

# Vivad se Vishwas Act, 2020

Western India Regional  
council

of

The Institute of Chartered  
Accountants of India

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# Objective of the Scheme

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- ✦ To reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process
- ✦ It is separate Act and not part of Income-tax Act, 1961. But this deals only with income tax related cases and does not cover cases under Wealth Tax, STT, CTT, Equalisation levy, etc.
- ✦ On lines of **Sabka Vishwas Scheme** in Indirect tax, which settled 1,89,000 cases and realised Rs. 38,000 crores tax.
- ✦ On 30 Nov 19, under direct taxes 4,83,000 cases pending, with about Rs. 9.32 lakh crores tax stuck in litigation

# Vivad Se Vishwas Scheme

## No Dispute but Trust

- ✦ Scheme provides opportunity of relief where appeals, relating to disputed income tax, interest, penalty or fees, are pending or orders passed but time to file appeal is pending as on 31<sup>st</sup> January 2020.
- ✦ Appellant to pay before 30<sup>th</sup> June 2020 100% of disputed tax and save interest, penalty and prosecution thereon. In case of disputed penalty, interest or fees appellant to pay 25% thereof & get waiver for balance.
- ✦ In case appellant chooses to pay later than 30<sup>th</sup> June 2020 but before last date to be notified he can do so by paying 110% of disputed tax and in case of disputed penalty, interest or fees appellant by paying 30% thereof.
- ✦ Declarant need to file electronically before Designated Authority (DA) in declaration **in Form-1** and an undertaking towards appeal withdrawal **in Form 2**. DA within 15 days thereof will grant certificate determining amount payable by declarant in **Form 3**. Declarant need pay amount in 15 days from receipt of Form 2 and to file intimation of payment in **Form 4**. DA will then issue order for settlement of Tax Arrear in **Form 5**.


# Appeals Covered



- ✦ Appeals pending on specified date (31<sup>st</sup> January 2020) before
  - ✓ CIT (Appeals), ITAT, High Court or Supreme Court
  - ✓ Writ petitions pending before HC or SC
  - ✓ SLPs pending before SC
- ✦ Where order is passed but time limit for filing appeal is not expired on specified date
- ✦ Where objections filed by 'a' against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given directions but AO not yet passed order.
- ✦ Where revision application u/s. 264 is pending
- ✦ Where declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation under any agreement by India with other country sec. 4(4)




# Who are not eligible ? (Sec. 9)



- ✦ Appeals relating to AY where prosecution instituted on or before date of declaration
- ✦ Appeals relating to undisclosed income from a source outside India or from undisclosed asset outside India
- ✦ Appeals where addition made on information received from foreign countries
- ✦ Persons on whom order of detention under COFEPOSA is made before date of declaration

# Not Eligible ... contd ... (Sec. 9)



- ✦ Cases where prosecution has been instituted before filing of declaration under
  - ✧ Indian Penal Code – If initiated by Income-tax Authority
  - ✧ 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

# Disputes Covered




- ✦ All disputes, subject to some exclusion, in relation to the –
  - ✦ Disputed Tax
  - ✦ Disputed Penalty
  - ✦ Disputed Interest
  - ✦ Disputed Fee ( 234E, 234F, etc.)

# What is Disputed Tax ?

Situation	Disputed Tax
Where appeal is pending before Appellate Forum on 31-1-20	Tax that is payable if the appeal / petition / SLP was to be decided against him
Where order passed but filing date is pending	Amount of Tax payable after giving effect to order so passed
Order passed by AO on or before SD and time for filing appeal has not expired as on SD	Amount of Tax payable in accordance with Asst. Order
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

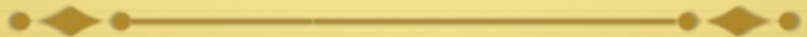


# Disputed Interest, Penalty or Fee



- ✦ **Disputed Interest** as determined in any case under the ITA, in respect of which appeal has been filed by the appellant, where
  - ✦ Such interest is not charged or chargeable on disputed tax;
- ✦ **Disputed Penalty** : as determined in any case under ITA in respect of which appeal has been filed by the appellant
  - ✦ Such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may;
- ✦ **Disputed Fees** : Means the fees determined under ITA in respect of which appeal has been

# Amount payable (S. 3)



Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax

- ★ 100% of disputed tax if paid on or before 30.06.20
- ★ 110% of disputed tax if paid on or after 01.07.20  
(Addl. 10% is restricted to (Interest + Penalty ) payable

Tax arrear relates to disputed interest or penalty or fee

- ★ 25% of disputed interest, penalty or fee, if paid on or before 30.6.20
- ★ 30% of disputed interest, penalty or fee, if paid on or after 01.07.20

# Amount payable (S. 3)


- ✦ In Search cases S. 132 or 132A where amount of disputed tax is Rs. 5 Crores or less in a particular Asst Year, in respect of Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax
  - ✓ 125% of disputed tax if paid on or before 30.06.20 (Addl. 25% is restricted to (Interest + Penalty) payable)
  - ✓ 135% of disputed tax if paid on or after 01.07.20 (Addl. 35% is restricted to (Interest + Penalty) payable)
- ✦ If CIT (A) has issued enhancement notice on or before SD then tax shall be increased by tax pertaining to proposed enhancement.
- ✦ 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

# Where Pending Appeals is filed by Dept. and in cases of Covered Issues

- ✦ Appeal by Department In cases where Appeal / Writ / SLP is filed by Department against assessee
- ✦ Covered Issues
  - ✦ Appeal is filed by appellant before CIT (A) or objections filed before DRP on any issue on which he has already received a decision in his favour by ITAT, HC or SC (where HC or SC should not have reversed such favourable order)
  - ✦ Appeal is filed by appellant before ITAT on any issue on which he has already received a decision in his favour by HC or SC (where SC should not have reversed such favourable order)
- ✦ Amount payable shall be 50% of the amount

# DTVSV Act —

## Features



- ✦ Declarant to waive of his right of any further litigation by way of undertaking to be filed with declaration
- ✦ No appeal can be filed against amount of tax arrear determined by DA
- ✦ Every order passed determining the amount payable under the Act, shall be conclusive and no matter shall be reopened. DA can amend his order if it contains any apparent errors.
- ✦ 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
  - Addition made in one year – telescoping benefit claimed in the other year
- ✦ 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



# DTVSV Act – Features contd. Effect of Declaration

- ✦ For Appeal before CIT (A) / ITAT: Appeal is deemed to have been withdrawn once certificate is issued
- ✦ For Appeals before HC /SC: Appeal / Writ Petition / SLP to be withdrawn after issuance of certificate ~~Before filing declaration~~ and the proof of withdrawal need not be attached along with intimation of payment.
- ✦ For Department appeal – It will be withdrawn by Department
- ✦ I. Tax Authority or declarant cannot in any appeal or writ or SLP contend that declarant or authority has acquiesced in the decision on the disputed issue by settling the dispute. It will not be considered conceding the tax position.
- ✦ *DA* shall not institute any proceeding in respect of an offence and impose or levy any penalty, charge any Interest under ITA in respect of Tax Arrears.
- ✦ If dispute is for both TDS default and also for disallowance u/s. 40(a)(ia), 'a' can choose to file declaration for one and will simultaneously get relief for other. However, interest on TDS will

## DTVSV Act – Features contd. Tax Adjustment / Refund



- ✦ Amount paid u/s 4 is not refundable under any circumstances
- ✦ Declaration can be filed where there is no amount outstanding or due
- ✦ If amount already paid under I.T. Act against the disputed demand exceeds the amount payable under the VsV 'a' shall be entitled to a refund of such excess amount without any interest u/s. 244A
- ✦ Payment made earlier against the

# DTVSV Act – Features contd. ..

## Appeals



- ✦ Appeal not filed as on 31-1-20 – Time Limit for filing not expired no need to actual filing.
- ✦ What happens where appeal is filed prior to 31-1-20 but is delayed one and no condonation is granted by appellate authority before 31.1.20.
- ✦ Appeal pending before ITAT for original asst. + Appeal pending before CIT (A) against reassessment, decln. can be done for any one appeal
- ✦ Assessee as well as Dept. appeals pending before ITAT – assessee can choose to file declaration for one while continue litigating the other one.
- ✦ What happens if Set-a-side of Appeal by Tribunal to AO or to CIT (A)

# STEPS INVOLVED IN PAYMENT OF TAX ARREARS



- ✦ Section 4 : Filing of declaration duly verified before designated authority (DA) in Form 1 and withdrawal of appeals and providing undertaking to DA in Form 2. DA to electronically acknowledge thereof. (DTVSVRule 3)
- ✦ Section 5(1) : DA within 15 days of receipt of Form 1 declaration to grant a certificate electronically in Form 3 specifying amount of tax arrears and amount payable refundable (DTVSVRule 4)
- ✦ Section 5(2) : Declarant to pay the amount within 15 days of receipt of certificate in Form 3. Details of payment and proof of withdrawal of the case to be intimated by declarant to DA within 15 days in Form 4. (DTVSVRule 5)
- ✦ DTVSV Rule 6 : Form 1, 2 and 4 shall be furnished electronically under digital signature or through electronic verification code as required in return of income.

# Form – 1

## (Form for filing declaration) Rule 3

- ✦ Part A – General Information
- ✦ Part B – Information relating to dispute
- ✦ Part C – Information related to tax arrear
- ✦ Part D – Information related to Amount payable
- ✦ Part E – Information relation to payment against tax arrear
- ✦ Verification

A Schedule : Applicable where declaration relates to disputed tax (PAN)

B Schedule : Applicable where declaration relates to disputed TDS / TCS (TAN)


C Schedule : Applicable where declaration relates to disptd. penalty, interest or fee

D Schedule : Where 'a' opts not to pay tax on addition having



# A Schedule

Where declaration relates to disputed tax  
(PAN) F1



- ✦ Sch.I : 'A' Appeal pending before CIT (A) or time for appeal not expired
- ✦ Sch.II : Where objection with DRP filed & DRP has not issued direction or time limit for objection not expired
- ✦ Sch.III : Where DRP has issued direction in 144C but AO has not passed order as per the direction of the DRP
- ✦ Sch.IV : 'A' appeal pending before ITAT or time for appeal not expired
- ✦ Sch V: Appeal of department is pending before ITAT or time to file appeal by department not expired
- ✦ Sch VI: Appeal or writ of 'a' pending before HC or time to file appeal by 'a' before HC not expired
- ✦ Sch VII: Appeal or writ of department pending before HC or time to file appeal by department before HC not expired
- ✦ Sch VIII: Appeal or writ or SLP of 'a' pending before SC or time to file appeal or SLP by 'a' before SC not expired
- ✦ Sch IX: Appeal or writ or SLP of department pending before SC or time to file appeal or SLP by department before SC not expired

# B Schedule

Where declaration relates to disputed TDS  
/ TCS (TAN) F1

- ✦ Sch.I : 'A' appeal pending before CIT (A) or time for appeal not expired
- ✦ Sch.II : 'A' appeal pending before ITAT or time for appeal not expired
- ✦ Sch III: Appeal of department is pending before ITAT or time to file appeal by department not expired
- ✦ Sch IV: Appeal or writ of 'a' pending before HC or time to file appeal by 'a' before HC not expired
- ✦ Sch V: Appeal or writ of department pending before HC or time to file appeal by department before HC not expired
- ✦ Sch VI: Appeal or writ or SLP of 'a' pending before SC or time to file appeal or SLP by 'a' before SC not expired
- ✦ Sch VII: Appeal or writ or SLP of department pending before SC or time to file appeal or SLP by department before SC not expired
- ✦ Sch VIII: Revision application of 'a' u/s. 264 is pending before PCIT /CIT

# C Schedule

Where declaration relates to disputed penalty, interest or fee (PAN & TAN) F1

- ✦ Sch.I : 'A' Appeal pending before CIT (A) or time for appeal not expired
- ✦ Sch.II : 'A' appeal pending before ITAT or time for appeal not expired
- ✦ Sch III: Appeal of department is pending before ITAT or time to file appeal by department not expired
- ✦ Sch IV: Appeal or writ of 'a' pending before HC or time to file appeal by 'a' before HC not expired
- ✦ Sch V: Appeal or writ of department pending before HC or time to file appeal by department before HC not expired
- ✦ Sch VI: Appeal or writ or SLP of 'a' pending before SC or time to file appeal or SLP by 'a' before SC not expired
- ✦ Sch VII: Appeal or writ or SLP of department pending before SC or time to file appeal or SLP by department before SC not expired
- ✦ Sch VIII: Revision appln. of 'a' u/s. 264 is pending before PCIT /CIT
- ✦ Sch IX: Arbitration or conciliation or mediation of 'a' is pending

# Other Forms



- ✦ Form 2 : Undertaking by declarant to voluntary waive all its rights to seek or pursue any remedy or any claim in relation to the tax arrear. To be electronically filed along with form 1 duly signed and verified.
- ✦ Form 3 : Certificate by designated authority specifying amounts determined to be payable by declarant towards tax arrear. Payment to be made in 15 days (in form it is printed as 30 days)
- ✦ Form 4 : Intimation by declarant of payments made and appeal been withdrawn along proof of withdrawal. To be filed in 15 days of F3.
- ✦ Form 5 : Order by designated authority for full and final settlement of tax arrear to declarant. AO, PCIT and Appellate forum

