

Issues on S.44AD and TDS

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Posers on S.44AD

- 1 An unincorporated Joint Venture which is engaged in a business having turnover of Rs.50 lacs wants to file return of income u/s 44AD of the Act. Can it avail the presumptive taxation scheme ?
- 2 Mr. Kumar has turnover of Rs.40 lacs and has shown income of Rs.3,20,000/- u/s 44AD of the Act. Now he wants to claim deduction u/s 80C of the Act on this income so declared u/s 44AD of the Act. Can he claim such deduction?
- 3 Mr.X, a resident individual, carries on the following commercial activities :

- Business of construction – Turnover -Rs. 55 Lacs
- Architect - Rs. 10 Lacs
- Business of Transportation - Rs. 5Lacs

Can Mr. X avail of presumptive taxation u/s 44AD of the Act for his business of construction? What if he also runs the business of retail grocery stores having a turnover of Rs.10.00 lacs? Can he still take benefit of S. 44AD of the Act only for his transportation business?

- 4 Whether provisions of S. 44AD of the Act is applicable to the following types of businesses?
 - (i) Accountancy
 - (ii) Architectural
 - (iii) Authorised Representative
 - (iv) Company Secretary
 - (v) Engineering
 - (vi) Film Artists/Actors, Cameraman, Director, Singer, Story-writer, etc.
 - (vii) Interior Decoration

- (viii) Legal
- (ix) Medical
- (x) Technical Consultancy
- (xi) Information Technology
- (xii) Advertising agent
- (xiii) Clearing, forwarding and shipping agents - *CIT v. JeevanlalLallubhai & Co. [1994] 206 ITR 548 (Bom).*
- (xiv) Couriers
- (xv) Insurance agent
- (xvi) Nursing home
- (xvii) Stock and share broking and dealing in shares and securities – *CITv. LallubhaiNagardas & Sons [1993] 204 ITR 93 (Bom).*
- (xviii) Travel agent.

- 5 Mr. Shiva has gross sales of Rs.61.50 lacs for A.Y. 2011-12. However after turnover discount allowed to a customer at the end of the year in the sum of Rs.2.00 lacs, his turnover worked out at Rs.59.50 lacs. Is he eligible to claim shelter of S. 44AD of the Act for the year 2011-12?
- 6 Whether the sales by a commission agent or by a person on consignment basis forms part of the turnover of the commission agent and/or consignee as the case may be? How does turnover of a stock broker be computed?
- 7 In case of an assessee opting for the provisions of S. 44AD of the Act, can disallowances u/s 38(2), 37(1), 40A(3), 40(a)(i)/(ia) of the Act be made?
- 8 M/s Partners, a partnership firm having a turnover of Rs.40.00 lacs has a profit of only Rs.1,50,000/- which after allowing interest and remuneration to partners, becomes Rs. Nil. Whether provisions of sub-section (5) apply? If yes, whether books of accounts are to be maintained and audit as required u/s 44AB is to be carried out?
- 9 Mr. V a resident individual has a car of Rs. 10,00,000/- as on 31-03-2011 eligible for depreciation u/s 32 of the Act @15%. In A.Y 2011-12, he opts for Section 44AD. In the Assessment Year 2012-13, his turnover is Rs.100lacs, so he files his return under the normal scheme of the Act. In A.Y 2013-14, he again opts for Section 44AD. In this Assessment year

he sold the Assets for Rs.7,50,000/-. Compute his tax liability u/s 50 of the Act.

- 10 Mr. Honest, a resident individual has income from eligible business at Rs.4,00,000 on the total turnover of Rs.50,00,000/-. He also has interest income of Rs.3,00,000/- for A.Y. 2012-13. Whether Mr. Honest is liable to pay advance tax? if yes, whether interest u/s 234B of the Act can be levied for non-payment of the same?
- 11 Mr. K, a resident individual, carries on an eligible business having turnover of Rs.40,00,000/- for A.Y. 2011-12. However he has earned profit of only Rs.1,50,000/-. Since he does not have any other income, he opted for provisions of S. 44AD of the Act and filed return of income without maintaining any books of accounts. Can he do so?
- 12 Mr.J, a resident individual, carries on an eligible business having turnover of Rs.40,00,000/- for A.Y. 2011-12. However he earned profit of only Rs.2,50,000/-. Since he fell under sub-section (5) of S.44AD of the Act, he maintained books of accounts and got them audited too. Whether provisions of tax deducted at source would be applicable to him for A.Y. 2011-12 for the payments made during FY 2010-11?
- 13 Whether Form 4S is mandatory for any assessee opting for presumptive scheme u/s 44AD?
- 14 Whether loss suffered in one of the eligible businesses can be set off against profit of another eligible business?
- 15 Whether audit u/s 44AD(5) r.w.s. 44AB of the Act be taken into consideration while computing overall limit of tax audit as prescribed by ICAI?
- 16 What would be the due date of filing return of income for an assessee falling under 44AD(5) of the Act?
- 17 An eligible assessee carrying on eligible business, be called up on to produce books of accounts, maintained for some other purposes or statutory requirements, by the AO?

- 18 Assessee has income not exceeding the maximum amount which is not chargeable to tax for A.Y. 2001-12 and has income from eligible business which is less than 8% of the turnover. Is he required to maintain books of accounts and get them audited?
- 19 While opting for provisions of S. 44AD of the Act, is it necessary to maintain record/proof to prove the turnover/gross receipt?
- 20 Can an assessee show only 8% profit even when he has earned 50% profit from its turnover?
- 21 Can return filed u/s 44AD of the Act be selected for scrutiny?
- 22 Can addition u/s 68 of the Act or S. 56(vii) of the Act be made to returned income declared u/s 44AD of the Act?

Posers on TDS

- 23 XY Ltd. made payment on 23/07/2011 to a Chartered Accountant which included reimbursement of expenditure on which Tax was not deducted at source. AO proposes to disallow the whole of the expenditure u/s 40(a)(ia).
- 24 Whether tax is required to be deducted on the service tax component included in the payment?
- 25 Whether tax deducted at source can determine the chargeability of a particular income in the hands of the recipient?
- 26 In absence of Circular 786, is it mandatory to deduct tax u/s 195 of the Act on all the payments made to a non-resident?
- 27 Can excess TDS be claimed as refund?
