

**BHUBANESWAR BRANCH OF EASTERN INDIA REGIONAL
COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

e-newsletter/06/2025-26



SEPTEMBER 25

ICAI

E-NEWSLETTER



Editorial



Dear Esteemed Members,

As we step into **September 2025**, we welcome a new month brimming with fresh opportunities - a perfect moment to reflect on past achievements, set renewed goals, and move forward with optimism. The continued support and active participation of our members remain the cornerstone of **ICAI Bhubaneswar's growth and positive impact**.

Turning the page from the previous month, our commitment to **professional excellence** remains unwavering. ICAI Bhubaneswar strives to empower its members through knowledge-sharing initiatives, promotion of best practices, and a steadfast dedication to quality in the profession.

This month, we are excited to present a thoughtfully **curated lineup of programs** designed to foster continuous learning, encourage meaningful engagement, and drive professional advancement. We warmly invite all our members to participate actively and stay updated through our official website: www.bhubaneswar-icai.org.

Together, let us continue shaping a **vibrant, future-ready CA profession** - grounded in integrity, driven by innovation, and defined by excellence.

Wishing you a month filled with growth, purpose, and meaningful accomplishments.

Warm regards,

CA. Mahendra Kumar Sahoo

Chairman, ICAI Bhubaneswar Branch

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Members area of Interest

Observations related to SA 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements

Observation 7:

The management representation letter does not contain any reference to any fraud related disclosure made in the financial statements though the audit report states "as per information and explanation given to us". No documentary evidence was obtained based on which such assertion was made by the firm. The management representation letter must contain a declaration from the management regarding their responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

What is the issue?	AASB Suggested Guidance	Technical Literature
Whether specific representations about management's responsibility relating to fraud should be obtained by auditor?	SA 240 requires the auditor to obtain specific written representations from management about their responsibilities relating to fraud.	Para 39 of SA 240 : The auditor shall obtain written representations from management and, where applicable, those charged with governance that: (a) They acknowledge their responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud; (b) They have disclosed to the auditor the results of management's assessment of the risk that the financial statements may be materially misstated as a result of fraud; (c) They have disclosed to the auditor their knowledge of fraud or suspected fraud affecting the entity involving: 1. Management; 2. Employees who have significant roles in internal control; or 3. Others where the fraud could have a material effect on the financial statements; and (d) They have disclosed to the auditor their knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others. (Ref: Para. A57 A58)



Comprehensive Guide: Responding to a Notice under Section 142(1) of the Income Tax Act, 1961

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Executive Summary

This document provides an in-depth, practitioner-level treatment of replies to notices issued under Section 142(1) of the Income-tax Act, 1961. It covers statutory scope, procedural requirements, strategic considerations, judicial precedents, corporate case studies, numerical illustrations, and annexures including checklists and actionable templates for chartered accountants and tax teams.

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1. Introduction and Statutory Background

Section 142(1) grants the Assessing Officer (AO) power to require any person to furnish: (a) returns; (b) accounts or documents; (c) information in writing; or (d) to produce books of account. The notice under this section can be the starting point of assessment proceedings, and often precedes notices under Section 143(2), or culminates in assessment under Sections 143(3) or 144. Given its pivotal role, a measured and legally coherent reply is essential to protect taxpayer rights while avoiding adverse consequences such as best judgment assessment, penalties, or prosecution.

2. Scope and Purpose of Notices under Section 142(1)

The statutory objectives of Section 142(1) are investigative and fact-gathering in nature. The AO may:

- Issue a notice asking the person to furnish a return where none has been filed.
- Call for explanation and supporting documents for particular entries.
- Direct attendance for verification or examination of accounts.



A practitioner must remember: a notice under Section 142(1) is not an adjudication; it is an opportunity to submit the taxpayer's case and supporting evidence. Failure to respond or producing incomplete records empowers the AO to adopt the best judgment under Section 144.

3. Legal Principles and Landmark Judgments

The courts have considered the nature and consequences of notices under Section 142(1) in a number of authoritative decisions.

Two landmark Supreme Court rulings are essential reading for practitioners:

Y. Narayana Chetty v. ITO, (1959) 35 ITR 388 (SC): The Supreme Court observed that the initiation of proceedings and the service of notices form the foundation of the assessment process. A notice must be validly issued - defects in issuance or service may render subsequent proceedings irregular or vulnerable to challenge. The judgment emphasises that procedural lapses cannot be overlooked if they have a material impact on the assessee's right to be heard.

M/s Guduthur Bros. v. ITO, (1960) 40 ITR 298 (SC): The Supreme Court held that where proceedings have been initiated irregularly (for example, where notices were not properly served), the defect can be cured by the same authority if done before the completion of proceedings. The decision underscores both the necessity of compliance with procedure by tax authorities and the limits of curative actions.

Later judgments and tribunal decisions have clarified ancillary points: notice content, mode of service (digital notifications under faceless assessment rules), timelines for reply, and consequences of non-compliance (best judgment assessment under Section 144 and penalties under Section 271(1)(b)). Practitioners should be attentive to jurisdictional High Court and ITAT decisions that interpret adequacy of replies and the standard of reason required from the AO when rejecting replies.

4. Practical Steps to Drafting a Reply

A structured process reduces risk. The following sequential steps are recommended:

A. Acknowledge receipt immediately:

Whether the notice is received electronically or physically, record date and preserve system logs/download receipts. If received electronically (e.g. Faceless portal, registered email), download and archive the notice.

B. Read the notice carefully and map requests to records:

Identify each item demanded- returns, bank statements, contracts, tax computation, TDS certificates, GST reconciliations, invoices, or board resolutions.

C. Identify timelines and request extensions early:

If the time permitted is insufficient to collate voluminous records, promptly request reasonable additional time from the AO in writing, stating reasons and an estimated date for compliance.

D. Perform a targeted internal pre-assessment:

Before replying, conduct a limited review focusing on the items raised. This should be done by an experienced tax professional or the client's internal tax team to detect gaps, mismatches or potential exposures.



E. Prepare index and paginated annexures:

To assist the AO, prepare a clear index linking each enquiry item to specific annexure pages. Pagination prevents misplacement and demonstrates professionalism.

F. Prepare detailed written explanations:

For every requested item, provide a concise narrative (1–2 paragraphs) explaining the entry's nature, accounting treatment, relevant contract clauses and statutory provisions relied upon.

G. Reconciliations and cross-references:

Reconcile figures across ITR, audited financial statements, GST returns, bank statements, and Form 26AS. Provide reconciliation tables showing how figures map to each other and explain any timing or classification differences.

H. Verification and signing:

If the reply requires verification under oath (e.g., Rule 12), ensure authorized signatories sign the verification statement.

For corporate replies, attach a board resolution authorizing the person signing (if required).

I. Maintain proof of submission:

For physical filing, obtain stamped acknowledgements. For electronic filing, retain screenshots, submission IDs, and emails generated by the portal.

5. Documentary Evidence:

What to Produce and How

Documentary evidence must be authentic, contemporaneous, and verifiable. The following guidance will assist in choosing and presenting documents:

- ✓ Primary documents: Loan agreements, bank statements, invoices, bills of entry, FIRC, purchase orders, sale agreements, lease deeds, and contractual correspondence.
- ✓ Secondary evidence: Reconciliations, ledger extracts, summary schedules and investigative memos prepared by external auditors or forensic accountants.
- ✓ Certifications: Where needed, obtain certifications from statutory auditors or independent experts for valuation reports, transfer pricing studies, or complex reconciliations.
- ✓ Electronic evidence: Maintain metadata where possible- timestamps, email headers, or portal logs - to prove creation and receipt dates.

Presentation tips:

1. Use a cover letter mapping each query to exhibit numbers.
2. Prepare an 'index of documents' with short descriptions and page ranges.
3. Where voluminous documents exist (e.g., thousands of invoices), provide a representative sample plus a reconciled summary and make the full set available for inspection.
4. If the document is not in English or Hindi, provide sworn translations or an affidavit certifying the translation accuracy.



6. Strategic Defences and Limitations

Not every demand by the AO must be conceded. The taxpayer and advising CA can lawfully push back on overbroad or irrelevant demands. Strategies include:

A. Objecting to irrelevant or harassment-style demands:

If the AO asks for unrelated historical data beyond the scope of the assessment year, object in writing identifying legal limits.

B. Asserting privilege and confidentiality:

While Indian law provides limited privilege for communications with legal advisers, work-product protection is not as developed as in some common law jurisdictions. Where documents contain privileged lawyer-client communications, assert privilege explicitly and supply a privilege log describing withheld documents, their authors, recipients and the nature of the privilege claimed.

C. Challenge invalid notices:

If there are defects in issuance (e.g., wrong addressee, invalid service), a taxpayer may challenge the notice by writ petition or by raising preliminary objections in proceedings, supported by citations such as Narayana Chetty and Guduthur Bros.

D. Consider quantifying exposures and negotiating:

For potential adjustments, compute maximum likely tax, interest and penalties to present a commercial settlement view to the board and counsel.

E. Use technical positions with authority:

Anchor explanations in statute, CBDT circulars, relevant case law and binding judicial precedents to minimize AO's discretion.

7. Corporate Case Studies (Extended)

Case Study A - Manufacturing Company: Interest Expense Disallowance Risk

Facts: A mid-sized listed manufacturing company (hereinafter 'Manufacturer Co.') received a Section 142(1) notice querying interest expense of ₹120 crore in FY 20XX. The AO requested loan agreements, bank statements, board minutes approving loan facilities, utilisation statements and intercompany memos for an alleged related-party loan.

Steps taken:

1. The tax team prepared a detailed loan schedule reconciling interest to specific loan tranches.
2. Board resolutions and loan sanction letters were annexed with pagination.
3. Intercompany invoices and transfer pricing contemporaneous documentation were provided to show arm's length terms.
4. Bank remittance advices, LIBOR/PLR references and amortisation schedules were produced.

Outcome: The AO accepted the documentation for ₹112 crore and disallowed ₹8 crore where documentary chain for one small tranche was not traceable. The company avoided significant litigation and the tax team demonstrated competence and transparency. The material lesson: full documentary trail and pre-prepared reconciliations limit AO's ability to make speculative additions.



Case Study B - Real Estate Developer: Sales Recognition and RERA Mismatch

Facts: A regional real estate developer ('Developer Co.') faced queries where total sales reported in revenue and ITR did not match RERA filings and GST returns. The AO issued a 142(1) notice asking for reconciliation of revenue recognition, booking dates, and receipt challans.

Steps taken:

1. Developer Co.'s tax and accounts teams prepared a project-wise reconciliation between books, RERA returns, GST outward supplies (GSTR-1), and cash receipts.
2. For each sale, the company produced sale agreements, customer remittance receipts, and possession certificates to demonstrate timing of revenue recognition as per applicable accounting standard.
3. Where differences existed due to stage-wise recognition and advances received, the company provided a schedule reconciling stage percentage to revenue recognized.

Outcome: AO made certain additions for delayed disclosures in two small projects worth ₹15 crore. ITAT later mitigated the additions after accepting the project-wise technical reconciliations and auditors' working papers. The case underscores the importance of aligning tax reporting with regulatory filings and maintaining clear project ledgers.

Case Study C - IT Services Company: TDS Credit Mismatch

Facts: A large IT services provider ('ITCo') received a Section 142(1) notice questioning difference in TDS credits claimed versus Form 26AS and TRACES records. The AO asked for payroll registers, contractor invoices and TDS returns for three preceding years.

Steps taken:

1. ITCo produced employee salary registers, contractor invoices and correction statements filed with TRACES.
2. ITCo's tax team provided a month-wise reconciliation showing timing differences between TDS certificates received and claimed credit in the return.
3. Where certificates were delayed, the company filed necessary corrective returns and produced affidavits explaining delays.

OUTCOME Following submission, AO accepted most claims after minor rectifications. The tax outflow was limited to interest on short claimed credits rather than substantive disallowance.

8. Numerical Illustrations

Numerical Illustration 1 — Interest Disallowance

ABC Ltd reports interest expense of ₹50,00,00,000 (₹50 crore) in its P&L. AO issues Section 142(1) notice asking for loan documentation to support ₹50 crore interest.

Company produces supporting documents for ₹45 crore but lacks documentation for ₹5 crore (records lost due to systems migration).

- AO disallows ₹5 crore.
- Tax consequences (approximate):



- Tax (30% on ₹5 crore) = ₹1.50 crore
- Surcharge (if applicable say 12% of tax) = ₹0.18 crore
- Health & Education Cess (4% on tax + surcharge) ≈ ₹0.0672 crore
- Interest under Section 234A/234B/234C depending upon delays — assume ₹0.10 crore
- Total impact > ₹1.85 crore (plus reputational and compliance costs).

Numerical Illustration 2 — TDS mismatch

XYZ Pvt Ltd claims refunds due to excess TDS credit reflected in books of ₹2 crore but only ₹1.6 crore reflected in Form 26AS. AO issues Section 142(1) notice.

- Company produces bank evidence of TDS remittance and vendor certificates for ₹2 crore, later finds ₹0.4 crore belonged to prior year and should be adjusted.
- Net accepted credit = ₹1.6 crore; ₹0.4 crore disallowed, interest liabilities apply.

9. Annexures: Checklists, Templates & Advanced Annexes

Annexure 1 - Practitioner's Checklist (2–3 page quick reference)

1. Immediate steps on receipt: Date stamp, download portal logs, notify client and engagement partner.
2. Identify the AO, jurisdiction and the assessment year(s) referred.
3. Map each query to required documents and responsible person.
4. Prepare an index and paginated annexures; highlight key pages for AO.
5. Prepare reconciliations (ITR vs audited accounts vs GST vs ROC filings).
6. Prepare brief legal positions with statutory and case law references.
7. Seek extension where required and document the request.
8. Consider witness statements/affidavits for critical factual issues.
9. Obtain certifications from auditors or third party experts where necessary.
10. Maintain proof of submission and chain of custody for documents.
11. If documents are voluminous, prepare sample sets and offer physical inspection.
12. Escalate to senior counsel for potential writ or pre-assessment litigation if notice defective.
13. Post submission: monitor AO queries, prepare for possible assessment or survey.

Annexure 2 - Template: Structured Reply Framework

Covering Letter (on firm's/corporate letterhead):

- Reference to notice (notice number and date).
- Statement of enclosed documents (index with exhibit numbers).
- Short narrative addressing each point raised in the notice (numbered replies matching notice numbering).
- Request for additional time if necessary and offer to produce further documents on inspection.
- Contact details of authorised person for follow-up and verification.

Verification Clause:

- A standard verification clause signed by authorised signatory with name, designation and DIN (if applicable) and date.



Annexure 3 - Procedural Remedies and Writ Options (Summary)

Where a notice under Section 142(1) is materially defective (for instance, not served on the correct legal entity, served beyond limitation, or issued without jurisdiction), taxpayers should consider preliminary steps before resorting to courts:

1. **Administrative remedies:** Object to the notice in writing to the AO and Principal CIT/Pr.CIT, set out reasons, and ask for reconsideration or clarification. Many defects can be cured administratively.
2. **Filing writ petitions:** If administrative remedies are ineffective and the defect is jurisdictional, file a writ before the High Court challenging the legality of the notice. Grounds include non-service, violation of natural justice and lack of jurisdiction.
3. **Stay applications:** For immediate relief, seek stay of assessment or stay of action pending adjudication of the writ. Courts may grant interim relief where irreparable harm is shown.
4. **Judicial timeline and risk:** Writs create delay and may attract increased AO scrutiny. Counsel should present precise, limited grounds and not convert a factual dispute into a constitutional battle unnecessarily.
5. **Costs and practicalities:** Courts generally expect taxpayers to have taken all reasonable administrative steps before filing a writ. A considered cost-benefit analysis is necessary before judicial escalation.

Annexure 4 - Forensic Reconciliation Annex (summary of approach)

When records are inconsistent or gaps are identified, a forensic reconciliation can be decisive. Typical steps:

- Extract core datasets (bank statements, ledger extracts, sales register, purchase register, GSTRs, vendor master reconciliation).
- Use analytical review to identify anomalies (e.g., spike transactions, round amounts, duplicate invoices).
- Source verification: obtain bank confirmations, third party invoices and call-reports.
- Prepare a forensic report describing scope, methodology, findings, limitations and recommendations. Attach exhibits with sample documents.

A high quality forensic annex increases credibility with revenue authorities and the tribunal.

10. Conclusion and Practitioner's Notes

A notice under Section 142(1) is a procedural tool that, if handled well, often resolves issues at the assessment stage without prolonged litigation. The practitioner's role is to: (a) secure procedural fairness for the client; (b) present clear and reconciled evidence; and (c) use legal tools where necessary to protect rights. Documentation, timeliness, and authoritative legal positioning are the keys to success.

References (select):

- Y. Narayana Chetty v. ITO, (1959) 35 ITR 388 (SC).
- M/s Guduthur Bros. v. ITO, (1960) 40 ITR 298 (SC).
- Various tribunal decisions and practitioner commentaries on Section 142(1)/Section 144 procedures.



Tax Audit – Basic Concepts of Business, Profession, Sales and Turnover

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What Amounts Business and Profession:

The question as to what is business and what constitute profession is relevant in this regard. Both the terms have been used in a widely differing manner in different circumstances. Therefore, a distinction between the two sometimes be difficult.

Section 2(13) of the Income Tax Act, 1961, defines a business as including “any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.” The term profession on the other hand, is generally understood as referring to an occupation which involve skill controlled by the intellectual skill to of the operator as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of commodities [CIT Vs. Manmohan Das (1966) 59 ITR 699 (SC)].

In the case of CIT Vs. KK Shah and others (135 ITR 1982) it was laid down that if a doctor husband and his doctor wife were running a nursing home for the person of treating their own patients, such income should be treated as their professional income.

However they were also running on business activity such as running a drug store for selling drugs to the patients or to others, admitting patients and charging fee like room fees it may be considered as business activity and that part of income would be business income. Share brokerage, dealing in shares or securities, running nursing home, clearing and shipping agencies, travel agencies, courier business, advertising agency and insurance agency have been held to be business (Unless otherwise provided for any specific purpose).

A question, which may arise, related to an assessee who carries on business as well as a profession at the same time. For determining whether he is covered by section 44AB or not, the two limits should be applied independently.

The word ‘business’ is one of wide import and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression “business” does not necessarily mean trade or manufacture only - Barendra Prasad Ray v ITO [1981] 129 ITR 295 (SC).

Section 2(36) of the Act defines profession to include vocation. Profession is a word of wide import and includes “vocation” which is only a way of living. – Additional CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All). 4.3 Whether a particular activity can be classified as ‘business’ or ‘profession’ will depend on the facts and circumstances of each case.

The expression “profession” involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale or arrangement for the production or sale of commodities. - CIT v. Ram Kripal Tripathi [1980] 125 ITR 408 (All).



The following have been listed out as professions in section 44AA of the Act:

- (i) legal,
- (ii) medical,
- (iii) engineering or
- (iv) architectural profession or
- (v) the profession of accountancy or
- (vi) technical consultancy or
- (vii) interior decoration.

Further under Rule 6F and other professions notified thereunder (Notifications No. 1620 SO-18(E) dated 12.1.77, No. 9102SO 2675 dated 25.09.1992 and No.116 SO 385(E), dated 4.5.2001), the following can also be considered as a profession:

- (i) Authorised Representative, Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2023) 11
- (ii) Company Secretary,
- (iii) Film Artists/Actors, Cameraman, Director including an assistant director; a music director, including an assistant music director, an art director, including an assistant art director; a dance director, including an assistant dance director; Singer, Story-writer, a screen-play writer, a dialogue writer; editor, lyricist and dress designer,
- (iv) Information Technology. (Attention is invited to Notification No. 890(E)/2000 dated 26-9-2000)

The following activities have been held to be business:

- (i) Advertising agent
- (ii) Clearing, forwarding and shipping agents - CIT v. Jeevanlal Lalloobhai & Co. [1994] 206 ITR 548 (Bom).
- (iii) Couriers
- (iv) Insurance agent
- (v) Nursing home
- (vi) Stock and share broking and dealing in shares and securities - CIT v. Lallubhai Nagardas & Sons [1993] 204 ITR 93 (Bom)
- (vii) Travel agent.

Sales, turnover, gross receipts:

The Income Tax Act does not define the term 'sales' and turnover.

The guidance note issued by the Institute of Chartered Accountants of India (2023) on the subject suggest that:

However, the terms "**sales**", "**turnover**" or "**gross receipts**" are not defined in the Act, and therefore the meaning of the aforesaid terms has to be considered for the applicability of the section. The Central Sales Tax Act, 1956 defines "Turnover" as follows: "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him.



In respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and rules made there under. Further, section 8A(1) of the said Act provides that in determining turnover, deduction of sales tax should be made from the aggregate of sales price.

The Central Goods and Services Act, defines 'Turnover' as under: Section 2(112) 'turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and Inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The term "**Turnover**" has been defined under Section 2(91) of the Companies Act, 2013 as follows:

"2(91) turnover means gross amount of revenue recognized in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;"

In the "Glossary of Terms used in Financial Statements" published by the Institute, the expression "**Sales Turnover**" has been defined as under:

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

The term '**gross turnover**' and '**net turnover**' (or '**gross sales**' and '**net sales**') are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts".

The term "turnover" is a commercial term and it should be construed in accordance with the method of accounting regularly employed by the company. The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If GST or any other tax is included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover.

Trade discounts can be deducted from sales but not the commission allowed to third parties. If, however, GST or any other indirect tax recovered are credited separately to GST or other tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover. However, sales of scrap shown separately under the heading 'miscellaneous income' will have to be included in turnover.

Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides 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.

The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts in the light of the above discussion. 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 other 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/s.
- (vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.
- (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.

CIRCULAR NO. 452, DATED 17.3.1986:

Subject: Section 44AB of the Income-tax Act, 1961- Clarification regarding applicability in the cases of Commission Agents, arathias etc.

1. Section 44AB of the Income-tax Act, 1961, 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 lakhs (substituted by Rs. 1 crore by Finance Act, 2012 w.e.f. A.Y. 2013-14) in any previous year relevant to the assessment year commencing on 1.4.1985 or any subsequent assessment year.
2. 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 of the Income-tax Act, 1961.
3. 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 contract 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 an agent is acting only as an agent or also as a principal.
4. Board are 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 Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2023) 306 arhatia. 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 arhatia and a pacca arhatia:



- a. A kachha arhatia acts only as an agent of his constituent and never acts as a principal. A pacca arhatia, 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 a principal as regards his constituent.
 - b. A kachha arhatia brings a privity of contract between his constituent and the third party so that each becomes liable to the other. The pacca arhatia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.
 - c. Though the kachha arhatia 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 arhatia, 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.
 - d. The remuneration of kachha arhatia 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 arhatia.
 - e. The kachha arhatia, unlike the pacca arhatia does not have any dominion over the goods.
 - f. The kachha arhatia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a pacca arhatia has a personal interest of his own when he enters into a transaction. Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2023)
 - g. In the event of any loss, the kachha arhatia is entitled to be indemnified by his principal as is not the case with pacca arhatia.
5. The above distinction between a kachha arhatia and pacca arhatia may also be relevant for determining the applicability of Section 44AB in cases of other type of agents. In the case of agents whose position is similar to that of kachha arhatia, 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 arhatia, 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 of the Income-tax Act.

How turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined:

(a) Speculative transaction:

A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.

Thus, 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. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such a transaction, the difference amount is 'turnover'.

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



Further, amount paid on account of negative difference 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.

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 vide section 44AB.

(b) Derivatives, futures and options:

Such transactions are completed without actual delivery of shares or securities or commodities etc. These are squared up by receipts/payments of differences.

The contract notes are issued for the full value of the underlined shares or securities or commodities etc. purchased or sold but entries in the books of account are made only for the differences.

The transactions may be squared up any time on or before the striking date. The buyer of the option pays the premia.

The turnover in such types of transactions is to be determined as follows (This is only and only for the purpose of computing 'turnover' for tax audit):

- (i) The total of favourable and unfavourable differences in case of squared off transactions shall be taken as turnover.
- (ii) Premium received on sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, then such net profit should not be separately included.
- (iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.
- (iv) In case of an open position as at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been actually squared off.
- (v) In case of delivery based settlement in a derivatives transaction, the difference between the trade price and the settlement price shall be considered as turnover. Further, in the hands of the transferor of underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade.

(c) Delivery based transactions:

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.

Further, an issue may arise whether such transactions of purchase or sale of stocks and shares undertaken by the assessee are in the course of business or as investment. The answer to this issue will depend on the facts and circumstances of each case taking into consideration the nature of the transaction, frequency and volume of transactions etc.



For this, attention is invited to the following judgments where this issue has been considered.

- (i) CIT v. P.K.N. and Co Ltd (1966) 60 ITR 65 (SC)
- (ii) Saroj Kumar Mazumdar v. CIT (1959) 37 ITR 242 (SC)
- (iii) CIT v. Sulej Cotton Mills Supply Agency Ltd. (1975) 100 ITR 706 (SC)
- (iv) G. Venkataswami Naidu & Co. v. CIT (1959) 35 ITR 594 (SC).

Ref. Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2023)

ON THE LIGHTER SIDE OF LIFE

Now have a laugh at our expense...

The Adventures of a Chartered Accountant

Meet **CA Arjun**, a hero armed not with a sword, but with a calculator, a laptop full of Excel sheets, and the eternal hope that his trial balance will balance someday.

His mornings begin not with yoga or meditation, but with a deep breath before opening client emails titled **“Urgent - Please Check”**.

By noon, he’s already conquered three deadlines, five balance mismatches, and one mysterious rounding-off difference of ₹1 that refuses to disappear.

During lunch, Arjun’s idea of a **“balanced diet”** is having both tea and coffee while reviewing depreciation schedules.

Evenings are for **“socializing”** - which usually means discussing GST updates with fellow CAs

Source: Anonymous



Glimpses of Events

“SEMINAR ON AUDIT OF NBFC”





“CAMPUS PLACEMENT PROGAMME”





“BRANCH LEVEL CA STUDENTS NATIONAL TALENT SEARCH 2025”



