

Direct Tax Vivad se Vishwas Act, 2020 (Enacted on 17.03.2020)

Presented by:- CA Sanjay Kumar Agarwal
E-mail id: agarwal.s.ca@gmail.com

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Whether to Exercise option of VsV in Demonetization Cases of Jewellers?

In its ongoing Operation Clean Money drive (OCM), Various cases of jewellers were selected for scrutiny assessment for AY 2017-18 where large amount of CASH was deposited during Demonetization period i.e. 9th November 2016 to 31st December 2016.

It is also observed that regular cash sale just before demonetization period is also not accepted and addition were made on the basis of deviation in ratio as set out in various SOP issued by CBDT.

As on date assessment has been completed in all the demonetization cases and appeal before CIT(A) against the assessment order has also been filed by the assessee.

Vide Finance Budget 2020, Central Government roll out an scheme “Vivad se Vishwas” to provide relief from vexatious litigation process and appellant is required to pay only the amount of the disputed tax and complete waiver of interest & penalty.

Now jewellers are in dilemma whether to file application in VsV or not?

To answer this question we have to checked following points:

1. Whether there is abnormal jump in cash sales during the period October to December, 2016 as compare to the period October to December, 2015?
2. Whether there is any difference in quantitative details of stock provided in Financial Statement and Tax Audit Report vis-à-vis stock quantity shown in GST Returns and GST Audit Report?
3. Whether assessee has revised any of his GST Return for the period of April to December, 2016?
4. Has assessee duly filed TCS Return for the period of April to December, 2016?
5. Whether there is any contradiction between reply filed to OCM vis-à-vis SFT Report vis-à-vis Financial Statement?
6. Whether assessee can prove identity of person to whom cash sales were made?

If answers to above mentioned points are “Favorable” then jewelers should not file application under VsV and continue to litigate his case before CIT(A)

Introduction

- ❑ This Act was proposed by our Finance Minister Mrs. Nirmala Sitaraman during her Budget Speech 2020-2021 referred as “**Vivad se Vishwas**”. This Act follows the Sabka Vishwas Scheme which was brought in to reduce the litigation in indirect tax cases. An opportunity is provided to Appellant to get relief from vexatious litigation process.
- ❑ Under this Act Appellant is required to pay only the amount of the disputed tax and complete waiver of interest & penalty and if appeal is related to interest and penalty then Appellant is only required to pay 25% of such interest or penalty provided that appellant applies by 31st December 2020 (earlier it was 31st March 2020) or any notified date. This Act also covers appeals made against the tax determined on the defaults in respect of TDS or TCS.

Cases covered under this Act

1. This Act is applicable to the **Appeals/ Writ Petition/ SLP filed by assessee or income tax authority** which are pending on 31st January 2020 before **appellate forum***

***Appellate Forum means-**

- i. Supreme Court
 - ii. High Court
 - iii. Income Tax Tribunal
 - iv. The Commissioner (Appeals)
- Appeal which was filed before HC and still pending for admission as on 31.01.2020 is also included above. [FAQ No. – 24]
 - If the time limit for filling the appeal expired on 31.01.2020, however an application for condonation of delay has been filed and such application is admitted by the appellate authority before filling the declaration under VsV Act then such appeal will be deemed to be pending as on 31st Jan 2020. [FAQ No. – 59]

2. Order has been passed by AO or appellate forum on or before 31.01.2020 and the time for filing appeal/SLP has not expired on 31.01.2020. further assessee is eligible even in case where he has not filed appeal in actual. [FAQ No. – 20 & 23]

Cases covered under this Act

3. Case pending before Dispute Resolution Panel (DRP) on 31.01.2020.
4. Cases where DRP issued direction on or before 31.01.2020 but no order has been passed up to 31.01.2020.
5. Cases where assessee filed revision u/s 264 of the Act on or before 31.01.2020.
6. Search cases where the disputed tax is upto Rs. 5 Crore – The limit of Rs. 5 crore will be computed year wise. **[Search cases also include the assessment year for which assessment is completed u/s 143(3) / 144] [FAQ No. - 6]**
7. Order has been passed by appellant authority and set aside an order to the file of AO for the giving proper opportunity or to carry out fresh examination, then such assessee will be covered under this Act. However this Act will not cover the cases where the original assessment has been cancelled with a direction to frame fresh assessment order. [FAQ No. – 7 & 26]

Cases covered under this Act

8. Where case is pending before arbitration even if no appeal is filed in respect of same matter. [FAQ No. – 2]
9. MA pending on 31st Jan 2020 is in respect of an appeal which was dismissed, such MA is covered under this Act. Disputed tax will be computed with reference to the appeal which was dismissed. [FAQ No. - 61]
10. Appeal which has been set aside to CIT(A)/ DRP and was pending as on 31st Jan 2020 can be settled under this Act. [FAQ No. - 66]
11. In a case where the appellate authority has quashed the prosecution complaint and time limit for filling of appeal against such order has been expired and department has not filed any appeal against such order, then such case can be settled under this Act. [FAQ No. - 69]

Cases not covered under this Act (Section 9)

The Act shall not apply in following cases-

- A. In respect of the tax arrear-
 - i. Search cases if disputed tax is more than 5 crore.
 - ii. Relating to an assessment year in respect of which **prosecution has been instituted** on or before the date of filing of declaration.
 - iii. Relating to any **undisclosed income from a source** located outside India or **undisclosed asset located outside India.**
 - iv. Relating to an **assessment or reassessment made on the basis of information** received under an agreement referred to in **section 90 or section 90A** of the Income-tax Act, if it relates to any tax arrear.
- B. 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.
- C. Any person in respect of **whom prosecution has been instituted on or before filing of declaration u/s 4 of the Act** or such person has convicted of any such offence under the provisions of the following Acts:
 - i. The Unlawful Activities (Prevention) Act, 1967
 - ii. The Narcotic Drugs and Psychotropic Substances Act, 1985
 - iii. The Prevention of Corruption Act, 1988
 - iv. The Prevention of Money Laundering Act, 2002
 - v. The Prohibition of Benami Property Transactions Act, 1988

Cases not covered under this Act (Section 9)

D. Any person in respect of whom prosecution has been initiated by an Income – tax authority for any offence punishable under the provision of 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 filing of declaration u/s 4 of the Act or such person has been convicted of any such offence consequent to the prosecution initiated by an Income –tax authority.

Interpretation of clause C & D

- ❑ However where only notice for initiation of prosecution has been issued with reference to tax arrears, **the taxpayer is eligible to go for 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 AY under this scheme, unless the prosecution is compounded before filing the declaration. (Clarified vide Circular no. 9 of 2020 dt. 22.04.2020) [FAQ No. – 22]**
- ❑ Further as per the provision of section 9 it is evident that if prosecution has been launched against any person on or before 31.01.2020, then such person will become ineligible for all the matters and for all the assessment years.
- ❑ The word instituted is not defined under any Act. However, Hon'ble Supreme Court in the case of Jamuna Singh & Others vs Bhadai Sah 1964 AIR 154, defined the word instituted as follows "The Code does not contain any definition of the words "institution of a case". It is clear however and indeed not disputed, that case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. Section 190(1) of the Code of Criminal Procedure contains the provision for cognizance of offences by Magistrates.

Cases not covered under this Act (Section 9)

- E.** 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.
- F.** Any dispute is pending before AAR will not covered under this Act. However, if any writ is pending before HC then such case will be covered by this Act. [FAQ No. – 3]
- G.** Disputes relating to Wealth Tax, Security Transactions Tax, Commodity Transaction Tax and Equalisation levy are not covered, since disputes related to direct tax are covered only. [FAQ No.- 18]
- H.** Case where proceedings are pending before ITSC or where writ has been filed against the order of ITSC. [FAQ No. - 63]
- I.** Any order denying registration u/s 12AA of the Income Tax Act, 1961. [FAQ No. - 69]

Relief Provided under this Act (Section 3) if Appeal/ Writ is filed by Assessee

S. No.	Nature of the Tax Arrear	Amount Payable on or before 31.3.2021 or such later date as notified	Amount payable on or after 31.3.2021 but upto the notified date
1	Where the tax arrear is amount of the aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax.	100% of disputed tax (in search cases 125%* of disputed tax)	110%* of disputed tax (in search cases 135%* of tax)
2	Where the tax arrear is relates to disputed Interest or disputed Penalty or Disputed Fees.	25 % of the Disputed Interest or Disputed Penalty or Disputed Fees.	30 % of the Disputed interest or disputed penalty or disputed Fees.

*Where the 10% or 25% or 35% 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.

Relief Provided under this Act (Section 3)

if Appeal/ Writ is filed by Department or the Department has lost on an issue

S. No.	Nature of the Tax Arrear	Amount Payable as on or before 31.03.2021	Amount payable on or after 31.3.2021 upto last date (to be notified)
1	Where the tax arrear is amount of the aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax.	50% of disputed tax (in search cases 62.5% of disputed tax)	55% *of disputed tax (in search cases 67.5% of tax)
2	Where the tax arrear is relates to disputed Interest or disputed Penalty or Disputed Fees.	12.5% of the Disputed Interest or Disputed Penalty or Disputed Fees.	15% of the Disputed interest or disputed penalty or disputed Fees.

- **Refund of Excess Amount:** If the amount paid by the taxpayer before filing declaration exceeds the amount payable under the Act, he shall be eligible for refund of such excess amount w/o interest u/s 244A [FAQ No. 5]. However any amount paid in pursuance to this Act shall not be refundable under any circumstances.
- **Credit for taxes paid** against the disputed tax before filing declaration shall be available to the declarant [FAQ No. – 29]

1. Provisions of Section 3 overrides the provision contained in the Income-tax Act, 1961 or any other law for the time being in force.
2. **Tax Arrear**: Tax Arrears means the aggregate amount of **Disputed Tax**, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax or **Disputed Interest**, or **Disputed Penalty** or **Disputed Fee** as determined under the provisions of the Income-tax Act;
3. **Disputed Interest**: "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. However, in a case where assessee has filed waiver application instead of appeal then such case is not covered under this Act [FAQ No. - 13]
4. **Disputed Penalty**: "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.

5. **Disputed Tax:** “Disputed tax” in relation to an assessment year, means income tax including surcharge and cess, as computed hereunder—
- a. In case where Appeal/ Writ/ SLP is **pending before appellate forum** as **on 31.01.2020**, the amount of tax if such appeal/ writ/ SLP is decided against assessee shall be the amount of Disputed Tax.
 - b. In case where order is passed in an Appeal/ Writ by appellate forum on or before 31.01.2020 and time of filing the Appeal/ SLP has not expired on that date, the amount of tax payable after giving the effect to the order passed shall be the amount of disputed tax.
 - c. In case where assessment order has passed by AO on or before 31.01.2020 and time for filing the appeal has not expired as on that date, the amount of tax payable in accordance with such order shall be the amount of Disputed Tax.
 - d. In case where objection is pending before DRP as on 31.01.2020, the amount of tax payable if DRP confirm the variation proposed in the draft order shall be the amount of Disputed Tax.
 - e. In case where direction has issued by DRP, but order is not passed by AO, then the amount of tax payable as per the order to be passed shall be the amount of Disputed Tax.
 - f. In case where application is pending u/s 264 as on 31.01.2020, the amount of tax payable if such application is not accepted shall be the amount of Tax Payable.

Provided that:- In case where CIT(A) has issued notice of enhancement u/s 251 on or before 31.01.2020, the **disputed tax shall be increased by the amount of tax pertaining to issue for which notice of enhancement has been issued.**

Provided Further that:- In a case where the dispute in relation to reduction of tax credit u/s 115JAA or 115D or any loss or depreciation computed thereunder, the **appellant 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 prescribe.

6. **Disputed Fee:** “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.
7. **Disputed Income:** “Disputed Income” in relation to an assessment year means the whole or so much of the total income as is relatable to disputed tax.

Procedure to be Followed (Section 4 & 5) and Rule-3, 4, 5, 6 of DTVSV Rules 2020

1. A **Declaration** shall be filled to the **Designated authority** by the **Declarant** in such a form (Declaration in Form 1) and verified in such a manner as prescribed by the Central Government (Form-1 shall be furnished electronically & verified by Digital Signature or EVC in the same way the ITR was verified-(Rule-6)) [Section 4(1) of the Act].
 - i. **Declaration**: "Declaration" means the declaration filed under section 4.
 - ii. **Designated Authority**: "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.
 - iii. **Declarant**: "Declarant" means a person making the declaration under section (4) of the Direct Tax Vivad Se Vishwas Act ,2020;
2. If there are more than one issue involved in the appeal, then taxpayer would be required to file declaration for all issues, he cannot file declaration for some issues and litigate the balance issues. [FAQ No. – 14]
3. Declaration filed u/s 4 can be revised any number of times before designated authority issued certificate u/s 5(1) of the Act. [FAQ No. - 89]

3. 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 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 (Certificate in Form-3 (Rule-4)).[Section 5(1) of the Act]
4. The declarant shall pay the amount determined within fifteen days of the date of receipt of the certificate (Date of payment extended to 31st March 2021 instead of 15 days by CBDT Circular No. 18 of 2020 dt. 28.10.2020) and intimate the details of such payment to the designated authority in the prescribed form (Form-4 along with proof of withdrawal of Appeal/WRIT/SLP etc.(Rule-5)) and thereupon the designated authority shall pass an order.[Section 5(2) of the Act]

Note: Any amount paid in pursuance of a declaration made u/s 4 shall not be refundable but eligible for refund of excess money paid before filing declaration without interest u/s 244A [Section 7]

5. 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 [Sec. 5(3)]

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 [Section 6 of the Act]
7. Any **appeal** pending before the ITAT 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 section 5(1) is issued by the designated Authority.** [Section 4(2) of the Act]
8. 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. [Section 4(7) of the Act]

CBDT Circular No. 18 of 2020 issued on 28.10.2020

- Under the existing provisions of sub-section (2) of section 5 of the Vivad se Vishwas, the declarant is required to pay the amount within a period of 15 days from the date of receipt of certificate from the designated authority. However, as per the aforesaid notification, a **declarant who files declaration on or before 31st December 2020 can make payment without additional amount on or before 31st March 2021.** Hence, requiring payment by the declarant within a period of 15 days from the date of receipt of certificate from the designated authority may result into undue hardship for the declarant in whose case the period of 15 days expires before 31st March 2021.
- In order to mitigate undue hardship and remove difficulty that may be caused by the aforesaid requirement of payment within 15 days from the date of receipt of certificate from the designated authority, in exercise of powers conferred under section 10 and II of Vivad se Vishwas, it is hereby clarified that where a declarant files a declaration under Vivad se Vishwas on or before 31st December, 2020, the designated authority, while issuing the certificate under sub-section (I) of section 5 of the Vivad se Vishwas, shall allow the declarant to make payment without additional amount on or before 31st March 2021

Rule-3 of DTVS Rules 2020

Form of declaration and undertaking:

- (1) The declaration under sub-section (1) of section 4 shall be made in **Form-1** to the designated authority.
- (2) The undertaking referred to in sub-section (5) of section 4 shall be furnished in **Form-2** along with the declaration.
- (3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.
- (4) The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgement thereof.

Rule-6 of DTVSV Rules 2020

Manner of furnishing (as prescribed under Section 3 of the Act):

The Form 1 and Form 2 referred to in rule 3 and Form 4 referred to in rule 5 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.

- *Explanation.* — For the purpose of this rule, "electronic verification code" shall have the same meaning as referred to in rule 12 of the Income-tax Rules, 1962.

Rule-4 of DTVSV Rules 2020

Form of certificate by Designated Authority:

- (1) The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in **Form-3**.

Rule-5 of DTVSV Rules 2020

Intimation of payment:

The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in **Form-4**.

Condition for filling Declaration (Section 4)

- A. If any appeal is pending before the **appellate forum** or any writ petition before the **High Court or the Supreme Court**, then declarant shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate u/s 5(1) of the Act and furnish proof of such withdrawal along with the declaration u/s 5(2) of the Act. [Section 4(3) of the Act]
- B. If declarant has filed any proceeding for arbitration, conciliation or mediation or has given any notice, he shall withdraw the claim after issuance of certificate u/s 5(1) of the Act and furnish proof of such withdrawal along with the declaration u/s 5(2) of the Act. [Section 4(4) of the Act]
- C. If 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 is initiated by the Declarant, then he shall withdraw the claim and furnish proof thereof along with declaration.

D. The declarant shall furnish an **undertaking** along with Declaration waiving of his right, to seek 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, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise. The Form of the undertaking will be notified by Central Government (**Undertaking in Form-2 (Sub-rule 2 of Rule-3)**). [Section 4(5) of the Act]

Declaration shall be deemed to be invalid– Section 4(6)

The declaration under section 4(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),

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**.

Rule-7 of DTVSV Rules 2020

Order by designated authority:

The order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in **Form-5**.

Rule-8 of DTVSV Rules 2020

Laying down of procedure, formats and standards:

- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration in Form 1 under sub-rule (1) of rule 3, furnishing and verifying the undertaking in Form 2 under sub-rule (2) of rule 3, granting of certificate in Form 3 under rule 4, intimation of payment and proof of withdrawal in Form 4 under rule 5 and issuance of order in Form 5 under rule 7 and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.

Manner of computing disputed tax where loss, unabsorbed depreciation, or MAT credit is utilized (Rule 9 and 10)

The VSV rules lays down the manner of computing disputed tax in specific situations such as those where loss or unabsorbed depreciation or MAT credit is reduced.

- Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation or MAT credit to be carried forward under the VSV Act, the declarant shall have an option to do the following:
 - i. Pay tax on the disputed amount without reducing the amount of loss or unabsorbed depreciation or MAT credit; or
 - ii. Carry forward the reduced amount of loss or unabsorbed depreciation or MAT credit

If the declarant chooses option (ii) then, he shall be liable to pay tax including interest in the subsequent years as a consequence of carrying forward the reduced amount of loss or MAT credit or unabsorbed depreciation provided:

- Written down value of the block of the assets is not increased by the amount of reduction in unabsorbed depreciation.
- The disputed amount shall be replaced by the following:

Particulars	VSV eligible search cases	Other VSV cases
Issues covered in favour of declarant	62.5%	50%
Others	125%	100%

Rule-9 of DTVS Rules 2020

Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced:

- (1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to-
 - (i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation;
 - (ii) carry forward the reduced amount of loss or unabsorbed depreciation.
- (2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years.

Rule-10 of DTVSV Rules 2020

Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced.

- (1) Where the dispute in relation to an assessment year relates to reduction in Minimum Alternate Tax (MAT) credit to be carried forward, the declarant shall have an option to
 - (i) Include the amount by which MAT Credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or
 - (ii) Carry forward the reduced MAT Credit.
- (2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years

Rule-II of DTVS Rules 2020

Manner of computing disputed tax in certain cases.

- Where the dispute includes issues covered in favour of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.

Power of CBDT (Section 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 to do so**.

Power of Central Govt

Power to Remove Difficulties (Section 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 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 u/s 11 shall be laid before each House of Parliament.

Power to Make Rules (Section 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 u/s 4.
 - b) The form and manner in which declarant shall furnish undertaking u/s 4(5).
 - c) The form in which certificate shall be granted u/s 5(1).
 - d) The form in which payment shall be intimated u/s 5(2).
 - e) 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.
 - f) The manner of calculating the amount payable under this Act.
 - g) Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.
3. Every rule made by the Central Government shall be laid before each House of Parliament. If both the houses agree in making any modification or 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.

Relevant Judicial Pronouncements

- The assessee claimed deduction of certain amount from its gross total income u/s 80-IC stating that a new industrial unit had started during the relevant AY. However, the AO was not satisfied with the submissions of the assessee, and was of the view that having regard to the value of the machinery, that previously used machinery for any purpose is more than 20% of the value of the plant and machinery used in the new unit, the assessee has failed to satisfy the conditions laid down in Section 80-IC(4)(ii). The AO also took note of the fact that the machinery was initially taken to Kala Amb and later transported to Selaqui. The AO, therefore, disallowed assessee's claim. On appeal CIT(A) set aside the disallowance and granted the benefit to the assessee. On further appeal, the ITAT reversed the order of CIT(A). On appeal, the High Cour declined to interfere in the matter on grounds that the Tribunal's findings did not suffer from any prima facie error.
- In writ, the Apex Court dismisses the assessee's Special Leave to Petition, considering the assessee's desire to seek adjudication of the issue under the Direct Tax Vivad Se Vishwas Scheme. [M/s Intec Corporation vs Principal CIT {High Court}, Special Leave to Appeal (c) no.27239/2019]

Some Important FAQ's Issued by CBDT

FAQ No. – 12 If a writ has been filed against the Notice issued u/s 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: The Assessee would not be eligible for Vivad se Vishwas as there is no determination of income against the said Notice.

FAQ No. – 19 The assessment order u/s 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 u/s 147/143(3) was passed for the same assessment year and that is pending with CIT(A). 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 form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.

FAQ 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

FAQ 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.

FAQ 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.

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

FAQ No. – 38 Addition was made u/s 143(3) on two issues whereas the appeal filed only for the one addition. Whether interest and penalty be waived for both the additions.

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

FAQ No.-40 Where there are two appeals filed for an AY- one by assessee and another by department's appeal, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?

Answer: The appellant has the option to settle appeal filed by it or appeal filed by department or both. So, the declarant needs to specify in Form-1, whether he wants to settle his appeal or department's appeal or both for a particular assessment year. The computation of tax payable would be calculated accordingly.

THANK YOU..!!

Presented by:- CA Sanjay Kumar Agarwal
E-mail id: agarwal.s.ca@gmail.com