

Concept & Meaning of Turnover in Tax Audit

How to calculate the gross receipt or turnover?

'Turnover', 'Gross Receipts' and 'Sales' are the buzzwords during this Tax Audit season. Incidentally, they are the very starting point of a Tax Audit. They form the qualifying criteria, determine whether a taxpayer is liable to tax audit during a given year. Sec. 44AB of the Income Tax Act 1961 lays down limits of turnover beyond which taxpayers are liable to get their accounts audited by a Chartered Accountant and present a Tax Audit Report in Form No. 3CD. The deciding basis, i.e., 'turnover' is not defined in the Act, thereby leading to different interpretations. As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of 'Turnover' shall be the aggregate amount for which sales are affected by an enterprise.

Meaning of turnover

The term "turnover" has been understood for the purpose of Section 44AB to mean:

- a. The aggregate amount for which sales are effected or services rendered by an enterprise. In case the assessee has opted for inclusive method of accounting and the sales price are inclusive of sales tax and excise duty, then no adjustment in respect thereof should be made for considering the quantum of turnover.
- b. Trade discounts can be deducted from sales but not the commission allowed to third parties. In case assessee is following the practice of crediting the Excise duty and / or sales tax recovered separately to Excise duty or Sales tax Account (being separate accounts) and payments to the authority are debited in the same account, then the same will not be included in the turnover.
- c. Sales of scrap shown separately under the heading 'miscellaneous income' will form part of turnover.
- d. Further, the words "Sales", "Turnover" and "Gross receipts" are commercial terms. They should be understood in view of provisions of Section 145(1), which provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. And as such the method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

Applying the above generally accepted accounting principles, a few typical cases may be considered:

- (i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.
- (ii) Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.
- (iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.
- (iv) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.
- (v) Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year.

Example: M/s. X & co. achieved a turnover of Rs.103 lacs during the financial year 2020-21. It has sales return of Rs.3.5 lacs. Out of the sales returns of Rs.3.5 lacs, Rs.3.25 lacs represents the return out of sales made during the earlier financial year i.e. 2019-20. Whether tax audit is applicable?

Ans: In this case, the assessee has rightly debited the sales returns in the financial year 2020-21. Sales returns of earlier financial year are to be deducted from the sales of the current year. It is to be noted that

the sales of earlier years are not a prior period item. In this case the turnover of the assessee shall be taken as 99.5 lacs which is less than 1 crore the assessee is not required for audit u/s 44AB.

(vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.

Example: M/s. ABC Pvt Ltd Carry on business of trading in cloth. During the FY 2019-20, its turnover from business was Rs.98 Lacs. Also, the company sold its car for Rs.4 lacs during the year. The sale of car was shown as turnover for the purpose of GST returns. Whether Sec 44AB is applicable in this case?

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. In the present case, the turnover of M/s. ABC Pvt Ltd from Business is Rs.98 lacs only and the amount received towards sale of car will not form part of turnover for considering the threshold limit of Rs.1 Crore u/s. 44AB.

(vii) Sale proceeds of property held as investment property will not form part of turnover.

(viii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover. In case of share brokers or sub broker, only brokerage is to be taken into account for determining the quantum of turnover. If, however, the broker is undertaking share transaction on his personal account, the sale value should also be taken into account for the purpose of limit under section 44AB

A question may also arise as to whether the sales by a commission agent or by a person on consignment basis form part of the turnover of the commission agent and/or consignee as the case may be. In such cases, it will be necessary to find out, whether the property in the goods or all significant risks, reward of ownership of goods belongs to the commission agent or the consignee immediately before the transfer by him to third person. If the property in the goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of the sales/turnover of the commission agent and/or the consignee as the case may be. If, however, the property in the goods, significant risks and reward of ownership belongs to the commission agent and/or the consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover.

In this context, it would be useful to refer to the CBDT Circular No.452 dated 17th March, 1986, where the Board has clarified the question of applicability of section 44AB in the cases of Commission Agents, Arhatias.

Q. Whether the provision of Section 44AB is applicable to commission agents, Arhatias, etc.?

Ans. Circular: No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986.- The contents of the said Circular are reproduced below : [for Circular Please refer Annexure III] "1. Section 44AB, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs.40 lacs in any previous year relevant to the assessment year commencing on 1-4- 1985 or any subsequent assessment year. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, Kachha arhatias and Pacca arhatias dealing in different commodities in different parts of the country. The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contracts under consideration. Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.

The Board is advised that so far as Kachha arhatias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to Pacca arhatias. A Pacca arhatia is not, in the proper sense of the word, an agent or even Del Credere agent. The relation between him and

his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principles of distinction can be laid down between a kachha arahtia and a pacca arahtia:

- (1) A kachha arahtia acts only as an agent of his constituent and never acts as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.
- (2) A kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
- (3) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.
- (4) The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia.
- (5) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods.
- (6) The kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a pacca arahtia has a personal interest of his own when he enters into a transaction.
- (7) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.

The above distinction between a kachha arahtia and pacca arahtia may also be relevant for determining the applicability of section 44AB in cases of other types of agents. In the case of agents whose position is similar to that of kachha arahtia, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of pacca arahtia, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB.

The term "gross receipts" is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. Broadly speaking, the following items of income and/or receipts would be covered by the term "gross receipts" in business.

- i) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
- ii) Any duty of customs or excise or service tax re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Service tax Drawback Rules, 1995;
- iii) The aggregate of gross income by way of interest received by the money lender.
- iv) Commission, brokerage, service and other incidental charges received in the business of chit funds;
- v) Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.) and if the same is credited to a separate account in the books, only the net surplus on this account should be added to the turnover for the purposes of Section 44AB;
- vi) The net exchange rate difference on export sales during the year on the basis of the principle explained in (v) above will have to be added;
- vii) Hire charges of cold storage
- viii) Liquidated damages
- ix) Insurance claims – except for fixed assets;

- x) Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account.
- xi) Gross receipts including lease rent in the business of operating lease.
- xii) Finance income to reimburse and reward the lessor for his investment and services;
- xiii) Hire charges and installments received in the course of hire purchase;
- xiv) Advance received and forfeited from customers.
- xv) Value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

The following items would not form part of "gross receipts in business" for purposes of section 44AB.

- (i) Sale proceeds of fixed assets including advance forfeited, if any;
- (ii) Sale proceeds of assets held as investments.
- (iii) Rental income unless the same is assessable as business income.
- (iv) Dividends on shares except in the case of an assessee dealing in shares.
- (v) Income by way of interest unless assessable as business income.
- (vi) Reimbursement of customs duty and other charges collected by a clearing agent.
- (vii) In the case of a recruiting agent, the advertisement charges received by him by way of reimbursement of expenses incurred by him.
- (viii) In the case of a travelling agent, the amount received from the clients for payment to the airlines, railways etc. Where such amounts are received by way of reimbursement of expenses incurred on behalf of the client. If, however the travel agent is conducting a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts.
- (ix) In the case of an advertising agent, the amount of advertising charges recovered by him from his clients provided these are by way of reimbursement. But if the advertising agent books the advertisement space in bulk and recovers the charges from different clients, the amount received by him from the clients will not be the same as the charges paid by him and in such a case the amount recovered by him will form part of his gross receipts.
- (x) Share of profit of a partner of a firm in the total income of the firm excluded from his total income under section 10(2A) of the Income-tax Act.

The guidance note issued by the Institute of Chartered Accountants of India on tax audit explains that in case of gross receipts of the business it will include all receipts whether in cash or in kind arising from carrying on of the business and it specially provides that for the purposes of section 44AB it would exclude partners share of profit which is exempt under section 10(2A).

The same view has been taken in the case of *ITAT h ACIT v. India Magnum Fund (Mum ITAT) – 74 TTJ 620, 81 ITD 295*. It was held that for section 44AB to be operational in first place there should be computation of profits and gains of business or profession i.e. computation of total income as per section 4, the income exempt under section 10 are those which do not form part of total income. Hence, the exempt income cannot be subjected to the provisions of section 44AB. Thus implying the share of partners profit which is exempt under section 10(2A) would not be considered for the purposes of the gross receipts.

- (xi) Write back of amounts payable to creditors and/or provisions for expenses or taxes no longer required.
- (xii) Advance received for services to be rendered is not to be included in gross receipts. As per ICAI view, such receipts are liabilities and not a part of gross receipts until services are rendered. However, ITAT

(Lucknow) in case of Gopal Krishan Builders [2004] 91 ITD 124 upheld a contrary view and held that the scope of the word “gross receipts” is quite wide to include advances also.

In the case of a professional, the expression “gross receipts” in profession would include all receipts arising from carrying on of the profession. A question may, however, arise as to whether the out of pocket expenses received by him should form part of his gross receipts for purposes of this section. Normally, in the case of solicitors, advocates or chartered accountants, such out of pocket expenses received in advance are credited in a separate client’s account and utilised for making payments for stamp duties, registration fees, counsel’s fees, travelling expenses etc. on behalf of the clients. These amounts, if collected separately either in advance or otherwise, should not form part of the “gross receipts”. If, however, such out of pocket expenses are not specifically collected but are included/collected by way of a consolidated fee, the whole of the amount so collected shall form part of gross receipts and no adjustment should be made in respect of actual expenses paid by the professional person for and/or on behalf of his clients out of the gross fees so collected. However, the amount received by way of advance for which services are yet to be rendered will not form part of the receipts, as such advances are the liabilities of the assessee and cannot be treated as his receipts till the services are rendered.

Alleged undisclosed turnover not to be considered while determining prescribed limit of audit under section 44AB

Addition made by AO during the assessment proceedings on the basis of unaccounted sales cannot be regarded as the turnover for the purpose of section 44AB of the Act because the documents relied upon by AO are neither the part of books of account nor would substitute the books of account or constitute the books of account of the assessee regularly maintained.

In the case of instant appeal before Tribunal assessee challenged the order of CIT(A), wherein penalty under section 271B was upheld. Assessee contended that the turnover declared by assessee was below the limit prescribed under section 44AB. Case of assessee was that a certain sum alleging the same as undisclosed turnover, was included to determine the limit prescribed under section 44AB. Assessee contended that the said amount was not recorded in regular books of account thus could not be considered for levy of penalty under section 44AB.

It is held that Addition made by AO during the assessment proceedings on the basis of unaccounted sales cannot be regarded as the turnover for the purpose of section 44AB of the Act because the documents relied upon by AO are neither the part of books of account nor would substitute the books of account or constitute the books of account of the assessee regularly maintained. Therefore, the books of account maintained by the assessee in regular course of business cannot be substituted by the material gathered by the AO in the course of some survey in the case of third party though the said material may be relevant evidence for making the addition to the income of the assessee.

(Nirmal Kumar Joshi v. ITO [ITA Nos. 73 & 74/JP/2018, dt. 27-3-2018] : 2018 TaxPub(DT) 2252 (Jp-Trib).IN THE ITAT, JAIPUR BENCH VIJAY PAL RAO, J.M. & VIKRAM SINGH YADAV, A.M.Satya Prakash Mundra v. ITO ITA No. 754/JP/2016)

Turnover in Speculative Transactions

Determination of Turnover In Respect Of Speculative Transaction

a. In a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note.

b. The contract is settled otherwise and squared up by **paying out the difference which may be positive or negative**. As such, in such transaction the *difference amount is ‘turnover’*.

c. In the case of an assessee undertaking speculative transactions there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction.

d. Further, amount paid on account of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences.

e. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vides section 44AB, whether the differences are positive or negative.

Determination Of turnover in for Non-Speculative transactions

Determination of turnover in case of F&O is one of the important factors for every individual for the Income Tax purpose. F&O is also considered as non-speculative as these instruments are used for hedging and also for taking/giving delivery of underlying contract. Turnover must be firstly calculated, in the manner explained below:

1. The total of positive and negative or favorable and unfavorable differences shall be taken as turnover.
2. Premium received on sale of options is to be included in turnover.
3. In respect of any reverse trades entered, the difference thereon shall also form part of the turnover.

Here, it makes no difference, whether the difference is positive or negative. All the differences, whether positive or negative are aggregated and the turnover is calculated.

Determination of Turnover In Respect Of Delivery Based Transaction:

Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sales is to be considered as turnover.

The value of the sale transactions of commodity carried out through MCX without taking delivery could not be considered as “Turnover” for the purpose of section 44AB

Where share broker does not sell goods of its constituents as his own and only charges commission for bringing two parties together to transactions of sale and purchase of shares, such transactions cannot amount to ‘sale, ‘turnover’ or ‘receipt’ of share broker himself within meaning of Sec. 44AB.

Cases	Remarks
In case of speculative transactions	Aggregate of both positive and negative differences – considered as turnover
In case of derivatives, F&O	Total of favourable and unfavourable differences is taken as turnover. Premium received on sale of options is also to be included in Turnover
In case of Delivery based transactions	Depends on whether transaction undertaken in the course of business or as investment. Also depends on facts and circumstances of each case considering nature of transaction, frequency and volume of transaction, etc.

Examples on Meaning of Turnover Or Gross Receipts

i. **Commission earned from Advertising agency** was to be Turnover and not the entire value of service. Sale on principal to principal basis: Gas Cylinders Agency, – “the agreement clearly indicated that the appellant was appointed as a distributor on principal to principal basis for sale of gas cylinders to consumers. Consequently, the sale of gas cylinders was liable to be included on the turnover of the appellant.

ii. **Treatment of discounts** : Trade discount should be excluded from ‘sales’ or ‘turnover’ for purpose of qualifying limit u/s. 44AB that discounts are allowed in sales bills themselves or at the time when payment were made by the parties to the assessee and the discount amounts are properly recorded in the assessee accounts.

iii. **Receipts from Job Work** : “It may be noticed that “sales”, “turnover” or “gross receipts” are not words of art used in relation to any individual transaction independently, but have been used as “sales”,

“turnover” or “gross receipts”. The expression ‘total’ qualifies all the other three expressions viz. ‘sales’, ‘turnover’ and ‘gross receipts’.” So, job work receipts have to be clubbed to the total turnover.

iv. **Turnover for a chit fund:** Subscription amount collected by the foreman of a chit fund from subscribers is on capital account and thus not part of turnover/ gross receipts/ sales for the purpose of Sec. 44AB.

v. **Income of a nursing home, whether professional or business income:** Activities of a nursing home constitute business and not profession – “activities of the nursing home”...constitute business activity, and ITAT Rejects Revenue's contention that activities of assessee-firm constitute a vocation/ profession.

vi. **For Leasing transactions:** Value of lease rentals or interest on lease financing should be forming part of receipts for computation of limits.

vii. **For Hire purchase transactions:** The sale on hire purchase is completed when the borrower exercises his option to purchase. When the option is exercised, the price of the equipment sold will be considered as turnover. During the hire purchase period, the hire charges received shall form part of gross receipts. Installments towards principal repayment to be excluded.

viii. **A clearing and forwarding agent:** Not to include reimbursement of customs duty and other charges collected by an agent.

ix. **Travel agent:** Where no commission is payable by airlines. Amount received from clients for payment to airlines is reimbursement of expenses and not turnover.

x. **Advertising agency booking space:** Advertising charges recovered – not turnover, provided by way of reimbursement. ITAT decision in ABP(P)Ltd. v. ACIT [23 SOT 28(Kol)]

Q. An educational institution not for profit motive having Rs.100 Lacs of Gross Receipts is whether liable for tax audit? What will be the situation if the Gross Receipts exceed Rs.100 Lacs?

A. It is found that the provision of section **44AB** shall be applicable only to certain persons who fulfill the following conditions:

i. must be a person under the Income Tax Act.

ii. must carry on business or profession.

iii. must maintain books of account.

iv. whose profits or gains are from business or profession.

v. whose profits or gains are computable under Chapter IV.

vi. whose objects are to earn profit/gain from business/profession and income is taxable or loss allowable under the Act.

vii. whose income to be lower than the profits or gains so deemed under sections 44AD, 44AE and 44AF.

Where income of assessee is exempt under section 10, then it is not required to obtain audit report under section 44AB and is thus not liable for penalty under section 271B as was held in Asstt. CIT vs. India Magnum Ltd. (2002) 81 ITD 295 (Mum-Trib). In Case the Gross Receipts exceed Rs.100 Lacs the institution needs to obtain registration either under section 12A of the Income Tax Act or under section 10(23)(c)(vi). In case the institution is registered u/s 12A then audit report in Form 10B has to be filed and in case the institution is registered u/s 10(23C)(vi) then audit report in Form 10BB has to be filed.

Q. Mr. A is running a business and his sale for the F.Y. 2020-21 is Rs.96 Lacs. He had interest income of Rs.3.00 Lacs and Rental receipts of Rs.2.00 Lacs and Dividend income of Rs.1Lac. During the year there was a sale of fixed assets for Rs.5 Lacs. Is he liable for the tax audit?

Ans: As per Guidance note on tax audit issued by the ICAI, the term “gross receipts” is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. However, following observations of the ICAI are noteworthy.

Items of income not forming part of the term “gross receipts in business”

- (a) Sale proceeds of fixed assets.
- (b) Sale proceeds of assets held as investments.
- (c) Rental income unless the same is assessable as business income.
- (d) Dividends on shares except in the case of an assessee dealing in shares.
- (e) Income by way of interest unless assessable as business income.
- (f) Reimbursement of customs duty and other charges collected by a clearing agent.
- (g) In the case of a travelling agent, the amount received from the clients for payment to the airlines, railways, etc. where such amounts are received by way of reimbursement of expenses incurred on behalf of the client. If, however, the travel agent is conducting a package tour and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts. Similar is the case in respect of advertising agent.

Thus the principle to be applied is that if the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts. But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts.

In view of the above, Mr. A is not liable for tax audit as his turnover has not reached Rs.100 Lacs.

Q. Whether GST amount needs to be included or excluded for the purpose of section 44AD, 44ADA or 44AB?

Ans: It is to be noted that section 44AD says about offering the income at prescribed percentage on the basis of its “Sales, turnover or gross receipts”. Now a question arises Whether GST amount needs to be included or excluded for the purpose of section 44AD, 44ADA or 44AB?

Suppose Mr. X has sold goods of Rs.1.50 Cr in the FY 2019-20. The GST rate was 18% on his goods and so effectively the billing was done for Rs.1.77 Cr after including the GST of Rs.27 Lacs. He wants to opt for the presumptive scheme of taxation and wish to offer the income @ 8% or 6% as the case may be u/s 44AD. Question now is, whether the presumptive rate of taxation of 8% or 6% would be on Rs.1.77 Cr or Rs.1.50 Cr?

The Question now needs to be examined is whether GST shall be included while calculating the gross turnover or receipt?

First school of thought

It may be noted that Income-tax Act 1961 contains section 145A which provides for inclusion of taxes, cess, etc. in the value of sale, purchase and inventory. But, the purpose of this provision u/s 145A is limited to calculation of income taxable under the head ‘Profits and Gains from Business or Profession’. In case of a person who has opted for Composition Scheme under GST Act 2017, the tax is not separately charged in the bill from the customer and the amount is debited to the profit & loss as an indirect expense and so in such cases GST may not at all form part of the turnover.

However, in case of other assessee, as GST is charged from the customer and it is recognized separately in the books of account. GST Collection & payment is done by the assessee as an agent of the Government in such cases and logically, cannot be treated as part of the assessee turnover.

Second school of Thought

As per Section 145A for the purpose of determining the **income chargeable** under the head “Profits and gains of business or profession”, the **valuation of purchase and sale of goods or services** and of inventory shall be adjusted to include the amount of any **tax, duty, cess or fee** (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.

Provisions of Section 44AD have overruling effect over the provisions of Section 28 to 43C. However Section 44AD does not overrule Section 145A hence the Section 44AD has to be read with Section 145A.

in order to do harmonious interpretation according to which the 8 %/6% is to be applied on the turnover inclusive of GST.

The other issue is whether the GST portion is included in determining the ceiling of 2 crore?

As per Section 145A, GST is required to be included in the valuation of turnover for the limited purpose of determining income chargeable to tax and not for the purpose of determining turnover. Hence assume a case where the eligible assessee has achieved turnover of Rs.1.90 Crore (without GST) and rate of GST is 18%. In this scenario, the eligible assessee shall be eligible to opt for Section 44AD subject to satisfaction of the other conditions of Section 44AD as the turnover does not exceed ceiling of Rs.2 Crore however presumptive rate of 8 %/6% would be applicable not on 1.90 Cr but on 2.242 Crore being 118% of 1.90Crore.

From the above discussion, it can be concluded that the amount of GST in such cases need to be ignored for the following reason:

(a) While collecting the GST, Assessee is acting as an agent of the Government and not on his own account.

(b) Section 145A begins with the word “For the purpose of determining the income chargeable under the head “Profits and gains of business or profession” which makes this provision inapplicable for other purposes. In short, for the purpose of section 44AD, 44AB, 44ADA, this treatment is not relevant.

(c) The amount of GST is debited / credited to altogether different accounts which are now forming the part of the Credit side of Profit & Loss Account.

The issue is controversial for the simple reason that section 145A provides for its inclusions. Unless the CBDT clarifies the meaning of the word “turnover”, the issue would remain controversial and disputable.

Q. Does ICDS apply to non-corporate taxpayers who are not required to maintain books of accounts and/or those who are covered by presumptive scheme of taxation like section 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?

Answer : The captioned issue has been clarified by the CBDT VIDE the [Circular No. 10/2017 dated March 23, 2017](#) regarding the applicability of ICDS on determination of turnover by non-corporate taxpayers covered under presumptive taxation like Sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. In this regard, in response to Question 3 on this topic, it has been clarified that ICDS shall also apply to persons computing income under presumptive taxation schemes. To illustrate this position, it is clarified that in case of taxation of a partnership firm under Section 44AD of the Act provision of ICDS on construction contract or revenue recognition shall apply for determination of its receipt or turnover.

Section 44AD of the Act provides that *“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, ... 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”.* Thus, it mandates taxation of specified assessee @ 8% of the turnover or gross receipt. In this regard, the only variable is the amount of turnover i.e. whether the turnover should be considered as per the accounts or any adjustment can be made to it before applying presumptive tax rate of 8% on it. For instance, where a taxpayer covered within the ambit of Section 44AD is engaged in the construction business, which requires determination of turnover as per Percentage of Completion Method (POCM) both under accounts and ICDS. However, under ICDS III, retention money is included in contract revenue while under AS 7 this may not be the case. Thus, the revenue recognised as per books of accounts and ICDS would vary. In this context, it has been clarified that revenue as per ICDS III would be considered for the purpose of applying presumptive tax rate under Section 44AD of the Act. However, whether same principle would apply for determining turnover in other provisions such as for maintenance of books of account under section 44AA or applicability of audit under Section 44AB, is yet to be seen.

Source : Taxguru