of the Income Tax Act 1961.
2. To get the books of accounts audited u/s 44AB of the Income Tax Act, 1961.

Advance Tax :- The assessee opting for this section shall be exempted from the provisions of Chapter XVII-C i.e. advance tax, and hence shall not be required to pay advance tax.

TDS :- Individual's and HUF's who are required to get Books of Accounts audited u/s 44AB as per provisions of section 44AD(S)

of the Income Tax Act are not required to deduct Tax at Source.

Whether Sec. 44AD Covers Profession :- Neither the opening wordings of Section 44AD nor definition of Section 44AD anywhere mentions the word "Profession". Therefore, if any assessee is carrying on profession and not eligible business, then, he is not covered by provisions of Section 44AD.

It is important to know as to what is profession. The expression profession has been defined in the Income Tax Act, 1961 in clause 36 of Sec. 2 in contradistinction to "Business" which has also been defined in clause 13 of Sec. 2. Both the subsections are reproduced below:-

Sec. 2(13) :- Business includes any trade, commerce or manufacture or any adventure or concern in nature of trade, commerce or manufacture.

Sec. 2(36) :- Profession includes vocation. Therefore, from the above sub section, it is clear that profession and business are two distinct activities. In the corpus juris secundum{vol-12} at page 1210, the word "profession" has also been defined as under:-

Profession :- A vocation or occupation, requiring special, usually advanced education, knowledge and skill, e.g. law or medical profession. The Bombay High Court decision in case of CIT. VS. LALLUBHAI NAGARDAS AND SONS (1993) 204 ITR 93 is a very thought provoking on the issue of determination of nature of job a business or a profession.

A number of queries are being raised from time to time as to whether an insurance agent or a broker can avail benefit u/s 44AD. Since the insurance agent does not require any special education or skill, they sell the insurance policies, they do not carry any

profession. The commission earned by the insurance agent is business income and hence they are covered by the provisions of Section 44AD.

Tax Audit :- The assessee is bound to get books of accounts audited if his profit and gain from the eligible business is lower than 8 % of turnover and the total income exceeds the maximum amount which is not chargeable to tax. The provisions of section 44AB will apply for the purpose of tax audit.

Return 4S Sugam :- Income Tax department has recently issued Income tax return forms vide notification 18/2011. Two new forms have been introduced first is Sahaj which is replacement of Saral-II and identical to old form and second is Sugam (4S) to be filled in the case of a person being an individual or a Hindu undivided family deriving business income and such income is computed in accordance with special provisions, referred to in section 44AD and section 44AE of the Act for computation of business income. Both these forms seem to be designed so that they are machine planned to be read by machine. You can not use Sahaj and Sugam form after printing it out from your black and white printer. Color scheme for these new forms has been specified.

Conclusion :- The extension of Section 44AD to all the business excepting business covered u/s 44AE is a welcome step of the Hon'ble Finance Minister. However, the only hardship is regarding 8% of turnover being taken as profit. The percentage of profit in retail trade and wholesale trade can never be same. The tax audit norms should be made easier as small businessmen are covered by this scheme. The provisions of Section 44AD are simple and hence controversies will be minimal.