

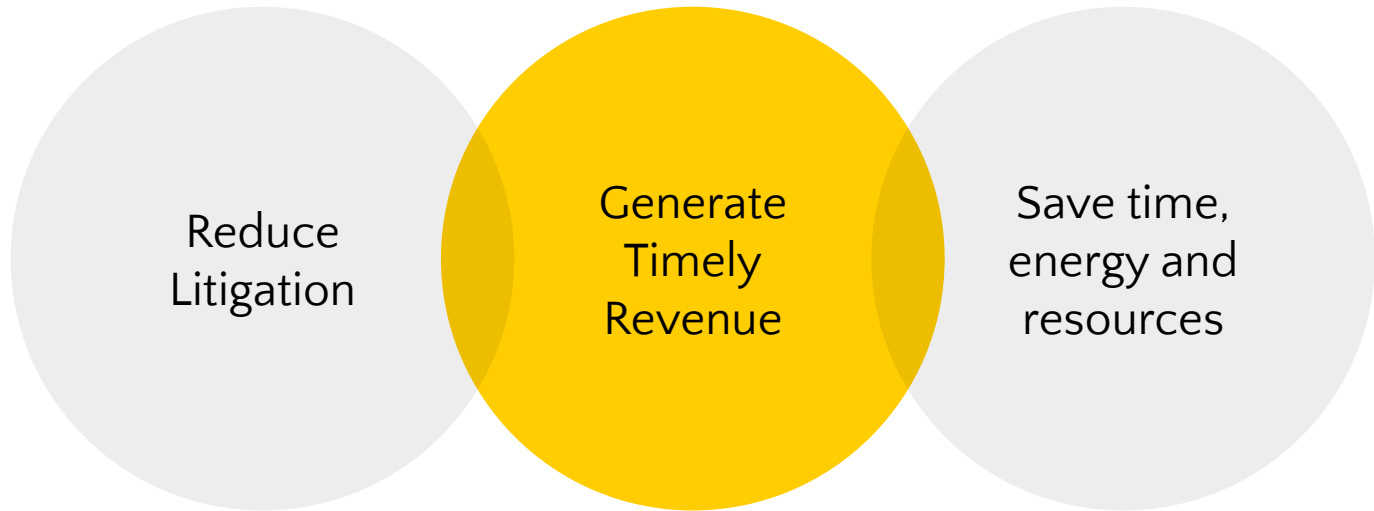
Vivad Se Vishwas Act, 2020



Speaker: Adv. Mahendra Gargieya



Why this dispute resolution scheme ?

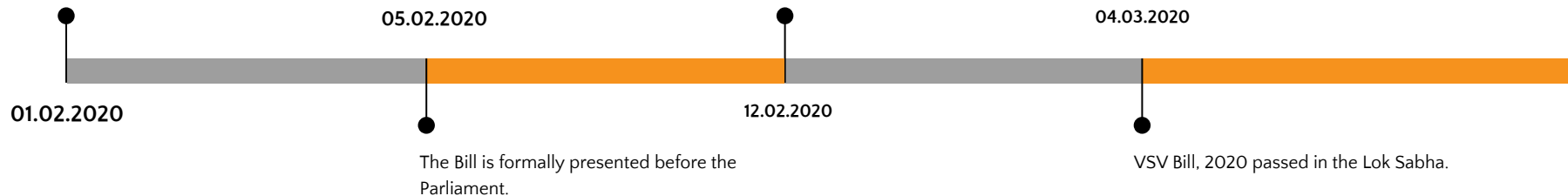




Scheme Timeline

The Hon'ble Union Finance Minister during her budget speech on February 1, 2020 **(2020) 420 ITR 115 (st) (146)** proposed to introduce a scheme at para 126 of the speech.

The Cabinet approved certain amendments with a view to widen the scope of the Bill.





Scheme Timeline

Central Board of Direct Taxes ('CBDT') vide **Circular No. 7 of 2020** on dated 04.03.2020 provided clarifications on VSV Bill in the form of FAQs and through Press Release: CBDT issues FAQs on Direct Tax Vivad se Vishwas Scheme, 2020.

13.03.2020

VSV Bill, 2020 received assent from the President and VSV Act comes into force.

18.03.2020

Government has brought in Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020 providing extension of various time limits

22.04.2020

04.03.2020

17.03.2020

VSV Bill, 2020 received nod from the Rajya Sabha

VSV Rules & forms notified

31.03.2020

Revised FAQ with minor changes vide CBDT Circular No. 9



Eligible Assessee Appellant/Declarant S. 2(1)(a) of VSVA, 2020

Appeal Pending

A person in whose case Appeal or Writ or SLP filed (by the assessee or IT authority) and pending before appellate forum as on specified date u/s 2(1)(n) of VSVA, 2020 i.e. 31.01.2020.

Deemed Appeal

A person in whose case adverse order passed by AO/ CIT(A)/ ITAT/ High Court but no appeal filed though the time to file appeal is still available as on 31.01.2020.

Dispute Resolution Panel

Objection filed u/s 144C of ITA, 1961 but the panel has not yet issued any directions.

Dispute Resolution Panel

Directions issued u/s 144(5) of ITA, 1961 but AO has not passed any order u/s 144C (13) of ITA, 1961 till 31.01.2020

Revision Application u/s 264

Application filed but pending as on 31.01.2020.



Meaning of Disputes Tax, Interest, Penalty, Fee & Computation thereof

Disputed Tax 2(1)(j)

Tax + Surcharge + Cess =
Disputed Tax

Disputed Interest S. 2(1)(h)

Determined under provision of ITA, 1961 where such interest is

(i) Not Charged/ Chargeable on
disputed tax and

(ii) Appeal filed by appellant

(for eg. Interest in u/s 201 or
206C(7))

Disputed Penalty S. 2(1)(i)

Determined under provision of
ITA, 1961 where such penalty is

(i) Not levied/ leviable on
disputed income or tax and

(ii) Appeal filed by appellant

(for eg. Penalty in u/s 271B or
271D or 271E)

Disputed Fee S. 2(1)(f)

As determined under provisions
of ITA, 1961 (for eg. fees in u/s
234E or 234F)



Amount Payable by declarant:

S. No.	Type of Case	Amount payable upto 30-06-2020		Amount payable on or after 01-07-2020	
		Assessee's Appeal	Department's Appeal	Assessee's Appeal	Department's Appeal
1.	Case relating to Disputed Tax: In any other case	100 % of DT	50% of DT	110% of DT	55% of DT
2.	Case relating to Disputed Tax: Search & Seizure and the disputed tax does not exceed Rs. 5 crores.	125% of DT	62.5% of DT	135% of DT	67.5% of DT
3.	Cases relating to disputed interest, penalty and disputed fee	25% of disputed interest, penalty or fee	12.5% of disputed interest, penalty or fee	30% of disputed interest, penalty or fee	15% of disputed interest, penalty or fee
4.	Tax payable w.r.t a covered issue	Half of the amount computed above.	Half of the amount computed above.	Half of the amount computed above.	Half of the amount computed above.

As per the press note dated 31.03.2020, the government has brought in an Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, on 31.03.2020 providing extension of various time limits, whereby the due dates under VSVA, 2020 stands extended to 30.06.2020 without amount of additional DT. But extended time after 30.06.2020 is not yet notified.



The Process

Step 1

Fill **Form 1** i.e. Form for filing declaration under section 4(1) of the VSVA, 2020 along with **Form 2** i.e. Undertaking under S. 4 (5) of VSVA, 2020 for waiving the rights with respect to the tax arrears, to be filed before the last date (now 30.06.2020)

Step 2

Within 15 days from the date of receipt of declaration, the designated authority shall issue **Form 3** i.e. a Certificate under S. 5 (1) of VSVA, 2020 determining the amount payable by the declarant as full and final settlement of the tax arrears.

Step 3

As per S. 5(2) of VSVA, 2020 within 15 days from the date of receipt of certificate, the declarant is expected to make the payment. In case of non-payment of amount payable within the said period, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made u/s 4(6).

Step 4

Pursuant to making payment, the declarant is required to file **Form 4** i.e. Intimation of Payment along with the proof of withdrawal of appeal, for cases pending before the Income tax Appellate Tribunal, Hon'ble High Court or Hon'ble Supreme Court.



The Process

Step 5

1. Upon furnishing of Form 4 by the declarant, the designated authority is required to pass an order in Form 5 for full and final statement as per S. 5(2) read with S. 6 of VSVA, 2020 certifying that the declarant has made the payment under the Act.
2. Further the Department is barred from instituting any proceeding for prosecution for any offence under the Income-tax Act, 1961 or from charging interest, or imposition of penalty.
3. Further, this declaration 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.
4. Such order shall be conclusive as to the matter stated therein.



Disputes **out of scope** of the Act - Exclusion S. 9 VSVA, 2020

Search Cases

Assessment made pursuant to search & seizure u/s 132 or 132A of ITA, 1961 where Disputed Tax exceeds Rs. 5 Cr.

Information based on S. 90 or 90A

Where the basis of assessment is the information received under an agreement referred to in S. 90 or S. 90A of ITA, 1961.

Source or Asset located outside India

Tax arrears relating to any undisclosed income from a source located outside India or an undisclosed asset located outside India;

Prosecution

Under ITA Act : Where prosecution has been instituted on or before the date of filing of the declaration

Under Other Laws :

- ❖ IPC,
- ❖ PoCA, 1988,
- ❖ PMLA, 2002,
- ❖ Benami Act, 1988
- ❖ Enforcing civil liability
- ❖ Etc.



Issue arising from VSVA, 2020

The initiative of the government is to be applauded. To ensure and to promote greater degree of confidence (Vishwas) of the taxpayer in the government, there should be least chances of Vivad in the understanding and implementation of the VSV. Despite CBDT FAQ still there are so many grey areas and issues arising which needs to be clarified by the CBDT in such a manner so as to minimize such possibility. The issues here comprised of

- The points which needs your attention and are not really issues
- Though initially issues cropped up but favourably settled by the CBDT FAQ.
- Issues still arising and needs to be addressed suitably.

Though we have tried to raise some issues along with the possible answer thereto with reference to the revised CBDT FAQ however, there is a possibility of different view thereon and may be finally settled only after suitable clarification by the CBDT.



Issues w.r.t Eligible Assessee

1. Disputing relating to Wealth Tax, Commercial Transaction Tax and Equalisation Levy are not covered as those are not covered under ITA, 1961 (Revised CBDT FAQ Q. 18)
2. Pending waiver application (interest or penalty) or a decision thereon u/s 273A of ITA, 1961 is not eligible to be settled but if challenged before the High Court, it may be possible.
- 3.. Any ruling by AAR is not an eligible dispute but if challenged before the High Court, it may be possible. Refer Revised CBDT FAQ's Q.No. 3.
4. But against a draft order passed u/s 144C of ITA, 1961 where assessee did not file objection, he can opt for VSV. Refer Revised CBDT FAQ's Q.No.60.
5. Even Against the intimation, revision application u/s 264 of ITA, 1961 has been permitted by the courts considering the intimation to be an order.



Issues w.r.t Eligible Assessee

6. Whether an appeal u/s 260A of ITA, 1961 before the High Court is filed but not yet admitted upto 31.01.2020, shall be an eligible dispute.

Suggestive answer: Yes. Refer Revised CBDT FAQ's Q. No.24. Otherwise also even if no appeal is filed but permissible time to file is still available, assessee can opt for VSV Scheme.

7. Where an appeal was filed late (i.e. after the prescribed time limit) without a prayer of condonation of delay but the same was lying pending as on 31.01.2020. Whether such appeal can be settled under the VSV Scheme ?

Suggestive Answer:

- Yes, Looking to the legislative intention, benefit should be extended. Support can be taken from Q.No. 8 of Dispute Resolution Scheme, 2016 (DRS). The Hon'ble Gujarat High Court in **Shatrushailya Digvijayasingh Jadeja v. CIT** [2003] 259 ITR 149 (Guj.) [as affirmed by SC in Shatrushailya



Issues w.r.t Eligible Assessee

- Digvijayasingh Jadeja v. CIT [2005] 277 ITR 435 (SC)], while referring to the case of **Raja Kulkarni v. State of Bombay** AIR 1954 SC 73 and **Dr. Mrs. Renuka Datla v. CIT** (2003) 259 ITR 258 (SC) held that the word 'appeal pending' would mean that an appeal should be pending and that there was no need to introduce qualifications that it should be valid or competent. The Hon'ble Gujarat High Court also held the revision application as pending even before the condonation of delay.
- Thus, if appeal is filed and pending on 31.01.2020 though delay not condoned upto that date it will be eligible dispute. But it would be in the assessee's best interest to get the delay in filing of appeal condoned at the earliest occasions by the Appellate forum.
- In any case, the delay, if condoned, even after 31.01.2020 shall relate back to the date of filing of appeal and such dispute should qualify.
- But where no condonation of delay has been filed along with the appeal, probably such appeal may not qualify.
- The above will hold good for the departmental appeal as well.



Issues w.r.t Eligible Assessee

8. Where there is no dispute on the additions made however, the assessee's appeal challenging the very levy of interest u/s 234B and 234C of ITA, 1961 is pending. Can the assessee get his appeal settled, even though list provided u/s 246A of ITA, 1961 nowhere speaks of interest charging as an appealable order.

Suggestive Answer: Yes. Since there is no dispute on income it is a case of disputed interest u/s 2(1)(h) of VSVA, 2020. Further the law as to the appealability of interest is well settled. Refer to **Central Provinces Manganese Ore Co. Ltd. v/s CIT** (1991) 191 ITR 662 (SC) and **Jalgaon Dist. Central Co-op Bank Ltd. Vs. ITO 70 ITD 290** (Pune) and various others, wherein it was held that Levy of interest u/s. 234B/234C/234D of ITA, 1961 is appealable on the ground that the assessee totally denies his liability to be assessed.

9. The cases where penalty has been imposed u/s 271D or 271E or 271B of ITA, 1961, etc where, appeal(s) has been filed and pending as on 31.01.2020, will qualify for VSV Scheme. Can the assessee get his appeal settled ?

Suggestive Answer: Yes. Since there is no dispute on income it is a case of disputed penalty u/s 2(1)(i) of the VSVA, 2020.



Issues w.r.t Eligible Assessee - Deemed Appeal

10. In the category of Deemed appeals u/s 2(1)(a)(ii) of VSVA, 2020 where order has been passed by the the AO/ CIT(A)/ ITAT/ HC and time is still available on 31.01.2020, such assessee can opt for VSV Scheme, Although similar should have been the situation for the order passed by the Hon'ble High Court in an appeal decided u/s 260A of ITA, 1961 but provision, as it stands today, speaks only for the order passed in a writ and not an order passed in an appeal. This appears to be an unintended drafting error and requires suitable modification.

11. Similarly, there no reference of order passed u/s 263 of ITA, 1961 in the category of Deemed appeals u/s 2(1)(a)(ii) of VSVA, 2020 hence such assessee must have filed appeal before ITAT and remained pending on 31.01.2020.



Issues w.r.t Eligible Assessee

12. Issues relating to set aside matters- There may be different answers to different situations w.r.t VSV dealt with hereunder-

a.	If only one issue is involved and the same has been restored (set aside) by the ITAT to the AO for fresh examination.	Assessee can opt for VSV and the entire amount of <i>disputed tax</i> relating to that issue shall be payable.
b.	If two issues are involved, one is set aside to AO and other is decided against the assessee.	Assessee can opt for VSV. However, the amount of <i>disputed tax</i> shall be the amount relating to both the issues (assuming that the set aside issue is also to be decided by the assessee).
c.	But where the Appellate Authority has annulled the order and directed the AO to pass a fresh assessment order.	No. Refer Revised CBDT FAQ. No. 7, the assessee can't opt for VSV in such a situation. However, looking to the fact that generally in most of the set aside cases, the assessments are framed against the assessee, the assessee should be given a chance to opt for VSV here also.



Issues w.r.t Eligible Assessee

13. Further, where the assessee's, appeal has already been heard and dismissed for default/ decided against the assessee prior to 31.01.2020 but the assessee filed a MA u/s 254(2) of ITA, 1961 before the ITAT which also stood heard prior to 31.01.2020 but order is awaited. Can such assessee be eligible to opt for VSVA, 2020 ?

Suggestive Answer: As the appeal had already been decided prior to the cut-off date, there is no pendency of appeal. But if the ITAT has recalled its order in the MA, one may possibly argue that the appeal has become pending as on the cut-off date and hence the assessee may be held eligible.

14. Where a writ has been filed against the notice issued by the AO u/s 148 of ITA, 1961, reassessment pursuant thereto, is still pending. The writ is pending decision by the Hon'ble High court. Can such petitioner assessee opt for VSV ?

Suggestive Answer: No. because reassessment is yet to be made hence, it is difficult to quantify the disputed income and the disputed tax. Similar situations may arise where a notice u/s 153A of ITA, 1961, and so on,



Issues w.r.t Eligible Assessee

have been issued but the final order pursuant thereto have not been passed by the concerned authority. Refer CBDT Revised FAQ 12 & 3

15. Where notice is issued u/s 263 of ITA, 1961 by the CIT, assessee can't opt for VSV (possibly for the reason that quantification is not possible. Though where notice of enhancement is given by the CIT(A) u/s 251(2) of ITA, 1961, he can opt and DT shall be w.r.t. the enhanced income.

However, if CIT has passed order u/s 263 of ITA, 1961 and appeal is pending before the ITAT, he can opt.

16. Whether assessee can opt for VsV for some of the issues and not other issues?

Suggestive Answer: Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must choose to settle all issues and then only he would be eligible to file a declaration. Refer Revised CBDT FAQ 11.



Issues w.r.t Eligible Assessee - Consequential Effect of Settlement

17. Consequential Effect of Settlement:

Another pertinent aspect requiring deliberations and clarifications are the cases where the dispute is settled on one issue/in one assessment year/in case of one assessee, whether consequential relief can be claimed/ shall be given automatically in relation to other related issue/in case of other assessment year/other assessee, respectively ?

Based on the Revised FAQ by CBDT (Q. 31,32 and 35), possible answers of some of such issues/situations.

17.1 TDS matters :

In a case, where appeal is pending against the order of the ITO (TDS) holding the assessee liable to TDS u/s 201 of ITA, 1961 relating to a particular sum paid (say commission) and consequent, thereto, the ITO (TDS) imposed penalty u/s 271C of ITA, 1961 due to non-compliance of TDS provisions, against which also separate appeal has been filed. Meanwhile, the assessee settled the appeal against order u/s 201 of ITA, 1961. Whether such settlement shall



Issues w.r.t Eligible Assessee - **Consequential Effect of Settlement**

consequently relieve the assessee from the penalty imposed u/s 271C of ITA, 1961 ?

Suggestive Answer: Keeping in mind the Answers given by CBDT in similar matters [Refer Q. 31 and 32 – wherein similar circumstances relief is provided w.r.t disallowance made u/s 40(a)(i)/(ia) of ITA, 1961] the assessee should be allowed the consequential relief, of not paying the additional 25% of the subjected amount of penalty.

17.2.1 Substantive and Protective Addition

Where substantive addition is made in the hands of one person, say Mr. A, who got his appeal settled, and protective additions was made in the hands of another person, say Mr. B. On settlement of dispute of substantive addition by Mr. A, Whether consequential relief will be given to Mr. B ?

Suggestive Answer: Yes, refer Revised CBDT FAQ Q. 35, wherein the CBDT has directed the AO to pass a rectificatory order deleting protective addition (of Mr. B) on settlement of protective substantive addition (by Mr. A) .



Issues w.r.t Eligible Assessee - Consequential Effect of Settlement

17.2.2 In the case of A, substantive addition have been made whereas in the cases of B & C protective addition have been made consequent to the substantive addition so made. If A gets his dispute settled, whether the assessment made with protective addition in the hands of main assessee, shall also get settled ?

However, if the assessee B & C get there matter settled whether consequently the assessment of A involving substantial addition while also get settled ?

Suggestive Answer: The law is well settled that there can't be addition or assessment of the same income twice. If the case of A settles the dispute involving substantive addition, this implies the issue has attained finality, Therefore consequently addition of the same income made on protective basis, must go. On this settlement of dispute in the case of A, consequently the addition made in the cases of B & C should be deleted. Ref. CBDT Revised FAQ 35.

Similar should be the situation where the assessee B & C settles the dispute then consequently, the addition



Issues w.r.t Eligible Assessee - **Consequential Effect of Settlement**

in the hands of A should go. of course all the assessee A, B & C may decide in which hand the dispute should be settled so as to attract minimum joint tax liability.

17.3 Higher Valuation of Closing Stock : In a case where the declared valuation of a closing stock has been enhanced by Rs. 10 Lakh and appeal is pending before the CIT(A) as on 31.01.2020. Whether, on settlement of such dispute, the assessee shall be getting the benefit of the enhanced value of the closing stock in the next year ?

Suggestive Answer: As per the Rule of consistency, the value of the opening stock should also be enhanced by the AO to the same extent. This is a settled law and consistent view taken by various courts. Refer **V.K.J. Builders & Contractors (P) Ltd vs CIT** (2010) 228 CTR 0143 : (2009) 318 ITR 0204 (SC) & **Mahendra Mills Ltd. Vs. P.B. Desai** CIT (1975) 1975 CTR 0082 : (1975) 99 ITR 0135 (SC). Therefore, even if the Act does not provide specifically so but to maintain the Rule of Consistency, being the law of the land, the assessee deserves to be given the benefit of enhancement of opening stock in the immediate next year. However the CBDT the ways and means.



Issues w.r.t Eligible Assessee - **Consequential Effect of Settlement**

17.4 The assessee accepted cash loan of Rs. 10 Lakhs which was added by the AO u/s 68 of ITA, 1961 and against which appeal is pending. At the same time, penalty u/s 271D of ITA, 1961 was also imposed, against which also separate appeal is pending. The assessee got the quantum appeal settled under VsV Scheme. Whether such assessee will get complete consequential relief in the penalty appeal ?

Suggestive Answer: There is a consistent judicial guideline that the loan amount, which is subjected to penalty, once considered as income of the assessee u/s 68 of ITA, 1961, there is no question of penalty u/s 271D of ITA, 1961. Logically therefore, consequent to the settlement of quantum appeal, the assessee should not be required to pay disputed penalty.

There may be many more similar situations, hence the CBDT may come out with a policy clarification.



Issue w.r.t. Amount Payable by Declarant:

18.1 Where a rectification order has been passed reducing the assessed income, whether the *disputed tax* is to be calculated after giving effect to the same?

Suggestive Answer: Yes. The very definition of *disputed tax* contained u/s 2(1)(j) of VSVA, 2020 states that “*disputed tax*” in relation to a assessment year or financial year as the case may be, means the income tax, including surcharge and cess payable by the appellant **under the provisions of the Income Tax Act, 1961**, which implies that disputed tax has to be essentially computed after giving effect to the 154 order. (Also refer Revised CBDT FAQ. 25). however, this should hold good even where through the order u/s 154 of ITA, 1961, the AO has enhanced the income and the consequent tax there upon (no doubt the statutory procedure of giving show cause notice, inviting reply, etc would have been followed by the AO).

18.2. However, in a case where rectification application u/s 154 of ITA, 1961, though filed but remains pending on 31.01.2020, how the *disputed tax* would be computed ?



Issue w.r.t. Amount Payable by Declarant:

Suggestive Answer: if no order is passed u/s 154 of ITA, 1961, till the filing of the declaration, one possible view, in a case where period of 6 months has already expired, is that the assessee may presume that rectification has been carried out in its favour as prayed for. In similar situations u/s 12AA of ITA, 1961, the Apex Court has held of granting of deeming registration if no order is passed within the prescribed time limit. Better course would be to pursue the AO
Else the CBDT may come out with a clarification in this aspect.

19. Covered Issue – Means any issue on which assessee has got a decision in his favour from ITAT/HC/SC [2nd & 3rd Proviso to S. 3 r.w Rule 2(e)] :

Q. Where the appeal of the assessee is pending before the ITAT or before the High Court on more than one issue and one of them is directly covered by decision of the Supreme Court in its favour, the issue is whether the designated authority should ignore the tax liability relating to such covered issues to compute the disputed tax accordingly.



Issue w.r.t. Amount Payable by Declarant:

Suggestive Answer: 19.1 If the appellant has got a decision in his favour from SC on an issue, since there is no dispute now with regard to that issue he need not settle. If that issue is part of the multiple issues, the disputed tax may be calculated on other issues ignoring nil tax on this issue. Ref. CBDT Revised FAQ – Refer Q. 37.

The 2nd and 3rd Proviso deals with the situation where appeal is pending before CIT(A) or is pending before ITAT but there is no similar worded proviso where assessee's appeal is pending before the HC. This may mean that where an appeal is pending before the HC, issues involved which are covered by the decision in favour of the assessee by the SC, there is no requirement of payment even 50% of the Tax.

19.2 Where an appeal is pending before the CIT(A) involving an issue which has already been decided in the favour of the assessee by the ITAT, the amount of DT shall be 50% of the DT as computed under the table given under 3 of VSVA, 2020. Similarly where an appeal is pending before the ITAT and issue is already decided in the favour of the assessee by the High Court then DT shall be half the normal DT.



Issue w.r.t. Amount Payable by Declarant:

Where an appeal is pending before ITAT and issued involved is covered in the assessee's favour by earlier ITAT order whether 50 % concession is available.

Suggestive Answer: Yes. Support can be taken from Revised CBDT FAQ 39 (relating to DRP matters). Though language of S. 3 of VSVA, 2020 does not suggest so. This requires clarification.

20. Whether the ITAT/HC order referred to in the 2nd and 3rd proviso should mean an order passed in assessee's own case or it may be an order passed in case of other assessee as well. This issue requires clarification from CBDT.

21. In a case where the amount *determined* by the designated authority u/s 5(1) of the VSVA, 2020 is found to be inconsistent or incorrect by the declarant for whatever reason, whether an opportunity of being heard will be provided to the declarant and the amount so determined can be appealed against ?



Issue w.r.t. Amount Payable by Declarant:

Suggestive Answer: As per section 5(3) of the VSVA, 2020, order passed u/s 5(1) of the VSVA, 2020 determining the amount is conclusive and final. Moreover, as per S. 4(7) of VSVA, 2020 it cannot be challenged before any forum (Ref. Revised CBDT FAQ 47).

However, this appears to be a violation of the principle of natural justice. In the amount determined, there may be an arithmetical mistake or error in the computation of the disputed tax, hence a suitable mechanism must be provided in the scheme related to such issue. Better course would be to write to the AO of informing the amount of disputed tax as per the assessee or to request the AO to provide outstanding amount of tax, interest and penalty and the CBDT must ask the AO himself may inform the declarant assessee.

Further representation may be made to the DA who can amend his order u/s 5 of the VSVA, 2020 to rectify any apparent errors. Refer Revised CBDT FAQ's Q. 46.

However, if still nothing happens, the only remedy is to approach the HC through a Writ Petition u/s 226 of ITA, 1961.



Issue w.r.t. Immunity

22. Interest related to S. 220(2) of ITA, 1961 and related penalty of ITA, 1961 shall also be waived consequent to the settlement of the quantum appeal. (Refer Revised CBDT FAQ. 26)

23. As per literal interpretation of S. 6 of the VSVA, 2020, it is the designation authority i.e the PCIT/CIT who shall not institute any proceedings in respect of offence, or impose penalty etc. whereas the AO impose penalty or charge interest. So to avoid confusion suitable clarification is required.

24. In a case where an assessee opts for the VSVA, 2020 and a Final Certificate is issued by the DA in terms of the said Act, whether the Department would be debarred from reopening the concluded assessment u/s. 148 of ITA, 1961 for the particular assessment year as per the provisions of S. 5 of the VSVA, 2020 on the basis of Audit Objections, fresh tangible material post assessment etc.



Issue w.r.t. Immunity

Suggestive Answer: Yes, the Department can do so for the reason that the order issued u/s 5(2) of VSVA, 2020 by the DA is conclusive *only as to the matters stated therein and no matter covered by such order shall be reopened in any proceeding* under the Income Tax Act or under any other law. However, if the reason recorded shows that the action u/s 147 r.w. 148 of ITA, 1961 has been taken w.r.t. some escaped income unconnected with the issue/ matters already settled, the AO would be in his right to do so. Refer **BHILWARA SPINNERS LTD. vs. CIT (2006) 102 TTJ 838 (Jd)** Revision—Jurisdiction of CIT for revision—KVSS scheme for settlement of arrears of taxes—Unpaid liability on the date of declaration under s. 68 being mandatory—Sec. 90(3)—Power to curtail further investigation into matters already adjudicated being curtailed—Sec. 263 being wider in scope including income not taxed earlier by AO—Hence, immunity under s. 90(3) provided only for those issues already settled—Hence, no bar on power of AO to consider issues not considered earlier—100 per cent depreciation allowed by AO on an item not otherwise eligible—Hence, s. 263 action invoked by CIT considering AO's order being erroneous on non consideration of issue on depreciation even in a settlement under KVSS being valid.”



Issues w.r.t. Disputes out of scope of the Act - Exclusion S. 9 VSVA, 2020

25.1 Mere issuance of notice by the IT authority will not disqualify the assessee for opting VsV. Moreover where, the **prosecution has been instituted** on or before the date of filing of the declaration but if the assessee has got it compounded he may opt for. Ref. Revised CBDT FAQ 22.

25.2. Sec 9(a)(ii) VSVA. 2020 excludes the dispute relating to an A.Y. in relation to which **prosecution has been instituted** on or before the date of filing of the declaration. In case where the department has already filed complaint before the Economic Offence Court u/s 276CC r.w.s. 279 of ITA, 1961 on 17.01.2020 and the court takes cognizance of such complaint on 25.01.2020 but in between, the declaration has been filed by the assessee on 20.01.2020. Whether such declarants are eligible under the Act?

Suggestive Answer: Yes. Mere filing of the complaint cannot be considered as an institution and it is only when the Court takes cognizance of the offence, a complaint will be treated as instituted. Since in this case the declaration has already been filed on 20.01.2020 which is prior to 25.01.2020 on which the court took cognizance, hence assessee is eligible. Refer *Jamuna Singh and Ors. Vs. Bhadai Shah, SC. (1964) 5 SCR 37 : AIR 1964 SC 1541 : (1964) 2 Cri LJ 468.*



Issues w.r.t. Disputes out of scope of the Act - Exclusion S. 9 VSVA, 2020

25.3 In S. 9(b) to (e) of VSVA, 2020, the reference is to any person and not to any particular assessment year. Hence, meaning thereby such person against whom prosecution for any offence has been instituted, in any year before filing of declaration, then he will not be eligible.

It must be noted where IT Dept. has launched prosecution for offence under IPC or for enforcement of any civil liability, **such cases shall be not eligible under VSVA, 2020 for any assessment year S. 9(d) of VSVA, 2020.**

26. In **Search cases**, penalty of Rs. 1 cr. u/s. 271AAB of ITA, 1961 has been imposed Whether such assessee is eligible to opt for VSV ?

Suggestive Answer: Yes, he can, in as much as u/s 9(a)(i) of VSVA, 2020 only those cases have been excluded where the disputed tax exceeds Rs. 5 cr. The disputed tax as defined u/s 2(1)(j) includes only the Income tax, surcharge and cess but not penalty. Therefore, apparently, the bar put by S. 9 of VSVA, 2020 should not come in the way. This being a case of Disputed Penalty defined u/s 2(1)(i) of the VSVA, 2020 where, there is no dispute on the additions made, hence the assessee can opt for VSV and has to pay 35% (i.e Rs. 35 Lakh in the present case).



Issues – Others

27. Where the assessee has filed the declaration however due to financial difficulties payment could not be made within the prescribed time limit, What shall be the consequences ?

Suggestive Answer: Such declaration would be deemed to have been withdrawn u/s 4(6)(b) of the VSVA, 2020 because the declarant has violated the conditions of the Act.

The assessee may approach the Hon'ble High Court by way of Writ under article 226. Refer **Goa Cricket Association vs PCIT (2020) 113 taxmann.com 287 (Bombay)** Where State Cricket Association was receiving funds from parent body BCCI to carry out its activities including payment of tax but BCCI was enjoined by Apex Court from paying money to State Cricket Associations due to which assessee became unable to pay tax by due date under Direct Tax Resolution Scheme, 2016, writ of mandamus were to be issued for payment of tax by parent body within extended period.



Issues - Others

In any case of failure, the related appeal shall be deemed to have been revived. It may be clarified that though the section uses the word *against the declarant* however, looking to the legislative intent the consequential proceedings shall be deemed to have been revived whether for or against the assessee/ Department.

28. Payment of DT : Where case of Rs. 50 L was seized by the Police and later Requisitioned by the Income Tax Dept u/s 132A. The AO made addition of Rs. 50 L and the same is agitated in appeal, which is pending as on 31.01.2020. The assessee wishes to opt for VsV and adjust the amount lying in the PD account towards the payment of disputed tax. Can he do so ?

Suggestive Answer : Yes, he can opt for VsV and bar of S. 9 will not apply because the disputed tax is below Rs. 5 Cr. Secondly, if the declaration is filed and the competent authority has issued a certificate u/s 5(1) of VSVA, 2020 determining the amount payable by such declarant, it will become an existing liability. Accordingly, the assessee would be acting within his right to get such cash adjusted to satisfy the requirement of making payment in 15 days.



Issues – Other

Similarly, there may be refund in one year but demand in other year. There appears no provision in the Act prohibiting such adjustments. However, there is no clarity if adjustment is permissible.

29. What if the assessee has filed a declaration prior to 30.06.2020 but the authority is unable to process the same and pass an order determining the amount of the disputed tax payable by the assessee in terms of section 5(1) within the period of 15 days, resulting into non-payment by the assessee upto 30.06.2020 ?

Suggestive Answer: It is the case of impossibility of performance because unless the designated authority determines the amount and passes an order, the declarant cannot deposit the amount. Hence, he cannot be made to suffer and as and when the order is passed, he is required to pay within a further period of 15 days from the date of receipt of the same, whereupon, he must be granted the benefits under the VsVA, 2020. Refer **National Aviation Co. of India v. Dy. CIT** [2010] 8 taxmann.com 106/[2011] 43 SOT 362 (Mum.) and **Jagdish Malpani v. ACIT** [2005] 94 TTJ 321 (Indore).



Issues – Decision making

30. Decision making : Whether to opt VsV or not ?

After Completely understanding the nuances and netegrity of the VsV Scheme, the decision whether to opt for the Scheme in a particular case may broadly depend upon the following factors/criteria:

- 1. How strong on merit :** First and Foremost factor to be considered is how strong is the case on merits and evaluating the chances of success in appeal. Where the issue involved is fully and directly covered in favour of the assessee by the decision of the jurisdictional HC (against which no further appeal has been filed and thus, has attained finality) or of SC, the assessee may not opt for VsV on/ w.r.t that issue.
- 2. Compare mathematically and prudently:** One is required to make a mathematical calculation as to what is the amount of disputed tax payable viz-a viz which the amount of penalty and interest which will be waived. If it is a very old matter reopened u/s 148, where interest and penalty liability as against the tax is heavy, one may think of opting VsV, if he is doubtful of success on merits.



Issues – Decision making

Where AO disallowed revenue expenditure holding it to be capital in nature and allowed depreciation, then one should evaluate its effect on demand payable and prudently consider opting for the Scheme or not.

3. Chances of Penalty and Prosecution : Further, the nature of the issue involved must be evaluated carefully w.r.t the imposing of penalty and initiation of the prosecution proceedings.

Depending upon the fact, one may decide whether to opt for VsV in one assessment year and not in the other years.

4. Departmental Appeal : Where a Dept. appeal with heavy stacks is pending along with cross appeal filed by the assessee involving small amount of addition. The assessee may think of opting for VsV w.r.t to Dept. Appeal whereas he may continue contesting his cross appeal.



Issues - Decision making

5. **Cost of Litigation & expected time** of attaining finality in the dispute are also very relevant.

The fact of **heavy tax payment already made** with the doubtful chances of success in appeal, may lead to consider to opt for VsV, more particularly in the Covid -19 scenario, which has resulted into serious cash crunch, so that he may focus more on his business.



Thanks!

Any *questions* ?

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