

Presumptive Taxation under Income Tax Act

By

CMA Niranjan Swain, B.Com,CS,FCMA,LLB
Advocate & Tax Consultant
Reached at nswain2008@ymail.com



Presumptive Taxation – For Resident & Non Resident

- ❑ **Sections 44AD, 44ADA & 44AE** - Introduced to help small business men, Traders and Professionals
 - ❖ i. Section 44AD – Small Business/Traders for Turnover up to Rs. 2 Crores
 - ❖ ii. Section 44ADA – Professionals refer to section 44AA(1)– Gross receipts up to Rs. 50 Lakhs
 - ❖ iii. Section 44AE – Truck owners owning not more than 10 trucks

- ❑ **Sections 44B, 44BB, 44BBA, 44BBB, 44C, 44D, 44DA & 44DDB**
- ❑ **Presumptive Taxation** for Non-Residents
 - ❖ **i. Section- 44B** – Taxation of shipping profits
 - ❖ **ii. Section 44BB** – Activities connected with exploration of mineral oils.
 - ❖ **iii. Section 44BBA** – Operation of Aircraft / Foreign Airlines
 - ❖ **iv. Section 44BBB** – Business of Civil Construction etc. / Certain power projects (in case of foreign companies)

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Applicable to	<p>A resident individual, resident Hindu undivided family or a resident partnership firm</p> <p>Note: The provision is not applicable in case of the following:</p> <ul style="list-style-type: none">• Limited liability partnership firm• A person carrying on profession as referred to u/s 44AA• A person earning income in the nature of commission or brokerage; or• A person carrying on any agency business• A person carrying on the business of plying, hiring or leasing goods carriages referred to in sec. 44AE
---------------	---

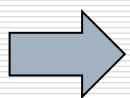
Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Conditions	<p>a. Eligible Business: Assessee must be engaged in any business other than the business referred above</p> <p>b. Maximum Turnover: Total turnover or gross receipts in the previous year of eligible business should not exceed ₹ 2 crore.</p> <p>c. Restriction on claiming deductions: The assessee has not claimed any deduction u/s 10AA or 80HH to 80RRB in the relevant assessment year.</p>	
Estimated income	<ul style="list-style-type: none"> Where amount of turnover or gross receipts is received by an account payee cheque or account payee bank draft or use of ECS or through other prescribed electronic modes during the previous year or before the due date of filing return of income 	6% of such turnover or receipts
	<ul style="list-style-type: none"> In any other case 	8% of such turnover or receipts
	However, a taxpayer can voluntarily declare a higher income in his return.	

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Notes:

1. **No Deduction in respect of expenses:** The estimated income is comprehensive and no further deductions relating to expenses shall be allowed.
2. **Depreciation:** Depreciation is deemed to have been already allowed. The written down value of asset will be calculated, as if depreciation has been allowed.
3. **Deductions:** The above estimated income is aggregated with other income of the assessee, from any other business or under any other heads of income. Further deduction under chapter VIA (other than those mentioned above) shall be available to the assessee as usual.
4. **Brought forward loss:** Brought forward loss (if any) shall be subtracted from such estimated income as per provisions of this Act.



Restriction on claiming deductions: The assessee has not claimed any deduction u/s 10AA or 80HH to 80RRB in the relevant assessment year.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

5. **Provision is not applicable [Sec. 44AD(4)]**: Where an eligible assessee:

- a. declares profit for any previous year in accordance with the provisions of this section (i.e., specified percentage of the turnover); &
- b. declares **lower** profit (i.e., less than specified percentage of the turnover) for **any** of the **5 assessment years** relevant to the previous year succeeding aforesaid previous,

then, he shall not be eligible to claim the benefit of the provisions of this section for 5 assessment years subsequent to the assessment year relevant to the previous year in which he has declared lower profit.

E.g. an assessee claims to be taxed on presumptive basis u/s 44AD for A.Y. 2019-20. For A.Y. 2020-21 and 2021-22, he offers income on the basis of presumptive taxation scheme. However, for A.Y. 2022-23, he did not opt for presumptive taxation Scheme. In this case, he will not be eligible to claim benefit of presumptive taxation scheme for next 5 A.Y.s, i.e. from A.Y. 2023-24 to 2027-28.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Example:

Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee whose gross receipts do not exceed ₹ 2 crore in any of the assessment years between A.Y.2020-21 to A.Y.2022-23 -

Particulars	A.Y.2020-21	A.Y.2021-22	A.Y.2022-23
Gross receipts (₹)	1,80,00,000	1,90,00,000	2,00,00,000
Income offered for taxation (₹)	14,40,000	15,20,000	10,00,000
% of gross receipts	8%	8%	5%
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y.2020-21 and A.Y.2021-22 and offers income of ₹ 14.40 lakh and ₹ 15.20 lakh on gross receipts of ₹ 1.80 crore and ₹ 1.90 crore, respectively.

However, for A.Y.2022-23, he offers income of only ₹ 10 lakh on turnover of ₹ 2 crore, which amounts to 5% of his gross receipts. He maintains books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y. 2020-21, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y.2022-23 i.e., from A.Y.2023-24 to 2027-28.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

6. **Effect on the assessee if sec. 44AD(4) is applicable:** An assessee to whom provision of sec. 44AD(4) is applicable and whose total income exceeds the maximum amount which is not chargeable to tax (i.e., basic exemption limit), he shall be required:
- To maintain books of account and other documents as required u/s 44AA; and
 - To get his accounts audited and furnish a report of such audit as prescribed u/s 44AB

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Higher threshold for non-audit of accounts for assessee opting for presumptive taxation under section 44AD: Section 44AB makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed ₹ 1 crore.

However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1), he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed ₹ 2 crore.

Advance tax: Further, since the threshold limit of presumptive taxation scheme has been enhanced to ₹ 2 crore, the eligible assessee is now required to pay advance tax by 15th March of the financial year.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Mr. Praveen engaged in retail trade, reports a turnover of ₹ 1,98,50,000 for the financial year 2019-20. His income from the said business as per books of account is ₹ 13,20,000 computed as per the provisions of Chapter IV-D "Profits and gains from business or Profession" of the Income-tax Act, 1961. Retail trade is the only source of income for Mr. Praveen. A.Y. 2019-20 was the first year for which he declared his business income in accordance with the provisions of presumptive taxation under section 44AD.

- (i) Is Mr. Praveen also eligible to opt for presumptive determination of his income chargeable to tax for the assessment year 2020-21?
- (ii) If so, determine his income from retail trade as per the applicable presumptive provision assuming that whole of the turnover represents cash receipts.
- (iii) In case Mr. Praveen does not opt for presumptive taxation of income from retail trade, what are his obligations under the Income-tax Act, 1961?
- (iii) What is the due date for filing his return of income under both the options?

- (i) Yes. Since his total turnover for the F.Y.2019-20 is below ₹ 200 lakhs, he is eligible to opt for presumptive taxation scheme under section 44AD in respect of his retail trade business.
- (ii) His income from retail trade, applying the presumptive tax provisions under section 44AD, would be ₹ 15,88,000, being 8% of ₹ 1,98,50,000.
- (iii) Mr. Praveen had declared profit for the previous year 2018-19 in accordance with the presumptive provisions and if he does not opt for presumptive provisions for any of the five consecutive assessment years i.e., A.Y. 2020-21 to A.Y. 2024-25, he would not be eligible to claim the benefit of presumptive taxation for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance the presumptive provisions i.e. if he does not opt for presumptive taxation in say P.Y. 2019-20, then he would not be eligible to claim the benefit of presumptive taxation for A.Y. 2021-22 to A.Y. 2025-26

Consequently, Mr. Praveen is required to maintain the books of accounts and get them audited under section 44AB, since his income exceeds the basic exemption limit.

- iv) In case he opts for the presumptive taxation scheme under section 44AD, the due date would be 31st July, 2020.

In case he does not opt for presumptive taxation scheme, he is required to get his books of account audited, in which case the due date for filing of return of income would be 30th September, 2020.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

X Co., a firm, is engaged in the business of trading of cloth (turnover of 2019-20 being ₹ 57,80,000, out of which ₹25,00,000 has been received in account payee cheque). It wants to claim the following deductions:

Particulars	Amount
Salary and interest to partners [as permitted by sec. 40(b)]	60,000
Salary to employees	4,90,000
Depreciation	2,70,000
Cost of materials used	35,90,000
Other expenses	13,45,000
Total	57,55,000
Net profit (₹ 57,80,000 – ₹ 57,55,000)	25,000

Determine the net income of X & Co. for the assessment year 2020-21 assuming that (i) taxable interest income is ₹90,000; (ii) Long term capital gain is ₹ 1,40,000; and (iii) the firm is eligible for a deduction of ₹ 15,000 under sec. 80G.

Solution:

Since turnover from business does not exceed ₹ 2 crore, hence sec. 44AD is applicable. However, income computed as per provision other than provision of sec. 44AD is less than estimated income, hence, the firm may be assessed for such lesser income provided following conditions are satisfied –

- (a) Maintain books of account as prescribed u/s 44AA; and
- (b) Get accounts audited u/s 44AB.

Where it maintains accounts and gets it audited

Computation of total income of X & Co. for the A.Y. 2020-21

Particulars	Amount
Profits and gains of business or profession: Income from cloth business	25,000
Capital gains: Long term capital gain	1,40,000
Income from Other Sources: Interest Income	90,000
Gross Total Income	2,55,000
Less: Deduction u/s 80G	15,000
Total Income	2,40,000

It is assumed that all the expenditures are allowed.

Computation of Business Profit on Presumptive Basis [Sec. 44AD]

Where it does not maintain account or fails to get accounts audited

Computation of total income of X & Co. for the A.Y.2020-21

Particulars	Details	Amount
<u>Profits and gains of business or profession</u>		
<u>Income from cloth business (being 6% of ₹ 25,00,000)</u>	1,50,000	
<u>Income from cloth business (being 8% of ₹ 32,80,000)</u>	2,62,400	4,12,400
<u>Capital gains: Long term capital gain</u>		1,40,000
<u>Income from Other Sources: Interest Income</u>		90,000
<u>Gross Total Income</u>		6,42,400
<u>Less: Deduction u/s 80G</u>		15,000
<u>Total Income</u>		6,27,400

Mr. Sivam, a retail trader of Cochin gives the following Trading and Profit and Loss Account for the year ended 31st March, 2020:

Trading and Profit and Loss Account for the year ended 31.03.2020

Particulars	₹	Particulars	₹
To Opening stock	90,000	By Sales	1,12,11,500
To Purchases	1,10,04,000	By Closing stock	1,86,100
To Gross Profit	3,03,600		-
	1,13,97,600		1,13,97,600
To Salary	60,000	By Gross profit b/d	3,03,600
To Rent and rates	36,000	By Income from UTI	2,400
To Interest on loan	15,000		
To Depreciation	1,05,000		
To Printing & stationery	23,200		
To Postage & telegram	1,640		
To Loss on sale of shares (Short term)	8,100		
To Other general expenses	7,060		
To Net Profit	50,000		
	3,06,000		3,06,000

Additional Information:

- It was found that some stocks were omitted to be included in both the Opening and Closing Stock, the values of which were:
 Opening stock ₹ 9,000
 Closing stock ₹ 18,000
- Salary includes ₹ 10,000 paid to his brother, which is unreasonable to the extent of ₹ 2,000.
- The whole amount of printing and stationery was paid in cash by way of one time payment.
- The depreciation provided in the Profit and Loss Account ₹ 1,05,000 was based on the following information:
 The written down value of plant and machinery is ₹ 4,20,000 as on 01.04.2019. A new plant falling under the same block of depreciation was bought on 01.7.2019 for ₹ 70,000. Two old plants were sold on 1.10.2019 for ₹ 50,000.
- Rent and rates includes GST liability of ₹ 3,400 paid on 7.4.2020.
- Other general expenses include ₹ 2,000 paid as donation to a Public Charitable Trust.

You are required to compute the profits and gains of Mr. Sivam under presumptive taxation under section 44AD and profits and gains as per normal provisions of the Act. Assume that the whole of the amount of turnover received by account payee cheque or use of electronic clearing system through bank account during the previous year.

Computation of business income of Mr. Sivam for the A.Y. 2020-21

Particulars	₹	₹
Net Profit as per profit and loss account		50,000
Add: Inadmissible expenses/ losses		
Under valuation of closing stock	18,000	
Salary paid to brother – unreasonable [Section 40A(2)]	2,000	
Printing and stationery -whole amount of printing & stationery paid in cash would be disallowed, since such amount exceeds ₹ 10,000 [Section 40A(3)]	23,200	
Depreciation (considered separately)	1,05,000	
Short term capital loss on shares	8,100	
Donation to public charitable trust	2,000	1,58,300
		2,08,300
Less: Deductions items:		
Under valuation of opening stock	9,000	
Income from UTI [Exempt under section 10(35)]	2,400	11,400
Business income before depreciation		1,96,900
Less: Depreciation (See Note 1)		66,000
		1,30,900

Computation of business income as per section 44AD -

As per section 44AD, where the amount of turnover is received, *inter alia*, by way of account payee cheque or use of electronic clearing system through bank account or through such other prescribed electronic modes, the presumptive business income would be 6% of turnover, i.e., ₹ 1,12,11,500 × 6 /100 = ₹ 6,72,690

Notes:

1. Calculation of depreciation

Particulars	₹
WDV of the block of plant & machinery as on 1.4.2019	4,20,000
Add : Cost of new plant & machinery	70,000
	4,90,000
Less : Sale proceeds of assets sold	50,000
WDV of the block of plant & machinery as on 31.3.2020	4,40,000
Depreciation @ 15%	66,000
No additional depreciation is allowable as the assessee is not engaged in manufacture or production of any article.	

- Since GST liability has been paid before the due date of filing return of income under section 139(1), the same is deductible.

Computation of Professional Income on Presumptive Basis – Section 44ADA

Applicable to	Any resident assessee
Conditions	<p>a. Engaged in Profession: Assessee must be engaged in any profession referred to in sec. 44AA (i.e., Legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration, etc.)</p> <p>b. Maximum Receipts: Gross receipts of the assessee in the previous year should not exceed ₹50 lakh.</p>
Estimated income	50% of the gross receipts. However, a taxpayer can voluntarily declare a higher income in his return.

Eligible persons who can take advantage of the presumptive taxation scheme of section 44ADA

A person resident in India engaged in following professions can take advantage of presumptive taxation scheme of section 44ADA:-

- 1) Legal
- 2) Medical
- 3) Engineering or architectural
- 4) Accountancy
- 5) Technical consultancy
- 6) Interior decoration
- 7) Any other profession as notified by CBDT

Computation of Professional Income on Presumptive Basis – Section 44ADA

Notes:

1. **Deduction u/s 30 to 38:** The estimated income is comprehensive and no further deductions u/s 30 to 38 shall be allowed.
2. **Depreciation:** Depreciation is deemed to have been already allowed. The written down value of asset will be calculated, as if depreciation has been allowed.
3. **Deductions:** The above estimated income is aggregated with other income of the assessee, from any other business or under any other heads of income. Further deduction under chapter VIA (other than those mentioned above) shall be available to the assessee as usual.
4. **Brought forward loss:** Brought forward loss (if any) shall be subtracted from such estimated income as per provisions of this Act.
5. **Effect if assessee declares lower income:** An assessee can declare his income lower than the estimated income as per provision of this section. In such case he will have to:
 - Maintain books of account and other documents as required u/s 44AA if his total income exceeds the maximum exemption limit; and
 - Get his accounts audited and furnish a report of such audit as prescribed u/s 44AB (*irrespective of amount of turnover or gross receipts*) if his total income exceeds the maximum exemption limit.

Note: Assessee can change his option from year to year

Computation of Professional Income on Presumptive Basis – Section 44ADA

Relief from maintenance of books of accounts and audit: The eligible assessee opting for presumptive taxation scheme will not be required to maintain books of account under section 44AA(1) and get the accounts audited under section 44AB in respect of such income

Option to claim lower profits: An assessee may claim that his profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under section 44ADA(1); and if such total income exceeds the maximum amount which is not chargeable to income-tax, he has to maintain books of account under section 44AA and get them audited and furnish a report of such audit under section 44AB.

Advance Tax: Further, since the presumptive taxation regime has been extended for professionals also, the eligible assessee is now required to pay advance tax by 15th March of the financial year.

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE]

Applicable to	All assessee engaged in the business of plying, hiring or leasing goods carriage.	
Condition	<p>Number of carriages: Assessee must not own more than 10 goods carriages at any time during the previous year.</p> <p>Owner of carriages includes a buyer under hire purchase or installment system even if the whole amount is unpaid.</p> <p>Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;</p>	
Estimated income	Income from each goods carriage shall be	
	Type of Goods Carriage	Presumptive Income (Per month or part of a month)
	Heavy	₹ 1,000 per ton of gross vehicle weight or unladen weight
	Other	₹ 7,500
<ol style="list-style-type: none">1. Income shall be calculated from the month when assessee acquired the property whether it has been put to use or not.2. An assessee can declare higher income.		

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE]

Meaning of certain terms

S.No	Term	Meaning
(1)	Heavy goods vehicle	any goods carriage, the gross vehicle weight of which exceeds 12,000 kilograms.
(2)	Gross vehicle weight	total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.
(3)	Unladen weight	the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of driver or attendant and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative body or part

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE]

Notes:

1. **Heavy goods vehicle** means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms
2. **Deduction u/s 30 to 38:** The estimated income is comprehensive and no further deductions u/s 30 to 38 shall be allowed.
3. **Deduction u/s 40(b):** In the case of a firm, deduction in respect of remuneration and interest to partner u/s 40(b) shall be further deductible from income so computed.
4. **Depreciation:** Depreciation is deemed to have been already allowed. The written down value of asset will be calculated, as if depreciation has been allowed.
5. **Deductions:** The above estimated income is aggregated with other income of the assessee, from any other business or under any other heads of income. Further deduction under chapter VIA shall be available to the assessee as usual.
6. **Brought forward loss:** Brought forward loss (if any) shall be adjusted from such estimated income.

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE]

7. **Maintenance of books of account and audit:** An assessee, who estimates income from such business as per section 44AE, or a higher income, is not required to -
- Maintain books of account u/s 44AA; and
 - Get his accounts audited u/s 44AB
- in respect of his income from such business.

However, he has to comply with the requirements of both sec. 44AA and 44AB in respect of his other businesses. Further to note that in computing the monetary limits u/s 44AA and 44AB, the gross receipts or income from the said business shall be excluded.

8. **Effect if assessee declares lower income:** An assessee can declare his income lower than the estimated income as per provision of this section. In such case he will have to
- Maintain books of account and other documents as required u/s 44AA; and
 - Get his accounts audited and furnish a report of such audit as prescribed u/s 44AB *irrespective of amount of turnover or gross receipts.*

Note: Assessee can change his option from year to year.

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE]

Mr. Sukhvinder is engaged in the business of plying goods carriages. On 1st April, 2019, he owns 10 trucks (out of which 6 are heavy good vehicles of (unladen weight of each is 20 ton)). On 2/5/2019, he sold one of the heavy goods vehicles & purchased a light goods vehicle on 6th May, 2019. This new vehicle could however be put to use only on 15-6-2019.

Compute the total income of Mr. Sukhvinder for the A.Y. 2020-21, taking note of the following data:

Particulars	Amount	Amount
Freight Charges collected		8,70,000
Less: Operational expenses	6,25,000	
Depreciation as per Sec. 32	1,85,000	
Other Office expenses	15,000	8,25,000
Net Profit		45,000
Other business and non-business income		70,000

Solution:

Alternative 1) Direct estimation of income u/s 44AE

Vehicle	No. of vehicle	Details	Amount
Light	4	₹ 7,500 * 4 vehicles * 12 months	3,60,000
Heavy	5	₹ 1,000 * 5 vehicles * 12 months * 20 ton	12,00,000
Heavy	1	₹ 1,000 * 1 vehicle * 2 [#] months * 20 ton	40,000
Light	1	₹ 7,500 * 1 vehicles * 11 [#] months	82,500
<u>Income from business of plying goods carriage</u>			16,82,500
<u>Add: Other business and non-business income</u>			70,000
Total Income			17,52,500

* Income shall be calculated from the month when assessee acquired the property whether it has been put to use or not. For this purpose, any fraction of the month shall be considered as month.

Alternative 2) Computation of income as per the provision of sec. 28 to 38

Particulars	Amount	Amount
Freight charges collected		8,70,000
<u>Less: Expenditure related to business</u>		
Operational expenses	6,25,000	
Depreciation u/s 32	1,85,000	
Other office expenses	15,000	8,25,000
<u>Income from business of plying goods carriage</u>		45,000
<u>Add: Other business and non-business income</u>		70,000
Total Income		1,15,000

Since Mr. Sukhvinder has lower taxable income in alternative 2 hence his total income is ₹ 1,15,000. But to claim such lower income than the estimated income (computed in alternative 1) as per provision of section 44AE, he will have to —

- Maintain books of account as required u/s 44AA; and - Get his accounts audited.

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE

Mr. X commenced the business of operating goods vehicles on 1.4.2019. He purchased the following vehicles during the P.Y.2019-20. Compute his income under section 44AE for A.Y.2020-21.

	Gross Vehicle Weight (in kilograms)	Number	Date of purchase
(1)	7,000	2	10.04.2019
(2)	6,500	1	15.03.2020
(3)	10,000	3	16.07.2019
(4)	11,000	1	02.01.2020
(5)	15,000	2	29.08.2019
(6)	15,000	1	23.02.2020

Would your answer change if the goods vehicles purchased in April, 2019 were put to use only in July, 2019?

SOLUTION

Since Mr. X does not own more than 10 vehicles at any time during the previous year 2019-20, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Heavy goods vehicle means any goods carriage, the gross vehicle weight of which exceeds 12,000 kg.

(1) Number of Vehicles	(2) Date of purchase	(3) No. of months for which vehicle is owned	(4) No. of months × No. of vehicles [(1) × (3)]
For Heavy goods vehicle			
2	29.08.2019	8	16
1	23.02.2020	2	2
			18
For goods vehicle other than heavy goods vehicle			
2	10.4.2019	12	24
1	15.3.2020	1	1
3	16.7.2019	9	27
1	02.1.2020	3	3
			55

The presumptive income of Mr. X under section 44AE for A.Y.2020-21 would be - ₹ 6,82,500, i.e., 55 × ₹ 7,500, being for other than heavy goods vehicle + 18 × ₹ 1,000 × 15 ton being for heavy goods vehicle .

The answer would remain the same even if the two vehicles purchased in April, 2019 were put to use only in July, 2019, since the presumptive income has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.

Computation of Business of Plying , Leasing or Hiring of Goods Carriage [Sec. 44AE

Mr. Sukhvinder is engaged in the business of plying goods carriages. On 1st April, 2019, he owns 10 trucks (out of which 6 are heavy goods vehicles, the gross vehicle weight of such goods vehicle is 15,000 kg each). On 2nd May, 2019, he sold one of the heavy goods vehicles and purchased a light goods vehicle on 6th May, 2019. This new vehicle could however be put to use only on 15th June, 2019.

Compute the total income of Mr. Sukhvinder for the assessment year 2020-21, taking note of the following data:

Particulars	₹	₹
Freight charges collected		12,70,000
Less : Operational expenses	6,25,000	
Depreciation as per section 32	1,85,000	
Other office expenses	15,000	8,25,000
Net Profit		4,45,000
Other business and non- business income		70,000

Answer

Section 44AE would apply in the case of Mr. Sukhvinder since he is engaged in the business of plying goods carriages and owns not more than ten goods carriages at any time during the previous year.

Section 44AE provides for computation of business income of such assessee on a presumptive basis. The income shall be deemed to be ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by the assessee in the previous year or such higher sum as declared by the assessee in his return of income.

Mr. Sukhvinder's business income calculated applying the provisions of section 44AE is ₹ 13,72,500 (See Notes 1 & 2 below) and his total income would be ₹ 14,42,500.

However, as per section 44AE(7), Mr. Sukhvinder may claim lower profits and gains if he keeps and maintains proper books of account as per section 44AA and gets the same audited and furnishes a report of such audit as required under section 44AB. If he does so, then his income for tax purposes from goods carriages would be ₹ 4,45,000 instead of ₹ 13,72,500 and his total income would be ₹ 5,15,000.

Notes:

1. Computation of total income of Mr. Sukhvinder for A.Y. 2020-21

Particulars	Presumptive income ₹	Where books are maintained ₹
Income from business of plying goods carriages [See Note 2 Below]	13,72,500	4,45,000
Other business and non-business income	70,000	70,000
Total Income	14,42,500	5,15,000

2. Calculation of presumptive income as per section 44AE

Type of carriage	No. of months	Rate per ton per month/ per month	Ton	Amount ₹
(1)	(2)		(3)	(4)
Heavy goods vehicle				
1 goods carriage upto 1 st May	2	1,000	15 (15,000/ 1,000)	30,000
5 goods carriage held throughout the year	12	1,000	15 (15,000/ 1,000)	9,00,000
Goods vehicle other than heavy goods vehicle				
1 goods carriage from 6 th May	11	7,500	-	82,500
4 goods carriage held throughout the year	12	7,500	-	3,60,000
Total				13,72,500

Summery of Computation of Income from Business – Presumptive Basis

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(1)	Eligible Assessee	Resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C – Deductions in respect of certain incomes"	Resident assessee engaged in any profession specified u/s 44A(1), namely, legal, medical, engineering, architectural profession or profession of accountancy or technical consultancy or interior decoration or notified profession (authorized representative, film artist, company secretary, profession of information technology)	An assessee owning not more than 10 goods carriages at any time during the P.Y..
		<p>Non-applicability of section 44AD in respect of the following persons:</p> <ul style="list-style-type: none"> - A person carrying on profession specified u/s 44A(1); - A person earning income in the nature of commission or brokerage; - A person carrying on any agency business. 		

7/31/2022

CMA, Niranjan Swain, Advocate & Tax
Consultants: reached at:
nswain2008@ymail.com

Summary of Computation of Income from Business – Presumptive Basis

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(2)	Eligible business/ profession	Any business, other than business referred to in section 44AE, whose total turnover/ gross receipts in the P.Y. \leq ₹ 200 lakhs	Any profession specified under section 44AA(1), whose total gross receipts \leq ₹ 50 lakhs in the relevant P.Y.	Business of plying, hiring or leasing goods carriages

Summery of Computation of Income from Business – Presumptive Basis

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(3)	Presumptive income	8% of total turnover/sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee. 6% of total turnover/gross	50% of total gross receipts of such profession or a sum higher than the aforesaid sum claimed to have been earned by the assessee.	For each heavy goods vehicle ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month
		receipts in respect of the amount of total turnover/sales/gross receipts received by A/c payee cheque/ bank draft/ECS through a bank account or through such other prescribed electronic modes during the P.Y. or before due date of filing of return u/s 139(1) in respect of that P.Y.		and for other than heavy goods vehicle, ₹ 7,500 per month or part of a month during which such vehicle is owned by the assessee or an amount claimed to have been actually earned from such vehicle, whichever is higher.

Summery of Computation of Income from Business – Presumptive Basis

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(4)	Non-allowability of deductions while computing presumptive income	Deductions allowable under sections 30 to 38 shall be deemed to have been given full effect to and no further deduction shall be allowed		
		Even in case of a firm, salary and interest paid to partners is not deductible.	Even in case of a firm, salary and interest paid to partners is not deductible.	In case of a firm, salary and interest paid to partners is deductible subject to the conditions and limits specified in section 40(b)
(5)	Written down value of asset	WDV of any asset of an eligible business/profession shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed depreciation for each of the relevant assessment years		

Summery of Computation of Income from Business – Presumptive Basis

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(6)	Requirement of maintenance of books of account u/s 44AA and audit u/s 44AB	After declaring profits on presumptive basis u/s 44AD, say, for A.Y.2020-21, non-declaration of profits on presumptive basis for any of the 5 successive A.Y.s thereafter (i.e., from A.Y.2021-22 to A.Y.2025-26), say, for A.Y. 2022-23, would disentitle the assessee from claiming profits on presumptive basis for five successive AYs subsequent to the AY relevant to the PY of such non-declaration (i.e., from A.Y.2023-24 to A.Y.2027-28). In such a case, the assessee would have to maintain books of account and other documents u/s 44AA(2) and get his accounts audited u/s 44AB, if his total income exceeds the basic exemption limit in those years.	If the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account and other documents u/s 44AA(1) and get his accounts audited u/s 44AB, if his total income > basic exemption limit for that year.	If the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account u/s 44AA(2) and get his accounts audited u/s 44AB.

PRESUMPTIVE TAXES FOR NON – RESIDENTS

- ❖ **i. Section- 44B – Taxation of shipping profits**
- ❖ **ii. Section 44BB – Activities connected with exploration of mineral oils.**
- ❖ **iii. Section 44BBA – Operation of Aircraft / Foreign Airlines**
- ❖ **iv. Section 44BBB – Business of Civil Construction etc. / Certain power projects
(in case of foreign companies)**

Shipping Business in case of Non Residents- Section 44B

Applicable to	All non-resident assessee
Condition	Assessee must be engaged in the business of operation of ships.
Estimated income	<p>Income taxable under the head "Profits & gains of business or profession" from such business shall be estimated at 7.5% of the amount being aggregate of the following:</p> <ol style="list-style-type: none">1. The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and2. The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.
Notes: The amount paid or payable or received or deemed to be received, as the case may be, shall also include demurrage charges or handling charges or any other amount of similar nature.	

Shipping Business in case of Non Residents- Section 44B

Applicable to	All non-resident assessee
Condition	Assessee must be engaged in the business of operation of ships.
Estimated income	<p>Income taxable under the head "Profits & gains of business or profession" from such business shall be estimated at 7.5% of the amount being aggregate of the following:</p> <ol style="list-style-type: none">1. The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and2. The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.
Notes: The amount paid or payable or received or deemed to be received, as the case may be, shall also include demurrage charges or handling charges or any other amount of similar nature.	

Shipping Business in case of Non Residents- Section 44B

The amounts paid or payable or the amounts received or deemed to be received will also include the amount paid or payable or received or deemed to be received by way of demurrage charges or handling charges or any other amount of similar nature [*CIT v. Japan Lines Ltd. 260 ITR 656 (Mad)*]. Thus 7.5% of the gross amounts mentioned above would be liable to tax and no deduction would be allowed for any expenditure, (i.e. the provisions of section 28 to 43A are not to be taken into account) however carried forward losses would be allowed to be set off from such income.

Analysis of section 44B and section 172:

Section 44B	Section 172
Presumptive tax provisions for non-residents engaged in shipping business. It does not, however, contain any procedure for assessment and collection of tax.	Complete code for taxation of occasional shipping business of non-residents, including assessment and collection of tax.
Manner of computation of presumptive Income:	
<p>Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to 7.5% of the aggregate of the -</p> <ul style="list-style-type: none">- amount paid or payable (whether in or outside India) to the non-resident or to any other person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any Indian port and- the amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. <p>shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".</p>	<p>Where a ship carries passengers, livestock, mail or goods shipped at a port in India, a sum equal to 7.5% of</p> <ul style="list-style-type: none">- the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, <p>shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.</p>

Other provisions of section 172

- (i) **Furnish a return of the amount paid to the owner:** Section 172(3) imposes an obligation on the master of the ship to prepare and furnish to the Assessing Officer a return of the full amount paid or payable to the owner or charterer or any person on this behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at any port in India since the last arrival of the ship thereat. Such return is, ordinarily, to be furnished by the master of the ship before the departure, from that port in India, of the ship.

A return may, however, be filed by the person authorized by the master of the ship within 30 days of the departure of the ship from the port, if:

- (a) the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return required by section 172(3) before the departure of the ship from the port and
- (b) the master of the ship has made satisfactory arrangement for the filing of the return and payment of tax by any other person on this behalf.

-
- (ii) **Assessment [Section 172(4)]:** This section provides for a summary procedure of assessment. On receipt of the return filed by the master of the ship or by any person on this behalf, the Assessing Officer has to determine the tax payable on the taxable income. By virtue of the provisions of section 172(2), the taxable income is a sum equal to 7.5% of the amount paid or payable on account of carriage of passengers etc. to the owner or charterer or to any person on his behalf, whether that amount is paid or payable in or out of India. The tax payable on such taxable income is to be calculated at the **rate or rates in force applicable to the total income of a foreign company**. The master of the ship is liable for payment of such tax.
- (iii) **Time limit for passing the assessment order [Section 172(4A)/(5)]:** It is incumbent on the Assessing Officer to pass the order of assessment within 9 months from the end of the financial year in which the return of income under section 172(3) is filed.

For the purpose of determining the tax payable, Assessing Officer is empowered to call for such accounts and documents as he may require.

-
- (iv) **Grant of port of clearance to the ship [Section 172(6)]:** A port clearance shall not be granted to the ship until the Collector of customs or other authorized officer, is satisfied that the tax assessable under section 172 has been duly paid or that satisfactory arrangements have been made for the payment thereof.
 - (v) **Option to pay tax as per normal provisions of the Income-tax Act, 1961 on the income chargeable to tax under section 172 [Section 172(7)]:** The owner or charterer has the option to claim before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment in respect of his total income for the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act. In such a case, any payment made under section 172 is to be treated as a payment in advance of the tax leviable for that assessment year and the difference between the sum so paid and the amount of tax found payable by him on such assessment is to be paid by him or refunded to him, as the case may be.

Section 172 vis-à-vis section 44B

In case the assessee is covered under section 172, 7.5 per cent of the amount paid or payable on account of the carriage of the passengers, livestock, mail or goods to the owner or the chartered or to any person on his behalf is deemed as his income and tax is levied on such income at a rate applicable to a foreign company i.e., 40% *plus* surcharge, if any, and *plus* health and education cess @4%.

Under the provisions of section 172(7), the non-resident owner or charterer is allowed an option to be assessed on his total income of the previous year in accordance with other provisions of the Act i.e., as per section 44B.

When such option is exercised, a regular assessment is made. In such a case, the tax already paid under the provisions of section 172(4) by the non-resident owner or charterer would be treated as tax paid in advance for that assessment year before determining the amount of tax finally due. The difference between the sum so paid and the amount of tax payable by him on such assessment shall be paid by the assessee or refunded to him (See Note below).

In that case, the non-resident assessee is liable to pay interest under sections 234B and 234C and also entitled to receive interest under section 244A of the Income-tax Act, 1961 as the case may be. **[Circular No. 9/2001, dated 9-7-2001]**

Note –*Refund may arise in case of non-corporate non-residents, since they are liable to pay tax at a rate lower than the rate of 40% (plus surcharge, if any, and cess@4%) applicable to a foreign company.*

Sea Port Shipping Line, a non-resident foreign company ships is engaged in the business of carriage of goods shipped at Mumbai port. During the previous year ended on 31.3.2020, it had collected freight of 100 lakhs, demurrages of ₹ 20 lakhs and handling charges of ₹ 10 lakhs. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lakhs. Compute its income applying the presumptive provisions under section 44B.

SOLUTION

Section 44B provides that in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to 7.5% of the aggregate of the following amounts would be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

- (i) The amount paid or payable, whether within India or outside, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

- (ii) The amount received or deemed to be received in India by the assessee himself or by any other person on behalf of or on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The above amounts will include demurrage charges and handling charges.

These provisions for computation of income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A of the Income-tax Act, 1961.

Therefore, in this case, M/s. Sea Port Shipping Line is required to pay tax in India on the basis of presumptive scheme as per the provisions of section 44B. The assessee shall not be entitled to set off any of the expenses incurred for earning of such income. Therefore, the Shipping Line is required to pay tax on deemed profit of ₹ 9.75 lacs (7.50% on the total receipts of ₹ 130 lacs). The tax payable would be reduced by the amount of tax paid under section 172(4).

Profits & Gains in connection with the Business of Exploration, etc. of Mineral Oils [Sec. 44BB]

Applicable to	Non-resident assessee
Conditions	<p>Assessee must be engaged in the business of -</p> <ul style="list-style-type: none">• Providing services or facilities in connection with; or• Supplying plant¹ and machinery on hire, used or to be used in,<ul style="list-style-type: none">– the prospecting for, or extraction or production of, mineral oils². <p>¹ Plant includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purpose of the said business</p> <p>² Mineral oil includes petroleum and natural gas.</p>
Estimated income	<p>A sum equal to 10% of the aggregate of the following amount shall be deemed to be the profits and gains of such business chargeable to tax -</p> <ul style="list-style-type: none">• The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and• The amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.
Assessee may claim lower profit	<p>An assessee may claim lower profits and gains if he keeps and maintains books of account as per sec. 44AA and gets his accounts audited and furnishes the report u/s 44AB and thereupon the Assessing Officer shall proceed to make an assessment of the total income of the assessee u/s 143(3) & determine the sum payable by, or refundable to, the assessee</p>

Profits & Gains in connection with the Business of Exploration, etc. of Mineral Oils [Sec. 44BB]

Non-applicability of presumptive taxation under section 44BB: The provisions of section 44BB shall not apply to any income to which the provisions of section 42 or section 44DA, 115A or 293A apply for the purpose of computing profit or gains or any other income referred to in these sections.

Section	Provision
42	Special provision for deductions in the case of business for prospecting, etc., for mineral oil
44DA	Special provisions for computing income by way of royalties, etc., in case of non-residents.
115A	Tax on dividends, royalty and fees for technical services in the case of foreign companies
293A	Power to make exemption, etc., in relation to participation in the business of prospecting for, extraction, etc., of mineral oils.

Profits and Gains of the Business of Operation of Aircraft [Sec. 44BBA]

Applicable to	All non-resident assessee.
Condition	Assessee must be engaged in the business of operation of aircraft.
Estimated income	<p>Income of such business shall be estimated at 5% of the aggregate of the following -</p> <ul style="list-style-type: none">• The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the carriage of passengers, livestock, mail or goods from any place in India; and• The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Profits and Gains of the Business of Operation of Aircraft [Sec. 44BBA]

Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircrafts for the year ended 31.3.2020:

- (i) ₹ 2 crores in India on account of carriage of passengers from Chennai.
- (ii) ₹ 1 crore in India on account of carriage of goods from Chennai.
- (iii) ₹ 3 crores in India on account of carriage of passengers from Singapore.
- (iv) ₹ 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by Mr. Q for the purposes of the business during the year ending 31.3.2020 was ₹ 6.75 crores.

Compute the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2020-21.

What would be your answer in case the business was carried on by a foreign company, Q Airlines (P) Ltd?

SOLUTION

Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -

- (a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and
- (b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder-

Particulars	₹
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business under section 44BBA at 5% of ₹ 7,00,00,000 is ₹ 35,00,000, which is the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the A.Y. 2020-21.

In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the answer would be the same since section 44BBA does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

Profits and Gains of Foreign Companies engaged in the Business of Civil Construction, etc. in certain Turnkey Power Projects [Sec. 44BBB]

Applicable to	A foreign company
Condition	<p>Assessee must be engaged in the business of -</p> <ul style="list-style-type: none">• civil construction; or• erection of plant or machinery or testing or commissioning thereof, – in connection with a turnkey power project approved by the Central Government in this behalf. <p>Approval issued by the Department of Power in the Ministry of Energy shall be deemed to be the approval of the Central Government for this section.</p>
Estimated income	<p>Income of such business shall be estimated at 10% of the amount paid or payable (whether in or out of India) to the said assessee (or to any person on his behalf) on account of such civil construction, erection, testing or commissioning.</p>
Assessee may claim lower profit	<p>An assessee may claim lower profits and gains if he keeps and maintain books of account as per sec. 44AA and gets his accounts audited and furnishes the report u/s 44AB and thereupon the Assessing Officer shall proceed to make an assessment of the total income of the assessee u/s 143(3) and determine the sum payable by, or refundable to, the assessee.</p>

Summery of presumptive Taxes for Non - Residents

Particulars	44B	44BBA	44BB	44BBB
Nature of business	Shipping business	Operation of aircraft	Business of providing services or facilities in connection with, or supplying P & M on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils	Business of civil construction or the business of erection of P&M or testing or commissioning thereof, in connection with turnkey power projects approved by the Central Government.
Eligible assessee	Non-resident	Non-resident	Non-resident	Only Foreign Co.
Presumptive income	7.5% of specified sum	5% of specified sum	10% of specified sum	10% of specified sum

Summery of presumptive Taxes for Non - Residents

Particulars	44B	44BBA	44BB	44BBB
Specified sum	(i) Amount paid or payable on account of carriage of passengers, livestock, mail or goods shipped at/ from any port/place in India; and (ii) Amount received or deemed to be received in India on account of the carriage of passengers, livestock mail or goods shipped at/ from any port/place outside India		(i) Amount paid or payable on account of the provision of such services or facilities for the aforesaid purposes in India; and (ii) Amount received or deemed to be received in India on account of the provisions of services or facilities for the aforesaid purpose outside India.	Amount paid or payable on a/c of such civil construction, erection, testing or commissioning
Option to declare lower profits	Not available		Lower profits may be claimed u/s 44BB and u/s 44BBB provided the assessee maintains Books of account u/s 44AA and gets them audited u/s 44AB.	

Q&A

