

## **Pre-Covid Presumptive Incomes - Not a Valid Presumption for Post-Covid Era**

The spread of pandemic by corona virus has made a huge disruption in economic activities, resulting into the biggest loss to the Indian economy as well. The large number of economic activities, like education, travelling, entertainment, sports, tourism etc have declined unexpectedly by the outbreak of corona virus. The biggest victim of corona virus is the economy i.e. the livelihood of the people and not the life (to that extent) of people. The Indian economy is suspected to contract by about 10.3% in F.Y. 2020-21 as per International Monetary Fund (IMF)

The disruption in economic activities can be seen by the downfall in collection of Income Tax and GST. As per reports appearing in media, the collection of income tax upto 15<sup>th</sup> September, 2020 is down by 22.5% as compared to income tax collection in corresponding period of F.Y. 2019-20. In the same manner, GST collection in the April-June quarter has declined by 41%.

In the Income Tax Act, 1961 there are number of sections where presumptive profits are taxed. The rates of presumptive profits deemed to be imbibed in the turnover/gross receipts, have been determined on the basis of economic conditions prevailing prior to the pandemic. With the outbreak of the pandemic, not only the volumes but the margins have also shrunk badly. Expecting the same margins having been earned by businessman would be unfair. Atleast for the F.Y. 2020-21, it would be in the fitness of things to reduce the deemed margins to a reasonable level.

### **Presumptive Rate for Business Income u/s 44AD**

An Individual, HUF or a Partnership Firm, who is engaged in any business other than the business of transportation and having turnover or gross receipts upto Rs. 2 crores can opt for this presumptive scheme. This scheme is very popular in small businesses.

Under this section, 8% of turnover or gross receipts are deemed to be the net profits of the business. In case, turnover or gross receipt is received through banking channels, the presumptive rate would be 6%.

It is a well known fact that during the initial lockdown period in the months of April-May, 2020, the businesses were completely closed down. However, the fixed overheads like salary, rent, electricity etc were continued to be incurred. This situation has adversely impacted the net margins of the businesses.

Even after the initial lock down period, the volume of business is low as compared to pre-covid era. This is more acute in the case of small businesses.

In this scenario, it is certain that net margins of the businesses will considerably shrink. Therefore, the presumptive rate prescribed u/s 44AD needs to be lowered, for the F.Y. 2020-21 atleast.

### **Presumptive Rate for Professional Income u/s 44ADA**

An Individual, resident in India, who is engaged in profession, having gross receipts upto Rs. 50 lacs can opt for this presumptive scheme. The professionals covered in the presumptive scheme are generally Chartered Accountants, Company Secretares, Advocates, Architects, Engineers etc.

Under this section, 50% of gross receipts are deemed to be the net profits of the profession.

As in the case of business, during the initial lockdown period in the months of April-May, 2020, the offices of such professionals were completely closed without any earnings. However, they were incurring fixed overheads like salary, rent, electricity etc. Even after the initial lock down, the normalcy is yet to return.

In the case of Chartered Accountants or Company Secretaries, due dates of all legal compliances are being extended, leading to stagnation of receipts from such professional work.

In the case of advocates, the working of different courts is effected adversely. Only few urgent hearings are taking place. This has considerably reduced professional work for advocates.

In the case of Architects, the problem is more serious. The real estate sector is worst affected by Covid.

Therefore, 50% profit margin is not fair to presume. The fixed overheads of professionals have remained almost same and significant decline in receipts has reduced the margins well below 50%. The presumptive rate prescribed u/s 44ADA needs to be lowered as in the case of section 44AD.

### **Presumptive Rate for Transporters Earning u/s 44AE**

Any transporter, who owns upto ten goods carriages at any time during the year, can opt for this presumptive scheme.

Under this section, the prescribed deemed income is as under:

<b>Type of Goods Carriage</b>	<b>Gross Vehicle Weight</b>	<b>Presumptive Income Per Month</b>
Heavy Goods Vehicle	Exceeds 12 Metric Ton	Rs. 1000 Per Month Per Ton of Gross Vehicle Weight or Unladen Weight
Others	Upto 12 Metric Ton	Rs. 7,500 Per Month

It is well known fact that during the initial lockdown period in the months of April-May, 2020, the transport business was almost shut down. Only few transporters were giving their services on account of movement

restrictions. Even after initial lock down, the volume of the business is low as compared to pre covid era.

The presumptive scheme u/s 44AE is very harsh as compared to presumptive scheme u/s 44AD. In presumptive scheme u/s 44AD, atleast, income is linked to receipts. If receipts are less, the incomes will also be less. However, in presumptive scheme u/s 44AE, income is linked to time. Merely owing a vehicle will lead to presumptive income irrespective of actual receipts. Suppose, a transporter owns 8 heavy goods vehicles, each having gross weight of 13MT. The presumptive income u/s 44AE would be Rs. 12,48,000 ( $13 \times 1000 \times 12 \times 8$ ). If the vehicles of the transporter did not ply for say three months, still he needs to pay tax for these three months also on presumptive income of Rs. 12,48,000.

Merely owing the vehicle might be a reasonable expectation of earning in the pre-covid era. Post covid, this expectation again would be unfair.

Therefore, relaxation should be given by counting the year not of 12 months but of 10 months only. The rate of presumptive income per month should also be reduced for F.Y. 2020-21.

### **Presumptive Income in case of Sale/Purchase of Immovable Property:**

In case of sale/purchase of immovable property, the present income tax law provides deemed income of excess of Stamp Duty Value of the immovable property over actual consideration, in the hands of seller as well as buyer under section 50C/43CA and 56(2)(x) respectively. However, in case, the excess value does not exceed 10% of the actual sales consideration, there will be no deemed income.

Real Estate has been hit the worst. No buyers are visible in the real estate market. There are distress sales taking place all around. The existing law which is tagged with the Stamp Duty Value is certainly unrealistic. Either the Stamp Duty Value reference should be totally dispensed with for F.Y. 2020-21 or atleast, the tolerance band of 10% be suitably increased. This step may also help in reviving the badly hit real estate market.

## **Presumptive Income in case of Sale/Purchase of Shares of Unlisted Company:**

Similarly, in case of sale/purchase of shares of unlisted companies, the present income tax law provides deemed income of excess of Fair Market Value of the shares of unlisted company over actual consideration, in the hands of seller as well as buyer under section 50CA and 56(2)(x) respectively. In case of unlisted shares, no tolerance band is provided within which there will be no deemed income.

Lot of businesses are under stress. Corporate ownerships are changing hands. Ownership restructuring is adopted as a tool to bring liquidity into the business. There are forced dilution of ownership stakes. Case of Future Group is an indication of the prevailing situations. The stringent valuation rules tagged to Fair market Value of properties of the businesses are proving hindrance to vital need of ownership restructuring.

In order to mitigate the hardship, operation of this section may be suspended for this year or the provision of tolerance band should be provided similar to that of immovable property, within which the variation between stamp duty value and actual consideration does not attracts income.

**The Government has taken number of positive steps to revive the economy and give relief to business man who have been affected by pandemic. The reduction in presumptive income will go a long way in giving relief to small business. The Law/Rules need to be relaxed to allow the businesses to keep afloat.**

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