

# ***Issues in Taxation of Non-Corporate Assessee***

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# ***What is the meaning of Presumptive Taxation Scheme ?***

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*As per sections 44AA , a person engaged in business is required to maintain regular books of account under certain circumstances. To give relief to small taxpayers from this tedious work, the Income-tax Act has framed the presumptive taxation scheme under sections 44AD, sections 44ADA and sections 44AE.*

*A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account.*

# ***Who is eligible to take advantage of the Presumptive Taxation Scheme of Section 44AD ?***

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*The presumptive taxation scheme of section 44AD can be adopted by following persons :*

- 1) Resident Individual*
- 2) Resident Hindu Undivided Family*
- 3) Resident Partnership Firm (not Limited Liability Partnership Firm)*

*In other words, the scheme cannot be adopted by a non-resident and by any person other than an individual, a HUF or a partnership firm (not Limited Liability Partnership Firm).*

# ***Which Businesses are not eligible for Presumptive Taxation Scheme ?***


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*The scheme of section 44AD is designed to give relief to small taxpayers engaged in any business, except the following businesses:*

- Business of plying, hiring or leasing goods carriages referred to in sections 44AE.*
- A person who is carrying on any agency business.*
- A person who is earning income in the nature of commission or brokerage*
- Any business whose total turnover or gross receipts exceeds two crore rupees.*

*Apart from above discussed businesses, a person carrying on profession as referred to in section 44AA(1) is not eligible for presumptive taxation scheme under section 44AD*


*Further, this Scheme cannot be adopted by a person who has made any claim towards deductions u/s 10A/10AA/10B/10BA or under sections 80HH to 80RRB.*



# ***Who are eligible for 44ADA ?***

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*The presumptive taxation scheme of sections 44ADA can be adopted by a person resident in India, carrying on specified profession whose gross receipts do not exceed fifty lakh rupees in a financial year. Following professions are specified profession:*

- 1) Legal*
  - 2) Medical*
  - 3) Engineering or architectural*
  - 4) Accountancy*
  - 5) Technical consultancy*
  - 6) Interior decoration*
  - 7) Any other profession as notified by CBDT*
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# ***Turnover whether includes GST ?***

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*Opted for Composition Scheme under GST, the tax is not to be recovered from the customer and it is debited to the Statement of profit & loss as an indirect expense. Thus, amount of GST paid by an assessee should not form part of his gross turnover.*


*In case of other assessee, as GST is charged from the customer and it is recognized separately in the books of account, it is not clear whether the amount of GST shall be included in the turnover for the purpose of calculation of taxable income only.*

*FAQs on Tax Audit under section 44AB 102 September 15 To September 21, 2018 u Taxmann's Corporate Professionals Today u Vol. 43 u 8 (c) Inclusion of GST in the turnover would have the cascading effect, i.e., presumptive income shall also be computed on the component of GST which is never treated as income of the assessee.*

# ***What about Turnover difference in 26AS ?***

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*Whether to consider the following mentioned amount in turnover of the assessee :*

- *Amount appearing in 26AS is on Gross Basis including taxes i.e. GST.*
  - *Amount appearing in 26AS which are towards receipt advance received by the assessee.*
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# ***What about Turnover difference in GST Return ?***

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*Whether to consider the following mentioned amount in turnover of the assessee :*

- *Sale of capital goods.*
- *Advance received*
- *Inter branch Sales.*



# ***Whether Share of profits of a partner shall be included in Gross receipts for the purpose of Section 44ADA***

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*Guidance Note on “Tax Audit” clarifies that in case of gross receipts of the business it will include all receipts whether in cash or in kind arising from carrying on of the business and it specially provides that for the purposes of Section 44AB it would exclude partners share of profit which is exempt under section 10(2A).*

*Though the said exclusion is provided for arriving at the gross receipts of the business; the same logic can be extended while arriving at the gross receipts of the profession.*

***The Mumbai Bench of the Income Tax Appellate Tribunal in the case of ACIT v. India Magnum Fund (81 ITD 295)***

*In order to trigger the provisions of Section 44AB, there should be first computation of profits and gains of business or profession i.e. computation of total income as per Section 4. As the income exempt under Section 10 does not form part of the total income, such exempt income cannot be subjected to the provisions of Section 44AB. Consequently, one may argue that share of partners profit which is exempt under section 10(2A) would not be considered for the purposes of the gross receipts.*

# ***Can income be offered under 44AD when one Partner is Non Resident ?***

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*As per Provision of Section 44AD, only a Resident Partnership Firm is an eligible assessee u/s 44AD*

*A partnership firm is a resident in India if then control and management of its affairs wholly or partly situated within India during the relevant previous year.*

*Thus, the firm can opt for taxation u/s 44AD provided control and management of its affairs wholly or partly situated within India during the relevant previous year.*

# ***Can income from FNO business be offered under Presumptive Taxation Scheme ?***

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*Explanation 2 to section 28 - Speculative transactions are of business nature then the same will be distinct transactions from any other business of the assessee.*

*Section 43(5) defines speculative transactions and specifically excludes derivative (F&O) transactions from the definition of speculative transactions.*

*Combined reading of section 28 and section 43(5) provides that derivatives (F&O) transactions will be treated as business and profit or loss will be taxable as business income only.*

*Thus, can be offered to tax u/s 44AD , subject to Turnover limit u/s 44AB.*

# ***Applicability of Tax Audit in Futures and Options Business (FNO) Business***

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*For the assessee engaged in FNO business, Turnover is to be calculated as a sum of*

- The total of positive and negative differences*
- Premium received on sale of options is also to be included in turnover.*
- In respect of any reverse trades entered, the difference thereon but not the total value of contract.*

# ***Can a assessee having Income from Business as well as Professional opt under Presumptive Taxation Scheme ?***

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*Receipt from Business Income to be offered as per Section 44AD and*

*Receipt from Profession income to be offered as per Section 44ADA.*

# What Is The Audit Limit For A Assessee Having Income From Business As Well As Profession ?

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Particulars	Case 1	Case 2	Case 3	Case 4
<b>Professional Receipts</b>	55 lakhs	45 lakhs	55 lakhs	45 lakhs
<b>Business Receipts</b>	35 lakhs	45 lakhs	125 lakhs	175 lakhs
<b>Total Turnover</b>	90 lakhs	90 lakhs	180 lakhs	220 lakhs
<b>Tax Audit</b>	Applicable as Professional receipts exceeds 50 lakhs	NA	Applicable as Professional receipts exceeds 50 lakhs	NA

# ***When the switching is possible from regular provisions to Section 44AD and back?***

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*Switching from Section 44AD to regular provisions can be done in any assessment year, but with following consequences:*

- Cannot offered income u/s 44AD for next five assessment years and*
- During next years, have to get the books audited if, total income exceeds the maximum amount which is not chargeable to income-tax.*

*No restrictions for switching from regular provision to Section 44AD.*



# ***Which ITR is applicable for Income offered under Presumptive Taxation Scheme?***

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*ITR-4, (subject to following conditions), who has income under the following heads:-*

- Income from business where such income is computed on presumptive basis under Section 44AD (i.e. Gross Turnover upto Rs. 2 crore) or Section 44AE (income from goods carriage upto ten vehicles); or*
- Income from Profession where such income is computed on presumptive basis under Section 44ADA (i.e. Gross receipt upto Rs. 50 lakh); or*
- Income from Salary/ Pension; or*
- Income from One House Property; or*
- Income from Other Sources.*

*Else ITR-3*





# ***What should be the addition to capital when tax is paid under presumptive scheme ?***

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*Profit should be taken as the filed in the Return of Income*

*or*

*Actual profit appearing in the books of accounts*

***In case of mutual fund investments, payment is made of 31<sup>st</sup> of March 2019 while mutual funds are allotted in 2<sup>nd</sup> April 2019 of next month. Inception of funds is falling in next assessment year. Is the deduction allowed u/s 80C for the AY 2019-20?***

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*As per Section 80C(xiii) “as **subscription** to any units of any Mutual Fund referred to in clause (23D) of section 10 or from the Administrator or the specified company under any plan formulated in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf;”*

*As per Section 80C(xiii) “as **subscription** to any units of any mutual fund referred to in clause (23D) of section 10 and approved by the Board on an application made by such mutual fund in the prescribed form: Provided that this clause shall apply if the amount of subscription to such units is subscribed only in the eligible issue of capital of any company. Explanation.—For the purposes of this clause "eligible issue of capital" means an issue referred to in clause (i) of the Explanation to clause (xix) of sub-section (2);”*

***U/s 80C Investment is allowed on payment basis.***

# ***ITR Disclosure regarding Unlisted shares held during the year.***

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*What about the following shares held:*

*Delisted Shares*

*Shares held in Co-operative Banks*

*Shares held in Co-operative Societies*

*Shares held in AOP/BOI*

# ***How to file income tax return of deceased assessee ?***

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*STEP 1 Login to e-Filing portal using Legal Heir Credentials*

*Step 2 My Account – Register as Legal Heir*

*Step 3 –Requesting: Select the Type of Request – New Request*

*Enter the details of Deceased, Select the files to upload, Attach a Zip File containing PDF of the scanned documents, mentioned in “Documents Required”*

*Click Submit & You will get Acknowledgement from the Dept. with a Transaction ID*

## ***Step 4 Checking the status of request.***

- The status of the request can be seen here. There are 3 types of status that can be seen, Pending, Rejected and Approved.*
- In case of Rejection, Dept. will provide the ground for such rejection, which can be viewed by clicking on Transaction ID*
- After completing the whole process and once the requested is approved, you will be able to use all the services for yourself (Legal Heir) and for the Deceased.*

# ***What are the documents required for registering Legal Heir Certificate ?***

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*The legal heir certificate issued by court of law.*

*The legal heir certificate issued by the Local revenue authorities.*

*The certificate of surviving family members issued by the local revenue authorities.*

*The registered will.*

*The Family pension certificate issued by the State/Central government.*

*The certificate of surviving family members issued by the local revenue authorities, is the most common certificate available. This certificate will usually be in the regional language, so the Legal Heir will be required to translate it into English/Hindi, and duly notarized the same.*

# ***Can we claim loss under Income From Other Sources ?***

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*No,*

*Except for Loss from the business of owning and maintaining race horses.*

***Thank You***

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# ***What is the rate of TDS towards the purchase of Immovable Property from NRI ?***

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*194-IA. (1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a **resident** transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.*

***Purchase of Immovable property from NRI is not covered u/s 194IA***

***Transaction will be covered under Section 195.***

***U/s 112(1)(c) - Long Term Capital Gains - 20%***





# Can Form 26QB be revised/ rectified/ corrected ?

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Yes

Correction Type	With DSC	Without DSC
Buyer's PAN	After Seller's and new Buyer's approval	After Seller's, New Buyer's and AO's approval
Seller's PAN	After existing Seller's approval	After existing Seller's and AO's approval
Buyer's Address	No approval needed	No approval needed
Seller's Address	No approval needed	No approval needed
Property Details	No approval needed	No approval needed
Amount Paid/ Credited	No approval needed	After AO's Approval
Date of Payment To Seller	No approval needed	After AO's Approval
Date of Deduction	No approval needed	After AO's Approval

# Can Form 26QC be revised/rectified/ corrected ?

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Yes

Correction Type	With DSC		Without DSC
	Landlord is known	Landlord is unknown	
Tenant's PAN	After Landlord's and new Tenant's approval	After AO's and new Tenant's approval	After AO's and new Tenant's approval
Landlord's PAN	After existing Landlord's approval	After AO's approval	After AO's approval
Property Details	No approval needed	No approval needed	After AO's approval
Amount Paid/ Credited	After Landlord's approval	After AO's approval	After AO's approval
Date of Payment / Credit	After Landlord's and AO's approval	After AO's approval	After AO's approval
Date of Deduction	After Landlord's and AO's approval	After AO's approval	After AO's approval
Total Value of Rent Payable	No approval needed	No approval needed	After AO's approval
Value of Last Month Rent Paid	No approval needed	No approval needed	After AO's approval