

J.B. NAGAR CPE STUDY CIRCLE

STUDY CIRCLE MEETING – 17/07/2016

IMPORTANT ISSUES UNDER “THE INCOME DISCLOSURE SCHEME 2016”

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Introduction:-

The Hon'ble Prime Minister Mr. Narendra Modi, during the course of his election speeches before the 2014 general elections had made several promises. One of the important promises was minimum government, maximum governance. Apart from this he had made several other promises like bringing back black money stashed in foreign countries, remove policy paralysis and re-initiate the economic reforms which were stagnating from quite some time. As per the promise, they have started working on all the fronts and the policy level decision making clearly shows that the present government means business and effective governance. Out of the many bold steps, some of the bold steps taken by the Finance Minister and Central Board of Direct Taxes are increasing monetary limit for filing appeal by the department before the Appellate Tribunal, High Court and Supreme Court. Similarly, they have increased monetary limit of the appeals to be heard by a Single Member Court in the Income Tax Appellate Tribunal. If one takes a clue from the Finance Minister's speech on the floor of the House while presenting the Finance Bill, 2016, the Government expects very strict voluntary compliance regime in future and before achieving this, the government has given an opportunity to the citizens to comply with the statutory requirements. Income Disclosure Scheme, 2016 is one of such opportunity available to the assessee.

The Hon'ble Finance Minister's claims that the present scheme is totally different from the various amnesty's and Voluntary Disclosure Schemes brought in operation earlier. Before making any further analysis of this topic, I would like to mention that I had an occasion to challenge the constitutional validity of the VDIS 1997 in the case of All India Federation of Tax Practitioners vs. Union of India [1997] 228 ITR 68 (Bombay). The Hon'ble Bombay High Court while upholding the constitutional validity of the scheme made certain observations which are very interesting:

- i. It is true that by the Voluntary Disclosure of Income Scheme dishonest tax payers get advantage. It is also true that the honest tax payers suffer, but, at the same time Court has to consider well established limitations under the constitution to interfere in such matters.
- ii. It has been pointed out that unaccounted money of Rs. 5 Lac Crore approximately was in circulation in this country.
- iii. It was repeatedly pointed out during the course of arguments that dishonest tax payers are given undue benefits and much more immunities by the present enactment. As against this, it has to be borne in mind that even at present the taxation laws are admittedly very stringent. Still, it is difficult for the authorities to take appropriate action against those persons who amass unaccounted wealth to a large extent. Whatever may be the reasons, at least it is a known fact that in the present day economy, there is a parallel economy of unaccounted money.
- iv. It is a known fact that at present the atmosphere is not so healthy wherein dishonest tax evaders would feel ashamed or would be reluctant to avoid legitimate payment of tax. In such an atmosphere, if the parliament decides to enact law giving certain immunities as inducement for disclosure of income of such tax evaders, it cannot be said that it is palpably arbitrary.

These were the observations of the Hon'ble Bombay High Court twenty years back. The fact of parallel economy has not changed. On the contrary, it has become much stronger. If the Government wants to make efforts to eradicate black money from the economy, we professionals should play a positive role in making the scheme successful. Here I would like to clarify that as professionals we have no need to sell the scheme but definitely we can caution the assesseees that compliance is a better virtue. The decision is in the hands of the assessee.

Post independence schemes were introduced to tackle the problems of black money. They are as under:

VDS - Scheme	No. of Declarants	Income / Wealth Declared (Rs. In Crs.)	Tax Collected (Rs. In Crs.)
1951	20,912	70.20	10.89
1965	2,001	52.18	30.80
VDS(2) 1965	1,14,226	145.00	19.45
1976	2,58,992	1,090.72	753.77
1997	4,70,000	3,300.00	1,010.00
Black Money Scheme	644	4,164.00	2,428.40

The Finance Act, 2016 introduced 'The Income Declaration Scheme, 2016' in chapter IX consisting of section 181 to section 199, which received the assent of the President on 14th May, 2016. It has provided mechanisms for declaration of undisclosed income and the manner in which it has to be offered for tax.

Scope of the scheme

The Central Board of Direct Taxes vide circular No. 16 of 2016 dated 20th May, 2016 explained that a declaration under the aforesaid Scheme may be made in respect of any income or income in the form of investment in any asset located in India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the

assessment year 2017-18 and which had not been offered to tax in the return filed before the date of commencement of the Scheme.

Rate of tax, surcharge and penalty [Sec. 184 & 185 of F.A., 2016]

The person making a declaration under the Scheme would be liable to pay tax at the rate of 30% of the value of undisclosed income alongwith surcharge at the rate of 25% of such tax. In addition, he would also be liable to pay penalty at the rate of 25% of such tax. In effect, the declarant would be liable to pay a total of 45% of the value of the undisclosed income declared by him. This special rate of tax, surcharge and penalty specified in the Scheme will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

Time limits for declaration and making payment

A declaration under the Scheme can be made anytime on or after 1st June, 2016 but before 30th September, 2016 and 30th November 2016 as the last date by which the tax, surcharge and penalty shall be paid on the income disclosed by the declarant under the present scheme.

Form and verification of declaration [Sec. 186 of F.A., 2016]

As per the Scheme, declaration is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 1 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

Sr. No.	Status of the declarant	Declaration to be signed by
1.	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other

		person competent to act on his behalf.
2.	Hindu Undivided Family	<i>Karta</i> ; where the <i>karta</i> is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3.	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
4.	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5.	Any other association	Any member of the association or the principal officer
6.	Any other person	That person or by some other person competent to act on his behalf.

Undisclosed income declared not to be included in total income [Sec. 188 of F.A., 2016]

The amount of undisclosed income declared in accordance with section 183 shall not be included in the total income of the declarant for any assessment year under the Income tax Act, if the declarant makes the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under sub-section (1) of section 187.

Undisclosed income declared not to affect finality of completed assessments [Sec. 189 of F.A., 2016]

A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or claim any set off or relief

in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

Undisclosed income declared not to be treated as Benami transaction in certain cases [Sec. 190 of F.A., 2016]

The provisions of the Benami Transaction (Prohibition) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset., if the asset existing in the name of a benamidar is transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government (capital gains has notified 30th day of September, 2017 as last date)

Tax in respect of voluntarily disclosed income not refundable [Sec. 191 of F.A., 2016]

Any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable.

Declaration not admissible in evidence against declarant [Sec. 192 of F.A., 2016]

Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 185, or for the purposes of prosecution under the Income-tax Act or the Wealth-tax, 1957.

Declaration by misrepresentation of facts to be void [Sec. 193 of F.A., 2016]

Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts, such

declaration shall be void and shall be deemed never to have been made under this Scheme.

Declaration not eligible in certain cases [Sec. 196 of F.A., 2016]

As per the provisions of the Scheme, no declaration can be made in respect of any undisclosed income chargeable to tax under the Income-tax Act for assessment year 2016-17 or any earlier assessment year in the following cases-

- (a) any person in respect of whom an order of detention has been made under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;
- (b) In relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988;
- (c) To any person notified under section 3 of the Special Court (Trial of offences relating to transactions in securities) Act, 1992;
- (d) In relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;
- (e) In relation to any undisclosed income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2017-
 - (i) Where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect

- of such assessment year and the proceeding is pending before the Assessing Officer; or
- (ii) Where search under section 132 or requisition under section 132A or survey under section 133A of the I.T. Act has been conducted and time limit for issuance of notice under section 143 (2) or section 153A or section 153C has not expired; or
 - (iii) Where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.

Circumstances where declaration shall be invalid [Sec. 197 of F.A., 2016]

In the following situations, a declaration shall be void and shall be deemed never to have been made:-

- (a) If the declarant fails to pay the entire amount of tax, surcharge and penalty on or before 30.11.2016;
- (b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply.

Some important issues

1. Whether the declarant is supposed to prove his source of income?
Whether source of tax paid will be subject matter of verification?
2. What is the meaning of nature of income?
3. What is the meaning of undisclosed asset?

4. Whether notional House Property income is to be declared is declared under section 23(4)(b) in respect of the investment made in the immovable property disclosed under I.D.S., 2016?
5. Consequences of not disclosing the undisclosed income?
6. Whether the provision of section 197 of the scheme is applicable, if the assessee falls under any of the category mentioned in section 196 of the Scheme?
7. Whether the declarant will get immunity under other economic laws including Service Tax, VAT, Companies Act, SEBI Act & regulations etc.?
8. Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such un-assessed income can be declared under the Scheme?
9. Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?
10. Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?

Case study

1. Mr. A declared undisclosed income in the form of investment in Capital asset being flat. The flat was acquired in the year 2000. The cost of acquisition of the flat was Rs.10 lakh in the year 2000

and FMV as on 01.06.2016 is Rs.2 Cr. The following issues may arise for consideration.

- i. Whether it is compulsory to disclose the undisclosed income in the form of investment?
 - ii. If it is declared at FMV, what would be the cost of acquisition?
 - iii. What would be the period of holding?
 - iv. What would be the treatment in respect of the said asset if the same has been sold in the year 2017 i.e. whether it is short term or long term?
 - v. If the said asset is acquired partly by disclosed income and partly by undisclosed income, how to compute the capital gains?
 - vi. What will be consequences under section 197(c) of the F.A., 2016?
 - vii. What will happen if Mr. A will not disclose this asset under the preset Scheme i.e. whether the department can re-open his case under section 148 of the I.T. Act?
2. Mr. C has declared Industrial Gala which is purchased for Rs.10 lakhs in the year 2005 and used in the manufacturing activities which is not disclosed. Mr. C has neither claimed nor allowed any depreciation on the said asset. Now, under the Income Declaration Scheme, 2016 he has declared Rs.1 Crore being FMV of the said asset as on 01.06.2016. Section 49(5) of the I.T. Act is amended only with reference to calculation of Capital gains. Section 43(6) read with section 43(1) which states that actual cost of acquisition

and direct expenses and Section 43(6) states that written down value as per previous closing balance.

- i. Now, for the purpose of financial year 2016-17 relevant to assessment year 2017-18 what is cost or WDV for the said assets?
 - (a) Rs.10 lakhs cost of acquisition less depreciation deemed to be allowed under the scheme
 - (b) Rs.10 lakhs as actual cost
 - (c) Rs.1 Crore, income declared on which the tax under the IDS have been paid.