

Tax issues in presumptive schemes of taxation u/s.44AD, 44ADA, 44AE

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Itinerary

- Objective
- Presumptive Income Schemes
- Schemes for Discussion:
 - * The Scheme
 - * Tax Issues
- Issues on Investment

- Objective

Presumptive Schemes

- Objective – Budget Speech – 28-2-1994 (*excerpts*)
- 1.1.4 .We have been implementing a simple presumptive scheme of taxation for the assesseees in the unorganised sector for the past two years. I propose to continue with the scheme.
- 1.1.5.In addition, I am introducing a new estimated income scheme for contractors with a turnover of upto Rs.40 lakhs. In the case of contractors, the net profit will be estimated at 8 per cent. of the gross receipts. No further deduction on account of depreciation or expenses will be allowed. The scheme is optional. The scheme will be simple and free of irritants, and I expect an enthusiastic response.

Presumptive Schemes

- Objective – Explanatory Memorandum – FB 2016
- The existing scheme of taxation provides for a simplified presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, it is proposed to provide for presumptive taxation regime for professionals

- Presumptive Income Schemes

Presumptive Schemes

- Section - 44B
- Shipping business in the case of NR
- Section - 44BB
- Business of exploration, etc. of mineral oils
- Section - 44BBA
- Operation of aircraft in the case of NR
- Section - 44BBB
- Foreign Cos engaged in civil construction, etc., in certain turnkey power projects

Presumptive Schemes

- **Section - 44D**
- Income by way of royalties, etc., in the case of foreign companies
- **Section - 44DA**
- Income by way of royalties, etc. of NR
- **Section - 44DB**
- Deductions in the case of business reorganization of co-operative banks

- Schemes for Discussion:
 - * The Scheme
 - * Tax Issues

Presumptive Schemes

- Section - 44AD
- Profits of business on presumptive basis
- Section - 44ADA
- Profits of profession on presumptive basis
- Section - 44AE
- Business of plying, hiring or leasing goods carriages

Section 44AD

- (1) eight per cent of the total turnover or gross receipts of eligible: assessee & business
- (2) Deduction under sections 30 to 38
- (3) Written down value of any asset
- (4) Any of the 5 assessment years relevant to the year succeeding previous year
- (5) Lower profits –Books required u/s 44AA and get audited
- (6) S. 44AD shall not apply to 3 categories

Section 44AD

(a) "eligible assessee"

(i) an individual, HUF or a partnership firm, not being LLP

(ii) no claim u/s 10A, 10AA, 10B, 10BA or Chapter VIA*

(b) "eligible business"

(i) Goods carriages Section 44AE; and

(ii) Gross receipts does not exceed Rs.2 cr

Section 44AD

Tax Issues:

- (1) LLP is assessed as partnership, can LLP report income from eligible business u/s 44AD?
- (2) Whether Salary to partner can be deducted by a partnership firm? Taxation for partner?
- (3) An agent of LIC is earning Rs. 10 lakh from LIC. Can he report income u/s 44AD?
- (4) A medical doctor is running a medical shop selling drugs. Can he report income u/s 44AD?
- (5) Without books of account, how to prove turnover, gross receipts?

Section 44AD

Tax Issues:

- (6) Payment to construction contractor Rs. 10 lakh in cash, no TDS. Disallowance?
- (7) In year 2 loss is claimed, how will it impact incomes for subsequent years?
- (8) Mr. Dalal is speculating in shares and commodities. Can he report income u/s 44AD?
- (9) Mr. Bond is engaged in stock broking and dealing in shares and securities. Can he report income u/s 44AD?

Section 44AD

Tax Issues:

- (10) Yr. 1 – Creditors Rs. 10 lakh. Yr. 2 – Turnover Rs. 2.50 cr. Creditors written back Rs. 6 lakh. Tax implications in Yr. 2?
- (11) Individual : Turnover Rs. 15 lakh, Profit Rs. 1 lakh – formalities to report income? Whether audit necessary?
- (12) Turnover Rs. 80 lakh. Net Profit Rs. 20 lakh. Income reported Rs. 7 lakh. – what income the Assessing Officer can assess?

Section 44AD

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"

Section 44ADA

- (1) 50% of total gross receipts engaged in a profession u/s 44AA(1) and total gross receipts do not exceed Rs. 50 lakh
- (2) Deduction under sections 30 to 38
- (3) Written down value of any asset
- (4) Books required u/s 44AA and get audited

Section 44ADA

Tax Issues:

- (1) Turnover Rs. 59.10 lakh (Rs. 45 lakh and GST Rs. 8.10 lakh, FD Interest Rs. 6 lakh. Whether S 44ADA is applicable?
- (2) Whether S 44ADA is applicable to teacher in coaching class with M. Com. degree?
- (3) Can firm claim deduction of partner's remuneration, interest?
- (4) In year 2 loss is claimed, how will it impact incomes for subsequent years?

Section 44ADA

Tax Issues:

- (5) In year 1 income reported under S 44ADA. TDS in respect of Rs. 1 lakh paid in December of Year 2, when turnover is Rs. 80 lakh. What is tax treatment?
- (6) A CA is not having COP. Engaged as a retainer @ Rs. 3.00 lakh p.m. and earning consultancy and return filing receipts of Rs. 5 lakh. Can he report income under section 44ADA?
- (7) No advance tax paid. Interest u/s 234B, 234C?

Section 44AE

- (1) Person owning not more than 10 goods carriages at any time during the previous year and engaged in hiring goods carriage
- (2) Rs. 7,500 for every month or part of a month during which the goods carriage is owned
[1.4.2019 - Rs. 1,000 p.t. p.m. for heavy goods vehicle, Rs. 7,500 p.m. for others]
- (3) Deduction under sections 30 to 38 / firm
- (4) Written down value of any asset

Section 44AE

(5) sections 44AA and 44AB shall not apply

(6) *Omitted*

(7) Lower profits –Books required u/s 4AA and get audited u/s 44AB

- *"heavy goods vehicle" gross vehicle weight exceeds 12,000 kilograms;*
- *assessee, in possession of a goods carriage, taken on HP or on instalments and the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.*

Section 44AE

Tax Issues:

- (1) Can Company or LLP report income under section 44AE?
- (2) Whether S 44AE is applicable for passenger carriage? Or JCB?
- (3) Assessee engaged in trading – turnover Rs. 10 cr. and owning five vehicles. Can the assessee report income under section 44AE?
- (4) If vehicle is under repair – whether income is required to be presumed?

SECTION 44AE

Tax Issues:

- (5) Assessee owns 5 vehicles and engages 50 vehicles owned by others for transportation business. Can the assessee report income under section 44AE?
- (6) Assessee owning three carriages, purchases one in March, 2018 and puts to use in April, 2018. what is his income and depreciation u/s 44AE?
- (7) Applicability of provision:
 - * 11th vehicle purchased in December
 - * 11th vehicle sold in December

SECTION 44AE

Tax Issues:

- (8) In Year 1 and 2 assessee reports income under section 44AE, in Year 3 lower than under section 44AE. Can he report income for year 4 under section 44AE?
- (9) Individual in (8) above pays interest of Rs. 35,000 to friend in Yr. 3 & 4. Is he required to make TDS?
- (10) Assessee owns three Tempos and One Truck. Can he report income for all the 4 vehicles under section 44AE?
- (11) No advance tax paid. Interest u/s 234B, 234C?

- Issues on Investment

Section 69

Tax Issues:

When net profit is more and reported income is less, whether investments made of higher amount will be exposed to tax under Section 69, 69B?

Example:

Turnover Rs. 80 lakh.

Net Profit Rs. 20 lakh.

Income reported Rs. 7 lakh.

New Car purchased for Rs. 10 lakh.

Section 69

- **Unexplained investments.**
- **69.** Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Section 69B

- **Amount of investments, etc., not fully disclosed in books of account.**
- **69B.** Where in any FY assessee has made investments in valuable article, and the AO finds that the amount expended on making such investments exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the AO, satisfactory, the excess amount may be deemed to be the income of the assessee for such FY.

Section 44AB

- **44B.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) 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".

Section 44AB

- **44B.** (2) The amounts referred to in sub-section (1) shall be the following, namely :—
- (i) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and
- (ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Considerations

- Liquidity v. Income
- Deemed income from House Property
- Ready Reckoner value based income from immovable property
- Wording of Presumptive Income Scheme sections – mandatory or directory?

Any Question

