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**Bit by Bit
analysis of
the significant amendments by
the Finance Act, 2021**

Income Tax Act, 1961

**Section 44AB
{Tax Audit}**

1. **Clause (a) of section 44AB** of the Income Tax Act, 1961 provides as follows:

Audit of accounts of certain persons carrying on business or profession.

44AB. *Every person,—*

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year:

Provided *that in the case of a person whose—*

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; **and**

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words "one crore rupees", the words "five crore rupees" had been substituted; or

2. The **proviso** was inserted by the Finance Act, 2020 *w.e.f.* 1.4.2020.
3. As per the proviso, where total sales, turnover or gross receipts of a person is carrying on business exceed or exceeds **one crore rupees** in any previous year, **and** (a) aggregate of **all amounts received** including amount received for sales, turnover or gross receipts during the previous year, **in cash**, does not exceed five per cent of the said amount; **and** (b) aggregate of **all payments made** including amount incurred for expenditure, **in cash**, during the previous year **does not** exceed five per cent of the said payment, such person shall be required to get his accounts audited in terms of clause (a) of section 44AB if his such total sales, turnover or gross receipts **five one crore rupees** in any previous year.

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4. Conversely, if in the case of such person his such total sales, turnover or gross receipts in any previous year does not exceed **five one crore rupees**, he shall **not** be required to get his accounts audited in terms clause (a) of section 44AB.
5. In fact this is beneficial provision. It provides **advantage and exemption** to those persons who carry on their business in such manner that their specified **receipts and payments in cash does not** exceed 5% of their respective total.

The Finance Act, 2021

6. Now the Finance Act, 2021 has extended the above **advantage and exemption** to those persons whose such total sales, turnover or gross receipts in any previous year exceeds Rs. 1 Crore but does not exceed **Rs. 10 Crore** and who carry on their business in such manner that their specified **receipts and payments in cash does not** exceed 5% of their respective total.
7. This has been done by **substituting** the words **“ten crore rupees”** for the words “five crore rupees”. This is applicable from assessment year 2021-22.
8. However, the Finance Act, 2021 has made another important amendment to clause (a) of section 44AB.
9. After the proviso, another **proviso** has been **inserted**, which is as follows:

*“Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank **or** by a bank draft, which is **not account payee**, shall be deemed to be the payment or receipt, as the case maybe, **in cash**.”*

Comments

10. The salient features of the above proviso are as follows:
 - for the purposes of this clause,
 - the payment **or** receipt,
 - as the case may be,
 - by a cheque drawn on a bank **or**
 - by a bank draft,
 - which is **not** account payee,
 - shall be deemed to be the payment or receipt, as the case maybe,
 - **in cash**

11. As per the provisions of section 44AB it is the obligation of an assessee –
 - (i) to get his accounts audited, **and**
 - (ii) to furnish report thereof along with prescribed particulars.
12. First proviso of clause (a) of section 44AB provides exemption from tax audit.
13. Since it is the obligation of the assessee to get his accounts audited and furnish its report with prescribed particulars, therefore, **it is to be ascertained by the assessee** as to whether he is eligible for the exemption.
14. In continuation, the assessee has to ascertain following facts:
 - (i) he is carrying on business;
 - (ii) his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds Rs. 1 crore in any previous year;
 - (iii) his total sales, turnover or gross receipts, as the case may be, in business does not exceed or exceeds Rs. 10 crore in any previous year;
 - (iv) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, **in cash, does not exceed 5%** of the said amount; **and**
 - (v) aggregate of all payments made including amount incurred for expenditure, **in cash**, during the previous year **does not exceed 5%** of the said payment,
 - (vi) the **amounts received** by cheques drawn on bank or by bank drafts, which are not account payee, shall be ascertained, so that the same be treated as amounts received in cash for ascertaining the threshold of 5% in cash.
 - (vii) the **amounts paid** by cheques drawn on bank or by bank drafts, which are not account payee, shall be ascertained, so that the same be treated as amounts received in cash for ascertaining the threshold of 5% in cash.
15. Ascertainment mentioned in (vi) and (vii) above is very herculean task, well-nigh impossible, the assessee may not possess tangible evidence in this respect.

16. A cheque on a bank may be drawn in the following manner:

- (i) **Self Cheque** : mentioning “self” at place ‘pay’;
- (ii) **Bearer Cheque** : mentioning “name of the person” at place ‘pay’, who is allowed to draw amount at the bank cash counter;

Crossed Cheque

*{Crossing a cheque means drawing two parallel transverse lines on the cheque with or without additional words such as “& CO.” or “Account Payee” or “Not Negotiable.” According to **Section 123** of the Negotiable Instruments Act, 1881 regarding Crossing of Cheques, the guidance declared defines that the amount defined in the cheque will be transferred directly into the account of the **cheque holder** and will **not** be directly delivered as cash to the owner over the bank counter. Further, According to **Section 123**, the common crossing of cheques means including some words in connecting the two lines drawn which signifies a crossed cheque. This represents that the bank on which it is drawn shall not allow the amount of return in any other banks. Therefore, the payment can be only in the collecting bank. **Section 126** of the Act provides law relating to payment of cheque crossed generally, which states that “where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker and where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.}*

- (iii) **General crossing** : mentioning “name of the person” at place ‘pay’ and marking across its face an addition of two parallel transverse lines.
- (iv) **General crossing with restrictive condition – ‘& Co.’** : mentioning “name of the person” at place ‘pay’ and marking across its face an addition of two parallel transverse lines and mentioned the expression ‘& Co.’, which directs the collecting banker that he needs to credit the amount of cheque only to the account of the payee named therein or in whose favour it is endorsed in writing in accordance with law.
- (v) **General crossing with restrictive condition – ‘A/C Payee’** : mentioning “name of the person” at place ‘pay’ and marking across its face an addition of two parallel transverse lines and mentioned the expression ‘A/C Payee’ or ‘Payees’ A/C only’ which directs the collecting banker that he needs to credit the amount of cheque only to the bank account of the payee named therein. Although the words ‘A/C Payee’ is not mentioned in the Negotiable Instrument Act, they are still considered to be part of the law because of their widespread practice and use.

17. So, now what the second proviso to clause (a) of section 44AB requires to identify such cheques, which are crossed as “A/C Payee” or “Payees’ A/C only”.

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18. When a cheque is presented to bank for collection, it is presented in original and after collection of the amount it is retained by the bank. Therefore, the presenter of the cheque end up with nothing except the amount credited to his account. Under these circumstances, how the presenter of the cheque would substantiate that it was “**A/C Payee**” or “**Payees’ A/C only**”, as required by the second proviso.
19. It can be possible if the presenter maintain a Photostat copy of such cheque.
20. Similarly, in case of payment, it can be possible if the issuer of cheque maintain a Photostat copy of such cheque.

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