



Business Income – SIRC of ICAI 25th

March

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Continuity ???

Sec 44 AD turnover Limit increased to 200 Lacs.

No corresponding amendment in Sec 44 AB of the Income tax Act.

New Sec 44 ADA applicable for profession referred in Sec 44 AA if the gross receipts does not exceed 50 Lacs

Corresponding amendment in Sec 44 AB of the Income tax Act



44 AB

- (a) Turnover exceeds 100 Lacs
- (b) Gross receipts exceeds 50 Lacs
- (c) Lower than Presumptive income u/s 44 AE offered
- (d) Lower than Presumptive Income u/s 44 ADA and $TI >$ basic exemption Limit
- (e) Lower than Presumptive Income u/s 44 AD and $TI >$ basic exemption Limit



44 AB

Clause b clause d – No conflict

Clause a clause e ???

Other contradictions



1. Advance tax
2. Lower than Presumptive Income
3. Applicability to LLP
4. Persons not covered by 44 AA

Conflict illustrated



Turnover 90 Lacs Total Income 3 Lacs

Turnover 90 Lacs Total Income 2 Lacs

Turnover 150 Lacs Total Income 3 Lacs

Turnover 150 Lacs Total Income 2 Lacs

44 ADA – CA

Gross receipts 40 Lacs Total Income 3.2 Lacs

Gross receipts 40 Lacs Total Income 2 Lacs

44 AD OR ADA

Sports person

Gross receipts 40 Lacs Total Income 3.2 Lacs

Gross receipts 40 Lacs Total Income 2 Lacs

Conflicts

Advance tax ?? 44 ADA 4 OR 1

Other Changes /Proposals

Interest and Remuneration not allowed for presumptive income

44 AD 6 % in certain cases

40 (A)(3) reduced to 10,000

No Depreciation if the amount in excess of Rs.10,000 is not paid by a/c payee cheque etc.,

ISSUE 1 Sec 36(1)(va) – Due date

Employees Contribution to PF etc., paid after the PF due date but before the due date for filing return of Income . Whether allowable as deduction ?



36 (1) (va)

any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of Sec 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date *Explanation.*—For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise;

ISSUE 1 Sec 36(1)(va) – Background

Employers contribution to PF etc., is allowed as deduction u/s 36(1)(iv) / v of the Income tax act subject to Sec 43 B of the Income tax Act

Employees Contribution to PF etc., is treated as Income u/s 2(24)(x) and deduction is allowed for the same u/s 36(1)(va) if paid or or before the PF due date.



ISSUE 1 Sec 36(1)(va) – Background

Up AY 03 04, no deduction will be allowed u/s 43 B for Employers contribution to PF etc., if it is paid after PF due date.

However, from AY 04 05, Employer's contribution will be allowed as deduction if paid on or before 139 (1) due date. If paid after 139(1) due date, then deduction will be allowed in the year of payment.

- **No corresponding amendment was made in 36(1)(va) till date.**

ISSUE 1 Sec 36(1)(va) – Background

From the above discussion it appears that the employer's contribution can be paid up to the 139(1) due date whereas the employee's contribution has to be paid before the PF / ESI due date. If paid after PF due date deduction will not be allowed in any Asst. year.

Judicial Pronouncements

Against

- CIT V Merchem Ltd
- CIT V Gujarat State Road transport Corporation (2014) 366 ITR 170

For

- **Commissioner of Income Tax v. AIMIL Ltd. & Ors. [(2010) 321 ITR 508 (Del.)],**
- **Commissioner of Income-Tax v. State Bank of Bikaner & Jaipur [(2014) 363 ITR 70 (Rajasthan)],**

Judicial Pronouncements

Against

In Favour

- **Essae Teraoka (P) Ltd. v. Deputy Commissioner of Income Tax [(2014) 366 ITR 408 (Karn.), Spectrum Consultants India P. Ltd. [(2014) 2 ITR-OL 622 (**
- **Commissioner of Income Tax v. Ghatge Patil Transports Ltd. [(2014) 368 ITR 749 (Bom)] and**

Section 40(a) – Issue 2

Whether amendment in 40 (a)(ia) extending the time for April to Feb to due date for filing of return applicable for AY 05 06 to AY 09 10. Whether this principle can be extended to Sec 40 (a)(i).

Vishwas Builders [2015] 53 taxmann.com 287 (Bangalore – Trib) *CIT v. Santosh Kumar Shetty* [2014] 49 taxmann.com 47 (Kar.) Rajiv kumar Agarwal Pune Standard Buildcon (Guj)

Section 40(a) – Issue 3



TDS Disallowance applies only to amounts 'payable' as at 31st March and not to amounts already 'paid' during the year

JUDICIAL PRONOUNCEMENTS

FAVOUR OF ASSESEE

- *Merilyn Shipping & Transports v. Addl.CIT* [\[2012\] 136 ITD 23/20 taxmann.com 244 \(Vizag.\)](#),
- *CIT v. Vector Shipping Services (P.) Ltd.*, [\[2013\] 357 ITR 642/218 Taxman 93/38 taxmann.com 77 \(All.\)](#)

AGAINST THE ASSESEE

- *CIT v. Crescent Export Syndicate* [\[2013\] 216 Taxman 258/33 taxmann.com 250 \(Cal.\)](#)
- **Ama Medical & Diagnostic Centre*** *Underwater Services Co. v. ITO* [\[2012\] 54 SOT 178/25 taxmann.com 216 \(Mum.\)](#)

Section 40(a) – Issue 4



Deduction of TDS under wrong section u/s 194 C instead of 194 J or / I –
whether disallowance will be attracted –

JUDICIAL PRONOUCTIONS

IN FAVOUR OF ASSESSEE

- **S K Tekrival KOL HC**
- Dy. CIT v. Parryware Roca (P) Ltd. (2016) 175 TTJ 450 (Chennai)(Trib.) Roca Bathroom Products (P.) Ltd. v. Jt. CIT (2016) 175 TTJ 450 (Chennai)(Trib.)

AGAINST THE ASSESEE

- PVS Memoraial hospital 60 taxaman 69 KER

Section 40(a) – Issue 5



If payment is made in previous year 16 17 in respect of expenditure disallowed in previous year 13 14 , will entire amount be allowed or only 30 % of the expenditure.

Section 40(a) – Issue 6



As per the second proviso to Sec 40 (a)(ia), assessee will not be considered as assessee in default if he furnishes a declaration in Form 26a. whether the Second proviso can be construed as retrospective in nature

JUDICIAL PRONOUNCEMENTS

IN FAVOUR OF

- **CIT V ANSAL Land mark township (P) Ltd (Del) 61 taxman 45 G Shankar (Bangalore) Rajiv Agarwal (Agra)**
- **) Nimbus Communications Ltd. v. ACIT (2016) 47 ITR 496 (Mum.)(Trib.)**

AGAINST

- **Thomas George Muthooth (Ker)**

Section 40(a)(i) (applicable to FC/NR payments)

Section 40(a)(i)

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year *but paid after the due date specified in sub-section (1) of section 139*, such sum shall be *allowed as a deduction in* computing the income of *the previous year in which such tax has been paid*

Section 40(a)(ia) Resident payments

Section 40(a)(ia)

30 % of any sum payable to a resident , on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, 30 % such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid

Section 40(a)(ia)

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of Sec 201 then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso

Changes Made in Section 40(a)/(ia) From AY 15 16

1. Only 30 % of the expenditure will be disallowed
2. All expenditures are covered
3. If the payment is made subsequently then only 30 % such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid

Upto AY 14 15 :

1. 100 % will be disallowed . If paid in the subsequent year, 100 % of amount paid will be allowed as deduction.
2. Salary to resident In India and Directors Fees not covered.

Section 40 (a) (iii) - Disallowance

40 (a) (iii)

- ❖ **Applicability** - Salary Payments to a resident outside India / Non- Resident in India.
- ❖ **Payments covered** -
Any payment chargeable under the head “Salaries” if it is
 - 1. Payable outside India (or)**
 - 2. To a Non Resident in India**

Section 40 (a) (i) / (ia) / iii – comparison

	40 (a) (i)	40 (a) (ia)	40 (a) (iii)
❖	<u>Applicability</u> - Payments to a Non- Resident.	<u>Applicability</u> - Payments to a Resident.	<u>Applicability</u> - Salary Payments to a resident outside India / Non- Resident in India.
❖	<u>Payments covered</u> - 1. Any interest 2. Royalty 3. Fees for technical services or 4. Other sum chargeable under this Act which is payable : (i) Outside India; (or) (ii) In India to a Non resident (not being a Company) or to a foreign Company (whether resident or not)	<u>Payments covered</u> - All payments from AY 15 16	<u>Payments covered</u> - Any payment chargeable under the head “Salaries” if it is 1. Payable outside India (or) 2. To a Non Resident in India

Section 40 (a) (i) / (ia) / iii – comparison

	40 (a) (i)	40 (a) (ia)	40 (a) (iii)
❖	<u>Applicability</u> - Payments to a Non- Resident. (No Change)	<u>Applicability</u> - Payments to a Resident. <u>All Payments claimed as deduction</u>	<u>Applicability</u> - Salary Payments to a resident outside India / Non- Resident in India.
❖	<u>Payments covered</u> - 1. Any interest 2. Royalty 3. Fees for technical services or 4. Other sum chargeable under this Act which is payable : (i) Outside India; (or) (ii) In India to a Non resident (not being a Company) or to a foreign Company (whether resident or not)	<u>30 % of the expenditure will be disallowed</u>	<u>Payments covered</u> - Any payment chargeable under the head “Salaries” if it is 1. Payable outside India (or) 2. To a Non Resident in India

Section 40 (a) (i) / (ia) / iii – comparison



	40 (a) (i)	40 (a) (ia)	40 (a) (iii)
❖	<p><u>Due Date for making the payment for claiming the deduction:</u></p> <p>For payments made from April to March - Allowed if paid on or before Sec 139(1) due date</p>	<p><u>Due Date for making the payment for claiming the deduction:</u></p> <p>For payments made from April to March - Allowed if paid on or before Sec 139(1) due date</p>	<p><u>Due Date for making the payment for claiming the deduction:</u></p> <p>Disallowance will be attracted if tax has not been paid or deducted thereon.</p> <p>Deduction shall not be allowed even if tax is paid in the subsequent year.</p>

Issue 7

Disallowance made by Assessing Officer under section 14A, read with rule 8D of Income-tax Rules 1962, - can it be added back for purpose of arriving at figure of book profit.

- **Viraj Profiles Ltd. V DCIT**
- ***CIT v. JSW Energy Ltd.* [\[2015\] 60 taxmann.com 303/234](#)
[Taxman 183 \(Bom.\)](#)**
- **Beach Minerals Company (P.) Ltd ACIT (Che.trib)64
taxman 218**

Issue 8



Additions to plant and machinery 200 Lacs on 1st November 2016

Depreciation for AY 17 18 and AY 18 19

Issue 8

AY 17 18 PY 16 17

Normal Depreciation	(7.5%)	15 Lacs	15 Lacs
Additional Depreciation	(10 %)	20 Lacs	20 Lacs
Total Depreciation		35 Lacs	35 Lacs
WDV		165 Lacs	165 Lacs

Issue 8

AY 18 19 PY 17 18

WDV	165 Lacs	165 Lacs
Normal Depreciation	24.75	21.75
	(15% 165)	(15%145)
ADDL Depreciation	20	20

Issue 9



Fees paid to ROC for increase in authorised capital . Capital increased for purchase of plant and machinery

Rana Polycot Ltd P & H 236 Taxman 567

Issue 9



Depreciation-Routers and switches

Printers, switches, net working equipments, UPS and pen drives,

Rana Polycot Ltd P & H 236 Taxman 567

Issue 10

Bad debts written off – Not claimed in the return

Goetz SC

Prithvi brokers Mumbai HC

DCIT V CMS Securities 447 ITR 378 mum trib

Issue 11

Replacement of various components in Boiler

CIT V Neyveli lignite corporation



SURESH & BALAJI
CHARTERED ACCOUNTANTS

THANK YOU

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