

Tax audit not applicable for Turnover less than 1 crore

Section 44 of Income Tax Act, 1961 essentially deals with sections related to audit, presumptive taxation and special provisions related to computation of income for business purpose. Till FY 2015-16, eligible assessee having turnover less than Rs 1cr and net profit less than 8% cannot were not allowed to avail the presumptive taxation scheme and had to be mandatorily audited by chartered accountant. This article tries to analyze the position brought by amendment to Section 44AB and 44AD by Finance Act, 2016.

Till FY 2015-16, Audit for profit % lower than 8% in case of individual and partnership firm (not LLP) was mandated by the following sections:

Section 44AB

44AB. Every person,-

carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be [(d)lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,]

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

The above section had following three limbs :

- Profits & gains u/s 44AD - Eligible business whose turnover and gross receipts is less than Rs 1 crore
- Claim that such income is lower than the deemed profit i.e. 8%
- income exceeds the limit over which income is taxable

The tax audit for such entities was also supported by Section 44AD(5) as follows :

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) 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](#).

Finance Act, 2016 has brought presumptive taxation to professionals also. The same was incorporated in Section 44AB by replacement of word “business” with “profession”. Post the amendment, the sub-section is as follows :

Section 44AB

44AB. Every person,-

carrying on the [profession] shall, if the profits and gains from the [profession] are deemed to be the profits and gains of such person under [\[section 44ADA\]](#) and he has claimed such [(d) income to be lower than the profits and 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 in any [previous year; or]]

Therefore, now if business has to come under purview of tax audit, it can come only by way of another sub-section being introduced in the act.

Sub-section (e) was added to Section 44AB which reads as follows :

44AB. Every person,—

carrying on the business shall, if the provisions of sub-section (4) of [section 44AD](#) are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,]

[(e)

get his accounts of such previous year audited by an accountant before the specified date and [furnish by] that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

So now, audit can only be applicable if provisions of sub0section (4) of Section 44Ad are applicable in case of assessee.

The section 44AD(4) and 44AD(5) are as follows :

[(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](#).]

As per Section 44AD(4), tax audit will now be applicable only if the following conditions are met

- Assessee declares profit for **any previous year** in accordance with provisions of this section - **As this is a new sub-section and no assessee would have declared profit under this section in any previous year.**
- He declares profit for any of the five assessment year succeeding this previous year **not in accordance with provision of sub-section (1)** i.e. he shows less than 8% profit in the succeeding years. **This condition will also not be followed as it is first year of this section**

Therefore, in my view tax audit in case of assessee having turnover less than 1 cr and profit less than 8% the same would not require to be audited for FY 2016-17. This contention is also supported by sub-section 5 which mandates tax audit only conditions u/s 44AD(4) is breached.

There is alternative view that assessee declares profit for any previous year in accordance of this section means section 44AD per se and not the newly inserted 44AD(4). In that case also, if assessee has never filed return u/s 44AD (i.e. higher than 8%) and now showing profit less than 8%, he would not be required to get audited as per Income Tax act. However, in case of newly commenced business the section 44AD(4) will not be breached and the assessee would not be under purview of tax audit.

Even in subsequent years also, if assessee follows the net profit trend it will need not to be get audited under income tax act. Audit will only be mandatory when once return is filed under 44AD and in next five years profit % is lower than the deemed profit.

This is shown as per example:

Financial Year	Turnover (lakhs)	%	Tax audit Applicability
2016-17	90	5	No as per above discussion
2017-18	85	7	Return not filed earlier u/s 44AD and now net profit % less than 8% and therefore there is no breach of section 44AD(4) and so not under purview of tax audit
2018-19	90	7	Return not filed earlier u/s 44AD and now net profit % less than 8% and therefore there is no breach of section 44AD(4) and so not

			under purview of tax audit
2019-20	80	9	Return now filed u/s 44AD as net profit higher than 8% Return in any previous year now filed u/s 44AD and return now not
2020-21	90	6%	filed as per sub-section(1) of 44AD and therefore tax audit will be applicable.
2021-22	80	9%	Because of restriction of Section 44AD(4) for further five years, irrespective of net profit % tax audit will be conducted

As per the above analysis, chartered accountants should ascertain the applicability of tax audit in all the relevant cases and Tax audit should be conducted accordingly.

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