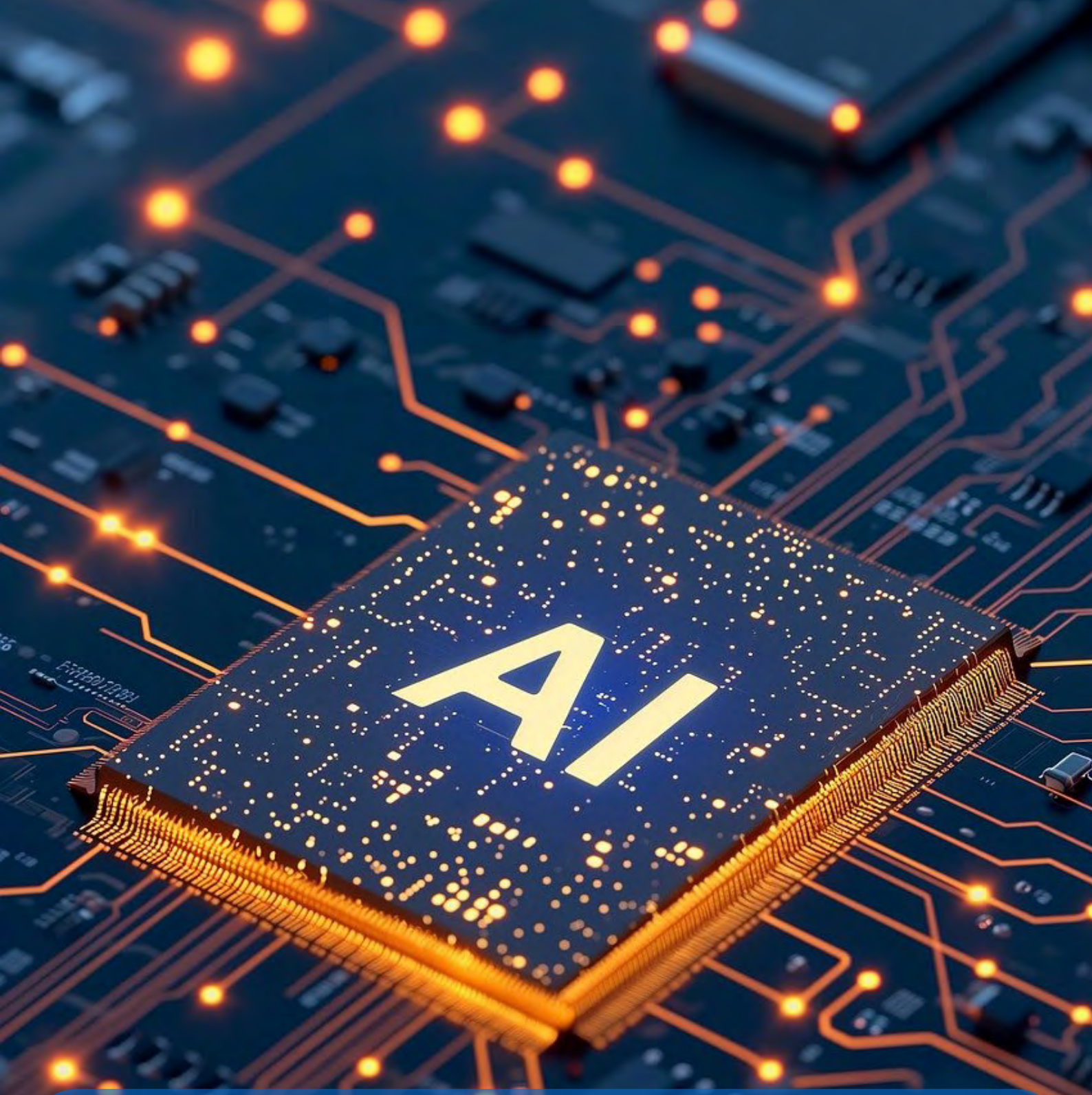

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Presumptive Taxation applicable to Residents Under Income Tax Act 1961 – A Critical Analysis

Rahul Sharma
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Reading of Section 44AD, 44ADA & 44AE coupled with advisory issued by Income Tax Department enable us to understand the Presumptive Taxation Schemes applicable to Persons Residents in India.

Income Tax Department through issuance of **advisory** explained - "**To give relief to small taxpayers from the tedious job of maintenance of books of account and getting the accounts audited, the Income Tax Act has framed the presumptive taxation scheme under section 44AD, 44ADA and 44AE**".

Critical Comment:
Presumptive means "of the nature of a presumption; presumed in the absence of further information."

What is presumed is an estimation of actual. What is to be estimated must have a sound reasoning.

My view is :- income can be presumed according to the commercial reality and in no case in any other way. There are different industries in economy having different cost and revenue structures – It is the size and nature of business which decides profit margin. In case of colour & paints, medicines, grocery stores, hardware

stores, Cycle Store, Sweet Shop etc. – different profit margin exist. To provide for single net profit margin for all type of business is against the commercial reality and substance.

Constitution provide Union Government right to levy Taxes on Income and not To tax hypothetical Income.

The original insertion of "Presumptive Taxation" had a separate vision. Should we not think for the same. **"To give relief to small taxpayers from the tedious job of maintenance of books of account and getting the accounts audited" – Can not be excuse for taxing on presumptive basis.**

Section 44AD: Special Provision for computing business income in certain cases

► **Who can opt for Presumptive Taxation Under 44AD:** An Eligible Assessee and Engaged in an eligible business.

- "**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;

- "**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.

► **Who Cannot opt for Presumptive Taxation Under Section 44AD:** Person carrying on specified profession U/s 44AA(1), person earning commission and exchange as income and person carrying agency business.

Critical Comment: As the title of the section make it applicable to business only then it is quite clear that it is not applicable to any profession. Business is different from profession and has been categorically defined under various case laws.

- Section 2(36) says "Profession includes Vocation".

  Here profession has not been defined rather vocation has been made part of it which is an independent word having a separate meaning. **"Profession" demands specialized knowledge through formal education and/or experience, an organized body to control persons exercising profession that assure competence of professionals – society needs professionals due to skills one has acquired due to that knowledge and /or experience.** Vocation is self employment of any sort, which require skill, it is not expected to be as organized as profession.

  The word profession is not rigid or static in it's signification; it is undoubtedly progressive with the general progress of the community [Bradfield V/s Federal Taxation Commissioner (1924) CLR 1].

► **Consequences if an eligible Assessee opts for Section 44AD** :

A. Deduction under **section 30 to 38** shall be **deemed to have been allowed**: Firm is not allowed for deduction on account of interest and salary to the partner.

Critical Comment: Section 40 (b) is not a section of allowance rather it is a section of disallowance. Whatever has been allowed as an expenditure under section 30 to 38 can be further disallowed by section 40 (b). As Act specifically disallow deduction U/s 30 to 38 and not provide otherwise – Interest and Salary cannot be paid to the partners on the basis of Partnership Deed.

B. **WDV** of any Asset for **succeeding years** (Incase Assessee not opt for 44AD) shall be computed as if the assessee **claimed deduction** in **preceding years.**

C. Consequence **if the eligible assessee, who has once opted for section 44AD(1) changes the applicable scheme befor expiry of 5 Assessment Years** – Assess shall not be entitle to opt again 44AD before end of next 5 years. [Sec. 44AD(4)]

D. Shall be required to Maintain books of account and get them audited on application of section 44AD (4).

Presumption of Income (Quantification) : Income shall be presumed @ 8% or higher. However amount of gross receipts through electronic mode and actually received before due date as specified U/s 139 (1) – it shall be presumed that they comprise income @6%.

Example : Gross receipts – Rs. 60,00,000, received till 31st March of previous Year – Rs. 2500000, Received between 31st March of previous year and 31st July of Assessment Year – Rs. 500000 and Received after 31st July – Rs. 3000000.

Particulars	Income Presumed (Rs.)
6% of Gross Receipts [i.e. the amount received till the due date of filing the return U/s 139 (1)] 3000000X6%	1,80,000
8% of remaining Income	2,40,000
Total Income	**4,20,000**

Section 44ADA : Special provision for computing profit & gains of profession on presumptive basis

► **Who can opt for Presumptive Taxation Under 44ADA**: Any Specified professional (only Individual and Partership Firm) as defined U/s 44AA(1). However LLPs are specifically excluded.

For opting 44ADA gross receipts of professional must not exceed Rs. 5000000 during previous year.

► **Consequences if an eligible Assessee opts for Section 44ADA :**

A. Deduction under **section 30 to 38** : Same as 44AD.

B. WDV of any Asset for **succeeding years** : Same as 44AD

C. Shall be required to Maintain books of account and get them audited on if professional claims income Lower than as specified under section 44AD (4).

Presumption of Income (**Quantification**) : Income shall be presumed @ 50% or higher.

Section 44AE: Special Provision for computing profits and gains of business of plying, hiring or leasing goods carriages

► **Who can opt for Presumptive Taxation Under 44AE:** Conditions –

(a). Any assessee,

(b). Owns not more than 10 goods carriage at any time during previous year and

(c). is engaged in the business of plying, hiring or leasing of such goods carriage.

► **Consequences if an eligible Assessee opts for Section 44AE :**

A. Deduction under **section 30 to 38** shall be **deemed to have been allowed:** However Firm is allowed for deduction on account of interest and salary to the partner – As specifically provided by proviso.

B. WDV of any Asset for **succeeding years** (Incase Assessee not opt for 44AE) shall be computed as if the assessee **claimed deduction** in **preceding years.**

C. Shall be required to Maintain books of account and get them audited on if carriage owner claims income Lower than as specified under section 44E.

Presumption of Income (**Quantification**) : Income shall be presumed – A. For Heavy goods vehicle : Rs1000 per ton (Loading capacity) for month or part of the month and B. Other Vehicles – Rs. 7500 per month or part of the month.

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.

Legal Updates-September

CA. Sooraj B

The following were some of the important judgements pronounced during September 2024 under the GST Law :

1. Sagar Brush Industries vs. State Tax Officer (2024) 21 Centax 512 (Mad.)

In this case , the Honourable Madras High Court set aside orders denying ITC availed by the assessee after the time limit prescribed under Section 16(4) of the CGST Act , in view of the amendments proposed in the Finance Act 2024, extending such time limit to 30th November 2021 in respect of ITC availed in respect of invoices pertaining to financial years 2017-18 to 2020-21. The Honourable High Court noted that since parliament itself came to rescue of assessees, impugned orders passed by original authority as well as appellate authority were to be set aside and cases were to be remitted to pass fresh order on merits [Section 16 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017].

In another case, the Honourable Calcutta High Court granted interim protection against any coercive action as proposed amendment in Sec. 16(4) would help the taxpayer (Kannan Mahalingam vs. Commissioner of GST & Central Excise (2024) 22 Centax 42 (Mad.))

2. Ketan Stores vs. State of Gujarat ((2024) 22 Centax 220 (Guj.))

In this case , only a summary of order in GST DRC-07 was issued . The Honourable High Court held that in absence of any order for which summary of order was issued on 13.08.2019, same could not be sustained and accordingly, Annexure-A , summary of order in Form GST DRC-07 was to be quashed and set aside and consequent action for recovery on basis of such summary of order in absence of any order was to be quashed and set aside including attachment of bank accounts of assessee[Section 83, read with section 74 of Central Goods and Services Tax Act,2017/ Gujarat Goods and Services Tax Act,2017.

3. High Noon Consulting Pvt. Ltd. vs. Deputy Commissioner of State Tax- (2024) 22 Centax 100 (Telangana)

The taxpayer challenged show cause notice and assessment order issued under GST Act on ground that they were not signed either digitally or physically by issuing authority. Revenue was unable to provide satisfactory explanation for lack of signature. The Honourable High Court held that unsigned order has no legal validity and cannot be sustained . Impugned show cause notice and assessment order were quashed . The Court held that the revenue at liberty to take fresh action in accordance with law.

Similar judgements have been passed by the Honourable High Courts of Andhra Pradesh and Bombay earlier on identical matters .

4. Sunil Kumar K vs. State Tax Officer-I (2024) 21 Centax 432 (Ker.)

The taxpayer challenged assessment order contending it was unaware of order as it was communicated through common portal which was accessed belatedly . The Revenue contended that the portal was notified for such communications under Section 146 read with Section 169 of CGST Act . It was held that the common portal notified under Section 146 can be used for communicating orders/notices as per Section 169 - Delay in accessing portal was due to assessee' s own latches. The writ appeals were dismissed .

The Honourable Kerala High Court has consistently held that service of notice by online mode , in the GST portal is a valid service since it is one of the modes prescribed under Section 169 of the CGST /SGST Act .

5. Paramount Shipping Services Pvt. Ltd. vs. Assistant Commissioner (ST) (2024) 22 Centax 435 (Mad.)

Where the tax payer filed reply to show cause notice in respect of each of issues mentioned in SCN, however proper officer passed impugned order recording identical observation on each issue by stating that the taxpayer had not filed proper documents, the Honourable High Court , held that the impugned order was vitiated by complete non-application of mind and non-consideration of assessee' s reply, thus, same was to be set aside and matter was to be remanded for fresh consideration.

Activities - September, 2024

IBC 2016: Shaping the Future of Debt Resolution -One Day Professional Development Seminar, Jointly organised by Kozhikode Branch of SIRC of ICAI with Kozhikode chapter of ICMAI, Kozhikode chapter of ICSI and Kerala Insolvency Professional Forum. *Speakers* :CA. Rajmohan R, CA. Vibin Vincent, CA. K K Jose. (05.09.2024)








Onam Celebration 2024 with Ona Sadhya for Members and family at Hotel Alkapuri, Kozhikode. (12.09.2024)

Important days in October, 2024

7
- TDS/TCS Payment for the month of September, 2024

11
- Filing of GSTR-1 for the month of September, 2024

13
- Filing of GSTR-1 (QRMP scheme) for the Period July-September, 2024

14
- ADT-1 filing (Appointment of an Auditor for Companies)

15
- Payment and Return Filing of ESI & PF for the month of September, 2024
- TCS Return in Form 27EQ (July to September, 2024)

18
- CMP 08 (Composition Scheme) for July to September, 2024

20
- Filing of GSTR-3B for the month of September, 2024

29
- Filing of Form AOC4 by Companies for FY 2023-24

30
- Last date for filing Form 8 for LLP's for FY 2023-24
- TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments), 26QE (Crypto Assets) for September, 2024
- Issue of TCS Certificates in Form 27D for July to September, 2024

31
- Due Date for ROI for Non-Corporate(Audit Assessee) and Corporates for FY 2023-24
- TDS Returns in Form 24Q,26Q,27Q for July to September, 2024

Upcoming Events October, 2024

15th
Tuesday

One Day Workshop on Advanced Excel

Venue : ITT Centre, Kozhikode Branch.
Time : 10 AM to 5 PM
Speaker : CA K. P. Rashique , Calicut

Holidays - October, 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

★ 2nd | Gandhi Jayanti
★ 12th | Maha Navami
★ 13th | Vijaya Dashami
★ 31st | Diwali

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to icaikoznewsletter@gmail.com along with name, membership number and mobile number.