Introduction To Tax Audit U/S 44AB Of The Income Tax Act
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“Government is the people's business and every man, woman and child becomes a shareholder with the first penny of tax paid.”

Ronald Reagan
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To discourage tax avoidance and evasion, the requirement of a tax audit was introduced by the Finance Act of 1984, by inserting a new section “44AB” w.e.f Assessment Year 1985-86. A Tax Audit involves an expression of the tax auditors' opinion on the truth and correctness of certain factual details, given by assessee to the Income Tax Authorities to enable an assessment of tax.

“...No government can exist without taxation. This money must necessarily be levied on the people; and the grand art consists of levying so as not to oppress...”

Frederick the Great, 18th Century Prussian king

A Tax Audit would serve the following purposes:

1. Ensure that the books of accounts and other records are properly maintained;
2. Faithfully reflect the income of the tax payer and claims for deduction correctly made by him;
3. Help in checking fraudulent practices;
4. Facilitate the administration of tax by a proper presentation of accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications like checking correctness of totals and verifying whether purchases and sales are properly vouched or not, thereby their time could be utilized for attending to more important investigational aspects of the case.
Circumstances under which Tax Audit is conducted

Section 44AB of Income Tax Act, states that the following persons are required to get their accounts compulsorily audited by a Chartered Accountant –

1. A person carrying on business, if the total *sales, **turnover or gross receipt in Business for the accounting year or years relevant to the assessment year exceed or exceeds Rs.40Lakhs.

2. A person carrying on profession, if his gross receipts in profession for an accounting year or years relevant to any of the assessment year exceed Rs.10Lakhs.

3. With effect from the assessment year 1998-99, an assessee covered under *section 44AD, or **44AF or w.e.f. the assessment year 2004-05, an assessee covered under ***Section 44BB or ****44BBB who claims that the profits and gains from the business are lower than the profits and gains computed in accordance with the provisions of these sections, irrespective of his turnover.

*Section 44AD
This section provides for a method of estimating income from the business of civil construction or supply of labour for civil construction work.

**Section 44AF
This section provides a method of computing income of an assessee who is engaged in retail trade of any goods or merchandise.

***Section 44BB
This section provides a method of computing profits and gains in connection with the business of exploration of mineral oils.

****Section 44BBB
This section provides a method for computing profits and gains of foreign companies engaged in the business of civil construction in certain turnkey power projects.
Circumstances under which Tax Audit is conducted (Contd.)

The Guidance Note issued by the Institute of Chartered Accountants of India defines 'Sales Turnover' as under:

“The aggregate amount for which sales are effected or services rendered by an enterprise.”

The terms 'gross turnover' and 'net turnover' are used to distinguish the sales aggregate before and after deduction of returns and trade discounts.

As per the Statement of Auditing Practise issued by the Institute, sales are defined as:

*Sales include sales of all products manufactured by the company including by-products. It is customary to show sale of scrap under the head “Miscellaneous income”. No adjustment in respect of sales tax and/or excise duty should normally be made in the sales account. (Trade discount can be deducted from sales but not the commission allowed to third parties. If however, the excise duty and/or sales tax recovered are credited separately to excise duty or sales tax account in separate accounts with payments to the authorities debited in the same account, they would not be included in the sales. But, the sale of scrap shown separately under the heading miscellaneous income will have to be included in the sales for the purpose of this section).

As per the Guide to Company Audit issued by the Institute, “Turnover” has been understood in the following manner:

“Turnover is the aggregate amount for which sales are affected by the company, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately”.
An Accountant referred to under section 288(2) is entitled to carry out the audit. The person so referred is either a Chartered Accountant or any other person, who is entitled to carry out audit under section 226(2) of the Companies Act, 1956. Generally, the Audit has to be done by an Accountant, who has to be the person specified in Explanation to section 288(2) which defines an authorized representative, who can be any one listed in this section. A chartered accountant, who is an accountant, becomes additionally responsible for authenticating tax audit report, while others are not so eligible, because only an accountant within the meaning of Explanation is authorized for this purpose.

Section 288(2) reads as under
For the purposes of this section, 'authorized representative' means a person authorized by the assessee in writing to appear on his behalf, being –

i. A person related to the assessee in any manner, or a person regularly employed by the assessee; or

ii. Any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealing; or

iii. Any legal practitioner who is entitled to practice in any civil court in India; or

iv. An accountant; or

v. Any person who has passed any accountancy examination recognized by the Board in this behalf; or

vi. Any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

vii. Any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income tax Act, and was actually practicing as such.

Explanation – In this section, 'accountant' means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that state.'
Due Date for getting Books Audited

Section 44AB casts an obligation on the person to whom tax audit provisions apply to obtain before the “Specified date” the audit report in the prescribed form duly signed and verified by the Chartered Accountant. Here, the expression “specified date” is September 30th. In case where accounts are to be audited by any other Law, it will be sufficient if accounts are audited under such other Law before the specified date and the assessee obtains before the said date, an audit report as required under such Law in the prescribed form.

Due date for submitting the Audit Report

It is obligatory for a taxpayer (covered under section 44AB) to not only get his accounts audited by the specified date but also furnish the audit report on or before the “specified date” i.e.; September 30th.

The Tax Audit Report shall be furnished by the “specified date” irrespective of the fact whether or not the Return of Income is filed by that date. If return of income is submitted after the submission of the tax audit report, then the following should be submitted along with the return of income -

- A copy of tax audit report and
- A proof for filing tax audit report before the “specified date”.

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Forms of the Audit Report

The Audit report shall be submitted in the following forms:

1. In the case of a person who carries on business or profession and who is required by or under any Law to get his accounts audited:
   a) Audit Report in Form No.3CA
   b) Statement in Form No.3CD

2. In the case of a person who carries on business or profession but not required to get his accounts audited:
   a) Audit Report in Form No.3CB
   b) Statement in Form No.3CD

Penalties

Section 271-B of the Income Tax Act says that “If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year of years and furnish a report of such audit as required under section 44 AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half percent of the total sales, turnover or gross receipts as the case may be, in business or of the gross receipts in profession, in such previous year or years or a sum of one lakh rupees, whichever is less.” The maximum penalty which may be imposed under this section is Rs.1,00,000.
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