

Tax Audit Series - Version 4.0

Chapter 1 – Applicability



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Namaste

We are starting a series on Tax Audit u/s 44AB (Version 4.0), considering practical aspects to be taken care of for issue of the Tax Audit Reports. The original series was published in year 2018, version 2.0 was published in year 2019 and version 3.0 was published in year 2021. This series i.e., version 4.0 would, not only update the earlier series, but would also cover the amendments till 31st May 2024 and would be applicable for AY 2024-25.

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, LLP, 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 clauses of section 44AB. In this chapter, we shall discuss what are the mentioned limits and its different criteria accordingly.

APPLICABILITY U/S 44AB

Section 44AB contains 5 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 exceed 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 exceed 5% of aggregate of all payments including amount incurred for expenditure, repayment of loan, withdrawal of capital, etc. during the previous year.

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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 tax 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 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 / Engagement Letter 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 the 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 the previous year shall be liable to tax audit. The businesses covered are:

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- 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 u/s 44ADA and his income exceeds the maximum amount which is not chargeable to income-tax (MANCT) in the previous year shall be liable to tax audit.
- a. It is pertinent to note that for coverage u/s 44ADA the gross receipts have to be less than Rs. 50 Lacs.
 - b. However, from AY 2024-25, the limit of gross receipts u/s 44ADA would be Rs. 75 Lakhs, where aggregate of the amounts received in cash does not exceed 5% of the Gross Receipts. For example, if the gross receipts is Rs. 60 lakhs, and total receipts are Rs. 5 Crs, if the receipt in cash is less than Rs. 3 lacs out of Rs. 5 Crs., he can avail of s. 44ADA.
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 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.

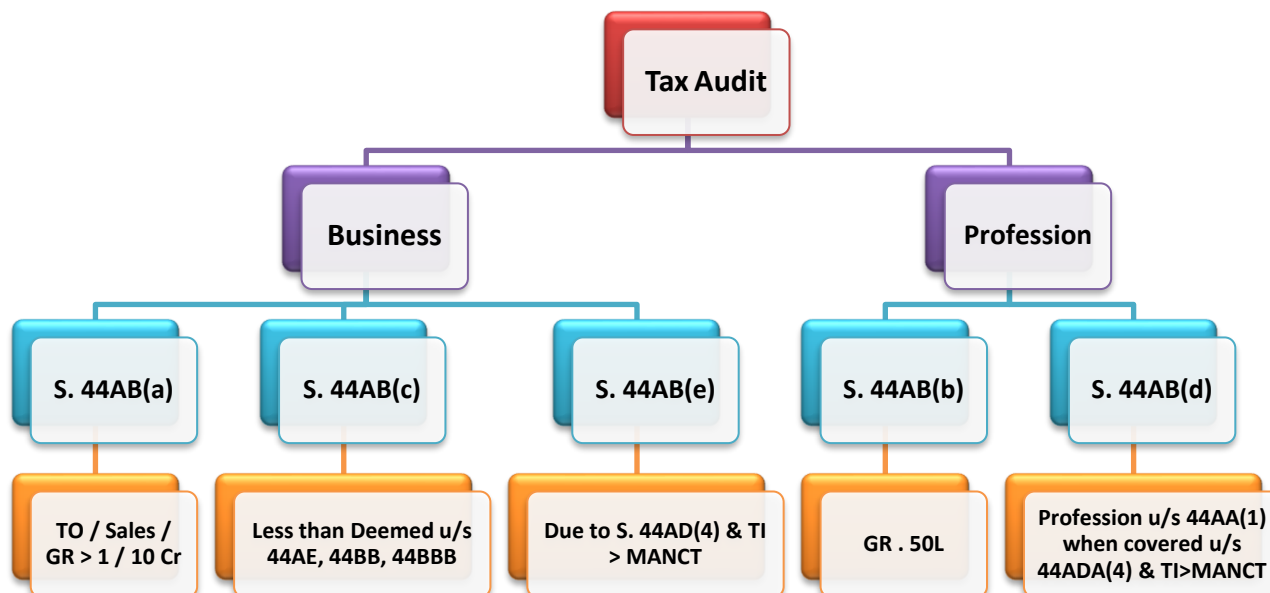
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An overview of tax audit applicability can be summarised by the below table:



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 (1) 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 as full receipts and payments can be in cash.
- However, it is pertinent to note that from AY 2024-25, the limit of turnover/gross receipts u/s 44AD would be Rs. 3 crores instead of Rs. 2 crores, where aggregate of the amounts received in cash does not exceed 5% of the total turnover/gross receipts. For example, if the turnover is Rs. 2.40 Crs, and total receipts are Rs. 10 Crs, if the receipt in cash is less than Rs. 12 lacs out of Rs. 10 Crs., he can avail of s. 44AD.

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However, if the person after once avails of S. 44AD (1) and in any of the next 5 years do not avail of the same, then s. 44AD(4) is attracted and if his/its total income exceeds the maximum amount not chargeable to tax and he / it shall be liable to audit u/s 44AB(e).

For example, if an assessee (whose total transactions are through NEFT and no cash transactions) has turnover of Rs. 1.5 Crs, in AY 2023-24 and has opted for section 44AD(1). His turnover in AY 2024-25 is Rs. 2.5 Crs., and he do not want to avail of section 44AD, then though his total receipts and payments are through proper banking channels (no cash transactions), he would be required to get his audit done u/s 44AB(e) by virtue of section 44AD(4) being attracted.

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.

I hope this document is of use to you. I thank CA. Shreya Jain in assisting me to compile this part of the series. Your suggestions and comments would be highly appreciated.

Best Regards

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10th June 2024

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(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)

ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL. B). He is qualified as an Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Certificate Course on CSR of ICAI. He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT and post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.

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- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 36000 answers since its launch in mid of year 2018.

He has delivered more than 1700 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is Senior Partner of **M/s LUNAWAT & CO.**, Chartered Accountants. He is president, founder convener and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical Reviewer with Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

He has authored books on “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, *Limited liability Partnership – A Complete Resource Book*”, “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, “*Importance of LLP after Companies Act, 2013*”, “*Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review*”, “*Limited Liability Partnership – Law, Procedures and Taxation*”, “*Documentation for Chartered Accountants*”, “*Limited Liability Partnership – Law and Procedures with Ready Reckoner*”, “*Fringe Benefit Tax & Banking Cash Transaction Tax*”, “*Documentation for Audits*” and “*Accounting Standards and CARO*”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.