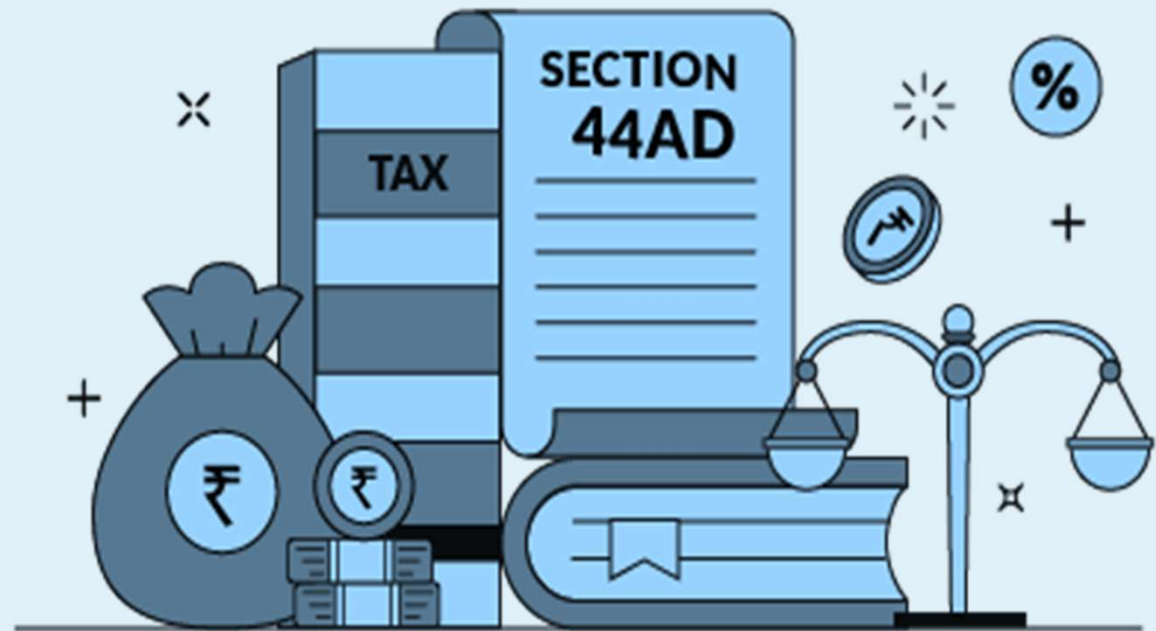




Jaipur Branch of CIRC of ICAI



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01

Speaker

~~Lecture Meeting~~- Discussion -My role is to ask questions and moderate discussion

02

~~Consensus~~- **Brainstorming**

There is no one answer - Aim not reach consensus, but to invoke thought process

03

~~One sided~~- **Interactive**

Free to ask, Lets make it interactive

04

~~Exclusive~~- **Inclusive**

Covered Nuances which we have faced

05

~~Taxability~~- **Technicality**

Beyond Taxability !!



Let's question everything and learn together – be like PK!!

TOPICS TO BE COVERED

1 Introduction to Section 44AD

2 Concept of Presumptive Taxation

3 Eligibility Criteria for Section 44AD

4 Turnover threshold and declaration of deemed profits

5 Computation of Income and advance tax u/s 44AD



6 Tax audit and Consequences of opting for section 44AD

7 Recent updates, Amendments and issues



INTRODUCTION TO SECTION 44AD



Introduction to Section 44AD

- ✓ The provisions related to Presumptive Taxation were introduced by Finance Act, 1994, through Section 44AD and Section 44AE. It has undergone subsequent amendments since then, as discussed below.
- ✓ A new section i.e., Section 44AF was introduced through the Finance Act, 1997 which was on similar lines as to Section 44AD.
 - i. **Intention-** To provide benefits for small retail traders
 - ii. **Difference-** The income was estimated @ 5%.
 - iii. **Inoperative-** The provision was made inoperative from A.Y. 2011-12.
- ✓ With a view to lowering the compliance cost and administrative burden, the scope of presumptive taxation was widened by extending its applicability to all businesses through Finance Act, 2009.
- ✓ Since then, it has been amended several times, and monetary limits for turnover have also been increased by Finance Act 2010, 2012, and 2017.
- ✓ With the introduction of Section 44ADA, a presumptive tax scheme is now also applicable to certain categories of assessee engaged in a profession.



Concept of Presumptive Taxation



✓ Small business owners are covered under this provision to provide them relief from the hassle of maintaining books of accounts and get books of accounts audited.

✓ The taxpayers are allowed to declare their taxable income based on a percentage of their total turnover or gross receipts.

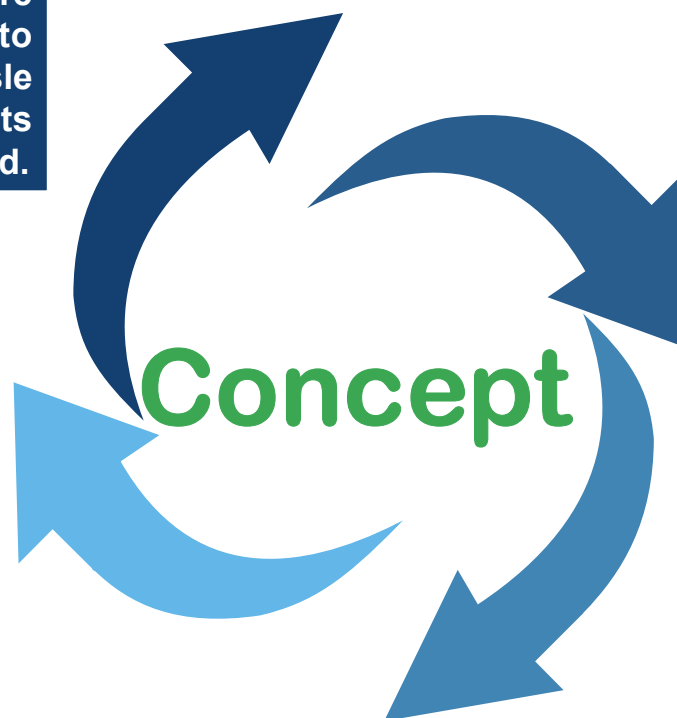
✓ a **lower percentage** is applied for businesses that receive **non-cash payments** (i.e., digital transactions).

✓ Simpler ITR form for people opting for filing income tax return under presumptive taxation.

✓ It requires only 6 details for filing profit and loss and balance sheet in such business.

✓ Taxpayers availing the scheme are **not required to maintain detailed books** of accounts like

- i. Invoice,
- ii. regular accounting records, or
- iii. supporting documents for expenses.



Eligibility Criteria for Section 44AD



Eligibility Criteria to avail Section 44AD

- ✓ **Nature of the taxpayer:-** Applicable to the following types of taxpayers-
 - i. Resident individuals
 - ii. Resident HUFs
 - iii. Resident Partnership Firms (excluding LLPs)
- ✓ **Business Type: -** Section 44AD is available only to businesses except for the business/ profession as mentioned below-
 - i. Business of plying, hiring, or leasing goods carriage.
 - ii. Where turnover exceeds Rs. 2 crore

Assessee not eligible for Section 44AD:

- i. Person carrying on profession as mentioned in section 44AA (1)
- ii. Person earning income through brokerage, commission.
- iii. Person carrying on agency business.
- iv. Person who is claiming deductions u/s 10AA or under Chapter VI-A against any specific income.

Turnover Limit: - To avail the benefit of Section 44AD, the total turnover of the eligible business should not exceed the prescribed threshold of Rs. 2 crore.

**Amendment
shall be
discussed later**

Poser: 1

Mr. Raju is an individual carrying on garment trading business where the turnover of business is Rs. 80 lakh and profit earned by him is Rs. 10 lakh. As a side income Mr. Raju also sells insurance to people and has earned Rs. 20,000 as commission from selling of insurance policies.

Now Mr. Raju has approached to get his return filed and show income from business of trading u/s 44AD and show income from commission as Income from other sources.

Can he file ITR 4 and declare income u/s 44AD?



Section 44AD to be checked Assessee wise or business wise

Relevant extract of Section 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 "Profits and gains of business or profession"
- ✓ "eligible business" means,—
 - (i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and
 - (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.

Turnover Threshold and declaration of deemed profit



Turnover threshold and declaration of Deemed Profits

Turnover Thresholds

- ✓ The turnover threshold for availing of Section 44AD is Rs. 2 Crores i.e. if the total turnover or gross receipts of the business do not exceed Rs. 2 Crores in an F.Y., the taxpayer is eligible to opt for the presumptive taxation. **(However, there is an amendment in this limit, which shall be discussed later in the presentation.)**

Declaration of Deemed Profits

- ✓ If the eligible business is opting for Section 44AD, a sum equal to 8% of the total turnover or gross receipts of the assessee in the P.Y. or the sum higher, shall be deemed to be the profits or gains chargeable to tax under the head PGBP.
- ✓ It is important to note that no deductions or allowances shall be allowed.

The words 8% shall be substituted with 6%, if the amount of total turnover or gross receipts is received by any **account payee cheque or account payee bank draft or use of ECS** through a Bank A/c or through such other electronic mode as may be prescribed during the P.Y. or before the due date specified in Sec. 139 (1).



Definition of Turnover as per Guidance Note

For the purpose of presumptive taxation, the meaning of “turnover” has to be considered for the applicability of the section. The term “turnover” has not been defined under the Income Tax Act and hence it’s meaning needs to be borrowed from various other laws as under:

The term ‘turnover’ for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. **If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover.** Trade discounts can be deducted from sales but not the commission allowed to third parties. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover. However, sales of scrap shown separately under the heading ‘miscellaneous income’ will have to be included in turnover.

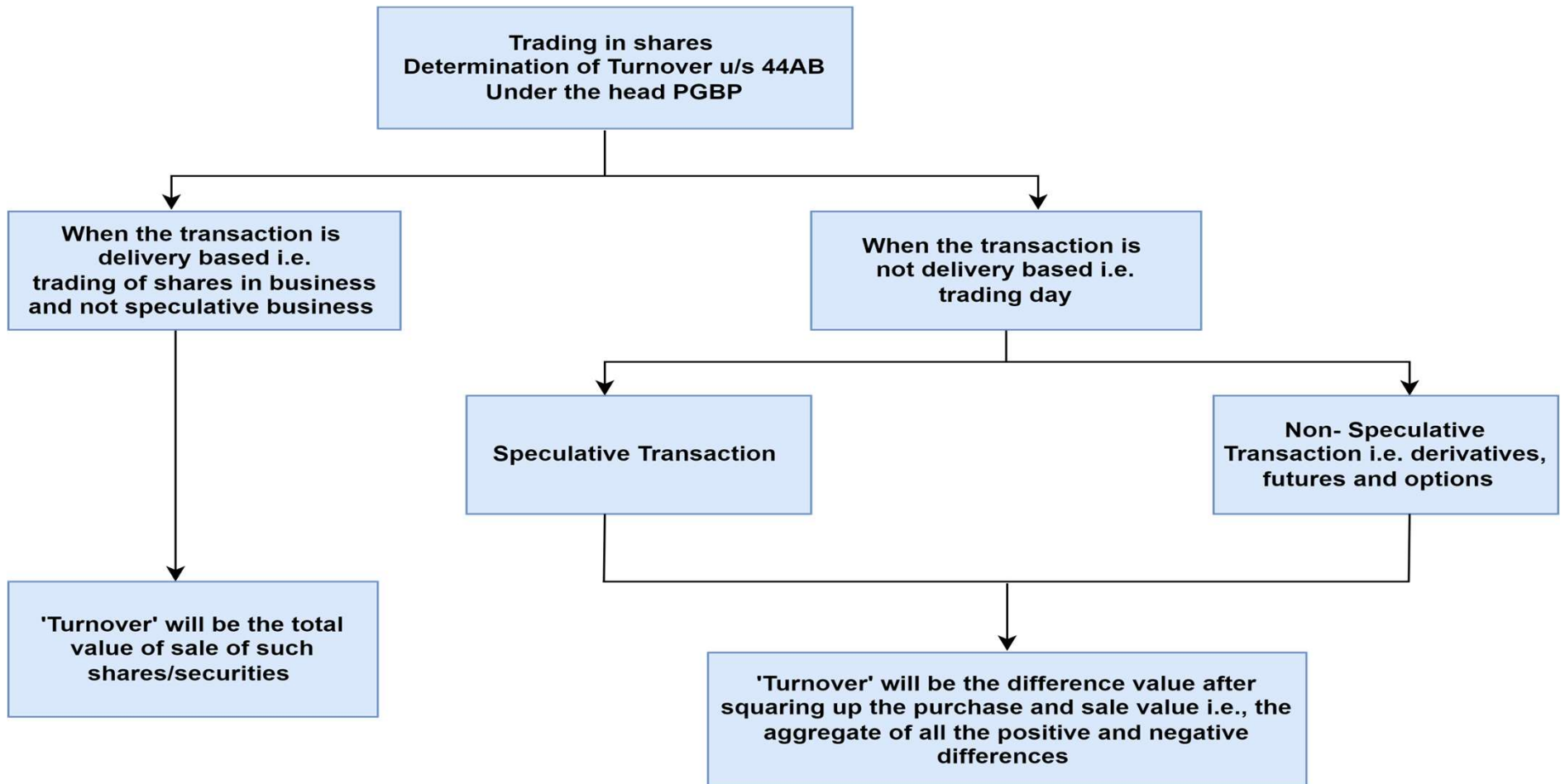
For detailed understanding one could refer the guidance note issued by ICAI i.e. Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 AY 2022-23

Calculation of Turnover in special cases i.e. F&O and intra day

- ✓ Total of
 - i. positive and negative, or
 - ii. Favorable and unfavorable differences shall be taken as turnover.
- ✓ **Premium received** on the sale of options is to be included in turnover. [After recent amendment in guidance note it has been removed if included in profit]
- ✓ In respect of any **reverse trades** entered, the difference thereon shall also form part of the turnover.
- ✓ In case of derivative transactions, the assessee shall **pass entries for differential amounts only** in books and the same will be regarded as the turnover for the purpose of Income tax.
- ✓ For every trade, **contract notes** are issued which show the value of Futures & Options bought or sold. While for the recording purpose, the difference between them shall be used.



Determination of Turnover (trading in shares)



Point to Ponder upon.....

Whether the benefit of 6% would be available if the payments are received in digital wallets?

- ✓ The government is desirous of promoting digital payments, and the intent behind the same appears to be to encourage all payments which can leave a banking trail.
- ✓ However, nowadays, a large number of small businesses accept payments through digital wallets like Paytm, Mobi Kwik, etc., especially post-demonetization.
- ✓ In this regard you can refer rule 6ABBA for other modes of payment some of which are as under:
 - ✓ (a) Credit Card;
 - ✓ (b) Debit Card;
 - ✓ (c) Net Banking;
 - ✓ (d) IMPS (Immediate Payment Service);
 - ✓ (e) UPI (Unified Payment Interface);
 - ✓ (f) RTGS (Real Time Gross Settlement);
 - ✓ (g) NEFT (National Electronic Funds Transfer); and
 - ✓ (h) BHIM (Bharat Interface for Money) Aadhar Pay;



Poser: 2

Mr. Jadoo is running a business of selling T-shirts online. The turnover of business is Rs. 1.2 crore and profit earned by him is Rs. 7.5 lakh (6.25%). Mr. Jadoo being a new age business owner has also provided an option to accept sale receipt in cryptocurrency and he wants to file return u/s 44AD of the Act.

Now he wants to know whether his profit shall be acceptable under the provisions of Income tax Act or not? Or he will have to pay additional tax.



Poser: 3

Mr. Singhvi is an individual engaged in F&O trading and his turnover as per the provision mentioned above comes to Rs. 80 lakh and he has earned a profit of Rs. 9 lakh. He also has a garment trading business with turnover of Rs. 1.3 crore and profit of Rs. 15 lakh.

Now Mr. Singhvi has come up to you to ask whether he can declare profit from only one business u/s 44AD or if he has to prepare full books of accounts?



Computation of Income and advance tax u/s 44AD



Deduction of Expenses or disallowance u/s 44AD

Question: Can assessee claim any deduction of expenses against income declared u/s 44AD of the Income Tax Act?

✓ Sub-section 2 of Section 44AD deals with the above question and states as under:

“Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.”

Question: Can disallowance be made u/s 40(a)(ia) of the Income tax Act for non-deduction of TDS by 44AD business?

✓ Sub-section 1 of section 44AD starts with a non-obstante clause wherein it has been held that nothing to the contrary contained in section 28 to 43C and hence section 44AD over-rules all previous sections. This contention is also supported by judgement as mentioned below;

- ✓ Shri Bipinchandra Hiralal Thakkar [TS-539-ITAT-2020(SUR)]
- ✓ Jaharlal Mukherjee v. ITO (in ITA No. 73/Kol/2014) (Kolkata -Trib)

Poser: 4

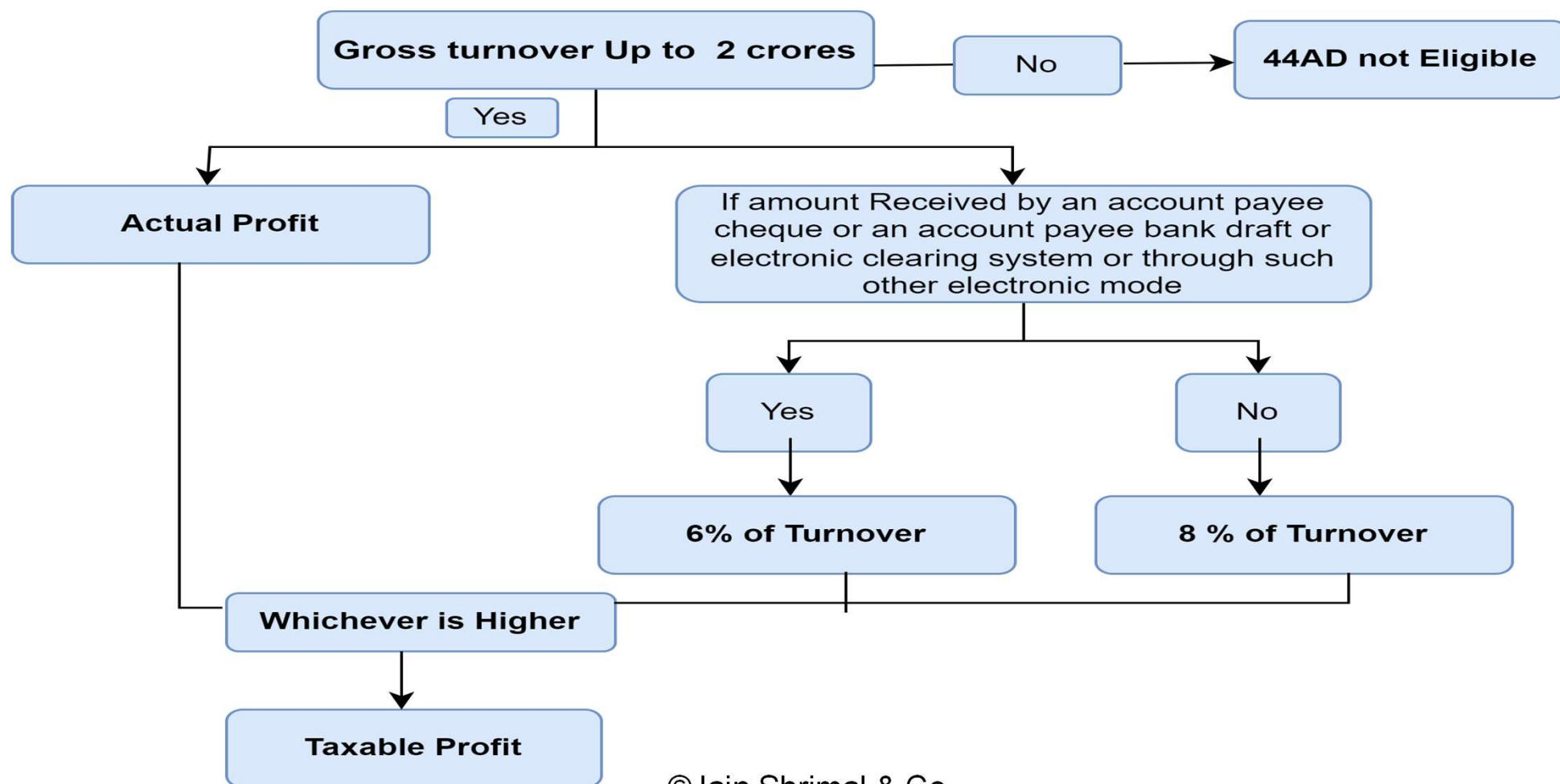
Mr. Chotu is running a business of selling grocery by name of Big basket. He owns various machines and vehicles to run his business. Since turnover is below Rs. 2 crore he is opting for presumptive taxation scheme.

Now Mr. Chotu wants to ask whether he can claim depreciation on such plant and machinery or any other asset used in business?

Further, when he sells such asset will he have to pay any capital gain tax u/s 50 on such plant and machinery, since no depreciation claim was allowed?



Calculating Taxable profit under section 44AD



Liability of Advance tax for section 44AD

Section 211 deals with liability of advance tax payment:

- ✓ Clause (b) of sub-section (1) of section 211 states liability for payment of advance tax as under:

(b) **an assessee** who declares profits and gains in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA, as the case may be, to the extent of the whole amount of such advance tax **during each financial year on or before the 15th March:**"
- ✓ Thus, considering the above provision it can be said that an assessee declaring income under section 44AD needs to pay advance tax only once i.e. on 15th March.

Poser:

If an assessee earns income u/s 44AD and also earns income from capital gain. Will he still be eligible to pay advance tax only once or will he have to pay advance tax each quarter?

Tax audit and Consequences of opting for section 44AD



Tax Audit as per Section 44AD of the Act

Relevant provision of Tax Audit under section 44AD:

- ✓ (4) Where an eligible assessee **declares profit for any previous year** in accordance with the provisions of this section and **he declares profit for any of the five assessment years** relevant to the previous year succeeding such previous year **not in accordance with the provisions of sub-section (1)**, **he shall not be eligible to claim the benefit of the provisions of this section for five assessment years** subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).
- ✓ (5) Notwithstanding anything contained in the foregoing provisions of this section, **an eligible assessee to whom the provisions of sub-section (4) are applicable 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.**

Tax Audit as per Section 44AD of the Act

Based on the provision discussed above let's check the conditions for Tax audit under provision of Section 44AD:

Condition 1: Assessee should declare profit of it's business u/s 44AD of the Act.

Condition 2: Assessee should declare profit of such business for next 5 years as per provision of section 44AD.

If assessee does not declare profit in any of the next 5 years as per the provision of section 44AD then he shall be not eligible for taking benefit of section 44AD in any of the next 5 years and if the assessee has total income above the exemption limit then he has to maintain books of accounts as required u/s 44AA of the Act and get his books of accounts audited u/s 44AB of the Income tax act.

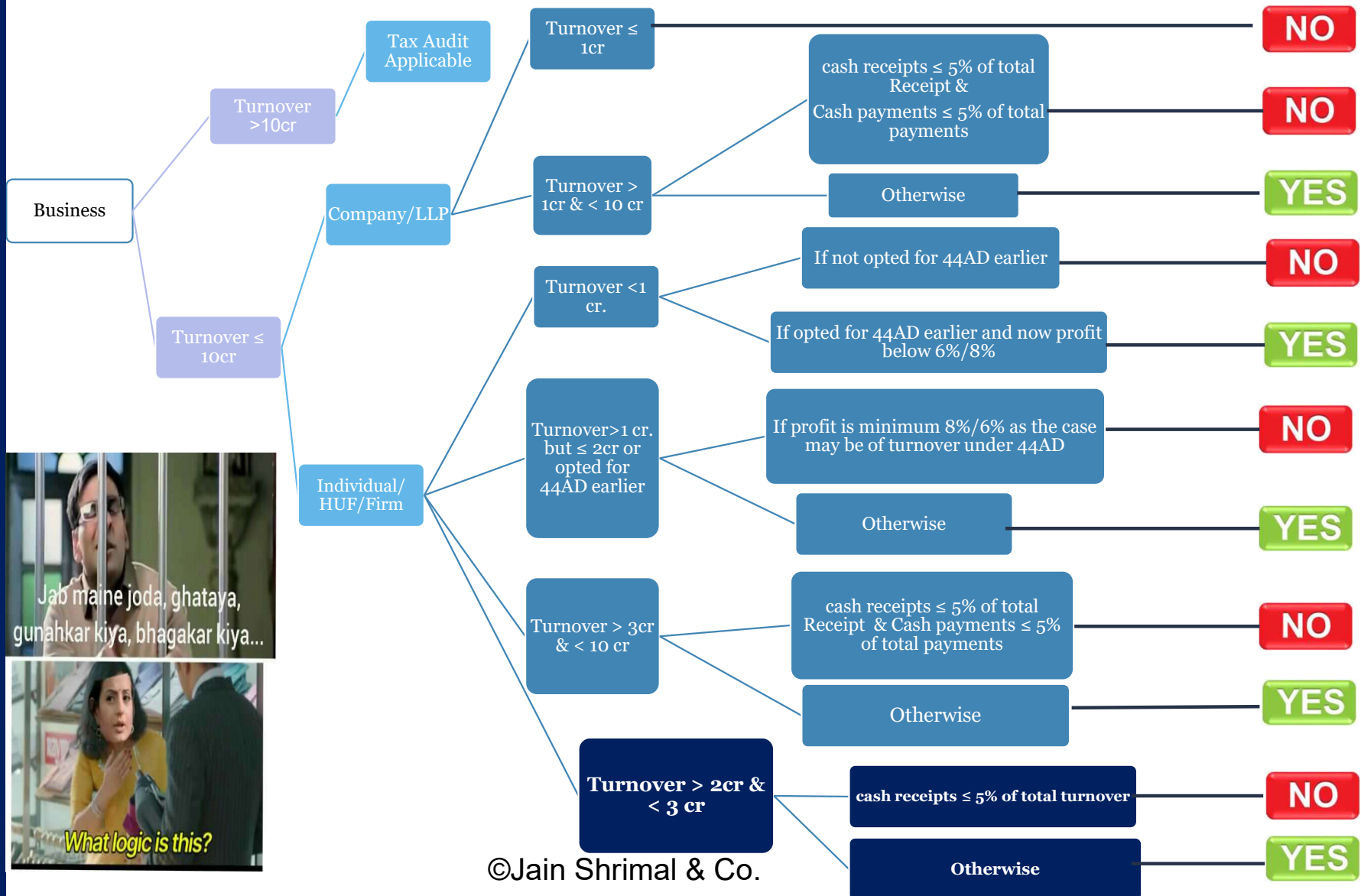
Consequences of opting for Section 44AD

Opting in or out of Section 44AD for Business

- ✓ Any person who is eligible to avail the benefit of Section 44AD as per eligibility discussed earlier can at any time opt for the scheme of Presumptive Taxation.
- ✓ Further, it is important to note that tax audit is only applicable if a person opts out of the scheme of Presumptive Taxation of Section 44AD, and once he opts out then he can not avail the benefit of such scheme for the next 5 years.
- ✓ The same has been summarized in table below:

Particulars	Presumptive Tax u/s 44AD for business
A.Y. 2017-18, 2018-19, 2019-20	Opts for Presumptive Taxation
A.Y. 2020-21	Does not opt for Presumptive Taxation
A.Y. 2021-22 to A.Y. 2025-26	Can not opt for Presumptive Taxation

Applicability of Tax Audit and Increase in limit of Presumptive Taxation (for business)





What if.....

Whether the presumptive scheme shall be available to the assessee if he is earning income from Derivative Trading, i.e., from Future and Options transactions.

If your trading turnover is more than Rs. 2 Crores:

A tax audit is mandatory as a presumptive scheme is not available.

If your trading turnover is between Rs. 1 Crore and Rs. 2 Crores:

A tax audit is required if you are opting out of presumptive scheme.

If your trading turnover is less than 1 Crore:

Tax Audit is not required. However, if the assessee is

- ✓ Under losses, or
 - ✓ Opting out of 44AD and Income is less than 8% of the turnover, and
 - ✓ 'Total Income' is greater than the basic exemption limit, and
 - ✓ The assessee wishes to claim such lower profits in your ITR,
- A tax audit would be required in such a case.



What if.....

An assessee offering income under the presumptive section scheme since A.Y. 2015-16. She continues to opt for the scheme till A.Y. 2019-20. In A.Y. 2020-21, she offers income lower than 8% of total turnover.

- ✓ **Question here is from which year should the 5-year period be calculated- from A.Y. 2015-16 or from 2017-18 since the amendment is w.e.f. 01.04.2017.**
- ✓ **The issue here is whether the 1st year should be from A.Y. 2017-18 or the year from which she opted for the presumptive section i.e., 2015-16.**

In the present case, we take the latter scenario, i.e., she completes her 5 years by A.Y. 2019-20.

However, if she takes the first year as A.Y. 2017-18, then she breaches the condition of 5 years, and therefore, shall be barred from tax audit for another 5 years.

The law is silent regarding its applicability in such scenarios and hence can lead to many practical issues for such assesseees.

Poser: 5

- ✓ The assessee started his business in P.Y. 2017-18,
- ✓ Has a turnover of Rs. 1 Crore,
- ✓ Desires to declare income of Rs. 5 Lakhs,

Whether in this case, can the assessee claim Sec 44AD benefit in future years or shall be ineligible to opt for the next 5 A.Y.s

In the given case-

Provisions of section 44AD(5) will not be attracted, since the opening words of section 44AD(4) are *“when an eligible assessee declares profits for any P.Y.s in accordance with the provisions of this section.”*

Since the assessee has not declared profits u/s 44AD, sub-section (4) does not operate, and consequently sub-section (5) is also not attracted.

Therefore, he can seek the benefit of Section 44AD in future years without being ineligible for 5 A.Y.s



Whether Section 44AD is a compulsory provision in first year of business?

Section 44AD starts with a non-obstante clause wherein it over-rules section 28 to Section 43C and states that an eligible assessee engaged in eligible business **“shall”** declare 8% or higher profit of the turnover and such profit shall be deemed to be the profit under the head PGBP.

Relevant extract of provision is as under:

- ✓ *“(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 "Profits and gains of business or profession”*
- ✓ Now read the above provision one could argue that since the word shall has been used in the provision and since the provision starts with a non-obstante clause it is a compulsory provision and therefore an eligible assessee running an eligible business should declare income u/s 44AD of the Act.

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Do you agree that Section 44AD is a compulsory provision for 1st year?

① Start presenting to display the poll results on this slide.

Recent updates, Amendments and issues in Section 44AD



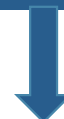
Recent amendments in Section 44AD

The **salary/ remuneration/ Interest** paid to partners would also not be allowed to be claimed as a deduction



- ✓ Earlier, there was a provision that allows the separate deduction of Salary/ remuneration payable u/s 40(b).
- ✓ However, after the amendment in 2016, such deduction was made inoperable, and thus, now such salary received shall be included in 8%.

Amendment made by Finance Act, 2023 in the limit of aggregate turnover or gross receipts for the eligible businesses



- ✓ A assessee carrying on an eligible business where the amount or aggregate amounts received in cash during the year does not exceed 5% of the total turnover or gross receipts, a threshold of Rs. 3 Crores shall apply.
- ✓ In simple words, if 95% or more of your business turnover is through the banking channel, you can opt for Sec. 44AD up to a turnover of Rs. 3 Crores. Otherwise, the threshold limit of Rs. 2 Crores shall apply.

Poser: 6

Hum saath saath hai is a partnership firm running ice-cream selling business and has sales in cash, wherein 5 family members are running business and are partners in the firm. The turnover of the firm is 1.5 crore with a profit of Rs. 30 lakh.

Now the firm has approached you to ask whether they can give remuneration to partners and whether it's deduction will be allowed and can the profit of firm after allowing remuneration go below 8% of the total sales?

Whether the partners have to show such remuneration in their income tax return?





Issue 1:

Whether assessee declaring income u/s 44AD of the Act is required to deduct TDS as per the provisions of Income tax Act?

**Implication of Section 271C
Disallowance u/s 40(a)(ia)**



Issue 2:

Whether benefit of presumptive taxation scheme can be taken while filing ITR 3?

For eg: ITR 3 selected because assessee is doing business and also earning capital gain



Issue 3:

Partner in a partnership firm earning income from remuneration and interest. Can they declare such profit u/s 44AD of the Act?



Issue 4:

Addition u/s 69 of the Act of person declaring income u/s 44AD of the Act?

[2022] 142 taxmann.com 148 (Madras) Smt.S.Sakunthala Sivam v. Income-tax Officer



Issue 5:

A person doing online business receives all payment in digital mode but there are some debtors as on 31.03.2023. Can he still show profit at 6% or he will have to show profit at 8%?



Issue 6:

Can AO ask to prove assessee to prove the expenditure claimed by assessee u/s 44AD of the Act?

Nand Lal Popli vs. DCIT [2016] 160 ITD 413 (Chandigarh Trib.)



Issue 7:

Will 5 years audit be required in case of individual who has opted out of Section 44AD and is claiming a loss?



Issue 8:

Whether Section 44AD is applicable/ available for professions/ services other than those mentioned u/s 44AA of the Act?

Chartered
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Income Tax
Department



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Any Questions



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