

Tax Audit Series v. 3.0

Ch. 1 – Applicability

Namaste

We are starting a series on Tax Audit u/s 44AB (Version 3.0), taking into account practical aspects to be taken care of to issue the Tax Audit Reports. The original series was published in year 2018 and version 2.0 was published in year 2019. This series i.e., version 3.0 would, not only update the earlier series, but would also cover the amendments till 30th September 2021 and would be applicable for AY 2021-22.

In chapter -1 we would discuss about the applicability of Tax Audit u/s 44AB of the Income Tax Act.

Every person i.e., an individual, firm, company or others as defined in section 2(31) of the Act is covered under this section carrying on business or profession. If a trust (included in the definition of a person) is not carrying a business then it is not covered in this section.

Now, the initial test is to see that the person shall be liable for audit if sales, turnover or gross receipts exceed 'mentioned limits' specified u/s 44AB (a) or 44AB (b) or falls under other sub-section criteria. In this chapter, we shall discuss what are the mentioned limits and its different criteria accordingly.

APPLICABILITY U/S 44AB

Section 44AB contains 5 sub-clauses under which tax audit is required. These are:

1. S. 44AB(a) – It is applicable to any assessee who is carrying on a business if his / its total sales, turnover or gross receipt exceeds Rs 10 crores. However, the limit shall be reduced to Rs 1 crore provided:
 - Cash receipts exceeds 5% of aggregate of all receipts including received for sales, turnover or gross receipts or loans, capital, etc. during the previous year;

OR

 - Cash payments exceeds 5% of aggregate of all payments including amount incurred for expenditure, repayment of loan, withdrawal of capital, etc. during the previous year.

In other words, if both i.e., the aggregate of receipts in cash AND aggregate of payments in cash are less than 5% of the aggregate receipts and payments respectively then the limit for audit would be Rs. 10 crores.

A simple example is that if an assessee has turnover of Rs. 8 Crs, where total receipts are Rs. 20 crs and payments Rs. 15 Crs. Then the cash portion of receipts should be less than Rs. 1 Cr and cash portion of payments should be less than Rs. 75 lacs. If any of

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these exceed the amounts as discussed, then audit would be required u/s 44AB(a) as the limit for audit would be Rs. 1 Cr.

However, it is important to note that a '*non-account payee cheque or draft*' received or paid shall be deemed to be payment or receipt in cash and thus shall be included in 5% bracket for calculating the tax audit limit.

In case an assessee is not sure of his receipts being through account payee cheque / draft, then the auditor, prior to accepting the audit engagement should obtain a certificate from the auditee mentioning the same, which may contain a language:

“I / we are not sure of receipts of sale consideration of invoices / cheques / drafts below Rs. 2 Lacs each to be being account payee or not, as the customer / office staff have deposited the same into my / our bank account without showing to me / management”

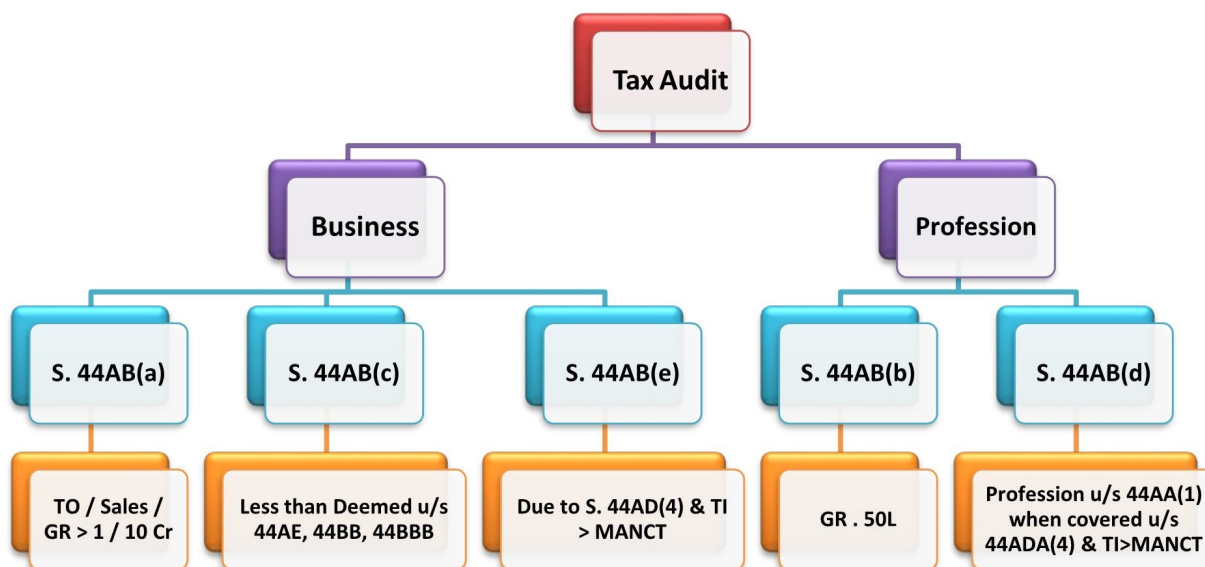
2. S. 44AB(b) – It is applicable to any person carrying on a profession, if his / its gross receipts exceed Rs 50 lacs in any previous year.
3. S. 44AB(c) - An assessee carrying on a business in the nature covered u/s 44AE, 44BB or 44BBB claiming his income to be lower than the profits or gains so deemed to be the profits and gains of his business in any previous year shall be liable to tax audit. The businesses covered are:
 - S. 44AE - Person engaging in the business of plying, hiring or leasing of goods carriage and owns not more than 10 goods carriages at any point in the previous year.
 - S. 44BB - Non-Resident engaging in the business of providing services or facilities in connection with or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils.
 - S. 44BBB - Non-Resident engaging in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.
4. S. 44AB(d) - An assessee carrying profession covered u/s 44ADA (an individual or a firm excluding LLP being a profession u/s 44AA(1)) claims his income to be lower than the profits or 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 (MANCT) in any previous year shall be liable to tax audit. For individuals and HUF, the MANCT is Rs. 2,50,000/-, for senior citizens its Rs. 3 Lacs and for very senior citizens its Rs. 5 Lacs.
5. S. 44AB(e) - An assessee (being an individual, HUF or firm excluding LLP) carrying business and attracts section 44AD (4) i.e., opts out of presumptive taxation in any one

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financial year out of lock in period and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year shall be liable to tax audit.

An overview of tax audit applicability can be summarised by the below table:



MANCT – Maximum Amount Not Chargeable to Tax.

TO – Turnover

GR – Gross Receipts

TI – Total Income

44AB v/s 44AD

Let's understand the two sections 44AB and 44AD in brief in relation to tax audit.

- If an individual, HUF or a firm (excluding LLP) has opted for presumptive taxation i.e., section 44AD then he/it shall not be liable to get his books audited u/s 44AB even if Turnover is more than Rs. 1 Cr but is less than Rs. 2 Cr.
- In such case even the question of calculating portion of cash receipt / payment is also not required.

However, if the person after once availing s. 44AD and in next year does not avail of the same and declares income less than the deemed income, then s. 44AD(4) is attracted and if the total income exceeds the maximum amount not chargeable to tax and he / it shall be liable to audit u/s 44AB(e).

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PENALTY

If any taxpayer who is required to get the tax audit done but fails to do so, the least of the following may be levied as a penalty:

- 0.5% of the total sales, turnover or gross receipts
- Rs 1,50,000

However, if there is a reasonable cause of such failure, no penalty shall be levied under section 271B. Few reasonable causes that have been accepted by Tribunals / Courts include:

- Natural Calamities
- Resignation of the Tax Auditor and consequent Delay.
- Labour problems such as strikes, lock-outs for an extended period.
- Loss of Accounts because of situations beyond the control of the assessee.
- Physical inability or death of the partner in charge of the accounts.

NO. OF TAX AUDITS

A Chartered Accountant in full time practice can conduct only 60 tax audits per assessment year as per ICAI Council Guidelines. However, the said limit should be only for audits done due to s. 44AB(a) or s. 44AB(b).