

## **Dispute Settlement Scheme in Income Tax An Overview**

**Dr. Jyoti M. Bhatia**

### **Abstract**

*Considering the success of Sabka Vishwas Scheme and analysing the amount of taxes pending in appeals, the most awaited reform in Income tax has been introduced to resolve disputed taxes. Budget 2020 has introduced Vivad se Vishwas Scheme 2020- a dispute resolution cum amnesty scheme for legacy cases under Direct Tax.*

*The scheme aims at providing speedy settlement of disputed cases on the part of Tax payers and the Government. It provides an opportunity of voluntary disclosure to non-compliant taxpayers. Pandemic situation at Global level has affected almost all sectors of the economy. This has made it difficult for the Central Government to achieve its expected target revenue as an outcome of this scheme. Through this paper, an attempt has been made to discuss the key aspects of the scheme and give an overview of its practical application.*

**Keyword: Compliance, Direct Tax, Dispute resolution, Interest, Penalty, Vivad se Vishwas.**

### **Introduction**

As an initiative towards 'Sabka Saath Sabka Vikas' (Collective Effort, Inclusive Development)- Agenda of National Development and considering the increasing numbers of pending litigations in Income Tax, Finance Minister Nirmala Sitharaman introduced dispute Settlement Scheme in Income Tax - Vivad Se Vishwas Scheme. The Goal for introducing this scheme is to arrive at speedy settlement of disputed cases on the part of Tax payers and the Government. It provides an opportunity of voluntary disclosure to non-compliant taxpayers. The

scheme expects to initiate Revenue Mobilisation of disputed funds held up under Income tax.

The study is an effort to discuss the key aspects of 'Direct Tax Vivad se Vishwas Act 2020' giving an overview of its practical application towards Tax payers and other stake holders.

### **Literature Review**

- Jha, S., & Kumar, M. (2020) in their critical analysis of Union budget 2020-2021, stated Sabka Saath, Sabka Vikas, Sabka Vishwas are likely to revitalise the economy of the country.

- Chauhan, M. (2020) conducted a critical research of sustainable development in India and concluded that cooperation from each segment of society is essential to achieve targets for development.
- Maheshwari, S. (2019) in her research opined that PM Narendra Modi's vision and work for Sabka Saath, Sabka Vikas, Sabka Vishwas have the common idea for growth and development of each and every individual by involving them into the mainstream of the nation building.
- Kasyapa, V. S. R. M. (2019) in the study on (Legacy Disputes Resolution) Scheme, stated that there exists a fight continues between NCLT and CBIC to study the status of amount of GST due to Government.
- Sitharaman N. (2020) in Aatmanirbhar Yojana extended the due date for Vivad Se Vishwas Scheme to December 31, 2020.

### **Objectives**

- To list the key areas of disputes for assessee under the Income Tax.
- To explore the need for Dispute Settlement Scheme in Income Tax Act.
- To evaluate practical application of Vivad Se Vishwas Scheme.

### **Scope**

- The study is restricted to Dispute Redressal Scheme in Income Tax Act
- Period of study covers six months up to June 2020.

### **Research Plan for Data Collection**

- Data from published sources, articles and newspapers.
- The study is Descriptive and Analytical.

### **Methodology**

#### Secondary Data for Study

- a. The study comprised of data availed from Budget speech and various measures undertaken by the Government during Covid -19 Pandemic w.r.t Dispute Redressal.
- b. An attempt has been made to discuss the key aspects of 'Direct Tax Vivad se Vishwas Act 2020' and evaluate its practical application towards Tax payers and other stake holders.

### **Findings**

#### **A. KEY AREAS OF DISPUTES UNDER IT ACT**

##### **I. Reasons for arising of Liability on Assessee under Income Tax Act**

- a. Default in making payment of Self-Assessment Tax
- b. Default in furnishing Return of

- Income Tax as on due date/ with incorrect details
- c. Default in making payment of Tax
  - d. Delay in filing TDS/ TCS statement
  - e. Misreporting of Income (suppressed facts, claim expense without evidence)
  - f. Under Reporting of Income (eg: Loan details)
  - g. Failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA
  - h. Failure to keep and maintain information and document etc. in respect of international transaction or specified domestic transaction
  - I. False entry in books of Accounts
  - j. Default in submission of statement / certificate prescribed under section 35 (Research)- Certificate to Donors
  - k. Default in submission of statement/certificate prescribed under section 80G- Entities receiving Donations.
  - l. Income from Undisclosed sources/ concealed income
  - m. Failure to get accounts audited or furnish report of Audit as required under 44AB
  - n. Failure to furnish report from CA for every person entering into International transaction
  - o. Failure to deduct TDS

- p. Failure to pay tax by winning from Lottery
- q. Penalty for furnishing inaccurate statement of Financial transactions

## **II. Actions Under IT Act**

- Issuing Notice to Tax payers asking to furnish details
- Search/ Seizures
- Penalty
  - post assessment proceedings
  - for default in payment of taxes
  - consequent to search proceedings

## **III. Authorities Under Income Tax Act**

- i. CBDT
- ii. Director General of Income Tax/ Chief Commissioner of Income Tax
- iii. Directors of IT/ Commissioner of IT
- iv. Additional Director/ Commissioner of IT
- v. Jt. Director/ Commissioner of IT
- vi. Dy. Director of IT / Dy. Commissioner of IT
- vii. Asst. Director of IT/ Asst. Commissioner of IT

## **IV. Authorities of Appeal Under IT Act**

There is a structured Appellate Hierarchy under Income Tax Act as under:

- a. Assessing Officer
- b. Principal Commissioner/ Commissioner of Income Tax (CIT-Appeals) functions within tax administrations.
- c. Income Tax Appellate tribunal (ITAT)- Independent Judicial Authority
- d. High Court
- e. Supreme Court

**V. Disputes Under Income Tax Act**

- Disputed Tax 2(1)(j): includes surcharge/cess

In case any appeal/ writ is pending before the appellate forum as on 31.1.2020- Tax payable by appellant if

such appeal or writ was decided against him. In case order in appeal is filed by Appellate forum on or before 31.1.2020 and time to file appeal has not expired- amount of tax payable by the appellant after giving effect to order so passed.

- Disputed Interest 2(1) (h): Interest in Income tax under which appeal is filed. Eg: Interest u/s 201
- Disputed Penalty 2(1) (i): Penalty in Income Tax in respect of which appeal is filed. Eg: 271C
- Disputed Fee 2(1) (f): Fee in Income Tax in respect of which appeal is filed. Eg: 234F

**B. NEED FOR THE DISPUTE REDRESSAL SCHEME**

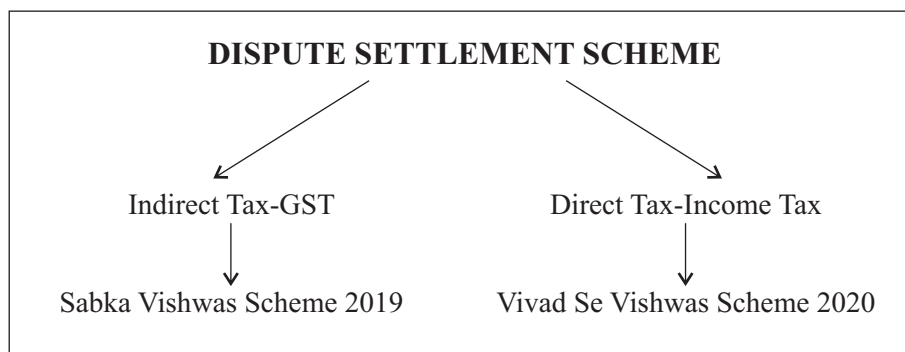
Pending Litigations

<b>Income Tax Disputes</b>	<b>31.3.18</b>	<b>31.3.19</b>
Appeals before CIT at the start of the year	3.28 Lakh	3.21 Lakh
New Appeals filed by Tax payers	1.17 Lakh	1.41 Lakh
Disposal of Case at Appellate Commissioner	1.23 Lakh	1.20 Lakh
<b>Cases pending before CIT appeals</b>	<b>3.22 Lakh</b>	<b>3.41 Lakh</b>
<b>Demand involved in First appeals</b>	<b>Rs. 6.38 Lakh Crores</b>	<b>Rs. 5.71 Lakh Crores</b>

Ref: CBDT Action Plan Report: FY 20

**C. VIVAD SE VISHWAS SCHEME (VSVS)**

**I. Scheme Evolution**



- a. 87.5 % of the eligible Tax payers took advantage of Sabka Vishwas Scheme 2019.
- b. As per the Income Tax department, 80332 appeals of Direct Tax involving Tax effect of Rs. 4.5 trillion are pending before Judicial forums.
- c. Optimism by the Center to add Direct Tax collection target by 1-1.5 trillion Rs. through Vivad se Vishwas scheme.

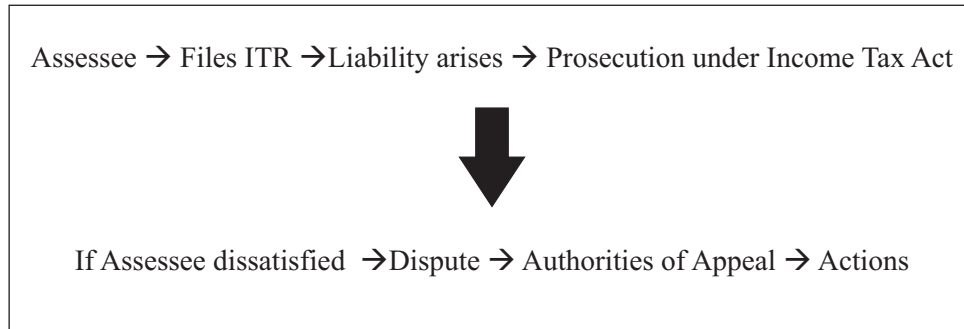
introduced in Loksabha. Addressing to the queries raised by stake holders, a clarification in the form of answers to FAQ's was issued by CBDT (Ref: Circular No 7/2020 dated March 4, 2020). The circular gives clarifications about eligibility, calculation of disputed tax, procedure related to payment of disputed tax, and benefits available to appellant. On March 17,2020 Government of India enacted Direct Tax Vivad Se Vishwas Act 2020. The act focussed on Litigation management w.r.t disputes in Income Tax.

Vivad refers to controversy or dispute and Vishwas refers to Assurance or Trust. The Vivad se Vishwas Bill emphasises on Trust building acting as a bridge between tax payers and the Income tax Department shaping step towards 'Sabka Saath Sabka Vikas'. In the Union Budget 2020, Vivad se Vishwas scheme was announced to resolve disputes for pending Income Tax litigations. On Feb 5, 2020, Direct Tax-Vivad se Vishwas bill 2020 was

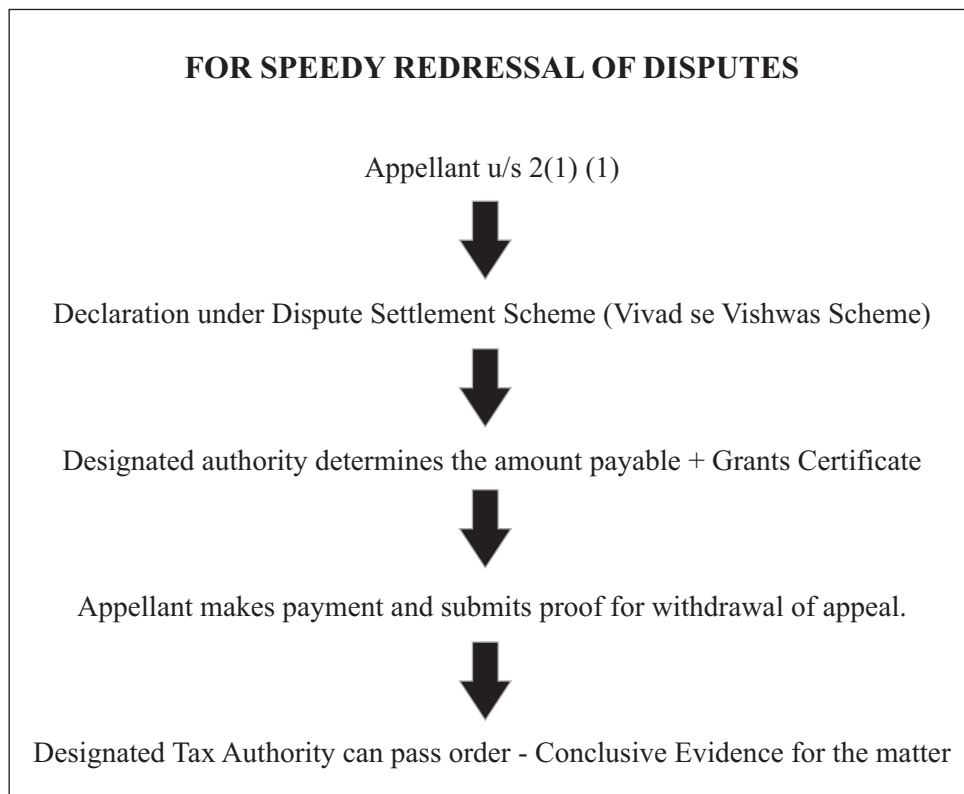
Vivad se Vishwas scheme is a fast track redressal mechanism which intended the appellant to settle their pending litigation with reference to disputed tax, interest or penalty under the Income Tax Act. Direct tax scheme announced in Budget 2020, for settling tax disputes between individuals and the income tax department.

**II. Conceptual Model** - The study reflects following conceptual models

*Conceptual Model 1 (Before VSVS)*



*Conceptual Model 2 (Under VSVS)*



### **III. Mechanism**

- a. Appellant u/s 2(1)(a) of the Act refers to
- Person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the Income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;
  - Person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the CITAT in an appeal, or by HC in a Writ petition before specified date and time for filing any appeal or special leave petition against such order by that person has not expired as on that date;
  - Person who has filed his objections before the DRP under Sec 144C of the Income-tax Act, 1961 and the DRP has not issued any direction on or before the specified date;
- b. Person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;
- Person who has filed an application for revision under section 264 of the Income-Tax Act and such application is pending as on the specified date.
- b. Appellant files declaration under VSVS --> Upto Deadline 31.3.2020 (Deadline extended to June 30, 2020 and Second time to December 31, 2020 in Atmanirbhar economic package by Finance Minister). Individual opting for settlement of dispute under VSVS after the deadline are required to pay an additional penalty of 10% or such specified percentage on the disputed tax as fee.

Payment Schedule for Vivad Se Vishwas Scheme		
	Payment upto 31.12.2020 (Due Date)	Payment after 31.12.2020 (Due Date)
<b>Appeals filed by the Tax payer</b>		
Search Cases involving dispute relating to Tax, interest, penalty etc.	125% of the disputed tax	135% of the disputed tax
Other than Search Cases involving dispute relating to Tax, interest, penalty etc.	100% of the disputed tax	110% of the disputed tax
Where dispute relates to only interest, penalty or disputed fee	25% of the disputed interest, penalty or fee	30% of the disputed interest, penalty or fee
<b>In case of appeals filed by the Department, payment is upto 50% of the amount specified for appeals filed by the Tax payers</b>		

- c. Scheme offers a waiver of additional fees, apart from immunity from prosecution/ penal proceedings. Scheme will help in settling a wide spectrum of these cases and in turn will instil a sense of confidence among the taxpayers and add certainty to the business environment. If a taxpayer elects to take recourse under the scheme, a proportion of the total tax along with interest and penalty needs to be paid (depending on the type of the pending dispute) for full and final settlement.
- d. The Act also provides that the tax disputes so settled cannot be reopened in any other proceeding by the income tax department or

any other designated authority. Declaration under the scheme shall not amount to accepting the tax position by the taxpayer and hence not impact the claims of the taxpayer in other years.

#### IV. Steps

- a. Appellant files declaration in form to designated authority
  - Initiate resolution of pending disputes.
  - Furnish undertaking waiving right to pursue remedy
- b. Within 15 days, designated authority determines the amount payable to the applicant and Grants Certificate with details of the amount payable. (Appeal not allowed).



- c. Within 15 days of issue of Grants Certificate, appellant makes payment and submits proof for Withdrawal of appeal.
- d. Designated Tax Authority shall then pass order which shall be conclusive for matters therein.

#### V. Application of the Scheme

The scheme applies to any taxpayer in relation to the tax matters where an appeal is pending before the following appellate authorities as on January 31, 2020:

- a) Commissioner of Income-tax (Appeals) ('CITA');
- b) Income-tax appellate tribunal (ITAT);
- c) High court (HC);
- d) Supreme Court (SC);
- e) Dispute resolution panel (DRP) and cases where directions have been issued by the DRP but no final assessment order has been passed.

*Note: Scheme not applicable to prosecution cases under Prevention of Money Laundering Act, Prohibition of Benami Property Act or IPC.*

While the number of new appeals instituted before the Appeal during 2018-19 has increased substantially, the disposal of cases is comparatively lower.

#### Limitations

- The study focusses only on Dispute Redressal Scheme in Income Tax Act
- It also restricts its analysis for a period covering six months upto June 2020.

#### Analysis & Practical Application

##### A. Tax Payers Perspective

- Scheme is useful for those fence sitters who miss the deadlines or are unaware of Income tax provisions.
- Taxpayers whose tax demands are locked in dispute in multiple forums can pay due taxes by December 31, 2020, and get full waiver in interest and penalty.
- Saves the appellant by avoiding any awkwardness or embarrassment of Interest and Penalty.
- The scheme confers immunity from prosecution, penalty and interest in respect of proceedings for which the taxpayer has opted to avail the scheme.
- Clears tax dues and Contingent liability which may have been reported in the Company's Annual Report.

### **B. Government Perspective**

- Twin Objective: reducing litigation and collecting the revenue locked up in that litigation.
- Assists Government to reduce Litigation expenses.
- Assists in timely collection of Revenue.
- It is a big Booster for Government which is staring at Revenue shortage.
- Aims at Nearly 90% of the cases involving smaller demands are to be disposed off during FY 19-20.
- Deliberate attempts are being made to keep the Scheme afloat.
- Tax payer given an option to make payments in Instalments or staggering payments further to the next financial year.

There was an urge by the Income Tax officials, Chartered Accountants and other stake holders to extend the deadline for the scheme in the wake of country wide lockdown to combat the Global pandemic. Extension was granted upto 31.12.2-2020 as a relief for those appellants who intended to settle their disputes via VSVS.

As per the VSV scheme income tax disputes settled under it cannot be reopened in any other proceeding by the income tax department or any other designated authority.

### **C. Scheme till date**

Priorities of taxpayers have shifted to survival due to the Global Pandemic.

- Global lockdowns have severely affected the liquidity of businesses
- Conserving Cash has been a top priority as an impact of the current pandemic situation.
- The scheme may not help shore up coffers due to Covid-19 pandemic which has halted outreach programmes by the Income Tax Department.

Max Financial Services, a private sector Indian company settles tax dispute at Rs 123 crore under Vivad Se Vishwas Scheme settling the litigation involving capital gains from the stake sale of its erstwhile telecom joint venture Hutchison Max Telecom.

### **Conclusion**

Global Pandemic has led to Economic slowdown affecting all sectors of economy. This has led to scary task for the Central Government to achieve the Target revenue collection. The scheme proposes to settle direct tax disputes relating to the Personal Income Tax and Corporate Tax between taxpayers and the tax department. Favourable results are still expected due to reluctance from large tax payers where a huge amount has been stuck.

Focussing on disposing all pending appeals with disputed Income Tax demand of specified amount. The government under Atmanirbhar yojana announced a range of relief measures for companies, including an extension in the deadline for Vivad Se Vishwas Scheme. Settlement of disputes have taken a back seat by tax payers. COVID-19 outbreak has shaped such situations that Scheme has apparently lost its glamour towards the taxpayers due to liquidity crunch and prevailing business uncertainties in future.

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