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# PRESUMPTIVE TAXATION – PRACTICAL ISSUES AND CASE STUDIES

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# PREAMBLE

- Introduction of Presumptive taxation
- Meaning
- Specific discussion about

- 44AD
- 44ADA
- 44AE



Section 58 of  
2025

- 44B
- 44BB
- 44BBA
- 44BBB
- 44BBC
- 44BBD
- 44D and 44DA



Section 61, 66  
and 59

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# PRESUMPTIVE

- “That which may be assumed to be valid or true until the contrary is established.”

*Advanced Law Lexicon by P Ramanatha Aiyar*

- This word is not used in the provision itself but only on section heading of section 58 (old section 44AD and 44ADA), section 61 (old section 44B, 44BB, 44BBA, 44BBB, 44BBC and 44BBD).
  - Instead, the section uses the term ‘shall be deemed’ so the principles of deeming fictions will only apply.
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# PRESUMPTIVE

‘A supposition of law that a thing is true, which is either certainly not true, or at least is as probably false as true’. - The Chambers’ Dictionary

The concept of fiction assumes quite significance in the context of tax laws, especially the Income-tax Act, for the simple reason that the fiction many times acts as an antithesis to the concept of ‘real income’ under the tax laws. It is a settled law that income which is susceptible to tax is the real income as is commercially understood, subject to statutory modifications thereto.

It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate, and a construction which defeats the very purpose sought to be achieved by the legislature (by introducing the fiction) must be, if possible, be avoided. (CIT Vs. S. Teja Singh 35 ITR 408 SC, CIT Vs. Shrishakti Trading Co. 207 ITR 442(Bom))

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# 44AD VS. 58

## Income-tax Act, 1961

**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"

## Income-tax Act, 2025

**Special provision for computing profits and gains of business or profession on presumptive basis in case of certain residents.**

**58.** (1) The provisions of sections 26 to 54, to the extent contrary to this section, shall not apply to the manner of computation of profits and gains of the specified business or profession in sub-section (2).

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## Income-tax Act, 2025

(2) The profits and gains of any specified business or profession as mentioned in column B of the Table below, carried on by an assessee specified in column C of the said Table, having total turnover or gross receipts of business or profession during the tax year specified in column D and computed in the manner specified in column E thereof, **shall be deemed** to be the profits and gains of such business or profession chargeable to tax under the head "Profits and gains of business or profession".

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## Income-tax Act, 2025

(A) The aggregate of–

(i) 6% of total turnover or gross receipts which is received by specified banking or online mode during the tax year or before the due date specified in section 263(1) in respect of that tax year;

(ii) 8% of total turnover or gross receipts as reduced by the turnover or gross receipts covered in (i); or

(B) profit **claimed to have been actually earned, whichever is higher.**

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# ISSUES:

- Is there any difference in two provisions.
  - What is the meaning of 'as the case may be'?
  - What is the significance of the term 'claim' ? Is it optional ?
  - Is there any option with the assessee not to return higher income even though he knows his income is higher.
  - Can AO take recourse to provisions of unexplained investments, unexplained expenditure etc. and enhance the income ?
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# ELIGIBLE ASSESSEE

## Income-tax Act, 2025

- (a) “eligible assessee” means an individual, a Hindu undivided family, or a firm other than a limited liability partnership, who is resident in India, and who—
  - (i) \* \* \*
  - (ii) *has not claimed any deduction under Chapter VIII-C for the relevant tax year;*
  - (iii) *does not carry on specified profession as defined in section 62(4);*
  - (iv) *does not earn any income in the nature of commission or brokerage;*
  - (v) *does not carry on any agency business;*

## Income-tax Act, 1961

- Similar definition given in explanation read with subsection (6).
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# ELIGIBLE ASSESSEE – SOME ISSUES

Profession is defined as “Profession includes vocation”.

Professions as given in section 62(4):

*(a)* legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, information technology or company secretary; or

*(b)* any other profession, as may be notified by the Board in this behalf.

Authorised representative, Film artists, Information Technology.

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# SOME JUDICIAL MEANINGS

- A 'profession' involves the idea of an occupation requiring either purely intellectual skill or if any manual skill, as in painting and sculpture or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. *CIT v Manmohan Das*, (1966) 59 ITR 699, 710 (SC)
  - 'Profession' means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. *Sodan Singh v New Delhi Municipal Committee*, (1989) 4 SCC 155: AIR 1989 SC 1988.
  - The word 'vocation' is a word of very wide meaning and is analogous to a calling. It means the way in which a person passes his life or the pursuit to which he devotes his time. 29 ITR 954 (Trav. – Coch)
  - A 'vocation' as normally understood, is a calling in which a person passes his life. It may even be stated to be a way of living or a sphere of activity for which one has a special fitness, though it is not necessary that the activity should be indulged in for purposes of livelihood. 19 Taxman 5 (Mad)
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# SOME EXAMPLES

- Dr. Lal is carrying on his medical profession. In the following different scenarios consider the applicability of section 58 (Table Sl. No. 1)
    - He dispenses medicines also and his fees includes prices of medicines also.
    - He owns a retail medical shop which sells medicines to the patients on prescriptions of Dr. Lal and also on prescriptions of other nearby doctors.
    - He is also running a wholesale business of surgical goods.
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# SOME EXAMPLES

- Mr Shanker Lal is a renowned Bhajan Singer and he has gross receipt of ₹ 50 lacs from this vocation. In addition he is running a MSME unit which has turnover of ₹ 1.00 crore in a tax year.
    - A. Mr Shanker Lal can file his return of Income taking turnover of ₹ 1.50 Crores u/s 58 or section 44AD.
    - B. Mr. Shanker Lal can file his return of Income on presumptive basis for his MSME unit only and not for his profession of singing.
    - C. Mr. Shanker Lal cannot return his income on presumptive basis as he is having 'professional income'.
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# ELIGIBLE BUSINESS

## **Income-tax Act, 2025**

- Now specified in table itself as 'Any business other than the business specified against serial number 2 i.e. business of plying, hiring or leasing goods carriage.

## **Income-tax Act, 1961**

- The same definition.
  - Turnover limit became part of column D of table.
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# TOTAL TURNOVER OR, AS THE CASE MAY BE, GROSS RECEIPTS OF BUSINESS OR PROFESSION

- Will the following be included in computing total turnover, gross receipts:
    - Reimbursement of expenses, particularly where tax has been deducted at source u/s 393 Table sl no. 8(iv). (194R).
    - Indirect taxes collected separately.
    - How far the provisions of section 277 (145A) will be applicable to provisions of Presumptive taxation.
    - Applicability of section 43CA
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# PROFIT IS LESS THAN DEEMED INCOME

## Sub-section 4 and 5 Prior to 1-4-2017

(4) The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business. (Advance Tax provisions)

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business 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 (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

## After 1-4-2017

(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.

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# 2025 ACT PROVISION FOR CLAIMING LOWER PROFIT

- (3) Any assessee mentioned in column C of the Table in sub-section (2), who claims that—
- (a) the profits or gains actually earned from the specified business or profession are lower than the profits or gains computed in the manner mentioned in column E of the said Table; and
  - (b) whose total income exceeds the maximum amount which is not chargeable to tax, shall be required to—
    - (i) keep and maintain such books of account and other documents as required under section 62; and
    - (ii) get the accounts audited and furnish a report of such audit as required under section 63.
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# SOME ISSUES

- What is the benefit which is being denied by sub-section (4)?
  - Can an assessee starting a new business not declare profit below the limit given in section 44AD.
  - Will the position change in the new Act? Can it not be said that the new provisions are in substance the same as in old law.
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# ALLOWABILITY OF PARTNERS REMUNERATION AND INTEREST

Sub-section (5) specifically allows deduction of partners' salary and interest only against the presumptive income computed for business of plying, hiring or leasing goods carriage. Earlier, this has been the position in section 44AD, 44ADA of 1961 Act also.

## **Prohibition on allowance:**

(4) Any loss, allowance or deduction allowable under the provisions of this Act, shall not be allowed against the income computed in the manner specified in sub-section (2).

In 1961, there was no such blanket restriction. Only restriction was on deduction under section 30 to 38. Now, it will cover all losses, allowances, or deduction like old chapter VIA deductions.

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# SUBMISSION BEFORE SELECT COMMITTEE

- *“...we will do one thing, because there might be a tax implication, because we have taken a stand that policy changes we are not proposing here, so, we will just review this formulation that while doing simplification have we ended up creating a situation where tax policy itself is getting revisited. We will examine and when I said we will send revised comments...”*
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# SUBMISSION BEFORE SELECT COMMITTEE

## **Proposed provision in the Bill**

- Any loss, allowance or deduction allowable under the provisions of this Act, shall not be allowed against income computed in the manner specified in sub-section (2).
  - The provisions of the Bill, do not allow any deduction or losses to the assessee for the income computed as per presumptive scheme. As per the provisions of the Bill, assessee can not claim deduction under Chapter-VIA of the Act, as no deduction is allowed against the income computed under presumptive scheme.
  - The new provisions do not allow set off of losses from any other head of income or from any other business with its presumptive income.
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# SUBMISSION BEFORE SELECT COMMITTEE

## Rationale:

- For non-allowance of deduction: The presumptive income is only a small fraction of the total receipts. For retail business, it is only 8% or 6% of the receipts. Income of 8%/6% will translate into effective tax rate of 2.4%/1.8% (when taxed at maximum rate of 30%).
  - So, a person having turnover of say Rs. 10 lakhs, will only pay taxes of Rs. 24,000/18,000. Thus, a substantial relief has already been provided to the assessee by way of presumptive scheme wherein a small proportion of total turnover is deemed as income. In the new tax regime there will be no tax on the income upto Rs. 12 lakhs on account of rebate. So, the assessee may not even avail any deduction under Chapter VI-A. Also, it has been found that many times the assessee are claiming deductions wrongly without making actual investment/expenditure. Removal of deductions is also in line with the intent of the Government to provide a simple tax regime without any specific deductions/exemptions.
  - For non-allowance of set off of losses: If assessee is claiming that it has loss from any other business, then computation of such loss will only be possible if assessee is maintaining books of accounts and getting these audited. If assessee is maintaining books of accounts for one of the business carried on by it, it can also maintain books of accounts for the business for which income is offered under the presumptive scheme.
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# 44ADA VS SECTION 58

## Income-tax Act, 1961

**44ADA.** (1) Notwithstanding anything contained in sections 28 to 43C, in case of an assessee, being an individual or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), who is a resident in India, and 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":

## Income-tax Act, 2025

**Special provision for computing profits and gains of business or profession on presumptive basis in case of certain residents.**

**58.** (1) The provisions of sections 26 to 54, to the extent contrary to this section, shall not apply to the manner of computation of profits and gains of the specified business or profession in sub-section (2).

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## Income-tax Act, 2025

(2) The profits and gains of any specified business or profession as mentioned in column B of the Table below, carried on by an assessee specified in column C of the said Table, having total turnover or gross receipts of business or profession during the tax year specified in column D and computed in the manner specified in column E thereof, **shall be deemed** to be the profits and gains of such business or profession chargeable to tax under the head "Profits and gains of business or profession".

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## Income-tax Act, 2025

50% of the gross receipts or profit claimed to have been actually earned, whichever is higher.

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# WHO CAN AVAIL 44ADA

By specified assessee for any specified profession as referred to in section 62(4) [44AA(1)]

Specified assessee means an individual or a firm, other than limited liability partnership, who is a resident in India.

Professions as given in section 62(4):

- (a)* legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, information technology or company secretary; or
- (b)* any other profession, as may be notified by the Board in this behalf.

Authorised representative, Film artists, Information Technology.

If the profession is not a specified profession, provisions of section 44ADA will not apply.

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# ISSUE

- Is any qualification or certificate required for being a specified profession.
  - Any one giving consultancy in the field of Interior decoration ?
  - A commerce graduate rendering accountancy services.
  - Computer technicians giving services.
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# 44AE VS 58

## Income-tax Act 2025

Business of plying, hiring or leasing goods carriage.

By

- An assessee, who **owns** not more than ten goods carriages **at any time during the tax year.**

## Income-tax Act, 1961

Similar provisions.

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# ISSUES

Meaning of Owns:

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.

At any time during the year.

Can provisions of section 44AE be applied for some vehicles and income on the basis of books/records be shown for some vehicles.

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# CASES

- A person was having 8 trucks at the beginning of the year. He sold 2 truck in June 2025 and purchased 4 trucks on 1<sup>st</sup> July. On 25<sup>th</sup> March he purchased 2 more trucks and sold 3 trucks on 30<sup>th</sup> March which were not in use for the last few months.
  - A person was having six trucks and 4 buses during the year. How his income will be computed ?
  - A person in transport business is having 5 trucks of his own and has taken 4 trucks on monthly hire charges of ₹ 20000/- per month. He will be eligible to compute his income as per provisions of presumptive computation in respect of:
    - A. For 5 trucks on presumptive basis and for 4 trucks on actual basis.
    - B. For all 9 trucks on presumptive basis
    - C. For all 9 trucks on actual basis.
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# PRESUMPTIVE INCOME

(A) The aggregate of income from goods carriage:—

- (i) being a heavy goods vehicle, calculated at the rate of ₹1000 per ton of gross vehicle weight or unladen weight, as the case may be, for each vehicle, for every month or part of a month during which such vehicle is owned by the assessee in the tax year;
- (ii) being a vehicle other than heavy goods vehicle, calculated at the rate of ₹7,500 for each goods carriage for every month or part of a month during which the vehicle is owned by the assessee in the tax year; or

(B) profit claimed to have been actually earned,

whichever is higher.

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# SOME MORE COMMON ISSUES

- Can partner of a firm, show remuneration/ interest from firm u/s 58 i.e. 44AD/44ADA.
  - Maintenance of Books of accounts and Audit
  - Applicability of Tax Audit provisions.
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# PRESUMPTIVE INCOME FOR NON-RESIDENTS

## Income-tax Act, 2025

- Business of Operation of ships, other than cruise ships.

7.50% of sum on account of **carriage of passengers, livestock, mail or goods.**

For shipped at any port in India: amount paid or payable in or outside India.

For shipped at any port outside India: received or deemed to be received in India.

- Business of operations of Cruise Ships (subject to conditions)

20%

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# PRESUMPTIVE INCOME FOR NON-RESIDENTS

## Income-tax Act, 2025

- Business of Operation of Aircrafts

5% of sum on account of carriage of passengers, livestock, mail or goods.

From any place in India: amount paid or payable in or outside India.

For any place outside India: received or deemed to be received in India.

- Business of civil construction or erection or testing or commissioning of plant or machinery, in connection with a turnkey power project, approved by central government

10% of the amount paid or payable in or outside India

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# PRESUMPTIVE INCOME FOR NON-RESIDENTS

## Income-tax Act, 2025

- Business of providing services or facilities (including supply of plant and machinery on hire) for prospecting, extraction or production of mineral oils.
  
- Business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India to a resident company.

## Presumptive Income

10% of the amount paid or payable in or outside India for doing such activity in India or for doing such activity outside India, amount received or deemed to be received in India.

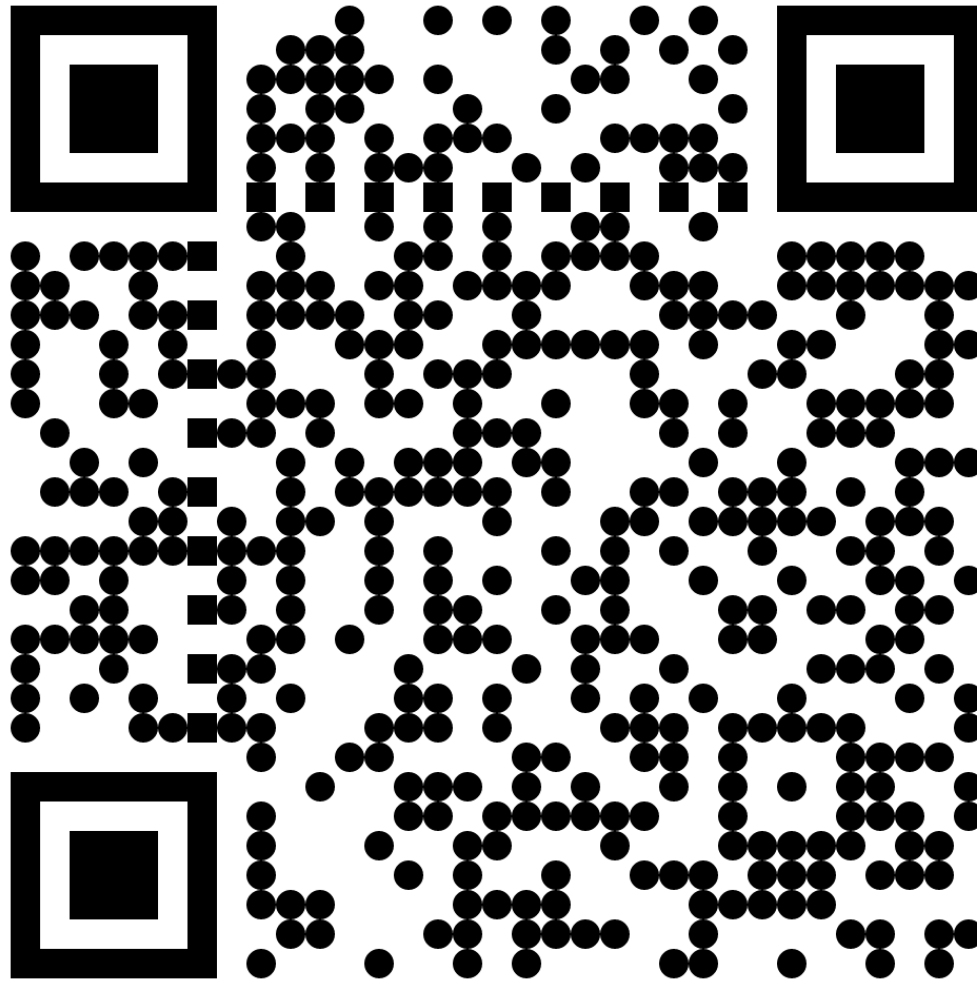
25%

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# QUESTIONS AND ANSWERS



**THANKS**

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