



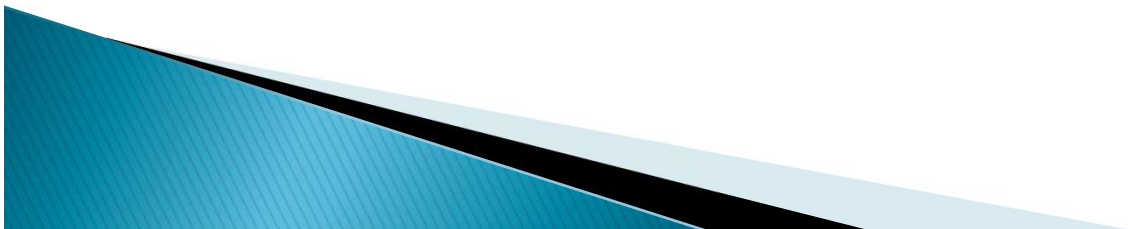
# **J. B. Nagar CPE Study Circle of WIRC of ICAI**

**Direct Tax Vivad se Vishwas Scheme 2024**

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# Vivad .... a Problem that refuses to cease

- Kar Vivad Samadhan Scheme - 1998 - Applicable to disputes under both Direct and Indirect Tax
- Direct Tax Dispute Resolution Scheme 2016
- Sabka Vishwas (Legacy Dispute Resolution) Scheme - 2019 - Applicable only for the Indirect Taxes dispute under pre-GST era
- The Direct Tax Vivad se Vishwas Act 2020
- Direct Tax Vivad se Vishwas Scheme 2024
- AND .... Do they wish to ever live happily ???



# Statutory Provisions



# VsV Scheme – Appellant – Sec. 89(1)(a)

- A person in whose case an appeal or a writ petition or SLP has been filed
  - By him or By department or both
  - Before any Appellate Forum – SC / HC /ITAT / CIT (a) / Jt. CIT (a)
  - And Such appeal /petition / SLP is **pending on specified date** i.e. 22-7-2024
    - **FAQ – 4 – Circular No. 12 Dt. 15-10-2024 – Contrary to the Act**
- A person who has filed objections before DRP and DRP has not issued any direction before SD
- A person in whose case DRP has issued directions but AO has not passed order as per the directions
- A Person who has filed an application for revision u/s. 264 and such application is pending on SD

- Cases where order has been passed by AO / CIT (A) / ITAT / HC on or before SD and the time for filing further appeal or SLP has not expired is not covered – Question FAQ 9 – Circular No. 12 Dt. 15-10-24
- This was covered in VsV 2020 by Amendment
- Even delayed appeal filed with condonation were allowed – Q No. 59

# VsV 2024 – Count your outflow

Quantum Appeals – Filed after 31-1-2020

- Declaration till 31-12-2024
- First Phase – Payment till 31-12-24
  - Only Disputed Tax
- Second phase – Payment post 31-12-24 (Last date to be notified)
  - 110% of Disputed Tax

Payment in Appeal against Interest / Penalty / Fees

- First Phase – till 31-12-2024
  - 25% of Disputed Interest / Penalty / Fees
- Second phase – Beyond 31-12-2024
  - 30% of Disputed Interest / Penalty / Fees

# VsV 2024 – Old Appeals – Cost of Missing Bus

Quantum Appeals – Filed prior to 31-1-2020

- Declaration till 31-12-2024
- First Phase – Payment till 31-12-24
  - 110% of Disputed Tax
- Second phase – Payment post 31-12-24 (Last date to be notified)
  - 120% of Disputed Tax

Payment in Appeal against Interest / Penalty / Fees

- First Phase – till 31-12-2024
  - 30% of Disputed Interest / Penalty / Fees
- Second phase – Beyond 31-12-2024
  - 35% of Disputed Interest / Penalty / Fees

# Appeals by Department and Covered Issues – Tax Payable

- Appeal by Department
  - In cases where Appeal / Writ /SLP by Department – Amount payable shall be 50% of the amount payable
- Covered Issues
  - Appeal filed before CIT (A) or JCIT (A)/ Objections before DRP **on any issue already decided in his favour** by ITAT or HC – Amount shall be 50% of the amount payable
    - Condition : HC or SC should not have reversed such favourable order
  - Appeal filed before ITAT where order of HC **on any issue is decided in his favour** – 50%
    - Condition : SC should not have reversed such favourable order

# Covered Issues

- What if the favourable order is of the same forum ? – Say ITAT or HC
- What if the favourable order is from SC and appeal is pending before HC – FAQ No. 32
  - The assessee need not settle as there is no dispute
  - If multiple additions – Tax for the favourable issue may be computed at NIL
    - For SC judgment – concession should also be available in case it is decided in some other case – Law of Land
- Cases where appeal filed by Department and also covered by favourable order of higher authorities also fall under 50% of Amount payable
  - Does this not deserve further concession ?



# Covered Issues

- Favourable order for which year ?
  - Section – No particular reference
  - Question No. 28 (Circular under VsV 2020) – Benefit available for later year if favourable order for earlier year – No concession for earlier year where favourable order for subsequent year
  - Favourable order must be in own case of the assessee – Otherwise settled issues are not getting concessional treatment

# What is Disputed Tax ?



Situation	Disputed Tax
Where appeal is pending before Appellate Forum on 22-7-24	Tax that is payable if the appeal / petition / SLP was to be decided against him
Objection filed by appellant before DRP is pending as on SD	Amount of Tax payable if DRP was to confirm the variation proposed in draft assessment order
DRP has issued directions but final order of AO is pending as on SD	Amount of Tax payable as per Asst. Order to be passed by AO as per the directions of DRP
Revision petition u/s. 264 is pending as on SD	Amount of Tax payable as if the revision application will not be accepted

Tax includes  
SC and Cess as  
applicable

# Disputed Tax – Proviso

- Where the dispute relates to reduction of MAT credit or AMT credit or reduction of loss or depreciation → Appellant has option to :
  - Include the amount of tax related to tax credit or loss or depreciation
  - Carry forward reduced tax credit or loss or depreciation in the manner to be prescribed

## What if Enhancement Notice is issued by CIT (a)

- The VsV 2020 provided : If CIT (a) has issued enhancement notice **on or before SD** then tax shall be increased by tax pertaining to proposed enhancement.
- No such provision in current scheme
- FAQ – 16 : This is covered as “disputed tax” ... Really ? – Extending the scope of Act by Circular

# Disputed Interest & Disputed Fee

- Interest determined in any case under the ITA, where
  - Such interest is not charged or chargeable on disputed tax;
  - An appeal has been filed by the ‘Appellant’ in respect of such interest.
- Disputed Fees : Means the fees determined under ITA in respect of which appeal has been filed by the appellant – For Ex : 234E

# Disputed Penalty

- Penalty determined in any case under the ITA, where
  - Such penalty is not levied or leviable in respect of DI or DT, as the case may be;
  - An appeal has been filed by the ‘Appellant’ in respect of such penalty.

# Disputed Penalty – Issues Contd.

- Quantum Appeal and Penalty appeal both pending
  - Assessee needs to settle quantum appeal – penalty will be waived
  - Cannot settle penalty appeal and continue with quantum appeal –  
FAQ 11
- Quantum Appeal Disposed – Penalty Appeal Pending
- Quantum Appeal not filed at all – Penalty Appeal pending –  
Whether covered ?
- What about appeal filed to Tribunal
  - By Assessee against penalty confirmed by CIT (A)
  - By Department against penalty deleted by CIT (A)

# VsV 2024 – Procedure

- Declaration to be filed before the Designated Authority – Form 1
- Declarant to waive of his right of any further litigation by way of undertaking
  - VsV 2020 – Form 2 was to be filed with declaration
- Declaration deemed not to have been filed if
  - The same contains any material false declaration or
  - If the declarant violates any conditions or
  - Does not Act in accordance with the undertaking
- In such a case, the respective appeal will be revived
- Appellate Authorities will not decide the issue relating to tax arrear in respect of which an order has been made

# VsV 2024 – Procedure

## Effect of Declaration

- For Appeal before CIT (A) / ITAT
  - Appeal is deemed to have been withdrawn once certificate u/s. 92(1) is issued
    - What about Department's Appeal ? – VsV 2020 – Question No. 48 – They will withdraw
- For Appeals before HC /SC
  - Appeal /Writ Petition / SLP to be withdrawn after issuance of certificate u/s. 92(1) and the proof of withdrawal to be attached alongwith intimation of payment
    - For Department appeal – It will be withdrawn by Department – VsV 2020 – Question No. 48
- VsV 2020 – Any petition for arbitration, conciliation or mediation under any law or agreement with any country shall be withdrawn after issuance of certificate – Not available under VsV 2024 – Sec. 96(a)(iv)



# VsV 2024 – Procedure

- Within 15 days of declaration a certificate will be issued determining amount of payment to be made – Sec. 92(1)
- Declarant shall pay the amount as per the certificate within 15 days of date of receipt of certificate and intimate details of payment
- Difficulties where declaration is filed in last fortnight of December
  - Question 41 (VsV 2020) : 15 Days is outer limit and attempts will be made to issue certificate at an early date enabling the appellant to pay the amount before 31-3-20

# VsV 2024 – Procedure

- Designated Authority shall pass order stating that the declarant has paid the amount
- Every order passed determining the amount payable under the Act shall be conclusive and no matter shall be reopened in any proceeding under the Act or under any other law for the time being in force.
  - Errors by CIT – Question No. 46 (VsV 2020) – DA can amend his order if it contains any apparent errors

# Declaration is not Admission on Legal Issue – Section 92 (4)

- Making a declaration under the scheme shall not amount to conceding the tax position and it shall not be lawful for **the Income-tax Authority or declarant** in any appeal or writ petition or SLP to contend that the declarant or authority has acquiesced in the decision on the disputed issue by settling the dispute

# Immunities available Sec. 93

- Designated Authority shall not
  - Institute any proceeding in respect of an offence
  - Impose or levy any penalty
  - Charge any Interest under ITA in respect of Tax Arrears
- Issues :
  - **What about already levied interest and Penalty – No Express mention for the same to be deleted.**
  - What if the AO institutes any proceeding for an offence or levies penalty or Interest
    - Restriction is on DA not on AO

# Section 94 – Tax Adjustment / Refund

- Amount paid under section 91 is not refundable under any circumstances – sec. 94(1)
- **If amount** already paid under Income Tax Act against the disputed demand exceeds the amount payable under the VsV the assessee shall be entitled to a refund of such excess amount **without any interest u/s. 244A** of Income-tax Act – Sec. 94(2)
- Issue : Adjustment of payment made earlier
  - VsV 2020 : Question No. 26 & 29
    - Payment made earlier against the disputed demand to be adjusted while computing the liability under the scheme

# Principle of Unjust Enrichment

- Ultimate rejection of declaration for any reason
- Refund not permissible under VsV
- Principle of Unjust Enrichment
- Tax Paid under VsV – Adjustment against normal tax under ITA

# Section – 95 – Restriction on benefit

- The Act does not confer any benefit, concession or immunity on the declarant
  - Other than as expressly provided and
  - In any proceedings other than those in relation to which the declaration has been made
    - Example : Addition made in one year – telescoping benefit claimed in the other year

# VsV – Prohibitions – Sec. 96



- Appeals for years of Search Assessments
  - Search at other person – Assessment made in case of assessee – Appears will not be covered
    - VsV 2020 – Permissible where Disputed Tax was less than Rs. 5 Crore.
- Appeals relating to assessment year where prosecution has been instituted **on or before date of declaration**
  - Prosecution u/s. 276C(2) – Non payment of Tax
    - Pragati Pre-Fab India Pvt. Ltd. v. Pr. CIT 155 Taxmann.com 281 (Bom). – SLP Dismissed by SC in Pr. CIT v. Pragati Pre-Fab India Pvt Ltd. 165 taxmann.com 506
- Appeals related to undisclosed income from a source outside India or from undisclosed asset outside India
- Appeals out of addition made as per information received from foreign countries u/s. 90 or 90A



# Prosecution – Position VsV 2020

- Initiation of Prosecution Vis-à-vis Institution – Q No. 22
  - Declaration is possible where prosecution is only initiated but not instituted
  - Where prosecution has been initiated declaration possible only after compounding of the offence
- Prosecution quashed by appellate authorities + period of filing appeal by dept over + no further appeal by department (with or without condonation request) – Q No. 67
- Prosecution instituted for TDS default – declaration not possible (Q No. 68) – It appears that even quantum appeals cannot be covered – seems harsh

# Prosecution VsV 2020

- Declaration not possible even for any issue of same AY in a case where prosecution instituted for an issue which is not subject matter of appeal – Q. No. 73
- Prosecution for one year – Declaration for other years possible (Even if the issue is the same) – Q No. 74
- Immunity from Prosecution shall also extend to the partners / directors of the firm / company for the issue settled
  - VsV 2020 – (Q No. 82)
  - VsV 2024 – FAQ – 35 of Circular No. 12

# VsV – Prohibitions – Sec. 96



- Persons on whom order of detention under COFEPOSA is made before date of declaration – *Some exceptions*
- Cases where prosecution has been instituted before filing of declaration under
  - **Bhartiya Nyay Sanhita (2023) – If initiated by Income-tax Authority**
    - VsV : 2020 – Indian Penal Code – What will be the position now ??
  - **Civil Liability consequent to Prosecution by Income tax Authority**
  - Unlawful Activities Prevention Act
  - Narcotic Drugs and Psychotropic Substances Act
  - Prevention of Corruption Act
  - Prevention of Money Laundering Act
  - Prohibition of Benami Property Transactions Act
  - Special Court (Trial of Offences Relating to Transactions in Securities) Act

# Sec. 201 and 40(a)(i) / 40(a)/(ia)

- FAQ 20 : Appeal under section 201 settled by deductor then
  - Credit will be available to the deductee for the tax
  - Credit on date of settlement of dispute – Interest to apply accordingly
- FAQ 21 : Assessee settles his dispute under VsV
  - Deductor will get consequent relief u/s. 201– No more assessee in default
  - Interest payable u/s. 201(1A) till date of payment by deductee

# Sec. 201 and 40(a)(i) / 40(a)/(ia)

- Disputed Tax for TDS default settled
  - FAQ - 22 : Consequential Relief for disallowance u/s. 40(a)(i) or 40(a)(ia)
  - If deduction already claimed in subsequent year - No further relief
  - If Appeal for the year is pending for other issues and Sec. 40(a)(i)/(ia) - Disputed tax to be computed ignoring disallowance u/s. 40(a)(i) / (ia)

# Multiple Appeals

- Appeal pending before ITAT for original assessment + Appeal pending before CIT (A) against reassessment – Whether any one can be subject to declaration ?
- FAQ 31 – Option available to settle one or both – if both settled then Tax will be total of both
- Question No. 78 (VsV 2020) – For repeated addition on same issue tax is payable only once – If there is difference in tax liability due to same issue – Higher of the two will be considered.

# Multiple Appeals

- Assessee as well as Department appeals pending before ITAT – Can only one be subjected to declaration while continue litigating the other one ? – (VsV 2020 Question No. 40)
- Cross Objections can be settled subject to the Main appeal also being settled (VsV 2020 – Q. No. 60)

# FAQ – Few Relevant Points

- Substantive Addition + Protective Addition
  - Same Assessee Different years
  - Different Assesseees
  - FAQ – 12 : Any of the two Additions can be settled – Relief available for other – AO will pass rectification order
- Request for withdrawal of Appeal Pending – Request letter will be deemed to be withdrawal – FAQ 14
- Denial of Registration u/s. 12AA – Appeal pending – Not covered by VsV – FAQ 23
- Writ against 148 /148A Notice pending – Not Covered – FAQ 26



# VsV – No Amount Outstanding

Whether declaration can be filed where there is no amount outstanding – Payment made under protest

- Declaration to be filed in respect of Tax Arrear
- Definition of Tax Arrear
  - Aggregate of Disputed Tax, Interest Chargeable or charged on Disputed Tax and penalty leviable or levied on such disputed Tax
  - Disputed Interest
  - Disputed Penalty
  - Disputed Fee

# VsV – Set–a–side Appeal

## VsV 2020 – Allowed

- Set–a–side of Appeal by Tribunal to AO
  - If direction is complete cancellation and de–novo assessment then not possible (Q. No. 7)
  - Direction is to look into evidence and consider then Possible
- Set–a–side by Tribunal to CIT (A) – Reply to Q No. 66 – All issues which were pending are required to be settled

VsV 2024 – Not Allowed – FAQ – 24 – Not allowed whether fully set a side or partly set a side

# Misc. Application

## VsV – 2020 – Allowed

- Misc. Application pending on 31-1-20 for appeals dismissed in limine eligible (Q. No. 61)

## VsV 2024 – Not Allowed – FAQ 29

# Few Hiccups ...

- Incorrect Demands raised – Rectifications pending
- Quantum appeal and Penalty appeal both pending – Penalty appeal cannot be settled while continuing with Quantum appeal – FAQ 11
- Addition for Unsecured Loans – settled under VsV – The Assessee cannot capitalize the same

# Few Hiccups ...

- Issue wise settlement not permissible – FAQ 10
- Secondary Adjustment u/s. 92CE will be made for Primary Adjustment of TP settled under VsV
- Sec. 92(4) : Declaration not admission on Legal Point – Whether secondary adjustment justified ?





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