# Agenda

- Overview of Presumptive Income Sections
- Section(s)  to be covered in today’s session
- History of Presumptive Income / Tax in India
- 44 AD / ADA / AE
- Comparative Analayis of 44 AD/ADA/AE
- Way Forward
- Issues

# Over View of Provisions relating to Presumptive Income

| Section | Covering | Applicable to |
|---|---|---|
| 44 AD | Eligible Business | Resident Ind/HUF/Firm ( other than LLP) |
| 44 ADA | Specified Profession | Resident |
| 44 AE | Transport Operators | All assessee' s |
| 44 B | Shipping business | Non Residents |
| 44 BB | Exploration etc., of Mineral oils | Non Residents |
| 44 BBA | Operation of Aircraft | Non Residents |
| 44BBB | Business of Civil construction in certain turnkey projects | Foreign companies |

# History of Presumptive Income ( Last 30 Years)

Sec 44 AC
(FA 1989)

Chapter XII C
(FA 1992 )

44 AD / AE / AF
(FA 1994 / FA 1997)

New 44 AD
(FA 2009) WEF AY 11 12

44 ADA FROM AY 17 18

# Objective and Justification – Memorandum to FB 1994

- Simplification;
- Reducing compliance cost
- Minimizing undue harassment to tax payers
- Prevalent in Many countries
- Recommendation of Tax Reforms Committee

# New 44 AD – objective and justification

- Substantial increase in small businesses
- A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net.
- Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources.
- A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and
- Reduces the administrative burden on the tax machinery.

# Constitutional validity

Section 44AC (as existed prior to assessment year 1993-94), which deemed a certain amount of profits related to purchase price, as assessable profits from the business of trading in certain goods, was challenged, *inter alia,* on a ground that the provisions raised a conclusive presumption of law that the assessee will make a net taxable income of the specified amount

The Kerala High Court in *T.K Aboobacker* v. *Union of India* [1989] 177 ITR 358.and the Andhra Pradesh High Court in *A. Sanyasi Rao* v. *Government of Andhra Pradesh* [1989] 178 ITR 31 held the provisions to be constitutional by reading it down and observing that it would be upon assessee to prove in the assessment proceedings his real assessable income.

# Sections to be covered in today’s session

44 ADA

ANY PROFESSION REFERRED TO IN SEC 44 AA

44 AD

ANY BUSINESS OTHER THAN

44 AE

44 AE

BUSINESS OF PLYING / RUNNING GOODS CARRIAGES

# Sec 44 ADA– Arrangement of the Section

# Presumptive Income 44 ADA (1)

- Notwithstanding anything contained in sections 28 to 43C,
- Resident Assessee
- Engaged in a profession referred to in sub-section (1) of section 44AA and
- Whose total gross receipts do not exceed Rs. 50 Lakhs in a previous year,
- Sum Equal to 50 % of the total gross receipts (or) 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".**

# Specified Profession 44 AA

- Legal,
- **Medical**,
- Engineering or
- Architectural profession or
- Profession of accountancy or
- Technical consultancy or
- Interior decoration or
- Information Technology , ( Notified Profession)
- Film Artist , ( Notified Profession)
- Company Secretary ( Notified Profession)
- Authorised Representative ( Notified Profession)

# Availability of Deductions 44 ADA (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 :

**Key issues**

- Unabsorbed Depreciation
- Unabsorbed Business Loss
- Chapter VI A deductions
- Whether Interest and Remuneration can be claimed as deduction ?

# Computation of WDV

## 44 ADA(3)

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

# Consequences of offering lower Income 44 ADA(4)

- Notwithstanding the foregoing provisions
- Assessee who claims that his profits and gains from the profession 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 Sec 44 AA (1) and get them audited and furnish a report of such audit as required under Sec 44 AB

# Issues

| | Situation 1 | Situation 2 | Situation 3 |
|---|---|---|---|
| Gross receipts ( legal profession) | 40 lacs | 40 lacs | 40 lacs |
| Income offered | 30 lacs | 10 lacs | 2 Lacs |
| Sec 44 ADA | | | |
| Sec 44 AB | | | |

# Issues

- Firm / LLP carrying on Specified profession
- Gross receipts 40 Lacs
- Whether 44 ADA can be opted
- If 44 ADA is opted whether interest and remuneration is allowed ?
- Whether interest and Remuneration is taxable in the hands of partners ?

# Issues

Firm / LLP carrying on Specified profession

- Gross receipts 140 Lacs
- Interest and remuneration within the limits and conditions of Sec 40 b will be allowed in the hands of the firm / LLP
- Whether interest and Remuneration is taxable is subject to presumptive income u/s 44 ADA

Factors to be considered

- Sec 67 – computation of Share of Income from Firm
- Partners – Jointly and severally carry on business or profession
- Whether Interest and remuneration be considered as turnover or gross receipts
- Kolkata bench of the Income Tax Appellate Tribunal in the case of Amal Ganguli v. DCIT (ITA No. 2135/Kol/2008) and Sagar Dutta v. DCIT (ITA No. 692/Kol/2012) wherein it was held that a partner would be liable to tax audit under Section 44AB if his salary from the partnership firm exceeds the threshold limit prescribed under Section 44AB
- Decision of the Chennai ITAT in *A Anand Kumar* v. *ACIT(* ITA No. 573/CHNY/2018, dated 30-1-2019) should also be borne in mind

# Allowability of Interest and remuneration against presumptive Income

The CBDT vide its Circular no. 684 dated 10 June 1994 while explaining the scope of Sections 44AD and 44AE stated that the deduction under section 40(b) of partners' salary and interest would be allowed from the income computed on the presumptive basis.

However, later the CBDT issued another Circular No. 737 dated 23 February 1996 holding that Circular No. 684 dated 10 June 1994 was erroneous to the extend it allowed deduction under section 40(b) and deleted the relevant portion of the earlier circular with retrospective effect from 1994.

This gave rise to wide spread litigations but the controversy was laid to rest by the Finance Act, 1997 which inserted the proviso in Sections 44AD and 44AE specifically providing for deduction under section 40(b) with retrospective effect from Assessment Year 1994-95

Section 44ADA does not contain the provision similar to that of Sections 44AD and 44AE extending the deduction under Section 40(b) and more over the Finance Act, 2016 has omitted the said proviso from section 44AD though not from section 44AE

# Sec 44 AD – Arrangement of the Section

# Presumptive Income 44 AD(1)

- Notwithstanding anything to the **contrary** contained in Sec 28 to 43 C
- Eligible assessee engaged in eligible business
- Sum equal to **8 %** (or) **higher than 8 % claimed** to have been earned
- **Shall be deemed to be "Profits and gains of business or profession"** :
- 8 % shall be substituted by 6 % total turnover or gross receipts if received by an account payee cheque or an account payee bank draft or use of electronic clearing system or ** up to due date for furnishing the Return of Income u/s 139 (1)

- ** any other prescribed electronic mode from AY 20 21

# Electronic Mode prescribed Rule 6ABBA

- Inserted from 29th Jan 2020 vide notification no 8/2020 dated 29th Jan 2020 .

| | |
|---|---|
| **(a)** | **Credit Card;** |
| (b) | Debit Card; |
| (c) | Net Banking; |
| (d) | IMPS (Immediate Payment Service); |
| (e) | UPI (Unified Payment Interface); |
| (f) | RTGS (Real Time Gross Settlement); |
| (g) | NEFT (National Electronic Funds Transfer), and |
| (h) | BHIM (Bharat Interface for Money) Aadhaar Pay" |

# Meaning of Eligible assessee and Eligible Business

## Explanation to 44 AD

- Eligible assessee
  - Individual /HUF/ partnership firm (other than LLP) and
  - Has not claimed deduction u/s 10 AA / Part C of chapter VI A
- Eligible Business
  - Any business except the business of plying, hiring or leasing goods carriages Referred to in section 44AE; and
  - Whose total turnover or gross receipts in the previous year does not exceed an amount of **Rs. 2 Crore rupees**
  - ***Sec 44 AB***
  - *Every person, carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds 1 Crore in any previous year*

# Deduction not allowable
## 44 AD (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 :

**Key issues**

Unabsorbed Depreciation

Unabsorbed Business Loss

Chapter VI A deductions

# Computation of WDV

## 44 AD (3)

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

# Consequences of opting out of Sec 44 AD ( Sub section 4 ) ( from AY 17 18 )

- Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and ( that is **8 % or 6 %** )
- 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), **( that is he Opts out of the scheme )**
- 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). **( Next 5 years assessee will be automatically opted out )**

**AY 11 – 12 TO AY 16 17 Provisions are similar to Sec 44 ADA**

# Maintenance of books of accounts and applicability of tax audit ( Sub section 5 )

- If the provisions of 44 AD (4) are applicable **and** whose total income exceeds the maximum amount which is not chargeable to income-tax,
- Assessee 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 44 AD(4)

- Whether applicable from AY 17 18 only or applicable from earlier Asst. years also
- If 5 years has already expired by AY 16 17 will the New provisions of 44 AD (4) will apply .
- If Business was started in PY 16 -17 and Income was not offered as per 44 AD (1) , Whether 44 AD (4) gets triggered ?

# Applicability of Sec 44 AD(4)

| | SITUATION | |
|---|---|---|
| AY 17 18 | 44 AD OPTED | |
| AY 18 19 | 44 AD not OPTED | |
| 44 AD NA | AY 19 20 TO AY 23 -24 | |

# Applicability of Sec 44 AA & Sec 44 AB during the opt out period

Assume in the previous issue turnover and total Income for AY 19 20 to 23 24 are as under

| | AY 19 20 | AY 20 21 | AY 21 22 | AY 22 23 | AY 23 24 |
|---|---|---|---|---|---|
| TURNOVER | 100 LACS | 100 LACS | 100 LACS | 100 LACS | 100 LACS |
| TOTAL INCOME | (2 LACS ) Loss | 12 LACS | 5 LACS | 2.5 LACS | 20 LACS |
| 44 AA AND AB | N A | APPLICABLE | APPLICABLE | N A | APPLICABLE |
| | | | | | |

# Issue to whom to Sec 44 AD is not applicable

- Business commenced in PY 19 20
- Turnover ( cash) 150 Lacs
- Income offered 9 Lacs
- **Whether Sec 44 AB Applicable**
- **Will opt out provisions of 44 AD (4) applicable from PY 20 21**
- **Position if the entire proceeds are received in digital mode**

# Person to whom to Sec 44 AD is not applicable ( Sub section 6 )

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

# Issue

- Gross Receipts from Medical Profession 40 Lacs
- Turnover from Pharmacy business 120 Lacs

- Can he choose Presumptive Income
- u/s 44 ADA for medical and
- Sec 44 AD for Pharmacy Business
- **Whether Sec 44 AB Applicable**

# Issue

- Commission Income 40 Lacs
- Retail Trade 61 Lacs
- Can he choose Presumptive Income
- **Whether Sec 44 AB Applicable ( Assume conditions of enhanced tax audit limit not satisfied )**

# Issue

An assessee has three business sources namely:

- Income from retail trade : Rs 80 lakhs
- Civil construction : Rs 90 lakhs
- Manufacturing : Rs 50 lakhs
- Total Rs.220 Lakhs

**Whether 44 AD is applicable**

**Whether 44 AB is applicable ( Assume conditions of enhanced tax audit limit not satisfied )**

# Issue

- Gross Receipts from Medical Profession 40 Lacs
- Turnover from Pharmacy business 80 Lacs

- Can he choose Presumptive Income
- u/s 44 ADA for medical and
- Sec 44 AD for Pharmacy Business
- **Whether Sec 44 AB Applicable**

# Issue

- Assessee carries on profession not specified in 44 AA
- Can he opt 44 ADA
- If No , can he opt 44 AD

# Issue

- Sale of property held as Stock in trade 150 Lacs
- Stamp Valuation 180 Lacs
- Whether 44 AD will apply
- If yes , presumptive Income ( Assume all amounts are received by account payee cheque)

# Sec 44 AE – Arrangement of the Section

# Eligible assesee and Eligible Business
# 44 AE (1)

Notwithstanding anything to the contrary contained in sections 28 to 43C

Assessee, who owns **not more than 10** goods carriages at any time during the previous year and

who is engaged in the business of plying, hiring or leasing such goods carriages,

# Presumptive Income
# 44 AE (2)

**From AY 19 20**

For Heavy Goods Vehicle

Rs.1.000 / ton of gross vehicle weight or unladen weight,

Other than Heavy Goods Vehicle

Amount equal to **Rs. 7,500** 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 the vehicle, whichever is higher.

**From AY 15 16 TO AY 18 19**

**Rs. 7,500** for every month or part of a month ( For all Vehicles)

**From AY 11 12 TO AY 14 15**

**Rs. 5,000 / 4,500** for every month or part of a month ( For Heavy Vehicles and other than heavy vehicles respectively)

**From AY 03 04 TO AY 10 11**

**Rs. 3,500 / 3,150**** for every month or part of a month ( For Heavy Vehicles and other than heavy vehicles respectively)

** 2,500/2000/ month prior to this period

# Availability of deductions

## 44 AE (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.

# Computation of WDV

## 44 AE(4)

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

# Applicability of 44 AA and 44 AB

## 44 AE(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.

# Consequences of offering lower Income

## 44 AE(6) ( up to AY 96 97 ) and 44 AE(7) From AY 97 98 )

**Upto AY 96 97**

Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.]

**From AY 97 98**

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.

| | 44 AD | 44 ADA | 44 AE |
|---|---|---|---|
| Eligible assessee | Ind/HUF/Firm( other than LLP) | Any resident | Any person |
| Eligible Business | Any Business except 44 AE | Profession referred in 44 AA | Plying , hiring or leasing goods carriages |

# Comparative Analysis

# Comparative Analysis

| | 44 AD | 44 ADA | 44 AE |
|---|---|---|---|
| Applicability | Turnover or gross receipts should not exceed 2 Crores.<br>Person should not be engaged in agency business or commission or brokerage or Profession referred in 44 AA | Gross receipts should not exceed 50 Lacs. | No of vehicles owned should not exceed 10 at any time during the previous year |

# Comparative Analysis

| | 44 AD | 44 ADA | 44 AE |
|---|---|---|---|
| Presumptive Income | 8 % or 6 % | 50 % | 7,500/Month or part of a month /1000/TON |
| Interest and Remuneration | Not allowed | Not allowed | Allowed |
| Applicability of 44 AB | If 44 AD (4) gets attracted AND Total Income basic exemption Limit | Income offered is less than 50 % and Total Income exceeds Basic exemption limit | Income offered is less than the presumptive Income |
| Higher Income<br><br>** substituted for the word Declared from AY 11 12 | **Claimed to have Been earned | Claimed to have Been earned | *** **Actually** Claimed to have Been earned<br>*** Circular no 5/2010 clarifies that it is an anti abuse provision introduced in 44 AE |

# Comparative Analysis

| | **44 AD** | **44 ADA** | **44 AE** |
|---|---|---|---|
| Advance tax | Applicable | Applicable | Silent Applicable |
| Number of Installments | 100 % in the last installment | 100 % in the last installment | Silent ALL 4 Installments |
| Applicability to Non residents | Not applicable | Not applicable | Applicable |
| Ceiling for 44 AB | No Specific Provision | No Specific Provision | Not Counted |

# Way forward

- Single Section for all businesses and profession
- Presumptive income % should be industry wise and can be modified once in 2/3  years
- To be synchronized with other laws like GST , companies act etc.,

# Other Issues

# Issue (s)

1. Assessee maintains books of accounts. Turover 100 Lacs . Actual profits 10 Lacs . Can he offer 8 % or 6 % as the case may be . (or) Is it mandatory for him to offer 10 lacs as his Income .

   *[CIT v. Surinder Pal Anand [2010] 192 TAXMAN 264 ( P & H )*

2. Whether 43 B can be applied for Presumptive Income
   - Good Luck Kinetic V ITO **[2015] 58 taxmann.com 267 (Panaji - Trib.)**

3. A surgeon's gross receipts is RS 60 lakhs out of which he paid RS 15 lakhs to his junior doctors. Will he be entitled to avail sec. 44ADA?

# Issues

4. Can the assessee in the revised return offer presumptive Income u/s 44 AE though has declared higher Income in the original return
   - **Pawa Industries (P.) Ltd. V ITO [2017] 80 taxmann.com 365 (Delhi - Trib.)**
   - Relevance of the above decision from AY 11 12
5. For the assessment year 2017-18 an assessee opts out of sec 44AD. The next year the said business was taken over by a partnership firm in which he is a partner. The AO says opting out will run for the next 5 years as business carried by a partnership firm is a business carried on by the assessee

# Issues

6. When a taxpayer declares income under presumptive basis, could he be subjected to addition under sections 68/69 based on entries in bank accounts.

- **Thomas Eapen v ITO 2020 113 Taxman 268 (Cochin – Trib)**
  - **Nand Lal Popli V DCIT [2016] 71 taxmann.com 246 (Chandigarh - Trib.)**
  - **CIT V Chander Prakash Pabrej [2015] 61 taxmann.com 90 (Delhi)**
  - **CIT V G S Tiwari and Co 2014] 41 taxmann.com 17 (Allahabad)**
  - ITO v. Devi Singh Solanki (99 TTJ 890) Jaipur

7. Can the AO discard the audit report as required u/s.44AD(5) and proceed to assess u/s.44AD(1) if the audit report is issued and/or filed belatedly?

  - **Pragati Engineering Corpn. V ITO [2013] 35 taxmann.com 168 (Allahabad)**