

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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PRESUMPTIVE TAXATION U/S 44AD OF THE ACT

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(1) (a) Section 44AD : Upto Assessment Year 2010 - 11

- (1) Applicable to all assesses engaged in civil construction business or supply of labour for civil construction. Civil construction includes in its sweep construction or repairs of building, bridge, dam or other structure, canal or road and works contract.
- (2) Turnover should not exceed Rs.40 Lakhs.
- (3) Presumptive rate of tax is 8% of turnover. Assessee can declare higher income if he has earned higher income.
- (4) The section applies notwithstanding the provisions of section 28 to 43C of the Act.
- (5) It applies even to search assessment provided the turnover of both disclosed and undisclosed business does not exceed Rs.40 Lakhs.

Pune Bench ITAT 72 ITD 559

- (6) It applies to Contractors as well as Sub-contractors.
- (7) It does not apply to computation of income of interior decoration business.

- (8) Deduction u/s 30 to 38 be deemed to have been given full effect. Therefore, no such deductions are separately to be made from presumed income. However, for computing WDV of the assets, depreciation is deemed to have been allowed.
- (9) In case of firm, the interest and remuneration paid to partners to be deducted from presumed income subject to ceiling in section 40 (b).
- (10) Provisions of section 44 AA and 44 AB regarding maintenance of accounts and tax audit not applicable qua this business. However, if assessee wants to return less than 8% of profit, he is bound to keep books and also get them audited u/s 44 AB of the Act. If assessee is having business other than 44 AD business, and in that business provisions of section 44 AA and 44 AB are applicable, he has to follow these provisions.

(b) **With effect from Assessment Year 2011-12**

- (1) Section 44AD has been widened to include all the eligible business except the business of plying, hiring or leasing goods carriage which is covered by 44 AE.
- (2) Under the amended provisions even wholesalers and semi-wholesalers are all included if they fulfill other conditions.
- (3) The turnover of the business shall not exceed Rs.60 Lakhs in the concerned previous year.
- (4) Presumptive income is 8% of the turnover. Assessee can declare higher income if he has earned higher income.

- (5) Other conditions mentioned in point 1 (a) 4 and 8 to 10 apply even for the assessment year 2011-12 and onwards.
- (6) Provisions of Advance Tax do not apply to the assesses filing return under the amended provisions.
- (7) The provisions are not applicable to assesses other than Resident individual, HUF, Partnership Firm and also to those assesses who claim deduction u/s 10 A, 10 AA, 10 B, 10 BA or deduction under Chapter VI-A under heading 'C', i.e. like 80 HH upto 80 TT.

(2)Issues for consideration

- 1. If assessee returns 8% profit on Rs.40 Lakhs and asks for capitalization of Rs.3,20,000/- in its capital, is it permissible ?
- 2. Whether only receipts derived from construction business only to be considered or even other receipts like interest on margin money, etc. which are attributable to such business also to be considered.
- 3. Because of the depreciation being deemed to have been allowed, assessee having more depreciation and thereby reduced income in future due to unabsorbed depreciation should not opt for presumptive taxation scheme.

4. Whether provisions of sections 68, 69 to 69D, 269 SS & 269 T will apply to assessee under the presumptive taxation.
5. If in a partnership business assessee filing return under this provision does not maintain books but wants to claim deduction u/s 40 (b), how will assessee be able to compute partners' capital account so as to calculate interest allowable to the partners.
6. Whether benefit of section 44 AD w.e.f. A.Y. 2011-12 can be availed by professionals like Advocates, Chartered Accountants if their gross receipts are less than Rs.60 Lakhs.
7. Mr. A is having Business Turnover of Rs 30 Lacs, His actual income from business is Rs 125000/-. He does not have any other income. Can he take benefit of Section 44AD(5) and may not maintain books of account/audit and file his return showing income at Rs 125000/-.
8. Mr. B is having Business Turnover of Rs 50 Lacs for FY 2010-11, His actual income from business is Rs 250000/-. He has got audited his books of account and filed the return appropriately. Does he require to make TDS for payments made during FY 2011-12.
9. Under sec.44AD if tax payer's turnover is below 60 lacs then he need not maintain account books. But under sec.44AA under certain circumstances taxpayer has to maintain account books and also if it is compulsory to maintain account books

under other laws and if taxpayer is maintaining such books then can the tax authorities call for such account books?

10. Does sec.44AD apply to assessee who does business of sale and purchase of shares and securities?
11. If the turnover of an assessee is Rs.58 lacs and he has commission income of Rs.5 lacs then does the provision under sec.44AD apply?
12. If the income of assessee is less than 8% of total turnover and assessee gets his books of account audited, then in these circumstances, has the assessee to file his return before 31st July or before 30th September?
13. If assessee's income is below threshold limit or assessee has incurred loss in business, then, has the assessee to maintain books of accounts? Does he have to get books of accounts audited?
14. Turnover of a firm is Rs.50 lacs. According to 8%, income comes to Rs.4,00,000/- , but firms profit is Rs.2,50,000/- only. Partner is given interest of Rs.1,00,000/- and salary of Rs.1,50,000/- bringing the income to 'NIL' i.e. below the threshold limit.

Does sec.44AD apply in this case?

Has audit to be done?

Has return of income to be filed compulsorily?
15. Whether the tax payer has to maintain the details of his receipts/turnover?
16. Can the tax payer show 8% profit as per this section if he has earned more than 8% profit?

17. Can the Assessing Officer take the case of the tax payer in scrutiny if he has filed his return as per this section 44AD?
18. During the course of assessment proceedings if the Assessing Officer comes to know that the tax payer has taken new cash credit then what proceedings can he take in that regard?
19. If the tax payer does more than one business and if the turnover is less than Rs.60 lacs for all such businesses, can he take advantage of this section for any one of his business or more than one business?
20. If the tax payer has filed the income tax return as per section 44AD, can the Assessing Officer disallow some depreciation out of depreciation claimed on building, machinery, plant, furniture on the ground that there is personal use of these assets to some extent?
21. If the tax payer files return on the basis of estimated income under section 44AD, then can provision of not granting such expenses if no TDS done for certain business expenses as per section 40(a)(ia) of the Income tax Act apply?
22. If during the course of survey or search proceedings, the Assessing Officer gets such information / evidence that the taxpayer has taken wrong advantage of section 44AD inspite of having turnover of more than Rs.60 lacs, then what action can the Assessing Officer take?
23. Whether the deductions like insurance, PPF, health insurance, medical treatment expenses of dependent, interest on loan taken for higher education, deduction of donation, deduction of rent etc. under section 80C to section 80GGC is available to the tax payer?

24. If the tax payer has filed the return under this section on the basis of estimated income, can the Assessing Officer disallow any amount from the expenses?
