Presumptive Taxation

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

1.1 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.

1.2 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 **`7500 p.m. or part of month** during which the goods carriage **<u>is owned by assessee</u>** in the PY or an amount actually earned by vehicle, **whichever is higher.(w.e.f. 01.4.2015)***
- 🕮 The date of **<u>put to use of vehicle is relevant</u>** if assessee intend to declare **higher income** than presumptive income.
- 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.

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

- **Presumptive taxation** of a shipping company and application of **normal corporate tax**
- Application made to **Joint Commissioner**
- Tax is payable even loss in a year
- Once company opted the scheme **then locked for** 10 years
- Company owing **at least one** qualifying ship. Qualifying ship refers to having at least 15 tons capacity.
- MAT credit can be carried forward to 10 assessment years
- Daily tonnage income **multiplied with** number of days operated in a year. **Rounded off** to nearest multiple of 100 tons

Capacity	Applicable rate – per day
Up to 1000 tons	` 70 for each 100 tons
1001 to 10,000 tons	` 53 for each 100 tons exceeding 1000 tons
10,000 to 25,000 tons	` 42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000 tons	` 29 for each 100 tons exceeding 25,000 tons

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

1.4 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. ❖ Amount payable to NR **X 7.50% is taxable income** ❖ **Set off and C/fwd** of loss **is not available** ❖ **Chapter VI-A** deduction **is not available**	❖ 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 business income** ❖ Set off and C/fwd of loss **is available** ❖ **Chapter VI-A** deduction **is available**
Additional Points in respective sections	
❖ This section **overrides** entire IT Act ❖ Import transaction taxable as per Sec 5(2) on receipt basis ❖ Return is to be filed **within 30 days** of departure of ship ❖ No order of assessment by AO after expiry of 12 months from end of FY in which return furnished ❖ Amount paid or payable **in or out of India** covered	❖ Section 44AB - Tax audit provision **is not** applicable ❖ **Lower income cannot** be claimed ❖ Assessment by assessing officer within 36 months from end of FY in which shipping income derived ❖ **No deduction** u/s 28 to 43A available.

1.5 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**

❖ **Deduction** u/s 28 to 43A **is not available**

❖ Chapter VI-A deduction **is available**

❖ Set off and carry forward of loss **is 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.

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

❖ **Mineral oil** includes petroleum and natural gas

- **Section 44AB** tax audit provision **is optional. Hence,** lower income can **be claimed**
- **Deduction** u/s 28 to 41 and 43 and 43A **is not available**
- **Chapter VI-A** deduction **is available**
- **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)*}**

1.7 Section 44BBB: Foreign company engaged in certain turnkey power projects

- Turnkey power project **approved** by Central Government
- **Section 44AB** tax audit provision **is optional. Hence,** lower income can **be claimed**
- **Deduction** u/s 28 to 44AA **is not 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.

1.8 Section 44DA: Special provision for royalty income of non-resident

- This section **overrides** provisions specified u/s 44BB.
- The income by way of royalty or fees for technical services **received from** government or an Indian concern **by a** non-resident (not being a company) or a foreign company carries on business in India through **a permanent establishment** or fixed place of business.
- The agreement entered after the 31.03.2003.
- **No deduction shall be allowed** in respect of **(i)** any expenditure or allowance **which is not wholly** and exclusively incurred in India; or **(ii)** any amounts **paid by** permanent establishment **to its** head office or any other offices.
- Every non-resident shall keep and maintain books of accounts and other documents **u/s 44AA** and get his accounts audited **u/s 44AB** and **furnish report** along with return of income.

Best of Luck

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