THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

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EARLIER SCHEMES OF GOVERNMENT OF INDIA

Demonetisation

99.3 percent of demonitised bank notes or Rs. 15.3 Lakh Crores of the Rs.15.41 lakh Crores that had been demonitised were deposited with the banking system. The bank notes that were not deposited were only worth Rs 10,720 cr.

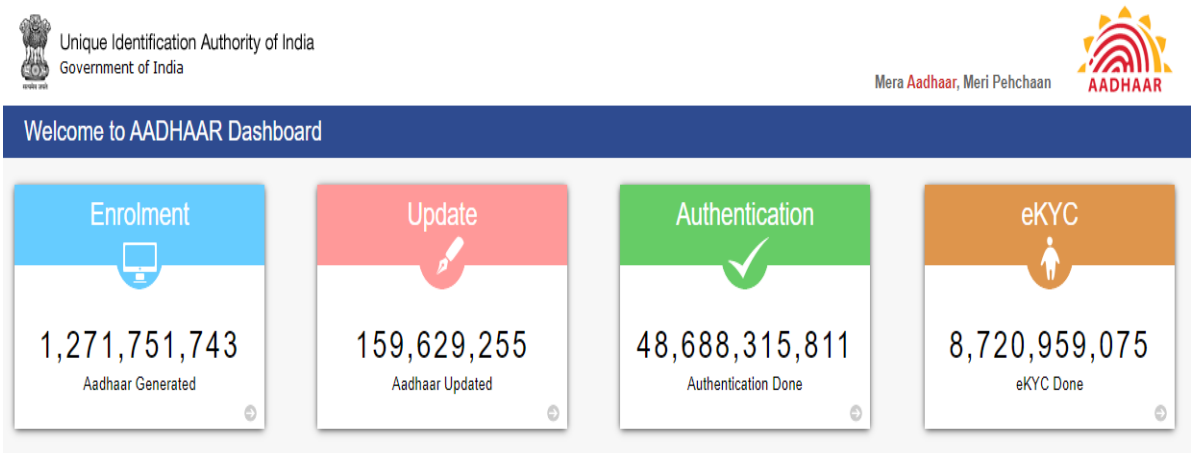
Pradhan Mantri Jan Dhan Yojana

41.36 Crore beneficiaries banked so far

₹130,909.44 Crore Balance in beneficiary accounts

and Counting...

Total Aadhaar enrolment as on date



IDS 2016

Original figures

No of Declarants : 64,275/-
Amount declared (In Crores) : 65,250/-

Revised figures

No of Declarants : 67,382/-
Amount declared (In Crores) : 71,726/-

Comparison between VDIS 97 and UFIA IOTA 2015

Subject	The Voluntary Disclosure of Income Scheme (VDIS) 1997	Undisclosed Foreign Income and Assets and Imposition of Tax Act, 2015
Number of Declarants	4,75,133	638
Total Amount Declared in Rs Crore	33,339	4,147
Amount to the Government as Tax & Penalty (In Rs Crore)	9,584	2,488
Compliance Period	6 months	3 months
Tax Rate	35% for Companies & 30% for Others	30% Tax + 30% Penalty (Total 60%)
Immunity	From prosecution under the Income-tax Act, Wealth-tax Act, Foreign Exchange Regulation Act and the Companies Act	From Prosecution under the Income-Tax Act, Wealth Tax Act, Companies Act and Customs Act.
Applicable to	Cash, securities or assets in India & Abroad	Undisclosed assets located outside India

Direct Tax Dispute Resolution Scheme, 2016

As announced by Late Sri Arun Jaitley pending appeal as at 29.02.2016.

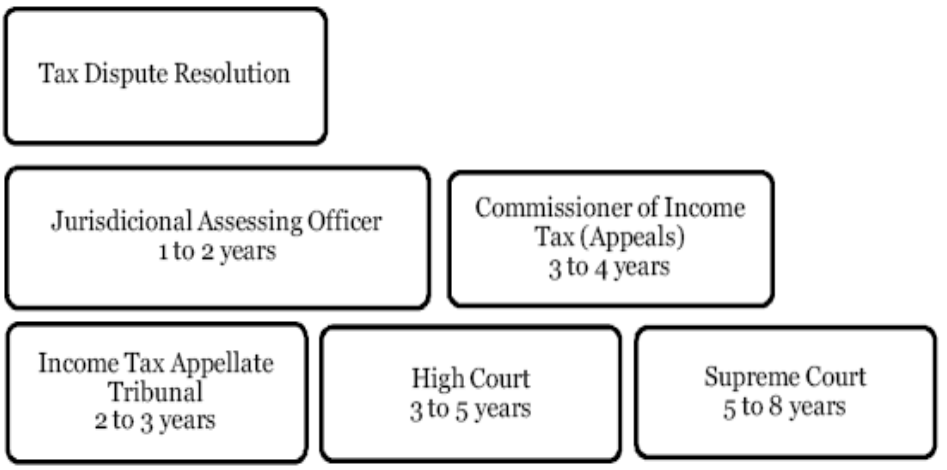
Sl No	Tax effect	Pending with CIT(A)
1	Above 10 Lakhs	73,402
2	Less than 10 Lakhs	1,85,858
	Total	**2,59,260**

Total collections around Rs 1,200 crore.

Sabka Vishwas scheme

Applications received	Target	Tax Collected	Target
189000	185000	38000 Crores	35000 Crores

FICCI's Dispute Resolution in Tax Matters – A Discussion Paper March 2013



From the above Table, it is clear that a dispute arisen at the Assessing Officer level may take any time between 10 to 20 years approximately before it reaches finality at the Supreme Court.

Circular No. 17/2019
New Delhi. 8th August 2019

Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018.

Sl No	Appeals / SLPs in Income-tax matters	Monetary Limit (Rs.)
1	Before Appellate Tribunal	50,00,000
2	Before High Court	1,00,00,000
3	Before Supreme Court	2,00,00,000

Direct tax dispute galore!!

As at 30 November 2019, 4.83 lakh direct tax disputes were pending at various courts and appellate forums like CIT(A), ITAT, High Court and Supreme Court involving a whooping Rs. 9.32 lakh crores (US$ 130 billion) in tax arrears.

Actual direct tax collection in FY 2018-19 was 11.37 lakhs Crores. Disputed tax arrears constitute nearly one Year direct tax collection.

Vivad Se Vishwas Scheme

Tax garnered till date	No of declarations	Disputed demand (till 17/11/2020)
72,480 crores	45,855	31,734 crore

Central public sector companies are also settling their disputes totalling □1 lakh crore under the scheme.

FM 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 SabkaVishwas 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.

STATEMENT OF OBJECTS AND REASONS

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.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Letter No. IT(A)/1/2020-TPL, dated 1.2.2020 from Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs to the Secretary General, Lok Sabha]

The President, having been informed of the subject matter of the Direct Tax Vivad se Vishwas Bill, 2020, recommends under clause (1) and (3) of article 117, read with clause (1) of article 274 of the Constitution of India, the introduction of the Direct Tax Vivad se Vishwas Bill, 2020, in Lok Sabha and also recommends to Lok Sabha the consideration of the Bill.

AS PASSED BY LOK SABHA
ON 4.3.2020

Bill No. 29-C of 2020

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 :-

Short Title

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

Definitions

2. (*1*) In this Act, unless the context otherwise requires –

(a) ~~"appellant" means the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on the specified date;~~

Amendment Bill (Page 1, for lines 4-6, substitute)

'(*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, means –~~

~~(i) tax determined under the Income-tax Act, 1961 in accordance with the following formula -~~

~~(A – B) + (C – D)where,~~

~~A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961(herein after called general provisions);~~

~~B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;~~

~~C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;~~

~~D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant:~~

~~Provided that where the amount of income in respect of which appeal has been filed by the appellant is considered under the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:~~

~~Provided further that in a case where the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 are not applicable, the item (C – D) in the formula shall be ignored:~~

~~Provided also that in a case where the amount of income, in respect of which appeal has been filed by the appellant, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the formula specified in sub-clause (*i*) with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income;~~

Amendment Bill (Page 2, for lines 19-50, substitute)

(*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 clause 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:

First Proviso to Section of disputed tax u/s 2(j)

- 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:

Second Proviso to Section of disputed tax u/s 2(j)

- 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 115JD of the Income-tax Act or
- any loss or depreciation computed there under,
- 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.

Amendment Bill (Page 3,*omit lines 1-3)*

~~(ii) tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.~~

(*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.

Amount payable by Declarant

3. 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 :-

Sl No	Nature of tax arrear	Amount payable under this Act on or before the 31st day of March, 2020	Amount payable under this Act on or after the 1st day of April, 2020 but on or before the last date
(a)	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	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 percent. 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 under this Act.

Amendment Bill (Page 3, after line 41, insert)

(aa)	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: Provied that where the twenty-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 under this Act.	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.
(b)	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 :

Amendment Bill (Page 3, after line 45, insert)

First Proviso to Sec 3

- 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:

Second Proviso to Sec 3

- 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:

Third Proviso to Section 3

- 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.

Filing of declaration and particulars to be furnished.

4. (*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 and furnish proof of such withdrawal alongwith the declaration referred to in sub-section (1).

(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 prior to making the declaration and furnish proof thereof alongwith the declaration referred to in sub-section (1).

Amendment Bill (Page 4, for lines 8-18, substitute)

(*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.

Amendment Bill (Page 4, for lines 8-18, substitute)

(*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 alongwith 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.

Time and Manner of Payment

5. (*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.

<u>Amendment Bill (Page 5, *after line 5, insert)*</u>

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.

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

6. 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.

No refund of amount paid.

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

Amendment Bill (Page 5, *after line 10, insert)*

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.

No benefit, concession or immunity to declarant.

8. 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.

Act not to apply in certain cases

9. 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 section 153A or section 153C of the Income-tax Act, if it relates to any tax arrear;~~

Amendment Bill (Page 5, for lines 17-19, substitute)

(*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;

Amendment Bill (Page 5, omit lines 27-29)

~~(v) relating to an appeal before the Commissioner (Appeals) in respect of which notice of enhancement under section 251 of the Income-tax Act has been issued on or before the specified date;~~

(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 Indian Penal Code, 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 or for the purpose of enforcement of any civil liability 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;~~

Amendment Bill (Page 6, for lines 6-12, substitute)

(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;

(ca) 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;

(d) 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.

Power of Board to issue directions, etc.

10.(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.

Power to remove difficulties

11.(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.

Power to make rules

12.(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;

Amendment Bill (Page 6, after line 42, insert)

"(da) determination of disputed tax including the manner of set-off in respect of brought forward or 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;

(db) the manner of calculating the amount payable under this Act.".

(e) 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.

Circular No.9 /2020

F. No. IT(A)/l /2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Dated: 22nd April, 2020

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

1. 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 (the Bill) was introduced in the Lok Sabha on 5th Feb, 2020. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to the Bill were proposed. These amendments sought to widen the scope of the bill and reduce the compliance burden on taxpayers.

2. After introduction of the bill in Lok Sabha, several queries were received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government had considered these queries and had decided to clarify the same in form of answers to frequently asked questions (FAQs) vide circular no 7 of 2020 dated 4th March 2020. These clarifications were, however, subject to approval and passing of the bill by the Parliament and receiving assent of the Hon'ble President of India.

3. The Bill has since been passed by the Parliament and has also received the assent of the Hon'ble President of India and has now been enacted as The Direct fax Vivad Se Vishwas Act, 2020 (Vivad se Vishwas). The objective of Vivad se Vishwas is to interalia 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.

4. 55 questions contained in circular no 7 of 2020 are reissued under this circular with following modifications

(i) Vivad se Vishwas referred to Direct Tax Vivad se Vishwas Bill, 2020 in circular no.7. However, in this circular it refers to The Direct 'fax Vivad Se Vishwas Act, 2020;

(ii) Since clauses of the Bill have now become sections in the Vivad Se Vishwas, the reference to "clause" in circular no 7 has been replaced with "section";

(iii) Reference to declaration form in circular no 7 has been replaced with referencing of relevant form, since rules and forms have now been notified; and

(iv) Answer to question no 22 has been modified to reflect the correct intent of the law. It has now been clarified that where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before tiling the declaration.

5. Section 10 and 11 of the Vivad se Vishwas empowers the Board or the Central Government to issue directions or orders in public interest or to remove difficulties. This circular is such direction/ order issued under section 10 and section 11 of the Vivad se Vishwas. Thus answers to some of the questions in this circular extend the application of Vivad se Vishwas in public interest or to remove difficulties, under section 10 and section 11 of Vivad se Vishwas.

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

Question No.1. Which appeals are covered under the Vivad se Vishwas?

Answer : 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.

Question No. 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?

Answer : 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 **u** (including surcharge and cess) **on the disputed income with reference to which the arbitration has been filed.**

Question No. 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 he calculated ?

Answer : 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.

Question No. 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?

Answer : 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.**

Question No. 5. What if the disputed demand including interest has been paid by the appellant while being in appeal?

Answer : <u>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.</u>

Question No. 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?

Answer :

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.**

Question No. 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?

Answer : <u>If an appellate authority has set aside an order</u> (except where assessment is cancelled with a direction that assessment is to be framed de novo) **<u>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 Vishwas.</u>**

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 in Form No 1,** the declarant **can indicate in the appropriate schedule that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).**

Question No. 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?

Answer : **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 covering 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.**

Question No. 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?

Answer : <u>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.</u>

Question No. 10. Whether 234E and 234F appeals are covered?

Answer : <u>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.</u>

<u>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.</u>

Question No. 11. In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating to 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?

Answer : 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 any one of the issues makes the declaration invalid, no declaration can be filed.**

Question No. 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?

Answer : <u>The assessee would not be eligible for Vivad se Vishwas as there is no determination of income against the said notice.</u>

Question No. 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?

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

Question No. 14. Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?

Answer : 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.**

Question No. 15. Will delay in deposit of TDS/TCS be also covered under Vivad se Vishwas?

Answer : 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.**

Question No. 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?

Answer : 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 in Form No.1, the declarant in this situation should indicate in the appropriate schedule that time to file objection with DRP has not expired.**

Question No. 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?

Answer : <u>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.</u>

Question No.18. Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?

Answer : <u>No. Only disputes relating to income-tax are covered.</u>

Question No. 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?

Answer : 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 in Form No 1. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.**

Question No. 20. In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed of by CIT (Appeals) on 1st January 2020. Time to file appeal in ITAT against the order of Commissioner (Appeals) is still available hut the appeal has not yet been filed. Will such case he eligible to avail the benefit?

Answer : 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 declarant should indicate in the declaration Form No 1, in the appropriate schedule, that time limit to file appeal in ITAT has not expired.**

Question No. 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?

Answer : <u>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.</u>

Question No. 22. In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas? Further, where the prosecution has not been instituted but the notice has been issued, whether the assessee is eligible for Vivad se Vishwas?

Answer : <u>Where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before filing the declaration.</u>

Question No. 23. If the due date of filing appeal is after 31.1.2021 the appeal has not been filed, will such case be eligible for Vivad se Vishwas?

Answer : <u>Yes</u>

Question No. 24. If appeal is filed before High Court and is pending for admission as on 31.01.2020, whether the case is eligible for Vivad se Vishwas?

Answer : <u>Yes</u>

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

Question No. 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?

Answer : 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.**

Question No. 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?

Answer : 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 31st 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.**

Question No. 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?

Answer : 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 ITAT 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 in Form No 1,** the declarant can **indicate in the appropriate schedule that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).**

Question No. 28. What amount of tax is required to be paid, if an assessee wants to avail the benefit of the Vivad se Vishwas?

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

A. In 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 ITAT, 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 31st 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 31st 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 ease of dispute related to disputed penalty, interest or fee only.

Question No. 29. whether credit for earlier taxes paid against disputed tax will he available against the payment to he made under Vivad se Vishwas?

Answer: 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.

Question No. 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?

Answer : 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.**

Question No. 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)?

Answer : 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 201, 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 201 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 CBDT circular), then in a case **where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 201 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.

Question No.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?

Answer : 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 (1A) of section 201 of the Act. If such levy of interest under sub-section (1A) 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.**

Question No. 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?

Answer : <u>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.</u>

Question No. 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?

Answer : 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 indicate both appeals in one declaration form (Form No 1) for that year.**

Question No. 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?

Answer : <u>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 asscssee or in the case of another assessee.</u>

Question No. 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?

Answer : 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.**

Question No. 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?

Answer : <u>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.</u>

Question No. 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.

Answer : 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.**

Question No. 39. DRP has issued directions confirming all the proposed additions in the draft order and the AO 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 is 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%?

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

Question No. 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?

Answer : <u>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 declarant needs to specify in the declaration Form No.1, 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.</u>

“QUESTIONS RELATED TO PROCEDURE (Q.No. 41-50)”

Question No. 41. How much time shall be available for paying the taxes after filing a declaration under the Vivad se Vishwas?

Answer : 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 31st March, 2020 so that he can take benefit of reduced payment to settle the dispute.

Question No. 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?

Answer : <u>No. Any amount paid in pursuance of a declaration made under the Vivad se Vishwas shall not be refundable under any circumstances.</u>

Question No. 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 DA 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.

Answer : <u>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 section.</u> 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.

Question No. 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?

Answer: As per section 5(2), the declarant shall pay the amount determined under section 5(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.

Question No. 45. Will DA also pass order granting expressly, immunity from levy of interest and penalty by the AO as well as immunity from prosecution?

Answer: As per section 6, subject to the provisions of section 5, 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.

Question No. 46. Whether DA can amend his order to rectify any patent errors?

Answer : <u>Yes, the DA shall be able to amend his order under section 5 to rectify any apparent errors.</u>

Question No. 47. Where tax determined by DA is not acceptable can appeal he filed against the order of designated authority before ITAT, High Court or Supreme Court?

Answer : <u>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.</u>

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

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

Question No. 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?

Answer : <u>Yes it would he void.</u>

Question No. 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?

Answer: In such cases, after getting the proof of payment of the amount payable under Vivad se Vishwas, the AO shall pass order under section 154 of the Act read with 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)"

Question No. 51. Will there be immunity from prosecution?

Answer : <u>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.</u>

Question No. 52. Will the result of this Vivad se Vishwas be applied to same issues pending before AO?

Answer: 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.**

Question No. 53. If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to he carried forward?

Answer: 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 fax (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.

Question No. 54. If the taxpayer avails Vivad se Vishwas for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?

Answer : <u>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.</u>

Question No. 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?

Answer : 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.**

On issuance of this circular, circular no. 7 of 2020 dated 4th March 2020 is hereby withdrawn.

(Ankur Goyal)
Under Secretary to the Govt. of India

Circular No. 21 /2020

F. No. IT(A)/l/2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Dated: 4th December, 2020

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

With the objective to 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, the Direct Tax Vivad se Vishwas Act, 2020 (hereinafter referred to as 'Vivad se Vishwas') was enacted on 17th March, 2020.

The provisions of Vivad se Vishwas were amended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to provide certain relaxations in view of the COVID-19 pandemic and also to empower the Central Government to notify certain dates.

Towards this end, vide notification dated 27th October, 2020 the date for payment without additional amount under Vivad se Vishwas was extended from 31st December, 2020 to 31'st March, 2021. The last date for filing declaration under Vivad se Vishwas was also notified as 31st December, 2020.

Subsequently, the Central Board of Direct Taxes issued a circular no. 18/2020 dated 28th October, 2020 relaxing the time limit of 15 days prescribed in section 5(1) of Vivad se Vishwas for making payment of amount payable, as detennined in a certificate issued by the Designated Authority.

2. In order to facilitate the taxpayers, the Board had vide **circular no. 9/2020 dated 22nd April, 2020** issued clarifications in form of answers to 55 frequently asked questions (FAQs) on issues related to eligibility, computation of amount payable, procedure and consequences under Vivad se Vishwas.

   Several representations have been received thereafter seeking further relaxation and clarifications with respect to such issues. Some of these representations have already been addressed through the aforesaid notification dated 27th October, 2020 and circular dated 28th October, 2020.

3. Section 10 and 11 of the Vivad se Vishwas empowers the Board / Central Government to issue directions or orders in public interest or to remove difficulties.

This circular is being issued in continuation of circular dated 22nd April, 2020 (which covered Q. no, I – 55) under section 10 and 11 of the Vivad se Vishwas to provide answers to 34 more FAQs (Q. no. 56 – 89).

It may be noted that in the FAQs, Income Tax Act, 1961 has been referred to as the Act, Designated Authority (under Vivad se Vishwas) has been referred to as the DA, Assessing Officer has been referred to as the AO, Commissioner (Appeals) has been referred to as CIT(A), and the Income Tax Department has been referred to as the Department.

“ QUESTIONS ON SCOPE / ELIGIBILITY (Q. No, 56 - 75)”

Q.No.56 Appeal or arbitration is pending with appellate authority as on 31st Jan 2020 (or time for filing appeal has not expired as on 31st Jan 2020). However, subsequent to that date, and before filing of the declaration, the appeal has been disposed of by the appellate authority. Whether it is still eligible under Vivad se Vishwas? If yes, how the amount payable under Vivad se Vishwas was shall be computed?

Answer : <u>Yes. Amount payable under Vivad se Vishwas shall be computed with reference to the position of appeal or arbitration as on 31st January, 2020.</u>

Q. No.57. Whether Vivad se Vishwas can be availed in a case where the enforceability of an assessment order passed by the AO has been stayed by the High Court or Supreme Court?

Answer : <u>Yes, in such case assessee can file declaration under Vivad se Vishwas, whether or not the appeal has been filed against the assessment order. Writ Appeal pending in High Court and Supreme Court shall be required to be withdrawn by the taxpayer. Upon settlement of quantum appeal, interest and penalty, if any,will be waived.</u>

Q. No.58. Appeal or writ against order under section u/s 263 of the Act was pending on 31st Jan, 2020 (or time to file appeal has not expired on 31st Jan, 2020). Whether Vivad se Vishwas can be availed for settling such appeal?

Answer : **If order u/s 263 of the Act contains general directions and income is not quantifiable, appeal against such order is not eligible under Vivad se Vishwas**. However, **if order u/s 263 of the Act contains only specific directions and income is quantifiable** (and does not contain any general directions due to which income is not quantifiable), **appeal against such order is eligible under Vivad se Vishwas**. In such case, assessee is **required to settle all the issues in the order, which are subject matter of order u/s 263 of the Act as well as issues pending in appeal** (or issues in respect of which time to file appeal has not expired on 31st Jan 2020), if any, with reference to the said order.

Q. No. 59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?

Answer : <u>If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020.</u>

Q. No. 60 Whether cross objections filed and pending as on 31 January 2020 will also be covered by the scheme?

Answer : <u>Yes. However, the main appeal is also required to be settled along with cross objections.</u>

Memorandum of cross objection

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT.

The memorandum of cross objection is to be filed within a period of 30 days of receipt of notice.

The memorandum of cross objection is to be filed in Form No. 36A.

There is no fee for filing the memorandum of cross objection.

The ITAT may accept a memorandum of cross objection even after the period of 30 days if it is satisfied that there was sufficient cause for not submitting the same within the prescribed time.

Person who is competent to sign Form 36 (i.e., form of appeal) has to sign and verify the memorandum of cross objections.

The ITAT will dispose of the memorandum of cross objections like an appeal in Form 36.

Q. No. 61 Whether Miscellaneous Application (MA) pending as on 31 January 2020 will also be covered by the scheme?

Answer : If the MA pending on 31st Jan 2020 is in respect of an appeal which was dismissed **in limine** (before 31st Jan 2020), such MA is eligible. Disputed tax will be computed with reference to the appeal which was dismissed.

Appeal which was dismissed ***in limine Meaning :***

It is a latin word. At limine literally means "at the outset" or at the threshold.

Preliminary, in law referring to a motion that is made to the judge before or during trial, often about the admissibility of the appeal / evidence etc.

If an appeal is dismissed in limine, it means that even prima facie, the appeal is devoid of any merit to warrant its admission.

If the appeal is dismissed in limine, you will not be able to file fresh appeal on the same cause of action.

The dismissal of a S.L.P. in limine simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case.

Q. No. 62 Whether search cases where assessment was made under section 158BA (i.e. block assessment) of the Act are covered under Vivad se Vishwas?

Answer : <u>Appeal, writ or Special Leave Petition in respect of block assessment is eligible if the disputed tax does not exceed five crore rupees for the said block assessment</u>.

Assessment of undisclosed income as a result of search.

158BA. (1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

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

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

(3) Where the assessee proves to the satisfaction of the Assessing Officer that any part of income referred to in sub-section (1) relates to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 for any previous year has not expired, and such income or the transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income shall not be included in the block period.

Q. No. 63 Whether Vivad se Vishwas can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC?

Answer : No.

Q. No. 64 Appeal against assessment order is pending (or time to file appeal against such order has not expired) on 31st Jan 2020. Assesses has also filed application for resolution of assessment order under Mutual Agreement Procedure (MAP). Whether Vivad se Vishwas can be availed?

Answer : <u>In a case where MAP resolution is pending or the assessee has not accepted MAP decision, the related appeal shall be eligible under Vivad se Vishwas. In such case, the declarant will be required to withdraw both MAP application and appeal.</u>

Mutual Agreement Procedure (MAP)

Mutual Agreement Procedure (MAP) is an alternate tax dispute resolution mechanism available to the taxpayers under the DTAAs for resolving disputes giving rise to double taxation or taxation not in accordance with DTAAs.

MAP can help in relieving double taxation either fully or partially. Almost all DTAAs entered into by India have the MAP Article and it provides an additional dispute resolution mechanism to taxpayers in addition to those available under the domestic laws of India.

A taxpayer can request for assistance under MAP regardless of the remedies provided under the Indian domestic law.

MAP enables the CAs of India to engage with the CAs of other treaty partners and is a process which facilitates discussions and negotiations between both treaty partners as they endeavour to resolve international tax disputes, which are not in accordance with the relevant DTAAs.

At present, India has two CAs for MAP cases and they are senior officers in Department of Revenue, Ministry of Finance (Joint Secretary, FT & TR-I and Joint Secretary, FT & TR-II).

The two CAs have been designated as such by the Finance Minister of India.

The two CAs have territorial jurisdiction over the MAP cases depending upon the location of the treaty partner.

The CAs of India are independent of the tax authorities who audit taxpayers and take their own decisions that are only administratively governed by an internal governance mechanism within the CBDT, Department of Revenue.

Q. No. 65 If AAR has ruled in favour of the taxpayer and the Department has gone in writ or appeal before the High Court/Supreme Court and the total income of the taxpayer was quantifiable on the facts of the case before AAR, is the taxpayer eligible under Vivad se Vishwas?

Answer : <u>Yes, the taxpayer is eligible since the income is quantifiable. In such case, since the issue is covered in favour of taxpayer, only 50% of the disputed tax is payable.</u>

What about AAR in favour of department?

Q. No. 66 Appeal has been set aside to CIT(A) / Dispute Resolution Panel (DRP) and was pending as on 31st Jan 2020? Whether it is eligible?

Answer : Yes. Such case can be settled under Vivad se Vishwas and **the set aside issues will be deemed to be pending at the level of CIT(A) / DRP as on 31st Jan 2020. However, all issues which were either pending in appeal (whether set aside or not)** or in respect of which time to file appeal has not expired on 31st Jan 2020 have to be settled.

Reference to dispute resolution panel.

144C.

(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(*a*) file his acceptance of the variations to the Assessing Officer; or

(*b*) file his objections, if any, to such variation with,—

(*i*) the Dispute Resolution Panel; and

(*ii*) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(*a*) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(*b*) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(*a*) the acceptance is received; or

(*b*) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(*a*) draft order;

(*b*) objections filed by the assessee;

(*c*) evidence furnished by the assessee;

(*d*) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(*e*) records relating to the draft order;

(*f*) evidence collected by, or caused to be collected by, it; and

(*g*) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(*a*) make such further enquiry, as it thinks fit; or

(*b*) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of section 144BA.

[(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(14D) Every notification issued under sub-section (14B) and sub-section (14C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.**]**

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

[(ii) any non-resident not being a company, or any foreign company.**]**

Q. No. 67 Whether in cases where the appellate authority has quashed the prosecution complaint or ruled in favour of taxpayer and no further appeal is filed by Department on or before filing of declaration are eligible?

Answer : <u>Yes, such cases are eligible if the time limit for filing appeal by the Department has expired and the Department has not filed appeal (with or without condonation of application).</u>

Q. No. 68 Whether the assessee is eligible to opt for Vivad se Vishwas if prosecution has been instituted due to a Tax Deduction at Source (TDS) default?

Answer : <u>If prosecution has been instituted for TDS default in a financial year on or before the date of filing of declaration, it cannot be settled under Vivad se Vishwas.</u>

Q. No. 69. A trust has been denied registration u/s 12AA of the Act. Whether appeal against such order is eligible for Vivad se Vishwas?

Answer : No.

Q. No. 70 If the assessment order has been framed in the case of a taxpayer under section 143(3) / 144 of the Act based on the search executed in some other taxpayer's case, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?

Answer : Such case is to be considered as a search case.

Q. No. 71 Vivad se Vishwas forms do not contain a specific option to settle appeal filed against intimation u/s 143(1) of the Act Accordingly, please clarify how to settle such appeal, which is pending as on 31st Jan 2020 (or time to file appeal has not expired on 31st Jan, 2020).

Answer : <u>Appeal filed against intimation u/s 143(1) of the Act is eligible under Vivad se Vishwas if adjustment has been made under sub-clauses (iii) to (vi) of clause (a) of section 143(1) of the Act.</u>

Assessment.

143. (1)

(*iii*) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(*iv*) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(*v*) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(*vi*) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

Q No. 72 Whether appeal filed under section 248 of the Act is eligible for Vivad se Vishwas?

Answer : <u>Yes.</u>

Appeal by a person denying liability to deduct tax in certain cases.

248.

- Where under an agreement or other arrangement,
- the tax deductible on any income,
- other than interest,
- under section 195
- is to be borne by the person by whom the income is payable,
- and such person having paid such tax to the credit of the Central Government,
- claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Q. No. 73 In the case of a taxpayer, prosecution has been instituted for assessment year 2012- 13 with respect of an issue which is not in appeal. Will he be eligible to file declaration for issues which are in appeal for this assessment year and in respect of which prosecution has not been launched?

Answer : <u>The ineligibility to file declaration relates to an assessment year in respect of which prosecution has been instituted on or before the date of declaration. Since in this example, for the same assessment year (2012-13) prosecution has already been instituted, the taxpayer is not eligible to file declaration for this assessment year even on issues not relating to prosecution.</u>

Contrary view to question no. 22 of circular no 9/2020 dt 22.04.2020.

Question No. 22. In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas? Further, where the prosecution has not been instituted but the notice has been issued, whether the assessee is eligible for Vivad se Vishwas?

Answer : Where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before filing the declaration.

Q. No. 74 If the prosecution is for a different assessment year and the appeal for a different one, would it debar the assessee from the benefit of this scheme?

Answer : <u>Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible.</u>

Q. No. 75 Whether cases where the taxpayer/Department has filed declaration/application under section 158A/158AA are eligible under Vivad se Vishwas?

Answer : <u>Yes, in such case declaration/application filed u/s 158A/158AA of the Act on or before 31st January 2020 shall be deemed to be a pending appeal as on 31st Jan 2020 for the purposes of Vivad se Vishwas.</u>

SPECIAL PROVISION FOR AVOIDING REPETITIVE APPEALS

Procedure when assessee claims identical question of law is pending before High Court or Supreme Court.

158A. (1)

- Notwithstanding anything contained in this Act,
- where an assessee claims that any question of law arising in his case for an assessment year
- which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case)
- is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court (such case being hereafter in this section referred to as the other case),
- he may furnish to the Assessing Officer or the appellate authority, as the case may be,
- a declaration in the prescribed form and verified in the prescribed manner,
- that if the Assessing Officer or the appellate authority, as the case may be,
- agrees to apply in the relevant case the final decision on the question of law in the other case,
- he shall not raise such question of law in the relevant case in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.

(2) Where a declaration under sub-section (1) is furnished to any appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim made by the assessee and, where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard in the matter, the appellate authority shall allow him such opportunity.

(3) The Assessing Officer or the appellate authority, as the case may be, may, by order in writing,—

(*i*) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or

(*ii*) reject the claim if he or it is not so satisfied.

(4) Where a claim is admitted under sub-section (3),—

(*a*) the Assessing Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and

(*b*) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

(5) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, as the case may be, shall, if necessary, amend the order referred to in clause (a) of sub-section (4) conformably to such decision.

(6) An order under sub-section (3) shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under this Act.

Explanation.— In this section,—

(a) "appellate authority" means the Deputy Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal;

(b) "case", in relation to an assessee, means any proceeding under this Act for the assessment of the total income of the assessee or for the imposition of any penalty or fine on him.

Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court.

158AA. (1)

- Notwithstanding anything contained in this Act,
- where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee for any assessment year (such case being herein referred to as relevant case)
- is identical with a question of law arising in his case for another assessment year
- which is pending before the Supreme Court, in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the High Court in favour of the assessee (such case being herein referred to as the other case),
- he may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal under sub-section (2) or sub-section (2A) of section 253,
- direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of the order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

(2) The Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application under sub-section (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in sub-section (2) or sub-section (2A) of section 253.

(3) Where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order and save as otherwise provided in this section all other provisions of Part B of Chapter XX shall apply accordingly.

(4) Every appeal under sub-section (3) shall be filed within sixty days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

“ QUESTIONS RELATED TO COMPUTATION (Q. No. 76 - 79)”

Q. No. 76. Whether enhancement notice issued by CIT(A) post 31st Jan 2020 is to be taken into account for computation of disputed tax?

Answer : <u>Enhancement notice issued by CIT(A) after 31st Jan, 2020 but before the date of issue of this circular shall be required to be taken into account for determining amount payable under Vivad se Vishwas. However, the enhancement notice issued on or after the date of this circular but on or before 31st December shall not be taken into account for determining amount payable under Vivad se Vishwas.</u>

Q. No. 77 Whether any additional ground filed in relation to an appeal is to be considered while computing disputed tax?

Answer : <u>If any additional ground has been filed on or before 31st January 2020, it shall be considered for the purpose of computing disputed tax.</u>

Q. No. 78 In case of appeals pending against both assessment and reassessment where addition is repeated on same issue, would tax be payable twice in respect of the same issue if both appeals are settled?

Answer : <u>Since disputed tax in respect of repeated addition will be payable only once, both the assessment and reassessment appeals are required to be settled together. If there is a difference between tax liability in respect of such addition in assessment and reassessment, then higher of the two tax liabilities will be considered for computing disputed tax.</u>

Q. No. 79. In a case where assessee accepts certain additions in an order (giving rise to undisputed tax liability) and appeals against certain additions (giving rise to disputed tax liability), how the prepaid taxes will be adjusted against the disputed tax liability or undisputed tax liability?

Answer : <u>If prepaid tax, being TDS/TCS, is clearly identifiable with the source of income, it will be adjusted against tax liability with respect to such income. Rest of the pre-paid tax, which cannot be clearly identified with the source of income, will be apportioned against the remaining tax liability.</u>

“ QUESTIONS RELATED TO CONSEQUENCES (Q. No. 80 - 87)”

Q. No. 80. Whether appeal against penalties that are not related to quantum assessment like penalty u/s 271B, 271BA, 271DA of the Act etc. are also waived upon settlement of appeal relating to 'disputed tax?

Answer : <u>No, appeal against such penalty order is required to be settled separately.</u>

Failure to get accounts audited.

271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a **sum equal to one-half per cent of the total sales, turnover or gross receipts,** as the case may be, in business, or of the gross receipts in profession, in such previous year or years **or a sum of one hundred fifty thousand rupees, whichever is less.**

Penalty for failure to furnish report under section 92E.

271BA. If any person **fails to furnish a report from an accountant as required by section 92E**, the Assessing Officer may direct that such person **shall pay, by way of penalty, a sum of one hundred thousand rupees.**

Penalty for failure to comply with provisions of section 269ST.

271DA. (1) If a person **receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt**:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Q. No. 81. In respect of some loan, addition was made u/s 68 of the Act. Appeal is pending before CIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account?

Answer : <u>No, Vivad se Vishwas is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee.</u>

Q. No. 82. Whether the immunity from prosecution is only for the declarant or also for the Director of the company or partner of the firm with respect to the issues settled under Vivad se Vishwas?

Answer : <u>If an issue has been settled under Vivad se Vishwas, the immunity from prosecution with respect to that issue shall also extend to the director / partner of company / firm (being the declarant) in respect of same issue under section 278B of the Act.</u>

Offences by companies.

278B. (1)

- Where an offence under this Act has been committed by a company,
- every person who, at the time the offence was committed,
- was in charge of, and was responsible to, the company for the conduct of the business of the company
- as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

278B(2)

- Notwithstanding anything contained in sub-section (1),
- where an offence under this Act has been committed by a company and
- it is proved that the offence has been committed with the consent or connivance of,
- or is attributable to any neglect on the part of,
- any director, manager, secretary or other officer of the company,
- such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and
- shall be liable to be proceeded against and punished accordingly.

278B(3)

- Where an offence under this Act has been committed by a person, being a company, and
- the punishment for such offence is imprisonment and fine,
- then, without prejudice to the provisions contained in sub-section (1) or sub-section (2),
- such company shall be punished with fine and every person, referred to in sub-section (1),
- or the director, manager, secretary or other officer of the company referred to in sub-section (2),
- shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Q. No. 83 If appeal involving issue of disallowance under section 40(a)(i)/(ia) of the Act is settled under the Scheme, whether consequential relief will be available in proceedings under section 201 of the Act initiated qua the same payment/ deduction.

Answer : <u>No.</u>

Q. No. 84. Tax was not deducted on an income and order under section 201 of the Act was passed in case of the deductor. The said income was also assessed in the case of the deductee. Both deductor and deductee are in appeal or arbitration, which is eligible under Vivad se Vishwas. What would be the amount payable by the deductor and the deductee with reference to the said income under Vivad se Vishwas in the following scenarios—

(i) Where the deductor settles his appeal or arbitration and makes payment under Vivad se Vishwas?

(ii)Where the deductee settles his appeal or arbitration and makes payment under Vivad se Vishwas?

Answer : In case of (i), since the deductor has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty under Vivad se Vishwas. Deductee will not be required to pay the tax under Vivad se Vishwas with reference to said income and he will get credit for tax paid by deductor.

However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%).

In case of (ii), since the deductee has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty.

Deductor will not be required to pay tax under Vivad se Vishwas with reference to non-deduction of tax on said income.

However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%).

Q. No. 85. In the scenarios mentioned in Q. no. 84, what will be the amount of tax credit if the payment of amount on settlement of section 201 appeal is more than 100% of disputed tax for it being a search case or for the reason that the payment is made after 31st March 2021?

Answer : <u>Tax credit in the hands of deductee cannot be more than 100% of disputed tax, even if the payment of more than 100% of disputed tax is required to be made by the deductor settling his section 201 appeal.</u>

Q. No. 86. Answer to Q. no 31 clarifies that where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201 of the Act), he will get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia) of the Act in the year in which the tax was required to be deducted. What will happen in a situation where the same amount of TDS was recovered in subsequent year and accordingly the assessee has already claimed deduction in that year?

Answer : <u>There is no question of double deduction. If the assessee has already claimed deduction of the same amount under section 40(a)(i)/(ia) of the Act in subsequent year on account of payment of such sum, he shall not be entitled to again claim the deduction on the basis of the settlement under Vivad se Vishwas.</u>

Q. No. 87. The declarant has filed a declaration for disputed penalty. He is required to pay 25% or 30% of disputed penalty to settle the dispute. Will interest levied or leviable be waived in this case?

Answer : <u>Yes. Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.</u>

Q. No. 88. Separate orders were passed u/s 201(1) & 201(1A) of the Act for a particular assessment year. Assessee has filed two separate appeals for principal portion u/s 201(1) of the Act and interest portion u/s 201(1A) of the Act. Can he file only one declaration under Vivad se Vishwas against 201(1) order and seek 100% waiver of interest levied u/s 201(lA)of the Act.

Answer : <u>Yes, once appeal against order u/s 201(1) of the Act is settled under Vivad se Vishwas, there would be 100% waiver of interest levied u/s 201(1A) of the Act.</u>

Consequences of failure to deduct or pay.

201. (1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [payee] or on the sum credited to the account of a [payee] shall not be deemed to be an assessee in default in respect of such tax if such [payee]—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

201(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) **at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted**; and

(*ii*) **at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid**, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [payee] or on the sum credited to the account of a [payee] but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (*i*) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such [payee].

Q. No. 89. Once declaration is filed by assessee u/s 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?

Answer : <u>Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of Vivad se Vishwas.</u>

Thanks to my computer operator
Sri. N. Beeresh Kumar