

**DEEMING FICTION UNDER THE HEAD INCOME  
FROM BUSINESS & PROFESSION (INCLUDING  
TAXATION ON PRESUMPTIVE BASIS, S. 43 CA ETC)**

**BY  
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## **BUSINESS (S. 2(13)) / PROFESSION (S. 2(36))**

- “Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture”
- wide Import
- Definition is inclusive and no exhaustive
- The “business” connotes some real, substantive and systematic or organized course of activity or conduct with a set purpose
  - Narain Swadeshi Vs. CEPT [26 ITR 765 (SC)]

## CONTD.....

- Adventure in the nature of trade – single plunge in the waters of trade may partake of the character of “trade”
  - Venkatswami Naidu & Co., Vs. CIT [35 ITR 594 (SC)]
- S. 2(36) – “Profession includes vocations
- The word “Profession” has to be understood as distinct and separate from the word “business”
  - CIT Vs. Lallubhai Nagardas [204 ITR 93 (Bom)]
- Separate limit u/s. 44AB for business and profession

## CONTD.....

- S. 32(2) provides that unabsorbed depreciation be deemed to be part depreciation allowance of the year.
- S. 32AC provides that any plant and machinery purchased by the assessee between April 01,2013 and March 31,2017 exceeding Rs. 100/- crs / 25 crs transferred or sold except amalgamation / merger, within a period of five years on which extra depreciation allowed @ 15% u/s. 32AC shall deemed to be income of the year of transfer
- Similar provisions exists:
  - i) Investment Deposit A/c. (Ship, aircraft etc) S. 32AB (6)
  - ii) Development Allowance (growing and mfg. tea) S. 33A(4)

**CONTD....**

- iii) Tea Development A/c., Coffee Development A/c. & Rubber Development A/c. S. 33AB(5)
- iv) Site Restoration Fund S. 33ABA(5)
- v) Reserves for Shipping Business S. 33AC(4).

## **SPECIAL PROVISION FOR COMPUTING PROFITS & GAINS OF BUSINESS ON PRESUMPTIVE BASIS** **(S. 44AD)**

- Notwithstanding anything to the contrary contained in Ss. 28 to 43C
- Eligible assessee means an Individual, HUF and firm – who is resident excluding LLP and has not claimed any deduction u/s. 10A(FTZ) 10AA(SEZ), 10B(EOU) and u/s. 10BA (export of certain article or things) or under chapter VIA - “C – Deduction in respect of certain incomes”, in relevant assessment years
- Eligible business means any business except plying, hiring or leasing goods carriage referred to in S. 44AE and whose turnover or gross profits does not exceed one crore in previous year.
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## **CONTD .....**

- A sum equal to 8% of the total turnover or gross receipts or higher than the aforesaid source, deemed to be profits and gains of such business.

## **NO DEDUCTION OF EXPENSES AND NO AT**

- Any deduction allowable under Ss. 30 and 38 be deemed to have been allowed.
- Hence WDV of asset of eligible business will be deemed to have been allowed.
- But, in case the eligible assessee is firm, the salary and interest paid to partners be deducted, subject to conditions and limits specified u/s. 40(b)
- The provisions of AT (Chapter XVII-C) are not applicable to an eligible assessee in respect of eligible business.



## CONTD.....

### Benefit of this section is not available:

- A person carrying on profession as referred to in S. 44AA.
- A person earning income in the nature of commission or brokerage, and
- A person carrying on agency business
- An eligible assessee who claims that his profits and gains from eligible business are lower than the deemed profits and whose total income exceeds the minimum amount chargeable to tax
- In such case he shall be required to maintain the books of account u/s. 44AA(2) and get them audited u/s. 44AB

## **SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGE (S. 44AE)**

- Notwithstanding S. 28 to S. 43C
- Method of estimating taxable income from business of plying, hiring or leasing trucks owned by a taxpayer.
- Possession of goods carriage taken on hire purchase or installments for which the whole or part amount payable, shall be deemed to be the owner of such good carriage.
- The expression “good carriage” shall have the meaning assigned to it in S. 2 of the Motor Vehicles Act, 1988
- Apply to persons owning not more than ten trucks; at any time during the previous year.

## CONTD.....

- Distinction bet. heavy goods vehicle and light goods vehicle has been removed by the Finance Act, 2014.
- Deemed profits and gains from each goods carriage shall be Rs. 7500/- p.m. or part during which goods carriage is owned by the assessee or an amount claimed to have been actually earned, whichever is higher.
- Once income is assessed on presumptive basis, all deductions including depreciation deemed to have been allowed; and WDV will have to be calculated accordingly.

## CONTD.....

- However, in case of partnership firm, salary and interest paid to its partners shall be deducted, subject to conditions and limits specified in S. 40(b)
- Assessee falling under presumptive tax is exempted from the applicability of S. 44AA and S. 44AB.
- If assessee declares income from such business lower than the amount specified above, he has to comply with S. 44AA relating to maintenance of books of account and S. 44AB relating to tax audit.

## **SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF SHIPPING BUSINESS IN THE CASE OF NON RESIDENT (S. 44B)**

- Notwithstanding S. 28 to 43C
- Being a non resident, engaged in business of operation of ship
- 7.5% of gross receipts is deemed to be profit taxable
- The gross receipts would cover fare or freight paid in or outside India on account of carriage or shipment at any Indian port and also any fare or freight received in India on account of carriage or shipment at any foreign port.
- Gross receipts would also cover demurrage charges handling charges or other amount of similar nature

## CONTD.....

- Any rebate allowed from the freight after freight has accrued is not deductible.
  - Hensa Vs. CIT [204 ITR 687 (Cal)]
- Unabsorbed business loss is allowed to set off against deemed profit under this section but not unabsorbed depreciation.
  - Universal Cargo Vs. CIT [165 ITR 209 (Cal)]
  - CIT Vs. American Export Lines [203 ITR 17 (Cal)]

## S. 44B Vs. S. 172

- S. 44B incidence of tax on a non-resident engaged in business of operating of ships while S. 172 deals with profits of non residents from occasional shipping business.
- S. 44AB is charging section while S. 172 deals with levy and recovery of tax
- Collection and recovery u/s. 172 are of provisional nature, hence, AO is not precluded from resorting to S. 44B and making the assessment.

## **SPECIAL PROVISIONS FOR COMPUTING PROFITS & GAINS IN CONNECTION WITH THE BUSINESS OF EXPLORATION, ETC OF MINERAL (S.44BB)**

- Notwithstanding S. 28 to 41 and S. 43 & S.43A
- Applicable to only a non –resident
- Engaged in the business of:
  - a) providing services or facilities in connection with or
  - b) supplying plant and machinery on hire usedin the prospecting for or extraction or production of, mineral oils @ 10% of aggregate amounts paid/payable or received / receivable on account of the provision of services and facilities
  - i) Plant includes ships, aircraft, vehicles, drilling units, scientific, apparatus and equipments
  - ii) “Mineral Oil” includes petroleum and natural gas.



## CONTD.....

- If an assessee claims lower profit, he has to maintain books of accounts and other documents as required u/s. 44AA and get books of account audited u/s. 44AB.
- S. 42 apply to resident carrying on business consisting of prospecting for or extraction or production of mineral oils in relation to which the Cent. Govt. has entered into an agreement and allowance of expenditure would be on the basis of agreement over and above deduction available under this Act.

## **SPECIAL PROVISION FOR COMPUTING PROFITS & GAINS OF BUSINESS OF OPERATING OF AIR- CRAFT IN THE CASE OF NON RESIDENT (S.44BBA)**

- Notwithstanding S. 28 to S. 43A
- Applicable to non-resident.
- Engaged in the business of operation of aircraft
- Sum equal to 5% of the aggregate of
  - i) the amount received or deemed to be received in India, and
  - ii) the amount paid or payable (on account of carriage of passengers, live stocks, mail or goods from any place in India]

**SPECIAL PROVISION FOR COMPUTING PROFITS &  
GAINS OF FOREIGN COMPANIE ENGAGED IN THE  
BUSINESS OF CIVIL CONSTRUCTION, ETC. IN CERTAIN  
TURNKEY POWER PROJECTS (S.44BBB)**

- Notwithstanding S. 28 to S. 44A
- Applicable to only foreign co.
- Engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof,
- In connection with a turnkey power project approved by the Cent. Govt.
- A sum equal to 10% of such activities.

## CONTD....

- Deemed to be profits and gains of business
- Lower profits, the assessee will have maintain books of account as required u/s. 44AB and get its account audited u/s. 44AB

## STAMP DUTY VALUE ON TRANSFER

- Object & Purpose
- Consideration received or accruing as a result of the transfer of a capital assets
- Capital asset as defined u/s. 2(14)
- A Capital asset viz; land or building or both
- Transfer as defined u/s. 2(47)
- Stamp duty value on transfer
- Was not Applicable to developer / builder
  - ITO Vs. Inderlok Infra Agro (P) Ldd [59 SOT 10 (URO) (Mum)]
  - CIT Vs. Kan Construction & Coloizers (P) Ltd. [208 Taxman 478 (All)]

## CONTD.....

- S. 43CA from Asst. Yr 2014/15
- Covers all assessee.
- The value adopted or assessed or **assessable** by any authority of a State
- Govt. – Stamp valuation authority.
- Deemed to be full value of consideration.
- “Assessable” w.e.f. October 01,2009
  - No Registration was done and plot was sold on agreement basis
  - S. 50C was not applicable
    - Ram Mal Bhansali Vs. ACIT [25 Taxman.Com 149 (Jodh)]
    - ACIT Vs. Anjali Dua [33 Taxman.com 593 (Del)]

## CLAIM HAS TO BE BY ASSESSEE

- Without prejudice to provisions of S. 50C(1)
- The assessee **claims** :
- Before AO that the value so adopted exceeds the FMV of the property on the date of transfer  
and
- The value so adopted by the stamp authority has not been disputed in any appeal or revision or no reference to any other authority Court or High Court under the Stamp Act,
- The AO may refer to DVO
- AO cannot determine
  - S. Muthuraja Vs. CIT [37 Taxman Com 352(Mad)].

## DVO'S VALUE

- If DVO determines the value which exceeds the value determined by stamp duty authority, the value so determined by stamp duty authority shall be taken as full value of consideration.
- If DVO decides less FMV than Stamp duty authority, then, AO should levy capital gains on the basis of value determined by DVO  
CIT Vs. Dr. Indra Swaroop Bhatnagar [349 ITR 210(All)]
- If consideration on transfer of a capital asset is not ascertainable or cannot be determined, then, FMV of said asset on the date of transfer shall be deemed value of transfer. (S. 50D) - Not specifically for land or building or both



## COMPARISON WITH OTHER SECTIONS

- S. 50 Vs. 50C
  - ACIT Vs. ETC Industries Ltd. [52 SOT 159 (Ind)]
  - Rallis India Ltd. Vs. ACIT [55 SOT 288(Mum)]
- S, 50C Vs. 56(2)(vii)(b)
  - Immovable property
  - Received by an Individual or an HUF without consideration - stamp duty value which exceeds Rs. 50,000/-
- S. 50C Vs. S. 54F
  - Gaudi Mahadevappa Vs. ITO [356 ITR 90 (Karn)]
  - Raj Babar Vs. ITO [56 SOT 1 (Mum)]

## OTHER MATTERS

- Date of agreement Vs. Date of Registration
  - Bagri Impex (P) Ltd. Vs. ACIT [214 Taxman 305 (Cal)] – on registration
  - Contra
  - DCIT Vs. S. Venkat Reddy [57 SOT 117 (Hyd)] – on date of agreement
- S. 43CA(3) clarifies that the “assessable” by stamp authority for the purpose of stamp duty to be considered on the date of agreement.
- S. 50C / 43CA not applicable for purchase of property
  - CIT Vs. Meghajibhai Popatbhai Virani [35 Taxmann.Com 100 (Guj)]
  - CIT Vs. Khoobsurat Resorts (P) Ltd. [211 Taxman 510 (Del)]

## CONTD .....

- S. 50C Vs. S. 69
  - ITO Vs. Mrs. Inderjit Kaur [ 50 SOT 377 (Chh)]
- S. 50C Vs. 69B
  - DCIT Vs. Vallabhai [ 54 SOT 556 (Ahd)]
- S. 50C not applicable to a transfer of leasehold rights / Tenancy
  - ITO Vs. Pradeep Steel Re Rolling Mills (P) Ltd. [ 39 Taxman. Com 123 (Mum)]
  - DCIT Vs. Tejinder Singh [ 50 SOT 391 (Kol)]
- S. 50C not applicable to sale of shares – Indirect transfer of two flats
  - Irfan Abdul Kader Faziani Vs. ACIT [ 56 SOT 12 (Mum)]



THANK YOU