

Time-limit specified for bringing export proceeds into India [Sec. 10AA]

R2.19 Section 10AA, *inter alia*, provides 15-year tax holiday to units established in a SEZ which begin to manufacture or produce articles or things or provide any services on or after April 1, 2005. The deduction is, however, available for units that begin operations before April 1, 2020 (extended to March 31, 2021 in some cases).

- **AMENDMENT PERTAINING TO FILING OF RETURN OF INCOME** - Section 10AA does not provide for the condition to file return before due date provided under section 139(1) for claiming deduction as is provided for similar deductions. Section 143(1), however, provides that the deduction under section 10AA shall be eligible if such return is filed before the due date. To align the two provisions, section 10AA has been amended (with effect from the assessment year 2024-25) to provide that no deduction under section 10AA shall be allowed to an assessee who does not furnish a return of income on or before the due date specified under section 139(1).

- **AMENDMENT PERTAINING TO THE TIME-LIMIT FOR REMITTANCE OF FOREIGN EXCHANGE** - There is no time-limit prescribed for timely remittance of the export proceeds from sale of goods or provision of services under section 10AA as is provided under other similar export related deductions under the Act. To provide time-limit for remittance, section 10AA has been amended (with effect from the assessment year 2024-25). After the amendment, deduction under section 10AA shall be available, if the proceeds from sale of goods (or provision of services) is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of 6 months from the end of the previous year (or within such further period as may be allowed by the competent authority). A few more amendments are as follows –

1. The export proceeds from sale of goods (or provision of services) shall be deemed to have been received in India where such proceeds are credited to a separate account maintained by the assessee with any bank outside India with the approval of RBI.

2. Further, section 155(11A) has been amended to allow the Assessing Officer to amend the assessment order later where the export earning is realized in India after the permitted period. The Assessing Officer can amend the assessment order within 4 years from the end of the previous year in which such income is received in India.

Amendment to sections 11, 12A and 12AB

R2.20 See para R2.12.

Amendment to section 17

R2.21 The following amendments have been made in the scheme of section 17 (with effect from the assessment year 2024-25) –

- *Provisions pertaining to valuation of residential accommodation provided to employees [Sec. 17(2)]* - The methodology to compute the value of rent-free accommodation is prescribed in rule 3, while the methodology to compute the value of any concession in the matter of rent provided to employees is prescribed in the *Explanations* to section 17(2).

Section 17(2) has been amended so as to provide that the method of computation of perquisite in respect of rent-free accommodation as well as concession in the matter of rent, shall be computed in such manner as may be provided by rules. Moreover, it has been clarified that accommodation shall be deemed to have been provided at a concessional rate if the value of accommodation computed in such manner (as may be provided by rules) exceeds the rent recoverable from employees.

- *Government's contribution to Agniveer Corpus Fund* - Sub-clause (ix) has been inserted in section 17(1) to provide that the contribution made by the Central Government in the previous year to the Agniveer Corpus Fund account of an individual shall be included in the income of the assessee under the head "Salaries". The whole of such contribution shall be deducted under section 80CCH(2).

Benefits or perquisites under section 28(iv) maybe in cash or kind

R2.22 Section 28(iv) provides that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to income-tax under the head "Profits and gains of business or profession".

- *Board's clarifications* - Section 28(iv) was inserted by the Finance Act, 1964. The Board (*vide* its Circular No. 20D, dated July 7, 1964) made the following observations pertaining to the scope of section 28(iv) –

"83. The effect of the abovementioned amendment is that in respect of an assessment for the assessment year 1964-65 and subsequent years, the value of any benefit or amenity, in cash or kind, arising

to an assessee from his business or the exercise of his profession, e.g., the value of rent-free residential accommodation secured by an assessee from a company in consideration of the professional services as a lawyer rendered by him to that company, will be assessable in the hands of the assessee as his income under the head 'Profits and gains of business or profession'."

- **Ruling of the Apex Court** - In order to invoke the provisions of section 28(iv), the benefit or perquisite arising from business/profession shall be in the form of benefit/perquisite other than in the shape of money – *CIT v. Mahindra & Mahindra Ltd.* [2018] 93 taxmann.com 32 (SC). Waiver of loan is in the form of cash/money. It cannot be taxed under section 28.

- **AMENDMENT** - Section 28(iv) has been amended (with effect from the assessment year 2024-25) to clarify that these provisions shall apply whether benefit or perquisite is convertible into money or not. In other words, after the amendment these provisions also apply to cases where benefit or perquisite is provided in cash or in kind or partly in cash or partly in kind. This amendment will supersede the aforesaid ruling of the Supreme Court in the case of *Mahindra & Mahindra Ltd.* Cash benefits or perquisites, arising from business or exercises of profession, which were not considered as taxable after the ruling of the Supreme Court, may become taxable under the amended provisions of section 28(iv).

Relaxation in the conditions to avail deduction pertaining to preliminary expenses [Sec. 35D]

R2.23 Section 35D provides for amortization of certain preliminary expenses incurred by an Indian company or a person resident in India. These expenses are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit.

- **Approved concerns** - Expenses which can be amortised under section 35D include expenditure in connection with (i) preparation of feasibility report, (ii) preparation of project report, (iii) conducting marketing survey or any other survey necessary for the business of the assessee; and (iv) engineering services related to the business of the assessee. However, the work in connection with the preparation of feasibility report (or the project report or the conducting of market survey or of any other survey or the engineering services) would need to be carried out either by the assessee himself/itself or by a concern which is approved by the Board.

- **AMENDMENT** - In order to ease the process of claiming amortization of these preliminary expenses, section 35D has been amended (with effect from the assessment year 2024-25) to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

Consequences of making late payment to micro and small enterprises [Sec. 43B]

R2.24 Section 43B is applicable if an assessee maintains books of account on mercantile basis. This section provides for certain deductions to be allowed only in the year in which payment is actually made (in other words, deductions covered by section 43B are allowed on payment basis, even if the assessee maintains books of account on mercantile basis). However, there is an exception. If payment is made on or before the due date of submission of return of income [as given by section 139(1)], deduction is allowed on accrual basis.

R2.24-1 Amendment - In order to promote timely payments to micro and small enterprises, the above provisions have been amended (with effect from the assessment year 2024-25) to include payments made to such enterprises within the ambit of section 43B. Clause (h) has been inserted in section 43B and proviso to section 43B has been amended. The impact of these amendments is narrated below –

- **Meaning of micro and small enterprises** - Any enterprise (whether sole proprietorship, HUF, AOP, co-operative society, partnership firm, company or undertaking, by whatever name called) can be termed as “micro enterprise” or “small enterprise” on the basis of investment in plant and machinery [as given under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006]. These limits are given below –

Micro enterprise - Investment in (a) plant and machinery does not exceed Rs. 25 lakh (in the case of industrial undertaking) or (b) equipment does not exceed Rs. 10 lakh (in the case of enterprise engaged in providing services).

Small enterprise - Investment in (a) plant and machinery exceeds Rs. 25 lakh but does not exceed Rs. 5 crore (in the case of industrial undertaking) or (b) equipment exceeds Rs. 10 lakh but does not exceed Rs. 2 crore (in the case of enterprise engaged in providing services).

In calculating the aforesaid investment ceilings, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, shall be excluded.

• *Due date of payment specified under MSMED Act, 2006* - Where any person purchases goods/services from a micro/small enterprise, the payment shall be made before the date agreed upon between him and supplier in writing. In no case the period agreed upon between the supplier and the buyer in writing shall exceed 45 days. If, however, there is no such agreement, the payment shall be made within 15 days of acceptance/deemed acceptance of goods/services.

• *Consequences of amendment to section 43B* - These are given below –

<i>Different situations</i>	<i>In which year deduction is to be allowed</i>
<i>Beyond time-limit</i> - If payment is made by an assessee to a micro or small enterprise beyond the time-limit specified under MSMED Act	Such payment will be deductible in the year making payment
<i>Within the time-limit</i> - If payment is made by an assessee to a micro or small enterprise within the time-limit specified under MSMED Act	Such payment will be deductible on accrual basis (if assessee maintains books of account on mercantile basis)

R2.24-1E1 X Ltd. purchases raw material on credit from Y Ltd. (value of invoice : Rs. 6,40,000, date of invoice : February 1, 2024, date of acceptance of goods : February 1, 2024). Y Ltd. is a manufacturing company and its investment in plant and machinery is Rs. 3 crore. Generally, payment is made by X Ltd. within 30 days (however, there is no written agreement about the time of payment). Discuss in which previous year X Ltd. will be able to claim deduction, if payment is made on –

- February 28, 2024, or
- March 31, 2024, or
- April 10, 2024.

Y Ltd. is a small enterprise. There is no agreement about the time of payment. Consequently, payment should be made within 15 days of acceptance of goods as per MSMED Act (*i.e.*, on or before February 16, 2024). Deduction will be available to X Ltd. as follows –

<i>Due date as per MSMED Act</i>	<i>Date of payment</i>	<i>Is it late payment and section 43B is applicable</i>	<i>Basis of deduction</i>	<i>Previous year in which deductible</i>
February 16, 2024	February 28, 2024	Yes	Payment basis	2023-24
February 16, 2024	March 31, 2024	Yes	Payment basis	2023-24
February 16, 2024	April 10, 2024	Yes	Payment basis	2024-25

R2.24-1E2 Z Ltd. purchases goods (invoice value : Rs. 11,20,000) on credit from A Ltd. (a micro/small enterprise as per MSMED Act). Date of purchase is March 2, 2024. As per written agreement with A, Z Ltd. has to make payment on or before April 30, 2024. However, the payment is made as follows –

- Rs. 1,00,000 paid on March 30, 2024,
- Rs. 2,00,000 paid on April 6, 2024,
- Rs. 4,00,000 paid on April 15, 2024 and
- Rs. 4,20,000 paid on May 6, 2024.

Date of acceptance of goods is March 2, 2024. Due date for payment as per MSMED Act is April 16, 2024 (*i.e.*, the agreed date of payment or 45 days, whichever is earlier). Deduction will be available to Z Ltd. as follows –

<i>Payment in Rs./date of payment</i>	<i>Due date as per MSMED Act</i>	<i>Is it late payment and section 43B is applicable</i>	<i>Basis of deduction</i>	<i>Previous year in which deductible</i>
1,00,000/March 30, 2024	April 16, 2024	No	Accrual basis	2023-24
2,00,000/April 6, 2024	April 16, 2024	No	Accrual basis	2023-24
4,00,000/April 15, 2024	April 16, 2024	No	Accrual basis	2023-24
4,20,000/May 6, 2024	April 16, 2024	Yes	Payment basis	2024-25

Non-Banking Financial Company (NBFC) categorization [Secs. 43B and 43D]

R2.25 Section 43B provides, *inter alia*, that any sum payable by an assessee as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company shall be allowed as deduction on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

Section 43D provides, *inter alia*, for special provision in case of income of deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Interest income in relation to certain categories of bad or doubtful debts received by such deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

● **AMENDMENT** - Section 43B and section 43D currently use two erstwhile categories of NBFC (namely, Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company). Such classification for non-banking financial companies is no longer followed by RBI for the purpose of asset classification.

In view of the above, sections 43B and 43D have been amended (with effect from the assessment year 2024-25) to substitute the words, “a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company”, for the words “such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf”.

Increasing threshold limits for presumptive taxation schemes [Secs. 44AB, 44AD and 44ADA]

R2.26 Sections 44AD and 44ADA provide for a presumptive income scheme for small businesses and small professionals as given below –

Section	Who is eligible	Threshold limits	Income under presumptive scheme
44AD	Resident assessee (<i>i.e.</i> , an individual, HUF or a partnership firm other than LLP) carrying on eligible business and having a turnover or gross receipt not exceeding the threshold limit given in the next column	Rs. 2 crore	8 per cent or 6 per cent ⁵ of the turnover or gross receipts is deemed to be business income
44ADA	Resident assessee (<i>i.e.</i> , an individual, or partnership firm other than LLP) who is engaged in any profession referred to in section 44AA(1) and whose total gross receipts do not exceed the threshold limit given in the next column	Rs. 50 lakh	50 per cent of the gross receipts is deemed to be income from profession

In the aforesaid cases, if assessee has claimed to have earned higher sum than 8 per cent or 6 per cent⁵ or 50 per cent, then that higher sum is taxable.

● **Tax audit under section 44AB** - Every person carrying on business/profession is required to get his accounts audited, if his total sales, turnover or gross receipts exceeds Rs. 1 crore (in the case of business) or Rs. 50 lakh (in the case of profession) in any previous year. By an amendment made by the Finance Act, 2021, the limit of Rs. 1 crore was raised to Rs. 10 crore where at least 95 per cent of receipts/payments are in non-cash mode.

● **AMENDMENT TO SECTIONS 44AD AND 44ADA** - In order to ease compliance and to promote non-cash transactions, the threshold limits under sections 44AD and 44ADA has been enhanced (with effect from the assessment year 2024-25) as follows –

Section 44AD - Where in the case of an eligible business, the amount (or aggregate of the amounts) received during the previous year, in cash, does not exceed 5 per cent of the total turnover or gross receipts, the threshold limit of Rs. 3 crore will apply.

Section 44ADA - Where in the case of an eligible profession, the amount (or aggregate of the amounts) received during the previous year, in cash, does not exceed 5 per cent of the total gross receipts, the threshold limit of Rs. 75 lakh will apply.

In the aforesaid cases, the receipt by a cheque/draft, which is not account payee, shall be deemed to be the receipt in cash.

● **AMENDMENT TO SECTION 44AB** - Section 44AB has been amended (with effect from the assessment year 2024-25). After the amendment, the provisions of section 44AB shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of section 44AD(1)/44ADA(1).

R2.26-E1 X is a resident individual [or a resident HUF or a resident firm (other than LLP)]. He wants to know –

5. 6 per cent is applicable in respect of total turnover (or gross receipts) received by the assessee by an account payee cheque/draft or received through prescribed electronic mode on or before the due date of submission of return of income under section 139(1).

- Whether (or not) the benefit of presumptive income scheme under section 44AD is available for the assessment year 2023-24/2024-25 (his turnover of the relevant previous year is given in the table below).
- Whether (or not) tax audit is required under section 44AB.

Different situations	Turnover of the assessee falls in the range given below	Whether section 44AD is applicable	Whether section 44AB tax audit is required	Notes
Situation 1	0 – Rs. 1 crore	Yes	No	See Note 1
Situation 2	Rs. 1 crore – Rs. 2 crore	Yes	Not required [if income is declared under section 44AD(1)]	See Note 2
Situation 3	Rs. 2 crore – Rs. 3 crore (AY 2024-25)	Yes (if a few conditions are satisfied)	Not required [if income is declared under section 44AD(1)]	See Note 3
Situation 4	Rs. 2 crore – Rs. 10 crore (not being covered by Situation 3)	No	Not required (if a few conditions are satisfied)	See Note 4
Situation 5	Above Rs. 10 crore	No	Required	See Note 5

Notes –

1. In *Situation 1*, the assessee can declare his business income as per section 44AD(1) [i.e., 8 per cent of turnover (6 per cent of turnover if amount is received by account payee cheque/draft/prescribed electronic mode) or more]. The assessee can even declare lower income. Tax audit under section 44AB is not required (as turnover does not exceed Rs. 1 crore). Tax audit under section 44AB is not required even if declared business income is lower than 8 per cent/6 per cent of turnover [unless the assessee falls under section 44AD(4)].

2. In *Situation 2*, tax audit under section 44AB is not required if declared business income is 8 per cent/6 per cent of turnover or more. The assessee can declare lower income. If declared business income is lower than 8 per cent/6 per cent of turnover, tax audit under section 44AB will be required only if the assessee falls in any one (or more) of the following 3 cases –

Case 1 - If the assessee falls under section 44AD(4).

Case 2 - If aggregate of all receipts in cash during the previous year exceeds 5 per cent of such receipt.

Case 3 - If aggregate of all payments in cash during the previous year exceeds 5 per cent of such payment.

3. *Situation 3* is applicable only for the assessment year 2024-25 (or any subsequent assessment year). Presumptive income scheme of section 44AD is applicable only if the amount (or aggregate of the amounts) received during the previous year, in cash, does not exceed 5 per cent of the total turnover or gross receipts. In such a situation, he can declare his business income on estimated basis (i.e., 8 per cent/6 per cent of turnover or more) and the provisions of tax audit under section 44AB will not be applicable. He can declare lower income [but then tax audit provisions of section 44AB will be applicable if the assessee falls in any one (or more) of the 3 cases given above].

4. In *Situation 4*, the assessee cannot avail the benefit of presumptive computation of income scheme under section 44AD. Tax audit under section 44AB is not required if the following two conditions are satisfied –

- aggregate of all receipts in cash during the previous year does not exceed 5 per cent of such receipt; and
 - aggregate of all payments in cash during the previous year does not exceed 5 per cent of such payment.
- For this purposes, payment/receipt by a cheque/draft, which is not account payee, shall be deemed to be payment/receipt in cash.

If, however, the assessee satisfies one or none of the aforesaid two conditions, he will have to get his books of account audited for the purpose of section 44AB.

5. In *Situation 5*, the assessee cannot avail the benefit of presumptive computation of income scheme under section 44AD. Tax audit under section 44AB is required (as the turnover exceeds Rs. 10 crore).

R2.26-E2 X is a resident individual (or a resident firm other than LLP). He is engaged in a profession referred to in section 44AA(1). He wants to know –

- Whether (or not) the benefit of presumptive income scheme under section 44ADA is available for the assessment year 2023-24/2024-25 (his gross receipts from the profession of the relevant previous year is given in the table below).
- Whether (or not) tax audit is required under section 44AB.

Different situations	Gross receipts of the assessee fall in the range given below	Whether section 44ADA is applicable	Whether section 44AB tax audit is required	Notes
Situation 1	0 – Rs. 50 lakh	Yes	No	See Note 1
Situation 2	Rs. 50 lakh – Rs. 75 lakh (AY 2024-25)	Yes (if a few conditions are satisfied)	Not required [if income is declared under section 44ADA(1)]	See Note 2
Situation 3	Above Rs. 50 lakh (other than Situation 2)	No	Required	See Note 3

Notes –

1. In *Situation 1*, the assessee can declare his income from profession as per section 44ADA(1) (*i.e.*, 50 per cent of the total gross receipts in the previous year on account of his profession). He can declare even higher income. Tax audit under section 44AB is not required. If he declares lower income from profession (and his total income exceeds the exemption limit), then he will have to maintain books of account as per section 44AA and get his books of account audited under section 44AB (irrespective of quantum of gross receipts).

2. *Situation 2* is applicable only for the assessment year 2024-25 (or any subsequent assessment year). Presumptive income scheme of section 44ADA is applicable only if the amount (or aggregate of the amounts) received during the previous year, in cash, does not exceed 5 per cent of the total gross receipts. In such a situation, he can declare his income from profession on estimated basis (*i.e.*, 50 per cent of total gross receipts or more) and the provisions of tax audit under section 44AB will not be applicable. He can declare lower income (but then compulsory books of account provisions of section 44AA and tax audit provisions of section 44AB will be applicable).

3. In *Situation 3*, the assessee cannot avail the benefit of presumptive computation of income scheme under section 44ADA. Tax audit under section 44AB is required.

R2.26-E3 X, a resident individual, gives the following information taken from his accounting records (date of commencement of business : October 15, 2022). He wants to know whether (or not) income can be declared on estimated basis within the parameters of section 44AD for the assessment year 2024-25. Also discuss the requirement of tax audit for the assessment year 2024-25.

(Rs. in lakh)

Date	Transaction	Invoice value	Cash	Bank transfer
October 20, 2022	Invoice No. 1	60	–	–
March 31, 2023	Payment received (Invoice No. 1)	–	2	46
	Total (PY 2022-23)	60	2	46
April 1, 2023	Payment received (Invoice No. 1)	–	–	12
April 6, 2023	Invoice No. 2	48	–	–
April 8, 2023	Invoice No. 3	36	–	–
May 1, 2023	Payment received (Invoice Nos. 2 and 3)	–	2	58
June 1, 2023	Payment received (Invoice Nos. 2 and 3)	–	–	10
June 15, 2023	Payment received (Invoice Nos. 2 and 3)	–	2	12
June 30, 2023	Advance received (Invoice No. 4)	–	1	14
July 18, 2023	Invoice No. 4	15	–	–
July 31, 2023	Invoice No. 5	14	–	–
August 6, 2023	Invoice No. 6	17	–	–
September 1, 2023	Payment received (Invoice No. 5)	–	2	12
September 25, 2023	Invoice No. 7	23	–	–
October 5, 2023	Payment received (Invoice No. 6)	–	2	0
October 28, 2023	Invoice No. 8	9	–	–
December 18, 2023	Invoice No. 9	7	–	–
January 6, 2024	Payment received (Invoice No. 8)	–	0	9
February 8, 2024	Invoice No. 10	34	–	–
March 25, 2024	Invoice No. 11	18	–	–
March 28, 2024	Gift received from a friend	–	1	–
March 31, 2024	Advance received (Invoice No. 12)	–	2	10
	Total (PY 2023-24)	221	12	137

Date	Transaction	Invoice value	Cash	Bank transfer
April 20, 2024	Payment received (Invoice No. 6)	-	-	15
May 18, 2024	Payment received (Invoice No. 7)	-	2	21
June 15, 2024	Payment received (Invoice No. 9)	-	2	5
July 31, 2024	Payment received (Invoice No. 10)	-	2	32
November 15, 2024	Payment received (Invoice No. 11)	-	2	16
December 30, 2024	Invoice No. 12	12	-	-

• Total turnover of the previous year 2023-24 is Rs. 2,21,00,000. Amount received in cash pertaining to business activities is Rs. 11,00,000 (total cash received : Rs. 12,00,000 – personal gift : Rs. 1,00,000). Business receipts (in cash) during the previous year 2023-24 does not exceed 5% of the turnover (*i.e.*, 5% of Rs. 2,21,00,000 which comes to Rs. 11,05,000). Consequently, under the amended provisions, X can declare his income within the parameters of section 44AD(1). Tax audit under section 44AB is not required if income declared is not less than the presumptive income as per section 44AD(1).

Averting misuse of presumptive schemes under section 44BB/44BBB

R2.27 Section 44BB provides for presumptive scheme in the case of a non-resident who is engaged in the business of providing services or facilities in connection with or supplying plant and machinery on hire used (or to be used) in the prospecting for (or extraction or production of) mineral oils. Under the scheme, a sum equal to 10 per cent of the aggregate of the amounts [as narrated in section 44BB(2)] is deemed to be business income.

Section 44BBB provides for presumptive scheme in the case of a non-resident foreign company who is engaged in the business of civil construction (or the business of erection of plant or machinery or testing or commissioning thereof), in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to 10 per cent of the amount paid or payable (whether in or out of India) to the said assessee on account of the aforesaid business shall be deemed to be business income.

Under the aforesaid sections, an assessee can declare lower profit than the amount specified above. In such a case –

- the assessee will have to maintain books of account under section 44AA(2);
 - the assessee will get his books of account audited under section 44AB (irrespective of turnover); and
 - the Assessing Officer will complete the assessment under section 143(3).
- *Misuse of presumptive schemes* - As there is no check, a taxpayer can opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when the assessee has loss, it can claim actual loss as per the books of account and carry it forward. In a year when it has higher profits, it can use presumptive scheme to restrict the profit to 10 per cent and set off the brought forward losses from earlier years. Logically, there is no justification for setting off of losses (computed as per books of account) with income computed on presumptive basis.
 - **AMENDMENT** - To avoid such misuse, sections 44BB and 44BBB have been amended (with effect from the assessment year 2024-25) to provide that [notwithstanding anything contained in section 32(2)/72(1)] where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.

Amendment to section 45(5A)

R2.28 Section 45(5A), *inter alia*, provide that capital gain arising to an individual/HUF from the transfer of land/building under a joint development agreement (JDA), shall be chargeable to tax in the year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, for computing capital gain, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in “cash”.

- *When consideration is payable by cheque/draft* - One can infer that any amount of consideration which is received in a mode other than cash (*i.e.*, cheque/draft, or electronic payment) would not be included in the consideration for the purpose of computing capital gains chargeable to tax under section 45(5A). It appears that it is not intention of law as is evident from the provisions of section 194-IC. Under Section 194-IC, TDS is required [in cases covered by section 45(5A)] regardless of the fact whether consideration payable is in cash or by way of issue of a cheque or draft or any other mode.

● AMENDMENT - Section 45(5A) has been amended (with effect from the assessment year 2024-25) to provide that the full value of consideration shall be taken as the stamp duty value of his share (*i.e.*, the share of transferor under joint development agreement) as increased by any consideration received in cash or by a cheque or draft or by any other mode.

Amendment to section 47

R2.29 The following amendments have been made in the scheme of section 47 (relating to transactions not regarded as transfers for the purpose of calculating capital gain under section 45) –

R2.29-1 Relocation - *Explanation (b)* to section 47(*viia*d) defines the term “relocation” as transfer of assets of the original fund (or of its wholly owned special purpose vehicle) to a resultant fund on or before March 31, 2023, where consideration for such transfer is discharged in the form of share (or unit or interest) in the resulting fund in the manner specified therein.

● AMENDMENTS - The following amendments have been made with effect from the assessment year 2023-24 –

1. The definition of “original fund” has been amended to include within its purview –

- An investment vehicle, in which Abu Dhabi Investment Authority is the direct or indirect sole shareholder or unitholder or beneficiary or interest holder and such investment vehicle is wholly owned and controlled, directly or indirectly, by the Abu Dhabi Investment Authority or the Government of Abu Dhabi.
- A fund notified by the Central Government.

2. The date for transfer of assets of the original fund (or of its wholly owned special purpose vehicle) to a resultant fund in case of relocation has been extended from March 31, 2023 to March 31, 2025.

3. Further, the *Explanation (c)(i)* to section 47(*viia*d) has been amended to give reference of the International Financial Services Centres Authority (Fund Management) Regulations, 2022 in the definition of “resultant fund”.

R2.29-2 Conversion of gold into electronic gold receipt - See para R2.32.

R2.29-3 Transfer of interest in a joint venture [Sec. 47(xx)] - Clause (xx) has been inserted in section 47 (with effect from the assessment year 2024-25). By virtue of this amendment, any transfer of a capital asset (being an interest in a joint venture held by a public sector company) in exchange of shares in a company incorporated outside India by a foreign Government, will not be treated as “transfer” for the purpose of computation of capital gain under section 45. “Joint venture” shall mean a business entity, as may be notified by the Central Government.

● *Cost of acquisition of aforesaid shares [Sec. 49(2AI)]* - Section 49(2AI) has been inserted (with effect from the assessment year 2023-24). It provides that where the capital asset [being shares as referred to in section 47(xx)] became the property of the assessee, the cost of acquisition of such asset shall be deemed to be the cost of acquisition to the assessee of the interest in the joint venture.

Interest on borrowed capital - Not to be part of cost of acquisition in certain cases [Sec. 48]

R2.30 Section 48, *inter alia*, provides that the income chargeable under the head “Capital gains” shall be computed, by deducting the cost of acquisition/cost of improvement from the full value of the consideration received or accruing as a result of the transfer of the capital asset. Interest on capital borrowed for the purpose of financing acquisition, construction/reconstruction/renewal of house property is deductible under section 24(b).

One can have double deduction of interest paid on borrowed capital for acquiring (or renewing or reconstructing, etc.) a property. Firstly, it is claimed in the form of deduction under section 24(b) from the income from house property. Secondly, while computing capital gains on transfer of such property the same interest also forms a part of cost of acquisition/cost of improvement under section 48 – *CIT v. C. Ramabrahmam* [2012] 27 taxmann.com 104 (Chennai).

● AMENDMENT - In order to prevent this double deduction, a proviso has been inserted in section 48(*ii*) (with effect from the assessment year 2024-25) to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed as deduction under section 24 or Chapter VIA.

Cost of acquisition of a unit of business trust [Explanations 1 and 2 to section 48(ii)]

R2.31 section 48(*ii*) has been amended (with effect from the assessment year 2024-25) to clarify that the cost of acquisition of a unit of a business trust shall be reduced by any sum received by a unitholder from the business trust with respect to such unit and which is not in the nature of income as referred to in section 10(23FC)/(23FCA) and which is not chargeable to tax under section 56(2)(*xii*)/115UA(2).