

31st March, 2021

To,

Shri Pramod Chandra Mody
Chairman CBDT
Central Board of Direct Taxes (CBDT)
North Block,
Delhi 110001.

Respected Sir,

Ref: The Direct Tax Vivad Se Vishwas Act, 2020 ('VSV Act').

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (about 95 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other laws. It has a robust membership strength of about 4000 professionals comprising of Advocates, Chartered Accountants and Tax Practitioners. It has from time to time made various representations to different Government Authorities drawing their attention to pressing issues.
2. The Government has rolled out the VSV Act in March 2020 and considering the pandemic situation, the same has been suitably extended time and again. Further, various clarifications were issued from time to time. We highly appreciate the above proactive approach of the Government. A detailed representation was made by CTC in respect of certain issues on 22.02.2020 and again on 13.11.2020.
3. The present representation is to draw the attention of the Government to a bunch of small issues which has crop up from the latest clarification in Circular No. 4/2021 dated 23.03.2021. A brief background of the controversy is given hereunder:
4. In reply to FAQ No. 70 of Circular No. 21/2020 dated 04.12.2020, the following was stated:

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“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.”

Thus, it was clarified that even assesseees who are not covered within the meaning of the term assessee as referred to in section 153A or 153C of the Income-tax Act, 1961 ('Act'), and where the assessments, either u/s 143(3) or 147 of the Act, were made based on the search proceedings carried out under the Act in case of some third party, then cases of such assesseees would be treated as search cases and such assesseees would be required to pay 125% of the disputed tax amount under the VSV Act.

5. The above clarification created an uncertainty and litigation ensued. Vide Circular No. 4/2021 (supra), the Board has now modified the said stand and now it has been clarified that 'search case' means an assessment or reassessment made u/s 143(3)/144/147/153A/153C/158BC of the Act only in the case of a person referred to in section 153A or 153C or 158BC or 158BD of the Act on the basis of search initiated u/s 132, or requisition made u/s 132A of the tax Act. The above clarification has now settled a lot of issues and brought about certainty.
6. The issues which are raised by the present representation concern the consequences of the said clarification and implications of the same on various cases pending at various stages of the VSV Act. Such instances are necessarily in relation to cases which are not search cases as per the latest circular i.e. Circular No. 4/2021 (supra). The same are brought out hereunder:



Sr. No.	Type of cases	Suitable directions sought
1	Form No. 1 and 2 filed declaring the amount payable under the VSV Act at the rate of 125% of the disputed tax and Form No. 3 not issued	Form No.3 should be issued by computing amount payable under the VSV Act at the rate of 100% of the disputed tax.
2	Originally, Form No. 1 and 2 was filed by applying at the rate of 100%. Subsequently, a revised Form No. 1 and 2 filed on the request of the Department by computing the amount payable at the rate of 125% and where the Form No. 3 is yet to be issued.	Form No.3 should be issued by computing amount payable under the VSV Act at the rate of 100% of the disputed tax.
3	In scenario number 1 and 2 above, Form No. 3 is already issued computing the amount payable at the rate of 125% of the disputed tax amount but no tax is paid.	Form No. 3 should immediately be revised by determining the amount payable under the VSV Act at the rate of 100% of the disputed tax.
4	In scenario number 3, where the assessee has already paid tax at the rate of 125% of the disputed tax amount and Form No. 4 is yet to be filed or filed but Form No. 5 is yet to be issued.	Form No. 3 should be immediately revised by determining the amount payable under the VSV Act at the rate of 100% of the disputed tax and appropriate directions should be given to refund the excess amount paid and to revise Form No. 4.
5	In scenario number 3, where the assessee has already paid tax at the rate of 125% of the disputed tax	Appropriate directions should be given to the Officer to revise Form No. 3 by determining the amount



	amount, Form No. 4 is filed and Form No. 5 is also issued.	payable under the VSV Act at the rate of 100% of the disputed tax and the assessee should be allowed to file a fresh Form No. 4. Further, the Officer, should issue a fresh Form No. 5. The excess amount of tax paid should be refunded.
6	Cases where the assessee have challenged Form No. 3 before the High Courts.	Appropriate directions should be given for conceding the issue before the respective High Courts and Form No. 3 should be immediately revised by determining the amount payable under the VSV Act at the rate of 100% of the disputed tax

7. The fresh issuance of Form No. 3 and Form No. 5 or fresh filing of Form No. 4 may take some time and therefore, the Board may contemplate extending dates for compliances to this limited extent.

8. In light of the above discussion and the issues raised herein, we request your learned self to kindly look into these issues and take appropriate measures in this regard.

We request your learned self to kindly consider the above issue on a priority basis. We look forward to your kind intervention and taking up our request for kind consideration.

Thanking you,



President
Anish Thacker

Hon. Jt. Secretaries
Haresh Kenia | Neha Gada

Vice President
Ketan Vajani

Hon Treasurer Imm. Past President
Parag Ved Vipul Choksi

Sincerely,

For The Chamber of Tax Consultants

Sd/-

Shri Anish Thacker
President

Sd/-

Shri Mahendra Sanghvi
Chairman
Law and Representation Committee

CC to: Smt. Nirmala Sitharaman,
Hon'ble Finance Minister,
Government of India,
North Block,
Delhi 110001.

Shri Ajay Bhushan Prasad Pandey
Hon'ble Revenue Secretary,
Central Board of Direct Taxes (CBDT)
North Block,
Delhi 110001.