

The Institute of Chartered Accountants of India

Webinar on:-

All about Presumptive Taxation Scheme under Section 44AD 44ADA 44AE

Organised by Direct Taxes Committee of ICAI



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Who is eligible to opt for 44AD ?

- An individual, HUF or Partnership firm not being LLP
- Resident
- Eligible business means any business except business covered U/s. 44AE
- total turnover or gross receipts in the previous year does not exceed Rs. 2 crores.
- If amount received in cash (cheque or bank draft which is not account payee shall be deemed to be receipt in cash) during the previous year does not exceed 5% of the total turnover or gross receipts of such previous year, then 44AD eligibility upto total turnover or gross receipts of Rs. 3 crores.

Income as per Sec. 44AD ?

- **A sum equal to 8% of the total turnover or gross receipts of the assessee in the previous year on account of such business,**
- **or higher sum claimed to have been earned by the eligible assessee.**
- **6% of the total turnover or gross receipts received by A/c Payee Cheque, A/c Payee Bank Draft, ECS through a bank account or electronic mode specified under rule 6ABBA (online payment systems received (through credit card, debit card, IMPS, net banking, UPI, BHIM, NEFT, RTGS), during the previous year or before the due date specified U/s. 139(1) of the act.**

Audit U/s. 44AB, if opted out of presumptive

- If assessee opted for Sec. 44AD(1) i.e. declared income @ 8%/6% or more,
- but doesn't want to follow 44AD in immediately succeeding year (or in any of the 5 assessment years relevant to the previous year in which income declared as per 44AD) i.e. declare income less than 8%/6%
- Then he shall not be eligible to claim the benefit of Sec. 44AD(1) for 5 assessment years, subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with Sec. 44AD(1), and
- in such a case as per Sec. 44AD(5):- if his total income exceeds maximum amount which is not chargeable to income tax in that year, then he has to keep and maintain books of accounts and documents as per Sec. 44AA(2) and to get them audited U/s. 44AB(e) and furnish audit report as per Sec. 44AB.

Sec. 44AD shall not apply to

- **Conditions specified under Sec. 44AD(6):-**
- **(i) Person carrying on specified profession as referred to in Sec. 44AA(1),**
- **(ii) Person earning income in the nature of commission or brokerage,**
- **(iii) Person carrying on agency business.**

Can an individual being commission agent opt for Sec. 44AD ?

- **No, a commission agent cannot opt for 44AD.**
- **Such individual has to maintain books of accounts if his income from commission business exceeds Rs. 2.50 lakh or his gross receipts exceeds Rs. 25 lakh, and**
- **Audit required U/s. 44AB(a) if his gross receipts from commission exceeds Rs. 1 crore.**

TDS and TCS provisions applicable even if opted presumptive

- **If turnover or gross receipts of assessee eligible for 44AD and 44ADA exceeds Rs. 1 crore and Rs. 50 Lakh respectively, they are required to deduct and collect TDS-TCS under following sections, even if eligible for presumptive taxation upto 3 crores or 75 Lakh U/s. 44AD and 44ADA respectively. :-**
- **194A, 194C, 194H, 194-I, 194J, 194R, 194S, 206C(1), 206C(1F),**
- **Every individual or HUF are liable to deduct tax – TDS U/s. 194-IB (Rent), 194M (payment to contractor, commission, professional fee),**
- **Sec. 194T applicable to every partnership firm even if opted for presumptive taxation.**

Sec. 269SS, 269ST applicable

- **Provisions of Sec. 269SS (acceptance or repayment of loan or specified sum Rs. 20000 or more) and receipt of amount of Rs. 2 Lakh or more in violation of Sec. 269ST are applicable even if presumptive taxation opted.**

What, if assessee wants to opt for 44AD having turnover upto Rs. 3 crores and his aggregate of cash received during the previous year is not in excess of 5% of total turnover or gross receipts but recovery of debtors outstanding at the end of previous year is not realized upto due date of 139(1) or any recovery from such outstanding debtors is in cash in the subsequent year before 139(1) due date ?

- Say for example total turnover is Rs. 2.80 crore and aggregate of cash received during the previous year is Rs. 10 Lakh (Rs. 2 Lakh towards sale of various fixed assets and Rs. 1 Lakh various small unsecured loans received in cash and Rs. 2 Lakh debtors of immediately preceding previous year and remaining Rs. 5 Lakh cash sales out of current year's turnover) and outstanding debtors as on 31-3-2025 are Rs. 75 Lakh and out of this Rs. 30 Lakh realized in cash in the succeeding year (i.e. FY 2025-26) and Rs. 30 Lakh realized through banking channel or online mode as per rule 6ABBA during FY 25-26 before 139(1) due date and remaining Rs. 15 Lakh still due on 139(1) due date, then in such a case out of turnover of Rs. 2.80 crore Rs. 5+30=35 lakh received in cash and Rs. 15 lakh due upto 139(1) due date will attract 8% deemed income and remaining Rs. 2.30 crore will attract 6% deemed income U/s. 44AD.

- Another example- total turnover Rs. 2.50 crore, aggregate cash received during previous year not exceeding 5%, out of Rs. 2.50 crore, the amount of Rs. 2 crore received through banking channel during the previous year FY 2024-25 and Rs. 4 Lakh received in cash during previous year 2024-25 and Rs. 5 Lakh received in cash during immediately succeeding year (FY 25-26) and Rs. 6 Lakh received through banking channel in immediately succeeding year FY 2025-26 upto 139(1) due date and remaining Rs. 35 Lakh still due upto 139(1) due date i.e. 15-9-2025, so in such a case Rs. 2.06 crore (2.00+0.06 crore) will be liable for 6% deemed income and Rs. 44 Lakh (4+5+35 Lakh), will be liable for 8% deemed income U/s. 44AD.

When is a person carrying on business required to get books of accounts audited ?

- Every person carrying on business, if total sales, turnover or gross receipts is exceeding Rs. 1 crore is required to get books of account audited, but he is not required to get books of accounts audited if the following conditions are satisfied :-
- (i). if individual or HUF or partnership not being LLP opted for 44AD and turnover not exceeding Rs. 2 crore, or,
- (ii). if any person having sales, turnover or gross receipts not exceeding Rs. 10 crore and aggregate of all payment received including towards sale, turnover or gross receipts in cash does not exceed 5% of the said amount and aggregate of all payments made including towards expenditure in cash does not exceed 5% of the said payment (cheques or draft which is not account payee will also be treated as cash).
- (iii). if individual or HUF or partnership not being LLP during the previous having aggregate cash receipts during the previous year not exceeding 5% of the total turnover or gross receipts, opted for 44AD and total turnover or gross receipts not exceeding Rs. 3 crore.

Whether any Individual/HUF/ Partnership firm not LLP, engaged in business having turnover of Rs. 1 crore or less and not opted for presumptive taxation U/s 44AD is required to get books of accounts audited if his income from such business is less than 8% or 6% ?

- If this is the first year of business for such assessee and his turnover is not exceeding Rs. 1 crore, or if the assessee has not opted for 44AD in any of the 5 immediately preceding previous years then he may declare less than 8% or 6% income and also no need to get books of accounts audited, i.e. actual profit or actual loss may be declared and Profit & Loss account and Balance Sheet to be filled up in ITR.**

Any person who is a commission agent or a specified professional, also having business income eligible to be covered under 44AD, can he simultaneously opt for 44AD for that business income ?

- **As per Sec. 44AD any person who derives income from specified profession or who is a commission agent is not eligible for 44AD and also he cannot opt for Sec. 44AD for the business income otherwise eligible for 44AD, however income tax portal allows to opt for both simultaneously, i.e. any person who sells goods and he has commission income also, then for business turnover he may opt for 44AD and for commission income he may opt for filling profit and loss account and balance sheet or no accounts case, as the case may be. The income tax portal also allows a professional to opt for 44ADA for specified professional income and simultaneously 44AD for his business income other than from specified profession.**

Partner's remuneration and interest 28(v)

- **Madras High Court in the case of Mr. Anandkumar vs ACIT vide Tax Case Appeal No.388 of 2019 AY 12-13 on 23 December, 2020, “While filing the return of income, the assessee had applied the presumptive rate of tax at 8% under Section 44AD and returned Rs.4,68,240/- as income from the remuneration and interest received from the partnership firm”. the assessee who is an individual in the instant case is not carrying on any business. Therefore, the remuneration and interest received by the assessee from the partnership firm cannot be termed to be a turnover of the assessee. Therefore appeal of the assessee dismissed.**

Partner's remuneration and interest is business ?

Under section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by, a partner of a firm from such firm shall be chargeable under the head profits and gains of business and profession. However, interest, remuneration, etc. received by an assessee from a partnership firm cannot be treated as gross receipt/turnover as partner is not doing any business/profession independently, but it is the firm which is carrying on the business/profession, in which assessee is only a partner. (*Perizad Zorabian Irani v PCIT, Mumbai* – WP No. 1333/2021- Bombay High Court – dated 09.03.2022)

Who is required to opt Sec. 44ADA -

- Individual, Partnership Firm (Not LLP).
- Resident
- Engaged in specified profession as per Sec. 44AA(1). Total gross receipts does not exceed Rs. 50 Lakh in a previous year. He shall be required to opt Sec. 44ADA. 50% of total gross receipts in profession, as the case may be a sum higher than the aforesaid sum claimed to have been earned by the assessee shall be deemed to be profits and gains from such profession.
- If amount received in cash (cheque or bank draft which is not account payee shall be deemed to be receipt in cash) during the previous year does not exceed 5% of the total gross receipts of such previous year, then 44ADA apply upto total gross receipts of Rs. 75 Lakh.
- Can he opt 44ADA in subsequent year if he has not followed 44ADA in current year ? :- yes, He may in any year opt-in/opt-out from 44ADA

Sec. 44ADA(4)

- **an assessee who claims that his profits and gains from the profession are**
- **lower than 50% and whose total income exceeds the maximum amount which is not chargeable to income-tax,**
- **shall be required to keep and maintain books of account and other documents as required under section 44AA(1) and get them audited U/s. 44AB(d) and furnish audit report as per section 44AB.**

If TDS is wrongly deducted U/s 194J whether the assessee is bound to offer income U/s 44ADA or can CPC make prima facie adjustment U/s 143(1)(a)(vi) by converting Section 44AD to Section 44ADA ?

- If TDS is deducted U/s 194J even though assessee filed ITR opting U/s 44AD and not opting U/s 44ADA due to the reason that income was not from a specified profession. CPC has no authority to make prima facie adjustment U/s 143(1)(a) by converting Section 44AD to Section 44ADA. Addition of income appearing in form 26AS or form 16A or form 16 is not allowable w.e.f. 1-4-2018 U/s. 143(1)(a)(vi). **ITAT Chennai** in the case of **PVN Associates V. ITO** vide I.T.A. No.3280/CHNY/2019 A.Y. 2017-18 order dated 30-1-2020 held that, “The action of the lower authorities is against the very spirit of provisions of Section 143(1) (a) of the Act as clarified by the CBDT Circular No.689, dated 24.08.1994. In the circumstances, we set aside the orders of the lower authorities and allow the appeal filed by the assessee”.

Who is specified professional for Sec. 44ADA

The following are specified profession as per section 44AA(1) of the Act:

- (i) legal, (ii) medical, (iii) engineering or (iv) architectural profession or (v) the profession of accountancy or (vi) technical consultancy or (vii) interior decoration. (viii). Authorised Representative, (ix) Company Secretary, (x) Film Artists/Actors, (xi) profession of Information Technology.

What is the rule regarding maintaining books of accounts by specified professionals ?

- As per rule 6F every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or film artist or authorised representative shall maintain books of accounts (if his gross receipts in profession exceeds Rs. 1.50 Lakh in any of the 3 preceding years). Profession of Company Secretary and Information technology is also notified as specified profession. Books to be maintained are cash book, ledger, journal, copies of bills serially numbered, original bills or receipts or vouchers in respect of expenditure incurred. Person carrying on medical profession will also have to maintain Form No. 3C and inventory of medicines and consumable at the start and end of the previous year. Such books of accounts has to be kept for 6 years from the end of relevant assessment year, the said time limit is applicable only to specified professions only.

What is the provision regarding maintaining books of accounts by business or non-specified professionals ?

- **As per Sec. 44AA(2) any individual or HUF carrying on business or non-specified profession will have to maintain books of accounts as may enable the Assessing Officer to compute the taxable income, if his income from business or non-specified profession exceeds Rs. 2.50 Lakh or his turnover or gross receipts exceeds Rs. 25 Lakh.**
- **Any person other than individual or HUF will have to maintain books of accounts if his income from business or non-specified profession exceeds Rs. 1.20 Lakh or his turnover or gross receipts exceeds Rs. 10 Lakh.**

Which ITR form to use?

- **In case of an eligible assessee opting for presumptive income/s. 44AD, 44ADA, 44AE Individual, HUF and partnership firm are required to file their ITR in form No. 4 Sugam.**
- **If they have any capital gain then ITR-5 is required for partnership firm and ITR- 3 for individual and HUF.**
- **HUF not covered U/s. 44ADA**

ITR-3

- **ITR 3: For individuals and HUFs having income from profits and gains of business or profession** [For professionals and businesses (non-presumptive)]
- No limit on total income or any capital gain and no limit on any agricultural income.
- Individual and HUF whose audit is conducted are required to file ITR-3 and cannot file ITR-4.

ITR-4 (SUGAM)

- ITR 4 (SUGAM): For Individuals, HUFs and Firms (other than LLP),
- being a resident having total income upto Rs.50 lakh and
- having income from business and profession which is computed under sections 44AD, 44ADA or 44AE, and
- having long-term capital gains under section 112A upto Rs. 1.25 lakh]

Who cannot file ITR-4?

- An individual who is Director in a company or
- has invested in unlisted equity shares or
- if income-tax is deferred on ESOP issued by an eligible startup, or
- has agricultural income more than Rs. 5000 or
- has assets (including financial interest in any entity) located outside India
- Capital Gain / Loss from sale of land or building, etc.
- Person having commission income, etc. for which, ITR-3 has to be filed.
- Non-residents
- LLP / Company or AOP/BOI, Trust, Society, etc.
- Partnership firm not opting for presumptive taxation

ITR-5

- **ITR 5: For persons other than- (i) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR-7 (Firms, AOPs, LLPs)**
- **For persons other than individuals, HUF and Company and persons who are not eligible to file ITR-7**
- Applicable for both resident / non-resident.
- No limit on total income or no limit on any agricultural income.
- Partnership firm who is not opting under presumptive taxation or getting its books of accounts audited u/s. 44AB have to file ITR-5.
- LLP, local authority, other cooperative bank, cooperative society, society registered under society registration Act, 1860 or any other Law corresponding to that state, Primary agricultural credit society/cooperative bank, rural development bank, Business investment fund, Trust (other than trust eligible to file Return in ITR 7), any other AOP/BOI, AJP: Estate of the deceased, Estate of the insolvent.

Who can opt for Sec. 44AE ?

- Any assessee who owns not more than ten goods carriages at any time during the previous year and engaged in plying, hiring or leasing of goods carriages has to declare minimum income of Rs. 1000 per ton of gross vehicle weight, per month for heavy goods vehicle, and
- for other than heavy goods vehicle minimum of Rs. 7500/- per month.
- Books of account has to be maintained and audited if lower profit is declared.
- In case of firm, salary and interest is also separately allowable as per Sec. 40(b).
- "heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms.

A doctor running nursing home also engages other doctors, whether this nursing home activity be treated as business or as profession ?

- **ITAT Jodhpur in the case of Sunil Chandak V. ITO A.Y. 2007-08 vide I.T.A No. 344/JU/2010 on 12-4-2012 held that, “To restate, no doubt physicians/doctors have been hired, but as explained, what is relevant and crucial is the nature of the services rendered by them, whether facilitative or substantially so, or on independent, stand alone basis, or substantially so. It is only in the later case that the assessee’s nursing home acquires the character of a business enterprise”.**
- **Therefore if the services of doctors are taken independently, stand alone basis or substantially so, by a nursing home being run by a doctor, such nursing home would be treated as carrying on business.**

Whether HUF running pathology is a business or a profession ? Can penalty U/s 271B be levied if HUF is running pathology, gross receipts were exceeding limits specified for professional but not exceeding the limit specified for businesses U/s 44AB ?

- ITAT Lucknow in the case of Pramendra Maheshwari HUF V. ITO vide ITA No.177/LKW/2017 AY 13-14 order dt. 19-3-18. The assessee HUF is running CT Scan Centre. The report of CT Scan is given by a qualified Doctor for which professional charges are paid to him. However the Karta of HUF is a qualified Doctor but he is not a Radiologist and not providing any service to the assessee as Doctor. The assessee contended that in the case of CIT v. Upasana Hospital (1997) 225 JTK 852 (Ker), it was held that when a medical practitioner without confining himself to his conventional function of examining patients and prescribing medicines establishes an X-Ray plant and machinery for augmenting his professional work, it cannot be said that he has no profit motive in such adventure. That means he is carrying on a business activity.
- Therefore ITAT Lucknow held that, “the activities are of business in nature and no profession. We, therefore direct deletion of penalty under section 271B of the Act”.

Whether sports person are liable U/s 194J, 44AA(1) or 44AA(2)/ 44AD or 44ADA or rule 6F ?

- **Sports is not specified for the purpose of Sec. 44ADA or 44AA(1). But for the purpose of Sec. 194J CBDT notified the services in relation to the sports activities as Professional Services rendered by Sports Persons, Umpires and Referees, Coaches and Trainers, Team Physicians and Physiotherapists, Event Managers, Commentators, Anchors and Sports Columnists. Therefore such sports persons are not liable U/s 44ADA and therefore it may be covered U/s 44AD.**

Who can opt for Sec. 44AE ?

- All assesseees,
- who owns not more than 10 goods carriage at any time during the previous year,
- engaged in plying, hiring or leasing goods carriage.
- An assessee who is in possession of goods carriage taken on hire purchase or on instalments shall be deemed as owner.
- In case of heavy goods vehicle (GVW exceeds 12000 kgs. i.e. 12 ton) Rs. 1000/- per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month or amount actually claimed to have been earned from such vehicle, whichever is higher.

Who can opt for Sec. 44AE ?

- **In case of other than heavy goods vehicle Rs. 7500/- per month or part of a month or amount actually claimed to have been earned from such vehicle.**
- **Relaxation As per Sec. 44AE(5):- The provisions of sections 44AA(2) and 44AB shall not apply if income is offered as per section 44AE(1) and in computing the applicability of monetary limits for Sec. 44AA(2) and 44AB, the gross receipts or, as the case may be, the income from the said business shall be excluded.**

Audit U/s. 44AB if 44AE not followed

- **As per Sec. 44AE(7):-**
- **an assessee may claim lower profits and gains than the profits and gains specified in 44AE(1) & (2),**
- **if he keeps and maintains books of account and other documents as required under section 44AA(2) and gets his accounts audited U/s. 44AB(c) and furnishes a report of such audit as required under section 44AB.**

Definition as per Motor Vehicle Act

- As per Sec. 2(16) of MV Act, 1988 – “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;
- As per Sec. 2(15) of MV Act, 1988 - “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;
- As per Sec. 2(14) of MV Act, 1988 - (14) “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;

- As per Sec. 2(28) of MV Act, 1988 - “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding (25cc) twenty-five cubic centimeters.
- .- As per Sec. 2(48) of MV Act, 1988 - “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.

Whether provisions and conditions of sec. 28 to 43C will be applicable to person opting for Sec. 44AD, 44ADA, 44AE ?

- “Notwithstanding anything to the contrary contained in Sec. 28 to 43C”,
- i.e. any allowance or expenses or deductions etc. allowable or disallowable under section 30 to 43C shall not be considered except the income computed on the basis of percentage for Sec. 44AD and 44ADA and income per month as per Sec. 44AE.
- In case of income offered U/s. 44AD (From AY 17-18) and 44ADA by any partnership firm, salary and interest paid to its partners shall not be deductible, this restriction does not apply to income offered by a partnership firm U/s. 44AE.

Whether provisions and conditions of sec. 28 to 43C will be applicable to person opting for Sec. 44AD, 44ADA, 44AE ?

- Therefore, if any assessee fails to make payment through cheque or RTGS for purchases or expenses even though violation under Sec. 40A(3)/40A(3A) will not attract or if any assessee fails to follow TDS provisions even though there will not be any disallowance U/s 40(a)(i)/40(a)(ia), but interest U/s 201(1A), 206C(7) and/or penalty U/s 271C/271CA may be applicable.

Whether deductions or allowance under sec. 30 to 38 will also be available separately to person opting for Sec. 44AD, 44ADA, 44AE ?

- **For the purposes of Sec. 44AD, 44ADA and 44AE any deduction allowable under provisions of Sec. 30 to 38 shall be deemed to have been already given full effect and no further deduction shall be allowed under these sections.**

Each entry in pass book

- Punjab & Haryana High Court in the case of CIT vs. Surinder Pal Anand [2010] 192 taxmann 264), had held as follows:-
- *" 7. Section 44AD of the Act was inserted by the Finance Act, 1994 with effect from 1-4-1994. Sub-section (1) of section 44AD clearly provides that where an assessee is engaged in the business of civil construction or supply of labour for civil construction, income shall be estimated at 8 per cent of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in sections 28 to 43C of the Act. This income is to be deemed to be the profits and gains of said business chargeable of tax under the head "profits and gains" of business. However, the said provisions are applicable where the gross receipts paid or payable does not exceed Rs. 40 lakhs.*

- *Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. The stand of the assessee before the Commissioner of Income-tax (Appeals) and the Tribunal that the said amount of Rs.14,95,300 was on account of business receipts had been accepted. The Ld. DR with reference to any material on record, could not show that the cash deposits amounting to Rs.14,95,300 were unexplained or undisclosed income of the assessee.*
- *In view of the above position, we are unable to hold that any substantial question of law arises in this appeal.*
- *The appeal of revenue is dismissed."*

Sec. 69C

- **The Chandigarh Bench of the Tribunal in the case of Nand Lal Popli vs. DC1T in ITA Nos. 1161 & 1162/Chd/2013, order dt. 14/06/2016, held as follows:- "9. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The issue to be decided by us is whether accepting the case of the assessee as taxable under the presumptive taxation as provided under section 44AD of the Act, the Assessing Officer can make addition under section 69C of the Act making the cash flow statement provided by the assessee the basis of his addition.**

- 10. Section 44 AD of the Act reads as under: "44AD (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum 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 "Profit and gains of business or profession". (2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of subsection (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed."
- The provision of the above section are quite unambiguous to the effect that in case of an eligible business based on the gross receipts/total turnover, the income under the head 'profits & gains' of business shall be deemed to be @ 8% or any higher amount. The first important term here is 'deemed to be' which proves that in such cases there is no income to the extent of such percentage, however, to extent, income is deemed. It is undisputed that 'deemed' means presuming the existence of something which actually is not. Therefore, it is quite clear that though for the purpose of levy of income tax 8% or more may be considered as income, but actually this is not the actual income of the assessee. This is also the purport of all provisions relating to presumptive taxation.

- Putting the above analysis, in converse, it can be easily inferred that the same is also true for the expenditure of the assessee. If 8% of gross receipts are 'deemed' income of the assessee, the remaining 92% are also 'deemed' expenditure of the assessee. Meaning thereby that actual expenditure may not be 92% of gross receipts, only for the purposes of taxation, it is considered to be so. To take it further, it can be said that the expenditure may be less than 92% or it may also be more than 92% of gross receipts.
- Further, on the reading on the substantive part of the provision, it is quite clear that an assessee availing the benefit of such presumptive taxation can claim to have earned income @ 8% or above of the gross receipts. In that case, the provisions of sub-section (5) of the said section will be applicable to it, which reads as under: "44AD (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 subsection (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."
- From the combined reading of sub-section (1) and sub-section (5), it is apparent that the obligation to maintain the books of account and get them audited is only on the assessee who opts to claim the income being less than 8% of the gross receipts."

Sec. 69A

- ITAT Cochin in the case of Sri.Thomas Eapen, Alappuzha vs The Ito, Wd-5, Alappuzha vide ITA No.451 /Coch/2019 on 19 November, 2019, “the Assessing Officer, for making the impugned addition has stated that there was total deposit of Rs.94,04,685/- and the assessee has only explained Rs.66,10,379/- and Rs.27,94,306/- , being balance unexplained, which is a totally wrong premise. If the income component is estimated, how the expenditure component on the basis of said income can be considered to have been 'actually incurred' and it is only presumption that an amount of 92% of gross receipts was incurred by the assessee as expenditure.”
- But can we say on the facts and circumstances of the present case that the assessee has incurred any expenses. From an analysis of section 44AD of the Act contained hereinabove, we have already held that the assessee had not incurred the expenses to the extent of 92% of the gross receipts. Therefore, in the present case, the provisions of section 69A of the Act cannot be applied. Asking the assessee to prove to the satisfaction of the Assessing Officer, the expenditure to the extent of 92% of gross receipts, would also defeat the purpose of presumptive taxation as provided under section 44AD of the Act or other such provision. Since the scheme of presumptive taxation has been formed in order to avoid the long drawn process of assessment in cases of small traders or in cases of those businesses where the incomes are almost of static quantum of all the businesses, the Assessing Officer could have made the addition under section 69A of the Act, once he had carved out the case out of the glitches of the provisions of section 44AD of the Act. No such exercise has been done by the Assessing Officer in this case.
- 9.7 Applying the propositions of law laid down in the above case law to the facts of the case on hand, we delete the addition in question. The Assessing Officer nor the CIT(A) have given any reason as to why the provisions of Section 44AD of the Act are not applicable to this case. This ground of appeal of the assessee is allowed
- 10. In the result, the appeal of the assessee is allowed”.

Sec. 69A

- **ITAT Cochin Bench in the case of Thomas Eapen vs ITO, (2020) 113 taxmann.com 268 (Coch), wherein, it was held that where the assessee, a small trader in medicines falling under section 44AD, offered income on presumptive taxation basis, provisions of section 69A could not be applied to make addition in respect of undisclosed cash credits found in assessee's bank account.**

Turnover more than upper limit of 44AD

- ITAT - Bangalore in the case of Mr. Chithappa Karthik Yadav vs. ITO vide ITA No.536/Bang/2021 : Asst.Year 2016-2017 on 31 March, 2022, AO observed that, “During the year under consideration, the turnover of the assessee was Rs.1,32,51,267 against which the assessee claimed direct expenses of Rs.1,20,20,415 and indirect expenses of Rs.2,40,437. During the course of hearing, the Assessing Officer (AO) called for furnishing documentary evidences in respect of direct and indirect expenses. The assessee vide letter dated 15.11.2018 stated that he has not maintained any books of account and net income from civil work contract have been estimated and offered to tax.”
- ITAT observed, “The assessee is required to maintain books of accounts as the presumptive provisions of section 44AD is not application basis the turnover exceeding Rs.1 crore which the assessee failed to do so.
- Given this, whether the lower authorities are justified in estimating the profits of the assessee at more than 40% is to be looked into.”

- ITAT further stated that, “We notice that a similar issue is considered by the Delhi High Court in the case of CIT vs Subodh Gupta (2015) 54 Taxmann.com 343 (Delhi) where the court has held that "6. Learned counsel for the Revenue submits that Section 44AD has no application as the turnover of the respondent assessee was Rs.18.43 crores and the said section prescribes a thumb rule or presumptive net profit rate if the turnover of an assessee is less than Rs.40 lacs. This is correct and has been noticed by the Commissioner of Income Tax (Appeals) and the Tribunal. The difficulty in the present case is that the Assessing Officer did not conduct any inquiry and ascertain the net profit rate of other comparable contractors. On the other hand, he disallowed expenditure of Rs.10.61 crores resulting in abnormal gross profit rate of 59.60%, which should not be accepted. The effect thereof was that 70% of the expenditure on account of purchases worth Rs.10.61 crores out of total purchases of Rs.14 crores was disallowed. The appellate authorities have taken a holistic and broader view and held that as the books of accounts had not been produced and were not regularly maintained, the book results should be rejected. We agree with the counsel for the Revenue that the assertion that the books of accounts were stolen had a hidden motive and the assertion is rather unbelievable. The respondent assessee therefore must suffer adverse consequences. The only question is whether the addition of Rs.1,13,22,334/- to declared income of Rs.34,21,970/- is adequate or a higher addition would be justified. As far as total turnover is concerned, the appellate authorities are right in holding that the figure of Rs.18.43 crores cannot be disputed as the assessee was only doing development work for the Greater Noida Authority. The total turnover is also supported by the tax at source certificate. The quantum of turnover was not adversely commented upon by the Assessing Officer. In view of the aforesaid position, we wanted the counsel for the Revenue to ascertain the gross profit or net profit rates declared and accepted by the Assessing Officer in case of other contractors engaged in similar work.

- We wanted ascertainment of this aspect as the counsel for the Revenue had submitted that net profit @ 8% was inadequate and low and a higher profit rate should be attributed. By order dated 19.08.2014, counsel for revenue was required to ascertain the said aspect. It is stated that the Assessing Officer has not given any comments in this regard. Noticeably, counsel for the assessee had earlier produced before us a copy of the assessment order relating to assessment year 2010-11, wherein the Assessing Officer himself had applied net profit rate of 8% on contractual receipt of Rs.6.66 crores and net profit rate of 3% on supply receipts of Rs.7.21 crores. As per the said order, the total receipts were to the tune of about Rs.14 crores. In the present assessment year the total turnover of the assessee was about Rs.18 crores. In these circumstances we are not inclined to accept the prayer of the counsel for the Revenue that an order of remand may be passed. The Assessing Officer in the subsequent years has accepted the figure of 8% net profit, which is the figure which has been adopted by the appellate authorities in the present case.

- Reliance placed by counsel for the Revenue on CIT vs. Sobti Construction (India) Ltd. [2008] 307 ITR 374 is misplaced. In the said case, Section 44AD had been applied though the turnover of the assessee was admittedly above Rs.40 lacs. In the case in hand, the appellate authorities have not applied Section 44AD as such. Difficulty arose as they had to estimate reasonable rate of net profit. In the absence of any data and details, they applied the net profit rate as mentioned in Section 44AD. As recorded above, we had asked counsel for the Revenue to ascertain whether similar contractors have declared a higher profit rate. Counsel for the Revenue has not been able to point out or state that the other contractors have a higher profit rate, than the net profit rate of 8% as held by the appellate authorities. The said rate was also applied in the assessment year 2010-11."

ITAT held that, "considering the judicial precedence and overall facts and circumstances of the case, we are of the considered view that it would be fair and proper that the income from contract business of the assessee be estimated at 8 per cent of the gross receipts. The AO is directed accordingly. The appeal of the assessee is allowed."

8% and peak credit

- ITAT – Chennai- Sridevi Ravi, Chennai vs ITO I.T. A.Nos.2716 to 2718/Chny/2018 AY 09-10 to 11-12, on 15 December, 2020, the assessee raised the ground of appeal, “that the Learned Commissioner of Income Tax (Appeals) having accepted that the appellant is engaged in civil works contract and the income derived from the said business is taxable @ 8% u/s 44AD of the Income- tax Act, 1961, erred in directing the Assessing Officer to include peak credit on the total deposits in the appellant's bank account amounting to 20,56,013/-in computing the assessed income.”
- ITAT observed that, “The undisputed facts emerge clearly indicate that the assessee has not disclosed her savings bank account maintained with Bank of India, West Mambalam branch. Further, when the case has been taken up for reassessment, the assessee has come out with explanation that cash deposits found in her bank account is out of contract receipts which was not disclosed to income-tax purpose, however, admitted before the Assessing Officer that net profit may be estimated by applying provisions of section 44AD of the Act.
- It was the contention of the assessee that once bank credit is accepted as turnover from her business on presumptive basis u/s.44AD of the Act, there is no reason to treat the remaining amount of cash deposits as unexplained investments which is to be taxed u/s.68 or 69 of the Act. ITAT held that, “we are of the considered view that Assessing Officer as well as learned CIT(A) erred in assessing part of cash deposits as unexplained investments to be taxed u/s.69 of the Act and part of cash deposits as receipts from business liable to be taxed u/s.44AD of the Act. Hence, we direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch as receipts from her civil contract business and estimate 8% net profit on total receipts as per the provisions of section 44AD of the Act.”

Turnover or Gross receipt in case of Shares, Securities and derivatives:- As per Exposure draft issued by ICAI on TAX AUDIT GUIDANCE NOTE 44AB:- Para 5.11(b)

- **Derivatives, futures and options:- (i).** The total of favourable and unfavourable differences in case of squared off transactions shall be taken as turnover.
- **(ii)** Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, then such net profit should not be separately included.
- **(iii)** In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.
- **(iv)** In case of an open position as at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been actually squared off.
- **(v)** In case of delivery based settlement in a derivatives transaction, the difference between the trade price and the settlement price shall be considered as turnover. Further, in the hands of the transferor of underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade.

Turnover in case of delivery based transactions

- **As per para 5.11 (c) of exposure draft ICAI Tax Audit GN - Delivery based transactions:** Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery-based, whether intended or by default, the total value of the sales is to be considered as turnover.

Gujarat HC - Sec. 44AF

- **Hon'ble Gujarat High Court in the case of CIT Vs. Pradeep Shantilal Patel 42 Taxmann.com 2 (Gujarat) (ITA No. 899 of 2013 order dt. 19-11-2013 AY 2007-08) has held "Where assessee admitted that cash deposits pertained to his retail business but details and nature of business were not forthcoming from record, considering total turnover of assessee, net income had to be determined under section 44AF."**
- **In this case - Returned income was Rs. 90,000/-, notice U/s. 143(2) issued – cash deposit in saving account Rs. 35,33,414/-, failed to furnish name and address of the suppliers in respect of Iron scrap business, assessee was not even registered under Gujarat VAT Act, AO added same as income from undisclosed sources.**
- **As and when cash deposited in bank same used for cheque cleared for payment, every time meager balance in bank not exceeding Rs. 1000/-,**

- **CIT(A) restricted the addition of Rs.35,33,414/- to Rs.1.80 lacs under Section 44AF of the I.T.Act.**
- **Revenue filed appeal before ITAT, ITAT confirmed the order of CIT(A), then revenue filed appeal before HC.**
- **Honourable High Court dismissed the appeal of revenue.**
- **(Sec. 44AF was applicable upto AY 2010-11 and then scope of Sec. 44AD widened from AY 2011-12 to include all business except 44AE).**

Bombay HC :- CIT v Bhaichand N. Gandhi [1983] 141 ITR 67/[1982] 11 Taxman 59

- Hon'ble HC upholding the decision of Tribunal concluded that bank passbook does not constitute books as envisaged under section 68 of the Act, cash credit for the previous year shown in the assessee's bank pass book issued to him by the bank but not shown in the cash book maintained by him for that year does not fall within the ambit of section 68 of the Income-tax Act, 1961, and as such the sum so credited is not chargeable to income-tax as the income of the assessee of that previous year
- stating that, “the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived.”

- Where assessee was engaged in business and required to maintain books of accounts, not doing so would not disentitle the Department from invoking section 68. Assessee cannot take advantage of his own wrong. **Arunkumar J. Muchhala v CIT 399 ITR 256 (Bom)**
- The High Court held that the assessee has admitted that books were maintained but that they have not been produced before the Assessing Officer. Addition under section 68 sustained. **Sudhir Kumar Sharma HUF v CIT [2014] 46 taxmann.com 340 (P&H HC)**. SLP dismissed in **[2016] 69 taxmann.com 219 (SC)**

Whether business includes profession or vocation ?

- Unless otherwise specifically excluded, business includes profession and vocation. Therefore except where the law specifically refer any provision for profession or for specified profession, the word business includes profession. Therefore any income which is not from a specified profession, i.e. income from non-specified profession can also be treated as business income.
- In the case of Gera Development P. Ltd. V. DDIT (Intl.T.) vide Income Tax Appeal No. 62/Pun/2015 | 29-07-2016 stated that, “Ld. Authorised
- Representative asserted that the payment made by assessee to Gensler for rendering services and providing drawings & design for its commercial building is the ‘business income’ of Gensler. To support the contention that ‘business’ includes ‘profession’ reliance was placed on the decision of Barendra Prasad Ray Vs. ITO 129 ITR 295 (SC). The Hon’ble Apex Court in the said case while explaining the meaning of expression ‘business connection’ as used under section 9 of the Act has also in an explicit manner held that Business’ does not necessarily mean trade or manufacturing only. It includes within its scope professions, vocations and callings.

- The relevant extract of the findings of Hon'ble Supreme Court of India are as under :
- *"11. In CIT v. Currimbhoy Ebrahim & Sons Ltd. [1935] 3 ITR 395, Sir George Rankin, speaking for the judicial Committee of the Privy Council, while construing the expression "business connection" in s. 42(1) of the Indian I.T. Act, 1922, observed (p. 400): "The phrase business connection is different from, though doubtless not unrelated to, the word business of which there is a definition in the Act." The expression "business" does not necessarily mean trade or manufacture only, It is being used as including within its scope professions, vocations and callings from a fairly long time. The Shorter Oxford English Dictionary defines "business" as "stated occupation, profession or trade" and "a man of business" is defined as meaning "an attorney" also. In view of the above dictionary meaning of the word "business", it cannot be said that the definition of business given in s. 45 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), was an extended definition intended for the purpose of that Act only. Section 45 of that Act says: "..... The expression business includes every trade, occupation, or profession." Section 2(b) of the Indian Partnership Act, 1932, also defines "business thus: "Business includes every trade, occupation and profession."*
- *12. The observation of Rowlatt J. in Christopher Barker & Sons v. IRC [1919] 2 KB 222, 228 (KB), "All professions are businesses, but all businesses are not professions" also supports the view that professions are generally regarded as businesses. The same learned judge in another case, IRC v. Marine Steam Turbine Co. Ltd. [1920] 1 KB 193, 203 (KB) held: "The word business, however, is also used in another and a very different sense, as meaning an active occupation or profession continuously carried on and it is in this sense that the word is used in the Act with which we are here concerned." The word "business" is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or*

- *skill with a view to earning an income. We are of the view that in the context in which the expression "business connection" is used in s. 9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding "professional connections" from its scope."*
- =====
- The term "business" is defined in section 2(13) of the Act, as under:
- *"Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.*
- The word 'business' is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only - *Barendra Prasad Ray v ITO [1981] 129 ITR 295 (SC).*
- Section 2(36) of the Act defines profession to include vocation. Profession is a word of wide import and includes "vocation" which is only a way of living. – Additional *CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All).*

No other addition if 44AD turnover accepted

- **Mr. Bhaskar Joseph, Bangalore v. ITO (high court appeal ITA No. 1737/Bang/2019):** affirmed similar principle that additions under Section 69C not permissible when returns filed under 44AD and bank deposits form part of declared receipts
- **Pradeep Jain vs. ITO (Delhi Tribunal ITA No. 8001/Del./2018, order 4-June-2019):** Tribunal deleted additions of cash deposits when assessee declared under 44AD and no material disproved declared turnover.

Allahabad HC – Sec. 44AE

- In the case of **The CIT-I, Kanpur v. Nitin Soni**, ITA No. 74 of 2009 (2012:AHC:54153-DB), order dt. 26-4-2012:- Revenue raised following question of law:-
- “Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in confirming the order of the **Ld. CIT(A)-I, Kanpur** in deleting the addition of **Rs.29,21,738/-** made by the **AO** on a/c excess generation of income by invoking the provisions of section u/s 56(1) of the Act without appreciating that assessee failed to explain source and nature of generation of his capital.”
- The assessee having 8 trucks and also director in a Pvt. Ltd. Co., The **AO** made additions of **Rs. 29,21,738/-** by stating that the assessee has not been able to reply as to how he has been meeting daily expenses. **AO** was of the view that assessee has more income than what has been calculated as per **Sec. 44AE**.
- **CIT(A)** partly allowed the appeal and **ITAT** dismissed the appeal of revenue.

- It was held that the presumptive income, which may be less or more, is taxable. even if, its actual income in a given case, is more than income calculated as per sub-section (2) of Section 44AE, cannot be taxed.
- AO treated the excess income as income from other sources, whereas as held by the Apex Court where an an income can appropriately fall under Section 28 as business income, or any other specific head of income, no resort can be made to Section 56 vide **S.G. Mercantile Corpn. (P.) Ltd. v. Commissioner of Income-tax (1972) 83 ITR 700.**
- “Only ground for making the addition is that the assessee was not able to explain the discrepancies in the account-books, which cannot be ground for making addition as income from other sources. Resultantly, the addition made by the Assessing Officer due to increase in the capital cannot be taxed under Section 56 of the Act as income from other sources as the accretion, if any, in the capital is relatable to profit from transport business of the assessee. A reading of the assessment order would show that the addition was made on account of excess generation of income of the assessee from the goods carriages business, under Section 56 of the Act.
- We do not find that any substantial question of law is involved in the appeal. Appeal of revenue is dismissed summarily.”

**INCOME BELOW TAXABLE : RETURN COMPULSORY –
CONDITIONS – 7th Proviso to 139(1)**

- Has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or
- has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or
- has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or

**INCOME BELOW TAXABLE : RETURN COMPULSORY –
CONDITIONS – 7th Proviso to 139(1)**

- total sales, turnover or gross receipts, as the case may be, in the business exceeds Rs. 60 Lakh during the previous year; or
- total gross receipts in profession exceeds Rs. 10 Lakh during the previous year; or
- aggregate of TDS, TCS during the previous year, in the case of the person, is Rs. 25,000 (senior citizen Rs. 40,000) or more; or
- deposit in one or more savings bank account of the person, in aggregate, is Rs. 50 Lakh or more during the previous year

Sec. 115BAC

- For Individuals, HUF and AOP (other than cooperative society) or BOI, AJP, etc. – New Tax Regime u/s. 115BAC of the Act is the default Tax Regime w.e.f. AY 2024-25
- Earlier in ITR forms for AY 24-25 the following was the option regarding cases covered under 115BAC:-

a. Have you exercised the option u/s 115BAC(6) of Opting out of new tax regime? (default is “No”) ☐ No ☐ Yes, within the due date ☐ Yes, but beyond the due date (If option other than ‘No’ is selected, please furnish date of filing and Acknowledgement number of form 10-IEA)

Note-For Opting out, option should be exercised in form 10-IEA on or before the due date for filing return u/s 139(1)

ITR AY 25-26 cases covered under 115BAC

Method of opting-out of new tax regime (if applicable) for current AY

- ☐ by filing 10IEA (having income from business or profession) (Answer set A)
- ☐ by exercising the option in the return of income only (form 10IEA is not applicable (Answer set B)

(Set A)

Have you exercised the option u/s 115BAC(6) of Opting out of new tax regime in Form 10-IEA in AY 2024-25?

(a) ☐ Yes (If 'Yes', please furnish date of filing and Acknowledgement number of Form 10-IEA for AY 2024-25)

(a1) Do you wish to continue to opt out of New Tax Regime for current assessment year ☐ Yes ☐ No
(If 'No', please furnish date of filing and Acknowledgement number of Form 10-IEA for AY 2025-26)

(b) ☐ No (Please select 'No', even if Form 10IEA was filed after due date for AY 2024-25)

(b1) Do you wish to opt out of New Tax Regime for current assessment year ☐ Yes ☐ No
(If 'Yes', please furnish date of filing and Acknowledgement number of Form 10-IEA for AY 2025-26)

(c) ☐ Not Applicable (Return was filed in ITR 1/ ITR 2 / ITR 3 without requirement of Form 10-IEA) for AY 2024-25

(c1) Do you wish to opt out of New Tax Regime for current assessment year ☐ Yes ☐ No
(If 'Yes', please furnish date of filing and Acknowledgement number of Form 10-IEA for AY 2025-26)

(Set B)

Do you wish to exercise the option u/s 115BAC(6) of Opting out of new tax regime? (default is "No") o Yes o No

Note- Option under section 115BAC(6) should be exercised in Form 10IEA on or before the due date for filing return u/s 139(1).

What if a person has to opt out of the (New) Default Tax Regime u/s. 115BAC and has to file return of income as per the old Regime?

- **For a person having income from business or profession:** To opt out of the New Tax Regime, such a person will have to file Form 10-IEA on or before the due date of filing return of income u/s. 139(1) of the Act and date of filing Form 10-IEA and its Acknowledgment Number is required to be mentioned in ITR.
- **In the case of business or profession if once opted out of default tax regime in a year then form 10-IEA is not required to be furnished in any subsequent year unless wishes to re-enter default Sec. 115BAC**
- **For a person NOT having income from business or profession:** If a person is not having business income, then such person can Opt out from default Section 115BAC by opting out in ITR Form itself and Form 10-IEA is not required to be filed.

Section 115BAC – Revoke in same AY ?

- Once Form 10IEA is filed for AY 2024-25, then **it cannot be revoked / withdraw** in same AY, Taxpayer must mandatorily opt for the old tax regime for AY 2024-25. But option to 'Withdraw' will be available in subsequent year and it can be changed only once in a lifetime for Business and profession case i.e. (in case of ITR-3 or ITR-4).

To ensure proper Verification of Annual Information Statement (AIS) / Taxpayer Information Summary (TIS) and Form No. 26AS before filing ITR:

- AIS contains details about all the SFT details submitted by the reporting entities and contains many details including
- Interest income from saving bank account, Interest income from fixed deposits, recurring deposits, etc.,
- sale of securities whether long term or short term, quantity, rate at which shares have been sold, total sale consideration, cost of acquisition,
- details about transaction of sale or purchase of immovable property reported from 26QB and SFT Form 61A filed by the Registrar.

AIS-TIS

- In case of duplicate information or any incorrect information appearing in AIS, the assessee should give feedback to AIS in order to avoid any unwanted Intimation / Defective ITR / scrutiny, etc. and
- Any item of income is not left to be included in the ITR.
- Further, in respect of TDS Credit claimed by the assessee, proper entry should be done for corresponding income offered in the return of income and under which head, such income is being offered, corresponding TDS section, in Schedule TDS of ITR Form, to avoid any 139(9) defective ITR notices.

TDS Sections to be mentioned

[illegible]

Return of Income in case of Audit Assessee – To verify the details in ITR with the Tax Audit Report (3CA/3CB-3CD):

- Where the books of accounts of an assessee are audited u/s. 44AB of the Act, the assessee should, while filing the ITR should verify that:-
- All the disallowances / deductions, etc. in the Tax Audit Report have been duly considered while preparing the return of income and
- appropriate disclosure (such as in Schedule-OI) has been made in the ITR to avoid any unwanted Intimations u/s. 143(1) of the Act.
- Example: Disallowance of delay in employees contribution to PF or any other fund, disallowance u/s. 40(a)(ia) / 40A(3), 40A(7), 43B, etc. mentioned by the Tax Auditor in the Tax Audit Report should be entered in the corresponding Schedule in the ITR form as well to avoid any mismatch in information.

E-Verification of ITR through Aadhaar OTP:

- An individual and HUF can e-verify the return through Aadhaar OTP even if the assessee is liable for audit. Further, Tax Audit Report can also be accepted by the assessee on the online income tax portal (after submission by CA), through Aadhaar OTP only for individual and HUF.
- As per Section 140 of the Act, the return of income of a Company is compulsorily required to be filed through Digital Signature of the Managing Director or any other director, if the Managing Director is not able to verify for any unavoidable reason.

E-Verification of ITR through Aadhaar OTP:

- Return of income of a partnership firm (unaudited) can be e-verified through Aadhaar OTP of the managing partner or any partner , if the managing partner is not able to verify for any unavoidable reason. For a trust (including trust liable for audit u/s. 12A in Form No. 10BB/ Form No. 10B) or any AOP/BOI, ITR can be e-verified through Aadhaar OTP without requirement of any digital signature.

E-Verification of ITR through Aadhaar OTP:

- E-verification is required to be done within 30 days from the date of filing the return of income. Where the return of income is uploaded within due date but e-verified or ITR-V submitted after 30 days of uploading, in such cases the date of e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the act shall follow, as applicable. The date on which the duly verified ITR-V received at CPC shall be considered for the purpose of determination of the 30 days period. If the return of income is not verified after uploading, such return shall be treated as invalid.
- ITR can also be e-verified through E-Verification Code (EVC) generated through pre-validated bank account or pre-validated Demat Account or through Net Banking.

New Business codes in ITR

| Code | Nature of Business/Profession | Description |
|-------|--------------------------------------|---|
| 09029 | Commission Agents (Kachcha Arahitya) | Agents working under commission, no ownership |
| 16021 | Social Media Influencers | Earning from brand deals, promotions, etc. |
| 21009 | Speculative Trading | Intraday trading or trades settled same day |
| 21010 | Futures and Options (F&O) Trading | Trading in derivatives on stock exchanges |
| 21011 | Buying and Selling Shares | Delivery-based equity trading |

Conclusion

- Even if the taxpayer has opted for presumptive taxation, even though various provisions which are out of Section 28 to 43C are to be taken care of and to be followed, otherwise any violation may result in tax, penalty etc.
- Please check 26AS/AIS/TIS at the time of filing ITR
- Also please check 26AS/AIS/TIS at the fag end of the time limit to file revised return for relevant Assessment Year i.e. on or before 31-12-2025, because deductors might have furnished revised/correction TDS/TCS statement or any information in 26QB/26QC/26QD might have been updated or modified by deductor or any new information might have been there due to delayed filing of SFT or correction filed by reporting authority in SFT. Otherwise Only option thereafter is Updated return.
- Please check and compile income from all bank account transactions and property transactions and shares transactions and GST data etc. before filing ITR.
- It is recommended to meticulously review the latest provisions, regulations, and pertinent case laws etc. concerning each unique case and circumstance. By remaining updated on the ever-changing legal terrain, so taxpayers can maintain adherence to regulatory requirements and skillfully navigate the complexities inherent in these provisions."