

Pune Branch of WIRC of ICAI

Direct Tax

Vivad Se Vishwas Scheme, 2024

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Vivad Pe Vishwas ?

Aata dal ka bhaav toh sabko pata hai, par dispute ka kya?

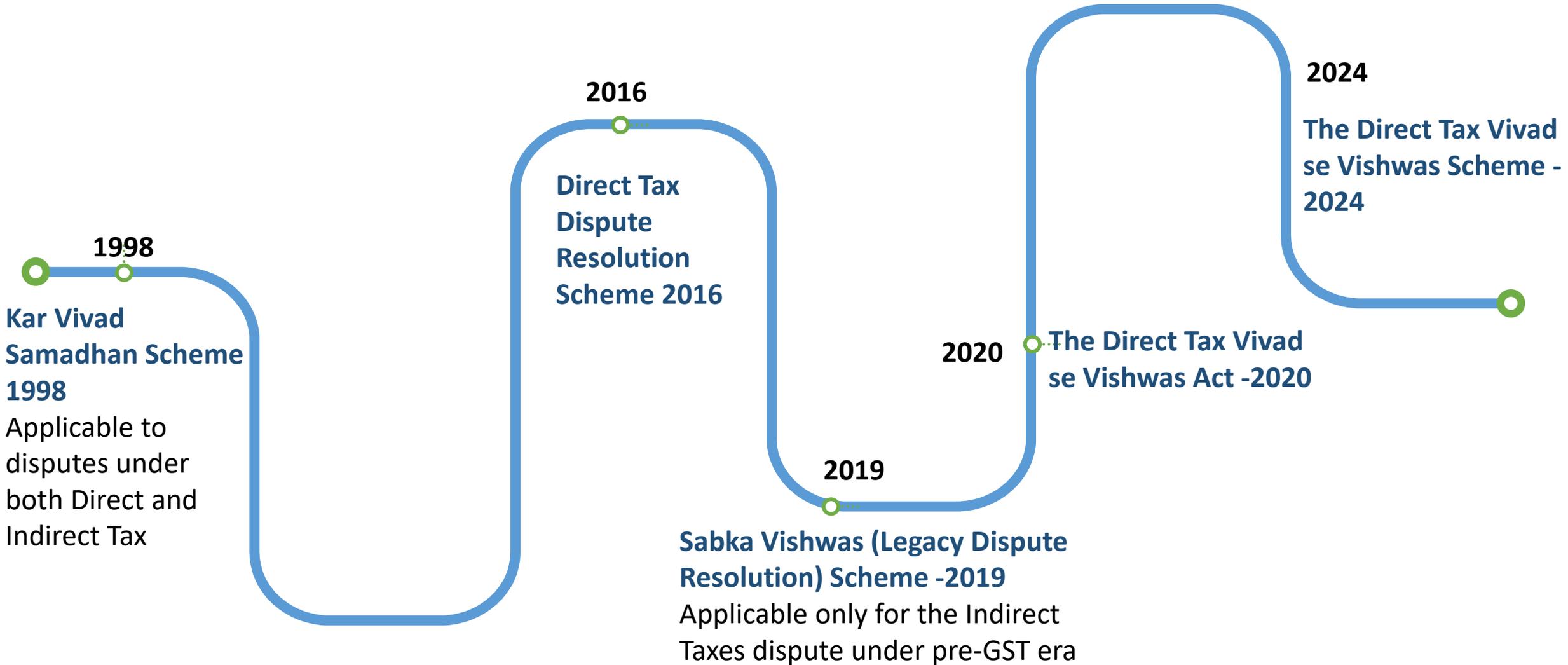
Memorandum to Finance Bill, 2024

2. The pendency of litigation at various levels has been on the rise due to larger number of cases going for appeal than the number of disposals. Keeping in view the success of the previous Vivaad Se Vishwas Act, 2020 and the mounting pendency of appeals at CIT(A) level, introduction of a Direct Tax Vivad se Vishwas Scheme, 2024 is proposed with the objective of providing a mechanism of settlement of disputed issues, thereby reducing litigation without much cost to the exchequer.

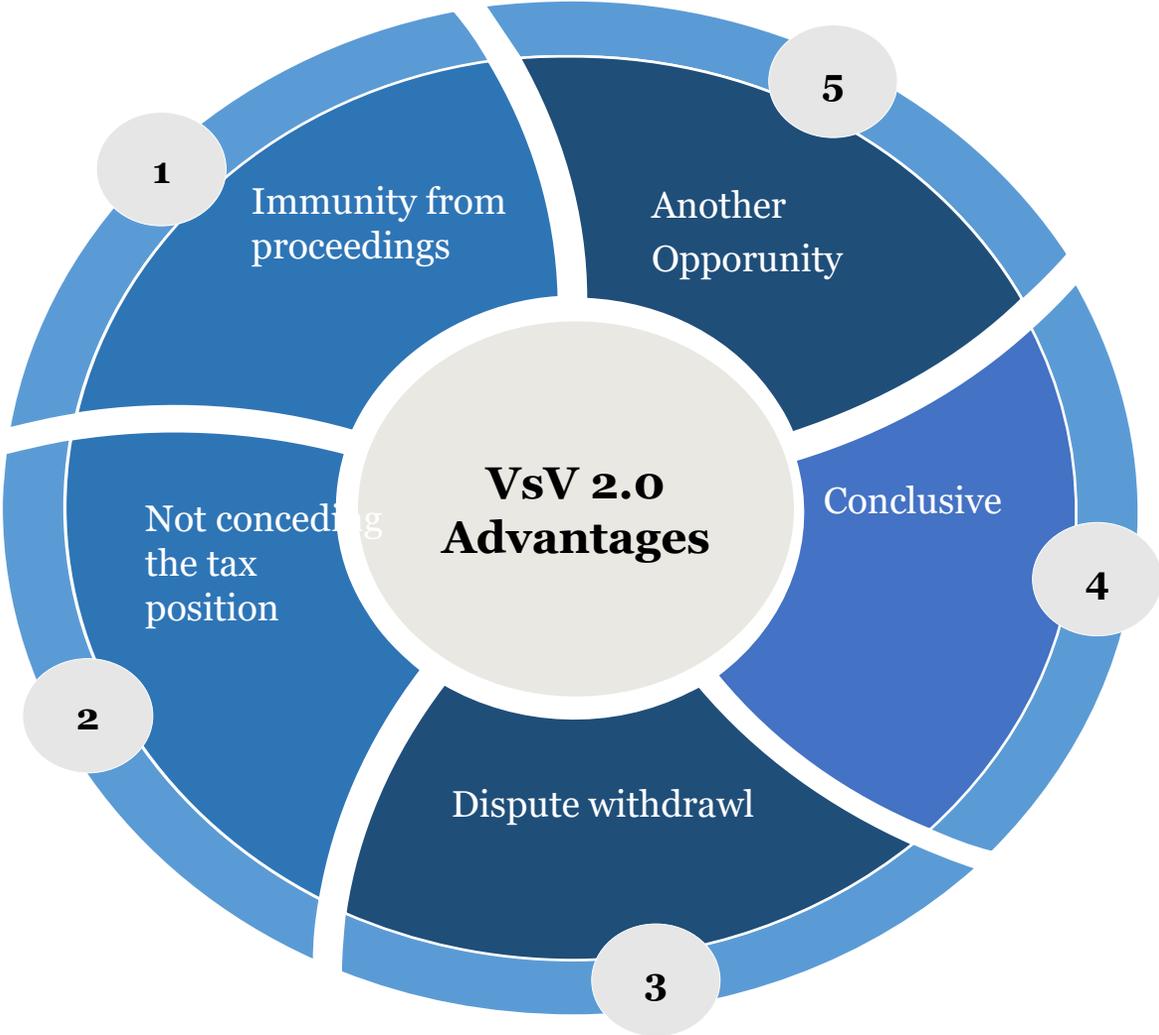
3. It is proposed that this Scheme shall come into force from the date to be notified by the Central Government. The last date for the Scheme is also proposed to be notified.

[Clauses 88 to 99]

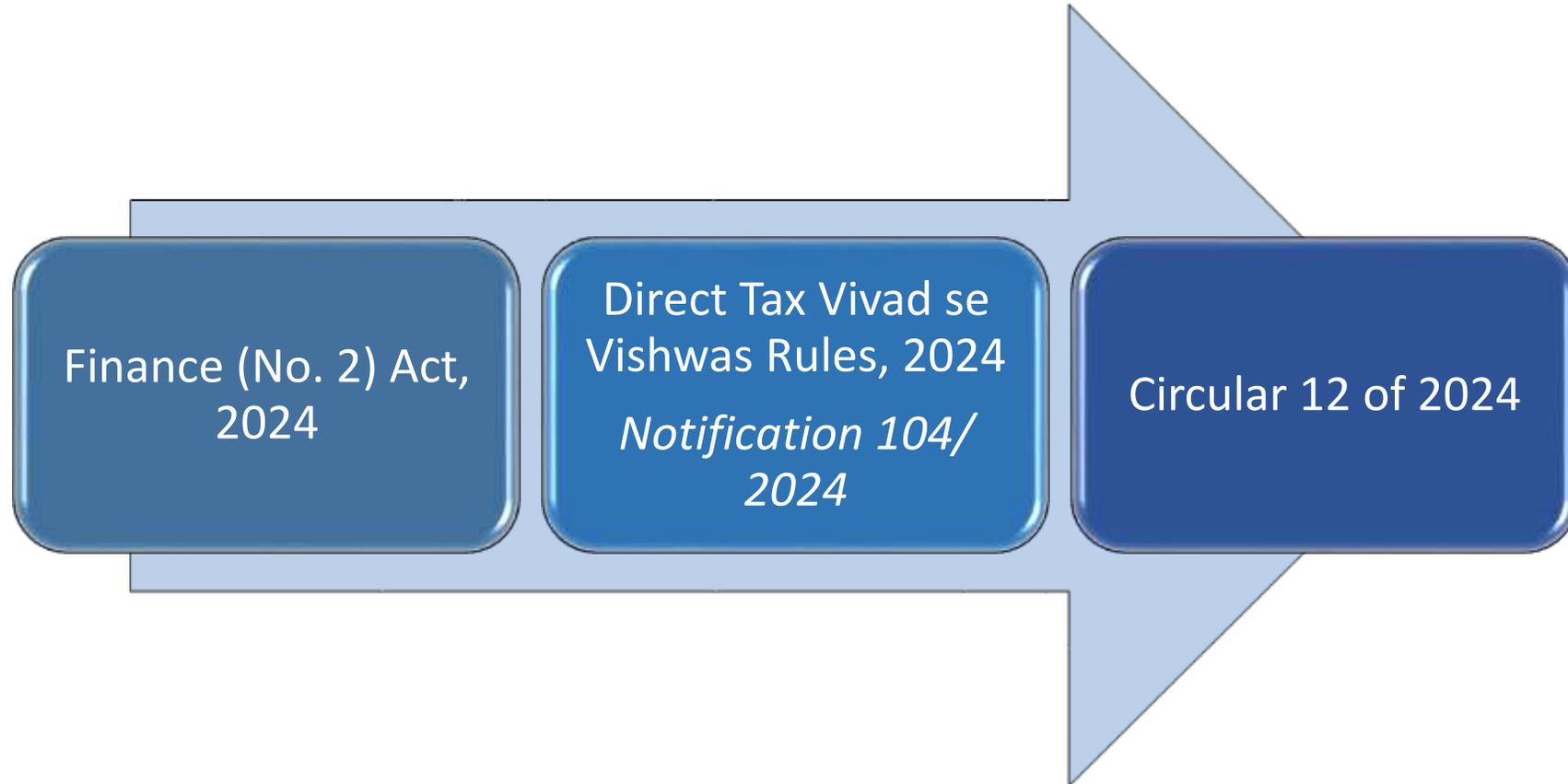
ATTEMPTS IN THE RECENT PAST



ADVANTAGES OF VSV



RELEVANT PROVISIONS



VSV 2.0 – APPLICABILITY

01



Appeal or writ or special leave petition filed either by appellant or income tax authority or by both before any appellate forum viz Commissioner (Appeals) or Income Tax Appellate Tribunal or High Court or Supreme Court, **and such appeal is pending as on 22 July 2024, or;**

02



Objections have been filed before the Dispute Resolution Panel (“DRP”) and no directions have been **received on or before 22 July 2024, or;**

03



DRP has issued directions under Section 144C(5) of the Act, but the Assessing Officer (“AO”) **has not completed the assessment as on 22 July 2024, or;**

04



Application for revision has been filed and is **pending before the commissioner of Income-Tax as on 22 July 2024**

05



Also covers disputes relating to Tax Deducted as Source (“TDS”) and Tax Collected at Source (“TCS”)

VSV 2.0 - APPLICABILITY

01

Appeal was pending on 22 July 2024, got disposed in September 2024



03

Selective grounds of appeal

***VsV 2.0
Applicability***

02

Appeal not filed, but timeline to file appeal is pending



04

Multiple Appeals for Same Year

AMOUNT PAYABLE UNDER THE SCHEME – 1/3

Appeals filed after 31.01.2020 but on or before 22.07.2024

| Sr No | Nature of tax arrear | Amount payable on or before the 31 st day of the December, 2024 | Amount payable on or before the 01.01.2025 but before *** |
|-------|---|--|---|
| 1 | Disputed Tax including Interest and Penalty thereon | Amount of Disputed tax (100% of Disputed tax) | Amount of Disputed Tax + 10% of Disputed Tax (110% of Disputed tax) |
| 2 | Disputed Penalty, Disputed interest or Disputed Fee | 25% of Disputed Penalty, Disputed interest or Disputed Fee | 30% of Disputed Penalty, Disputed interest or Disputed Fee |

*** End date not notified

CASE STUDY

- New Appellant
- Declaration for VsV in Form 1 done on 25 December 2024
- Tax not paid upto 31 December 2024
- Whether tax to be paid equivalent to 100% of disputed tax or 110% of disputed tax?

Finance Act (No. 2), 2024

TABLE

| Sl. No. | Nature of tax arrear. | Amount payable under this Scheme on or before the 31st day of December, 2024. | Amount payable under this Scheme on or after the 1st day of January, 2025 but on or before the last date. |
|---------|-----------------------|---|---|
| (1) | (2) | (3) | (4) |
| | | | |

CBDT Circular

| Rates | | | |
|---|---|---|---|
| 3 Kindly provide the amount payable on the tax arrears as per the DTVSV Scheme, 2024? | | | |
| Table-1 | | | |
| S. No. | Nature of tax arrears | Amount payable where declaration made on or before 31.12.2024 | Amount payable where declaration made on or after 1.1.2025 & before last date |
| 1 | Tax arrears include disputed tax, interest, penalty (New appellant) | 100% of disputed tax | 110% of disputed tax |
| 2 | Tax arrears include | 110% of | 120% of |

AMOUNT PAYABLE UNDER THE SCHEME – 2/3

Appeals filed on or before 31.01.2020

| Sr No | Nature of tax arrear | Amount payable on or before the 31 st day of the December, 2024 | Amount payable on or before the 01.01.2025 but before *** |
|-------|---|--|---|
| 1 | Disputed Tax including Interest and Penalty thereon | Amount of Disputed Tax + 10% of Disputed Tax (110% of Disputed tax) | Amount of Disputed Tax + 20% of Disputed Tax (120% of Disputed tax) |
| 2 | Disputed Penalty, Disputed interest or Disputed Fee | 30% of Disputed Penalty, Disputed interest or Disputed Fee | 35% of Disputed Penalty, Disputed interest or Disputed Fee |

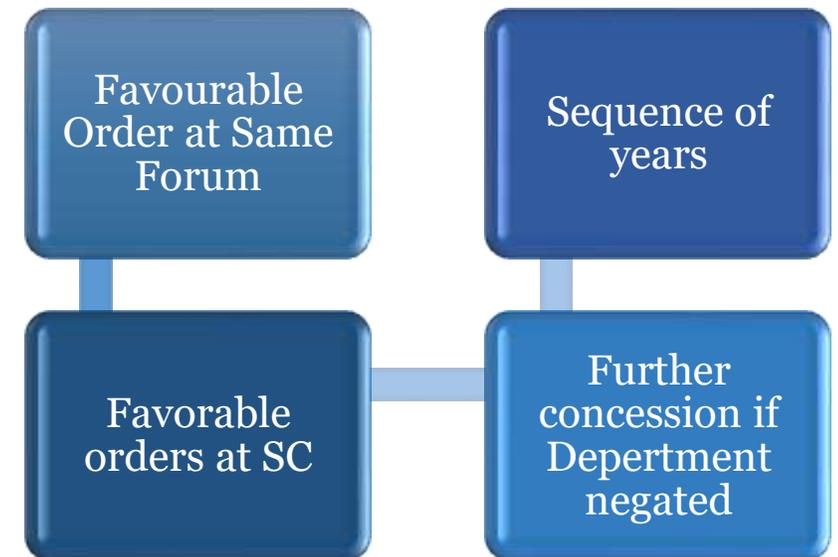
*** End date not notified

AMOUNT PAYABLE UNDER THE SCHEME – 3/3

Appeal by Department / Covered Issues

| Sr. No. | Nature of tax arrear | Amount payable | Condition, if any |
|---------|--|---|--|
| 1 | Appeal/ Writ/ SLP by Department | 50% of amount payable (as determined in earlier slides) | |
| 2 | Appeal pending before CIT(A) or JCIT(A) and favorable order received from ITAT or High Court on such issue | | Decision not reversed by higher forum |
| 3 | Appeal pending before ITAT and favorable order received from High Court on such issue | | Decision not reversed by Supreme Court |

Case Studies



DISPUTED TAX

What is Disputed Tax

| Situation | Disputed Tax |
|---|--|
| Where appeal is pending before Appellate Forum on 22 Jul 2024 | Tax that is payable if the appeal /petition/ SLP was to be decided against him |
| Objection filed by appellant before DRP is pending as on SD | Amount of Tax payable if DRP was to confirm the variation proposed in draft assessment order |
| DRP has issued directions but final order of AO is pending as on SD | Amount of Tax payable as per Asst. Order to be passed by AO as per the directions of DRP |
| Revision petition u/s 264 is pending as on SD | Amount of Tax payable as if the revision application will not be accepted |

Disputed Tax Proviso

Where the dispute relates to reduction of MAT credit or AMT credit or reduction of loss or depreciation → Appellant has option to

- Include the amount of tax related to tax credit or loss or depreciation
- Carry forward reduced tax credit or loss or depreciation in the manner to be prescribed

CASE STUDY – FOR COMPUTATION OF DISPUTED TAX - 1

| Particulars | AY 2018-19 | AY 2019-20 | AY 2020-21 |
|--|-----------------|-----------------|-----------------|
| Additions during assessment u/s 143(3) | | | |
| (i) Unexplained cash credits | 25,000 | 20,000 | 60,000 |
| (ii) Disallowance of cash payments | 30,000 | 50,000 | 40,000 |
| (iii) Disallowance for TDS defaults | 50,000 | 40,000 | 70,000 |
| (iv) Disallowance u/s 40A(2) | 25,000 | 60,000 | 90,000 |
| TOTAL ADDITION BY AO | 1,30,000 | 1,70,000 | 2,60,000 |
| <i>Tax on assessed income</i> | <i>50,000</i> | <i>60,000</i> | <i>105,000</i> |
| Interest u/s 234B/234C | 10,000 | 15,000 | 20,000 |
| Penalty | 30,000 | 45,000 | 80,000 |
| ADDITIONS AFFIRMED BY CIT(A) AND PENDING BEFORE ITAT BEFORE 22/7/24 | 1,30,000 | 1,70,000 | 2,60,000 |
| Questions | | | |
| Can taxpayer opt for VsV? | Yes | Yes | Yes |
| What is the tax payable in VsV (before 31 December 2024 case)? | 50,000 | 60,000 | 105,000 |

CASE STUDY – FOR COMPUTATION OF DISPUTED TAX - 2

| Particulars | AY 2018-19 | AY 2019-20 | AY 2020-21 |
|--|---------------|-----------------|-----------------|
| ADDITIONS AFFIRMED BY ITAT | | | |
| (i) Unexplained cash credits | | | 60,000 |
| (ii) Disallowance of cash payments | 30,000 | 50,000 | |
| (iii) Disallowance for TDS defaults | 50,000 | | 70,000 |
| (iv) Disallowance u/s 40A(2) | | 60,000 | |
| TOTAL ADDITIONS CONFIRMED BY ITAT | 80,000 | 1,10,000 | 1,30,000 |
| Tax on income after ITAT Additions | 24,000 | 33,000 | 66,000 |
| Interest u/s 234B/C | 4500 | 11,000 | 12,000 |
| Penalty u/s 270A | 12,000 | 40,000 | 55,000 |
| ADDITIONS DELETED BY ITAT | 50,000 | 60,000 | 130,000 |
| Tax on deletions | 26,000 | 27,000 | 39,000 |
| <i>Assessee and Department have filed appeals against all adjustments before High Court</i> | | | |

Does Assessee need to settle both appeals?

Amount of disputed tax if VsV is opted only for taxpayer's appeal

← Disputed tax

Amount of disputed tax if VsV is opted for both appeals

← 50% of such amount to be added to Disputed tax

CASE STUDY – FOR CARRY FORWARD OF LOSS/ UD

| Particulars | Computed by Assessee in ITR | Recomputed by AO | Remarks |
|--|-----------------------------|------------------|--|
| <u>Year 1</u> | | | |
| Long term capital loss on sale of shares | (10,00,000) | NIL | This is reduction of loss as determined during assessment |
| <u>Year 2 – Long term capital gain (without loss)</u> | 10,00,000 | | As per return of income – Tax paid on Nil (after set off of 10,00,000 from year 1) |

Option 1 – Pay the tax in year 1 itself

No tax was paid originally in ITR due to loss situation. Now entire loss is ignored and tax is paid in first year itself.

| <u>Year 1</u> | | <u>Year 2</u> | |
|--|----------|------------------------|-------------|
| Tax at 20% on loss reduced (10,00,000*20%) | 2,00,000 | Long term capital gain | 10,00,000 |
| | | Less: Loss from Year 1 | (10,00,000) |
| | | Tax on Balance Income | NIL |

CASE STUDY – FOR CARRY FORWARD OF LOSS/ UD

| Particulars | Computed by Assessee in ITR | Recomputed by AO | Remarks |
|--|-----------------------------|------------------|--|
| <u>Year 1</u> | | | |
| Long term capital loss on sale of shares | (10,00,000) | 0 | This is reduction of loss as determined during assessment |
| <u>Year 2 – Long term capital gain (without loss)</u> | 10,00,000 | | As per return of income – Tax paid on Nil (after set off of 10,00,000 from year 1) |

Option 2 – Not Pay Tax in Year 1

Tax carry forward will reduce for year 2. Interest u/s 234B on enhanced income for year 2 will apply.

| <u>Year 1</u> | | <u>Year 2</u> | |
|------------------------------|-----|------------------------|-----------|
| No tax paid – Loss situation | Nil | Long term capital gain | 10,00,000 |
| | | Less: Loss set off | Nil |
| | | Tax on Balance Income | 2,00,000 |

VSV 2.0 INELIGIBLE DISPUTES/ PERSONS

In respect of tax arrears

- Relating to an assessment year (“AY) of which an assessment or reassessment has been made under section 143(3), 144, 147, 153A or 153C on the basis of search
- Relating to an AY in respect of which prosecution has been instituted on or before the date of filing of declaration
- Relating to an undisclosed income from a source outside India or undisclosed asset located outside India
- Relating to an assessment or reassessment made on the basis of information received under tax information exchange agreements

Following Persons

- Detention order (not revoked or set aside) under Conservation of Foreign Exchange or Prevention of Smuggling Activities Act, 1974
- Prosecution/ Convicted for any punishable offence :
 - Unlawful Activities (Prevention) Act, 1967
 - Narcotics Drugs and Psychotropic Substances Act, 1985
 - Prohibition of Benami Property Transactions Act, 1988
 - Prevention of Corruption Act, 1988
 - Prevention of Money Laundering Act, 2002
- Prosecution instituted by an income-tax authority ; or convicted under provisions of Bhartiya Nyaya Sanhita, 2023 / enforcement of any civil liability under any law
- Person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

CASE STUDY – INELIGIBLE DISPUTES

- An appeal is filed by assessee for multiple issues as below before CIT(A)
 - Addition of house property income – Rs. 1,00,00,000/-
 - Addition of salary income – Rs. 10,00,000/-
 - Addition of undisclosed income from a source located outside India – Rs. 2,00,000/-
- Whether taxpayer can opt for VsV 2.0?

CASE STUDY – SEARCH CASES

- Taxpayer has filed appeal on 1 January 2020
- Assessment reopened on the basis of documents found during search on another person on 1 January 2017
- Assessment order was passed under section 147 r.w.s. 143(3) of the Act
- Whether taxpayer is eligible to opt for VsV?

Finance Act (No. 2), 2024

Scheme not to apply in certain cases.

96. The provisions of this Scheme 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 sub-section (3) of section 143 or section 144 or section 147 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act;

Circular 12/2024

| | | payer has paid the full and final amount. |
|---------------------------|--|--|
| Search assessments | | |
| 6 | Kindly clarify which assessments shall be considered to have been made on the basis of search initiated under section 132/132A of the Act? | <p>Assessments framed under section 153A or 153C are clearly made on the basis of search initiated u/s 132/132A. Therefore, such cases shall not be eligible for the DTVS Scheme, 2024.</p> <p>For other cases where assessments have been made u/s 143(3)/144/147, following three sets of cases shall be considered as cases where assessments have been made on the basis of search initiated u/s 132/132A.</p> <p>These cases are:-</p> <p>(i) Where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee and assessments have been made consequently; or</p> <p>(ii) Where the Assessing Officer has drawn satisfaction, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee and assessments have been made consequently; or</p> <p>(iii) Where the Assessing Officer has drawn satisfaction, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee and assessments have been made consequently.</p> |

CASE STUDY PROSECUTION

- Prosecution not instituted on 22 July 2024
- Prosecution Instituted on 10 December 2024

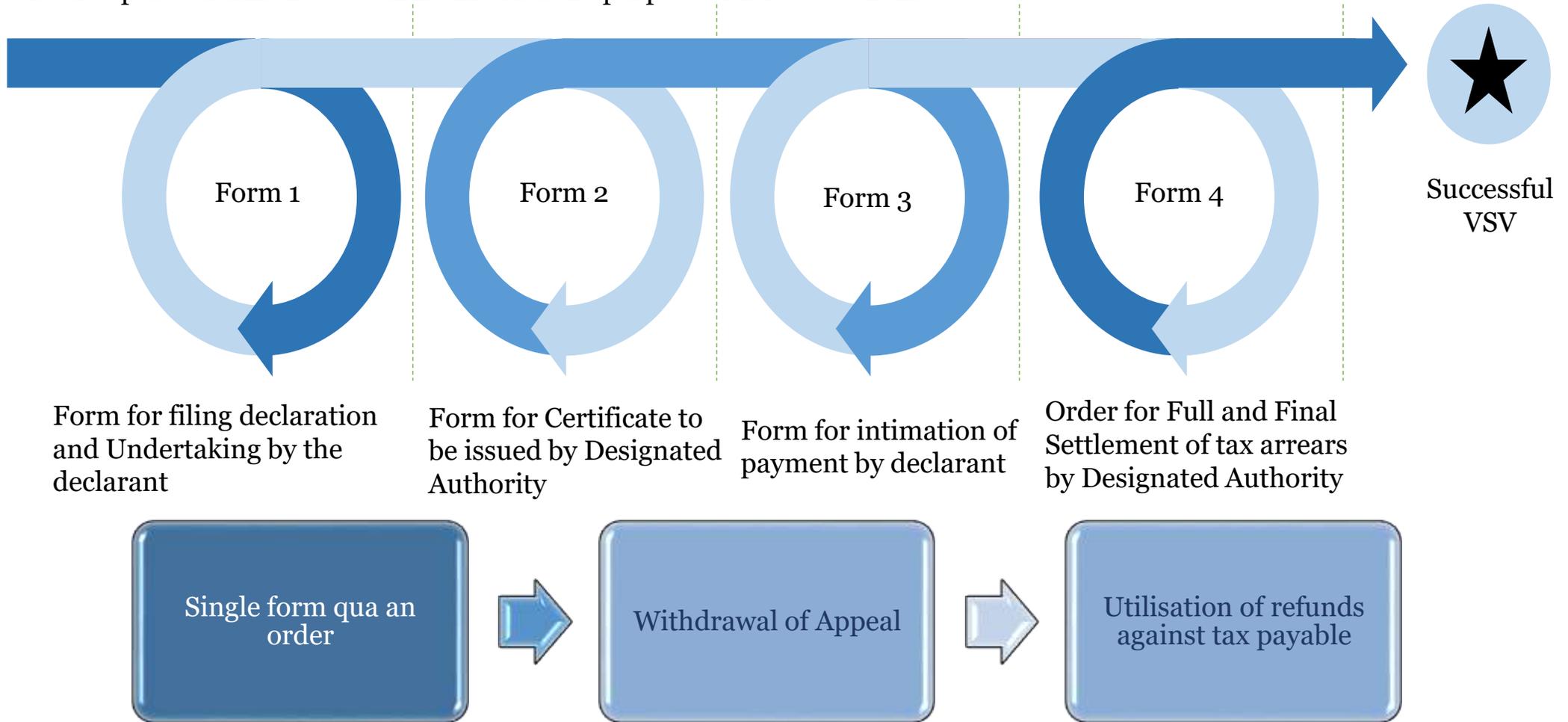
- Prosecution initiated on 22 July 2024

- Prosecution instituted in Year 1
- Same issue in year 2, but prosecution not instituted

Whether eligible to opt for VsV 2.0?

PROCEDURAL ASPECTS

Four separate forms have been notified for the purpose of DTVSV Scheme



CASE STUDY

Single Form 1 v Multiple Forms

- For AY 2020-21, taxpayer has filed an appeal against CIT(A) order before ITAT and Department has also filed an appeal against the same CIT(A) order before ITAT. Appeals are pending before ITAT. Assessment order was passed under section 143(3) of the Act
- For the same AY 2020-21, reassessment done in the case of the assessee and order passed under section 147 of the Act. Appeal filed and pending before CIT(A)
- Question 1 – Does taxpayer need to settle all above disputes in VsV mandatorily?
- Question 2 – Appellant intends to settle all above disputes in VsV. How many form 1s is taxpayer required to file?

Calculation of 'Disputed Tax' for covered issue and presentation in Form 1

REFUNDS & OTHER MATTERS

Refunds

- Amount not refundable
- Excess amount paid refundable without interest
- Adjustment of payment made earlier

Other Matters

- Settling issues in part
- Protective *v* Substantive Additions
- Settling penalty appeal while continuing to litigate the associated quantum appeal?
- Conceding position
- Multiple Appeals

OTHER ASPECTS



Mauris consetetuer ullamcorper quam. Morbi tincidunt mi ut diam ultricies non, hendrerit quis, pellentesque a, eros. Aenean non mauris quis massa varius tempus.



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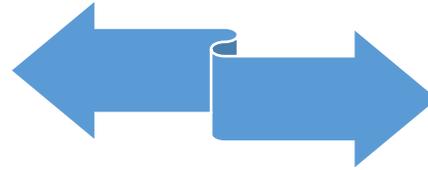


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OTHER ASPECTS



TDS ISSUES



Delay in deposit of TDS/TCS

Covered under the Scheme

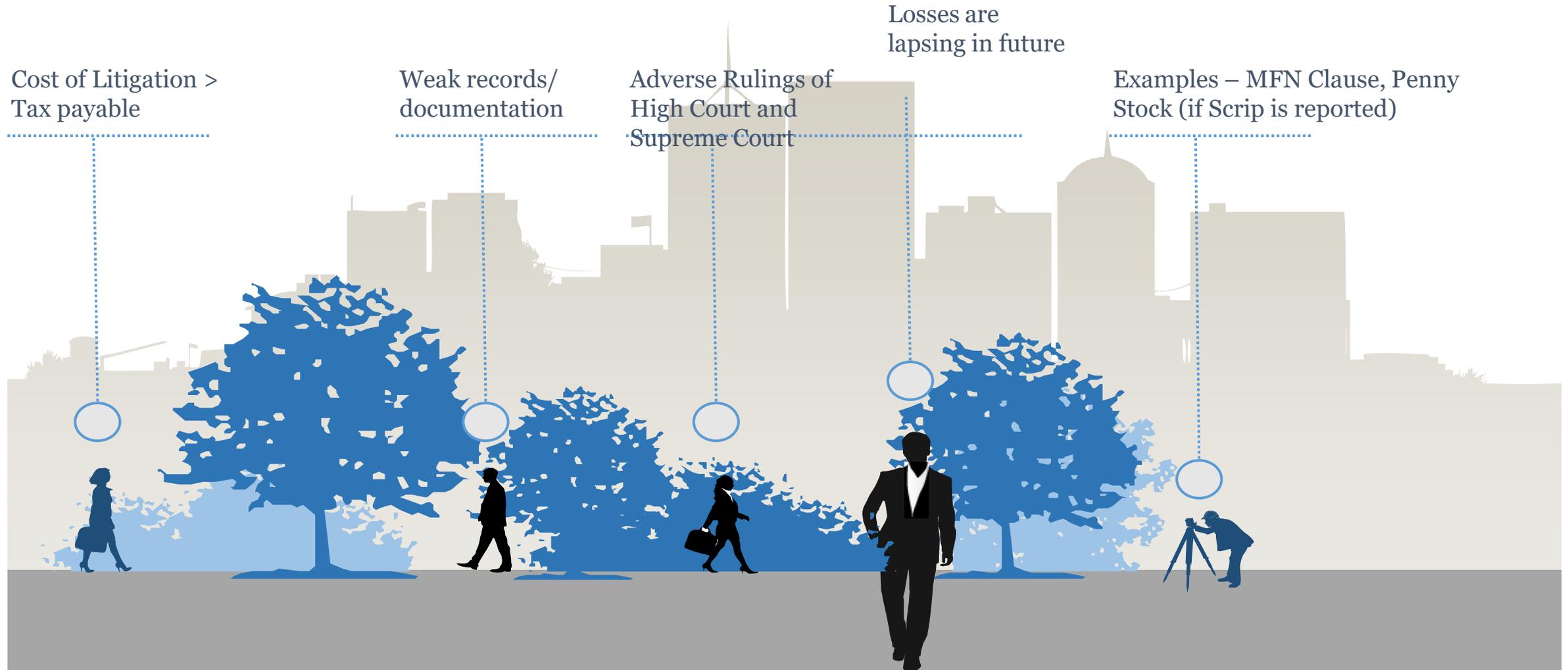
Credit of TDS to deductee

- Credit allowed
- On date of settlement of dispute. Hence, deductee to bear interest

Deductee settles the appeal under VsV

- Deductor not required to pay tax
- Interest u/s 201(1A) will continue to apply

CASES SUITABLE FOR VSV 2.0

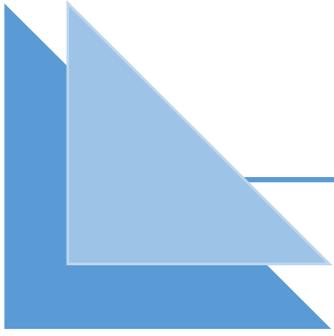


KEY DIFFERENCES – VsV 1.0 v Vsv 2.0

| Key Amendment | Vivad se Vishwas Act 2020 | Vivad se Vishwas Scheme 2024 |
|--|---|--|
| Availing the scheme where order is passed and no appeal is pending | Eligible cases included where the tax authorities have passed orders on or before 31 Jan 2020 and the time limit for filing an appeal against such an order has not expired as on such date | Scheme can be availed only for pending appeals as on 22 Jul 2024 and does not include cases where the time limit to file an appeal has expired as on such date |
| Saving in excess interest/penalty | If the additional 10% of the disputed tax (over and above 100% of the disputed tax), exceeds aggregate amount of interest and penalty on disputed tax, the such excess to be ignored | No such provision has been included in VsV 2.0 |
| Availment of this scheme in search cases | Search cases eligible where disputed tax is upto INR 5 Cr for each year | Scheme is not available for search cases |
| Enhancement of disputed taxes | Notice of enhancement issued by the CIT(A) on or before the specified date - The disputed tax be increased by tax payable on proposed enhancement | Under VsV 2.0 no increment in the disputed tax is provided for |
| Arbitration Proceedings | Covered guidelines for withdrawal of claims under arbitration proceedings under any agreement entered into by India with any other country or territory outside India | No such provision has been included in VsV 2.0 |

TRICKY AREAS

- Rectification
- Secondary Adjustment



THANK YOU

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