CHAPTER - 10

Presumptive Taxation

Provision relating to Resident: Section 44AD, 44AE, 115V

10.1 Section 44AD: Computation of income of specified business

- Applicable to **(i)** an Individual **(ii)** HUF **(iii)** Firm (Not for limited liability partnership) **(iv)** who **has not claimed** deduction u/s 10AA or income based deduction under **chapter VI-A in head-C.**
- All small businesses with total turnover or gross receipts of **up to ₹ 100 lakhs.**
- Rate of tax would be **8%** of total turnover or gross receipts.
- Following persons are **specifically excluded** from applicability of this presumptive provision.
  - ➔ A person carrying on profession as specified u/s 44AA(1) namely legal, medical, architectural, accountancy, technical consultancy, interior decorator and any professions as notified by Board **(or)**
  - ➔ A person earning income in the nature of commission or brokerage **(or)**
  - ➔ A person carrying on any agency business.
- **No deduction** u/s 30 to 38 available. In case of firm Sec 40(b) is applicable.
- **Section 44AA & Sec 44AB:** maintenance of books of accounts and tax audit.
  - (i) **Mandatory** if income **exceeds** specified limit. (₹ 100 lakhs)
  - (ii) Mandatory if income **does not exceed** specified limit but he **intends to claim his income lower than** income prescribed u/s 44AD (8% of total turnover or gross receipts) **and** his income exceeds the maximum amount not chargeable to tax.
- Exemption u/s 10AA and deduction under Chapter VI-A **is not** available.
- Requirement of advance tax payments **is not** applicable.
- The **written down value** of any asset of such business shall be **deemed to have been calculated.**
- **Provisional Illustration:** A partnership firm consisting of three partners X, Y and Z is engaged in the business of manufacturing and selling teddy bear.

  Turnover of the business for the year ended 31.03.2013 amounts to ₹ 95 lakhs. Bad debts written off in the books are ₹ 75,000. Interest at 12% is provided to partner Z on his capital of ₹ 6 lakhs as authorized by the partnership deed.

  The firm had business loss of ₹ 50,000 and unabsorbed depreciation of ₹ 1,50,000 carried forward from Assessment Year 2012-13. The firm did not pay tax under presumptive tax system in AY 2012-13. The firm opts for presumptive taxation under section 44AD for AY 2013-14.

  (i) Compute the income of the firm chargeable under the head "Profits and gains of business or profession".

  (ii) What would be the liability for interest under section 234B and 234C, if the firm has not paid any advance tax?

Solution:

(i) Computation of business income of the firm:

Particulars	Ref.	₹
Presumptive income under section 44AD (₹ 95 lakh x 8%)	(a)	7,60,000
Less: Interest @ 12% to Z (₹ 6 lakh x 12%)	(a)	72,000
		6,88,000
Less: Brought forward business loss u/s 72	(a)	50,000
		6,38,000

(a) A partnership firm falls within the definition of eligible assessee u/s 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ₹ 100 lakhs.

- ✓ 8% of the total turnover would be deemed to be the business income of the firm.
- ✓ No deduction shall be allowed for bad debts since the same is deductible u/s 36(1)(vii) and unabsorbed depreciation since the same is deductible u/s 32(2).
- ✓ All deductions allowable u/s 30 to 38 shall be deemed to have been fully allowed.
- ✓ Business loss of PY 2011-12 can be set-off against current year business income as per section 72.

(ii) An assessee opting for presumptive taxation scheme u/s 44AD is relieved from the requirement of advance tax payments. The firm is not required to make advance tax payments. Accordingly, there would be no liability for interest u/s 234B and 234C.

10.2 Section 44AE: Computation of income of business of plying, hiring or leasing goods carriages

- ❖ Applicable to **all assessees** including non-resident who carries on business of plying, hiring or leasing goods carriage **and** owns not more than 10 goods carriages **at any time** during the previous year.
- ❖ The presumed income will be **₹ 5000p.m.** or part of month in respect of **heavy goods vehicle** and **₹ 4500 p.m.** or part of month **other than heavy goods vehicles**, during which the goods carriage is owned by assessee.
- ❖ **No deduction u/s 30 to 38 available. In case of firm Sec 40(b) is applicable.**
- ❖ **Section 44AA & Sec 44AB:** maintenance of books of accounts and tax audit **are mandatory** if income **does not exceed** specified limit **but he intends to claim** his income **lower than income prescribed u/s 44AE**
- ❖ Chapter VI-A deduction **is available**
- ❖ The **written down value** of any asset of such business shall be **deemed to have been calculated.**

10.3 Section 115V:Tonnage tax – Shipping business of domestic shipping company (Do not confuse with Section 44B)

- ❖ **Presumptive taxation** of a shipping company and application of at **normal corporate rate.**
- ❖ Tax is payable **even if there is loss in a year.**
- ❖ Daily tonnage income x number of days operated in a year. **Rounded off** to nearest multiple of 100 tons.
- ❖ Once company opted the scheme **then locked for 10 years**.
- ❖ Company owing **at least one** qualifying ship. Here, Qualifying ship refers to having at least 15 tons capacity.
- ❖ Application to be made to **Joint Commissioner.**
- ❖ **MAT credit** can be **carried forward for 10 AY**.
- ❖ At least **20%** of book profit derived from **its core and incidental activity** transferred to a special reserve account and utilised before expiry of 8 years for acquisition of new ship.
- ❖ Until the acquisition of new ship, such above said amount **must be used f**or working capital requirement, but **not used** for **(i)** distribution of dividend or **(ii)** remittance of profit outside India or **(iii)** remittance for creation of asset outside India.

❖ **Provision Illustration:** Assume two vessels are **(i)** operated for 360 days with 47,549 tons and 800 kgs and **(ii)** operated for 200 days with 25,759 tons and 400 kgs respectively. Tonnage income computed is as follows.

Capacity	Applicable rate – per day	Ship-1 (₹)	Ship-2 (₹)
Up to 1000 tons	₹ 70 for each 100 tons	700	700
1001 to 10,000 tons	₹ 53 for each 100 tons exceeding 1000 tons	4770	4770
10,001 to 25,000 tons	₹ 42 for each 100 tons exceeding 10,000 tons	6300	6300
Exceeding 25,000 tons	₹ 29 for each 100 tons exceeding 25,000 tons Ship-1: (47,550-25,000) x $^{29}/_{100}$	6,525	232
		18,295	12,002
Number of days vessel is in operation		360	200
Tonnage income (18,295 x 360) & (12,002 x 200)		**65,86,200**	**24,00,400**

Provision relating to Non-resident
Section 44B, 44BB, 44BBA, 44BBB

10.4 Shipping business of any Non-resident

☞ **A non-resident** (NR) has an **option to offer the income** as per the Indian income tax Act or DTAA entered into between India and other countries, **whichever is beneficial.** Under Indian income tax Act, section 44B and section 172 deals with computation of shipping business of non-resident.

Section 172(1) – Default Provision	Section 44B – Option by application
❖ Business of operation of ships **occasionally** and income is earned on account of passengers, livestock, mail or goods at a port in India in respect of **export** transaction.	❖ Business of operation of ships **regularly** and income is earned on account of passengers, livestock, mail or goods at a port in India or outside India in respect of **export and import** transaction.
❖ Amount payable to NR x **7.50% is taxable income**	❖ Amount payable to NR x **7.50% is a business income**
❖ **Set off and carry forward** of loss **is not** available.	❖ Set off and carry forward of loss **is** available.
❖ **Chapter VI-A** deduction **is not** available	❖ **Chapter VI-A** deduction **is** available

Additional Points in respective sections

Section 172(1)	Section 44B
❖ This section **overrides** entire IT Act.	❖ Section 44AB - Tax audit provision **is not** applicable.
❖ Import transaction taxable u/s 5(2) on receipt basis.	❖ **Lower income cannot** be claimed.
❖ Return is to be filed **within 30 days** of departure of Ship.	❖ Assessment by assessing officer within 36 months from end of FY in which shipping income derived.
❖ No order of assessment by AO after expiry of 12 months from end of FY in which return furnished.	❖ **No deduction** u/s 28 to 43A available.
❖ Amount paid or payable **in or out of India** covered.	

10.5 Section 44BBA: Non-resident engaged in business of operation of aircraft

- Non-resident **is in operation** of aircraft
- Section 44AB - Tax audit provision **is not** applicable.
- Hence lower income **cannot be** claimed.
- Chapter VI-A deduction **is** available
- Set off and carry forward of loss **is** available.
- **No deduction** u/s 28 to 43A available.
- A sum equal to 5% of the **aggregate of the amounts** specified deemed to be the profit.
- (a) Paid or payable **(in India or out of India) to** the assessee or to any person for 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 for carriage of passengers, livestock, mail or goods **from** any place outside India.
- **Provisional Illustration:**

  Mr. Mogambo, a non-resident, operates an aircraft between Dubai and Chennai. He received the following amounts in the course of operation of aircraft during the year ending 31.3.2013.

➔	Amount received in India	(₹) lakhs
	(a) carriage of passengers from Chennai	200
	(b) carriage of goods from Chennai	100
	(c) carriage of passengers from Singapore	300
➔	Amount received in Singapore	
	(d) carriage of passengers from Chennai	100

The total expenditure incurred by Mr. Mogambo during the year ending was ₹ 6.75 crores.

Compute the income chargeable to tax in India under the head PGBP for the assessment year 2013-14.

Solution:

➔ Section 44BBA incorporates special provisions for computing profits and gains of the business of operation of aircraft in the case of non-residents.

	Particulars	₹ (lakhs)
➔	Amount received in India	
	(a) carriage of passengers from Chennai	200
	(b) carriage of goods from Chennai	100
	(c) carriage of passengers from Singapore	300
➔	Amount received in Singapore	
	(d) carriage of passengers from Chennai	100
	Total amount received during the year	**700**
➔	% of the aggregate of the amounts	**5%**
➔	Income from business under section 44BBA	**35**

10.6 Section 44BBB: Foreign company engaged in business of civil construction in certain turnkey power projects

- Turnkey power project **approved** by CG
- **Section 44AB** - Tax audit provision **is optional**.
- Hence **lower income** can be claimed.
- **No deduction** u/s 28 to 44AA available.
- **Chapter VI-A** deduction **is** available
- **Set off** and carry forward of loss **is** available.
- A sum **equal to 10% of the profit** Paid or payable **(in India or out of India)** to the assessee or to any person on account of such civil construction, erection, testing or commissioning shall be deemed to be income.

10.7 Section 44BB: Non-resident engaged in prospecting for (or) extraction or production of mineral oils

- **Mineral oil** includes petroleum and natural gas.
- **No deduction** u/s 28 to 41 and 43 and 43A.
- **Section 44AB** - Tax audit provision **is optional**.
- **Chapter VI-A** deduction **is** available
- Hence **lower income can be claimed**.
- **Set off** and carry forward of loss **is** available.
- A sum equal to **10%** of the **aggregate of the amounts** specified deemed to be the profit.
- (a) Paid or payable **(in India or out of India)** to the assessee or to any person in connection with prospecting for or extraction or production of mineral oil **in India.**
- (b) Received or deemed to be received **(in India)** by or on behalf of the assessee or to any person in connection with prospecting for or extraction or production of mineral oil **outside India.**
- Seismic data acquisition and interpretation used to create highly accurate images of the earth's sub-surface which in turn are used by the exploration and production companies for locating potential oil and gas reserves based upon the geology observed. The income derived was to be computed under the provisions of section 44BB. **{(In re *Global Geophysical Services Ltd.*)(2011)(AAR)}**