

ISSUES IN PRESUMPTIVE
TAXATION – SEC
44AD / 44ADA / 44AE OF
THE I.T ACT

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PRESUMPTIVE PROVISIONS

PRIMARY PROVISIONS

- SECTION 44AD
- SECTION 44ADA
- SECTION 44AE

ALLIED PROVISIONS

- SECTION 44AA
- SECTION 44AB
- SECTION 40(a), 40A, 43B
- SECTION 68/69 SERIES
- TDS PROVISIONS
- PENALTY PROVISIONS

Basics of section 44AD

- Subsection 1
- Notwithstanding anything to the contrary contained in sections 28 to 43C,
- In case of an eligible assessee engaged in an eligible business
 - a sum equal to eight per cent of the total turnover or gross receipts **on account of such business** or
 - a sum higher than the aforesaid sum claimed to have been earned
- shall be deemed to be the profits and gains of such business

"eligible assessee" means,—

- (i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and
- (ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "*C. - Deductions in respect of certain incomes*" in the relevant assessment year;

Basics of section 44AD

- **For "eight per cent",** the words "**six per cent**" shall be **substituted**, in respect of total turnover or gross receipts which is received by
 - I) an account payee cheque or
 - II) an account payee bank draft or
 - III) use of electronic clearing system through a bank account *or*
 - IV) *through such other electronic mode as may be prescribed*

during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

(b) "eligible **business**" means,—

- (i) **any business** except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and
- (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees

Basics of section 44AD

- Sec 2(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.
 - Investing in partnership is not amounting to “business”
 - **Tara Devi Behl 218 ITR 541 (P&H)**
- Sec 2(36) “Profession" includes vocation
 - Professional firm cannot claim initial depreciation u/s. 32(1)(iv)
 - **Choksi & Co (GK) – 252 ITR 863 (Guj)**
- Section 115BAC – (5) Nothing contained in this section shall apply unless option is exercised in the prescribed manner by the person,—
 - (i) *having income from business or profession, ~~business~~ **income***

Basics of section 44AD

(6) The provisions of this section, **notwithstanding anything contained in the foregoing provisions**, shall not apply to—

- (i) a person carrying on profession as referred to in subsection (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or
- (iii) a person carrying on any agency business.

Inserted by FA 2012 w r e from 1-4-2011

Profession – sec 44AA

- (1) - Every person carrying on certain specified profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.
- (2) - Every person carrying on business or profession not being a profession referred to in sub-section (1) shall

Profession specified u/s. 44AA(1) Vs Code prescribed – Others

Sector	Sub-Sector	Code	44AD	44ADA	44AE
PROFESS IONS	Advertising	16006	√	X	X
	Auctioneers	16010	√	X	X
	Business brokerage	16011	X	X	X
	Market research and public opinion polling	16012	√	X	X
	Labour recruitment and provision of personnel	16014	√	X	X
	Investigation and security services	16015	√	X	X
	Building-cleaning and industrial cleaning activities	16016	√	X	X
	Packaging activities	16017	√	X	X
	Other professional services n.e.c.	16019	√	X	X

Basics of section 44AD

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

Basics of section 44AD

From A Y 2017-18 onwards

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section 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 sub-section (1).

Prior to AY 2017-18

(4) The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.

Basics of section 44AD

From A Y 2017-18 onwards

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee **to whom the provisions of sub-section (4) are applicable** and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Upto AY 2016-17

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee **who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1)** and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Section 44AB

- Every person,—
 - (a) carrying on business shall, if **his total sales, turnover or gross receipts**, as the case may be, in business exceed or exceeds **one crore rupees** in any previous year ; Or
 - (b) carrying on profession shall, if **his gross receipts in profession** exceed fifty lakh rupees in any previous year; or
 - (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section **44AE** or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

Section 44AB – CONTD...

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section **44ADA** and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section **44AD** are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant **before the specified date** and **furnish by that date** the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

Applicability of Sec 44AD

- Mr. Q is engaged in retail trade and money lending business
- His turnover and profits for the first year of business are as under

Particulars	Turnover	Net Profit	% of NP to TO
Money lending	Rs.25 Lacs	Rs.5 Lacs	20%
Retail Trade	Rs.50 Lacs	Rs.3 Lacs	6%
Total	Rs.75 Lacs	Rs.8 Lacs	10.67%

- He would like to go u/s. 44AD for money lending (offering 8%) and u/s. 44AB for retail trade (offering 6%).
- Can he do so?

Applicability of Sec 44AD – Contd...

- Mr. A is a non-resident Indian
- He achieved a turnover of Rs.90 lacs
- He earned an income of 8% on the turnover
- Can he claim the benefit of sec 44AD
- Would your answer be different if the status of the assessee is resident - AOP?

• Sec 44AD –

Explanation.—For the purposes of this section,—

(a) "eligible assessee" means,—

(i) **an individual, Hindu undivided family or a partnership firm, who is a resident,** but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009);

Applicability of Sec 44AD – Contd...

- M/s. PQR & co -a firm - is engaged in agency business
 - Its turnover was Rs.80 lacs – Amount received thru bank only
 - Its net profit was Rs. 2.4 lacs (3%)
 - From this, it would like to claim interest & salary to partners of Rs. 1.8 lacs
 - Can it do so?
 - Examine whether sec 44AB is applicable
- Sec 44AD –
(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—
 - (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) a person earning income in the nature of commission or brokerage; or
 - (iii) a person carrying on any agency business.

Applicability of Sec 44AD – Contd...

- Mr. S is a proprietor engaged in trading of match boxes
 - His turnover was Rs.90 lacs – All received in Cash
 - His net profit was Rs.4.5 lacs
 - He also received commission of Rs.10000/- on a real estate deal.
 - Whether sec 44AD/44AB would be applicable?
- Sec 44AD –
 - (6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—
 - (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) a person earning income in the nature of commission or brokerage; or
 - (iii) a person carrying on any agency business.

Applicability of Sec 44AD – Contd...

- M/s. P & Co., a firm, into manufacturing match boxes.
- Its turnover for the first year was Rs.80 lacs (all cash)
- It earned a profit (after int and salary to partners) of Rs.4 lacs
- Applicability of s. 44AD/44AB

Sec 44AD (4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section 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 sub-section (1).

Applicability of Sec 44AD – Contd...

- sec 44AD

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee **to whom the provisions of sub-section (4) are applicable and** whose total income exceeds the maximum amount which is not chargeable to income-tax, **shall be required to keep and maintain such books of account** and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

- Sec 44AB

(e) carrying on the business shall, if the provisions of **sub-section (4) of section 44AD** are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year

Applicability of Sec 44AD – Contd...

- M/s. S & Co, is a firm engaged in the business of trading in rice. It gives the following details:

Asst Year	Turnover	Business Income	%	Audit u/s
2016-17	80.00 lacs	4.00 lacs	5%	44AB
2017-18	82.00 lacs	4.10 lacs	5%	44AB
2018-19	84.00 lacs	4.20 lacs	5%	44AB
2019-20	90.00 lacs	4.50 lacs	5%	44AB
2020-21	95.00 lacs	4.75 lacs	5%	????

- Is this firm required to audit its accounts since the income is less than 8/6% of its turnover

Applicability of Sec 44AD – Contd...

- Mr. S is running a lodge
- He offered income u/s. 44AD for the last 4 years
- His income from the said lodge was Rs.3.50 lacs (5% of turnover – all received in cash)
- He is eligible for deduction of Rs.1.5 lacs u/s. 80C
- He has no other income
- Whether sec 44AB is applicable to him?

- Sec 44AD –

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Applicability of Sec 44AD – Contd...

- sec 44AD (4) Where an eligible assessee **declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1)**, he shall not be eligible to claim the benefit of the provisions of this section 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 sub-section (1).
- Sec 44AB
 - (e) carrying on the business shall, if the provisions of **sub-section (4) of section 44AD** are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year

Applicability of Sec 44AD – Contd...

- M/s. ANP & Co engaged in cloth business furnishes the following information

Asst Year	Turnover	Business Income	%	Section Applied
2017-18	80.00 Lacs	6.80 Lacs	8.5%	S.44AD(1)
2018-19	150.00 Lacs	13.50 Lacs	9.0%	S.44AD(1)
2019-20	210.00 Lacs	16.80 Lacs	8.0%	S.44AB(a)
2020-21	150.00 Lacs	13.50 Lacs	9.0%	???

- Whether the assessee can opt for sec 44AD in AY 2020-21??

Applicability of Sec 44AD – Contd...

- M/s. XYZ & Co engaged in furniture business furnishes the following information

Asst Year	Turnover	Busi. Income	%	Section Applied
2017-18	80 Lacs	6.80 Lacs	8.5%	S.44AD(1)
2018-19	150 Lacs	8.25 Lacs	5.5%	S.44AD(4) & 44AB
2019-20	210 Lacs	16.80 Lacs	8.0%	S.44AB(a)
2020-21	150 Lacs	12.75 Lacs	8.5%	???

- Whether the assessee can opt for sec 44AD in AY 2020-21??

Applicability of Sec 44AD – Contd...

- M/s. P & Co., a firm, into trading of soap powder.
- It opted for sec 44AD for the last 3 years
- Its turnover for the current year was Rs.80 lacs (all cash)
- It earned a profit
 - Before int & salary – Rs.8 lacs
 - After int & salary - Rs.4 lacs
- Whether sec 44AB is applicable to the firm?

Sec 44AD.

- (1) 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" :
- (2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

Applicability of Sec 44AD – Contd...

- M/s. P & Co., a firm, into trading of textile items
- It opted for sec 44AD for the last 3 years
- Its turnover for the current year was Rs.80 lacs (all cash)
- It earned a profit
 - Before int & salary – Rs.1.3 L
 - After int & salary - (-)Rs.0.2 Lacs
- Whether sec 44AB is applicable to the firm?

Sec 44AD.

5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Controversies in sec 44AD

- Claim of partner's remuneration & interest
- Offering interest & remuneration from firm u/s. 44AD
- Quantum considered for source
- Applicability of other provisions such as
 - Sec 40A(3)
 - Sec 40(a)(ia)
 - Sec 43B
 - Sec 68/69 series
 - Sec 269SS/269T/269ST
- Will be discussed after discussing sec 44ADA/sec 44AE

Basics of sec 44ADA – sub sec 1

- Notwithstanding anything contained in sections 28 to 43C,
- in the case of an assessee, being a **resident in India**,
 - who is engaged in a profession referred to in **sub-section (1) of section 44AA** and
 - whose total **gross receipts do not exceed fifty lakh rupees** in a previous year,
- a sum equal to
 - **fifty per cent of the total gross receipts** of the assessee in the previous year on account of such profession or, as the case may be,
 - a sum **higher than the aforesaid sum** claimed to have been earned by the assessee,
- shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".

Profession – sec 44AA

- (1) - Every person carrying on certain specified profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.
- (2) - Every person carrying on business or profession not being a profession referred to in sub-section (1) shall

Profession specified 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

- Authorized representatives
- Film Artists ([No. 17\(E\) - Dated: 12-1-1977 – IT](#))
- Company Secretaries ([No. S.O.2675 - Dated: 25-9-1992 – IT](#)) and
- Information technology ([No. 385\(E\) - Dated: 4-5-2001 – IT](#))

Basics of sec 44ADA – sub-sec 2 & 3

- Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.
- The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

Basics of Sec 44ADA – Sub – sec 4

- Notwithstanding anything contained in the foregoing provisions of this section,
 - an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in subsection (1) and
 - whose **total income exceeds the maximum amount** which is **not chargeable to income-tax**,
- shall be required to keep and maintain such books of account and other documents as required under subsection (1) of section 44AA and
- get them audited and furnish a report of such audit as required under section 44AB.

Analysis of sec 44ADA

- Section applies to **resident assessee only**
- Section does not have any restriction on the status of the assessee
 - Professional regulatory body may not permit certain status to carry on the profession – those cases may not qualify
- Section does not apply to all professionals – it applies to only professionals specified u/s. 44AA(1) –
 - Sec 44AA(2) - Every person carrying on business or **profession not being a profession referred to in sub-section (1)** shall
 - **Form provides for non-specified professionals – see next few slides**

Profession specified u/s. 44AA(1) Vs Code prescribed – Medical – Part 1

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	General hospitals	18001	X	√	X
	Speciality and super speciality hospitals	18002	X	√	X
	Nursing homes	18003	X	√	X
	Diagnostic centres	18004	X	√	X
	Pathological laboratories	18005	X	√	X
	Independent blood banks	18006	√	X	X
	Medical transcription	18007	√	X	X
	Independent ambulance services	18008	√	X	X
	Medical suppliers, agencies and stores	18009	√	X	X
	Medical clinics	18010	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Medical – Part 2

Sector	Sub-Sector	Code	44AD	44ADA	44AE
HEALTH CARE SERVICES	Dental practice	18011	X	√	X
	Ayurveda practice	18012	X	√	X
	Unani practice	18013	X	√	X
	Homeopathy practice	18014	X	√	X
	Nurses, physiotherapists or other para-medical practitioners	18015	X	√	X
	Veterinary hospitals and practice	18016	X	√	X
	Medical education	18017	X	√	X
	Medical research	18018	X	√	X
	Practice of alternative medicine	18019	X	√	X
	Other healthcare services	18020	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Accountancy, Consultancy

Sector	Sub-Sector	Code	44AD	44ADA	44AE
PROFESSIONS	Accounting, book-keeping and auditing profession	16002	X	√	X
	Tax consultancy	16003	X	√	X
	Fashion designing	16007	X	√	X
	Photography	16009	X	√	X
	Business and management consultancy activities	16013	X	√	X
CULTURE AND SPORT	Individual artists excluding authors	20010	X	√	X
	Literary activities	20011	X	√	X
	Other cultural activities n.e.c.	20012	X	√	X

Profession specified u/s. 44AA(1) Vs Code prescribed – Information technology

Sector	Sub-Sector	Code	44AD	44ADA	44AE
COMPUTER AND RELATED SERVICES	Software development	14001	X	√	X
	Other software consultancy	14002	X	√	X
	Data processing	14003	X	√	X
	Database activities and distribution of electronic content	14004	X	√	X
	Other IT enabled services	14005	X	√	X
	BPO services	14006	X	√	X
	Maintenance and repair of office, accounting and computing machinery	14008	X	√	X
	Cyber café	14007	√	X	X
	Computer training and educational institutes	14009	√	X	X
	Other computation related services n.e.c.	14010	√	X	X

Analysis of sec 44ADA (Contd..)

- All deductions shall be deemed to be claimed and allowed in full
 - Firm – partners interest and remuneration
- Profit on sale of assets – block becoming negative – shall not be included in the presumptive income
- In case of lower % of profits, Maintaining books and audit necessary
 - Only when the taxable income exceeds basic limit
 - For firm & LLP – basic limit – Zero – when loss comes???

Applicability of Sec 44AD – Contd...

- Dr R is a medical practitioner, having clinic and medical shop.
- His turnover/gross receipts are as under:
 - Fees from Profession – Rs. 40 lacs
 - Sales in medial Shop – Rs. 70 lacs
- Advise whether sec 44AD/44AB is applicable to him.
- **Form vs Act**

• Sec 44AD –

(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.

Section 44AB (1) reads ...

- Dr R is a medical practitioner, having clinic and medical shop.
 - His turnover/gross receipts are as under:
 - Fees from Profession – Rs. 40 lacs
 - Sales in medial Shop – Rs. 70 lacs
 - Advise whether sec 44AD/44AB is applicable to him.
 - **Form vs Act**
- Every person,—
 - (a) carrying on business shall, if **his total sales, turnover or gross receipts**, as the case may be, in business exceed or exceeds **one crore rupees** in any previous year ; **Or**
 - (b) carrying on profession shall, if **his gross receipts in profession** exceed fifty lakh rupees in any previous year;

Basics of Section 44AE

- **Sub-section (1)**
- **Notwithstanding anything to the contrary contained in sections 28 to 43C,**
- In case of an assessee
- engaged in the business of plying, hiring or leasing such goods carriages,
- **owns not more than ten goods carriages at any time** during the previous year
- aggregate of the profits and gains, from all the goods carriages owned by him in the previous year,
- shall be deemed to be sum computed in accordance with the provisions of sub-section (2).

Explanation.

- (b) an assessee,
- i) who is in possession of a goods carriage,
 - ii) whether taken on hire purchase or on instalments and
 - iii) for which the whole or part of the amount payable is still due,
 - iv) shall be deemed to be the owner of such goods carriage.

Basics of Section 44AE

*Sub-section (2) - the profits and gains from each **goods carriage**,—*

*(i) being a **heavy goods vehicle**,*

*a) one thousand rupees per ton of **gross vehicle weight or unladen weight, as the case may be**, for every month or part of a month*

b) or an amount claimed to have been actually earned from such vehicle, whichever is higher;

*(ii) **other than heavy goods vehicle**,*

*a) **seven thousand five hundred rupees** for every month or part of a month*

b) or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

Basics of section 44AE

- (3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :
 - **Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.
- (4) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

Basics of Section 44AE

- (5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.
- (6)
- (7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.

Definitions used in sec 44AE

- *Explanation.*—For the purposes of this section,—
 - (a) *the expressions "goods carriage", "gross vehicle weight" and "unladen weight" shall have the respective meanings assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);*
 - (aa) *the expression "heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;*

Definition used in sec 44AE

Under Income tax Act

- *"heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;*

Under Motor Vehicle Act

- Heavy Goods Vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller, the unladen weight of either of which, exceeds 12,000 kilograms.

Meaning of words – MV Act 1988

- "goods carriage" means any **motor vehicle constructed** or adapted for use **solely for the carriage of goods**, or any motor vehicle not so constructed or adapted when used for the carriage of goods
- "gross vehicle weight" means in respect of any vehicle the **total weight of the vehicle and load certified and registered** by the registering authority as permissible for that vehicle;
- "unladen weight" means the **weight of a vehicle or trailer** including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body

Clarification of CBDT - F.No.225/233/ 2019/ITA-II dt 14-08-2019

- All **goods carriage** vehicle whose **gross vehicle weight** exceeds 12.000 kilograms, the profits and gains from each goods carriage for the purposes of section 44AE of the Act shall be at the rate of **Rs. 1000/- per ton of gross vehicle weight** for every month or part of the month.
- However in respect of a **tractor or a road-roller**. where the **gross vehicle weight is not applicable, and unladen weight** exceeds 12,000 Kilograms. the profits and gains from each **goods carriage** for the purposes of section 44AE of the Act shall be at the rate of **Rs. 1000:- per ton of unladen weight** for every month or part of the month.

Analysis of Section 44AE

- All type of assesseees can avail the benefit of this section – including LLP, AOP, BOI, Ltd Company
- Interplay between section 44AE and Section 115JB and normal provisions
- Consider the case of A Ltd – owning three lorries (Not heavy goods carriages) through out the year
Income Tax
- U/s. 44AE–3*7500PM*12mts- Rs.2,70,000/- Rs.84,240/-
- Under Normal Provisions - Rs.2,20,000/- Rs.68,640/-
- Under section 115JB - Rs.5,00,000/- Rs.78,000/-

Analysis of section 44AE

- Section does not have any turnover restrictions.
- It has restrictions on the number of vehicles **owned by** the assessee at any time during the previous year
 - **Status of the vehicles taken on lease or hire- to include or exclude??**
 - Form vs Act – owned, hired or leased
- Assessee owns not more than 10 vehicles – but few more taken on lease / hire.
 - **To avail presumptive income u/s.44AD???**
 - Form Vs Act – Code prescribed

Analysis of sec 44AE – code prescribed

Sector	Sub-Sector	Code	44AD	44ADA	44AE
RENTING OF MACHINERY	Renting of land transport equipment	08001	√	X	√
TRANSPORT & LOGISTICS SERVICES	Packers and movers	11002	√	X	√
	Freight transport by road	11008	√	X	√
	Forwarding of freight	11010	√	X	√
	Receiving and acceptance of freight	11011	√	X	√
	Cargo handling	11012	√	X	√
	Other Transport & Logistics services n.e.c	11015	√	X	√

Analysis of Section 44AE

- M/s. Garuda Carriers is a firm owning 10 goods carriages (gross vehicle weight less than 12 tons).
- During the FY 2019-20,
 - Its Turnover - Rs.110 lacs and
 - Its Net profit - Rs.11 Lacs (before int and salary to Partners)
- Examine the applicability of sec 44AE or sec 44AB

Sec 44AE –

- Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee,
 - who owns not more than ten goods carriages at any time during the previous year and
 - who is engaged in the business of plying, hiring or leasing such goods carriages,
 - the income of such business chargeable to tax under the head "PGBP" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

Analysis of section 44AE – CONTD...

- As per sec 44AE, Estimated net profit is Rs.7500 per month per vehicle – In total – Rs.7500 * 12 * 10 – Rs.9,00,000/-.
- How much is the estimated income to be shown? - Rs. 9 lacs or Rs.11 lacs.

- Sec 44AE –

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,-

- (i) being a heavy goods vehicle, shall be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, actually earned from such vehicle, whichever is higher;
- (ii) other than heavy goods vehicle, shall be an amount equal to **seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee** in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

Analysis of section 44AE

- Depreciation shall also be considered as allowed in full and WDV shall be arrived at accordingly
 - Profit on sale of lorries, subject to block becoming negative chargeable u/s. 50
 - Such profit cannot be considered as part of presumptive income
- Consider the following case
 - Mr. A purchased a lorry in April 2016 for Rs.20 lacs
 - He offered income u/s. 44AE for the AY 2017-18, 18-19 and 2019-20
 - During April 2019, he sold the lorry for Rs.7.5 lacs
 - He did not claim any depreciation in books
 - The WDV as at 1-4-2019 was Rs.6.86 lacs and the STCG would be Rs.0.64 lacs

Analysis of section 44AE

- Once income is offered u/s. 44AE, the turnover shall not be counted for the purpose of section 44AA, 44AB.
- If the income claimed is less than the quantum prescribed in Ss(2), maintenance of books u/s.44AA & audit u/s. 44AB required.
 - If the income claimed is less but books not maintained, or not audited – consequences?
 - Can the income be enhanced - Can penalty be levied - Can both be done
 - SHRI NATTHI SINGH VERSUS ITO - 2018 (11) TMI 634 - ITAT JAIPUR
 - Would this condition be applied even if the income is less than basic limit? – see next slide

APPLICABILITY OF SEC 44AE – CONTD...

- Mr. A owns 2 goods carriages (gross vehicle weight is less than 12 tons).
 - His net profit from the business during the FY 2019 – 20 was Rs. 1,50,000/-
 - He did not want to show income as per sec. 44AE (@ Rs.7500*12*2 – Rs.1,80,000/-
 - He does not have any other income during the year
 - Is he required to get the accounts audited if he chooses to offer income of Rs.1.5 lacs instead of Rs.1.8 lacs?
- Every person,—
 - (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section **44AE** and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

Other Issues in Sec 44AE

- Whether the assessee can choose this section only for few vehicles and for rest of other vehicles claim lower profits by maintaining accounts, etc?
 - CP. Kunhimohamed – 2004 (12) TMI 313 (ITAT Cochin)
- Whether the section would apply even if the turnover crosses the limit of Rs.1 Crore
 - ANIL RAMGOPAL MALI – 2009 (12) TMI 583 (ITAT Pune)
- When ONLY one truck is owned and used for own business but occasionally let on hire (income being very meagre) S.44AE applicable
 - Northern Services & Supply Co P Ltd – 2016 (10) TMI 222 ITAT KOLKATA

Presumptive cases – comparative study

Particulars	Sec 44AD	Sec 44ADA	Sec 44AE
Type of assessee	INDL. HUF, Firm (Other than LLP) – all residents	Resident assessee	No restrictions
When %/sum not offered, Sec 44AB applies	Only when income exceeds basic limit & Ss (4) applies	When income exceeds basic limit	Whether or not income exceeds basic limit
In case of firm, allowability of Partners' salary & interest	Deemed to be allowed	Deemed to be allowed	From the presumptive income, claim can be made

Common issues for sec 44AD/44ADA/44AE

- Sections prescribed only minimum income to be offered – It does not restrict offering of additional amount over and above the amount or % specified
 - Advisable to report actual income
- All deductions u/s. 30 to 38 shall be deemed to be allowed in full
- Disallowance for personal purposes u/s. 38
 - SHRI RAM KARAN YADAV VERSUS ITO - 2018 (9) TMI 1090 - ITAT JAIPUR
- Unabsorbed depreciation loss u/s. 32(2)
 - DCIT VERSUS SUNIL M. KANKARIYA - 2007 (1) TMI 242 - ITAT PUNE-B
- Unabsorbed business loss u/s. 72(2)

Common issues for sec 44AD/44ADA/44AE

- All deductions u/s. 30 to 38 shall be deemed to be allowed in full
- Disallowance u/s 40A(3)
 - BV. PRABHU VERSUS INCOME TAX OFFICER - 2010 (1) TMI 882 - ITAT, BANGALORE
- Disallowance u/s. 40(a)(i)(a)
 - BV. PRABHU VERSUS INCOME TAX OFFICER - 2010 (1) TMI 882 - ITAT, BANGALORE
 - JAHARLAL MUKHERJEE VERSUS I.T.O., WARD-29 (1) , KOLKATA - 2015 (8) TMI 1155 - ITAT KOLKATA
- Disallowance u/s. 43B
 - GOOD LUCK KINETIC VERSUS ITO, WARD-2, MARGAO - 2015 (6) TMI 648 - ITAT PANAJI

Common issues for sec 44AD/44ADA/44AE

- Section 44AD on Partners remuneration and interest
 - MR. A. ANANDKUMAR VERSUS ACIT - 2019 (2) TMI 165 - ITAT CHENNAI
- Section 44AD on share trading business
 - SHRI RAHUL KASHYAP VERSUS ITO - 2019 (2) TMI 898 - ITAT DELHI
- Verification of creditors / debtors balance
 - SHAILENDRA SINGH BHADAURIA VERSUS ITO - 2015 (10) TMI 2561 - ITAT LUCKNOW
- Amount available as source for investment - Profit declared plus depreciation allowable
 - SHRI BHARAT BHUSHAN – 2020 (5) TMI 167 ITAT BANGALORE

Common issues for sec 44AD/44ADA /44AE

- Applicability of section 68
 - MOHD. AKBAR VERSUS ITO HYD - 2016 (6) TMI 494 - ITAT HYDERABAD
 - ITO VERSUS SRI SHAIK ZAMEER, KOVUR (V) & (M) - 2018 (5) TMI 1484 - ITAT HYDERABAD
 - INDRANI DEVI VERSUS ITO - 2019 (3) TMI 376 - ITAT PATNA
 - MOHAN KUMAR AGARWAL VERSUS ITO - 2019 (6) TMI 1365 - ITAT KOLKATA
 - SH. AMIT JAIN VERSUS ITO - 2019 (8) TMI 1314 - ITAT AGRA
 - SRI. GIRISH V. YALAKKISHETTAR VERSUS ITO - 2020 (1) TMI 1111 - ITAT BANGALORE
 - SHRI KOKKARNE PRABHAKARA VERSUS ITO – 2020 (9) TMI 536 ITAT BANGALORE
- Applicability of section 69 Series
 - MR. PRADEEP JAIN VERSUS ITO - 2019 (6) TMI 300 - ITAT DELHI
 - NAND LAL POPLI VERSUS DCIT - 2016 (6) TMI 883 - ITAT CHANDIGARH
 - SHRI THOMAS EAPEN VERSUS ITO - 2019 (11) TMI 1240 - ITAT COCHIN.
 - SMT. KIRAN VALLABHAI AHIR VERSUS ITO - 2020 (4) TMI 329 - ITAT SURAT

Common issues for sec 44AD/44ADA/44AE

- Applicability of TDS provisions
 - 194A, 194H, 194I, 194J, 194C – limit rationalised in FA 2020
- Applicability of penalty provisions
 - sec 269SS/269T/269ST (when books are not maintained)
 - Section 271A
 - Section 271B
 - Section 271A and sec 271B

THANK YOU