Presumptive & Deemed Taxation Regimes

Under the Indian Income-tax Framework

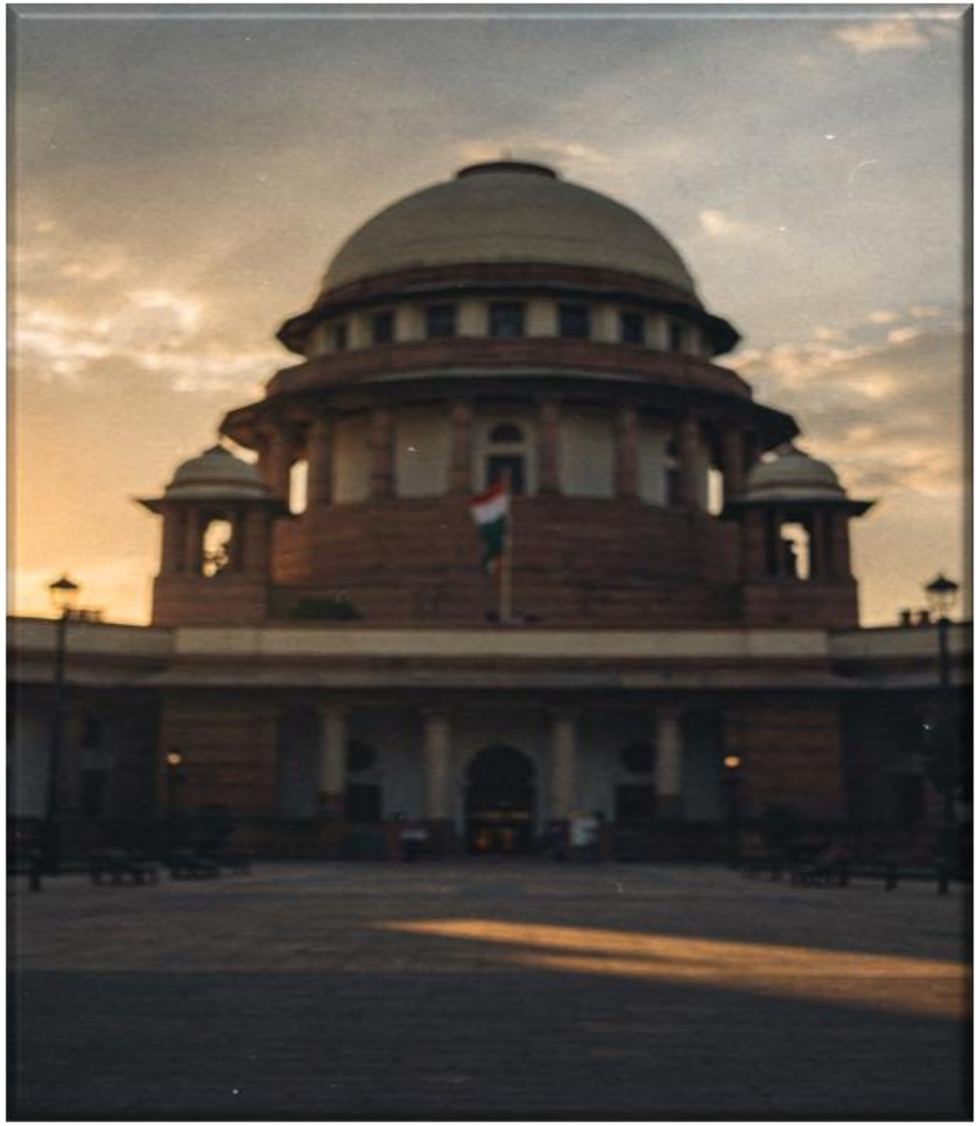
Income-tax Act, 1961 | **Income-tax Act, 2025**
(Effective Date of New Act: **April 1, 2026**)

Presented by

CA Hemasundara Rao P

Partner

Manohar Chowdhry & Associates



Objective of Income-tax Act, 2025

Over six decades, the Income Tax Act, 1961 had accumulated numerous amendments, provisos, and explanations making it complex and difficult to navigate. The new Act aims to present the same tax policy in a more logical, accessible, and reader -friendly format.

Structural Rationalisation

536
Sections (vs. 819)

16
Schedules (vs. 14)

333
Rules (vs. 511)

190
Forms (vs. 399)

Key Objectives

- Simplify statutory language and improve structural clarity
- Reduce interpretational disputes and cross-referencing
- Consolidate scattered provisions; remove obsolete ones
- Align drafting style with modern legislative standards
- Enhance voluntary compliance and ease of doing business
- Explanations and provisos have been incorporated into the main text of the sections
- Tables and formulas replace verbose narrative provisions;

New Concept — Tax Year: "Previous Year" is replaced by **Tax Year** (a 12-month period within a financial year), and the concept of "Assessment Year" is eliminated. Effective from FY 2026–27, this removes the longstanding confusion of dual-year terminology.

From Basics to Breakthrough: Today’s Flow

01

Part I

Provisions Under the Income-tax Act, 1961

02

Part II

Provisions Under the Income-tax Act, 2025

03

Part III

Key Differences: Old Act vs. New Act

04

Part IV

Practical Problems & Litigation Issues

05

Part V

Governing Laws, Case Laws & Circulars

Maintenance of accounts by certain persons carrying on profession or business. – 44AA

A structured analysis of Section 44AA obligations as modified by Sections 44AD and 44ADA of the Income-tax Act, 1961 — balancing administrative simplicity with revenue protection.



Sub-section (1): Professions Specified

Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents **as may enable the Assessing Officer** to compute his total income in accordance with the provisions of this Act.

The obligation under Sub-section (1) is **unconditional** — no monetary threshold applies. All persons in these professions must maintain books regardless of income or turnover.

Sub-section (2): Business & Other Professions — Threshold-Based Obligation

Existing Business / Profession

Income exceeds **₹1,20,000** *or* sales/turnover/gross receipts exceed **₹10,00,000** in any one of the **three immediately preceding previous years**.

Newly Set Up Business / Profession

Income is *likely to exceed* **₹1,20,000** *or* sales/turnover/gross receipts are *likely to exceed* **₹10,00,000** during the current previous year.

Deemed Profits under Sec. 44AE / 44BB / 44BBB

Where profits are deemed under these sections and the assessee **claims income lower** than the deemed profits during the previous year.

Opting Out of Sec. 44AD (Sub-sec. 4)

Where Sub-section (4) of Section 44AD applies and the assessee's income **exceeds the basic exemption limit** in any previous year.



Enhanced Thresholds for Individuals & HUFs

The two provisos to Sub-section (2) grant **relaxed thresholds** exclusively to **individuals and Hindu Undivided Families (HUFs)** under clauses (i) and (ii):

Standard Threshold

(All other assessees)

- Income limit: **₹1,20,000**
- Turnover / Sales limit: **₹10,00,000**

Enhanced Threshold — Individuals & HUFs

(First & Second Proviso to Sub-section 2)

- Income limit raised to: **₹2,50,000**
- Turnover / Sales limit : **₹ 25,00,0000**

These enhanced limits apply to **clauses (i) and (ii)** — i.e., existing and newly set-up businesses/professions.

Sub-sections (3) & (4): Board's Rule-Making Powers

Sub-section (3) — Prescription of Books & Documents

The CBDT may, by rules, prescribe — having regard to the nature of business or profession — the following for any class of persons:

- Books of account and other documents (including inventories, wherever necessary)
- Particulars to be contained therein
- Form and manner of maintenance
- Place at which they shall be kept

Sub-section (4) — Retention Period

Without prejudice to Sub-section (3), the Board may separately prescribe the **period for which** books of account and documents maintained under Sub-sections (1) or (2) shall be **retained** by the assessee.

The Board's powers under Sub-sections (3) and (4) operate independently — rules on **what to maintain** and rules on **how long to retain** are separate prescriptions.

Rule Reference Update: The specific prescriptions made by the Board under these sub-sections were previously set out in **Rule 6F** of the Income-tax Rules, 1962. Under the new act, this has been renumbered and consolidated as **Rule 46**. Rule 46 continues to govern the classes of persons required to maintain specified books of account, the particulars to be recorded, and the applicable retention periods — ensuring continuity in compliance obligations despite the renumbering.

Statutory Deemed Relief from Maintaining Books

Assessees opting for presumptive taxation are deemed to be relieved from the obligation to maintain books of account under Section 44AA, as income is computed on a deemed basis rather than from actual accounting records.

Section 44AD — Business

- **8%** of turnover (general)
- **6%** of turnover via prescribed digital receipts

Section 44ADA — Profession

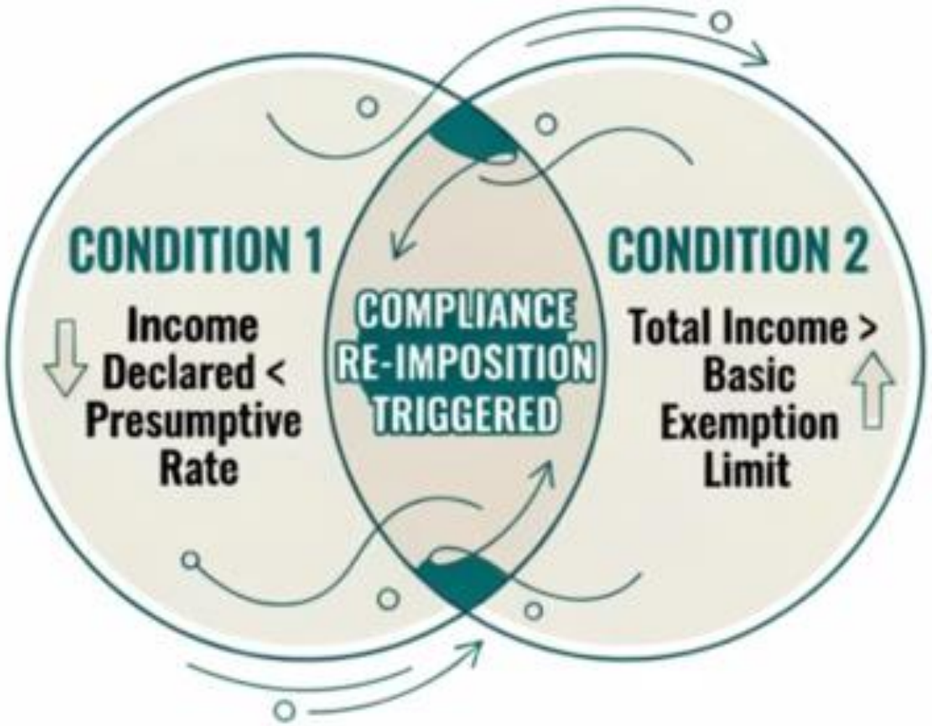
- **50%** of gross receipts
- Applicable to specified professionals

Legislative Rationale

The Act presumes a reasonable profit margin, removing the need to verify individual expense claims through detailed records.

Conditional Nature of the Exemption

The relief from maintaining books is not absolute. It subsists only while the assessee accepts the prescribed presumptive profit rate. Deviation triggers immediate reinstatement of normal compliance obligations.



Consequences When Both Conditions Are Met

- Maintain books of account under Section 44AA
- Subject accounts to audit under Section 44AB
- Compute income on actual revenues and expenses under Chapter IV-D

⚠ This re-imposition is specifically triggered by **Section 44AD(5)** for business taxpayers.

Whether Non-Maintenance is Explicitly Addressed in the Act: A Statutory Interpretation with Practical Conclusion

Principles of Statutory Interpretation Applied

Harmonious Construction

Courts prefer reading provisions together so that neither is rendered redundant. Reading 44ADA(4) alongside 44AA(1) suggests that books are triggered on opting out — implying relief when the scheme is followed — but this harmony is inferred, not written.

Implied Exemption Doctrine

Where a later special provision (44ADA) creates a self-contained scheme with its own compliance trigger (sub-section 4), it may be treated as impliedly overriding the general provision (44AA) — but only where the legislative intent is reasonably clear.

Legislative Intent

The stated purpose of 44ADA is to reduce compliance burden. Requiring books under 44AA simultaneously would defeat that very purpose — supporting an implied exemption, though not a statutory one.

⚠ **Key Fact:** Unlike Section 44AD, which explicitly exempts eligible assessees from Section 44AA, **Section 44ADA contains no equivalent express exemption**. The gap in drafting is real and unresolved by statute.

Practical Position Followed by Tax Practitioners

In practice, most tax professionals and their clients **do not maintain formal books of account** when opting under Section 44ADA, relying on the implied exemption derived from the structure of sub-section (4). However, this position rests on **inference and interpretation — not on any express statutory exemption**. Assessees should be aware of this risk, particularly in scrutiny assessments where the Revenue may challenge the non-maintenance of books by invoking Section 44AA(1) independently.

Conclusion: The interpretational conflict between Sections 44AA and 44ADA arises from a drafting omission. While Section 44ADA(4) structurally implies that books of account are not required when income is declared under the presumptive scheme, there is no explicit provision stating that the requirement under Section 44AA stands dispensed with. As a result, the relief from maintaining books for professionals opting for Section 44ADA operates as an **implied rather than express exemption**. However, this ambiguity is largely addressed in the proposed **Income Tax Act, 2025**, which introduces a **master provision governing presumptive taxation for resident taxpayers**, thereby creating a clearer and more coherent compliance framework.

Quick Reference: Section 44AA at a Glance

Category	Applicability	Income Threshold	Turnover Threshold
Specified Professions (Sec. 44AA(1))	Unconditional — always applies	No threshold	No threshold
Business / Other Profession — Existing (Others)	Sub-section (2)(i)	Exceeds ₹1,20,000	Exceeds ₹10,00,000
Business / Other Profession — Existing (Individual / HUF)	Sub-section (2)(i) + First & Second Proviso	Exceeds ₹2,50,000	Exceeds ₹25,00,000
Newly Set-Up (Others)	Sub-section (2)(ii)	Likely to exceed ₹1,20,000	Likely to exceed ₹10,00,000
Newly Set-Up (Individual / HUF)	Sub-section (2)(ii) + Provisos	Likely to exceed ₹2,50,000	Likely to exceed ₹25,00,000
Deemed Profits (Sec. 44AE / 44BB / 44BBB)	Sub-section (2)(iii)	Claim below deemed profits	—
Sec. 44AD Opt-Out (Sub-sec. 4)	Sub-section (2)(iv)	Exceeds basic exemption limit	—

Rules on the **nature of books, form, manner, place of maintenance** (Sub-section 3) and **retention period** (Sub-section 4) are separately prescribed by the CBDT under the Income Tax Rules.

Section 44AB: Tax Audit under the Income Tax Act

A comprehensive reference guide to all clauses governing the mandatory tax audit provisions under Section 44AB of the Income Tax Act, 1961 — applicable to businesses, professionals, and presumptive taxpayers in India.

Clause (a) — Business Turnover

Mandatory tax audit applies when a person carrying on **business** has a total sales, turnover, or gross receipts exceeding **₹1 crore** in the previous year. The threshold is enhanced to **₹10 crore** if cash receipts and cash payments each do not exceed 5% of total receipts and payments respectively (cash-limited transactions).

Clause (b) — Profession Gross Receipts

A person carrying on a **profession** is required to get accounts audited if gross receipts exceed **₹50 lakh** in the previous year..

Clause (c) — Sec. 44AE / 44BB / 44BBB

Applicable to assessees carrying on business whose profits and gains are deemed under Section 44AE, 44BB, or 44BBB, and who have claimed income lower than the deemed profits under those sections. A tax audit under 44AB is mandatory in such cases.

Clause (d) — Sec. 44ADA Professional Opt-Out

A person carrying on a notified profession whose profits and gains are deemed under Section 44ADA (50% of gross receipts) but who has claimed income lower than the deemed profits, and whose total income exceeds the basic exemption limit, is required to get accounts audited.

Clause (e) — Sec. 44AD Business Opt-Out

Applicable to a person carrying on business where the provisions of sub-section (4) of Section 44AD apply (i.e., the assessee opted out of the presumptive scheme after availing it) and whose income exceeds the maximum amount not chargeable to income-tax in any previous year. A tax audit is mandatory in such cases.

Compliance Requirement — Audit Before Specified Date

Every person covered under any of the above clauses must get their accounts of the relevant previous year audited by an accountant before the specified date. The audit report must be furnished by that date in the prescribed form, duly signed and verified by the accountant, and must set forth such particulars as may be prescribed. The "specified date" as per the Act means one month prior to the due date for furnishing the return of income under Section 139(1) — typically 30th September of the assessment year (or 31st October where transfer pricing provisions apply).

History of Section 44AB — Threshold Limits Over the Years

Under Section 44AB of the Income Tax Act, a tax audit by a Chartered Accountant is mandatory for businesses and professionals exceeding specified gross receipt/turnover thresholds. These limits have been revised progressively across assessment years.

1

AY 1985–86 to 2011–12

Business: ₹40 lakhs
Profession: ₹10 lakhs

2

AY 2012–13 to 2016–17

Business: ₹1 crore
Profession: ₹25 lakhs

3

AY 2017–18 to 2019–20

Business: ₹1 crore
Profession: ₹50 lakhs

4

AY 2020–21 & onwards

Business: ₹5 crores*
Profession: ₹50 lakhs

5

AY 2021–22 & onwards

Business: ₹10 crores**
Profession: ₹50 lakhs

Section 44AB: Time Limit for Tax Audit — Key Amendments

The "specified date" for completion of a tax audit under section 44AB has undergone a series of legislative revisions to align the audit deadline more closely with the return filing framework. Tracing these amendments from the original formulation through the Finance Act, 2020 shows the current position.

1

Original Position

The specified date was fixed as 30th September following the year of audit — a static date independent of return filing changes.

2

Amendment: A.Y. 2012–2013

To avoid complications from changes in the return filing due date — whether by statute or extension under section 119 — Explanation (ii) to section 44AB redefined the specified date as the due date for filing the return of income. This made the audit deadline track any revision to that deadline.

3

Finance Act, 2016: A.Y. 2017–2018

Sections 44AB and 44AA were consequentially amended after the extension of the presumptive taxation scheme to professions under newly inserted section 44ADA. This ensured professionals under the scheme were also subject to the audit and accounts maintenance provisions.

4

Finance Act, 2020: Critical Amendment

The definition of "specified date" in Explanation (ii) to section 44AB was amended by inserting "date one month prior to" before the return filing due date. As a result, the audit must be completed one clear month before the return filing due date.

No Books, No Audit

No Books, No Audit Obligation

Where a taxpayer does not maintain books of accounts, the mandate of Section 44AB is not triggered. Consequently, no tax audit is required, and the provisions of the section cannot be enforced.

No Penalty Under Section 271B

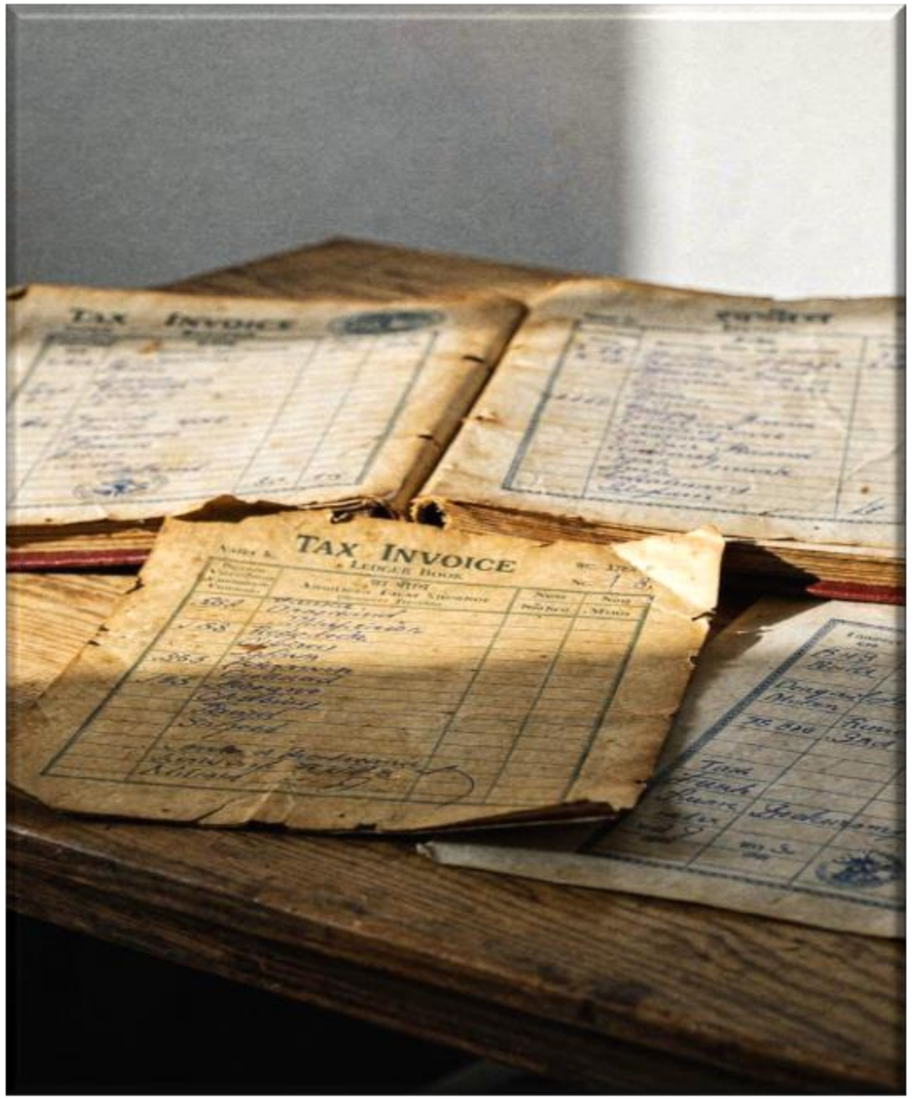
If no books of accounts are maintained and Section 44AB is not violated, no penalty is attracted under Section 271B. Penalty follows the audit obligation — where none exists, neither does liability.

Audit Report Observations Are Not Conclusive

A mere mention or adverse observation in the tax audit report does not, by itself, constitute conclusive evidence. Such observations must be examined in proper legal context before any adverse inference is drawn.

Key Principle: The obligation to audit is contingent upon the maintenance of books of accounts. Absence of books severs the very foundation upon which Section 44AB operates.

Practitioner's Note: Whilst absence of books may preclude a 271B penalty, assessees should be advised that non-maintenance may itself attract separate consequences under the Income Tax Act. Reliance on this principle should be made with full appreciation of the broader statutory framework.



Historical Evolution & Policy Background of Presumptive Taxation

Presumptive taxation in India evolved through targeted, sector-specific provisions to draw the unorganized sector into the formal tax net.

The **Chelliah Committee (early 1990s)** and **Kelkar Task Force (2002)** both advocated mechanisms to reduce compliance burden while maximizing revenue from hard-to-tax small businesses.

Section 44AF (Pre-AY 2010-11): Applied to retail traders with turnover up to Rs. 40 lakhs at a 5% deemed profit rate. Omitted by Finance Act, 2010 — retail traders subsumed under Section 44AD at 8%, representing a **60% increase** in tax burden on retail traders.

Section 44AD - Presumptive Taxation for Eligible Businesses

Section 44AD offers a simplified tax scheme for small businesses — declare profits at a fixed rate instead of maintaining detailed books and computing actual profits.

8%

Standard Rate

of total turnover or gross receipts is deemed as taxable business income.

6%

Digital / Banking Mode Rate

deemed profit rate applies where turnover or receipts are received through banking channels or electronic modes — incentivizing cashless transactions.

The language of the section us made clear by using words “or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee

---

Definition of "Eligible Assessee" — Section 44AD Explanation (a)

An eligible assessee must satisfy **both** conditions:

Residential Status & Entity Type

Must be a **resident individual, HUF, or partnership firm**. Note: LLPs are explicitly excluded and do not qualify.

No Specified Deductions Claimed

Must not have claimed deductions under **Sections 10A, 10AA, 10B, 10BA**, or any deduction under **Chapter VI-A (heading "C")** in the same previous year.

Definition of "Eligible Business" — Section 44AD Explanation (b)

An **eligible business** under Section 44AD means any business that meets the following criteria:

1 Not a Goods Carriage Business

The business must not involve **plying, hiring, or leasing goods carriages** as referred to in Section 44AE. Such businesses have their own separate presumptive scheme and are excluded here.

2 Turnover / Gross Receipts Limit

The total turnover or gross receipts in the previous year must **not exceed ₹2 crore**. This is the base threshold for eligibility.



SECTION 44AD

Turnover Thresholds & Deemed Profit Rates

Condition	Threshold
General (all receipts including cash)	Rs. 2 Crores
Enhanced (cash receipts ≤ 5% of total turnover)	Rs. 3 Crores (Finance Act, 2023)

Mode of Receipt	Deemed Profit Rate
Cash / Non-account payee instruments	8% of total turnover
Account payee cheques / electronic modes (UPI, IMPS, RTGS, NEFT)	6% of such turnover

Meaning of cash receipt : For the purposes of determining deemed profit a cheque drawn on a bank or a bank draft that is not account payee shall be treated as a cash receipt. Only account payee instruments qualify as non-cash receipts.

Exclusions from Section 44AD — Sub-section (6)

Notwithstanding anything contained in the preceding provisions of Section 44AD, the scheme **does not apply** to the following categories of persons:



Professionals under Section 44AA(1)

Persons carrying on a **profession** specified under Section 44AA(1)—including legal, medical, engineering, architectural, accountancy, technical consultancy, and interior decoration professions—are outside the ambit of this scheme.



Commission or Brokerage Income

Persons earning income **by way of commission or brokerage** are excluded. As such receipts do not constitute "turnover" in the conventional sense, the presumptive scheme is not applicable.



Agency Business

Persons carrying on **any agency business** are also excluded. Since agents act on behalf of principals, their income structure is not suited to a turnover-based presumptive computation.

SECTION 44AD

Interaction with Other Provisions - 44AD(1)&(2)



Sections 28–43C Displaced

No separate disallowance under Section 40A(3) or Section 40(a)(ia) once Section 44AD is validly opted. The deemed profit computation is a sealed envelope. Deductions available under 30 to 38 deemed to be given effect



Losses & Depreciation

Brought-forward business losses retain set-off entitlement. However, unabsorbed depreciation from the eligible business is deemed allowed in prior years and cannot be separately set off with the income declared at the prescribed rates.

Expenses, Deductions & WDV — Why the Specific Carve-Out?

General Expense Treatment

Under both old and new presumptive taxation provisions, the logic is that the **deemed profit percentage already subsumes all allowable expenses** — rent, salaries, interest, repairs, and all other deductions under Sections 30 to 38 are **deemed to have been allowed**. No separate deduction is permitted. The assessee cannot claim these expenses additionally, nor is any specific computation required for them. This is the foundational "in lieu of actuals" philosophy of presumptive taxation.

WDV — The Specific Exception

Despite the above, **Written Down Value (WDV) of assets** is specifically called out. The reason: depreciation affects not just current-year profit but the **cost base of assets for future years**. If WDV is not computed and recorded even under the presumptive scheme, it would distort asset values and capital gains computation in future years when the asset is sold. The law therefore mandates that WDV be calculated as if depreciation under Section 32 was actually allowed — preserving correct asset values for future transactions. This is a **forward-looking compliance requirement**, not a current-year deduction.



Section 44AD: Lock-Out Rules & Audit Triggers Explained

A practical guide for understanding the consequences of opting out of presumptive taxation — covering the 5-year lock-out, audit obligations, and books of account requirements under Indian tax law.

The 5-Year Lock-Out Rule Under Section 44AD

What Triggers the Lock-Out?

If a taxpayer who has opted into presumptive taxation under Section 44AD subsequently declares income **lower than the prescribed presumptive rate**, they are barred from using Section 44AD for the **next 5 assessment years**.

This is the **5-year lock-out rule** — a significant compliance consequence designed to discourage selective use of the presumptive scheme.

Audit Trigger: Section 44AB Clause (e)

An audit is required in the **year of opting out** when both of the following conditions are simultaneously met:

- Income declared is **below the presumptive rate**
- Total income **exceeds the basic exemption limit**

⚠ The law does **not** automatically require audit for all five lock-out years — only the year both conditions are triggered.

Practical Effect: Year-by-Year Breakdown

Year	Situation	Books & Audit Requirement
Year of opting out	Income declared below presumptive rate	Books of account required + Audit mandatory (if total income exceeds exemption limit)
Next 5 years (lock-out period)	Cannot opt for Section 44AD	Normal business taxpayer rules apply — audit only if turnover exceeds the prescribed audit limit

📚 Books of Account — Section 44AA

During the lock-out period, books of account must generally be maintained if income exceeds **₹2.5 lakh** or turnover exceeds **₹25 lakh**. However, an audit is triggered only when the applicable audit threshold is independently crossed — not automatically for all 5 years.

⚖ Key Takeaway for Taxpayers

During the lock-out period, you are treated as a **normal business taxpayer**. This means standard rules for books, returns, and audit apply based on your actual turnover and income — not any special presumptive provision. Plan accordingly before opting out of Section 44AD.

Voluntary Opt-Out: Assessee's Choice

A voluntary opt-out occurs when an otherwise eligible assessee **deliberately elects** to abandon the presumptive scheme and declare actual profits under the normal computation method.

Illustrative Example A trader declares income under Section 44AD for AY 2024-25. In AY 2025-26, he opts to maintain books and report actual profits rather than the prescribed 8% / 6% presumptive rate. This is a conscious, unforced decision.

Legal Consequence: The Five-Year Lock-Out

Under Section 44AD(4), if a taxpayer opts out within five subsequent assessment years, they are barred from re-entering Section 44AD for five assessment years. During that period:

- Books of account must be maintained under Section 44AA
- Tax audit under Section 44AB may become applicable

Trigger

Declaring income otherwise than as per the presumptive scheme despite continued eligibility

Section 44AD(4) Applied

Five-year restriction on re-entry into the presumptive scheme is activated

Section 44ADA Exception

The five-year lock-in does not apply to professionals under Section 44ADA — free switching is permitted

Statutory Opt-Out: Law Forces Exit

Statutory opt-out arises when the **statute itself renders the assessee ineligible** — the taxpayer does not choose to leave; the law compels departure.

Turnover Threshold Breached

Section 44AD: turnover exceeds ₹2 crore (₹3 crore where digital receipt conditions apply)
Section 44ADA: gross receipts exceed ₹50 lakh

Ineligible Person

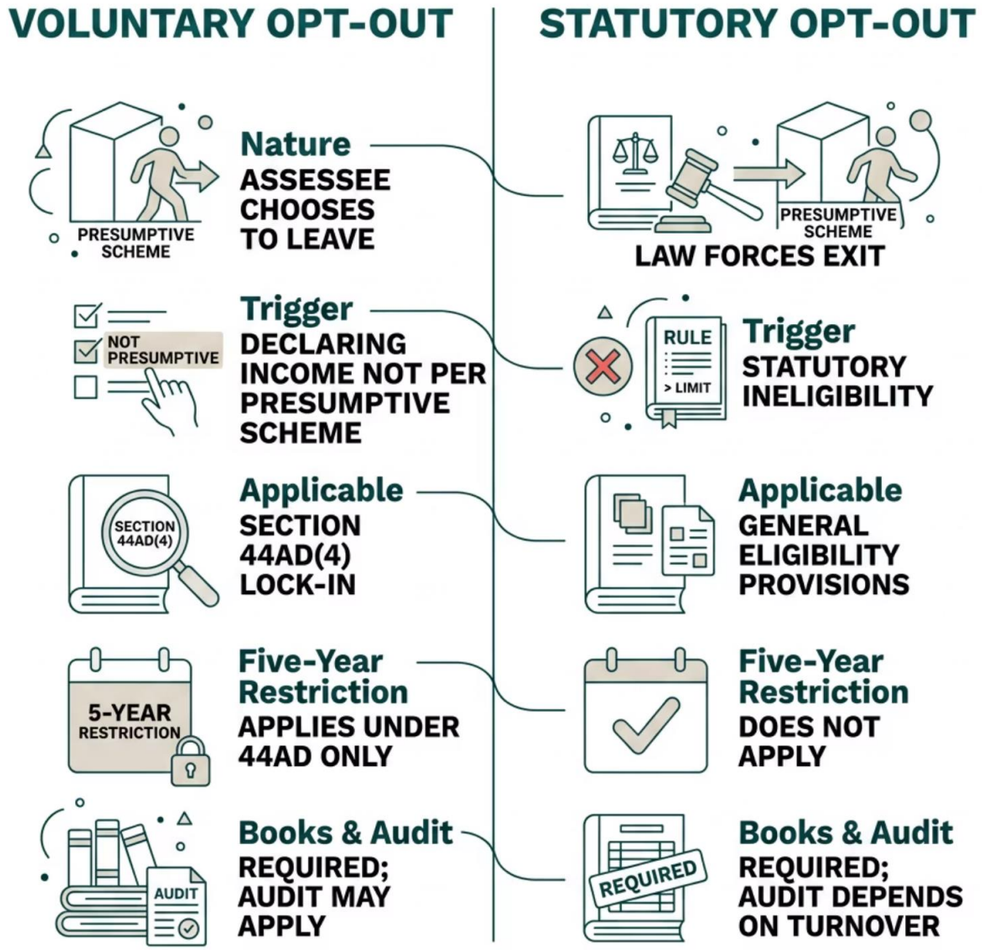
LLPs are excluded from Section 44AD; non-resident individuals are not eligible to opt in

Excluded Business Activity

Agency, commission, brokerage businesses, and certain transport businesses covered under Section 44AE are statutorily excluded

Key Consequence: Since exit is compelled by statute rather than chosen, the five-year restriction under Section 44AD(4) **does not apply**. The assessee simply transitions to the normal taxation regime without penalty.

Comparative Analysis



Section 44ADA: A Distinct Regime

Professionals under Section 44ADA enjoy considerably greater flexibility. There is **no five-year lock-in** — neither voluntary nor statutory exit imposes any restriction on future use of the presumptive scheme.

> **Legislative Intent**The lock-in under Section 44AD was deliberately introduced to prevent taxpayers from alternating opportunistically between presumptive and normal taxation solely to minimise tax liability.

Conceptual Distinction

- **Voluntary opt-out** — a behavioural choice by the taxpayer
- **Statutory opt-out** — structural ineligibility imposed by law

Section 44ADA: Presumptive Taxation for Professionals

A special provision for computing profits and gains of profession on a presumptive basis — simplifying compliance for eligible resident professionals in India.

Who Qualifies?

- Individual or partnership firm (not LLP) engaged in a profession referred to in sub-section (1) of section 44AA
- Resident in India
- Engaged in profession under Section 44AA
- Total gross receipts ≤ **₹50 lakh** (or ₹75 lakh with digital receipts)

How Profits Are Computed

A sum equal to **50% of total gross receipts** is deemed to be the profits and gains of the profession chargeable to tax under *Profits and gains of business or profession*. **The assessee may also declare a higher sum if actually earned.**

First Proviso — Enhanced Threshold (₹75 Lakh)

Where cash receipts during the previous year do **not exceed 5%** of total gross receipts, the ₹50 lakh limit is substituted with **₹75 lakh** — incentivising digital and account-payee transactions.

Second Proviso — Cash Receipt Clarification

Receipt by a **cheque or bank draft that is not account payee** shall be treated as **cash receipt** for the purposes of the first proviso — preventing circumvention of the 5% cash limit.

Section 44ADA overrides Sections 28 to 43C — once applicable, no separate books of account are required to compute presumptive income, unless the assessee opts out.

Section 44AA(i): Professions Specified

Every person carrying on a **profession mentioned** is required to maintain books of account and documents sufficient for the Assessing Officer to compute total income.

Legal

Advocates, solicitors, and legal consultants engaged in professional practice.

Engineering & Architecture

Professional engineers and architects offering consultancy or design services.

Technical Consultancy

Professionals providing specialised technical advisory services.

Medical

Physicians, surgeons, dentists, and all registered medical practitioners.

Accountancy

Chartered accountants and cost accountants in professional practice.

Authorized Representative

A person who speaks or acts for another person before a tribunal or authority, usually for payment.

Interior Decoration & Others

Interior decorators and any profession notified by the Board in the Official Gazette.

Film Artists

The Board may, by notification in the Official Gazette, add further professions to this list — as given by rule 6F of the Income-tax Act — extending the book-keeping obligation to film artists (any person engaged in their professional capacity in the production of a cinematograph film, whether produced by them or by any other person accordingly).

Section 44ADA: Special provisions

(2) Deemed Deductions: All professional expenses (Sections 30-38) are assumed to be fully allowed within the 50% margin. **No additional business expenses can be claimed.**

(3) Asset Valuation: Depreciation is treated as automatically calculated. This **reduces the Written Down Value (WDV)** of your assets every year, even without a specific claim..

(4) Audit Trigger: Notwithstanding anything contained in the foregoing provisions of this section, If you declare a profit **below 50%**, the simplified benefits are lost. Maintaining **Books of Accounts** and a **Tax Audit** becomes mandatory.



What about professionals who do not fall under Section 44ADA? Can they alternatively opt for Section 44AD?

Professionals Outside Section 44AA(1): other than specified professionals

If your profession is **not listed** under Section 44AA(1) — such as legal, medical, CA, engineering, architecture, IT, interior decoration, or technical consultancy — you are **not eligible for the 50% presumptive benefit under Section 44ADA**. Here is what applies instead.

Income Computation

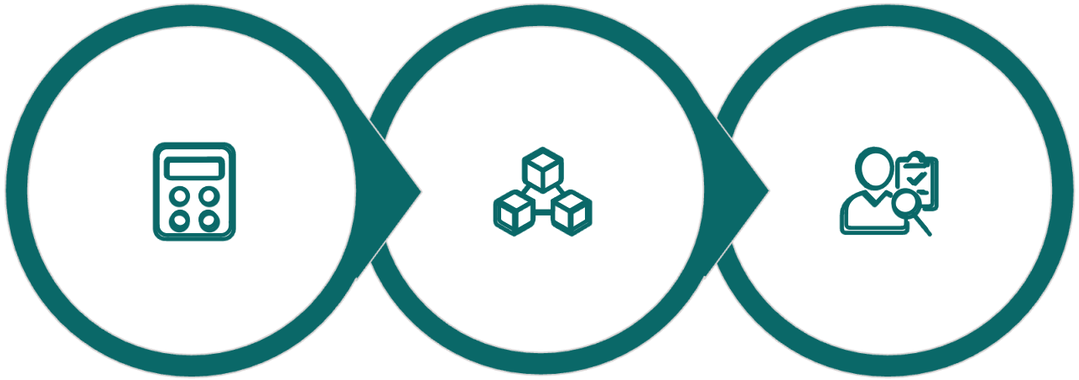
Income is computed under **normal PGBP provisions (Sections 28–43D)** — on actual net profit after deducting all allowable business-related expenses and disallowing non-deductible items. No 50% flat deduction is available.

Books of Account — Section 44AA

Mandatory maintenance of books of account is required if **gross receipts exceed ₹25 lakh** in a financial year. Below this threshold, books are still advisable but not statutorily required.

Tax Audit — Section 44AB

Books must be **audited under Section 44AB** once **gross receipts exceed ₹50 lakh** in a financial year, unless a specific exemption applies (e.g., coverage under 44AD for business activities).



Compute Profit | **Maintain Books** | **Get Audit**

Key Distinction: Professionals not covered under 44AA(1) — and therefore ineligible for 44ADA — must compute income on an **actual-profit basis**, maintain books under Section 44AA, and get them audited under Section 44AB once the ₹50 lakh gross receipts threshold is crossed.

The central question: does a professional with gross receipts of Rs. 40 lakhs who computes income under normal provisions — declaring Rs. 15 lakh — attract a mandatory tax audit under Section 44AB(b) or 44AB(d)?



Are Sections 44AD& ADA Optional or Mandatory?

Legislative Intent — Elective Scheme

The Finance Act, 2016 Explanatory Memorandum uses "benefit," "option," and "relief" — language inconsistent with mandatory application. Section 44AD (business equivalent) is universally understood as optional, with a five-year lock-in on election confirming an affirmative choice is required. Section 44ADA follows the same pattern.

ITR Forms & CBDT Guidance

ITR-3 and ITR-4 instructions treat Section 44ADA as one option among multiple alternatives. CBDT Circular No. 1/2023 frames the enhanced Rs. 75L threshold in terms of eligible assessees who may "avail" the scheme. Normal-provisions computation remains a valid alternative.

Judicial Tendency (ITAT)

ITAT Mumbai and ITAT Bangalore have held that an assessee opting out of the presumptive scheme and maintaining proper books cannot be subjected to penal consequences for computing income at a lower rate.

Revenue's Counter — and Its Weakness

Revenue argues "shall be deemed" is mandatory and 44AB(d) operates as an anti-avoidance check. However, where the legislature intended anti-avoidance consequences for non-adoption (as in Section 44AD(4) and (5)), it expressly legislated them. The absence of such a provision in 44ADA strongly suggests non-adoption carries no audit consequence.

Issues: Applicability of Section 44AB(b) and 44AB(d)

Section 44AB(b) — Not Applicable

Threshold is Rs. 50 lakh (Rs. 75L with cash conditions). Gross receipts of Rs. 40 lakh fall clearly below. A charging provision must be construed strictly in favour of the Assessee — no liability beyond what is clearly enacted.
Conclusion: 44AB(b) does not apply.

Section 44AB(d) — Three Conditions Required

All three must be independently satisfied:

- **Condition A:** Profits are deemed under Section 44ADA
- **Condition B:** Assessee claims income lower than deemed profits
- **Condition C:** Assessee's income exceeds basic exemption limit

The decisive question: does Condition A apply when the Assessee has *never opted* for Section 44ADA?

Section 44ADA(1) uses "shall be deemed" — appearing mandatory on its face. However, the full legislative architecture and intent point firmly to an **elective scheme**.

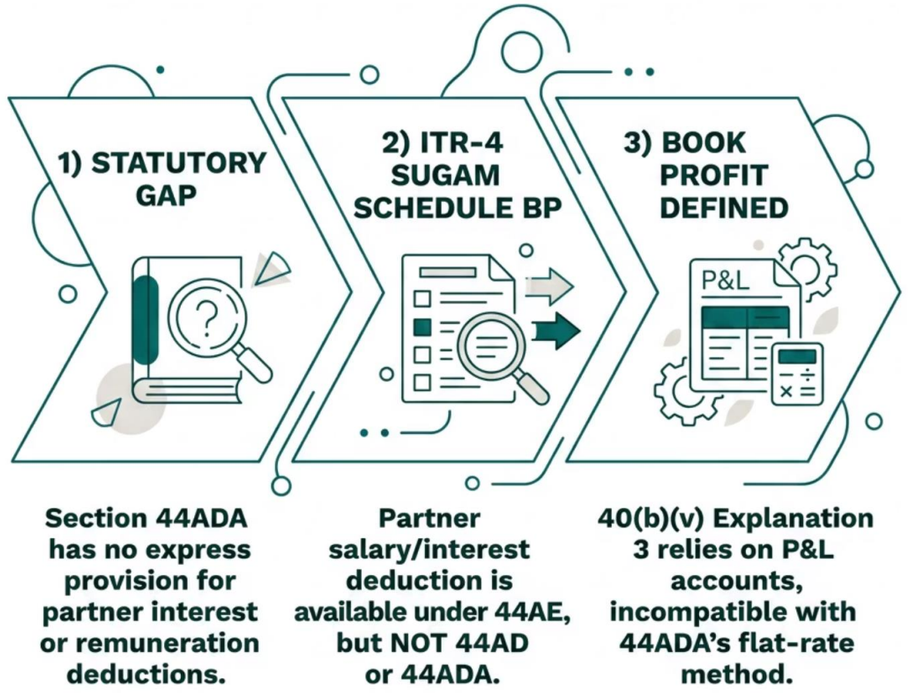
Reasoned Conclusion & Practical Compliance

44AB(b)	44AB(d)	44AA(1)
Does **not** apply — Rs. 40L below Rs. 50L threshold	Does **not** apply — 44ADA never invoked; deeming fiction not operative	**Books must** be maintained — obligation tied to profession, not income mode

The phrase **"are deemed to be...under Section 44ADA"** in Section 44AB(d) references the operative legal fiction *within* the 44ADA scheme — not a generalised description applicable to all eligible but non-opting professionals. Legislative intent, CBDT memoranda, ITR form structure, ICAI guidance, and dominant judicial tendency all converge on this conclusion.

⚠ Given the Revenue's known contrary view and the unsettled judicial position, the Assessee and their tax advisor must assess risk tolerance. Where scrutiny is likely, voluntarily opting into Section 44ADA and declaring at least 50%, or getting accounts audited, may be the more **prudent course based on case to case basis**.

Deductibility of Partner Remuneration — The Legal Position



⚠ CBDT has issued no clarification — neither in the Explanatory Memorandum nor in any FAQ on presumptive taxation — regarding the deductibility of partner remuneration or interest under Section 44ADA.

Key Analytical Points

- No express provision: Unlike Section 44AE, Section 44ADA is silent on partner remuneration and interest deductions under Section 40(b).
- "Book profit" incompatibility: The Explanation 3 definition of "book profit" presupposes maintained books of account — a condition Section 44ADA does not impose.
- Flat-rate mechanism: Section 44ADA prescribes a 50% rate applied to gross receipts; it does not deem the resulting figure to constitute "book profit" for any purpose.
- For businesses under Section 44AD, the earlier specific allowance to separately deduct partners' salary and interest has been removed; this specific deduction now continues only in the case of goods-carriage businesses under Section 44AE

⊗ In the absence of an express deductibility provision in Section 44ADA, deduction of partner remuneration is likely not permissible — a position supported by Schedule BP of ITR-4 Sugam.

Can a Working Partner Claim and the Firm both claim Presumptive Taxation?

A. Anandkumar v. ACIT

Madras High Court | Tax Case Appeal No. 388 of 2019 | Decided: 23.12.2020

Takeaway: A working partner **cannot apply Section 44AD or 44ADA** to remuneration and interest received from their partnership firm. These receipts are not "sales turnover" or independent professional receipts — they are passive distributions and must be fully taxed under normal provisions.

> The assessee argued that **partner's remuneration and interest received from a partnership firm** qualified as "gross receipts" eligible for the Section 44AD presumptive scheme, since the amounts were below the threshold.
>
> The AO, CIT(A), ITAT Chennai, and ultimately the **Madras High Court all rejected** this argument.

Court's Ruling

Partner income taxable under **Section 28(v)** read with **Section 40(b)** does **not constitute independent business turnover** as required for Section 44AD eligibility.

Presumptive taxation under **44AD (and by extension 44ADA)** is designed for taxpayers earning from their *own* eligible business or profession — **not passive distributions** like partner remuneration or interest.

Result: Full taxation on such income; presumptive benefit **denied**.

Applicability to CA Professional Partners -Ranu Gupta vs. ACIT

Delhi ITAT [ITA No. 2224/Del/2025] — A practicing CA and partner received Rs. 27,00,000 as remuneration for AY 2018-19 and opted for Section 44ADA. & The Hon'ble Delhi ITAT in Atul Kumar Gupta vs. ITO, following the Supreme Court ruling in Ramnik Lal Kothari vs. CIT, held that expenses incurred by partners wholly and exclusively for earning such business income are allowable as deductions.

Revenue's Stand

Remuneration governed by Section 28(v) and deductible under Section 40(b) — cannot be "gross receipts." Relied on A. Anand Kumar (Chennai ITAT, affirmed by Madras HC).

Tribunal's Ruling

Section 44ADA imposes no condition requiring independent practice. No express exclusion = benefit cannot be denied. Strict interpretation per CIT v. Dilip Kumar & Co. (SC, 2018).

Section 44AD vs. 44ADA

44AD covers "eligible businesses" (turnover); 44ADA covers specified professions (gross receipts). Distinct scope — precedents from 44AD cannot be mechanically applied to 44ADA.

Deduction Rights

Partners incur non-reimbursed professional expenses (CPE, memberships, seminars). Once income falls under Section 28, legitimate deductions under Sections 30–37 should ordinarily apply.

Amount Received Till Due Date — 44AD vs. 44ADA Asymmetry

44AD (58) — Cash Receipt Timing (Old & New)

Under Section 44AD (old), for the purpose of computing the 6% rate, the relevant amount is **amounts received through account payee cheque/bank draft/electronic means on or before the due date of filing return under Section 139(1)**. This gave assessees a window — receipts received after year-end but before the return filing date still qualified for the lower 6% rate. This provision is **carried forward in substance** under the New Act framework.

44ADA (58) — No Such Extension

Notably, **Section 44ADA (for professionals)** did not have a corresponding provision allowing receipts till Section 139(1) due date to be treated differently. The question arises: **why was this benefit not extended to professionals** under 44ADA? This asymmetry has practical implications — a professional with year-end digital receipts does not get the same timing benefit as a business assessee. Practitioners should flag this in client advisory, especially for professionals near the turnover threshold.

⚠ This asymmetry between 44AD and 44ADA has not been corrected in the New Act. Tax professionals should advise clients accordingly when computing eligible receipts.

Scenarios: When Does Presumptive Taxation Trigger?

PRACTICAL ILLUSTRATIONS

Scenario A — 44AD Triggered ✓

Mr. Ramesh runs a retail trading business. Turnover: ₹1.8 Cr. He receives 80% via bank transfer, 20% cash. He declares 6% on ₹1.44 Cr (digital) = ₹8.64L and 8% on ₹36L (cash) = ₹2.88L. Total deemed profit = ₹11.52L. His actual profit is ₹10L. Since deemed > actual, he declares ₹11.52L. Presumptive applies. No audit. No books required.

Scenario B — 44AD Exits ✗

Ms. Priya opted for presumptive for 3 years (FY21–FY23). In FY24, she declares income below the deemed rate. Under Section 44AD(5), she **cannot opt back into presumptive for the next 5 years (FY24–FY29)**. She must maintain books under 44AA and get audit under 44AB regardless of turnover in FY24 — the conversion year rule applies.

Scenario C — 44ADA Triggered ✓

Dr. Anjali, a practicing physician (specified professional), has gross receipts of ₹48L. She declares 50% as deemed profit = ₹24L. Her actual profit (after all expenses) is ₹20L. Since deemed > actual, she must declare ₹24L under the "whichever is higher" rule now explicitly codified. No books required, no audit. Note: she gets no benefit for digital receipts received after March 31 but before ITR filing — unlike 44AD.

Scenario D — 44ADA Fails ✗

CA Vikram has gross receipts of ₹75L (exceeds the ₹75L limit — at threshold). If in a year his receipts cross ₹75L even marginally, he exits 44ADA, must maintain full books under 44AA, and his accounts become liable to audit under 44AB. Unlike 44AD, there is no 5-year lock-in rule for 44ADA — the exit is turnover-driven each year.

Section 44AE - Presumptive Taxation for Goods Carriage Operators

Section 44AE applies exclusively to an **Assessee** engaged in **plying, hiring, or leasing goods carriages**, subject to a ceiling of **maximum ten vehicles** owned at any time during the previous year.

Type of Vehicle	Deemed Income per Month
Heavy Goods Vehicle (unladen weight > 12,000 kg)	Rs. 1,000 per ton of gross vehicle weight
Other Goods Carriage (light commercial)	Rs. 7,500 per month per vehicle (flat)

⚠ **Ten-Vehicle Ceiling:** Tested on ownership at any point during the year — not active deployment. Owning 12 trucks even with 2 idle disqualifies the assessee (*M. Rajendra v. ITO*).

SECTION 44AE

The Ownership Conundrum — Hire-Purchase & Deemed Ownership

Deemed Ownership

Where an assessee possesses a goods carriage under a **hire-purchase agreement or on instalments** with any part of purchase consideration remaining payable, such assessee is deemed to be the owner for Section 44AE purposes — even without full legal title.

Limitation

This deeming provision is limited to hire-purchase or instalment arrangements involving **acquisition** of the vehicle. It does not extend to situations where the assessee merely hires vehicles from other owners without any ownership interest.

Summary: Core Resident Presumptive Provisions (ITA 1961)

Provision	Eligible Assessee	General Threshold	Enhanced Threshold	Deemed Rate	Lock-in
Section 44AD	Individuals, HUFs, Firms (excl. LLPs)	Rs. 2 Crores	Rs. 3 Crores	8% cash / 6% digital	Yes – 5 years
Section 44ADA	Specified Professionals	Rs. 50 Lakhs	Rs. 75 Lakhs	50% of gross receipts	No
Section 44AE	Goods Carriage Operators (max 10 vehicles)	N/A (vehicle-based)	N/A	Fixed Rs./vehicle/month	No



Presumptive Taxation: Key Structural Changes

An analysis of the legislative reorganisation under the Income-Tax Act 2025

INCOME-TAX ACT 2025

FINANCE ACT 2026

Comparison: Section 44AA (1961 Act) vs Section 62 (2025 Act)

Maintenance of books of account — corresponding provisions across both Acts

Section 44AA — Income Tax Act, 1961	Section 62 — Income Tax Act, 2025
Section 44AA(1) & (2)	Section 62(1)
Section 44AA(2)	Section 62(2)
Section 44AA(2)(i)	Section 62(2)(3)(a)
Section 44AA(2)(ii)	Section 62(2)(3)(b)
Section 44AA(2)(iii)	Section 62(2)(3)(c)
Section 44AA(2), 1st & 2nd Proviso	Section 62(2)(3)(d)
Section 44AA(3)	Section 62(3)(3)(a), (b) & (c)
Section 44AA(4)	Section 62(3)(d)
Section 44AA(1)	Section 62(4)

Context: Section 62 of the Income Tax Act, 2025 consolidates and re-enumerates the provisions of Section 44AA of the 1961 Act relating to **maintenance of books of account** by certain persons carrying on a profession or business. The core obligations remain the same; only the section numbering has changed.

Section 44AB (1961 Act) vs 63(2025 Act)

The table below maps each sub-section of **Section 44AB** of the Income Tax Act, 1961 to its corresponding provision under the **2025 Act** (Sections 63 and 58), listed in chronological order.

Section 44AB — Income Tax Act, 1961	Corresponding Provision — 2025 Act
Section 44AB(a)	Section 63(1) & 58(3)
Section 44AB(b)	Section 63(1) & 58(8)
Section 44AB(c)	Section 63(1), Table: Sl. No. 1(a)
Section 44AB(d)	Section 63(1), Table: Sl. No. 1(b)
Section 44AB(e)	Section 63(1), Table: Sl. No. 1(c)
Section 44AB, long line	Section 63(1), Table: Sl. No. 1(d)
Section 44AB, 1st & 2nd Provisos	Section 63(1), Table: Sl. No. 1(e)
Section 44AB, long line	Section 63(2)
Section 44AB, 1st & 2nd Provisos	Section 63(3)
Section 44AB, 3rd Proviso	Section 63(4)
Section 44AB, Explanation (ii)	Section 63(5)(a)
Section 44AB(a), 1st & 2nd Provisos	Section 63(5)(b)

Reheading: Section 44AA → Section 62



From "Maintenance of Books of Account" to a Consolidated Framework

The Income-Tax Act 2025 reorganises the old Section 44AA into Section 62, consolidating presumptive taxation provisions under a single, structurally coherent heading. The operative mechanics remain broadly similar.

Interpretational principle: Headings serve as an aid to interpretation but do not override the substantive operative language. Courts consistently hold that the actual wording of a section governs its scope and application.

The revised heading primarily signals a legislative intent to simplify the Act's architecture — not to alter the underlying tax treatment — though heading changes may still be examined in interpretational disputes.

Section 44AA vs Section 62: Key Legislative Changes

Language shift

- The expression **"every person"** in Section 44AA has been replaced with **"any person"** in Section 62, reflecting simplified drafting adopted in the new Act.
- The phrase “any person carrying on business or profession” conveys that the provision applies to all persons who satisfy the prescribed conditions, and therefore the change is largely stylistic rather than substantive.

Title Change

- Under Section 44AA, the title was "**Maintenance of accounts by certain persons carrying on profession or business**." Under section 62, it is now "**Maintenance of books of account.**"

Key Revisions

- Earlier **specified professionals** that were embedded in the main body of section 44AA are now placed in a separate definition, making the operative provision shorter and easier to amend.
- With the removal of the word **“may”,** is it mandatory requirement for AO to relay rather than a discretionary one?
- The earlier separate reference to **“profits and gains**”, including capital gains, is dropped and replaced by a simpler reference to **deemed profits**, avoiding duplication in the wording. **Further two sections for rules merged to one**.

What the Drafting Choice Signals

Terminology, Context, and Compliance Implications



Section 63 — "Every Person": Retention of "every person" is deliberate and purposive — it underscores the mandatory, universal nature of the tax audit obligation once specified turnover or receipt thresholds are met. No exceptions are contemplated.

Contextual Drafting, Not Substantive Change: The divergence in terminology arises from contextual drafting choices. Neither provision narrows nor widens its scope relative to its predecessor. Practitioners should not read substantive implications into the linguistic variation.

Section 62 — "Any Person": Reflects a simplified drafting style. The change from "every person" is largely stylistic, not substantive — the provision still applies to all persons satisfying the prescribed conditions for maintaining books of account.

ⓘ The core compliance obligations under both provisions remain materially unchanged. The terminology shift reflects legislative style rather than a reinterpretation of scope.

Section 44AB vs Section 63: The Audit Trigger — Old vs. New

Section 63(1), sub-clause (2) of the New Act:

- **"If the person is carrying on a business or profession referred to in Section 58(2) or Section 61(2) (Sl No 4&5) and the profits or gains from such business or profession are claimed to be lower than the deemed profits, as referred to in the said sections."**
- Importantly, Sections 58(2) and 61(2) now correspond to the earlier presumptive sections like 44AE, 44BB, 44BBB, and 44ADA, and Section 44AD(4) cases are also included in the same sub-clause instead of being dealt with separately. Notably, this places the audit

Aspect	Section 44AB — Clauses (c), (d), (e)	Section 63(1) Sub-clause (2)
Structure	Three separate, independently worded clauses	One unified sub-clause covering all presumptive cases
Presumptive Sections Covered	44AE, 44BB, 44BBB [cl.(c)]; 44ADA [cl.(d)]; 44AD(4) [cl.(e)]	Sec. 58(2) & 61(2) — Table Sl. Nos. 4 & 5 — covers all equivalents in one reference
Exemption-Limit Condition	Clauses (d) & (e) explicitly required income to exceed basic exemption limit; Clause (c) had no such filter	**Sub-clause (2) does not explicitly restate the basic exemption filter — condition is unified and silent on differential treatment**
Scope of 44AD(4) Cases	Separate clause (e); distinct from 44ADA and 44AE cases	Merged into the same sub-clause as all other presumptive cases — no separate treatment
Legislative Clarity	Granular but verbose; risk of gaps between clauses	Compact and consolidated; broader textual reach

Does the Consolidation open's new Interpretive scope?

- The new Act merges Clauses (c), (d), and (e) into one sub-clause under Section 63(1)(2), so the audit trigger is presented in a single consolidated form.
- The earlier separate reference to the basic exemption limit is not expressly repeated in the new wording, creating doubt about whether that condition still applies.
- Section 44AD(4) cases are now placed together with the other presumptive cases, so there is no separate treatment in the new structure.
- Because of this consolidation, there is an interpretive issue as to whether the new provision only simplifies drafting or actually expands the audit trigger.

Practical Guidance for Professionals

- Do not assume the consolidation means the position is unchanged, because the omission of the basic exemption filter is a live interpretive issue.
- For 44ADA-equivalent professionals with income below the exemption limit who declare below deemed profit, seek explicit advice before concluding that audit is not applicable.
- In litigation, both literal and purposive interpretation arguments are available; the absence of a saving clause or transitional note strengthens the uncertainty.

Bottom Line Assessment

- The consolidation of Clauses (c), (d), and (e) into Section 63(1)(2) is not merely cosmetic.
- The removal of the express basic exemption filter and the separate treatment of 44AD(4) cases can create room for a wider interpretation of the audit trigger.
- Until the CBDT issues clarifications or courts rule on the point, practitioners should treat this as an area of live interpretive risk and advise clients accordingly.

Section 58 - Resident Presumptive Taxation (Consolidated)

Section 58 of the ITA 2025 is the single, comprehensive provision subsuming all three legacy resident presumptive regimes:

ITA 2025 Provision	Legacy Provision	Subject Matter
Section 58(2) – Serial No. 1	Section 44AD	Businesses with turnover ≤ Rs. 3 Cr; deemed profit at 6% (digital) or 8% (cash)
Section 58(2) – Serial No. 3	Section 44ADA	Specified professionals with gross receipts ≤ Rs. 75 L; deemed profit at 50%
Section 58(2) – Serial No. 2	Section 44AE	Goods carriage owners (≤ 10 vehicles); fixed deemed income per vehicle per month

✓ **Retained Economic Parameters:** All core thresholds (Rs. 3 Cr / Rs. 75 L with digital restriction) and deemed profit rates (6%/8%, 50%, fixed per vehicle) are preserved under Section 58 to maintain market stability and continuity.

Section 44AD — Presumptive Taxation: 1961 Act vs. 2025 Act

Provisions of 1961 Act (Section 44AD)	Corresponding Provisions of 2025 Act
Section 44AD(1) & its Proviso	Section 58(1) and Section 58(2), Table: Sl. No. 1, Proviso
Section 44AD explanation b & its first proviso	Section 58(2) & its Table: Sl. No. 2
Section 44AD(2)	Section 58(4)
Section 44AD(2)	Section 58(4)
Section 44AD(3)	Section 58(6)
Section 44AD(4)	Section 58(7)
Section 44AD(5)	Section 58(8)
Section 44AD, *Explanation (b)*, 2nd Proviso	Section 58(9)
Section 44AD(1), 2nd Proviso	Section 58(10)
Section 44AD, *Explanation*	Section 58(11)
Section 44AD, *Explanation (a)(i)*	Section 58(11)(a) & (c)
Section 44AD, *Explanation (a)(ii)*	Section 58(11)(a)(ii)
Section 44AD(6)	Section 58(11)(iii), (iv) & (v)

Section 44ADA — Presumptive Taxation for Professionals: 1961 Act vs. 2025 Act

Provisions of 1961 Act (Section 44ADA)	Corresponding Provisions of 2025 Act
Section 44ADA(1) & its 1st Proviso	Section 58(1) and Section 58(2) & its Table: Sl. No. 3 and Section 58(11)(b) & (c)
Section 44ADA(1), 2nd Proviso	Section 58(9)
Section 44ADA(1) & (2)	Section 58(2) & its Table: Sl. No. 2
Section 44ADA(2)	Section 58(4)
Section 44ADA(3)	Section 58(6)
Section 44ADA(4)	Section 58(3)

Section 44AE — Presumptive Taxation for Goods Carriages: 1961 Act vs. 2025 Act

Provisions of 1961 Act (Section 44AE)	Corresponding Provisions of 2025 Act
Section 44AE (1) & (2)	Section 58(1) and Section 58(2) & its Table: Sl. No. 2
Section 44AE (3)	Section 58(4)
Section 44AE (3) proviso	Section 58(5)
Section 44AE (4)	Section 58(6)
Section 44AE (5)	Section 58(10)
Section 44AE (7)	Section 58(3)
Section 44AE (8)(f)	Section 58(3)
Section 44AE (4)	Section 58(7)
Section 44AE, *Explanation*	Section 58(11)
Section 44AE, *Explanation (a), (aa) and (b)*	Section 58(11)(d), (e) and (f)



Policy Implications & Practical Takeaways

Structural Reorganisation

The reheading from Existing Sections to Section 58 reflects consolidation of the presumptive framework. No substantive change in tax treatment arises from the heading alone.

Restricted Deductions & allowances

Simplified Terminology for Small Taxpayers

The amendments collectively support the presumptive scheme's core objective

SECTION 58 OF NEW ACT (EQUIVALENT TO SECTION 44AD OF OLD ACT)

Eligible Assessee & Eligible Business - Old Act vs. New Act

Side-by-side comparison of key definitional changes in the old and new tax regimes.

Eligible Business - Old Act (Section 44AD)

- Set the turnover limit (Rs. 2 crore)
- Explicitly excluded businesses covered under Section 44AE
- Built in the banking/digital receipt rule (the 6% vs 8% deemed profit distinction) directly into the definition

Eligible Business - New Act (Section 58)

The standalone definition of "eligible business" has been abolished. Instead:

- The turnover limit and the exclusion of goods carriage operators is handled separately in Serial No. 2 of that same table.
- To determine if a business qualifies, you must read the entire section together

Eligible Assessee - Old Act (Section 44AD)

Earlier, the provision referred to specified persons and also imposed a condition that no deductions be claimed under Chapter VI-A.

Eligible Assessee - New Act (Section 58)

It has now been broadened to cover categories that were earlier excluded under the section.

ITA 2025 - SECTION 58(3)

The 6% & 8% Rate - Aggregate & Profit Clarity

6% — **Digital Receipts**
Account payee cheque / bank transfer / digital modes

+

8% — **Cash Receipts**
All other receipts not covered under digital mode

= **Aggregate Presumptive Profit**
Combined across both receipt types under §58(3)

OLD ACT - Section 44AD

No Specific Aggregation Provision

No formula
to aggregate 6% and 8% components within the section itself.

Relied on
interpretation & CBDT guidance

No clear answer
on whether actual profits above the presumptive floor had to be declared.

NEW ACT - Section 58(3)

Explicit Clarity Introduced

- **Aggregation codified -** 6% (digital) and 8% (cash) are explicitly combined - no CBDT guidance needed.
- **Mandatory floor, not a ceiling -** Profit = presumptive amount or actual earned, whichever is higher.
- **Debate settled -** If actual profits exceed the presumptive sum, the higher figure must be declared - written into the law.

i **Codified language (58(2)):** Profit = the aggregate of 6% and 8% computed amounts, or the sum actually earned - whichever is higher.

SECTION 58 OF NEW ACT (EQUIVALENT TO SECTION 44AD OF OLD ACT)

Deemed Cash Receipt - Old Act vs. New Act

Why does the rate matter, *and what changed about how it is triggered?*

Old Act - Section 44AD

Scope: Narrow

The 6% rate was available only if the amount was actually received via account payee cheque, bank draft, or electronic clearing through a bank account during the previous year itself. .

Placement: Embedded in Definition

This rule sat inside the proviso to the definition of "eligible business." Its reach was bounded by that definition - it only applied to assessees who first qualified as an eligible business under Section 44AD.

Rate Framework: 6% / 8% - Split Application

6% applied to turnover actually received digitally; 8% applied to all remaining turnover. Both rates could apply to different portions of the same turnover simultaneously - producing a blended effective rate.

New Act - Section 58

Scope: Expanded

The 6% / 8% distinction now applies at the sub-section level, governing the entire computation under Section 58 ,not just businesses, but all three categories – businesses, professionals and goods carriages, under one serial number.

Placement: Standalone Operative Sub-section

The rule is no longer buried inside a definition. It is now a standalone operative sub-section with independent legal force, applicable across the whole of Section 58.

Rate Framework: Uniform + "Deemed" Trigger

The 6% / 8% split is retained identically, but the trigger now covers amounts received or deemed to be received through prescribed electronic modes.

Section 58(3) — Lower Profit Claim: Audit & Books Obligation

Provision — Section 58(3), Income Tax Act, 2025: An assessee covered under the presumptive taxation table [S.58(2)] who claims actual profits are lower than the deemed profit, **and** whose total income exceeds the basic exemption limit, must: **(i)** maintain books of account as required under Section 62; and **(ii)** get accounts audited and furnish the audit report as required under Section 63.

Parameter	Old Act (Income Tax Act, 1961)	New Act (Income Tax Act, 2025)
Governing Section	S.44AA (books) & S.44AB (audit), read with S.44AD / 44ADA / 44AE separately	S.58(3) — books under S.62, audit under S.63 (unified)
Books of Account	Required under S.44AA (if profit below presumptive rate & income > exemption limit)	Required under S.62 (if actual profit < deemed profit & income > exemption limit)
Audit Requirement	Required under S.44AB; S.44AE triggered audit even below basic exemption limit	Consistent across all the sections

Key Change: Audit Trigger for 44AE

Specifically 44AE is also brough in the same parameters as other sections

Impact

- **Structural Consolidation:** The new Act merges fragmented obligations (S.44AA & S.44AB) into a single sub-section, improving legislative clarity and reducing interpretational disputes.
- **Unchanged Core Burden:** Assessees opting out of presumptive taxation must still maintain books and obtain a tax audit — continuity of compliance is preserved under the new framework.

Section 58(4) — Ring-Fencing of Presumptive Income

No loss, allowance, or deduction otherwise permissible under the Act shall be set off or claimed against income computed under the presumptive taxation framework of Section 58(2).

Provision:

Section 58(4) explicitly bars any deduction, allowance, or loss from being applied against presumptive income determined under sub-section (2). The presumptive figure is treated as final and self-contained — no further adjustments are permitted.

Old Act vs. New Act

Old Act (1961)

No explicit ring-fencing provision — practitioners often contested only deductions not permissible against deemed profit.

New Act (2025)

Statutory bar codified in sub-section (4) — no ambiguity; presumptive income is immune from any loss or deduction claim.

Key Impacts

Legislative Certainty

Eliminates litigation over set off losses, deductibility against presumptive income.

No Loss Set-Off

Carried-forward losses cannot reduce presumptive tax liability.

Compliance Clarity

Assessees must plan tax positions without factoring in deductions under other provisions.

SECTION 58 — ITA 2025

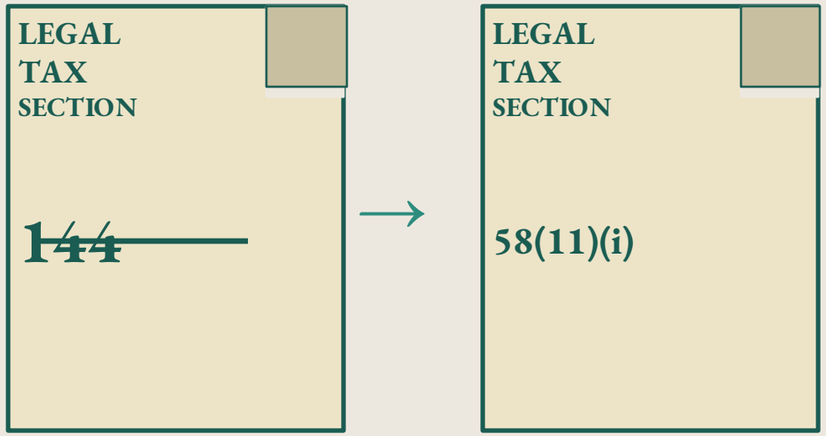
Section 58(5) & Sub-sections 6-10

Provisions retained from Income Tax Act, 1961 — now codified under ITA 2025

Sub-sec.	Provision	ITA 1961 Ref.	What It Says
58(5)	Deductions — Allowability	Section. 44AE	Deduction for Partner related expenditure
58(6)	Depreciation Deemed Allowed	Section 32	Same like old sections
58(7),(8)	Lock in Period	44AD(4)&5	Same like lock in period as earlier sections
58(9)	Deemed Cash Receipts	44AD,ADA	Retained same deemed cash receipts rule

✓ All provisions above are retained verbatim in ITA 2025 — substantive law unchanged; only section numbering updated.

BEFORE



AFTER

MEMORANDUM OF 2026 · OFFICIAL REASON

"The deduction under Section 144 is available only to units established in a Special Economic Zone. Section 144 had a sunset clause — no new unit qualifies after 1 April 2021. The disqualification under sub-clause (i) of Section 58(11)(a) therefore serves no further purpose **and is accordingly omitted.**"

Removal of the Section 144 Disqualification

01 Sunset Clause Had Already Expired

Section 144 barred new SEZ units after 1 April 2021. Only existing units in deduction years 6–15 remained - making the disqualification redundant.

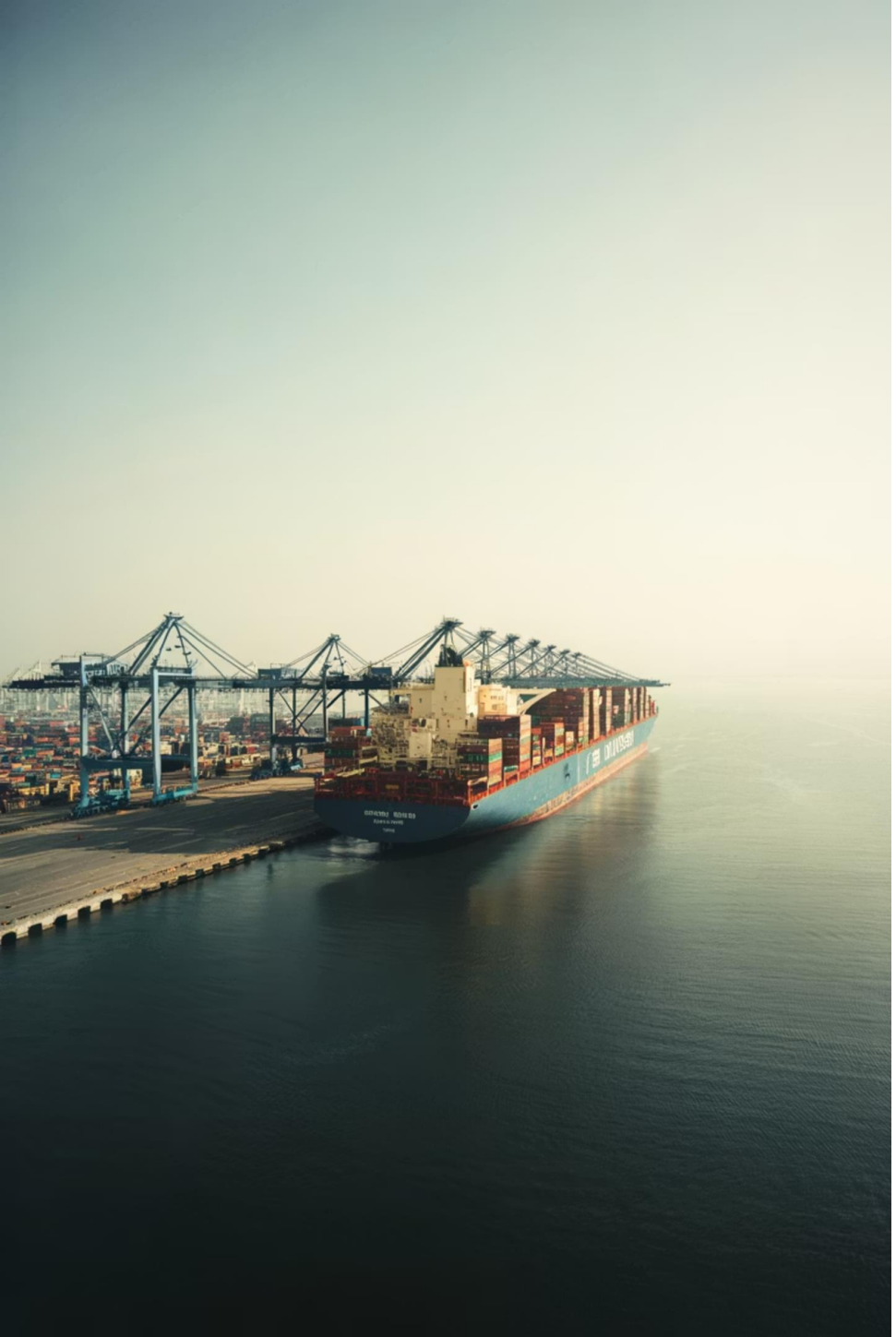
02 Legitimate Deductions Were Penalised

Assessees lawfully claiming Section 144 could not opt into the simpler presumptive scheme under Section 58, creating an unintended disadvantage.

03 Policy Alignment with Presumptive Taxation

Removing the bar lets eligible SEZ businesses access Section 58's flat-rate ease from Tax Year 2026-27, without conflicting with actuals-based SEZ deductions.

Finance Act 2026 · w.e.f. 1 April 2026 · Section 58 = Section 44AD (Old Act)



NON-RESIDENT PROVISIONS

Non-Resident Presumptive Regimes — Policy Rationale

To avoid complex cross-border expense apportionment, transfer pricing disputes, and Permanent Establishment profit attribution issues, the Act provides standalone presumptive regimes for non-residents in specific capital-intensive sectors. These regimes:

Override

Standard deduction provisions (Sections 28 to 43C)

Prohibit

Set-off of unabsorbed depreciation and brought-forward losses

Tax

A flat, non-negotiable percentage of India-sourced gross receipts

Non-Resident Presumptive Tax Provisions

Sections 44B to 44BBD — Standalone presumptive regimes designed to eliminate complex cross-border expense apportionment, transfer pricing disputes, and PE profit attribution challenges for non-residents in capital-intensive sectors.

Override Standard Deductions

Sections 28 to 43C do not apply

No Loss Set-Off

Unabsorbed depreciation and brought-forward losses are disallowed

Flat Rate on Gross Receipts

A fixed, non-negotiable percentage of India-sourced gross receipts is taxed



Sector-Wise Presumptive Rates at a Glance



Each rate applies to the **aggregate of amounts** paid, payable, received, or deemed received in India in respect of the qualifying activity — forming the taxable base under the respective section.

Rates are applied to **gross receipts**, not net profits. No deduction for actual expenditure is permitted once a presumptive regime is elected or applied.

Section-by-Section Analysis

44B — Shipping (Non-Resident)

Rate: 7.5% of amounts paid/payable or received in India for carriage of passengers, livestock, mail, or goods shipped at any Indian port. Excludes cruise ships (now governed by 44BBC).

44BB — Mineral Oil Exploration Services

Rate: 10% of amounts for services, facilities, or plant and machinery hire connected with prospecting, extraction, or production of mineral oils. **Does not apply** where income is chargeable under Sections 42, 44DA, 115A, or 293A.

44BBA — Aircraft Operations

Rate: 5% of amounts for carriage of passengers, livestock, mail, or goods from any place in India, plus receipts for carriage originating outside India.

44BBB — Turnkey Power Projects

Rate: 10%. Applies exclusively to **foreign companies** engaged in civil construction, erection, testing, or commissioning of plant and machinery in connection with a Central Government-approved turnkey power project.

New Provisions: 44BBC & 44BBD

44BBC — Foreign Cruise Ship Operators

Rate: 20% of gross receipts for carriage of passengers on qualifying cruise ships. Carved out from legacy §44B to reflect sector growth.

Qualifying Conditions (Rule 6GB):

- Capacity exceeds 200 passengers *or* vessel length ≥ 75 metres
- Used exclusively for leisure — no commercial cargo
- Itinerary includes at least two Indian sea ports, or embarks and returns to the same Indian port

44BBD — Electronics Manufacturing Technology (Inserted by Finance Act, 2025)

Rate: 25% of gross receipts for services or technology provided in connection with the establishment or operation of a MeitY-approved electronics manufacturing facility.

Effective Tax Incidence: Given the corporate tax rate applicable to foreign companies, the regime results in an **effective rate of 8.75%** on gross receipts (exclusive of surcharge and cess).

Conditions for applicability of the section: Section 44BB applies to non-residents engaged in providing services, facilities, or equipment on hire in connection with oil exploration or production activities in India, whereby 10% of their total receipts is deemed as taxable income. However, it is not applicable if the income is in the nature of royalty or fees for technical services taxable under Sections 44DA or 115A. The key determinant is the nexus of the activity with core oilfield operations.

Summary: Non-Resident Presumptive Provisions (ITA 1961)

Section	Sector / Activity	Deemed Rate	Key Notes
44B	Core Shipping	7.5%	Cargo, livestock, mail, passengers from Indian ports
44BB	Mineral Oil Exploration	10%	Overrides Sec 115A; extensive judicial history
44BBA	Aircraft Operations	5%	Based on origin/destination point
44BBB	Turnkey Power Projects	10%	Requires specific government approval
44BBC	Cruise Ship Operations	20%	Rule 6GB conditions; Sec 10(15B) lease exemption
44BBD	Electronics Tech Providers	25%	MeitY-approved facilities; effective tax ~8.75% of gross receipts

ITA 2025 — SECTION 61

Section 61 — Non-Resident Presumptive Taxation (Consolidated)

ITA 2025 Reference	Legacy Provision	Sector & Rate
Section 61 – Shipping	Section 44B	Shipping Business (7.5%)
Section 61 – Mineral Oil	Section 44BB	Mineral Oil Exploration (10%)
Section 61 – Aircraft	Section 44BBA	Aircraft Operations (5%)
Section 61 – Turnkey Power	Section 44BBB	Turnkey Power Projects (10%)
Section 61 – Cruise Ships	Section 44BBC	Cruise Ship Operations (20%)
Section 61 – Electronics	Section 44BBD	Electronics Tech Providers (25%)

⊗ **Section 61(4) — Expanded Restriction:** ITA 2025 bars the set-off of **ANY** loss and prohibits claiming **ANY** deduction or allowance — including Chapter VI-A deductions such as Section 80G. The deemed rate is a hard, inescapable tax floor for non-residents.

ITA 2025 · SECTION 61

Key Changes: ITA 1961 → ITA 2025

Presumptive Taxation of Non-Residents · Section 61 Consolidated Framework

1 Consolidation

6 sections → 1 unified Section 61

Sections 44B, 44BB, 44BBA, 44BBB, 44BBC, 44BBD merged into a single structured table — cleaner statute, one place to look.

2 Wider Override Scope

Ss. 28–43A → Ss. 26–54

Section 61 overrides a broader range of domestic provisions, closing gaps that existed under the scattered old sections.

3 Retained Lower-Profits Option

Retained same like the existing sections

4 Hardened Loss Bar · S. 61(4)

Explicit statutory prohibition

ALL losses, deductions, and allowances under any provision are expressly barred against S. 61(2) income — stronger than the old piecemeal bar.

5 Terminology & Carve-Outs

"Tax Year" replaces PY/AY

"Tax Year" terminology adopted throughout. Mineral Oil carve-out (Sl. No. 5) explicitly codified: S. 61 doesn't apply where Ss. 54, 59, 207, or 527 govern.

6 Electronics Conditions · 44BBD

Statute > subordinate rules

MEITY scheme eligibility and prescribed conditions for the resident company are now codified in the statute itself, not left to delegated rules.

SUMMARY

What's Widened vs Tightened - Summary Table

✓ WIDENED (Relief) | ✕ Same (Neutral) | ● TIGHTENED | ▲ Mixed

Aspect	Status	Details	Impact
Transport audit trigger	✓ WIDENED	Now audit only if income > ₹2.5L (aligned with 44AD/44ADA)	+++ for small transporters
Business/Professional thresholds	✕ Same	₹2cr/₹3cr and ₹50L/₹75L unchanged	Neutral
Audit limits (₹1cr/ ₹10cr/₹50L)	✕ Same	Section 63 mirrors Section 44AB	Neutral
Loss set-off	● TIGHTENED	Section 58(4) explicitly bars loss set-off	--- for businesses with losses
Eligibility criteria	● TIGHTENED	Assessee-wise disqualification (not business-wise)	--- for mixed-income earners
Structural consolidation	▲ Mixed	44AD+44ADA+44AE merged into Section 58	Simpler structure, stricter application

LITIGATION ISSUE

Section 68 — Foundational Inapplicability to Section 44AD Assessees

The Revenue's Flawed Tactic

AOs frequently invoke Section 68 (unexplained credits in books) against high-volume cash deposits in bank accounts of taxpayers legitimately filing under Section 44AD.

Why Section 68 Cannot Apply

Section 44AD explicitly exempts the taxpayer from maintaining books of account. A bank passbook provided by a financial institution does **not** constitute 'books of account maintained by the assessee.' Without maintained commercial books, the foundational prerequisite for Section 68 instantly fails — rendering any addition **void ab initio**.

Burden of Explanation

A presumptive taxpayer is under no obligation to account for each and every bank deposit entry, provided deposits bear a discernible nexus with declared turnover (*CIT v. Surinder Paul Anand* [2010] 192 Taxman 264).

LITIGATION ISSUE

Section 69C — No Parallel Track After Accepting Presumptive Income

> Once the AO has accepted business income computed at 8% of sales under Section 44AD, it is impermissible to open a parallel enquiry under Section 69C requiring the assessee to substantiate that the residual 92% of turnover was actually expended.

The non-obstante effect of Section 44AD displaces Sections 28 to 43C in their entirety, rendering any itemised scrutiny of expenditure — and by extension any Section 69C addition — legally incoherent. Acceptance of the deemed profit carries an irrebuttable acceptance that the notional expenditure component stands absorbed within the deeming fiction. (*Nandlal Popli v. Dy. CIT*, Chandigarh ITAT)

- **Form 26AS Mismatches:** Unrecorded receipts reflected in Form 26AS enlarge the turnover base on which the presumptive rate operates — they do not become income in their entirety (*Hamid Khan v. ITO*, Jodhpur ITAT).

LITIGATION ISSUE

Book Rejection & the 44AD Rate as Estimation Benchmark

AO's Power to Apply 8%

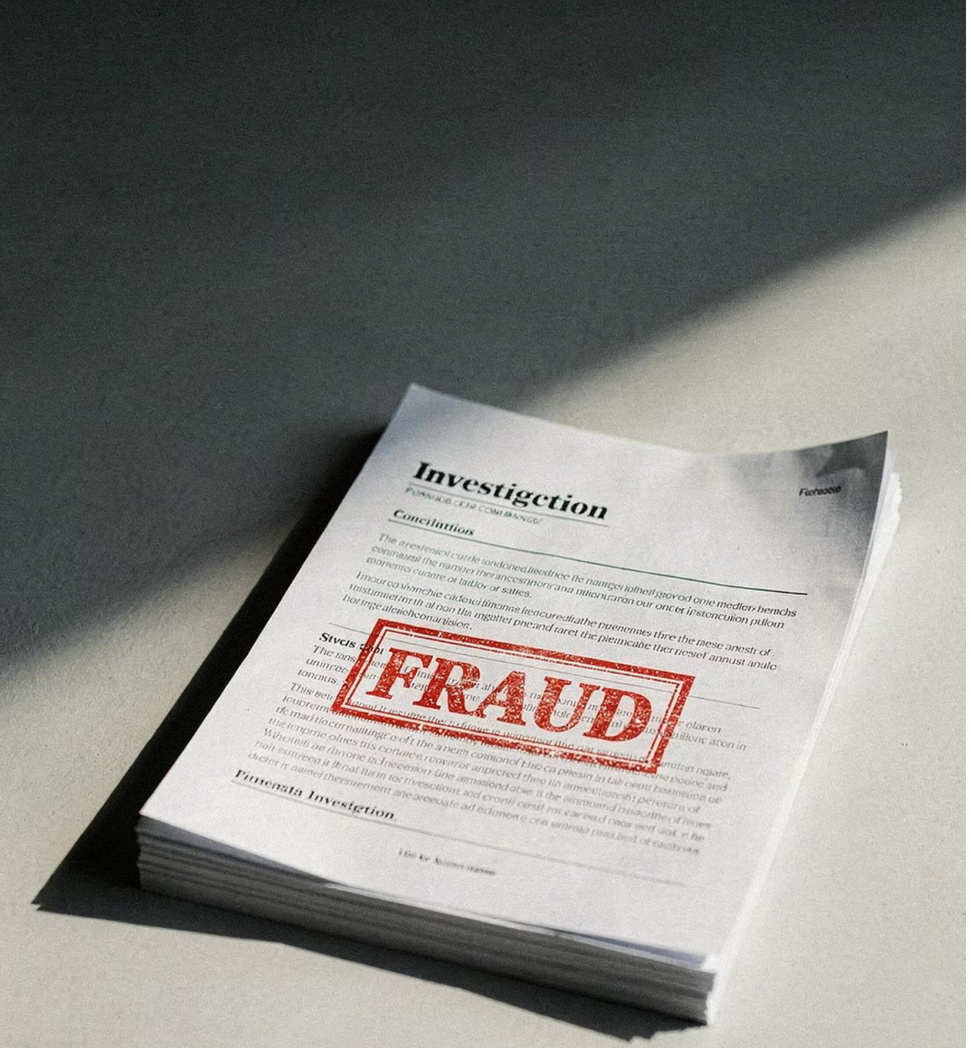
High Courts of Karnataka (*P. Sudhakar*), Punjab & Haryana (*Earth Tech Engineers*), and Delhi (*Subodh Gupta*) have upheld the AO's power to apply the 8% deemed rate as a fair estimation benchmark on book-rejection — even where turnover exceeds the Section 44AD ceiling.

Depreciation Remains Allowable

Where the AO applies the 44AD rate as an estimation benchmark outside its formal scope, depreciation remains separately allowable (*Awasthi Traders v. CIT* [2016] 388 ITR 185 (SC)).

8% as Soft Ceiling

An AO estimating profits above 8% in a book-rejection scenario cannot ordinarily justify a higher rate without adducing comparable case data or a specific deviation rationale (*Nishikant T. Patne v. ACIT*; *Abhi Developers v. ITO*).



LITIGATION ISSUE

The Bogus Purchases Paradox under Section 44AD

A frequent and highly illogical paradox arises when an AO unearths bogus purchases (hawala accommodation entries) linked to a Section 44AD assessee. The Revenue's typical approach: **accepts** gross sales turnover as genuine (applying the 8% rule) while **simultaneously disallowing 100%** of corresponding bogus purchases under Section 69C.

The Contradiction: The Revenue cannot simultaneously accept that sales are real (requiring genuine purchases) AND treat 100% of purchases as non-existent. Courts hold that any warranted addition should be restricted to the **Gross Profit margin impact — typically 10% to 12.5% of the bogus purchase value** — rather than the total purchase value itself (*M/s Shivam Construction Co.*, ITAT).

COMPLIANCE WARNING

Section 269ST & the Independence of Collateral Penal Provisions

A declaration under Section 44AD does **not** insulate the assessee from collateral penal consequences of how the underlying receipts were collected.

⚠ **Section 269ST:** Prohibits cash receipts of Rs. 2 lakh or more in aggregate from a single person on a single day, in respect of a single transaction, or transactions relating to a single event. The penalty under Section 271DA — equal to the amount of the impugned receipt — is attracted mechanically, independent of whether that receipt has already been swept into the 6%/8% deemed computation under Section 44AD.

The statutory plane of income computation under Section 44AD and the statutory plane of cash-transaction discipline under Sections 269ST/271DA operate **separately**; compliance on one does not discharge the other.



EMERGING ISSUE

Derivatives (F&O) & the Presumptive Taxation Gap

Artificial Turnover

F&O turnover is computed on the basis of profit/loss (not gross settlement values), creating artificial turnover figures that may not reflect actual business scale.

Volatility Problem

Actual profit margins in derivatives trading can swing wildly — potentially far below the 8% deemed rate — making presumptive taxation wholly inappropriate for this income class.

Unresolved Gap

Current law does not explicitly exclude F&O from Section 44AD. The ICAI has formally proposed excluding F&O and speculative trades — this exclusion has **NOT yet been incorporated** into either ITA 1961 or ITA 2025.

SUPREME COURT & HIGH COURTS

Key Judicial Precedents — Higher Courts

Case	Court	Key Principle
ONGC v. CIT	Supreme Court	Pith and substance of contract determines Section 44BB taxability — overrides FTS re-characterisation
UCO Bank v. CIT	Supreme Court (overruled by Sec 400(2))	CBDT circulars binding on authorities but NOT assessees — reversed w.e.f. April 1, 2026
Awasthi Traders v. CIT	Supreme Court	Depreciation separately allowable even where AO applies 44AD rate as estimation benchmark
CIT v. Bhaichand H. Gandhi	Bombay High Court	Bank passbook is not 'books of account'; Section 68 cannot be invoked against Section 44AD assessee
CIT v. Surinder Paul Anand	Punjab & Haryana HC	Section 44AD assessee not required to explain each bank deposit; excess investments require explanation
Anandkumar v. ACIT	Madras High Court	Partner remuneration from firm is not independent 'gross receipts' for Section 44ADA
PGS Geophysical AS v. CIT	Delhi High Court (Feb 2026)	Specialised presumptive regimes override general FTS provisions where proximate nexus to extractive sector is established

ITAT DECISIONS

Key Judicial Precedents — ITAT

Case	Tribunal	Key Principle
Narendra Chandubhai Rafaliya v. ITO	ITAT (Multiple Benches)	Section 68 inapplicable to Section 44AD assessee — bank statements are not assessee's books
Santosh Kumar v. ITO	Jaipur ITAT	Cash deposits of retail trader under Section 44AD taxed at 8% on gross deposits — not 100% undisclosed income
M/s Shivam Construction Co.	ITAT	Addition for bogus purchases restricted to GP margin impact (10–12.5%) — not total purchase value
M/s Supremo India Ltd.	ITAT / MP HC	Surrendered business stock cannot be reclassified under Section 69 to trigger 78% rate
Nandlal Popli v. Dy. CIT	Chandigarh ITAT	After accepting 8% presumptive income, AO cannot make parallel Section 69C addition on 92% of turnover
Good Luck Kinetic v. ITO	Panaji ITAT	Section 43B applies even when income declared under Section 44AD — unpaid statutory dues remain disallowable
M. Rajendra v. ITO	Chennai ITAT	Ownership of more than ten goods carriages — even for a single day — disqualifies from Section 44AE

CBDT & REGULATORY INSTRUMENTS

Key CBDT Circulars & Legislative Instruments

Instrument	Subject Matter
CBDT Circular No. 3/2017	Clarifies 6%/8% bifurcated computation under Section 44AD — 6% applies to account payee cheques, bank drafts, electronic modes (UPI, IMPS, RTGS, NEFT) received before Section 139(1) due date
ICDS-2	Valuation of inventories — leans toward inclusive methodology; key instrument in GST-inclusive turnover debate
Rule 6GB, IT Rules 1962	Qualifying vessel and voyage conditions for Section 44BBC (foreign cruise ship operators)
ICAI Guidance Note on Tax Audit (10th Ed., 2025)	Enhanced guidance on cash restriction thresholds; eligible-business turnover under 44AD to be excluded while computing Section 44AB threshold
ICAI Pre-Budget Memorandum 2026	Recommends explicit exclusion of F&O from Section 44AD; GST–ITR mismatch harmonisation; restoration of Section 40(b) deduction for firms

TREATY INTERACTION

DTAA Interaction with Domestic Presumptive Regimes

Self-Contained Codes

Sections 44B, 44BB, 44BBA, 44BBB, 44BBC, and 44BBD override general domestic provisions — but their interaction with DTAA articles (Business Profits Art. 7, Royalties/FTS Art. 12) requires case-by-case analysis.

ONGC Principle

Proximate nexus to the sector (e.g., mineral oil) determines taxability under the specialised presumptive section, overriding FTS classification.

DTAA Beneficial Rate

Non-residents should always evaluate whether the beneficial rate under an applicable DTAA is lower than the presumptive regime rate — if so, the DTAA rate prevails under Section 90(2), ITA 1961.

Post-ITA 2025 Risk

CBDT circulars on DTAA interpretation (where issued) will be binding — adding complexity to treaty positions previously challengeable on administrative law grounds.



PART IV — PRACTICAL ISSUES

The GST–Income Tax Turnover Mismatch

A systemic, heavily litigated issue affecting thousands of SME taxpayers is the persistent mismatch between turnover reported in GST returns (GSTR-1, GSTR-3B, GSTR-9C) and 'gross receipts' reported in ITR-4 under Section 44AD.

⚠ **The Section 145A Problem:** Revenue authorities argue that 'gross turnover' for computing the 8% deemed profit must be **inclusive of GST collected** — effectively taxing the taxpayer on a pure pass-through government liability. Example: Rs. 90 lakh sales + Rs. 16.2 lakh GST = Rs. 1.062 Crore base, inflating the tax base by Rs. 1.29 lakh.

The ICAI strongly recommends a mandatory **three-way reconciliation statement** covering: (i) GSTR-1 vs GSTR-3B differences, (ii) GST turnover vs IT turnover, and (iii) all non-GST income items — filed alongside ITR-4 to nullify automated scrutiny.

COMPLIANCE

Advance Tax, TDS & Derivatives Turnover

Advance Tax Concession

From AY 2017-18, assessees offering presumptive income may discharge their entire advance tax liability in a **single instalment on or before 15th March**, easing cash-flow management.

TDS Obligations Persist

Relief from books maintenance does **not** dispense with TDS obligations. An Individual/HUF whose turnover exceeded Rs. 1 crore (or professional receipts Rs. 50 lakh) in the preceding year remains a 'person responsible for paying' under Chapter XVII-B.

Derivatives Turnover (ICAI)

For F&O transactions: total of favourable and unfavourable differences from squared-off trades constitutes turnover. Premium on sale of options is included. Open positions at year-end are considered in the year of actual squaring off.

Thank You

We welcome your questions and look forward to the conversation.

✉ hemasundar.p@mca.co.in

