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Niceties of Presumptive Taxation – Section 44AD & 44ADA

Index

- Section 44AD
- Section 44ADA
- Some issues

44AD – Presumptive income from business

- Upto 31 March, 2010 the Chapter Profit & Gains of Small business on Presumptive Basis was having majorly 3 sections for Indian entities
 - Section 44AD civil construction
 - Section 44AE Transporters
 - Section 44AF Retail Traders
- From 1 April 2010 – FM Mr. Pranab Mukharjee has kept the last two intact and has amended the first section i.e. 44 AD along with 5 sub sections to facilitate the business operations of small taxpayers
- Earlier this section was extended to civil constructions only but now this section has been extended to all small businesses
- Apparently the section 44AD is very straightforward, but has lots of implications on the taxpayers

44AD – Presumptive income from business

- Small businesses to comply with the taxation provisions without consuming much time and resources
- To reduce the compliance cost and administrative burden
- Expand the scope to all small businesses
- To encourage the small businesses

44AD – Presumptive income from business

- Section 44AD(1) provides as under

*“Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an **eligible assessee** engaged in an **eligible business** a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum **claimed to have been earned** by the eligible assessee, **shall be deemed** to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.*

Presumptive Income from Business

- Eligible Assessee carrying on eligible business.
- PGBP =
8% of turnover/gross receipts; or
higher sum as declared by the assessee in the return of income



Presumptive Income from Business

- Proviso inserted in Section 44AD(1):
- **PGBP = 6% of turnover/gross receipts which is received by account payee cheque etc. during the p.y. or before the due date u/s 139(1)**

So now,

8% for cash sales

6% for digital payments

Records to be kept to bifurcate turnover between cash and digital payments.

- **Relevance of method of accounting**

Presumptive Income from Business

The provisions of this section shall not apply to—

1. a person carrying on profession as referred to in Section 44AA(1);
2. a person earning income in the nature of commission or brokerage; or
3. a person carrying on any agency business.

44AD – Presumptive income from business

- Eligible Assessee
- Eligible Business
- Total Turnover / Gross Receipts
- Claimed to have been earned

Eligible Assessee

- Eligible Assessee
 - A Resident individual
 - A Resident HUF
 - A Resident Partnership Firm (NOT BEING A LLP)
 - LLP as defined under LLP Act, 2008
- Additional Criteria
 - The assessee has not claimed any deduction under Sec 10A, 10AA, 10B, 10BA, 80HH to 80RRB (income based deduction) in the relevant assessment year

WHO ARE ALL NOT COVERED UNDER SEC. 44AD ?

- Individual who is not resident
- HUF who is not Resident
- Association of Person
- Firm having non resident Status
- A local Authority
- A co operative Society
- Limited Liability Partnership both Indian as well as Foreign
- Companies both Domestic and Foreign company
- Every Artificial Juridical Person
- Individual/HUF/Firms claiming deduction under chapter III of the Act i.e. Section 10A, 10AA, 10B, 10BA relating to units located in FREE Trade Zone, Hardware Software Technology Park etc
- Individual/HUF/Firms claiming deduction under Chapter VIA Part C (deductions in respect of certain Incomes) i.e. Section 80H to 80TT

Eligible Business

- The assessee should be engaged in any business (whether it is retail trading or wholesale trading or civil construction or any other business)
- However, the following persons are not eligible to avail any benefit u/s. 44AD
 - A person carrying on profession as referred to in Sec 44 AA(1)
 - A person earning income in the nature of commission or brokerage
 - A person carrying on any agency business or
 - A person who is in the business of plying, hiring or leasing goods carriages
- **Turnover Criteria**
- Total Turnover / Gross Receipt in the FY of the eligible business should not exceed Rs.1 Crores (Rs.2 Crores from the AY 2017-18)

Inclusion in Turnover

- GST, Sales Tax, Excise Duty, Cess and other levy
- Sales of unusable empties and packages
- Service charges charged for delivery

Limit of Turnover

- It includes all the eligible businesses carried on by an eligible assessee during the previous year and the Rs.1 Crores (Rs. 2 Crores from the AY 2017-18) will be for all of them cumulatively
- In other words, if an assessee has multiple eligible businesses, then the turnover of those businesses shall be Clubbed to determine the limit

Common points

- Deductions u/s 30 to 38 deemed to be allowed
- WDV to be calculated as if depreciation actually allowed
- For Sec. 44AD and 44ADA – provisions of S.44AA / 44AB applicable only if assessee claims lower income *and his total income exceeds the basic exemption limit.*
- Proviso inserted in Section 44AB by FA 2017 w.e.f. 1-4-2017
 - If income declared u/s 44AD(1) and turnover does not exceed 2 crores – tax audit not required.

Amendment in Sec. 44AD [F.A. 2016 – AY 2017-18]

- Where an assessee declares profit for any previous year in accordance with the provisions of section 44AD and
 - he declares profit for any of the five succeeding A.Ys. not in accordance with the provisions of section 44AD and
 - his total income exceeds the basic exemption limit for the relevant A.Y.
- he shall be required to maintain books of accounts as per Section 44AA & gets the accounts audited & furnish audit report as required u/s 44AB for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of this section.

Amendment in Sec. 44AD [F.A. 2016 – AY 2017-18]

- For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 4 lakh on the turnover of Rs. 50 lacs.
- For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs. 6 lakh on turnover of Rs. 1 Crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Years 2021-22 to 2025-26.

Example

- Mr. Raju, A Resident individual, is carrying on three eligible business, the turnover of which is as under
 - Business A (Rs.145 Lac)
 - Business B (Rs.35 Lac)
 - Business C (Rs.25 Lac)
- The Answer is NO
- Because turnover of eligible business exceeds Rs.2 Crores

Example

- Mr. Raju, a Resident individual, is carrying on two businesses, the turnover of which is as under
 - Business A (Eligible Business) Rs.55 Lakhs
 - Profession Rs.20 Lakhs
 - Business B (Transport u/s 44 AE) Rs.6 Lakhs
- Section 44AD and 44AE both are applicable, as profession is not included under section 44AD and section 44AD and 44AE are independent of each other.

Example

- Ramdas has paid Rs.28,000 for purchase of goods in cash No disallowance can be made under section 40A(3) for the same
- Mahesh has paid Rs.42,000 to transporter for freight in cash No disallowance can be made under Section 40A(3)
- Peter has contributed certain sum to national Laboratory which qualifies for deduction under section 35(2)(AA), if he chooses section 44AD he will not eligible for benefit of this section
- Salman has recovered certain bad debts written off in earlier years of Rs.35,000. It may not be added in specified amount declared

Example

- A Partnership Firm is involving in manufacturing of leather and it is offering income u/s 44 AD each year. Now, it converts its business to LLP. Whether it can continue to offer income u/s 44AD ?
 - The Presumptive Taxation scheme of Section 44ADA which can be adopt only by Individual, HUF and Partnership Firm (Not LLP). So, it cannot offer presumptive income u/s 44 AD since it converts into LLP.

Example

- An Individual who is offering income u/s 44AD each year. He became Non resident in the Previous year. Whether he can continue to offer presumptive income u/s 44AD ?
 - The Presumptive Income u/s 44AD will be applicable only to the resident individual. Non Resident cannot avail the benefit u/s 44AD.

Example

- A Person doing brokerage business who have received brokerage for Rs.1,00,00,000 and declaring income @ 5% of Rs.5,00,000. Should his books of Accounts be audit u/s 44AB since he is offering income less than 8%?
 - Audit u/s 44AB is applicable if he is declaring income lower than the rate specified u/s 44AD. But, section 44AD is not applicable to Agency, Commission and Brokerage. Hence, he can declare income less than 8%.

Example

- An Individual who is doing the contracting business. He has total turnover of Rs.70 Lakhs and he has earned profit of Rs.12 Lakhs as per his Profit & Loss A/c. Whether he can declare income of Rs.5.6 Lakhs (8% of Rs.70 lakhs) as presumptive Income u/s 44AD ?
 - He has to offer income at 8% of his turnover or higher income he earned as his presumptive income u/s 44AD.

Example

- The Major Changes in presumptive Income u/s 44AD compared to AY 2016-17 is that 1) we can offer presumptive income of 6% for receipts through Bank A/c & 8% for receipts through cash. 2) The Interest and remuneration payable to partners u/s 40(b) even though normally deductible but will not be deductible before arriving presumptive income. The Comparative difference in presumptive Income with AY 2016-17 in case of receipt of Rs.50 Lakhs in Cash and Rs.50 Lakhs in Bank is

	2016-17	2017-18
Turnover		
Cash	50,00,000	50,00,000
Bank*	<u>50,00,000</u>	<u>50,00,000</u>
Profit u/s 44AD	8,00,000	8% 4,00,000 6% 3,00,000
Less : Remuneration	<u>(1,00,000)</u>	<u>Not Allowed</u>
	7,00,000	7,00,000

- The Amount should be received before or due date u/s 139(1).

Example

- Whether a person opting the presumptive taxation scheme who is liable to pay advance tax in each installment and whether he will be liable to the interest u/s 234C?
 - The Person who opts for Presumptive taxation will be liable to pay only March month advance tax installment of 100% on or before 15th March, otherwise he will liable to pay interest u/s 234C @ 1%.

Example

- Assessee had a turnover of Rs.1 crore in AY 2018-19. Which were realized in following ways :
 - **Cash component** - Rs.25 Lakhs.
 - **A/c payee Cheque or ECS :**
 - a) Upto 31.03.2018 - Rs.70 Lakhs.
 - b) Upto 31.07.2018 - Rs.3 Lakhs.
 - c) Upto 31.08.2018 - Rs.2 Lakhs.

The circumstances for computing profits u/s 44AD.

Example

Under 44AD, there are two rate to calculate presumptive income, i.e. 8% and 6%.

In order, to apply 6% on Sales turnover following are conditions specified :

- a) Sales should be realized through bank
- b) Such bank receipts should be on or before due date u/s 139(1)

Hence in case the assessee can offer profits @ 6% only on Rs.73 Lakhs and balance Rs.27 Lakhs should be offered @ 8%.

Profit u/s 44AD = Rs.6,54,000

(6% * Rs.73Lakhs + 8%* 27Lakhs)

Example

- Assessee (Individual or HUF) had a turnover of Rs.1 Crore in AY 2017-18, but he computed a business income of Rs.2 Lakhs. Assessee has no other source of Income . Whether Assessee is liable for Tax Audit. What is if Assessee has Loss in business ? Also state whether Assessee is liable for Tax Audit, if Assessee is a Firm.
 - Since Assessee wants to offer income lower than limits specified in section 44AD, Tax audit is applicable u/s 44AB. But in this case as assessee has no other source of income and his income computed does not exceed the basic exemption limit, No Tax Audit is applicable.
 - If Assessee has loss from such business, No Tax audit u/s 44AB is required.
 - If Assessee is a Firm, there is no basic exemption limit hence ,Tax Audit u/s 44AB is applicable.

Example

- An Eligible Assessee is engaged in trading business of goods both in his own name and also as a consignee for another person. The Total Sales amount to Rs.1.40 Crores, Turnover Details are as follows:

Own Business Turnover	= Rs.80 Lakhs
Consignment Sales Turnover	= Rs.60 Lakhs

Whether Assessee can opt for Presumptive income computation or not ?

Example

- For computing Turnover for 44AD, the turnover of sale of goods on his own name should alone to be considered i.e. Rs.80 Lakhs.
- Here, the commission received on Consignment sales is liable for Tax Audit only when such commission exceeds the limit of Rs.2 Crores.
- Consignment Commission can be offered at any rate (Even below 8%), provisions of Sec.44AD will not govern the commission income.

Presumptive Income from Professionals – Section 44ADA

- Eligible assessee - resident assessee
- Eligible profession – Any profession notified u/s 44AA(1) and gross receipts \leq 50 Lacs.
- PGBP = 50% of **gross receipts**/higher sum as declared by the assessee in the return of income

Presumptive Income from Professionals – Section 44ADA

Profession referred to u/s 44AA(1):

- 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



Presumptive Income from Professionals – Section 44ADA

- Other notified professions:
 - (a) The profession of authorized representative; and
 - (b) the profession of film artist (actor, cameraman, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer)—Notification : No. SO 17(E), dated 12-1-1977
 - (c) the Profession of Company Secretary—Notification : No. SO 2675, dated 25-9-1992
 - (d) the Profession of Information Technology—Notification : No. SO 385(E), dated 4-5-2001.

Advance Tax

- Prior to Finance Act, 2017:
 - Eligible assesseees – to pay advance tax in relation to eligible business only in one installment i.e. on 15th March.
- Amendment by Finance Act, 2017: (Retrospective from AY17-18)
 - Scope extended to 44ADA also
- Restricted to an assessee who declares profit as per section 44AD or section 44ADA

Example

- An Individual who is doing financial consultancy business and the service receiver while he is paying service charge, he is deducting TDS u/s 194 J. Whether he can offer income u/s 44ADA ?
 - Sec. 44ADA will be applicable only to the Notified Professions. It is a inclusive definition, it doesn't cover financial consultancy business, hence he can't offer income u/s 44ADA.
 - Notifications No. SO-18[E] dated 12.01.1977, No. SO 2675 dt.25.09.1992 and S.O. 385[E] dt.04.05.2001

Issues

- Can a partner of a firm carrying on Profession opt for payment of presumptive tax under section 44ADA on the interest, remuneration and the like payments received from the firm?
- Whether any professional activity can be regarded as profession (for S. 44ADA)?
- If not, whether other professionals covered by S. 44AD?
- SC decision in case of ***[G.K. Chokshi & Co. v CIT (2007) 295 ITR 376 (SC)]***.

Issues

- Multiple business or professional activities
- Role of method of accounting in determining turnover or receipts?
- Other specific allowances or disallowances like 35, 35AC, 40(a), 40A(3), 43B etc.?

Issues

- Brought forward depreciation?
- Brought forward losses?
- Inter source or Inter head adjustment of losses?
- Higher income to be offered mandatorily?
- Addition u/s. 68, 69 etc.?



Issues

- Once under special provision of section 44AD, exemption from maintenance of books of account has been provided and presumptive tax at rate of 8 per cent of gross receipt itself is basis for determining taxable income, assessee is not under any obligation to explain individual entry of cash deposit in bank unless such entry has no nexus with gross receipts.

CIT v. Surinder Pal Anand [2010] 192 TAXMAN 264 (PUNJ. & HAR.)

- In an appropriate case, Assessing Officer can make addition in respect of both cash credits under section 68 as well as business income estimated by him under section 44AD after rejecting books of account maintained by assessee finding those books as unreliable

▶ CIT v. G.S. Tiwari & Co - [2014] 41 taxmann.com 17 (Allahabad)

Issues

- When books are rejected by AO and profit rate is estimated, rates mentioned in these sections can be used even if the turnover limits are higher.
 - CIT v. P. Sudhakar [2015] 61 taxmann.com 17 (Karnataka)
 - CIT v. Earth Tech Engineers [2014] 224 Taxman 358 (Punjab & Haryana)
 - CIT v. Subodh Gupta [2015] 229 Taxman 367 (Delhi)
 - Hamid Khan v. ITO [2014] 65 SOT 185(Jodhpur - Trib.)
 - Nishikant T. Patne v. ACIT[2013] 60 SOT 146 (Pune - Trib.)
 - Ram Prasad Bhatta v. ACIT [2015] 68 SOT 509 (Cuttack - Trib.)
 - Eastern Construction Company V. ITO [1997] 59 TTJ 723 (DELHI)
 - Dhalewan Co-operative L & C Society v. ITO[2006] 157 TAXMAN 239 (ASR.) (MAG.)

Issues

- However, in such cases, depreciation is separately allowable and the bar to the entitlement for depreciation under Section 44AD(2) of the Act will not apply.

Awasthi Traders v. CIT [2016] 242 Taxman 99 (SC)

- Where raw materials belonged to main contractor and not to assessee sub-contractor, same should have been excluded while estimating net profit rate of assessee.

Ravi Dubey v. CIT [2015] 375 ITR 469 (Allahabad)(MAG.)

Issues

- Assessee was engaged in business of execution of civil construction works - It had invested certain funds in fixed deposits with a bank out of surplus generated from business - Assessee thereafter partly offered fixed deposits as security for various loans availed by it from bank. Held that interest income on FDRs with bank continued to have its sources as bank and fixed deposits placed with it and fact that these FDRs were offered as security for financial facilities obtained by assessee for purpose of business would not change character of income as one from business. Hence, interest income on FDRs could not be considered as part of contract receipts while estimating income from business of civil construction contracts and same was assessable as income from other sources.

DCIT v. Allied Construction [2007] 105 ITD 1 (Delhi) (SB)

Issues

- Where assessee engaged in business of supply of labour for civil and technical job, did not record certain receipts in his books but reflected in form 26AS, the entire difference cannot be added as income. Only profit at 8% of such unrecorded receipts can be added as income.

Hamid Khan v. ITO [2014] 49 taxmann.com 219 (Jodhpur - Trib.)

Issues

- Where profit declared by assessee under presumptive taxation as provided under section 44AD was accepted, Assessing Officer could not make separate addition by invoking provisions of section 69C.
- Keeping or preparing a cash flow statement cannot be considered as keeping the books of account.
- Asking the assessee to prove to the satisfaction of the Assessing Officer, the expenditure to the extent of 92 per cent of gross receipts, would also defeat the purpose of presumptive taxation as provided under section 44AD or other such provision.

Nand Lal Popli v. DCIT [2016] 160 ITD 413 (Chandigarh - Trib.)

Acknowledgements: Various authors and speakers



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