Section 44AD of the Income tax Act after Budget 16

SPECIAL PROVISIONS FOR COMPUTATION OF PROFIT AND GAIN OF BUSINESS ON

PRESUMPTIVE BASIS

This section is nothing but provides a relaxation to the tax payers to declare income on

presumptive basis, which should not be less than 8% of the gross turnover or gross receipt

during the financial year. However this relaxation is provided to certain persons and certain

business subject to specified conditions which are provided under Sec 44AD of Income Tax

Act, 1961. These certain business and certain persons are named as Eligible Business and

Eligible Assessee in the Act. Let us discuss this Section.

This section provides that ELIGIBLE ASSESSEES in respect of ELIGIBLE BUSINESS can declare his income on estimated basis if not maintaining the books of accounts or because of other reasons unable to calculate the business income. This declared income on estimated basis should not be less than 8% of Gross turnover or gross receipts of the business during the financial year.

Now the question arises what’s the meaning of eligible business and eligible assesses as given above.

Here the eligible assessee means –

a. An individual, HUF or a partnership firm who is resident other than a LLP. and

b. Who has not claimed any deductions under section 10A, 10AA, 10B, 10BA, or deductions under any provisions of Chapter VIA under the heading ‘C’ i.e Deductions in respect of certain incomes in relevant assessment year.

Interpretation: Only resident individual, HUF and Partnership firm can declare income under SEC 44AD. An LLP can not declare income under this section . Moreover in case a resident individual, HUF or a partnership firm claims any deduction under section mentioned above also can not declare income under this section

These eligible assessees can declare income on estimated basis in respect of any business except the business mentioned below ,if his gross turnover or gross receipts in the previous year does not exceed Rs. 2 Crore

1 A person carrying on profession as referred u/s44AA(1)

2. A person carrying income in the nature of Commission or brokerage.

3. A person carrying on any agency business

4. A person who is in the business of plying , hiring or leasing goods carriages.

Thus income on estimated basis can not be declared u/s 44AD if the gross turnover or gross receipts exceeds Ra. 2 crore during the financial year.This is because if we declare income u/s 44AD, which is not less than 8% ,then we are not required to maintain books of accounts as per the provisions of Sec 44AD however sec 44AB states that audit is compulsory in case the turnover exceeds Rs. 2 crore during the year which requires proper maintenance of books of accounts . Hence an assessee can not apply Sec 44 AD and declare income on estimated basis if the gross trnover or gross receipts exceeds Rs. 2 crore during the financial year.

However the Budget 2016 provides that where an eligible assessee declares profit for any previous year under Sec 44AD and the elegible assessee has not declared income u/s 44AD in any of the five consecutive assessment years succeeding the assessment year in which the income was declared u/s 44AD, , then he shall not be eligible to claim the benefit of declaring the income on presumptive basis u/s 44AD for five assessment years subsequent to the assessment year in which the profit has not been declared under sec 44AD.This limitation will take effect from F.Y. 2016-17

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Let us have a clarification of this Budget amendment with an example:Suppose

an eligible assessee declared income U/s 44AD for A.Y. 2017-18. He continues to declare the

income u/s 44ad for A.Y 2018-19 and 2019-20. However for A.Y 2020-21 he has not declared income u/s 44AD, Then the eligible assessee will not be able to avail the benefit of declaring income u/s 44AD for five assessment years succeeding the AY in which he fails to declare income u/s 44AD i.e he will not be allowed to declare income u/s 44AD from A.Y 2021-22

to 2026-27.

**Allowability of the Expenses from the Income Declared under Section 44AD**

All the expenses are already deemed to be already deducted from the income under this section. It means no further deductions are allowed under this section from the income declared , for expenses. Even the interest , salary , remuneration etc paid to partners by the partnership firm will not be allowed as deduction if income declared u/s 44AD wef F.Y. 201617 as the provision in this respect provided under Section 44AD(2) has been deleted by the Finance Act 2016.

**Depreciation:** The assessee can provide deprecation to the assets of the business in respect of which the provisions of Section 44AD is claimed and can show WDV value of the assets in the balance sheet.

However the depreciation amount will be assumed to be already deducted from the income and no further amount of deprecation can be deducted from the income declared under section 44AD

**Advance Tax** : After Budget 2016 , the person declaring income u/s 44AD will also be required to pay the advance tax. However he can pay the advance tax by 15th March of the financial year..

**Applicabilty of Section 44AB:** if the assessee is covered u/s 44AD(4) and his total incomeand his total income exceeds the maximum amount which is not chargeable to tax , then such assessee is required to maintain the books of accounts and get his accounts audited under Section 44AD and furnish the prescribed report.

**Current year losses and brought forward losses**: Since this section overrides Section 28 to Sec 43C but does not overrides Chapter VI , so current year losses and brought forward losses can be set off from the income declared under this section.

To have a clarification of Sec .let us have some classifications.

**Current Year Depreciation and Brought Forward Depreciation**

Since the provision of current year depreciation and brought forward deprecation are provided under Section 32 and Section 44AD overrides Section 28 to sec 43C , so current year depreciation and brought forward deprecation can not be set off against the income declared under Sec 44AD.

Deduction under section 80C to 80GGC : This section provides that the assessee who opt for Section 44AD can claim deductions under section 80C to 80GGC. However no deduction can be claimed from Section 80IA to 80RRB

To be more precise, if turnover of all business of eligible assessee, excluding business covered by section 44AE, exceeds Rs. 1 Crore, taxpayer has to get accounts audited u/s 44AB and option to file return on presumptive basis u/s 44AD in respect of any particular business or part of business or division thereof will not be available. Your business other than the business of plying and hiring vehicle declared u/s 44AE is already covered by tax audit provision u/s 44AB for the reason that your turnover therefrom is exceeding Rs. 1 Crore. Resultantly, the benefit of presumptive taxation u/s 44AD in respect of I and III business would not be available to you. You have to get the Business I and III also audited & income of it cannot be offered for taxation on presumptive basis u/s 44AD. Limit of Rs. 1 Crore for tax audit is assesseewise

and not businesswise.

Only exception is in respect of income from plying, hiring or leasing of your own goods carriages. You can offer income from goods carriages on presumptive basis u/s 44AE & tax audit would not be mandatory in such case.

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