



ICAI Branch of Ahmedabad

Vivad se Vishwas Bill 2020

Bhaumik Goda & Saumya Sheth

20 August 2020

Media report indicates that VSV Bill as introduced in Parliament will be amended once House resumes business. Further, FAQs will be provided to assist Taxpayer in understanding VSV Scheme. This presentation is made when above aspect are not in public domain. Readers are advised to take note of subsequent development before placing reliance on reading material

Background

- Amount of direct tax dispute as on 30 November 2019 was Rs 9.32 crs equivalent to nearly one year direct tax collection
- VSV is not part of IT Act as separate scheme but a separate bill
- Preamble:
- “to provide resolution of disputed tax and for matters connected therewith or incidental thereto”

Media reports Cabinet recently approved some amendments to the Bill which will be placed before Parliament early next month. Presentation covers amendment reported in Media

Relevance of Specified date

- Appellant means the person or the income tax authority or both who has filed appeal before the **appellate forum** and such appeal is pending on **specified date** [Sec 2(1)(a)]
 - Specified date means 31 January 2020 [Sec 2(1)(n)]
 - Appellant forum means SC, HC, ITAT or CIT(A) [Sec 2(10)(b)]
-
- Benefit of VSV can be taken only if appeal is pending before Appellate forum on or before 31 January 2020
 - 31 January 2020 acts as cut off date
 - Appellant forum does not include
 - Draft AO order pending DRP adjudication
 - DRP direction pending AO passing order
 - Settlement Commission
 - AAR

Relevance of Specified date

Situation	VSV eligibility
Appeal against assessment order u/s 143(3) or reopening u/s 147	<ul style="list-style-type: none">• Eligible
Order treating agent u/s 163	<ul style="list-style-type: none">• Eligible but there is no tax arrears at this stage.• VSV eligible for order passed on merits after treating person as agent
Appeal against AID proceeding	<ul style="list-style-type: none">• Eligible
Order passed by AO/CIT/ITAT/HC before 31 Jan 2020 but appeal is yet to be filed as statutory limitation period not expired	<ul style="list-style-type: none">• Not eligible as there is no appeal pending against appellate forum

Relevance of Specified date

Situation	VSV eligibility
Ongoing proceeding under section 154 before AO	<ul style="list-style-type: none"> • Not Eligible as no appeal is pending before CIT
Appeal filed to Appellate forum with condonation of delay and Appellate forum yet to hear	<ul style="list-style-type: none"> • Strict reading - appeal is not pending and hence not eligible • Persuasive – appeal is pending till it is not disposed off
Tribunal remands matter back to AO for assessment 'de novo'	<ul style="list-style-type: none"> • Not eligible as no appeal is pending
Tribunal remands matter back to CIT	<ul style="list-style-type: none"> • Eligible as appeal is pending
Tribunal remand matter back to AO for limited verification basis direction	<ul style="list-style-type: none"> • Eligible as appeal is pending

Relevance of Specified date

Situation	VSV eligibility
Ongoing proceeding under section 154 before AO	<ul style="list-style-type: none">• Not Eligible as no appeal is pending before CIT
Appeal filed to Appellate forum with condonation of delay and Appellate forum yet to hear	<ul style="list-style-type: none">• Strict reading - appeal is not pending and hence not eligible• Persuasive – appeal is pending till it is not disposed off
Tribunal remands matter back to AO for assessment 'de novo'	<ul style="list-style-type: none">• Not eligible as no appeal is pending
Tribunal remand matter back to AO for limited verification basis direction	<ul style="list-style-type: none">• Eligible as appeal is pending

Relevance of Specified date

Situation	VSV eligibility
Quantum proceeding final and tax is paid. Subsequent penalty proceeding initiated	<ul style="list-style-type: none">• Since quantum proceeding is finalised and no appeal is pending VSV benefit cannot be availed• Since AO is yet to pass penalty order, benefit cannot be availed
Order under section 263 is passed	<ul style="list-style-type: none">• Not eligible at this stage since there is no tax arrear• Appeal filed against AO order passed pursuant to section 263 is eligible for VSV

Relevance of Specified date

Situation	VSV eligibility
Writ petition to HC against initiation of reopening	<ul style="list-style-type: none"> Not eligible as there is no tax arrears determined by AO
Order of Appellate forum accepted pre 31 Jan 2020 but assessee files delayed appeal after 31 Jan 2020 to take advantage of scheme	<ul style="list-style-type: none"> Not eligible as there is no appeal pending on specified date
Appeal heard by Appellate Forum but order not passed on specified date or order passed after specified date	<ul style="list-style-type: none"> Eligible as appeal is pending on specified date
Quantum proceedings completed and AO issued show cause notice for penalty	<ul style="list-style-type: none"> No VSV benefit for completed quantum proceeding Since no appeal is pending before AO – benefit of VSV not available
Order received from Appellate forum accepted by Assessee but OGE is pending	<ul style="list-style-type: none"> Not eligible as no appeal is pending In case OGE is not in accordance with Appellate Forum order, separate appeal can be filed

Proposed amendment

.....media report

-
- Appeals/writs filed on or before 31.01.2020 are eligible.
 - Order for which time for filing appeal has not expired on 31.01.2020
 - Case pending before Dispute Resolution Panel (DRP) on 31.01.2020
 - Cases where DRP issued direction on or before 31.01.2020 but no order has been passed.
 - Cases where assessee filed revision (Section 264) on or before 31.01.2020.
 - Search case if the disputed demand is less than Rs. 5 Crore for a particular financial year.

What will be tax arrears in case highlighted above?

Disputed Interest

Disputed interest means the interest **determined** in any case under the provisions of IT Act 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



- Includes interest which are consequential like section 234B, section 234C or section 234A
- In case of TDS proceedings, includes interest under section 201(1A)

Issues:

- Interest should be determined – interest is consequential and increases every month – determination should not be read as fixed amount

Disputed Penalty

Disputed penalty means the penalty **determined** in any case under the provisions of IT Act where –

- i. Such penalty is not levied or leviable in respect of disputed income or disputed tax ;
- ii. An appeal has been filed by the appellant in respect of such interest



- Includes Penalty actually levied
- Initiation of penalty
- Other Penalty
 - Failure to obtain Tax Audit
 - Non filing of Form 3CEB
 - Non maintenance of TP documentation

Disputed tax

$$\text{Disputed Tax} = (A - B) + (C - D)$$

A	Tax on income assessed under general provisions (i.e., income without considering MAT/ AMT),
B	Tax payable on (a) income assessed under general provisions, less (b) the income in respect of which an appeal has been filed
C	Tax on income assessed under MAT / AMT provisions
D	Tax payable on (a) income assessed under MAT / AMT provisions, less (b) the income in respect of which an appeal has been filed

- Ignore 'C' and 'D' where the taxpayer is not subject to MAT / AMT provisions
- Where the appeal has the effect of reducing the loss or converting the loss into income tax – tax payable on such income
- Where the matter relates to disputed WHT tax, the “disputed tax” shall be considered as the tax determined under the relevant provisions governing WHT.

Disputed tax

- Disputed tax is in relation to an assessment year
 - Opting for VSV has be made for each assessment year separately
 - VSV needs to be opted for all issues involved in appeal and assessee cannot opt for VSV on few grounds and litigate other grounds
 - This is irrespective whether appeal is filed by Assessee or Revenue or both
 - Additional grounds for relief filed before Appellant Forum
- Brought forward loss or UAD cannot be set off against disputed tax
- Brought forward MAT credit cannot be set off against disputed tax
- In case of loss return, tax needs to be paid as against reducing loss for subsequent year
- Assume appeal against original assessment for AY 2013-14 is pending at HC and appeal against section 147 is pending at CIT(A) – How disputed tax will be calculated?

VSV relief matrix

Type of disputes	Amount payable on or before 31 March 2020	Amount payable on or after 1 April 2020 but before 30 June 2020
Where the 'tax arrears' is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax or penalty leviable or levied on such disputed tax	100% of the disputed tax	110% of the disputed tax [If 10% of disputed tax exceeds total disputed interest and penalty, such excess to be ignored]
Where the tax arrears are related to disputed interest or disputed penalty or disputed fee	25% of the disputed penalty/interest/ fees	30% of the disputed penalty/interest/ fees

Procedural

- Applicant needs to file declaration to Designated Authority (DA) before specified date
- On filing declaration, any appeal pending before CIT, ITAT is deemed to be withdrawn
- Declarant to submit proof of deposit of such withdrawal
- DA shall within 15 days from date of receipt of declaration by order determine the amount payable by declarant and grant certificate to declarant containing particulars of the tax arrear and amount payable
- Declarant shall pay able amount within 15 days of receipt of certificate
- No matters covered by order passed by DA shall be reopened in any proceeding under Act or an law for time being in force
- DA shall not institute any proceeding in respect of an offence or impose or levy any penalty or charge any interest under Act in respect of tax arrear

Procedural

- Applicant merely have to opt in for entire assessment year, DA has to determine amount payable
 - No opportunity of hearing granted
 - What if DA does not determine amount correctly
- Applicant is required to file proof of withdrawal of appeal – now what will be recourse if Applicant is not aggregable to DA computation
- Litigation status if Applicant could not pay funds within specified time
- Status of rectification application filed for said assessment year in respect of TDS, SA tax credit
- Impact on subsequent years and recurring issues

Proposed amendment reported by media

Particulars	Where payment made up to 31.03.2020	Where payment made after 31.03.2020
Appeals filed by the assessee		
Search cases involving dispute relating to tax, interest, penalty, etc.	125% of the disputed tax. Penalty and interest would be waived	135% of disputed tax. Penalty and interest would be waived
Other than search cases where dispute involves tax, interest, penalty, etc	100% of the disputed tax, penalty and interest would be waived	110% of disputed tax. Penalty and interest would be waived
Where dispute relates to only interest, penalty or Levy	25% of disputed interest, penalty or fee – balance 75% would be waived	30% of disputed interest, penalty or fee – balance 70% would be waived
Appeals filed by Department or the Department has lost an issue		
Search cases involving dispute relating to tax, interest, penalty, etc	62.5% of the disputed tax. Penalty and interest would be waived	67.5% of disputed tax. Penalty and interest would be waived
Other than search cases where dispute involves tax, interest, penalty, etc.	50% of the disputed tax, penalty and interest would be waived	55% of disputed tax. Penalty and interest would be waived
Where dispute relates to only interest, penalty or Levy	12.5% of disputed interest, penalty or fee – balance 87.5% would be waived	15% of disputed interest, penalty or fee – balance 85% would be waived

Exclusions

.....media report

- Search cases if disputed tax is more than Rs. 5 Crore.
- Prosecution cases under the Income-tax Act or IPC filed by the Department.
- Cases relating to undisclosed foreign income and assets.
- Cases completed on the basis of information from foreign countries.
- Cases covered under offense under IPC, the Unlawful Activities (Prevention) Act, 1967, NDPS Act, 1985, PC Act, 1988, PMLA Act, 2002, COFEPOSA Act, 1974, Prohibition of Benami Property Transactions Act, 1988 and Special Court Trial in Securities Act, 1992

Other amendments

.....media report

-
- If the amount paid by the taxpayer before filing declaration exceeds the amount payable under the Scheme, he would be granted the refund for such excess amount
 - If there are more than one issues involved in the appeal, the taxpayer would be required to file declaration for all issues, he cannot file declaration for some issues and litigate the balance issues
 - In a case where the taxpayer has got a favourable decision on an issue at higher forum, he would be required to pay only 50% of disputed tax on that issue even in the cases in which he has filed appeal
 - The taxpayer would be required to submit the proof of withdrawal of appeal/writ with the intimation of payment i.e. before the issuance of final certificate for setting dispute and not with the declaration as originally proposed in the Bill. The department would also withdraw the appeal/writ before the issuance of final certificate for setting dispute.

-
- In case where the Assessing Officer has reduced the returned loss by making addition of income/disallowing expenditure, the taxpayer shall have an option to either pay the notional tax on amount by which the loss has been reduced and carry forward the claimed loss without reduction or by accepting the reduced carry forward of loss without making any payment under the Scheme. Same mechanism would apply for reduction in MAT credit

Thank You

MUMBAI

605, Zee Nayak, M.G. Road, Vile Parle (East),
Mumbai – 400 057

Email : bhaumik@bgss.co.in

Mobile No: +91 98339 15583

AHMEDABAD

604, Shitiratna Building, Panchwati Circle, C.G.
Road, Ahmedabad – 380 009

Email : saumya@bgss.co.in

Mobile No: +91 90999 27783

