

Presumptive Taxation

RANO JAIN LEGAL

WHAT IS PRESUMPTIVE

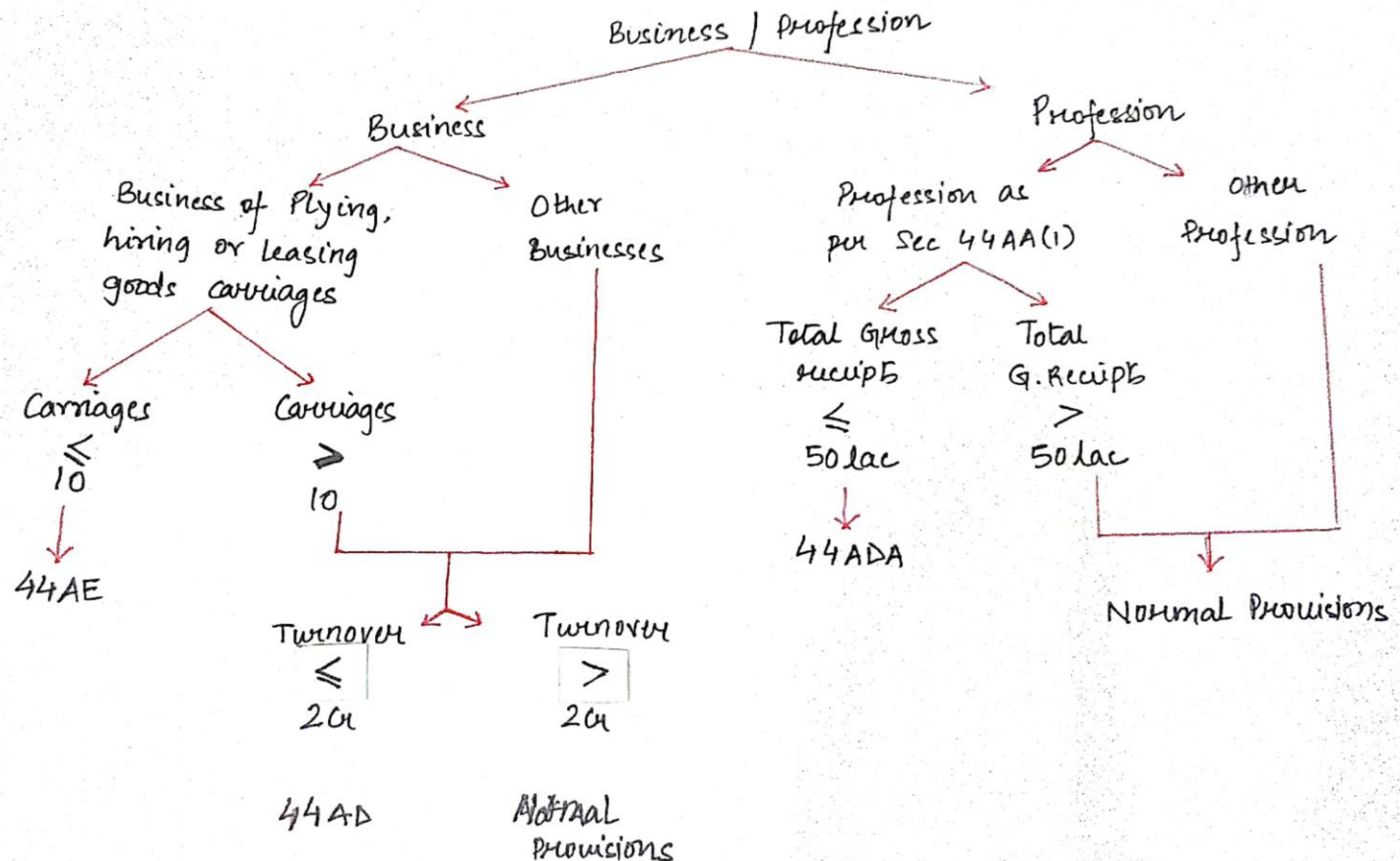
2

- ▶ Dictionary meaning: “*the act of believing that something is true without having any proof*”
- ▶ Real purport of Presumptive taxation
- ▶ Nand Lal Popli vs. DCIT, ITA 1161-62/Chd/2013, dt. 14.06.2016
- ▶ The first important term here is 'deemed to be', which proves that in such cases there is no income to the extent of such percentage, however, to that extent, income is deemed. It is undisputed that 'deemed' means presuming the existence of something which actually is not. Therefore, it is quite clear that though for the purpose of levy of income tax 8% or more may be considered as income, but actually this is not the actual income of the assessee. This is also the purport of all provisions relating to presumptive taxation.

Introduction

3

Presumptive Taxation Regime



RELEVANT PROVISIONS

- ▶ Section 44AA
- ▶ Section 44AB
- ▶ Section 44AD
- ▶ Section 44AE
- ▶ Section 44ADA

**SECTION 44AA: Maintenance of
accounts by certain persons
carrying on profession or
business.**

- ▶ *(1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.*
- ▶ ISSUES:
- ▶ 44ADA(4): no books to be maintained if total income does not exceed maximum amount chargeable to tax

NOTIFIED PROFESSIONS

7

- ▶ Legal
- ▶ Medical
- ▶ Engineering
- ▶ Accountancy
- ▶ Architecture
- ▶ Technical Consultancy
- ▶ Advertisement
- ▶ Company Secretary- Notification dt. 25.09.1992
- ▶ Information Technology- 04.05.2001
- ▶ Authorised Representative
- ▶ Film Artiste-

(2) Every person carrying on business or profession not being a profession referred to in sub-section (1) shall,-

(i)

(ii)

(iii)

(iv)

keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

- (i) if his income from business or profession exceeds one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year; or*
- ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed ten lakh rupees, during such previous year; or*

(iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or

Issues:

In cases of 44AE, 44BB and 44BBB- if claiming lesser income, books to be maintained even if income does not cross threshold- section 44AE(7)

(iv) where the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

ISSUES:

- ▶ No requirement of maintaining books if opted for 44AD
- ▶ To keep books of accounts if claim less than income presumed under section 44AD
- ▶ If sub section (4) applicable, books to be maintained, only if income exceeds threshold limit

Provided that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words “one lakh twenty thousand rupees”, the words “two lakh fifty thousand rupees” had been substituted:

Provided further that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words “ten lakh rupees”, the words “twenty-five lakh rupees” had been substituted.

3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.

- ▶ Books to be maintained as per section 44AA(3) and kept at a place as per section 44AA(4): As prescribed by the Board
- ▶ Penalty for non keeping, maintaining and retaining of books of accounts is dealt u/s 271A: Rs. 25,000/-

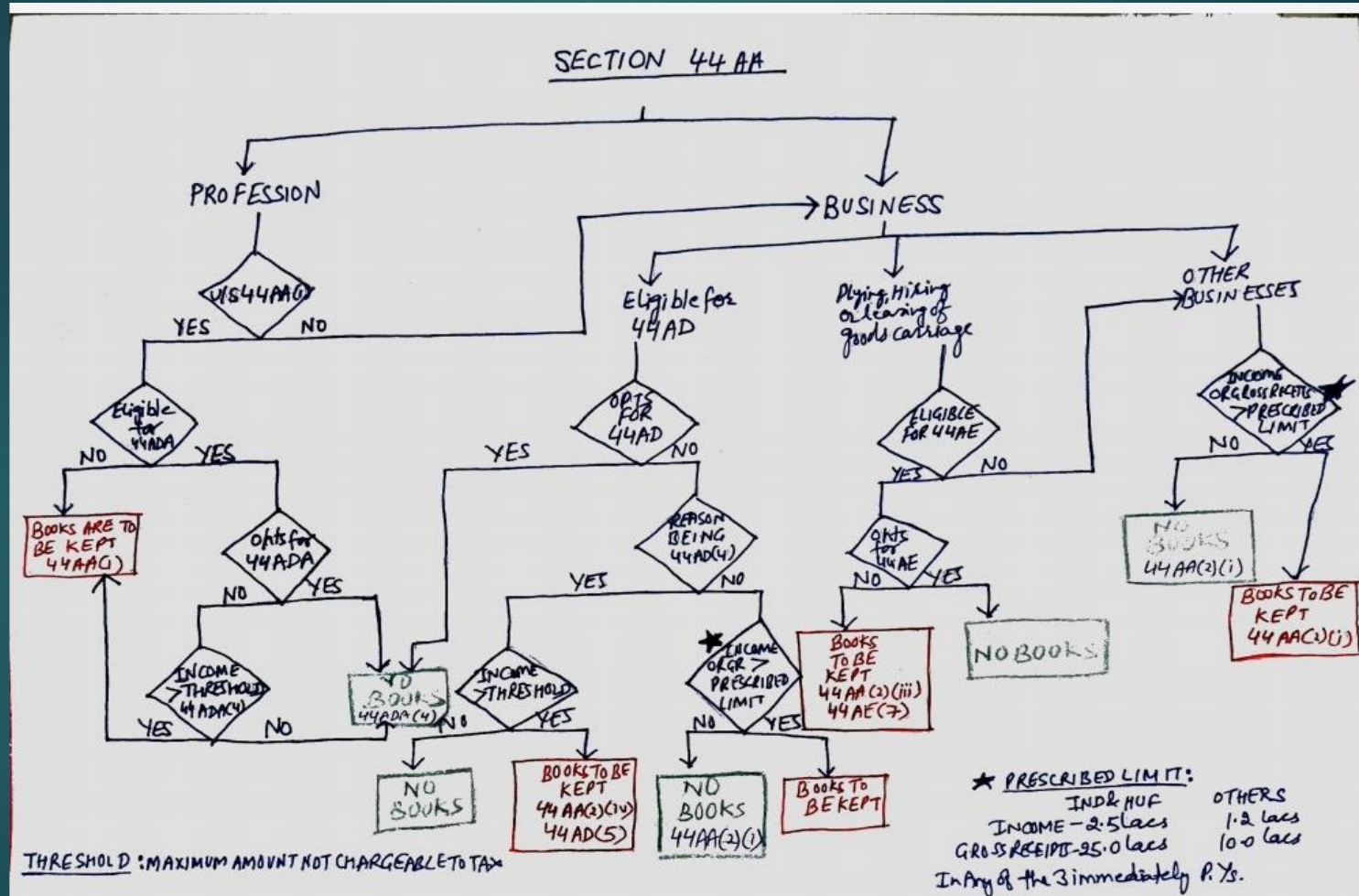
Books of accounts: defined in Sec 2(12A)

What books are generally required to be maintained :
Rule 6F

- Cash book;
- Ledger;
- Journal;
- Carbon copy of bills and receipts issued by the person in relation to sums exceeding INR 25000;
- Original bills and receipts issued by the person in respect of expenditure incurred in relation to sums exceeding INR 50,000

In crux :

15



**SECTION 44AB: Audit of
accounts of certain persons
carrying on profession or
business.**

- ▶ Every person
- ▶ CLAUSES (a) to (e)
- ▶ get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year

Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent. of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. of the said payment,

this clause shall have effect as if for the words “one crore rupees”, the words “five crore rupees” had been substituted; or

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

- ▶ Issues arising:
- ▶ Even if the income below taxable limit??

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

Issues:

- ▶ Only if income exceeds the minimum threshold- section 44ADA(4)

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

Issues:

- ▶ condition for opting out of section 44AD
- ▶ Only if crosses threshold limit
- ▶ Definitely applicable only to those assesses, who having once opted, but opt out of presumptive taxation in any of the five Pys preceding the relevant previous year.
- ▶ What if, first year, eligible for 44AD, but opt not to- go to clause (a)
- ▶ What if six mediating years elapsed having opted out of 44AD, eligible for 44AD, but does not opt- go to Clause(a)

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

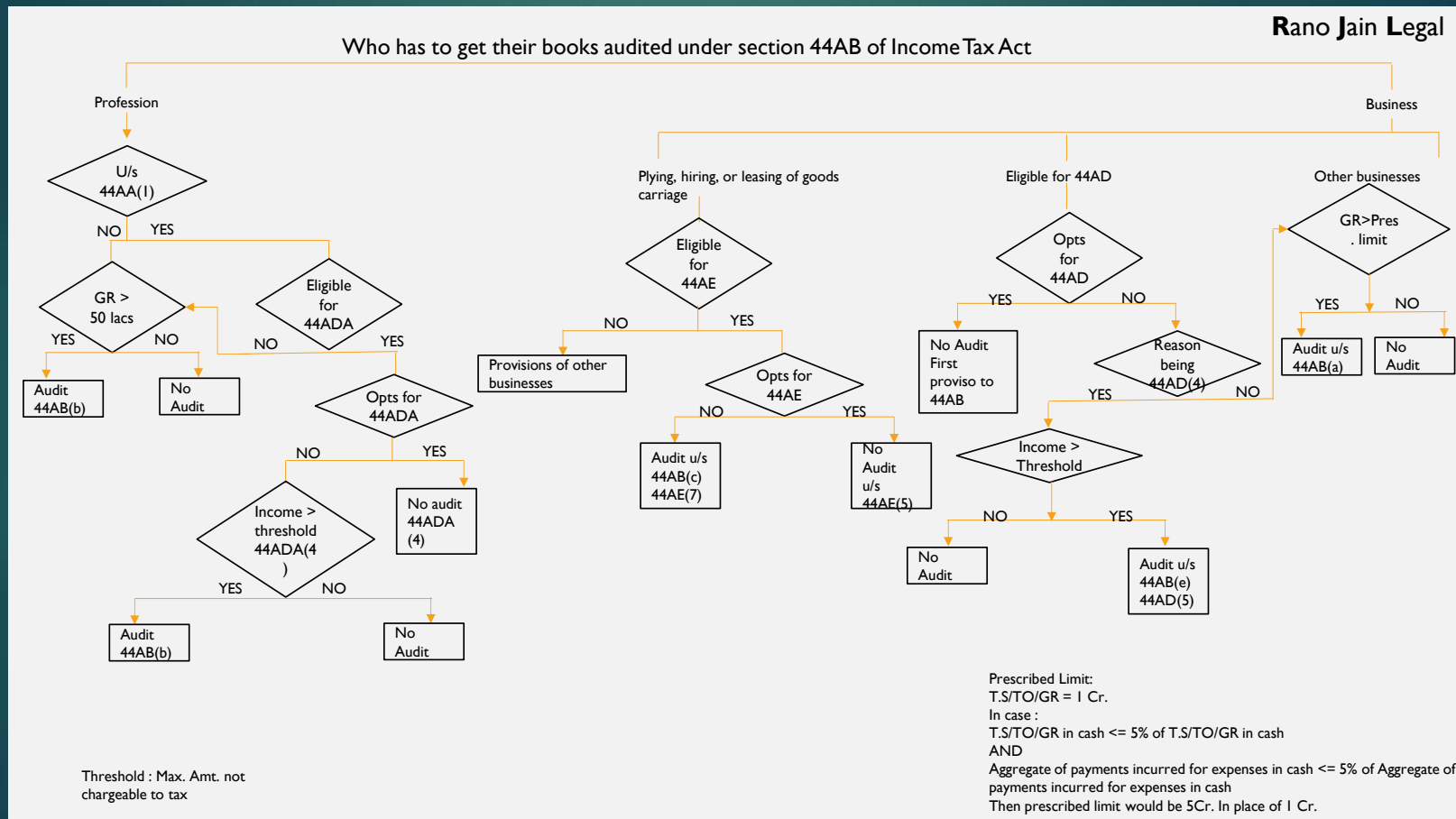
Explanation.-For the purposes of this section,-

(i) "accountant" shall have the same meaning as in the **Explanation** below sub-section (2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to] the the due date for furnishing the return of income under sub-section (1) of section 139

Section 44AB: Audit of accounts of certain persons carrying on business or profession

25



Issues Regarding calculation of Turnover/Gross Receipts/Total Sales : As Per Guidance Note ICAI

Ancillary charges-packing, freight, forwarding, interest, commission etc should be excluded from turnover. If where separate demarcation of these charges is not possible, turnover will include these charges. If charges represent reimbursement of actual cost, these will not form part of 'turnover'.

If the sales proceeds of any shares, securities, debentures, etc. held as investment then it will be excluded, otherwise, if held as stock in trade, then included.

Sale of by products or sale of scrap should be included in computing the 'turnover' for the purposes of section 44AB.

In case of Derivatives, Future and options, the difference between total favourable and unfavorable is to be considered as turnover for the purpose of deciding the limit under section 44AB of the Act.

Special rebate allowed to customer (not being in the nature of commission on sales) should be excluded from the turnover.

The value of stocks surrendered during a survey should be excluded from the turnover.

Trade discount should be deducted from sales.

Cash discount (otherwise than that allowed in cash memo/sales invoice) should not be deducted from turnover as it is a financing charge.

Bad debts written off should not be excluded from the turnover.

The exchange difference (net) on export sales are included in the gross receipts only if the same is not credited to a separate account.

Out of pocket expenses recovered by a CA/solicitor/ advocate as part of a consolidated fee should be included in gross receipts.

Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling, etc.) are included in the gross turnover – if the same is not credited to a separate account and expenses incurred are debited to that account, then only the net surplus should be added to turnover for section 44AB purposes.

Advance received from customers forfeited are to be included in gross receipts.

Write back of amounts no longer payable to creditors are not to be included in the term gross receipts as per the Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961.

Professionals

S. No.	Particulars	Books			Audit		
		Y/N	Condition	Section	Y/N	Condition	Section
1	Eligible for 44ADA & Opts for it	N	-	44ADA(4)	N	-	44AB(d)
2	Eligible for 44ADA & do not Opts for it	Y	Income > Threshold	44ADA(4)	Y	Income > Threshold	44AB(d) 44ADA(4)
3	44AA professions/ not eligible for 44ADA	Y	-	44AA(1)	Y	GR>50 Lacs	44AB(b)
4	Any other profession	Y	Sales > 20/50 lacs or Income > 1.2 lacs/ 2.5 lacs	44AA(2)(i)	Y	GR>50 Lacs	44AB(b)

Business

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Books

Audit

S. No.	Particulars	Y/N	Condition	Section	Y/N	Condition	Section
1	Eligible for 44AD & opts for the same	No	-	44AA(2)(iv)	No	-	Proviso to sec 44AB
2	Eligible for 44AD but does not avail due to s. 44AD(4)	Yes	Income > Threshold	44AA(2)(iv)	Yes	Income > Threshold	44AB(e)
3	Eligible for 44AD but does not avail (not due to s. 44AD(4))	Yes	Income > 1.2/2.5L GT > 10/25 L	44AA(2)(i)	Yes	TO > 2cr	44AB(a)
4	Eligible for 44AE & opts for the same	No	-	44AE(7)	No	-	44AE(7)
5	Eligible for 44AE but opts not to avail	Yes	-	44AA(2)(iii)	Yes	-	44AB(c)
6	Other businesses	Yes	Income > 1.2/2.5L GT > 10/25 L	44AA(2)(i)	Yes	TO > 2cr	44AB(a)

**SECTION 44AD: SPECIAL
PROVISIONS FOR COMPUTING
PROFITS AND GAINS OF
BUSINESS ON PRESUMPTIVE
BASIS**

MEMORANDUM EXPLAINING THE FINANCE(NO2) ACT, 2009- Extract

32

- ▶ There has been a substantial increase in small businesses with the growth of transport and communication and general growth of the economy. A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net. Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources. A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and also reduces the administrative burden on the tax machinery.
- ▶ In view of the above, it is proposed to expand the scope of presumptive taxation to all businesses by substituting a new section 44AD. The salient features of the proposed presumptive taxation scheme are as under:

- ▶ There has been a substantial increase in small businesses with the growth of transport and communication and general growth of the economy. A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net. Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources. A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and also reduces the administrative burden on the tax machinery.

- ▶ ((e) An assessee opting for the above scheme shall be exempted from maintenance of books of accounts related to such business as required under section 44AA of the Income-tax Act.
- ▶ (g) An assessee with turnover below Rs 40 lakhs, who shows an income below the presumptive rate prescribed under these provisions, will, in case his total income exceeds the taxable limit, be required to maintain books of accounts and also get them audited.

Intention for introduction of section 44AD:-

- ▶ On analysis of various judgements of various courts on issue related to 44AD it becomes ample clear, that the court held Section 44AD was introduced to help the small traders who have difficulties in maintaining books of account and other records.
 - ▶ NAND LAL POPLI VERSUS THE D.C.I.T., CHANDIGARH, 2016 (6) TMI 883 - ITAT CHANDIGARH
 - ▶ MOHAN KUMAR AGARWAL VERSUS INCOME TAX OFFICER, WARD -46 (1) , KOLKATA, 2019(6) TMI 1365
- ▶ That the assessee determining his income u/s 44AD shall not be asked to produce the books of accounts, however the principle factor deciding the applicability of sec 44AD i.e. the turnover may be asked to be explained. For that necessary bills, confirmations etc could be produced.
 - ▶ Favor: SYED KHALID SAIFULLAH VERSUS INCOME TAX OFFICER, WARD-28 (4) , NEW DELHI, 2020 (4) TMI 818 - ITAT DELHI
 - ▶ SANJEEV SABLOK VERSUS ITO, WARD-1 (4) , JAMSHEDPUR, 2019 (9) TMI 99 - ITAT RANCHI

SECTION 44AD

Special provision for computing profits and gains of business on presumptive basis.


44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent. of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, 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".

Provided that this sub-section shall have effect as if for the words "eight per cent.", the words "six per cent." had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.'



(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.



(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax , shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.



(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to-

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.



Explanation.- For the purposes of this section,-

(a) "eligible assessee" means,-

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C.-Deductions in respect of certain incomes" in the relevant assessment year;

(b) "eligible business" means,-

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees

- ▶ Applicability of section 69C : While making the addition on the basis of expenditure shown being less than 92%, instead of section 44AD section 69C shall be applied.
 - ▶ NAND LAL POPLI VERSUS THE D.C.I.T., CHANDIGARH, 2016 (6) TMI 883 - ITAT CHANDIGARH

An assessee who is declaring the income on presumptive basis u/s 44AD/ADA and not maintaining the books of account could not be asked to maintain the same and get them audited. The very intension for the introduction of section 44AD is to free the small professionals, traders and businessmen from keeping and maintaining the books of accounts.

- ▶ Case law: NAND LAL POPLI VERSUS THE D.C.I.T., CHANDIGARH, 2016 (6) TMI 883 - ITAT CHANDIGARH
- ▶ MOHAN KUMAR AGARWAL VERSUS INCOME TAX OFFICER, WARD -46 (1) , KOLKATA, 2019(6) TMI 1365

When the assessee fulfills all the criteria related to the application of presumptive scheme, he cannot be denied the application of the same. The AO following his own logics and explanations cannot snatch away the benefit available to the assessee otherwise.

- ▶ Case Law: SHRI SOHAN NATH VS. ITO, ITAT JAIPUR, ITA NO. 08/JP/2018, DT27.09.2019
- ▶ SHRI NATTHI SINGH VS. ITO, ITAT JAIPUR, ITA NO. 451, 814 & 815/JP/2018, DT. 6.11.2018

An assessee is running a business and his sales for the F.Y. 2019-20 is Rs.97.00 Lacs. He had interest income of Rs.3.00 Lacs and Rental receipts of Rs.2.00 Lacs and Dividend income of Rs.1 .00 Lac. During the year there was a sale of fixed assets for Rs.5.00 Lacs. He is not required to get his accounts audited as the turnover is only Rs. 97 lacs which is much lower than 1 cr, ie. The limit prescribed u/s 44AB

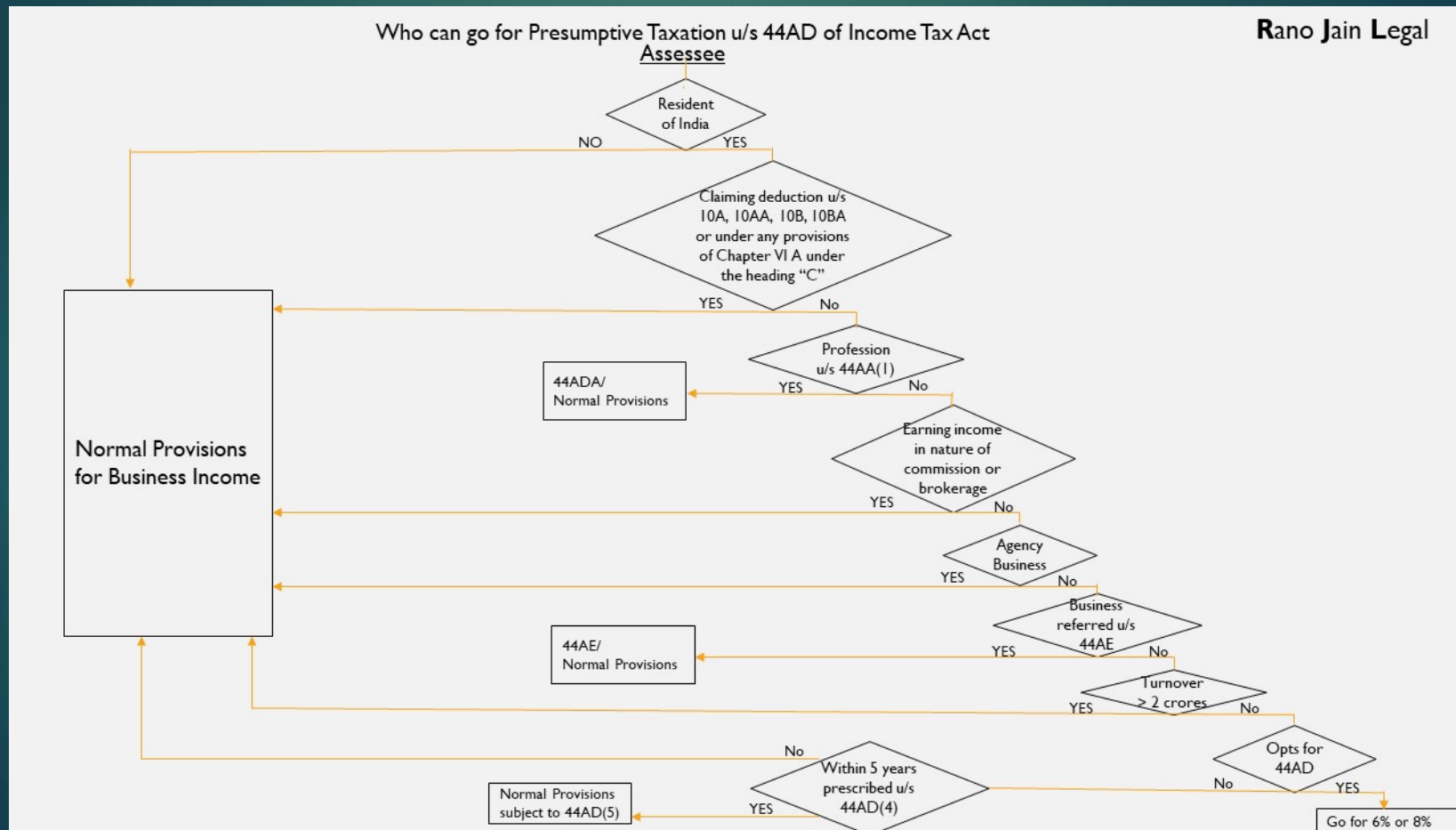
Illustration clarifying the application of section 44AB and 44AD

43

Year	G. T/O	Profit	Total income > Basic Exemption	44AD if applicable (prudent decision)	44AB if applicable	Remarks
1	2,00,00,000	9%	YES	YES	NO	No books of accounts No Audit (First proviso to sec 44AB)
2	1,80,00,000	11%	NO	YES	NO	No books of accounts No Audit (First proviso to sec 44AB)
3	90,00,000	5%	YES	NO	YES	Assessee fall under 44AD(4) Option u/s is therefore not available for next 5 years Audit (sec 44AD(5) & AB(e))
4	1,90,00,000	9%	YES	NO	YES	44AD Not Applicable u/s 44AD(4) Audit (sec 44AD(5) & AB(e))
5	1,60,00,000	6%	YES	NO	YES	44AD Not Applicable u/s 44AD(4) Audit (sec 44AD(5) & AB(e))
6	95,00,000	4%	NO	NO	NO	44AD Not Applicable u/s 44AD(4) No Audit (44AB(1)) Sec 44AD(5) N.A. since the TI<B.Exmp
7	2,10,00,000	11%	NO	NO	NO	44AD Not Applicable u/s 44AD(4) No audit (44AB(1)) Sec 44AD(5) & AB(E) N.A. since the TI<B.Exmp
8	1,20,00,000	10%	YES	NO	NO	44AD Not Applicable u/s 44AD(4) Audit (sec 44AD(5) & AB(e))
9	1,89,00,000	11%	YES	YES	NO	No books of accounts No Audit (First proviso to sec 44AB)
10	1,49,00,000	3%	NO	NO	YES	Since 44AD not selected, sec AD(4) Audit (44AB(1)) Sec 44AD(5) & AB(e) N.A. since the TI<B.Exmp

Section 44AD: Special provision for computing profits and gains of business on presumptive basis

44



SECTION 44AE: Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.

(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,-

(i) being a heavy goods vehicle, shall be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher;

(ii) other than heavy goods vehicle, shall be an amount equal to seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

(3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

***Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.*

(4) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

(6) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-sections (1) and (2), and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.

(7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.

Explanation.-For the purposes of this section,-

(a) the expressions “goods carriage”, “gross vehicle weight” and “unladen weight” shall have the respective meanings assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(aa) the expression “heavy goods vehicle” means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms;

(b) an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

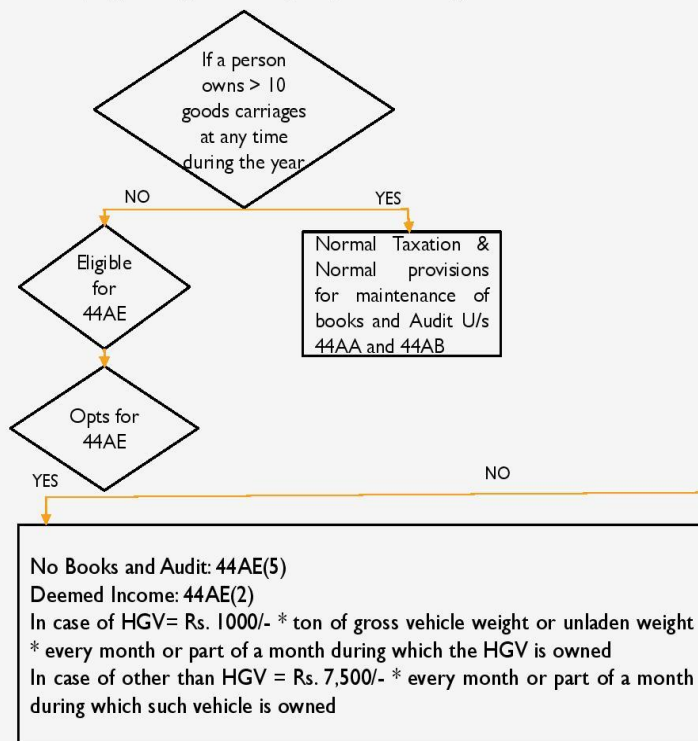
Section 44AE

51

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In depth Analysis of sec 44AE of Income Tax Act

Plying, Hiring, or leasing of goods carriages



Businesses eligible for 44AD

Income Calculation as per sec 44AD
 maintenance of books: Not Required
 No Audit: I proviso to sec 44AB

Other Businesses

Normal Taxation & Normal provisions for maintenance of books and Audit U/s 44AA and 44AB



NOTE

Here the assessee can be any person like Individual, HUF, Co. etc

Heavy Goods Vehicle (HGV)= Any goods vehicle having weight exceeding 12,000 Kgs.

Goods carriages , gross vehicle weight, unladen weight are described in Motor Vehicle Act, 1988

an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage

General issues regarding the application of section 44AE

52

- ▶ The income of the assessee covered u/s 44AE has to be estimated on the basis of relevant provisions of the section. The AO cannot calculate the same without following the proper criteria using his own whims and fancies.
 - ▶ Shri Sohan Nath Vs. ITO, ITAT Jaipur, ITA No. 08/JP/2018, dt. 27.09.2019
 - ▶ Shri Natthi Singh Vs. ITO, ITAT Jaipur, ITA No. 451, 814 & 815/JP/2018, dt. 6.11.2018
- ▶ An assessee is not required to explain the cash deposited in bank account if he falls under the specific criteria established for determining the eligible assessee under the given section. Therefore, if it is not in dispute that the assessee owns less than 10 vehicles then he is accordingly entitled to offer income u/s 44AE.
 - ▶ Sri Bijoy Shribastab, Prop. Isha Enterprise Vs. ITO, ITAT Kolkata, ITA No. 605/kol/2013, dt. 23.05.2018

- ▶ Assessee is eligible to choose between declaring a higher income other than income deemed to be earned u/s 44AE. It is upon the assessee to choose whichever option he feels like.
- ▶ Pawa Industries Pvt Ltd. Vs. ITO, ITAT Delhi, 2017(4) TMI 253, ITA No. 2743/del/2015 : In the said case the assessee in its original return declared the income higher than prescribed income which it later revised by filing a revised return on income wherein it then declared a lower income as per sec 44AE. The CIT(A) here directed the AO to assess the income. The said act was considered invalid and the ITAT directed the AO to calculate income as per the prescribed limit u/s 44AE

Sub section 5 of Section 44AE clearly mentions that provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1). Therefore, the assessee in no circumstances except not falling within the criteria given u/s 44AE (1) be asked to maintain the books of accounts or get them audited.

The common mistake that one makes while understanding the presumptive scheme is that the income to be declared is prescribed as 8%/6% u/s 44AD, 50% u/s 44ADA or Rs.1000 per ton /Rs. 7500 per month per carriage u/s 44AE. It is usually over looked that in all these sections it has clearly been mentioned that even if the assessee declares a profit higher than the above mentioned limits it would still be applicable on assessee provided all other criterias are fulfilled. Therefore, the reason for opting out could be the income declared less than the limit prescribed above and not more.

**SECTION 44ADA: Special
provision for computing profits
and gains of profession on
presumptive basis**

(1) Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent. of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head “Profits and gains of business or profession”.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years

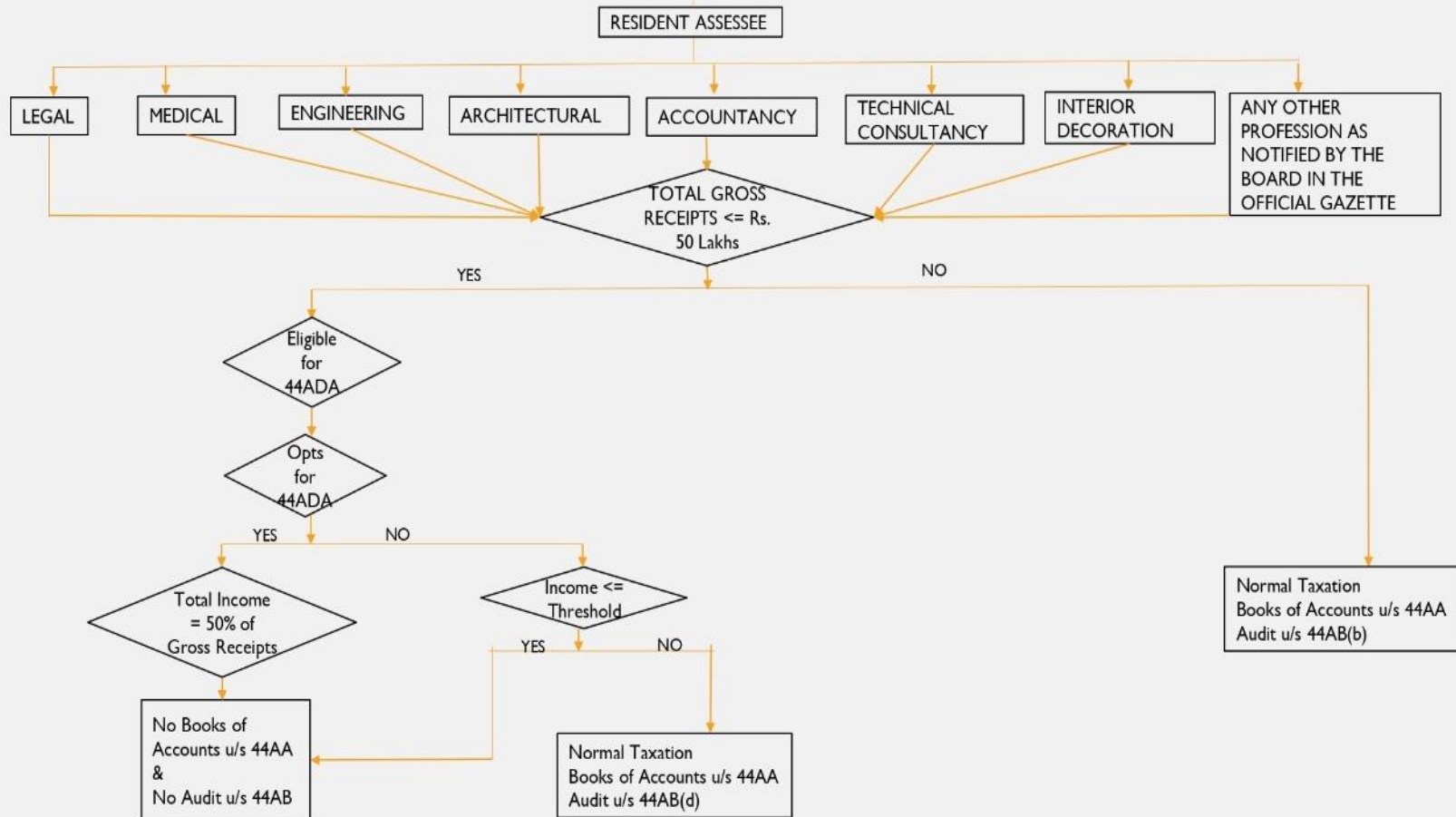
(4) Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.]

Section 44ADA

59

Presumptive taxation scheme for Professionals under section 44ADA of the Income Tax Act, 1961

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Threshold : Maximum Amount not chargeable to tax

Applicability of various provisions

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44AA	44AB	44AD	44ADA	44AE
Every Person	Every Person	Eligible assessee, who is a resident	An assessee, being a resident	An assessee

Term used	Defined in	Description
Person	Section 2(31)	Person includes: an individual, a HUF, a company, a firm, a AOP or BOI whether incorporated or not, a local authority and every artificial judicial person
Assessee	Section 2(7)	means a person by whom any tax or any other sum of money is payable under this act, and includes: ➤ every person in respect of whom any proceeding under this act has been taken for the assessment ➤ every person who is deemed to be an assessee under any provision of this act; ➤ every person who is deemed to be assessee in default under any provision of this act.
Resident	Section 2(42)	means a person who is resident in India within the meaning of section 6.
Eligible Assessee for the purpose of section 44AD	Explanation to section 44AD	➤ Resident Individual; or ➤ Resident HUF; or ➤ Resident Partnership Firm (but not a LLP); and ➤ Who has not claimed deduction u/s 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C" .

General Queries:

61

applicability of provision related to advance tax payment in respect of income declared under the presumptive scheme mentioned u/s 44AD/ADA?

As mentioned in section 211(1)(b), any person opting for the presumptive taxation scheme under section 44AD or 44ADA is liable to pay whole amount of advance tax on or before 15th March of the previous year. The cap of proportionate payment of advance tax on 15th June, 15th September, 15th December is not applicable on these sections. However, any amount paid by way of advance tax on or before 31st day of March shall also be treated as advance tax paid during the financial year ending on that day. However, this provision is not applicable on sec 44AE.

Assessee can be asked to explain the turnover declared by him while opting for presumptive taxation.

The answer to this lies with the section applicable on assessee. If the assessee is opting for exemption u/s 44AD then the basic criteria for applicability is the turnover not being more than two crore rupees. Since the basic criteria involves the amount of turnover the same could be asked to be explained for which sale bill, confirmations etc could be provided.

Case Law: SYED KHALID SAIFULLAH VERSUS INCOME TAX OFFICER, WARD-28 (4) , NEW DELHI, 2020 (4) TMI 818 - ITAT DELHI

SANJEEV SABLOK VERSUS ITO, WARD-1 (4) , JAMSHEDPUR, 2019 (9) TMI 99 - ITAT RANCHI

However, if the assessee is asking for the exemption under such section a section wherein the applicability criteria is different say in 44AE the criteria is the no. of goods carriages being more than ten then the assessee cannot be asked to explain the turnover.

Case Law: SRI BIJOY SHRIBASTAB, PROP. ISHA ENTERPRISE VS. ITO, ITAT KOLKATA, ITA NO. 605/KOL/2013, DT. 23.05.2018

If an assessee who was eligible for opting the scheme of presumption forgets to take the benefit of same can apply for revising the return to declare a lesser income and therefore file a revised return cannot be denied the benefit available to him.

Case Law: PAWA INDUSTRIES PVT LTD. VS. ITO, ITAT DELHI, 2017(4)
TMI 253, ITA NO. 2743/DEL/2015

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