

Section 44ADA | Presumptive Taxation For Professionals

Special provision for computing profits and gains of profession on presumptive basis

44ADA:

(1) Notwithstanding anything contained in sections 28 to 43C, [in case of an assessee, being an individual or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), who is a resident in India, and] is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lacs rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, 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".

(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.

(3) The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, an 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 sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Introduction

The Scheme of Presumptive Taxation for Professionals was introduced under Section 44ADA in the Finance Act 2016 and is applicable from Financial Year 2016-17 onwards.

Before 2016, the benefits of Presumptive Taxation were only given to Businesses under Section 44AD and to Transporters under Section 44AE. Specified professionals were specifically kept out of this scheme of Presumptive Taxation.

As Professionals were specifically kept out of the scheme of Presumptive Taxation, the only option available for Professionals was to compute their Income under the normal system of taxation. These professionals were also required to maintain all books of accounts, maintain a copy of invoices for all expenses and in some cases – they were also required to get their Tax Audit conducted.

So many complexities ended up discouraging the professionals from filing income tax returns. So as to simplify the taxation for Professional, the Presumptive Taxation for Professionals was introduced under Section 44ADA in Finance Act, 2016 which is applicable from Financial Year 2016-17 onwards. The scheme of presumptive taxation was extended to professionals by introduction of section 44ADA of the ITA w.e.f. Assessment Year 2017-18. It was made applicable to all assessees, being a resident in India, who is engaged in the profession referred to in sub-section (1) of section 44AA of the ITA.

However, in the memorandum explaining the provisions in the Bill, it is clarified that section 44ADA of the Act are applicable only to individual, Hindu Undivided Family and partnership firm, but not a Limited Liability Partnership (LLP). Accordingly, the Bill proposed to amend sub-section (1) of section 44ADA of the ITA to provide that the provisions of section 44ADA of the ITA shall apply only to an assessee, being an individual, Hindu Undivided Family or a partnership firm, other than a limited liability partnership, who is a resident in India.

However, the Finance Act, 2021 has surprisingly and without any explanation has excluded 'Hindu Undivided Family' from the list of assessee, who would be eligible to opt for the presumptive scheme.

The above amendment is applicable from the Assessment Year 2021-22.

Eligible Profession

Meaning of “Professional services”

“Professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA(1) of the Act.

Section 44AA(1) prescribes for compulsory maintenance of such books of accounts and other documents which will enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. Sub-section(1) applies to the followings-

- A person carrying on a legal profession.
- A person carrying on a medical profession.
- A person carrying on engineering or architectural profession.
- A person carrying on the profession of accountancy.
- A person carrying on the profession of technical consultancy.
- A person carrying on the profession of interior decoration.
- Any other profession as notified by the Board. The CBDT has notified the following professions u/s 44AA(1) of the Act.

(1) A person carrying on the **profession of an authorised representative or film artist. [Notification No. SO 17(E) dated 12-1-1977]**

"Authorised representative" means a person who represents any other person, on payment of any fee or remuneration, before any tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an

employee of the person so represented or a person carrying on a legal profession or a person carrying on the profession of accountancy.

"Film artist" means any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as –

- (i) an actor ;
- (ii) a cameraman ;
- (iii) a director, including an assistant director ;
- (iv) a music director, including an assistant music director ;
- (v) an art director, including an assistant art director ;
- (vi) a dance director, including an assistant dance director ;
- (vii) an editor ;
- (viii) a singer ;
- (ix) a lyricist ;
- (x) a story writer ;
- (xi) a screen-play writer ;
- (xii) a dialogue writer; and
- (xiii) a dress designer.

Example:

Jatinder Sharma who is a professional singer. He is a stage artist and not a Playback singer. He wants to opt the provision of section 44ADA of the Act. Can he do so?

Ans:

It is to be noted that by virtue of [Notification No. SO 17(E) dated 12-1-1977], a person carrying on the profession of an authorized representative or film artist is an authorised professional u/s 44AA(1) of the Act. "Film artist" means any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as singer also. In this connection, it is clear that only those singers are professional u/s 44AA(1) of the Act who are engaged in their professional capacity in the production of a cinematograph film, whether produced by him or by any other person. Hence, stage singers are not professionals for the application of sec 44ADA of the Act. It is also to be noted that the persons who are the singers on religious/social occasions can't opt the provisions of sec 44ADA of the Act as they are not singers for the purposes of sec 44ADA of the Act.

Interpretation of Fee for Professional Service

As per definition given under Income Tax Act, 1961 following attributes are required to classify a service as "Professional Services":

1. Service is provided by a person;
2. Service is provided in the course of carrying out any profession;
3. Such service falls under the list of professions given in definition itself or it falls under any other profession notified for Section 44AA. These attributes are discussed below in detail:

a. Service is provided by a person

It is to be noted that “Professional Service” is the one which is rendered by a person.

“person” includes –

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

So, as per definition given, a person can either be an individual or HUF or Firm or any other artificial person.

However, activities mentioned in the definition of FPS are more into intellectual and artistic nature and the same can be provided by a person only and not by any artificial person.

Maintenance of books of accounts and audit

A very interesting issue is that whether a professional who has opted presumptive system of taxation has to maintain books of account also. To resolve this issue firstly we have to see the provisions of section 44AA(1) of the Act.

Section 44ADA overrides section 28 to section 43C but does not override section 44AA. Section 44AA(1) provides for compulsory maintenance of books of accounts by a person carrying on specified profession. Further, section 44ADA can be opted only by a person carrying on a specified profession in section 44AA(1). Therefore, on the plain reading of the law, it appears that it is mandatory for a person carrying on a specified profession as per section 44AA(1) has to compulsorily maintain books of accounts even if such a person declares his income as per section 44ADA(1).

If this interpretation is invoked, then the purpose of simplification will get defeated. The purpose of introducing the presumptive taxation is to provide relief to small taxpayers from the burden of maintaining the detailed books of account and reducing the cost of compliances.

The memorandum to Finance Bill 2016 states that in order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small taxpayers having income from profession and to facilitate the ease of doing business, it is proposed to provide for presumptive taxation regime for professionals. It further states that the assessee will not be required to maintain books of account under sub-section (1) of section 44AA and get the accounts audited under section 44AB in respect of such income unless the assessee claims that the profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under sub-section (1) of section 44ADA and his income exceeds the maximum amount which is not chargeable to income-tax.

Further, the 'FAQs on Tax on Presumptive Taxation Scheme' published on income tax portal clarifies the same in the following manner-

If a person adopts the presumptive taxation scheme of section 44ADA, then he is required to maintain books of account as per section 44AA?

In case of a person engaged in a specified profession as referred in sections 44AA(1) and opts for presumptive taxation scheme of sections 44ADA, the provision of sections 44AA relating to maintenance of books of account will not apply. In other words, if a person opts for the provisions of sections 44ADA and declares income @50% of the gross receipts, then he is not required to maintain the books of account in respect of the specified profession.

Even though the FAQ is not the law but still it can be an aid to interpretation on the issue. This view shall further fortify from the speech of the Finance Minister.

In the Budget Speech of the then Finance Minister while presenting the Union Budget 2016 stated as follows-

“At present about 33 lacs small business people avail of this (presumptive taxation scheme under section 44AD) benefit, which free them from the burden of maintaining detailed books of account and getting audit done.

I also propose to extend the presumptive taxation scheme to professionals with gross receipts up to Rs.50 lacs with the presumption of profit being 50% of the gross receipts.”

From the speech, it is also suggested that professionals opting the presumptive taxation scheme with gross receipts up to Rs.50 lacs with the presumption of profit being 50% of the gross receipts are not required to maintain books of accounts.

The legislative intent is very clear that such a professional is not required to maintain books of account under section 44AA. Although, it can be said that when the plain meaning of the words of the statute is unambiguous, there is no need to resort to external aid for interpretation. However, one should not forget that it is a beneficial provision provided to small taxpayers and hence is required to be interpreted liberally.

From the perusal of above section, it is clear that it is mandatory for the professional who is covered under Section 44ADA to maintain books of accounts even though he has opted for the presumptive taxation scheme. Although, the Memorandum to the Finance Bill, 2016 provides that an assessee opting for Section 44ADA would not be required to maintain books of account under Section 44AA(1), the same has not been brought out clearly in the Section 44AA. Section 44AA is silent in relation to the assessee who is covered by Section 44ADA. Moreover the provisions of Sec 44ADA overrides Sec 28 to 43C and not sec 44AA of the Act. Hence, on combined reading of 44AA(1), 44AA(3) read with Rule 6F, the specified professionals would need to maintain books of account even if they opt for section 44ADA.

Whether option of sec 44ADA optional or mandatory

Further, one more question that is to be answered is whether the provision of Section 44ADA is optional or mandatory, that is to say, is it mandatory for the partner whose gross

receipts is less than Rs.50 lacs to apply the provisions of Section 44ADA or is it optional. Once the gross receipts are less than Rs.50 lacs the partner has to mandatorily offer 50% of such gross receipts for tax. In a case, where the partner thinks his expenditure is more than 50% or want to offer lower amounts of gross receipts for tax, he should then get his books of accounts audited as per provisions of sub-section (4) of Section 44ADA.

Source : Caclubindia