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NEWSLETTER

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INCOME TAX

Section 44AD of Income Tax Act, 1961

To give relief to small assesseees, the Income-tax Law has incorporated a simple scheme commonly known as Presumptive Taxation Scheme. There are two schemes, viz., the scheme of section 44AD and the scheme of section 44AE.

An assessee adopting these provisions is not required to maintain the regular books of account and is also exempt from getting the books of account audited.

The detailed provisions in this regard are as follows:

Applicable assessee:

The provisions of section 44AD are applicable to such resident assessee who is an Individual, Hindu Undivided Family or a Partnership Firm (not a Limited Liability Partnership Firm).

Eligible business:

The presumptive taxation scheme under these provisions can be opted for by the eligible assessee who is engaged in any business (except the business of plying, hiring or leasing goods carriages referred to in section 44AE), whose turnover or gross receipts from such business do not exceed Rs. 200,00,000.

INCOME TAX (*cont.*)

Further, these provisions can be adopted by the assessee only if he has not claimed deduction under section 10A/10AA/10B/10BA or under sections 80HH to 80RRB in the relevant year.

Moreover, the provisions of section 44AD cannot be adopted by an assessee who is engaged in any profession as prescribed under section 44AA or is carrying on an agency business or is earning income in the nature of commission or brokerage.

Scheme of computation of income

In case of an assessee who is willing to opt for these provisions, income will be computed on an estimated basis. It is provided that 8% of total turnover or gross receipts of the eligible business for the previous year will be presumed to be the Net Income of the assessee. An **assessee is not permitted to claim any deduction under sections 30 to 38** (including depreciation or unabsorbed depreciation).

An assessee, being a partnership firm, can claim further deduction of remuneration and interest paid to its partners within the limit specified under section 40(b). In other words, in case of an assessee, being a partnership firm, separate deduction from the net income computed as per presumptive taxation scheme in respect of remuneration and interest paid to its partners is allowed.

Further, from income computed at the aforesaid rate, no disallowance can be made under sections 40, 40A and 43B. Thus, in case of an assessee adopting the presumptive taxation scheme of section 44AD, no disallowance under sections 40, 40A and 43B will apply.

Manner of computation of WDV of depreciable assets:

An assessee opting for the presumptive taxation scheme is not permitted to claim deduction on account of various expenditures including depreciation. As regards the computation of the WDV of depreciable asset, following provision should be kept in mind:

Deduction on account of depreciation is not available. However, the WDV of any asset used in the business covered under the scheme of section 44AD shall be calculated as if depreciation as per section 32 is claimed and allowed. Thus, even though no depreciation is available separately, for purpose of computation of the WDV of the asset, depreciation will be deducted.

Provisions relating to maintenance of books of account:

The scheme gives a great relief to the assessee in respect of maintenance of books of account. An assessee, who adopts the provisions of section 44AD, is not required to maintain books of account as per section 44AA.

INCOME TAX (*cont.*)

Declaration of lower income:

If the actual income from the business covered under section 44AD is lower than the income prescribed under the presumptive scheme, then the assessee can declare such lower income. However if the assessee declares such lower income and the total income exceeds the basic taxation limit (Rs. 250,000 currently), he is required to maintain the books of account as per section 44AA and further he is also required to get such books of account audited as per section 44AB.

Applicability of Provisions of Advance Tax

An assessee opting for the presumptive taxation scheme of section 44AD will not be liable to pay advance tax in respect of business covered under section 44AD.

Measures promoting digital economy wef FY 2017 – 18:

It is proposed in the Finance Bill 2017 that the presumed income of 8% will be reduced to 6% for that part of the turnover or gross receipt for which the receipts are in any digital mode i.e. Cheques, debit/credit cards, bank transfer or any other digital mode.

FAQs

1. Who can adopt the presumptive taxation scheme as provided in section 44AD?

The provisions of section 44AD are applicable to such resident assessee who is an Individual, Hindu Undivided Family and Partnership Firm but not Limited Liability Partnership Firm.

2. What is the eligible business as provided in section 44AD?

The presumptive taxation scheme under these provisions can be opted for by the eligible assessee who is engaged in any business (except the business of plying, hiring or leasing goods carriages referred to in section 44AE), whose turnover or gross receipts from such business do not exceed the limit of audit prescribed under section 44AB (i.e., Rs. 2.0 crores from financial year 2017 - 18). Further, these provisions can be adopted by the assessee only if he has not claimed deduction under section 10A/10AA/10B/10BA or under sections 80HH to 80RRB in the relevant year.

Moreover, the provisions of section 44AD cannot be adopted by an assessee who is engaged in any profession as prescribed under section 44AA or is carrying on an agency business or is earning income in the nature of commission or brokerage.

INCOME TAX (*cont.*)

3. *What is the manner of computation of income under the presumptive taxation scheme as provided in section 44AD?*

In case of an assessee who is willing to opt for these provisions, income will be computed on an estimated basis. The income will be presumed to be 8% of turnover or gross receipts of the eligible business for the previous year. Tax will have to be calculated and paid on such presumed income.

4. *What are the provisions relating to various allowances/disallowances in case of an assessee adopting the presumptive taxation scheme as provided in section 44AD?*

Income computed as per section 44AD (*i.e.*, @ 8% of turnover or gross receipts of the eligible business, for the previous year) will be net income for the business covered under this scheme.

From the net income computed as above, an assessee is not permitted to claim any deduction under sections 30 to 38 (including depreciation or unabsorbed depreciation). Provisions in case of a partnership firm:

It should be noted that an assessee, being a partnership firm, can claim further deduction of remuneration and interest paid to its partners within the limit specified under section 40(b).

Further, from income computed at the aforesaid rate, no disallowance can be made under sections 40, 40A and 43B. Thus, in case of an assessee adopting the presumptive taxation scheme of section 44AD, no disallowance under sections 40, 40A and 43B will apply.

5. *What is the manner of computation of WDV of depreciable assets in case of an assessee who is adopting the presumptive taxation scheme as provided in section 44AD?*

An assessee opting for the presumptive taxation scheme is not permitted to claim deduction on account of various expenditures including depreciation. In this context, as regards the computation of the WDV of depreciable asset, following provision should be kept in mind:

Deduction on account of depreciation is not available. However, the WDV of any asset used in the business covered under the scheme of section 44AD shall be calculated as if depreciation as per section 32 is claimed and allowed. Thus, even though no depreciation is available separately, yet for purpose of computation of the WDV of the asset, depreciation will be deducted.

INCOME TAX (*cont.*)

6. *Can an assessee adopting the presumptive taxation scheme as provided in section 44AD declare lower income?*

If the actual income from the business covered under section 44AD is lower than the income prescribed under the presumptive scheme, then the assessee can declare income from aforesaid business at a lower rate (i.e., at less than 8%).

If the assessee does so, i.e. declares lower income and his actual income exceeds the maximum amount which is not chargeable to tax, then the relief from maintenance of books of account is not available. He is required to maintain the books of account as per section 44AA and also get such books of account audited as per section 44AB.

7. *Can an assessee adopting the presumptive taxation scheme as provided in section 44AD declare higher income?*

As regards the declaration of higher income, i.e. declaring income above the prescribed rate of 8%, the scheme permits the assessee to declare at his option a higher income (i.e., higher than 8%).

8. *What are the provisions relating to payment of advance tax in case of an assessee who is adopting the presumptive taxation scheme as provided in section 44AD?*

An assessee opting for the presumptive taxation scheme of section 44AD will not be liable to pay advance tax in respect of business covered under section 44AD.

9. *Is there any benefit for transacting in digital mode?*

If the receipts of the eligible assessee in respect of the eligible business is in any non-cash mode i.e. Cheque, debit/credit cards, bank transfer or any other digital mode, the presumed total income will be 6% instead of 8%.

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INTERNATIONAL TAX

Brief note on DTAA

DTAA stands for Double Taxation Avoidance Agreement. It is an agreement between two countries with an objective to avoid taxation of the same income in both countries.

Where the taxpayer is resident in one country but has a source of income situated in another country, it gives rise to possible double taxation. This arises from two basic rules that enable the country of residence as well as the country where the source of income exists to impose tax.

The DTAA is a tax treaty signed between India and another country (or any two/multiple countries) so that taxpayers can avoid paying double taxes on their income earned from the source country as well as the residence country.

Claiming benefits of DTAA:

Tax Residency Certificate (TRC):

In the Finance Act 2012, an amendment in Section 90 of the Income Tax Act, 1961 has been made it mandatory for a non-resident who wishes to avail DTAA rate to provide Tax Residency Certificate (TRC) to the deductor.

TRC is issued by the Tax / Government authority of the country in which the NRI is the resident of. No other document in lieu of TRC shall be considered for availing any benefit under the DTAA.

Rule 21AB has been inserted to the Income-tax Rules with effect from 1 April 2013. The rule prescribes that the TRC must contain the information specified in Form 10F.

INTERNATIONAL TAX (*cont.*)

Form 10F contains following details to be furnished:

- i. Status of the assessee;
- ii. Permanent Account Number of the assessee, if allotted;
- iii. Nationality;
- iv. Identification Number in the country of Residence or Unique number on the basis of which the person is identified in that country;
- v. Period for which residential status is applicable;
- vi. Address of the assessee in country of residence.

If the TRC issued by the Government authority contains all the information as prescribed in Form 10F, it will be accepted. If not, in addition to the TRC, the Non-resident will have to provide Form 10F duly filled and self certified.

If the TRC is not produced by the foreign payee, the assessee would not be able to apply beneficial provisions of the DTAA, if any and the tax cost would increase or the payer will have to pay higher taxes.

Relaxation from deduction of higher tax rate if PAN not furnished by Non-Residents:

Sec 206AA of the Income-tax Act, 1961:

The existing provisions of section 206AA of the Act provide that any person who is entitled to receive any amount on which tax is deductible at source, shall furnish his PAN to the deductor, failing which a higher withholding tax rate will be applicable.

The amendment in the Finance Act, 2016, sub-section 7 of Section 206AA is read as under:

*The provision of this section **shall not apply** to a non-resident, not being a company, or to a foreign company, in respect of –*

- i) payment of interest on long-term bonds as referred to in section 194LC; and*
- ii) any other payment subject to such conditions as may be prescribed.*

For this purpose, CBDT has notified a new Rule 37BC in the Income-tax Rules, 1962 to specify the conditions to avail the aforesaid relaxation.

INTERNATIONAL TAX (*cont.*)

CBDT notification – Rule 37BC:

Rule 37BC of the Rules provides that the provisions of section 206AA of the Act shall not apply on following payments made to non-resident deductees who do not have PAN in India:

- 1) Interest;
- 2) Royalty;
- 3) Fee for Technical Services; and
- 4) Payments on transfer of any capital asset

In respect of the above specified payments, the non-resident deductee shall be required to furnish following details and documents:

- 1) Name, e-mail id, contact number;
- 2) Address in the country of residence;
- 3) Tax Residency Certificate (TRC), if the law of country of residence provides for issuance of such certificate; and
- 4) Tax Identification Number (TIN) in the country of residence. Where TIN is not available, a unique identification number is required to be furnished on the basis of which the deductee is identified in the country of residence.

To capture and report the details specified in the notification, corresponding changes have also been made in the quarterly withholding tax return (i.e. Form 27Q) applicable for reporting withholding tax on payments made to non-resident deductee.

Compiled by: Divya Mehta, Tax Manager
