

A STUDY ON VIVAD SE VISHWAS SCHEME, 2020

Speaker:

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Estd : 1987

Date:- 01.03.2020

ICAI BRANCH: HYDERABAD

**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:

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

DEFINITIONS

Section 2(1)(a)(i):

In this Act, unless the context otherwise requires,-

"appellant" means -

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;

Definition of appellant -contd.....

Section 2(1)(a)(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;**

INTRICACIES

Delay in filing of Appeal:

As the scheme applies to cases which are pending with the CIT(A), ITAT, High Court or Supreme Court as on the 31st day of January, 2020.

A question arises for appeals which were filed before January 31, 2020; however, a delay exists in filing of the appeal as per the respective statutory provisions and **the application for condonation of delay has not been disposed of.**

Can such cases avail the benefit of the Scheme. It is opined that such cases must be covered within the ambit of the Scheme.

INTRICACIES

Set aside proceedings

An issue arises where the matter is remanded back to the Ld. Assessing Officer ('AO') by the Tribunal (mostly) for de novo proceedings, whether the same will be covered within the ambit of the Scheme.

There could be **3 possibilities**:

(a) Where all the issues are remanded back to the Ld. AO: As there is no appeal pending as per section 2 (1) (a) of the proposed Scheme; **The same will not be covered** within the ambit of the Scheme.

INTRICACIES

Set aside proceedings

(b) Where all the issues are remanded back to the Ld. CIT(A): As there is an appeal pending against an order of the Ld. AO as per section 2(1)(a) of the proposed Scheme; The same will be covered within the ambit of the Scheme.

INTRICACIES

Set aside proceedings

(c) Where part issues are remanded back to the Ld. AO and part to the Ld.

CIT: It is opined that the assessee must be allowed to take up the matters pending with the Ld. AO to the Ld. CIT(A) so as to facilitate him to avail the benefit of the Scheme.

Definition of appellant -contd....

Section 2(1)(a)(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;

Definition of appellant -contd....

Section 2(1)(a)(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;

Definition of appellant -contd....

Section 2(1)(a)(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;”

DEFINITIONS

Section 2(1)(b):

"**appellate forum**" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);

DEFINITIONS

Section 2(1)(c):

"**declarant**" means a person who files declaration under section 4;

DEFINITIONS

Section 2(1)(d):

"**declaration**" means the declaration filed under section 4;

DEFINITIONS

Section 2(1)(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;

DEFINITIONS

Section 2(1)(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;

DEFINITIONS

Section 2(1)(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;

DEFINITIONS

Section 2(1)(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;

DEFINITIONS

Section 2(1)(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;**

DEFINITIONS

Section 2(1)(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:-

Definition of Disputed Tax- contd....

Section 2(1)(j)(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;**

Definition of Disputed Tax- contd....

Section 2(1)(j)(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;**

Definition of Disputed Tax- contd....

Section 2(1)(j)(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;**

Definition of Disputed Tax-contd....

Section 2(1)(j)(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;**

Definition of Disputed Tax- contd....

Section 2(1)(j)(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;**

Definition of Disputed Tax- contd....

Section 2(1)(j)(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:**

Definition of Disputed Tax- contd....

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:

Definition of Disputed Tax- contd....

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed 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**

DEFINITIONS

Section 2(1)(k):

"Income-tax Act" means -
The Income-tax Act, 1961;

DEFINITIONS

Section 2(1)(l):

"**last date**" means such date as may be notified by the Central Government in the Official Gazette;

DEFINITIONS

Section 2(1)(m):

"prescribed" means prescribed by rules made under this Act;

DEFINITIONS

Section 2(1)(n):

"specified date" means
the 31st day of January,
2020;

DEFINITIONS

Section 2(1)(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;

DEFINITIONS

Section 2(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

Section 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 :-**

AMOUNT PAYABLE BY DECLARANT- Contd....

S I N O	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
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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 disputed tax

The aggregate of the amount of **disputed tax and ten percent** 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 .

AMOUNT PAYABLE BY DECLARANT- Contd...

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
	<p>(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 this Act.</p>	<p>The aggregate of the amount of disputed tax and twenty-five percent. of the disputed tax:</p> <p>Provided 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 leviabale or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.</p>	<p>The aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax:</p> <p>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 leviabale or Levied on such Disputed tax, the Excess shall be Ignored for the Purpose of Computation of amount payable.</p>
	<p>where the tax arrear relates to disputed interest or disputed penalty or disputed fee.</p>	<p>twenty-five per cent of disputed interest or disputed penalty or disputed fee.</p>	<p>thirty per cent of <i>disputed interest or disputed penalty or disputed fee.</i></p>

INTRICACIES

Re-opening proceedings :

This point is to advise that in reopening proceedings, where the interest component is high and matter does not seem to be strong on merits. It is advisable to take shelter of the Scheme

INTRICACIES

Doctrine of relation back :

Doctrine of Relation Back is a principle that something done today will be treated as if it were done earlier.

This principle needs to be applied while computing interest and penalty as interest accrued during pendency of appeal or penalty leviable cannot be taken into account for the purpose of the Scheme.

AMOUNT PAYABLE BY DECLARANT- Contd....

“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:

AMOUNT PAYABLE BY DECLARANT- Contd....

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 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:

AMOUNT PAYABLE BY DECLARANT- Contd....

Provided also that in a case where an appeal is filed by the appellant on any issue before 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

Section 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.**

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED-Contd....

Section 4(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.

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED-Contd....

Section 4(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 alongwith the intimation of payment to the designated authority under sub- section (2) of section 5.**

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED- Contd....

Section 4(4):

Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or **under any agreement entered into by India with any other country or territory outside India** whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of section 5.”

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED-Contd....

Section 4(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.**

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED-Contd....

Section 4(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.

FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED-Contd....

Section 4(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

Section(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.

TIME AND MANNER OF PAYMENT- Contd....

Section 5(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 there upon the designated authority shall pass an order stating that the declarant has paid the amount.

TIME AND MANNER OF PAYMENT- Contd....

Section 5(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.

TIME AND MANNER OF PAYMENT- Contd....

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.”.

INTRICACIES

In case, there is an inconsistency in the amount declared as payable by the declarant and amount certified as payable by the 'designated authority' whether the declarant will be given an opportunity of being heard and whether the amount so certified by the designated authority can be modified?

As of now, the Scheme does not take into account such a scenario where there is discrepancy in the amount declared and the amount certified by the designated authority.

The discrepancy could be either due to a simple arithmetical error or due to an error of calculation made at either ends, etc.

Ideally, the Scheme should have provided for an eventuality of addressing discrepancies, if any, by providing an opportunity to the assessee of being heard.

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

Section 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 arrear.

NO REFUND OF AMOUNT PAID

Section 7:

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

NO REFUND OF AMOUNT PAID- Contd....

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

Section 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

Section 9(a)(i):

In respect of tax arrear,—

“relating to an assessment year in respect of which an assessment has been made under subsection (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;”.

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(a)(ii):

Relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(a)(iii):

Relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(a)(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;

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(b)(i):

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—

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

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(b)(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

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(b)(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

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(b)(iv):

such order of detention has not been set aside by a court of competent jurisdiction;

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(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;

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(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;”

ACT NOT TO APPLY IN CERTAIN CASES - Contd....

Section 9(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 DIRECTION, ETC

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.

Section 10(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

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 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

POWER TO REMOVE DIFFICULTIES- Contd....

Section 11(2):

Every order made under subsection (1) shall, as soon as may be after it is made, 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.**

POWER TO MAKE RULES- Contd....

Section 12(2)(a):

Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,

namely:—

the **form in which a declaration may be made**, and the manner of its verification under section 4;

POWER TO MAKE RULES- Contd....

Section 12(2)(b):

the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;

POWER TO MAKE RULES- Contd....

Section 12(2)(c):

the form in which
certificate shall be granted
under sub-section (1) of
section 5;

POWER TO MAKE RULES- Contd....

Section 12(2)(d):

the form in which payment shall be intimated under sub-section (2) of section 5;

POWER TO MAKE RULES- Contd....

Section 12(2)(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;

POWER TO MAKE RULES- Contd....

Section 12(2)(db):

the manner of calculating the amount payable under this Act.”.

POWER TO MAKE RULES- Contd....

Section 12(2)(e):

any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

POWER TO MAKE RULES- Contd....

Section 12(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.

INTRICACIES

If the declaration has been filed by the taxpayer, before March 2020 but the certificate is issued by the ‘designated authority’ in April 2020 after which the amount of disputed tax is to be paid, whether the amount payable will have to be modified?

Section 3 of the VSV provides for the amount payable by the declarant. The relevant extract of the same is as under:

“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....”

As is evident from the aforesaid, what is relevant is that the declaration shall be filed on or before the date, with the designated authority in accordance with section 4 of the VSV.

Thus, when the declaration in terms of section 4(1) has been filed on or before 31 March 2020 but the same has been certified on or after 01 April 2020, then declarant may not liable to pay additional tax which is payable from April 2020 onwards.

However, a reading of the table in Section 9 indicates that to be able to avail of the Scheme vis-à-vis the lower amount, this payment has to be made before March. This seems to be a challenge practically as the date of 31 March is fast approaching and hence a clarification in this regard will be imperative.

INTRICACIES

Filing a second application :

With a view to clarify, although the Scheme envisages a provision for waiver of all rights once the assessee chooses the scheme for a particular appeal, nothing precludes the assessee from filing a second application under the scheme in the event the first application is rejected

INTRICACIES

Orders pronounced post February 4, 2020:

Reiterating, As the scheme applies to cases which are pending with the CIT(A), ITAT, High Court or Supreme Court as on the 31st day of January, 2020.

A question arises with respect to the matters which were heard before January 31, 2020 and the order has been passed after February 4, 2020. Will such cases be able to take advantage of this Scheme?

Such cases may be covered within the ambit of the Scheme.

However, precaution must be taken to ensure that the CIT(A) does not pass a high pitched assessment after the budget speech.

INTRICACIES

Miscellaneous Application:

Further, in the event a Miscellaneous application is filed against an order of the Tribunal, in a case which was heard before the cut off date but order has been passed after the budget speech. It must be understood that a Miscellaneous application revives the appeal which pending before the Tribunal and therefore such cases must be covered within the ambit of the Scheme

CBDT Cracks Whip. Warns PCsIT Their Future Prospects Depend On Success Of 'Vivad Se Vishwas Scheme'

The CBDT has sent a clear message to the Principal Commissioners and their subordinates that the “Vivad se Vishwas” scheme should not be treated in a casual manner by them but that they have to make efforts in the right earnest. It is stated that the performance of officers in respect of the scheme will be specifically commented upon and shall be an important factor in determining their future postings

QUESTIONS AND ANSWERS ?

Presented by

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Chartered Accountants

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