



Direct Tax Vivad Se Vishwas Scheme! Policy and Challenges! CA Vaishali Kharde Pritam Mahure and Associates

It's raining 'discounts' on interest and penalties in Income-tax!

Vivad Se Vishwas Scheme (VSV)

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Feedback

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1. Direct Tax Vivad Se Vishwas Scheme (VSV)

1.1 Why VSV is needed under Direct Tax?

Pending legacy Direct tax litigation is one of the biggest-cause of concern not only for Government but also for taxpayers as most of it comprised of frivolous cases.

Legacy litigation has drawn a lot of attention, as more than **INR 4.83 lacs cases** are pending before Commissioner (Appeals), CESTAT, High Court and Apex Court.

The H'ble FM mentioned in her Budget 2019 Speech as under:

"126. No Dispute but Trust Scheme – 'Vivad Se Vishwas' Scheme

- *Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes.*

*It resulted in settling over 1,89,000 cases. Currently, there are **4,83,000 direct tax cases pending** in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.*

- *Under the proposed '**Vivad Se Vishwas**' scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain open till 30th June, 2020.*
- *Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.*
- *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process."*

Even as per Statement of Objects and Reasons of The Direct Tax Vivad Se Vishwas Bill, 2020 specifies as under :VSV

*"Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is **Rs. 9.32 lakh crores**. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly **one year direct tax collection**.*

*2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an **urgent need to provide for resolution** of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the*

time, energy and resources saved by opting for such dispute resolution towards their business activities.

3. *It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:—*

*(a) The provisions of the Bill shall be applicable to **appeals** filed by taxpayers or the Government, **which are pending** with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;*

*(b) the pending appeal may be against **disputed tax, interest or penalty** in relation to an assessment or reassessment order or against disputed interest, disputed **fees** where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of **tax deducted at source or tax collected at source**;*

*(c) in appeals related to disputed tax, the declarant shall **only pay the whole of the disputed tax** if the payment is*

*made before the **31st day of March, 2020** and for the payments **made after** the 31st day of March, 2020 **but on or before the date notified** by Central Government, the amount payable shall be **increased by 10 per cent.** of disputed tax;*

*(d) in appeals related to **disputed penalty, disputed interest or disputed fee**, the amount payable by the declarant shall be **25 per cent.** of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to **30 per cent.** of the disputed penalty, disputed interest or disputed fee, as the case may be.*

1.2. How many clauses are there in the VSV?

VSV, 2020 is a ten pager Bill containing 12 clauses as discussed below:

Clause	Particulars
1	Short title
2	Definitions
3	Amount payable by declarant
4	Filing of declaration and particulars to be furnished
5	Time and manner of payment
6	Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases
7	No refund of amount paid
8	No benefit, concession or immunity to declarant
9	Act not to apply in certain cases
10	Power of Board to issue directions, etc
11	Power to remove difficulties
12	Power to make rules

1.3 What are the dates of the scheme?

VSV scheme has divided in to two phases. First phase is up to 31st March 2020 wherein benefit available is more than the second phase.

1.4 What is the last date of VSV?

As per Section 2(1)(l) of VSV, 2020 the last date is the date as may be notified by the Central Government in the Official Gazette. As per the Budget Speech of H'ble Finance Minister, the VSV will be available up to 30th June, 2020.

1.5 Which are the enactments covered under VSV?

The VSV covers the specified litigation under Income Tax Act, 1961. In this regard, below question from Circular No. 7/2020 dated 4th March 2020 can be referred

Que-18.

Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?

Ans

No. Only disputes relating to income-tax are covered.

1.6 What is the covered under VSV?

VSV is available for the 'tax arrears' as determined under Income Tax Act, 1961. In this regard, Section 2(1)(o) of VSV defines the term tax arrears means:

- (i) *the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or*
- (ii) *disputed interest; or*
- (iii) *disputed penalty; or*
- (iv) *disputed fee*

1.7 Who can apply under VSV

As per Section 2(1) of the VSV Act the persons given below can apply for VSV

<u>Types of Cases</u>	<u>Description / Conditions</u>
Appeal or a writ petition or special leave petition Pending cases at	1. Appeal or a writ petition or special leave petition has been filed either by taxpayer or by the income-tax authority or by both, before an

<p>various stages Appellate forums</p>	<ul style="list-style-type: none">- Appellate forum and- such appeal or petition is pending as on the 31.01.2020 <p>2. An order has been passed by the AO, or Commissioner (Appeals) or ITAT, or the High Court in a writ petition,</p> <ul style="list-style-type: none">- on or before 31.01.2020 and- the time for filing any appeal or special leave petition against such order by that person has not expired on 31.01.2020.
<p>Dispute Resolution Panel (DRP)</p>	<p>1. A person who has filed</p> <ul style="list-style-type: none">- his objections before DRP under section 144C of the Income-tax Act, 1961 and- the DRP has not issued any direction on or before 31.01.2020.

	<p>2. A person in whose case</p> <ul style="list-style-type: none">- The DRP has issued direction U/S (5) of section 144C of the Income-tax Act and- The AO has not passed any order under sub-section (13) of that section on or before 31.01.2020.
Revision under section 264	<p>A person who has filed</p> <ul style="list-style-type: none">- an application for revision under section 264 of the Income-tax Act and- Such application is pending as on 31.01.2020.

1.8 What is the meaning of disputed tax, interest, penalty and fee?

The term 'tax arrears' as defined under Section 2(1)(o) of VSV is an aggregate of disputed tax, disputed interest, disputed penalty

and disputed fee. In this regard, a table given below describes the meaning of these terms.

No.	<u>Term and Reference</u>	<u>Meaning</u>				
1.	Disputed tax [Refer Section 2(1)(j) of VSV]	<p>“disputed tax”, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this Section referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:—</p> <table border="1" data-bbox="613 1205 1344 1713"> <thead> <tr> <th data-bbox="613 1205 954 1289"><i>Particulars</i></th> <th data-bbox="954 1205 1344 1289"><i>Disputed tax</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="613 1289 954 1713"><i>Any appeal, writ or special leave petition Pending on 31.01.2020</i></td> <td data-bbox="954 1289 1344 1713"><i>Tax that is payable by the appellant if such appeal/writ or SLP is decided against him</i></td> </tr> </tbody> </table>	<i>Particulars</i>	<i>Disputed tax</i>	<i>Any appeal, writ or special leave petition Pending on 31.01.2020</i>	<i>Tax that is payable by the appellant if such appeal/writ or SLP is decided against him</i>
<i>Particulars</i>	<i>Disputed tax</i>					
<i>Any appeal, writ or special leave petition Pending on 31.01.2020</i>	<i>Tax that is payable by the appellant if such appeal/writ or SLP is decided against him</i>					

		Appeal or writ petition passed before 31.01.2020 time of filing appeal or SLP has not expired as 31.01.2020	Tax Payable if after giving effect to the order so passed
		Order passed by AO before 31.01.2020 time of filing of appeal not expired	Tax Payable as per said order
		Objection filed by the appellant pending before the Dispute Resolution Panel	Tax payable if DRP was to confirm variation proposed in draft order

		<p>DRP issued any direction [Section 144(c)] however AO has not passed order</p>	<p>Tax payable if AO order to be passed</p>
		<p>Application of revision U/S 264 leads to reduction of Income</p>	<p>Revision not accepted tax dues will be constant</p>
		<p>Application of revision U/S 264 leads to addition of Income</p>	<p>Disputed tax shall be increased</p>
		<p>AO has reduced the returned loss by addition of income/disallowing expenditure or MAT Credit two options are available</p>	

		<ul style="list-style-type: none"> • Pay the notional tax on amount by which the loss has been reduced and carry forward the claimed loss without reduction or • by accepting the reduced carry forward of loss without making any payment under the Scheme
2.	Disputed interest [Refer Section 2(1)(h) of VSV]	<p><i>"Disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961, where—</i></p> <p><i>(i) such interest is not charged or chargeable on disputed tax;</i></p> <p><i>(ii) an appeal has been filed by the appellant in respect of such interest;</i></p>
3.	"Disputed Penalty	<p><i>"Disputed Penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—</i></p>

	[Refer Section2(1)(i) of VSV]	<p><i>(i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;</i></p> <p><i>(ii) an appeal has been filed by the appellant in respect of such penalty;</i></p>
4.	Disputed Fee [Refer Section2(1)(f) of VSV]	<i>"Disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant</i>

1.9 Who can avail the benefit under VSV?

As per Para 3 (a) of the Statement of Object and Reasons '*The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid*'.

However, now as per Amended Act of VSV the benefit extended to appeal the writ and special leave petition pending. Additionally, the specified Dispute Resolution penal and search cases up to INR 5 crores are eligible to avail the benefit of the VSV.

1.10 Which type of cases are not covered under VSV?

As per Section 9 (a) of the VSV specifies certain exclusion of cases for which VSV is not applicable as discussed hereunder:

SR	Particulars
(a)	Where the tax arrears are <ul style="list-style-type: none">- Relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees
(b)	Where the tax arrears are relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration.

(c)	Where the tax arrears are relating to any <ul style="list-style-type: none">- Undisclosed income from a source located outside India or- Undisclosed asset located outside India
(d)	Where the tax arrears are relating to an assessment or reassessment made on the basis of <ul style="list-style-type: none">- Information received under an agreement referred to in section 90 of the Income-tax Act (i.e. Double Taxation Relief Agreement) with foreign countries or specified territories) or- Information received under an agreement referred to in section 90A of the Income-tax Act (i.e. Agreement Adopted by Central Government between specified associations for double taxation relief.)

1.11 How much amount is payable under VSV?

The benefits available under the VSV Scheme are as under:

As per Section 3 of the VSV, the benefit available is as under:

<u>No.</u>	<u>Nature of tax arrear</u>	<u>Amount Payable under this Act on or before the 31st day of March, 2020.</u>	<u>Amount Payable under this Act on or after the 1st day of April, 2020 but on or before the last date.</u>
a.	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or	amount of the disputed tax	The aggregate of the amount of disputed tax and ten per cent. of disputed tax: Provided that where the ten per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or

	levied on such disputed tax.		levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.
b.	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act	The aggregate of the amount of disputed tax and twenty-five per cent. of the disputed tax: Provided that where the twenty-five per cent. of disputed tax exceeds the	The aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax: Provided that where the thirty five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed

		aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.	tax, the excess shall be ignored for the purpose of computation of amount payable.
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c.	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee	twenty-five per cent of disputed interest or disputed penalty or disputed fee	thirty per cent of disputed interest or disputed penalty or disputed fee.
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1.12 How to apply for the VSV?

As per Section 4 of VSV a declarant should file declaration before the Designated Authority in such form and verified in such manner as may be prescribed.

1.13 What is the procedure for withdrawal of appeal, writ etc if applied for VSV?

Upon filing the Declaration, an appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), shall be **deemed to have been withdrawn** from the date on which

prescribed certificate is issued by the Designated Authority [refer Section4 (2) of the VSV].

In case of any appeal before the Appellate Forum or any Writ petition before the High Court or the Supreme Court, the taxpayer is required to withdraw appeal or writ petition with the leave of the Court [refer Section4 (3) of the VSV].

Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, then it is required to withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5. [refer Section4 (3) of the VSV].

Further, without prejudice to Section4 (2) or (3) or (4) of VSV, the declarant shall furnish an undertaking waiving his right, whether

direct or indirect, to seek or pursue any **remedy or any claim** in relation to the tax arrears which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed [refer Section 4 (5) of the VSV].

1.14 When declaration is presumed to never have been made?

The declaration presumed never to have been made if:

- a. Any material particular furnished in the declaration is found to be false at any stage;
- b. The declarant violates any of the conditions
- c. The declarant acts in any manner which is not in accordance with the undertaking given by him as required under the Act

In such cases, all the proceedings and claims which were withdrawn and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

1.15 What is time to confirm the amount payable by the designated authority

The designated authority within a period of **fifteen days** from the date of receipt of the declaration shall determine the amount payable by the declarant. Also, the Authorities will grant a certificate containing the particulars of the tax arrears and the amount payable.

1.16 What is the time limit for payment of amount declared under VSV?

The declarant is required to **pay** the amount determined **within fifteen days** of the date of receipt of the certificate and intimate the details of such payment to the designated authority.

It may be noted that in Sabka Vishwas Scheme in Indirect Taxes (SVLDRS) the time limit for making payment was thirty days.

1.17 How to pay liability?

The VSV does not prescribe the methodology adjustment of the liability already paid. However, as per explanation of section 7 of VSV the where the declarant had paid any liability before filing the declaration under sub-section (1) of section 4 and where paid amount exceeds the amount payable under section 3, then refund is allowed however interest on such excess amount is not available.

Additionally, below questions from Circular No. 7/2020 dated 4th March 2020 can be referred

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What if the disputed demand including interest has been paid by the appellant while being in appeal?

Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under Vivad se Vishwas, the appellant

will be entitled to refund without interest under section 244A of the Act.

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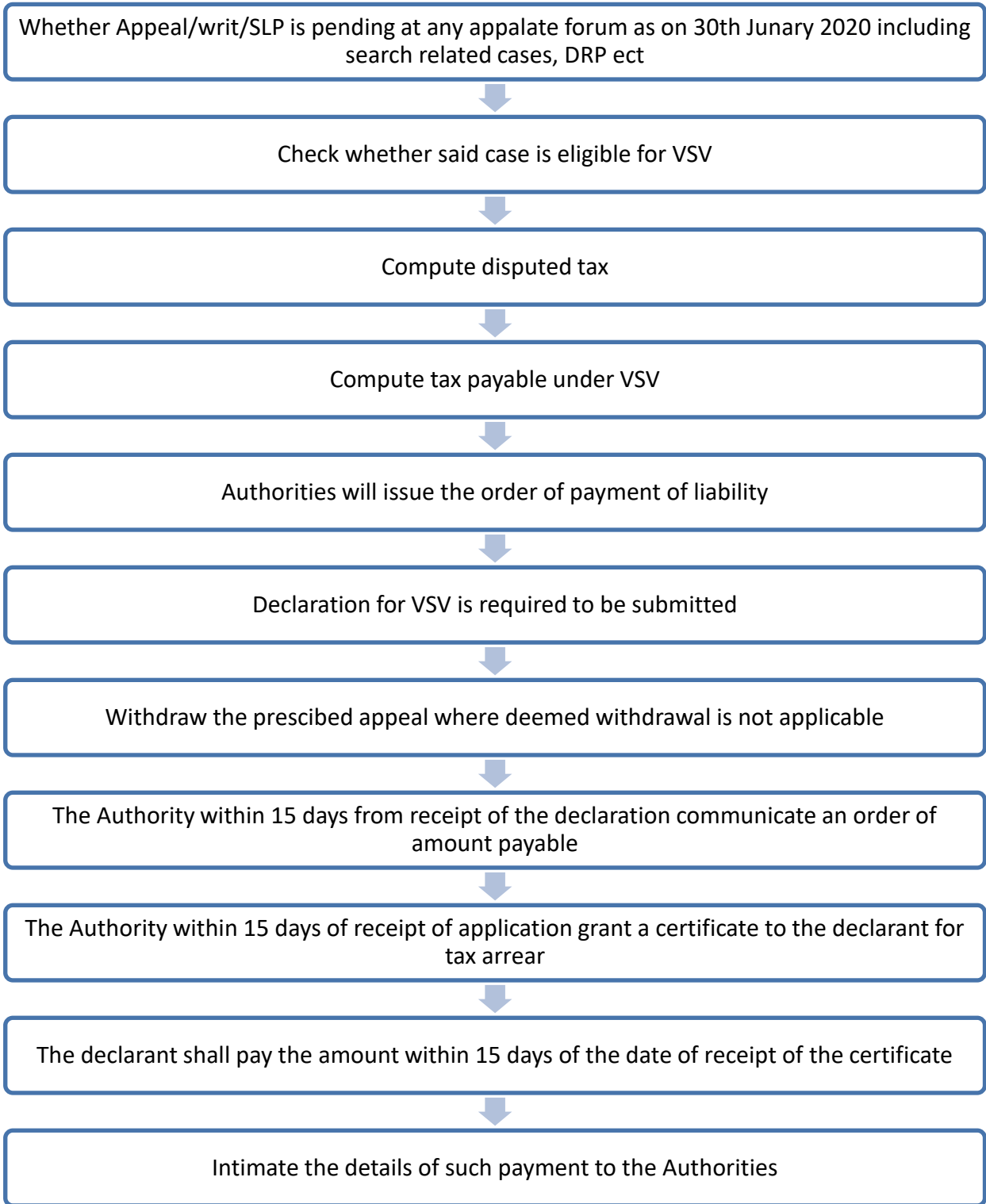
Refer to question number 5. How will disputed tax be calculated in a case where disputed demand including interest has been paid by the assessee while being in appeal?

Please refer to answer to question no. 5. To illustrate, consider a non-search case where an assessee is In appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs. 30,000 and interest under section 234B of Rs.1,000. Assessee has paid this amount of Rs. 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs. 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs. 10,000 and interest on such disputed tax of Rs.6000. Penalty has been initiated separately. Assessee has paid the

demand of Rs. 14,000 during pendency of appeal; however interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs 10,000 (at 100%) is to be paid on or before 31" March 2020. Since he has already paid Rs. 14,000, he would be entitled to refund of Rs. 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.

1.18 What is Process to be followed to apply for scheme.

The Government yet to issue detailed process guideline including online system, form to apply for scheme etc. However, a brief process flowchart as prescribed in the bill as given hereunder :



1.19 Which documents are expected to be issued?

Additional details regarding the VSV such as mode of payment, adjustment of amount already deposited, application form, online procedure etc. are awaited. Thus, in days to come the CBDT may issue:

Notification	Rules	FAQs	System
<ul style="list-style-type: none">• To be notified	<ul style="list-style-type: none">• To be notified	<ul style="list-style-type: none">• To be issued	<ul style="list-style-type: none">• To be put in place

1.20 Challenges Ahead

1. Part payment of liability

It may be noted that VSV does not prescribe the methodology if the applicant is intends to make part payment before 31st March 2019 and part on or after 1st April 2019. Thus, appropriate clarification in this regard, would be helpful.

2. Days prescribed for payment is minimal

As per VVS Bill the declarant is required to pay the liability within **15 days** of the date of communication of liability by the Designated Authority.

Additionally, with respect to minimum benefit even the 15 days are not available. The table given below can be referred:

Date of declaration	Issue of order of determination	No of days to avail reduced benefit
20-03-2020	04-04-2020	In such case the benefit of Phase-I (i.e. available up to 31 st March 2020 will not be available.
15-03-2020	30-03-2020	1
10-03-2020	25-03-2020	6
07-03-2020	22-03-2020	9

In this regard, it can be noted that there were many instances observed during payment of liability at the time of Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS)

wherein system errors were faced by the taxpayer at various stages of payment. Thus, considering the system challenges the taxpayer should pay the liability once certificate of payment is received without waiting for the 15th day and/or last day.

3. VSV does not specify about validity of issue under Appeal

VSV does not mention that filing of application will not lead to acceptance of the issues under Appeal. However, Sabaka Vishwas Legacy it was specifically mentioned that application for the scheme for the matter under appeal does not be concluded the acceptance of liability. Thus, an appellant can dispute the same matter for another years.

4. Limitation of time could lead to delay in filing of declaration

VSV gives fifteen days after receipt of declaration for issue of amount payable by the Authorities and fifteen days for

payment of liability. Thus, maximum days available for payment is 30 days after filing of declaration by the taxpayer. Given this, the taxpayer may delay the filing of declaration so that to delay the payment. Herein of the intention of the CBDT is to receive the applications at the earliest, appropriate clarification about time could be helpful.

5. Amount of tax payable adjusted against refund

In certain cases there could be scenario where the amount of tax payable is adjusted by the AO against the refund to be paid. In such case the methodology of computation of the payment of liability is required to be clarified. (i.e. whether the appellant is required pay the liability again and claim the refund or the amount adjusted is deemed as amount paid.

1.21 How VSV is different in comparison with Other Schemes?

Scheme	Remark
Sabaka Vishwas Legacy Dispute Resolution Scheme (SVLDRS)	<p>SVLDRS was issued to resolve the disputes under Indirect Tax and same was operational till 15th January 2020.</p> <p>SVLDRS provided for reduction even in tax amount (upto 70%) in addition to waiver of interest, penalty, prosecution etc.</p> <p>However, VSV only provides for waiver of interest, penalty and fees.</p> <p>Further, voluntary disclosure of liability was also allowed under SVLDRS. However, VSV scheme only covers pending appeals.</p>
Income Declaration Scheme (IDS)	<p>IDS was introduced in FY 2015-16. IDS was mainly aimed at encouraging tax evaders to file their income tax returns. IDS was applicable to all taxpayers who intended to declare additional</p>

	income up to AY 2016-17. However, the taxpayers to whom notices are served were not covered under the said scheme.
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1.22 History of Amnesty Schemes in Direct Taxes

Since 1951, the Government has announced approx. twelve amnesty schemes covering declaration of undisclosed assets, black money, jewellery etc as under:

Year	Amnesty Scheme
1951	VDIS Tyagi Scheme
1965	VDIS 60-40 Scheme
1965	Black Scheme
1965	National Defence Gold bonds
1965	National Defence Remittance Scheme
1975	Voluntary Disclosure Scheme
1981	Special Bearer Bond
1985/86	Amnesty Circular
1991	Foreign Remittance Scheme

1997	VDIS
2015	VDIS-Compliance Window
2016	Income Disclosure Scheme

2. The Direct Tax Vivad Se Vishwas Bill, 2020

A BILL

to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. Short title.

This Act may be called the Direct Tax Vivad se Vishwas Act, 2020.

2. Definitions.

(1) In this Act, unless the context otherwise requires, —

a. **“appellant”** means—

- (i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;

- (ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;
- (iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 and the Dispute Resolution Panel has not issued any direction on or before the specified date;
- (iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;

- (v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date;”;

- b. **“appellate forum”** means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);
- c. **“declarant”** means a person who files declaration under section 4;
- d. **“declaration”** means the declaration filed under section 4;
- e. **“designated authority”** means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act;
- f. **“disputed fee”** means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;

- g. **“disputed income”**, in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;
- h. **“disputed interest”** means the interest determined in any case under the provisions of the Income-tax Act, 1961, where—
 - i. such interest is not charged or chargeable on disputed tax;
 - ii. an appeal has been filed by the appellant in respect of such interest;
- i. **“disputed penalty”** means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—
 - i. such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;
 - ii. an appeal has been filed by the appellant in respect of such penalty;
- j. **“disputed tax”**, in relation to an assessment year or financial year, as the case may be, means the income-

tax, including surcharge and cess (hereafter in this Section referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:—

(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;

(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;

(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;

(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;

(E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by

the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the

Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

- k. **“Income-tax Act”** means the Income-tax Act, 1961;
- l. **“last date”** means such date as may be notified by the Central Government in the Official Gazette;
- m. **“prescribed”** means prescribed by rules made under this Act;
- n. **“specified date”** means the 31st day of January, 2020;
- o. **“tax arrear”** means,—
 - i. the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
 - ii. disputed interest; or
 - iii. disputed penalty; or

iv. disputed fee, as determined under the provisions of the Income-tax Act; (2) The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

3. Amount payable by declarant.

Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:—

<u>No.</u>	<u>Nature of tax</u>	<u>Amount</u>	<u>Amount Payable</u>
	<u>arrear</u>	<u>Payable</u> <u>under this</u> <u>Act on or</u>	<u>under this Act on or</u> <u>after the 1st day of</u> <u>April, 2020 but on</u>

		<p><u>before the 31st day of March, 2020.</u></p>	<p><u>or before the last date.</u></p>
<p>a.</p>	<p>where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.</p>	<p>amount of the disputed tax</p>	<p>The aggregate of the amount of disputed tax and ten per cent. of disputed tax: Provided that where the ten per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of</p>

			amount payable under this Act.
b.	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act	The aggregate of the amount of disputed tax and twenty-five per cent. of the disputed tax: Provided that where the twenty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or	The aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax: Provided that where the thirty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.

		<p>charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.</p>	
c.	<p>Where the tax arrear relates to disputed interest or</p>	<p>twenty-five per cent of disputed interest or</p>	<p>thirty per cent of disputed interest or disputed penalty or disputed fee.</p>

	disputed penalty or disputed fee	disputed penalty or disputed fee	
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Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the

amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.

4. Filing of declaration and particulars to be furnished

1. The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.
2. Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed

interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

3. Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of section 5.
4. Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if

any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of section 5.

5. Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.
6. The declaration under sub-section (1) shall be presumed never to have been made
if,—

- (a) any material particular furnished in the declaration is found to be false at any stage;
- (b) the declarant violates any of the conditions referred to in this Act;
- (c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

7. No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

5. Time and manner of payment

- (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.
- (2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.
- (3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of

investment or otherwise, entered into by India with any other country or territory outside India.

Explanation.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

6. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases.

Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrears.

7. No refund of amount paid.

Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances

Explanation.—For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under sub-section (1) of section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act.

8. No benefit, concession or immunity to declarant.

Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

9. Act not to apply in certain cases

The provisions of this Act shall not apply—

(a) in respect of tax arrear,—

- i. relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees;
- ii. relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration.
- iii. relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;
- iv. relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration

Provided that—

- i. such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
- ii. such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or
- iii. such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the

- basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or
- iv. such order of detention has not been set aside by a court of competent jurisdiction.

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988 has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence

punishable under the provisions of the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income tax authority;

(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

10. **Act not to apply in certain cases**

1. The Central Board of Direct Taxes may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit:

Provided that no direction or order shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

2. Without prejudice to the generality of the foregoing power, the said Board may, if it considers necessary or expedient so to do, for the purpose of this Act, including collection of revenue, issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that it is necessary in the public interest so to do.

11. **Power to remove difficulties.**

1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.

- 2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament

12. **Power to make rules.**

- 1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- 2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - a. the form in which a declaration may be made, and the manner of its verification under section 4;
 - b. the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;

- c. the form in which certificate shall be granted under sub-section (1) of section 5;
- d. the form in which payment shall be intimated under sub-section (2) of section 5;
- e. determination of disputed tax including the manner of set-off in respect of brought forward to carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act;
- f. the manner of calculating the amount payable under this Act;
- g. any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made,

before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

3. Circular

Circular No. 7/2020

F. No. IT(A)11I2020-TPL

Government of India

Department of Revenue

Central Board of Direct Taxes

Dated: 4th March 2020

Snb.: Clarifications on provisions of the Direct Tax Vivad se Vishwas Bill, 2020 - reg.

During the Union Budget. 2020 presentation, the 'Vivad se Vishwas' Scheme was announced to provide for dispute resolution in respect of pending income tax litigation. Pursuant to Budget announcement, the Direct Tax Vivad se

Vishwas Bill, 2020 (*Vivad se Vishwas*) was introduced in the Lok Sabha on 5th Feb, 2020. The objective of *Vivad se Vishwas* is to *inter alia* reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to *Vivad se Vishwas* have been proposed. These amendments seek to widen the scope of *Vivad se Vishwas* and reduce the compliance burden on taxpayers.

2. After introduction of *Vivad se Vishwas* in Lok Sabha, several queries have been received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government has considered these queries and decided to clarify the same in form of answers to frequently asked questions (FAQs). These clarifications are, however,

subject to approval and passing of *Vivad se Vishwas* by the Parliament and receiving assent of the Hon'ble President of India.

"QUESTIONS ON SCOPE/ ELIGIBILITY (Q. No.1 - 24)"

1. Which appeals are covered under the *Vivad se Vishwas*?

Appeals pending before the appellate forum [Commissioner (Appeals), Income Tax Appellate Tribunal (ITAT), High Court or Supreme Court], and writ petitions pending before High Court (HC) or Supreme Court (SC) or special leave petitions (SLPs) pending before SC as on the 31st day of January, 2020 (specified date) are covered. Cases where the order has been passed but the time limit for filing appeal under the Income-tax Act, 1961 (the Act) against the order has not expired as on the specified date are also covered. Similarly, cases where objections filed by the assessee against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given the directions but the

Assessing Officer (AO) has not yet passed the final order on or before the specified date are also covered. Cases where revision application under section 264 of the Act is pending before the Principal Commissioner or Commissioner are covered as well. Further, where a declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation as referred to in Section 4 of the Bill is also covered.

2. *If there is no appeal pending but the case is pending in arbitration, will the taxpayer be eligible to apply under Vivad se Vishwas? If yes what will be the disputed tax?*

An assessee whose case is pending in arbitration is eligible to apply for settlement under *Vivad se Vishwas* even if no appeal is pending. In such case assessee should fill the relevant details applicable in his case in the declaration form. The disputed tax in this case would be the tax (including

surcharge and cess) on the disputed income with reference to which the arbitration has been filed.

3. *Whether Vivad se Vishwas can be availed for proceedings pending before Authority of Advance Ruling (AAR)? If a writ is pending against order passed by AAR in a HC will that case be covered and how disputed tax to be calculated?*

Vivad se Vishwas is not available for disputes pending before AAR. However, if the order passed by AAR has determined the total income of an assessment year and writ against such order is pending in HC, the appellant would be eligible to apply for the *Vivad se Vishwas*. The disputed tax in that case shall be calculated as per the order of the AAR and accordingly, wherever required, consequential order shall be passed by the AO. However, if the order of AAR has not determined the total income, it would not be possible to calculate disputed tax and hence such cases would not be covered. To illustrate, if AAR has given a ruling that there

exists Permanent Establishment (PE) in India but the AO has not yet determined the amount to be attributed to such PE, such cases cannot be covered since total income has not yet been determined.

4. *An appeal has been filed against the interest levied on assessed tax; however, there is no dispute against the amount of assessed tax. Can the benefit of the Vivad se Vishwas be availed?*

Declarations covering disputed interest (where there is no dispute on tax corresponding to such interest) are eligible under *Vivad se Vishwas*. It may be clarified that if there is a dispute on tax amount, and a declaration is filed for the disputed tax, the full amount of interest levied or leviable related to the disputed tax shall be waived.

5. *What if the disputed demand including interest has been paid by the appellant while being in appeal?*

Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under Vivad se Vishwas, the appellant will be entitled to refund without interest under section 244A of the Act.

6. *Can the benefit of the Vivad se Vishwas be availed, if a search and seizure action by the Income-tax Department has been initiated against a taxpayer?*

Case where the tax arrears relate to an assessment made under section 143(3) or section 144 or section 153A or section 153C of the Act on the basis of search initiated under section 132 or section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year.

Thus, if there are 7 assessments of an assessee relating to search & seizure, out of which in 4 assessments, disputed tax is five crore rupees or less in each year and in

remaining 3 assessments, disputed tax is more than five crore rupees in each year, declaration can be filed for 4 assessments where disputed tax is five crore rupees or less in each year.

7. *If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the Vivad se Vishwas with respect to such additions?*

If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail Vivad se Vis/mas.

However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case

disputed tax shall be the tax (including surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner(Appeals).

What if the disputed demand including interest has been paid by the appellant while being in appeal

- 8. *Imagine a case where an appellant desires to settle concealment penalty appeal pending before CIT(A), while continuing to litigate quantum appeal that has travelled to higher appellate forum Considering these are two independent and different appeals, whether appellant can settle one to exclusion of others? If yes, whether settlement of***

penalty appeal will have any impact on quantum appeal?

If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form giving details of both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.

9. Is there any necessity that to qualify under the Vivad se Vishwas, the appellant should have tax demand in arrears as on the date of filing declaration?

Vivad se Vishwas can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are outstanding.

10. Whether 234E and 234F appeals are covered?

If appeal has been filed against imposition of fees under sections 234E or 234F of the Act, the appellant would be eligible to file declaration for disputed fee and amount payable under Vivad se Vishwas shall be 25% or 30% of the disputed fee, as the case may be.

If the fee imposed under section 234E or 234F pertains to a year in which there is disputed tax, the settlement of disputed tax will not settle the disputed fee. If assessee wants to settle disputed fee, he will need to settle it separately by paying 25% or 30% of the disputed fee, as the case may be.

11. In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as,

tax arrears relating 10 assessment made in respect of undisclosed foreign income):

(i) Whether assessee is eligible to the Vivad se Vishwas itself?

(ii) If eligible, whether quantification of disputed tax can exclude/ignore non-qualifying tax arrears?

If the tax arrears include tax on issues that are excluded from the Vivad se Vishwas, such cases are not eligible to file declaration under Vivad se Vishwas. There is no provision under Vivad se Vishwas to settle part of a pending dispute in relation to an appeal or writ or SLP for an assessment year. For one pending appeal, all the issues are required to be settled and if anyone of the issues makes the declaration invalid, no declaration can be filed.

12. If a writ has been .filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice, will such case be eligible to .file declaration under Vivad se Vishwas?

The assessee would not be eligible for Vivad se Vishwas as there is no determination of income against the said notice.

13. With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31 Jan 2020? Will such cases be covered under Vivad se Vishwas?

No, such cases are not covered. Waiver applications are not appeal within the meaning of Vivad se Vishwas.

14. Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?

Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.

15. Will delay in deposit of TDS/TCS be also covered under Vivad se Vishwas?

The disputed tax includes tax related to tax deducted at source (TDS) and tax collection at source (TCS) which are disputed and pending in appeal. However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under Vivad se Vishwas.

16. Are cases pending before DRP covered? What if the assessee has not filed objections with DRP and the AO has not yet passed the final order?

Yes, a person who has filed his objections before the DRP under section 144C of the Act and the DRP has not issued any direction on or before the specified date as well as a person in whose case the DRP has issued directions but the AO has not passed the final assessment order on or before the specified date, is eligible under Vivad se Vishwas.

It is further clarified that there could be a situation where the AO has passed a draft assessment order before the specified date. Assessee decides not to file objection with the DRP and is waiting for final order to be passed by the AO against which he can file appeal with Commissioner(Appeals). In this situation even if the final assessment order is not passed on or before the specified

date, the assessee would be considered as the appellant and would be eligible to settle his dispute under Vivad se Vishwas. Disputed tax in such case would be computed based on the draft order. In the declaration form, the appellant in this situation should indicate that time to file objection with DRP has not expired.

17. If CIT(Appeals) has given an enhancement notice, can the appellant avail the Vivad se Vishwas after including proposed enhanced income in the total assessed income?

The amendment proposed in the Vivad se Vishwas allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31st January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.

18. Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?

No. Only disputes relating to income-tax are covered.

19. The assessment order under section 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under Vivad se Vishwas?

The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in

this case would be the aggregate amount of disputed tax in both appeals.

20. In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT (Appeals) on 5th January 2020. Time to file appeal in ITAT against the order of Commissioner(Appeals) is still available but the appeal has not yet been filed. Will such case be eligible to avail the benefit?

Yes, the appellant in this case would also be eligible to avail the benefit of Vivad se Vishwas. In this case, the terms of availing Vivad se Vishwas in case of disputed penalty/interest/fee are similar to terms in case of disputed tax. Thus, if the time to file appeal has not expired as on specified date, the appellant is eligible to avail benefit of Vivad se Vishwas. In this case the appellant should indicate

in the declaration form that time limit to file appeal in ITA T has not expired.

21. In a case ITAT has quashed the assessment order based on lack Of jurisdiction by the AO. The department has filed an appeal in HC which is pending. Is the assessee eligible to settle this dispute under Vivad se Vishwas and if yes how disputed tax be calculated as there is no assessment order?

The assessee in this case is eligible to settle the department appeal in HC. The amount payable shall be calculated at half rate of 100%,110%, 125% or 135%, as the case may be, on the disputed tax that would be restored if the department was to win the appeal in HC.

22. In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas?

No. However, where only notice for initiation of prosecution has been issued with reference to tax arrears, the taxpayer has a choice to compound the offence and opt for Vivad se Vishwas.

23. If the due date of filing appeal is after 31.1.2020 the appeal has not been filed, will such case be eligible for Vivad se Vishwas?

Yes

24. If appeal is .filed before High Court and is pending for admission as on 31.1.2020, whether the case is eligible for Vivad se Vishwas?

Yes

"QUESTIONS RELATED TO CALCULATION (Q. No. 25-40)"

25. In a case appeal or arbitration is pending on the specified date, but a rectification is also pending with the AO which if accepted will reduce the total assessed income. Will the calculation of disputed tax be calculated on rectified total assessed income?

The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.

26. Refer to question number 5. How will disputed tax be calculated in a case where disputed demand including

interest has been paid by the assessee while being in appeal?

Please refer to answer to question no. 5. To illustrate, consider a non-search case where an assessee is In appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs. 30,000 and interest under section 234B of Rs.1,000. Assessee has paid this amount of Rs. 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs. 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs. 10,000 and interest on such disputed tax of Rs.6000. Penalty has been initiated separately. Assessee has paid the demand of Rs. 14,000 during pendency of appeal; however interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs 10,000 (at 100%) is to be paid on or

before 31" March 2020. Since he has already paid Rs. 14,000, he would be entitled to refund of Rs. 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.

27. Refer to question no 7. How will disputed tax be computed in a case where assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO?

Please refer to answer to question no. 7. To illustrate, return of income was filed by the Assessee. The tax on returned income was Rs 10,000 and interest was Rs 1,000. The amount of Rs 11,000 was paid before filing the return. The AO made two additions of Rs 20,000/- and Rs 30,000/- . The tax (including surcharge and cess) on this comes to Rs 6,240/- and Rs 9,360/- and interest comes to Rs.2,500 and Rs.3,500 respectively. Commissioner(Appeals) has

confirmed the two additions. ITAT confirmed the first addition (Rs 20,000/-) and set aside the second addition (Rs 30,000/-) to the file of AO for verification with a specific direction. Assessee appeals against the order of IT AT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The assessee can avail the Vivad se Vishwas if declaration covers both the additions. In this case the disputed tax would be the sum of disputed tax on both the additions i.e. Rs. 6240/-plus Rs. 9,360/-.

In such cases while filling the declaration from, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner(Appeals) .

28. What amount of tax is required to be paid, if an assessee wants to avail the benefit of the Vivad se Vishwas?

Under the Vivad se Vishwas, declarant is required to make following payment for settling disputes:

29. appeals / writ / SLP / DRP objections / revision application under section 264 / arbitration filed by the assessee -

(a) In case payment is made till 31st March, 2020-

- (i) 100% of the disputed tax (125% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty levied or leviable), or

- (ii) 25% of the disputed penalty, interest or fee where dispute relates to disputed penalty, interest or fee only.

(b) In case payment is made after 31st March, 2020 -

(i) 110% of the disputed tax (135% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty), or

(ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

However, if in an appeal before Commissioner(Appeals) or in objections pending before DRP, there is an issue on which the appellant has got favourable decision from ITAT (not reversed by HC or SC) or from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

Similarly, if in an appeal before IT AT, there is an issue on which the appellant has got favourable decision from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

B. In appeals/writ/SLP filed by the Department -

(a) In case payment is made till 31 "March, 2020-

(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax or

(ii) 12.5% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

(b) In case payment is made after 31" March, 2020 -

(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or

(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

29. Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under Vivad se Vishwas?

The amount payable by the declarant under Vivad se Vishwas shall be determined by the DA under Section 5. Credit for taxes paid against the disputed tax before filing declaration shall be available to the declarant. Please refer to example at question no. 26 above. If in that example against disputed tax of Rs. 10,000 an amount of Rs. 8,000/- has already been paid, the appellant would be required to pay only the remaining Rs. 2,000/- by 31st March 2020.

30. Where assessee settles TDS appeal or withdraws arbitration (against order U/S 201) as deductor of TDS, will credit of such tax be allowed to deductee?

In such cases, the deductee shall be allowed to claim credit of taxes in respect of which the deductor has availed of dispute resolution under Vivad se Vishwas. However, the credit will be

allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply.

31. Where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia)?

In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) in the year in which the tax was required to be deducted.

To illustrate, let us assume that there are two appeals pending; one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143 (3) of the Act for disallowance under section 40(a)(i)/(ia) of the Act. The disallowance under section 40 is with respect to same issue on which order under section 201 has been issued. If the dispute is settled with respect to order

under section 20 I, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i)/(ia) of the Act, in accordance with the provision of section 40(a)(i)/(ia) of the Act.

In case, in the order under section 143(3) there are other issues as well, and the appellant wants to settle the dispute with respect to order under section 143(3) as well, then the disallowance under section 40(a)(i)/(ia) of the Act relating to the issue on which he has already settled liability under section 201 would be ignored for calculating disputed tax.

If the assessee has challenged the order under section 20I on merits and has won in the Supreme Court or the order of any appellate authority below Supreme Court on this issue in favour of the assessee has not been challenged by the Department on merit (not because appeal was not filed on account of monetary limit for filing of appeal as per applicable CEDT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 20 I and is part of disputed income as per order

under section 143(3) in his case, such disallowance would be ignored for calculating disputed tax, in accordance with the proviso to section 40(a)(i)/(ia) of the Act.

It is clarified that if the assessee has made payment against the addition representing section 40(a)(i)/(ia) disallowance, the assessee shall not be entitled to interest under section 244A of the Act on amount refundable, if any, under Vivad se Vishwas,

It is further clarified that if the assessee wish to settle disallowance under section 40(a)(i)/(ia) in a search case on the basis of settlement of the dispute under section 201, he shall be required to pay higher amount as applicable for search cases for settling dispute in respect of that TDS default under section 201.

32. When assessee settles his own appeal or arbitration under Vivad se Vishwas, will consequential relief be

available to the deductor in default from liability determined under TDS order U/S 201?

When an assessee (being a person receiving an income) settles his own appeal or arbitration under Vivad se Vishwas and such appeal or arbitration is with reference to assessment of an income which was not subjected to TDS by the payer of such income (deductor in default) and an order under section 201 of the Act has been passed against such deductor in default, then such deductor in default would not be required to pay the corresponding TDS amount. However, he would be required to pay the interest under sub-section (IA) of section 201 of the Act. If such levy of interest under sub-section (IA) of section 201 qualifies for Vivad se Vishwas, the deductor in default can settle this dispute at 25% or 30% of the disputed interest, as the case may be, by filing up the relevant schedule of disputed interest.

33. Where DRP order passed on or after 1st July, 2012 and before 1st June, 2016 have given relief to assessee and Department has filed appeal, how assessed tax to be calculated?

If department appeal is required to be settled, then against that appeal the appellant is required to pay only 50% of the amount that is otherwise payable if it was his appeal.

34. Appeals against assessment order and against penalty order are filed separately on same issue. Hence there are separate appeals for both. In such a case how disputed tax to be calculated?

Please see question no. 8. Further, it is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order (with penalty appeal automatically covered), he is required to give details of both

appeals in one declaration form for that year. However, in the annexure he is required to fill only the schedule relating to disputed tax.

35.If there is substantive addition as well as protective addition in The case of same assessee for different assessment year, how will that be covered? Similarly if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas?

If the substantive addition is eligible to be covered under Vivad se Vishwas, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee.

36. In a case ITAT has passed order giving relief on two issues and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department will file appeal or not?

The Vivad se Vishwas allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. Vivad se Vishwas also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.

37. There is no provision for 50% concession in appeal pending in HC on an issue where the assessee has got relief on that issue from the SC?

If the appellant has got decision in his favour from SC on an issue, there is no dispute now with regard to that issue and he need not settle that issue. If that issue is part of the multiple issues, the disputed tax may be calculated on other issues considering nil tax on this issue.

38. Addition was made u/s 143(3) on two issues whereas appeal filed only for one addition. Whether interest and penalty be waived for both additions.

Under Vivad se Vishwas, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest and penalty shall be payable,

39.DRP has issued directions cOI1;firming all the proposed additions in the draft order and the A 0 has passed the order accordingly. The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year. The time limit to file appeal in ITAT i.~ still available. The taxpayer is eligible for Vivad se Vishwas treating the situation as taxpayer's deemed appeal in ITAT. In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?

In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by He or SC) the disputed tax shall be computed at half of nominal rate of 100%, 110%, 125% or 135%, as the case maybe.

40.Where there are two appeals filed for an assessment year-- one by the appellant and one by the tax

department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed

The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

"QUESTIONS RELATED TO PROCEDURE (Q. No. 41-50)"`

41.How much time shall be available for paying the taxes after filing a declaration under the Vivad se Vishwas?

As per Section 5 of Vivad se Vishwas, the DA shall determine the amount payable by the declarant within fifteen days from the date of receipt of the declaration and grant a certificate to the declarant containing particulars of the tax-arrear and the amount payable after such determination. The declarant shall pay the amount so determined within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form. Thereafter, the DA shall pass an order stating that the declarant has paid the amount. It may be clarified that 15 days is outer limit. The DAs shall be instructed to grant a certificate at an early date enabling the appellant to pay the amount on or before 31 st March, 2020 so that he can take benefit of reduced payment to settle the dispute.

42.If taxes are paid after availing the benefits of the Vivad se Vishwas and later the taxpayer decides to take refund of these taxes paid, would it be possible?

No. Any amount paid in pursuance of a declaration made under the Vivad se Vishwas shall not be refundable under any circumstances.

43. Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the Vivad se Vishwas by DA at the stage of determination of amount payable under section 5(1) or, amount determined by]A is at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payable, then whether the appeals are automatically reinstated or a separate application needs to be filed for reinstating the appeal before the appellate authorities.

Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA under Section 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellant forum and submit proof of withdrawal with intimation of payment to the DA as per the same clause. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed.

Similarly in case of arbitration, conciliation or mediation, proof of withdrawal of arbitration/conciliation/mediation is to be enclosed along with intimation of payment to the DA.

44. Section 5(2) requires declarant to pay amount determined by DA within 15 days of receipt of certificate from DA. Clarification is required on whether declarant is to also intimate DA about fact of having made

payment pursuant to declaration within the period of 15 days?

As per Section5(2), the declarant shall pay the amount determined under Section5(1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form and thereupon the DA shall pass an order stating that the declarant has paid the amount.

45. Will J)A also pass order granting expressly, immunity from levy of interest and penalty by the A () as well as immunity from prosecution?

As per Section6, subject to the provisions of Section5, the DA shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrears. This shall be reiterated in the order under section 5(2) passed by DA.

46. Whether DA can amend his order to rectify any patent errors?

Yes, the DA shall be able to amend his order under Section 5 to rectify any apparent errors.

47. Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before [TAT, High Court or Supreme Court?]

No. As per Section 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

48. There is no provision for withdrawal of appeal wrtt/SLP by the department on settlement of dispute

On intimation of payment to the DA by the appellant pertaining to department appeal writ/SLP, the department shall withdraw such appeal writ/SLP.

49. Once declaration is filed under Vivad se Vishwas, and for financial difficulties, payment is not made accordingly, will the declaration be null and void?

Yes it would be void.

50. Where the demand in case of an assessee has been reduced partly or fully by giving appeal effect to the order of appellate forum, how would the amount payable under Vivad se Vishwas be adjusted?

In such cases, after getting the proof of payment of the amount payable under Vivad se Vishwas, the AO shall pass order under the relevant provisions of Vivad se Vishwas to

create demand in case of assessee against which the amount payable shall be adjusted.

"QUESTIONS RELATED TO CONSEQUENCES (Q. No. 51-55)"

51. Will/here be immunity from prosecution?

Yes, Section 6 provides for immunity from prosecution to a declarant in relation to a tax arrears for which declaration is filed under Vivad se Vishwas and in whose case an order is passed by the DA that the amount payable under Vivad se Vishwas has been paid by the declarant.

52. Will the result of this Vivad se Vishwas be applied to same issues pending before AO?

No, only the issues covered in the declaration are settled in the dispute without any prejudice to same issues pending in other cases. It has been clarified that making a declaration under this Act shall not amount to conceding the tax position and it

shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

53.If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?

As per the amendment proposed in Vivad se Vishwas, in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and carry forward the MAT credit or loss or depreciation or (ii) to carry forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases.

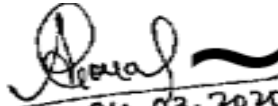
54.If the taxpayer avails Vivad se Vishwas for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?

Yes, secondary adjustment under section 92CE will be applicable. However, it may be noted that the provision of secondary adjustment as contained in section 92CE of the Act is not applicable for primary adjustment made in respect of an assessment year commencing on or before the 1st day of April 2016. That means, if there is any primary adjustment for assessment year 2016-17 or earlier assessment year, it is not subjected to secondary adjustment under section 92CE of the Act.

55.The appellant has settled the dispute under Vivad se Vishwas in an assessment year. Whether it is open for Revenue to take a stand that the additions have been

accepted by the appellant and hence he cannot dispute it in future assessment years?

Please refer answer to question no 52. It has been clarified in Explanation to Section 5 that making a declaration under Vivad se Vishwas shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.


04.03.2020
(Ankur Goyal)

Under Secretary to the Govt of India

4. Statement Of Objects And Reasons of VSV Bill

Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy

and resources saved by opting for such dispute resolution towards their business activities.

3. It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:—

(a) The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

(c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent. of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.

5. Key cases from IDS

It may be recalled that the Finance Act, 2016 (“the Finance Act”) had introduced the much-celebrated Income Declaration Scheme (‘IDS’) scheme to encourage voluntary compliance to encourage tax evaders to file their income tax returns.

Table given below captures certain key legal pronouncements under IDS scheme, which could be of relevance:

No.	Particulars	Citation	Legal pronouncement
1.	Computation of liability under the scheme	Kumudam Publications Pvt. Ltd [W.P.(C) 11216/2016]	<i>In the light of the above findings, the petition has to succeed. Accordingly a direction is issued to the respondents to process the petitioner's application under the IDS, 2016, and give adjustment or credit to the amounts paid as advance tax and TDS to its account,</i>

			<p><i>under the Income Tax Act, and accept the balance amounts (after also giving credit to the amounts paid during the interregnum, pursuant to the interim order of this court dated 29th November, 2016). The respondents shall ensure that the petitioner's payments and declarations are processed in accordance with the IDS, 2016. The writ petition is allowed in these terms; there shall be no order as to costs.</i></p>
2.	Applicability of IDS	M/S Suman vs The Principal Commissioner Of ..[<p><i>Having heard the learned counsels for the parties, this Court is of the opinion that there is no justification or reason for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution</i></p>

		No.5740 of 2018 (T-IT)]	<p><i>for interference in the matter of relaxation or extension of time limit as prayed for and therefore the Respondent Authority was justified in rejecting the said request of the petitioner, in view of the aforesaid Supreme Court decision.</i></p> <p><i>8. However, in view of para.14 of the aforesaid judgment of the Hon'ble Supreme Court, the petitioner assessee will be free to approach the Respondent Authorities in accordance with law and the Respondent Authorities are expected to pass appropriate orders in the matter with regard to refund/adjustment of amount already deposited by the petitioner.</i></p>
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6. Relevant Extract - Budget Speech

126. No Dispute but Trust Scheme – ‘Vivad Se Vishwas’

Scheme

- *Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.*
- *Under the proposed **‘Vivad Se Vishwas’** scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain open till 30th June, 2020.*

- *Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.*
- *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process.*

7. Relevant Sections – Income Tax Act

6.1 Section - 90A of Income-tax Act

90A. (1) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in any specified territory outside India; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that specified territory outside India to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that specified territory outside India, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that specified territory outside India, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that specified territory outside India.

(2) Where a specified association in India has entered into an agreement with a specified association of any specified territory outside India under sub-section (1) and such agreement has been notified under that sub-section, for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any specified territory outside India, is obtained by him from the Government of that specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a company incorporated in the specified territory outside India at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such company.

Explanation 2.—For the purposes of this section, the expressions—

(a) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be notified as such by the Central Government for the purposes of this section;

(b) "specified territory" means any area outside India which may be notified as such by the Central Government for the purposes of this section.

Explanation 3.—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

Explanation 4.—For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall

have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

6.2 Section - 153A of Income-tax Act

153A.

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in Section(b), in the prescribed form and verified in the prescribed manner and setting forth such other

particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where

any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in Section(a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year

which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

6.3 Section- 153C of Income-tax Act

153C.

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total

income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made

and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

6.4 Section – 251 of Income-tax Act

Powers of the Commissioner (Appeals).

251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the

course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

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Yesterday I was clever, so I wanted to change the world.

Today I am wise, so I am changing myself.

Rumi