



# CONTENTS

---

	PAGE
<i>Chapter-heads</i>	<i>I-5</i>

## INTRODUCTION

### **WHAT IS “PRESUMPTIVE TAXATION” ?**

<b>0.1</b>	What is meant by “presumptive taxation”?	<i>1</i>
<b>0.2</b>	Presumptive taxation for small businesses of resident taxpayers	<i>3</i>

## DIVISION ONE

### **SECTION 44AD : SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF BUSINESS ON PRESUMPTIVE BASIS**

#### *1*

### **WHAT IS THE PRESUMPTIVE TAX REGIME UNDER SECTION 44AD?**

<b>1.1</b>	Backdrop	<i>11</i>
<b>1.2</b>	What is the presumptive taxation regime of section 44AD?	<i>14</i>
	<b>1.2-1</b> Engaged in an eligible business	<i>15</i>
<b>1.3</b>	Presumptive income	<i>16</i>
	<b>1.3-1</b> Modes through which payment must be received to avail the concessional 6% Presumptive rate	<i>16</i>

## CONTENTS

**I-10**

	PAGE
<b>1.3-2</b> Received during the previous year on or before ITR due date through non-cash modes	18
<b>1.4</b> What happens when actual income is more or less than the presumptive income calculated under section 44AD?	20
<b>1.5</b> Whether AO can make additions for discrepancies in assessee's account books where assessee opts for section 44AD?	21
<b>1.6</b> Which are the businesses for which an eligible assessee can avail section 44AD ('eligible business')	21
<b>1.6-1</b> "Any business except the business..... referred to in section 44AE"	21
<b>1.6-2</b> Total turnover or gross receipts not to exceed Rs. 1 cr. (Rs. 2 cr. w.e.f. assessment year 2017-18)	23
<b>1.7</b> How to calculate "total turnover or gross receipts"	24
<b>1.7-1</b> ICAI's views on 'turnover'	25
<b>1.7-2</b> Whether sales tax/excise duty collected is to be included in turnover	26
<b>1.7-3</b> Items to be excluded/deducted from 'turnover'	26
<b>1.7-4</b> Items not to be deducted from 'turnover'	27
<b>1.7-5</b> "Gross Receipts" of business - ICAI's Views	27
<b>1.7-6</b> Tribunal's interpretation of the term 'Gross Receipts'	30
<b>1.7-7</b> Turnover/gross receipts - Transactions in shares, securities and derivatives	30A

## 2

### **WHO CAN OPT FOR THE SECTION 44AD SCHEME ?**

<b>2.1</b> Which assesseees are eligible to opt for the scheme under section 44AD?	33
<b>2.1-1</b> Non-residents are not eligible assesseees and cannot avail benefit of section 44AD	33
<b>2.1-2</b> Section 44AD can be availed only by resident individuals, HUFs and firms	33

	PAGE	
2.1-3	Not claimed any deduction under Part C of Chapter VIA-A of the Act or under section 10A, 10AA, 10B or 10BA	33
2.2	Which assessee are barred from availing section 44AD scheme?	34
2.2-1	A person carrying on a profession referred to in section 44AA(1) [Section 44AD(6)(i)]	35
2.2-2	A person earning commission or brokerage income [Section 44AD(6)(ii)]	39
2.2-3	A person carrying on agency business [Section 44AD(6)(iii)]	45
2.2-4	Disqualification incurred by opting out of section 44AD before availing it for 6 consecutive previous years	46
2.2-5	How to avoid the pitfalls of sub-sections (4) and (6) of section 44AD	47
2.3	Are there any circumstances in which eligible assessee is disqualified from availing section 44AD scheme?	47
2.4	Will amended section 44AD apply to a trader who did not opt for the scheme and got his accounts audited under section 44AB for AY 2013-14, AY 2014-15 and AY 2015-16?	47
2.5	Can an eligible assessee who does not opt for amended section 44AD regime in AY 2017-18 opt for the same in assessment year 2018-19?	48

### 3

#### **CAN ONE OPT IN AND OPT OUT OF THE SECTION 44AD SCHEME AT WILL?**

3.1	What is the procedure for 'opting in' into the scheme?	56
3.2	What is the procedure for 'opting out' of the scheme?	56
3.2-1	If an eligible assessee gets accounts audited to comply with State VAT laws, will he be ineligible to avail section 44AD? Will he be deemed to have opted out of section 44AD?	57
3.3	What are the restrictions on opting in and opting out applicable with effect from AY 2017-18?	57
3.3-1	What happens if assessee opts out of section 44AD after availing it for 6 consecutive assess-	

## CONTENTS

I-12

PAGE

- ment years starting from AY 2017-18 and declares 4% profit in the 7th AY? Will he be liable to maintain accounts as per section 44AA(2) and get them audited if his total income exceeds the taxable limit? Will he be barred from opting for section 44AD for 5 consecutive AYs thereafter? 58
- 3.3-2** An eligible assessee whose turnover is Rs. 80 lakhs had opted for section 44AD in AY 2015-16 and AY 2016-17. He opts out of section 44AD in AY 2017-18. Will section 44AD(4) apply to him? 58
- 3.4** If assessee declares less than 8% in a year where turnover exceeds Rs. 2 cr. limit, will section 44AD(4) be attracted? 59

### 4

#### **WHAT ARE THE CONSEQUENCES OF OPTING OUT OF SECTION 44AD BEFORE AVAILING FOR 6 CONSECUTIVE YEARS?**

- 4.1** What are the consequences if eligible assessee opts out before availing it for 6 consecutive years? 60
- 4.2** If an assessee furnishes audit report beyond date specified in section 44AB, can he be denied benefit of claiming lower profits and gains than specified in section 44AD? 62
- 4.3** Suppose an individual or HUF opts out of section 44AD in Assessment Year 2018-19 after claiming the benefit in Assessment year 2017-18 and its total income is less than the taxable limit. If the individual/HUF does not maintain any books of account nor furnishes any tax audit report, will the income from eligible business declared @ less than 8% of total turnover or gross receipts (say @ 2%) in the ITR be accepted as it is? 63

### 5

#### **ARE THE PARTNERSHIP FIRMS AVAILING SECTION 44AD ENTITLED TO DEDUCTION UNDER SECTION 40(A)?**

- 5.1** Are firms availing section 44AD entitled to deduction of interest and remuneration paid to partners? 65

	PAGE
5.2 Will firms availing section 44AD have to amend their partnership deeds to omit “interest to partner”/“remuneration to partner” clauses?	66
5.3 Will partnership firms be rendered ineligible to avail section 44AD if they pay interest/remuneration to partners?	66

## 6

### **WHAT ARE THE COMPLIANCES REQUIRED BY ASSESSEE WHO OPTS FOR SECTION 44AD SCHEME?**

6.1 What compliances are required when assessee opts for section 44AD?	67
6.2 What compliances are required when turnover limit of Rs. 2 crores is breached?	69
6.3 What compliances are required when assessee opts out of section 44AD regime after availing it for AY 2017-18 and/or subsequent years?	69
6.4 Will assessee be required to maintain and furnish gross profit, expenses and net profit details to AO?	69

## DIVISION TWO

### **SECTION 44ADA : SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF PROFESSION ON PRESUMPTIVE BASIS**

## 7

### **WHAT IS THE PRESUMPTIVE TAX REGIME APPLICABLE TO PROFESSIONALS UNDER NEW SECTION 44ADA?**

7.1 Introduction of new presumptive taxation scheme for professionals - New section 44ADA	73
7.2 What is the presumptive tax regime applicable to professionals under section 44ADA?	74
7.2-1 “Engaged in any profession referred to in sub-section (1) of section 44AA”	77
7.3 How to reckon the limit of Rs. 50 lakhs for the purposes of section 44ADA?	77

## CONTENTS

I-14

	PAGE	
7.4	If professional is also carrying on some “eligible business” covered by section 44AD, can he avail either section 44AD or section 44ADA in respect of such business?	79
7.5	If gross receipts of nursing home run by doctor exceed Rs. 50 lakhs but are less than Rs. 2 cr., can the doctor avail presumptive tax under section 44AD?	79
7.5-1	In case of a ‘passive entrepreneur’ professional as in para 7.5 above, will he be able to avail section 44AD scheme if his gross receipts do not exceed ₹ 50 lakhs ?	81
7.6	What happens when actual income is more or less than the presumptive income calculated u/s 44ADA @ 50% of gross receipts?	81
7.7	Whether AO can make additions for discrepancies in assessee’s account books where assessee opts for section 44ADA?	82

### 8

#### **WHO CAN OPT FOR THE PRESUMPTIVE REGIME APPLICABLE TO PROFESSIONALS U/S 44ADA?**

8.1	Which professional assesseees are eligible to opt for the section 44ADA?	83
8.2	Are partnership firms eligible to avail section 44ADA scheme?	84
8.3	Are Limited Liability Partnerships (LLPs) eligible to avail section 44ADA scheme?	84
8.4	Are companies eligible to avail the scheme?	84
8.5	Can an individual assessee availing deductions under section 80QQB or section 80RRB opt for section 44ADA?	85

### 9

#### **CAN ONE FREELY OPT IN AND OPT OUT OF THE PRESUMPTIVE REGIME APPLICABLE TO PROFESSIONALS UNDER SECTION 44ADA?**

9.1	Can one freely opt in and opt out of section 44ADA scheme?	86
9.2	What are the consequences of opting out? Will assessee be barred for availing it for certain number of years?	86

	PAGE
9.3	87
<p>If an assessee engaged in profession referred to in section 44AA(1) opts out of section 44ADA scheme by declaring less than 50% of gross receipts as income from the profession and his total income does not exceed the maximum amount not chargeable to income-tax, will income from the profession declared by him in his ITR be accepted as it is?</p>	
<b><u>10</u></b>	
<b>WHAT ARE THE IMPLICATIONS OF OPTING IN INTO SECTION 44ADA REGIME?</b>	
10.1	89
<p>What are the implications of opting in into section 44ADA regime?</p>	
<b><u>11</u></b>	
<b>WHAT ARE THE IMPLICATIONS OF NOT OPTING FOR OR OPTING OUT OF SECTION 44ADA?</b>	
11.1	91
<p>What are the implications of not opting for or opting out of section 44ADA?</p>	
11.2	93
<p>If an assessee furnishes audit report beyond date specified in section 44AB, can he be denied benefit of claiming lower profits and gains than specified in section 44ADA?</p>	
<b><u>12</u></b>	
<b>ARE PARTNERSHIP FIRMS AVAILING SECTION 44ADA ENTITLED TO DEDUCTIONS IN RESPECT OF INTEREST/ REMUNERATION PAID TO PARTNERS?</b>	
12.1	95
<p>Are partnership firms/LLPs availing section 44ADA entitled to deduction under section 40(b) in respect of interest/remuneration paid to partners?</p>	
<b><u>13</u></b>	
<b>WHAT ARE THE COMPLIANCES REQUIRED BY ASSESSEES OPTING FOR SECTION 44ADA?</b>	
13.1	98
<p>What compliances are required if assessee opts for section 44ADA?</p>	

	PAGE
13.2 Will assessee be required to maintain and furnish gross profit, expenses and net profit details to AO?	99

### DIVISION THREE

#### **SECTION 44AE : SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES**

##### 14

#### **WHAT IS THE PRESUMPTIVE TAX REGIME UNDER SECTION 44AE?**

14.1 What are the features of the presumptive scheme for truck owners under section 44AE?	103
14.2 What happens when actual income is more or less than the presumptive income calculated under section 44AE @ Rs. 7,500 p.m. or part thereof per truck owned?	106
14.3 Whether AO can make additions for discrepancies in assessee's account books where assessee opts for section 44AE?	107
14.4 What if assessee owned 11 trucks at any point of time during the year but only 10 were operational as one was under repair? Is assessee eligible to avail section 44AE scheme?	107
14.5 If assessee owns 8 trucks, can he opt for section 44AE for say 3 of them and opt for regular taxation for the remaining 5 trucks?	108

##### 15

#### **WHO CAN OPT FOR THE PRESUMPTIVE TAX REGIME UNDER SECTION 44AE?**

15.1 Who can opt for section 44AE scheme?	110
15.2 Goods carriage	111
15.2-1 Whether JCBs are "goods carriages"? Whether assessee can claim section 44AE scheme in respect of business of hiring out JCBs owned by him?	113



	PAGE
15.3 Whether assessee can avail the scheme in respect of trucks acquired on hire-purchase basis? Can he be considered owner of such trucks?	114
<b><u>16</u></b>	
<b>CAN ONE OPT IN AND OPT OUT OF SECTION 44AE REGIME FREELY?</b>	
16.1 Can one freely opt in and opt out of section 44AE scheme?	115
16.2 What are the consequences of opting out? Will assessee be barred for availing it for certain number of years?	115
<b><u>17</u></b>	
<b>WHAT ARE THE IMPLICATIONS OF OPTING IN INTO SECTION 44AE REGIME?</b>	
17.1 What are the implications of opting in into section 44AE regime?	116
<b><u>18</u></b>	
<b>WHAT ARE THE IMPLICATIONS OF NOT OPTING FOR OR OPTING OUT OF SECTION 44AE?</b>	
18.1 If assessee claims his profits are lower than the presumptive income under section 44AE, will he be required to maintain books and get them audited if his income is below taxable limit?	118
18.2 If an assessee furnishes audit report beyond date specified in section 44AB, can he be denied benefit of claiming lower profits and gains than specified in section 44AE?	119
<b><u>19</u></b>	
<b>ARE PARTNERSHIP FIRMS/LLPs AVAILING SECTION 44AE ENTITLED TO DEDUCTIONS IN RESPECT OF INTEREST/ REMUNERATION PAID TO PARTNERS?</b>	
19.1 Are partnership firms/LLPs availing section 44AE entitled to deduction under section 40(b) in respect of interest/remuneration paid to partners?	120

CONTENTS

I-18

PAGE

20

**WHAT ARE THE COMPLIANCES REQUIRED BY  
ASSEESSES OPTING FOR SECTION 44AE?**

<b>20.1</b>	What compliances are required if assessee opts for section 44AE?	123
<b>20.2</b>	Will assessee be required to maintain and furnish gross profit, expenses and net profit details to AO?	124

**APPENDICES**

<b>APPENDIX 1</b>	: RELEVANT SECTIONS OF INCOME-TAX ACT, 1961	129
<b>APPENDIX 2</b>	: CIRCULAR NO. 684, DATED 10-6-1994 (RELEVANT EXTRACTS)	138
<b>APPENDIX 3</b>	: CIRCULAR NO. 5, DATED 3-6-2010 (RELEVANT EXTRACTS)	144
<b>APPENDIX 4</b>	: EXPLANATORY MEMORANDUM TO FINANCE BILL, 2016 (RELEVANT EXTRACTS)	146
<b>APPENDIX 5</b>	: JUSTICE EASWAR COMMITTEE REPORT (RELEVANT EXTRACTS)	148
<b>APPENDIX 6</b>	: PRESS RELEASE CLARIFYING AMENDMENTS TO SECTION 44AD TO PROMOTE DIGITAL PAYMENTS	152
<b>APPENDIX 7</b>	: EXPLANATORY MEMORANDUM TO FINANCE BILL, 2017 (RELEVANT EXTRACTS)	153