



Direct Tax Vivad Se Vishwas Scheme! Policy and Challenges! CA Vaishali Kharde CA Pritam Mahure and Associates

It's raining 'discounts' on interest and penalties in Income-tax!

10th February 2020

1st Edition

Income Tax

Vivad Se Vishwas Scheme (VSV)

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Feedback

- Author would like to thank CA Pritam Mahure Sir without whose guidance and mentorship this book could not have been a reality.
- Author would like to ack. support of team members CA Sahil Tharani, CA Deepika Jaiswal, Sajana Kumawat, Pooja Bora, Pooja Sharma, Sourabh Kankaria, Amit Gundecha, Lavesh Solanki, M. Raju, Purva Jadhav, Shivani Agrawal, and Nitu Mishra.
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1. Direct Tax Vivad Se Vishwas Scheme (VSV)

1.1 Why VSV is needed under Direct Tax?

Pending legacy Direct tax litigation is one of the biggest-cause of concern not only for Government but also for taxpayers as most of it comprised of frivolous cases.

Legacy litigation has drawn a lot of attention, as more than **INR 4.83 lacs cases** are pending before Commissioner (Appeals), CESTAT, High Court and Apex Court.

The H'ble FM mentioned in her Budget 2019 Speech as under:

"126. No Dispute but Trust Scheme – 'Vivad Se Vishwas' Scheme

- *Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are **4,83,000 direct tax cases pending** in various*

appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.

- *Under the proposed '**Vivad Se Vishwas**' scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain open till 30th June, 2020.*
- *Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.*
- *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process."*

Even as per Statement of Objects and Reasons of The Direct Tax Vivad Se Vishwas Bill, 2020 specifies as under:

*"Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is **Rs. 9.32 lakh crores**. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly **one year direct tax collection**.*

*2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an **urgent need to provide for resolution** of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.*

3. It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:—

(a) The provisions of the Bill shall be applicable to **appeals** filed by taxpayers or the Government, **which are pending** with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against **disputed tax, interest or penalty** in relation to an assessment or reassessment order or against disputed interest, disputed **fees** where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of **tax deducted at source or tax collected at source**;

(c) in appeals related to disputed tax, the declarant shall **only pay the whole of the disputed tax** if the payment is made before the **31st day of March, 2020** and for the payments **made after** the 31st day of March, 2020 **but on**

or **before the date notified** by Central Government, the amount payable shall be **increased by 10 per cent.** of disputed tax;

(d) in appeals related to **disputed penalty, disputed interest or disputed fee**, the amount payable by the declarant shall be **25 per cent.** of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to **30 per cent.** of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it **receives the assent** of the President and declaration may be made thereafter up to the date to be notified by the Government.”

1.2. How many clauses are there in the VSV Bill? VSV Bill

VSV Bill, 2020 is a ten pager Bill containing 12 clauses as discussed below:

Clause	Particulars
1	<u>Short title</u>
2	<u>Definitions</u>
3	<u>Amount payable by declarant</u>
4	<u>Filing of declaration and particulars to be furnished</u>
5	<u>Time and manner of payment</u>
6	<u>Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases</u>
7	<u>No refund of amount paid</u>
8	<u>No benefit, concession or immunity to declarant</u>
9	<u>Act not to apply in certain cases</u>
10	<u>Power of Board to issue directions, etc</u>
11	<u>Power to remove difficulties</u>
12	<u>Power to make rules</u>

1.3 When will VSV come into force?

VSVAs per Para 4 of Statement of Objects and Reasons "4. *The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.*"

1.4 What is the last date of VSV?

As per Clause 2(1)(I) of VSV Bill, 2020 the last date is the date as may be notified by the Central Government in the Official Gazette. As per the Budget Speech of H'ble Finance Minister, the VSV will be available up to 30th June, 2020.

1.5 Which are the enactments covered under VSV?

The VSV Bill covers the specified litigation under Income Tax Act, 1961.

1.6 What is the covered under VSVVSV?

VSV is available for the 'tax arrears' as determined under Income Tax Act, 1961. In this regard, Clause 2(1)(o) of VSV Bill defines the term tax arrears means:

- (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or*
- (ii) disputed interest; or*
- (iii) disputed penalty; or*
- (iv) disputed fee*

1.7 What is the meaning of disputed tax, interest, penalty and fee?

The term 'tax arrears' as defined under Clause 2(1)(o) of VSV Bill is an aggregate of disputed tax, disputed interest, disputed penalty and disputed fee.

In this regard, table given below describes the meaning of these terms:

No.	Term and Reference	Meaning
1.	Disputed tax [Refer Clause 2(1)(j) of VSV Bill]	<p><i>Disputed Tax means tax determined under the Income-tax Act, 1961 in accordance with the following formula</i></p> $(A - B) + (C - D)$ <p><i>Where</i></p> <p>'A' means <i>an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961 other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 (herein after called general provisions)</i></p> <p>'B' means <i>an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect</i></p>

		<p><i>of which appeal has been filed by the appellant</i></p> <p>'C' Means <i>an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961.</i></p> <p>'D' Means <i>an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant</i></p> <p><i>Provided where the amount of income in respect of which appeal has been filed by the appellant is considered under the provisions</i></p>
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		<p><i>contained in section 115JB or section 115JC of the Income-tax Act, 1961 and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D</i></p> <p><i>In a case where the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 are not applicable, the item (C - D) in the formula shall be ignored in a case where the amount of income, in respect of which appeal has been filed by the appellant, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the formula specified in sub-clause (i) with the modification that the amount to be determined for item (A - B) in that formula</i></p>
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		<p><i>shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income</i></p> <p><i>(ii) tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.</i></p>
2.	<p>Disputed interest</p> <p>[Refer Clause 2(1)(h) of VSV Bill]</p>	<p><i>"Disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961, where—</i></p> <p><i>(i) such interest is not charged or chargeable on disputed tax;</i></p> <p><i>(ii) an appeal has been filed by the appellant in respect of such interest;</i></p>

3.	"Disputed Penalty [Refer Clause 2(1)(i) of VSV Bill]	<i>"Disputed Penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where— (i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be; (ii) an appeal has been filed by the appellant in respect of such penalty;</i>
4.	Disputed Fee [Refer Clause 2(1)(f) of VSV Bill]	<i>"Disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant</i>

1.8 Who can avail the benefit under VSV?

As per Para 3 (a) of the Statement of Object and Reasons *'The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the*

Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid’.

1.9 Which type of cases are not covered under VSV?

As per Clause 9 (a) of the VSV Bill specifies certain exclusion of cases for which VSV is not applicable as discussed hereunder:

SR	Particulars
(a)	Where the tax arrears are <ul style="list-style-type: none">- Relating to an assessment year in respect of which an assessment has been made under section 153A Income-tax Act. (i.e. Assessment in case of search or requisition)or- Relating to an assessment year in respect of which an assessment has been made under section 153C of the Income-tax Act. (i.e. Assessment of income of any other person than the person referred to in section 153A,)

2.	Where the tax arrears are relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration.
3.	Where the tax arrears are relating to any <ul style="list-style-type: none">- Undisclosed income from a source located outside India or- Undisclosed asset located outside India
4.	Where the tax arrears are relating to an assessment or reassessment made on the basis of <ul style="list-style-type: none">- Information received under an agreement referred to in section 90 of the Income-tax Act (i.e. Double Taxation Relief Agreement) with foreign countries or specified territories) or- Information received under an agreement referred to in section 90A of the Income-tax Act (i.e. Agreement Adopted by Central Government between specified associations for double taxation relief.)
5.	Where the tax arrears are relating to an appeal before the Commissioner (Appeals) in respect of which notice of

	enhancement under Section 251 of the Income-tax Act has been issued on or before 31 st January, 2020.
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1.10 Which persons are not covered under VSV?

As per Clause 9 (b) (c) and (d) of the VSV Bill certain persons cannot avail benefit of VSV as discussed below:

SR.	Particulars
1.	<p>Any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration; Provided that:</p> <p><i>(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or</i></p> <p><i>(ii) Such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been</i></p>

	<p><i>revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or</i></p> <p><i>(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or</i></p> <p><i>(iv) such order of detention has not been set aside by a court of competent jurisdiction;</i></p>
2.	<p>Any person in respect of whom:</p> <p>Prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of</p>

	Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts
3.	Any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration

1.11 How much amount is payable under VSV?

As per Clause 3 of the VSV Bill, the benefit available is as under:

No.	Tax Arrear	Amount Payable before 31 st March 2020	Amount Payable on or after 1 st April 2020 but on or before the last date
(a)	Where the tax arrear is the	Amount of disputed tax	The aggregate of the amount of disputed tax and ten per cent. of disputed tax

	<p>aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax</p>		<p>Provided that where the ten per cent. of disputed tax exceeds the aggregate amount of interest and penalty the excess shall be ignored for the purpose of computation of amount payable under this Act</p>
(b)	<p>Where the tax arrear relates to disputed interest or disputed penalty or disputed fee</p>	<p>Twenty-five per cent of disputed interest or disputed penalty or disputed fee</p>	<p>Thirty per cent of disputed interest or disputed penalty or disputed fee</p>

1.12 How to apply for the VSV?

As per Clause 4 of VSV Bill a declarant should file declaration before the Designated Authority in such form and verified in such manner as may be prescribed.

1.13 What is the procedure for withdrawal of appeal, writ etc if applied for VSV?

Upon filing the Declaration, an appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), shall be **deemed to have been withdrawn** from the date on which prescribed certificate is issued by the Designated Authority [refer Clause 4 (2) of the VSV Bill].

In case of any appeal before the Appellate Forum or any Writ petition before the High Court or the Supreme Court, the taxpayer is required to withdraw appeal or writ petition with the leave of the Court [refer Clause 4 (3) of the VSV Bill].

Where the declarant has initiated any proceeding for **arbitration**, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice prior to making the declaration and furnish proof thereof along with the declaration [refer Clause 4 (3) of the VSV Bill].

Further, without prejudice to Clause 4 (2) or (3) or (4) of VSV Bill, the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any **remedy or any claim** in relation to the tax arrears which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed [refer Clause 4 (5) of the VSV Bill].

1.14 When declaration is presumed to never have been made?

The declaration presumed never to have been made if:

- a. Any material particular furnished in the declaration is found to be false at any stage;
- b. The declarant violates any of the conditions
- c. The declarant acts in any manner which is not in accordance with the undertaking given by him as required under the Act

In such cases, all the proceedings and claims which were withdrawn and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

1.15 What is time to confirm the amount payable by the designated authority

The designated authority within a period of **fifteen days** from the date of receipt of the declaration shall determine the amount payable by the declarant. Also, the Authorities will grant a

certificate containing the particulars of the tax arrears and the amount payable.

1.16 What is the time limit for payment of amount declared under VSV?

The declarant is required to **pay** the amount determined **within fifteen days** of the date of receipt of the certificate and intimate the details of such payment to the designated authority.

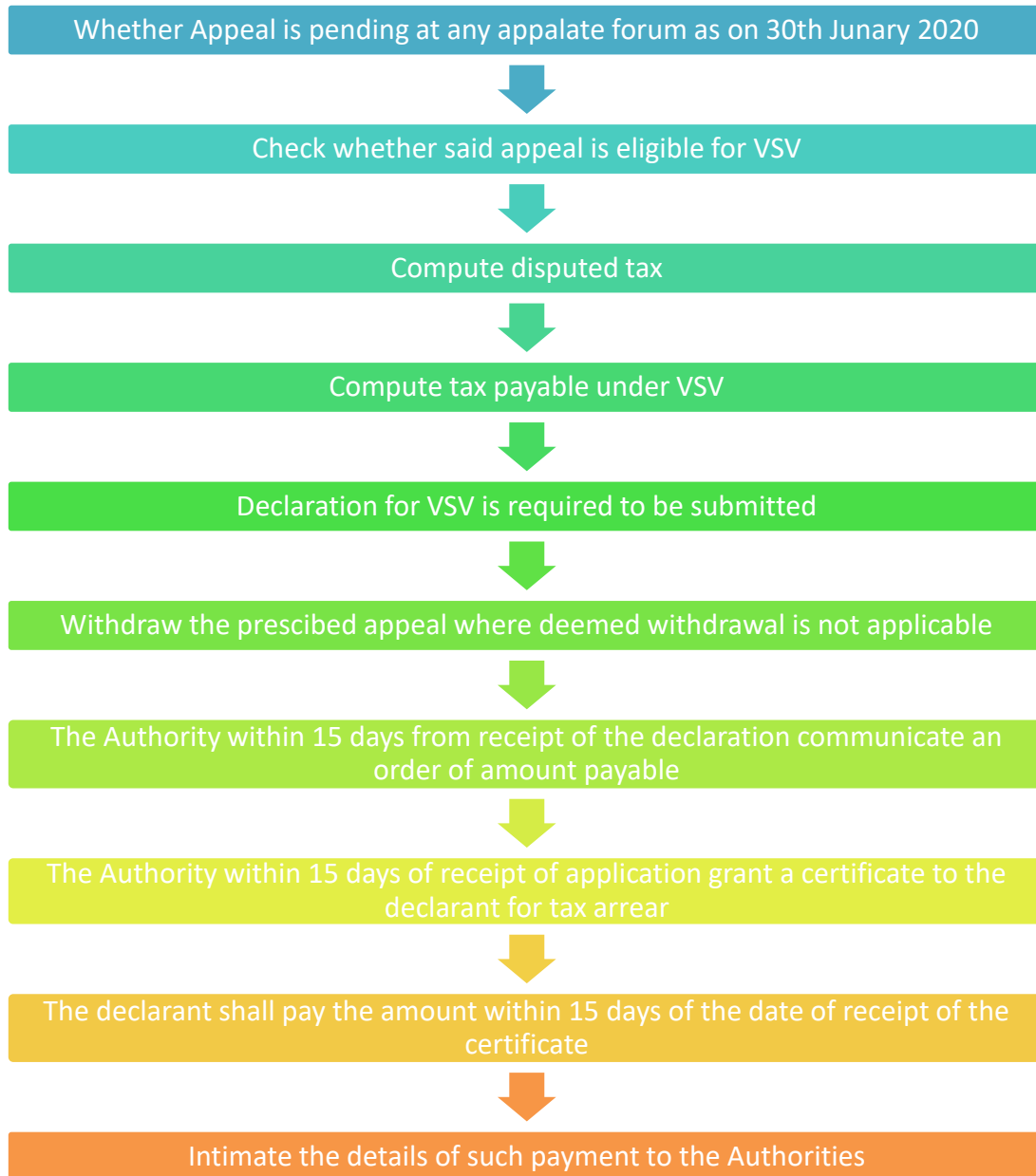
It may be noted that in Sabka Vishwas Scheme in Indirect Taxes (SVLDRS) the time limit for making payment was thirty days.

1.17 How to pay liability?

The VSV does not prescribe the adjustment of the liability already paid (such as amount paid as pre-deposit paid during filing of an appeal). Thus, it is expected that appropriate clarification will be issues in this regard.

1.17 What is Process to be followed to apply for scheme.

The Government yet to issue detailed process guideline including online system, form to apply for scheme etc. However, a brief process flowchart as prescribed in the bill as given hereunder:



1.18 Which documents are expected to be issued?

Additional details regarding the VSV such as mode of payment, adjustment of amount already deposited, application form, online procedure etc. are awaited. Thus, in days to come the CBDT may issue:

Notification	Rules	Circular	FAQs	System
<ul style="list-style-type: none">• To be notified	<ul style="list-style-type: none">• To be notified	<ul style="list-style-type: none">• To be issued	<ul style="list-style-type: none">• To be issued	<ul style="list-style-type: none">• To be put in place

1.19 Challenges Ahead

1. Adjustment of Pre-Deposit paid by the taxpayer for Appeal is not prescribed

It may be noted that VSV Bill does not prescribe adjustment of tax already paid like pre-deposit paid during filing of appeal. Thus, appropriate clarification in this regard, would be helpful.

2. Days prescribed for payment is minimal

As per VVS Bill the declarant is required to pay the liability within **15 days** of the date of communication of liability by the Designated Authority.

In this regard, it can be noted that there were many instances observed during payment of liability at the time of Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS) wherein system errors were faced by the taxpayer at various stages of payment. Thus, considering the system challenges the taxpayer should pay the liability once certificate of payment is received without waiting for the 15th day and/or last day.

3. Appeal not filed as on 31st January 2020 may not cover under VSV

VSV covers the pending appeal as on 31st January 2020. It appears that the appeal which are not filed before 31st

January 2020 as the time for filing appeal is expired may not get covered under Scheme.

However, if the intention is to reduce the litigation then, such cases should be eligible in tune with the other pending appeal. Thus, appropriate clarification in this regard, would be helpful.

4. Certain clarification with respect to closure of cases would be critical

VSV requires the intimation of the tax paid to the Designated Authorities after payment has been made by the Applicant. However, VSV does not prescribe any certificate and/or closure order to be issued to the taxpayer which can help in future to substantiate the closure of case.

Further the procedure and/or impact in the scenario given below is not discussed:

- What if the taxpayer files the declaration but Authorities unable to process within 15 days?
- What are the consequences if Declarant pays part of the tax liability payable and determined by the Authorities?

5. Procedure for taxes already paid is not mentioned

There could be scenario where tax, interest and fee has been paid by the taxpayer.

VSV does not prescribe about eligibility of refund or benefit to such a taxpayer if he intends to close the litigation under the Scheme.

6. Determination of benefit as on 31st March 2020 could be litigious

VSV prescribes two phases wherein tax benefit available is different as per date on which amount is payable. In this regard, there could be a scenario given below:

- Applicant has filed a Declaration on or before 31st March, 2020.

- Designated Authorities has issued a certificate stating amount payable after 31st March, 2020.

As per Clause 2 of the VSV the term used is 'amount payable on or before 31st March 2020' whereas in the 'Statement of Objects and Reasons' *the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent. of disputed tax;*

In such a scenario for computation of benefit could be litigious as the term used 'amount payable' or 'payment made' is required to be interpreted. [i.e. whether benefit is required to be computed by treating the amount payable on or before 31st March 2020 or by treating amount payable after 31st March 2020].

7. VSV does not specify about validity of issue under Appeal

VSV does not mention that filing of application will not lead to acceptance of the issues under Appeal.

8. Limitation of time could lead to delay in filing of declaration

VSV gives fifteen days after receipt of declaration for issue of amount payable by the Authorities and fifteen days for payment of liability. Thus, maximum days available for payment is 30 days after filing of declaration by the taxpayer. Given this, the taxpayer may delay the filing of declaration so that to delay the payment. Herein of the intention of the CBDT is to receive the applications at the earliest, appropriate clarification about time could be helpful.

1.20 How VSV is different in comparison with Other Schemes?

Scheme	Remark
Sabaka Vishwas Legacy Dispute Resolution Scheme (SVLDRS)	<p>SVLDRS was issued to resolve the disputes under Indirect Tax and same was operational till 15th January 2020.</p> <p>SVLDRS provided for reduction even in tax amount (upto 70%) in addition to waiver of interest, penalty, prosecution etc.</p> <p>However, VSV only provides for waiver of interest, penalty and fees.</p> <p>Further, voluntary disclosure of liability was also allowed under SVLDRS. However, VSV scheme only covers pending appeals.</p>

Income Declaration Scheme (IDS)	IDS was introduced in FY 2015-16. IDS was mainly aimed at encouraging tax evaders to file their income tax returns. IDS was applicable to all taxpayers who intended to declare additional income up to AY 2016-17. However, the taxpayers to whom notices are served were not covered under the said scheme.
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1.21 History of Amnesty Schemes in Direct Taxes

Since 1951, the Government has announced approx. twelve amnesty schemes covering declaration of undisclosed assets, black money, jewellery etc as under:

Year	Amnesty Scheme
1951	VDIS Tyagi Scheme
1965	VDIS 60-40 Scheme
1965	Black Scheme
1965	National Defence Gold bonds
1965	National Defence Remittance Scheme

1975	Voluntary Disclosure Scheme
1981	Special Bearer Bond
1985/86	Amnesty Circular
1991	Foreign Remittance Scheme
1997	VDIS
2015	VDIS-Compliance Window
2016	Income Disclosure Scheme

2. The Direct Tax Vivad Se Vishwas Bill, 2020

A

BILL

to provide for resolution of disputed tax and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows: —

1. Short title.

This Act may be called the Direct Tax Vivad se Vishwas Act, 2020.

2. Definitions.

(1) In this Act, unless the context otherwise requires,

(a)"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 the specified date;

- (b) "appellate forum"** means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);
- (c) "declarant"** means a person who files declaration under section 4;
- (d) "declaration"** means the declaration filed under section 4;
- (e) "designated authority"** means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act;
- (f) "disputed fee"** means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;
- (g) "disputed income"**, in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(h) "disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961, 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;

(i) "disputed penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—

- i. such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;
- ii. an appeal has been filed by the appellant in respect of such penalty;

(j) "disputed tax", in relation to an assessment year, means—

- (i) tax determined under the Income-tax Act, 1961 in accordance with the following formula—

$$(A - B) + (C - D)$$

where,

A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961 other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 (herein after called general provisions);

B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;

C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;

D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant:

Provided that where the amount of income in respect of which appeal has been filed by the appellant is considered under the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

Provided further that in a case where the provisions contained in section 115JB or section 115JC of the

Income-tax Act, 1961 are not applicable, the item (C – D) in the formula shall be ignored:

Provided also that in a case where the amount of income, in respect of which appeal has been filed by the appellant, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the formula specified in sub-clause (i) with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income;

- (ii) tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of

the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.

(k)"Income-tax Act" means the Income-tax Act, 1961;

(l)"last date" means such date as may be notified by the Central Government in the Official Gazette;

(m)"prescribed" means prescribed by rules made under this Act;

(n)"specified date" means the 31st day of January, 2020;

(o)"tax arrear" means,—

- i. the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
- ii. disputed interest; or
- iii. disputed penalty; or
- iv. disputed fee, as determined under the provisions of the Income-tax Act;

(2) The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

(3) Amount payable by declarant.

Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:—

<u>No.</u>	<u>Nature of tax arrear</u>	<u>Amount Payable under this Act on or before the</u>	<u>Amount Payable under this Act on or after the 1st day of April, 2020 but on</u>

		<u>31st day of March, 2020.</u>	<u>or before the last date.</u>
1.	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	amount of the disputed tax	The aggregate of the amount of disputed tax and ten per cent. of disputed tax: Provided that where the ten per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of

			computation of amount payable under this Act.
2.	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	twenty-five per cent of disputed interest or disputed penalty or disputed fee	thirty per cent of disputed interest or disputed penalty or disputed fee.

4. Filing of declaration and particulars to be furnished.

- (1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.
- (2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed

penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writpetition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required and furnish proof of such withdrawal alongwith the declaration referred to in sub-section (1).

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice prior to making the declaration and

furnish proof thereof alongwith the declaration referred to in sub-section (1).

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,—

- (a) any material particular furnished in the declaration is found to be false at any stage;

- (b) the declarant violates any of the conditions referred to in this Act;
- (c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5), and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

5. Time and manner of payment

- (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrears and the amount payable after such determination, in such form as may be prescribed.
- (2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.
- (3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-

tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

6. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases.

Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrear.

7. No refund of amount paid

Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.

8. No benefit, concession or immunity to declarant.

Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

9. Act not to apply in certain cases.

The provisions of this Act shall not apply—

(a) in respect of tax arrear,—

- (i) relating to an assessment year in respect of which an assessment has been made under section 153A or section 153C of the Income-tax Act, if it relates to any tax arrear;
- (ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

- (iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;
 - (iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;
 - (v) relating to an appeal before the Commissioner (Appeals) in respect of which notice of enhancement under section 251 of the Income-tax Act has been issued on or before the specified date;
- (b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration: Provided that—
- i. such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the

- Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
- ii. such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or
 - iii. such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or
 - iv. such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

10. Power of Board to issue directions, etc

(1) The Central Board of Direct Taxes may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit: Provided that no direction or order shall

be issued so as to require any designated authority to dispose of a particular case in a particular manner.

- (2) Without prejudice to the generality of the foregoing power, the said Board may, if it considers necessary or expedient so to do, for the purpose of this Act, including collection of revenue, issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that it is necessary in the public interest so to do.

11. Power to remove difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act , the Central Government may, by order, not inconsistent with the provisions of this Act , remove the difficulty:
Provided that no such order shall be made after the expiry of

a period of two years from the date on which the provisions of this Act come into force. (2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament. 12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

- a. the form in which a declaration may be made, and the manner of its verification under section 4;
- b. the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;
- c. the form in which certificate shall be granted under sub-section (1) of section 5;
- d. the form in which payment shall be intimated under sub-section (2) of section 5;

e. any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

3. Statement Of Objects And Reasons of VSV Bill

1. Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.
2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the

time, energy and resources saved by opting for such dispute resolution towards their business activities.

3. It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:—

- (a) The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;
- (b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

- (c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent. of disputed tax;
- (d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.

4. Key cases from IDS

It may be recalled that the Finance Act, 2016 (“the Finance Act”) had introduced the much-celebrated Income Declaration Scheme (‘IDS’) scheme to encourage voluntary compliance to encourage tax evaders to file their income tax returns.

Table given below captures certain key legal pronouncements under IDS scheme, which could be of relevance:

No.	Particulars	Citation	Legal pronouncement
1.	Computation of liability under the scheme	Kumudam Publications Pvt. Ltd [W.P.(C) 11216/2016]	<i>In the light of the above findings, the petition has to succeed. Accordingly a direction is issued to the respondents to process the petitioner's application under the IDS, 2016, and give adjustment or credit to the amounts paid as advance tax and TDS to its account,</i>

			<p><i>under the Income Tax Act, and accept the balance amounts (after also giving credit to the amounts paid during the interregnum, pursuant to the interim order of this court dated 29th November, 2016). The respondents shall ensure that the petitioner's payments and declarations are processed in accordance with the IDS, 2016. The writ petition is allowed in these terms; there shall be no order as to costs.</i></p>
2.	Applicability of IDS	M/S Suman vs The Principal Commissioner Of ..[<p><i>Having heard the learned counsels for the parties, this Court is of the opinion that there is no justification or reason for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution</i></p>

		No.5740 of 2018 (T-IT)]	<p><i>for interference in the matter of relaxation or extension of time limit as prayed for and therefore the Respondent Authority was justified in rejecting the said request of the petitioner, in view of the aforesaid Supreme Court decision.</i></p> <p><i>8. However, in view of para.14 of the aforesaid judgment of the Hon'ble Supreme Court, the petitioner assessee will be free to approach the Respondent Authorities in accordance with law and the Respondent Authorities are expected to pass appropriate orders in the matter with regard to refund/adjustment of amount already deposited by the petitioner.</i></p>
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5. Relevant Extract - Budget Speech

126. No Dispute but Trust Scheme – ‘Vivad Se Vishwas’ Scheme

- *Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.*
- *Under the proposed **‘Vivad Se Vishwas’** scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay*

some additional amount. The scheme will remain open till 30th June, 2020.

- *Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.*
- *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process.*

6. Relevant Sections – Income Tax Act

6.1 Section - 90A of Income-tax Act

90A. (1) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in any specified territory outside India; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that specified territory outside India to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that specified territory outside India, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that specified territory outside India, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that specified territory outside India.

(2) Where a specified association in India has entered into an agreement with a specified association of any specified territory outside India under sub-section (1) and such agreement has been notified under that sub-section, for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any specified territory outside India, is obtained by him from the Government of that specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a company incorporated in the specified territory outside India at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such company.

Explanation 2.—For the purposes of this section, the expressions—

(a) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be notified as such by the Central Government for the purposes of this section;

(b) "specified territory" means any area outside India which may be notified as such by the Central Government for the purposes of this section.

Explanation 3.—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

Explanation 4.—For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall

have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

6.2 Section - 153A of Income-tax Act

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act

shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second

proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year

which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

6.3 Section- 153C of Income-tax Act

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total

income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made

and for the relevant assessment year or years as referred to in sub-section (1) of [section 153A](#) except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#) and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of [section 142](#) has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of [section 143](#) has been served and limitation of serving the notice under sub-section (2) of [section 143](#) has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in [section 153A](#).

6.4 Section – 251 of Income-tax Act

Powers of the Commissioner (Appeals).

251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under [section 245HA](#), he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the

course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

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Yesterday I was clever, so I wanted to change the world.

Today I am wise, so I am changing myself.

Rumi