

Latest Update on DTVsV Act, 2020 [**]

[Read disclaimer at the bottom first]

Treating the pending litigations (appeals) of reassessments framed pursuant to searches as Search Case under DTVsV Act, 2020 and the latest CBDT Circular putting to rest the controversy



PREFACE

The provision of Direct Tax Vivad Se Viswas Scheme (herein after referred to as DTVsV) were introduced by the Hon'ble Finance Minister while presenting the Finance Bill 2020 and the Scheme was poised as No Dispute but Trust Scheme. The Hon'ble FM had intended that by taking opportunity from this Scheme, the tax litigations would be reduced and at the same time, it was expected that the tax payers would get relief from vexatious litigation process. The provisions of DTVsV were intended to bring in peace of mind, certainty and saving on account of time and resources which would have been otherwise frustrated in litigations at various levels.

Under the DTVsV scheme, a taxpayer is required to pay only the amount of the disputed taxes and gets complete waiver of interest and penalty provided he pays by the specified date the disputed tax.

HIGHER RATE OF DISPUTED TAX

As per para (b) of the Table Appended below Section 3 of the DTVsV Act, 2020, 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:—

where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 OR section 132A of the Income-tax Act

The ***aggregate of the amount of disputed tax and twenty-five per cent of the disputed tax:***

provided that where the twenty-five 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.
--	---

In this regard, the **CBDT vide Circular no. 21/2020 dated 04/12/2020** had issued an FAQ herein it was stated as under:

*“Q.No. 70. If the assessment order has been framed **in the case of a taxpayer** under section 143(3) / 144 of the Act **based on the search executed in some other taxpayer's case**, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?”*

*Answer. **Such case is to be considered as a search case.**”*

Accordingly, in various cases, **Form-3** were being issued by the designated authorities being Pr. CIT’s classifying the cases of **reassessments made** (wherein the **reasons to believe** owed their genesis to the **reports of investigation wing**, for eg. **Bogus LTCG, Bogus Share Capital cases**, etc) of such declarants as **being a search cases** and accordingly, the amount to be paid was being determined at **125% of the disputed tax.**

Subsequently, in many of the cases, to settle their tax disputes, umpteen declarants had either deposited the aforesaid tax (i.e. 125% of the disputed tax) and were issued Form 5 or the declarants had already deposited the aforesaid tax and are awaiting Form-5 from the designated authority.

Thereafter, the **Hon’ble Delhi High Court** in case of **Ashish Saraf vs. Pr. CIT** [W.P.(C) 1980/2021 dated 15/02/2021], in one such similar matter had directed as under:

- “3. The petition impugns the Certificate dated 9th January, 2021 issued by the respondent in Form-3, under Section 5(1) of the Direct Tax Vivad Se Vishwas Act, 2020, vide Acknowledgment No.158235220090121, to the extent the same treats the case of the petitioner as a search case.*
- 4. On a perusal of the documents placed by the petitioner, it appears that the case of the petitioner cannot be treated as a search case.*
- 5. The counsel for the respondent appearing on advance notice has been heard and has not been able to justify the case of the petitioner as falling in the category of a search case.*

6. *We thus allow the petition, by directing the Principal Commissioner, Income Tax-4, New Delhi to, within three days hereof, correct the error apparent on the record and if of the opinion that there is no error, to within the said time, communicate the reasons therefor in writing and whereagainst the petitioner shall have remedies in accordance with law.”*

Further, the Hon’ble Delhi High Court, while examining the issue as to the Constitutional Validity of the Aforesaid CBDT circular no. 21/2020, in the case of H.B.Manufacturing Industries Pvt. Ltd vs. CBDT & Ors. [W.P.(C) 3332/2021 and CM APPL. 10159/2021 dated 15.3.2021] had directed the designated authority, for the moment, to accept 100% of the disputed tax as offered by the petitioner–assessee.

It is in this backdrop that the CBDT had issued Circular 04/2021 dated 23/03/2021 whereby, the meaning of the expression “Search Case” has been clarified.

In this regard, para 4 of the CBDT Circular 04/2021 dated 23/03/2021 in this regard is being reproduced as under:

4. Several representations have been received seeking further clarity with regard to the classification of a case as a 'search case' for the purposes of Vivad se Vishwas. The matter has been examined. In order to remove any uncertainty in this regard, and in exercise of powers under section 10 and 11 of Vivad se Vishwas, it is hereby clarified that a 'search case' means an assessment or reassessment made under sections 143(3)/ 144/ 147/ 153A/ 153C/ 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act on the basis of search initiated under section 132, or requisition made under section 132A of the Income-tax Act. The FAQ no. 70 of circular 21/2020 stands modified to this extent.

From a bare perusal of the above para of the CBDT circular is it evident as under:

- a. That, the expression search case has been aptly defined and thus, it is clear that the higher rate of 125% of the disputed tax would be payable only by the person in whose case a search has been initiated under section 132, or requisition was made under section 132A of the Income-tax Act. [this is subject to fulfilment of other stipulations qua disputed tax not exceeding Rs. 5.0 crore as per Section 9(a) of DTVsV Act, 2020].
- b. That, even under the Law, the heading of Section 153A reads as “**Assessment in case of search or requisition.**”
- c. That, further as per Section 153C(2) of the Act, where books of account or documents or assets seized or requisitioned as referred to in section 153C(1) has or have been received by the

Assessing Officer having jurisdiction over such other person, the Assessing Officer having jurisdiction over such other person, 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.

- d. That, thus, the assessments framed under Section 153A (i.e. in the case of persons searched or requisition made) or the assessments framed under Section 153C read with Section 153A are the only cases which could be said to be search cases.

The Above CBDT circular dated 23/03/2021 is thus a welcome measure by the revenue to bring certainty to the tax payers and also to the tax professionals.

However, in the backdrop of the above discussion, it is suggested as under:

- A. That the CBDT may issue such further clarifications, orders, instructions, etc enabling the designated authorities to revise Form-3 issued by them in the light of latest circular.
- B. That the CBDT may issue such further clarifications, orders, instructions, etc enabling the designated authorities to refund the higher taxes paid by the declarants whose declarations were treated as search case. This would obviously thwart unwanted litigations from such declarants for claim of excess taxes, etc.

In the end the present circular is to be seen in the spirit and light of the **manifestation of the present Government for minimum government and maximum governance coupled with certainty on fiscal laws**.

[] DISCLAIMER**

[By reading the above views, it is presumed that the reader has consented to the this disclaimer. The views expressed herein are the personal views of the author based on his understanding of the taxation laws and the circulars referred herein-earlier. The above discussion is meant solely for private circulation and before relying on the above discussion paper, it is advisable to seek independent professional opinion. The author neither solicits any work nor this discussion paper is intended to be viewed as solicitation or advertisement of professional work. The author disclaims any liability on account of any loss, liability, etc accruing or being ascribed to any unsolicited act by placing reliance on the above discussion.]