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[ In online form, total in Part F is appearing incorrect. Currently, it is showing aggregate amount i.e. Part D (i) + D (ii) - tax paid whereas it should be Part D (i) - tax paid. D(ii) will be applicable later post 31 December 2024. 48](#_Toc183249981)

[ In case appeal against 201 order was filed through PAN login by mentioning TAN number, Form 1 needs to be filled through PAN login but TAN field is not editable. Kindly allow the TAN to be editable so that TAN can be mentioned. 48](#_Toc183249982)

[ In case appeal against 201 order was filed through PAN login by mentioning TAN number, Form 1 needs to be filled through PAN login but there is no option of ‘Order passed u/s. 201’ in the drop-down for section in which order is passed. Kindly add 201 section in drop-down as well, and enable filling of Schedule B. 48](#_Toc183249983)

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**Representations on issues arising from CBDT’s FAQs issued vide Circular No. 12/2024 dated 15 October 2024 on The Direct Tax Vivaad Se Vishwas Scheme 2024**

**Category 1 - FAQs which restrict the scope of VSV 2.0, as compared to VSV 1.0**

In the following instances, FAQs issued as part of VSV 2.0 are in contradiction to FAQs issued as part of VSV 1.0. Since VSV 2.0 is a one-time opportunity, keeping in view the twin objectives of VSV 2.0 of settling disputes, and garnering revenue for the Tax Department, the decision to curtail the scope of VSV 2.0 in the following instances may be revisited. Maintaining consistency between VSV 2.0 and VSV 1.0 would ensure that taxpayers have clarity on the operation of the scheme and ambiguity is avoided. It would also benefit from the wealth of jurisprudence which is available in the context of VSV 1.0.

| **FAQ** | **Clarification provided by CBDT in FAQ in brief** | **Issue** | **Suggestion** |
| --- | --- | --- | --- |
| 29 | 1. **Miscellaneous Application (MA) pending as of 22 July 2024 is ineligible, since MA is not an appeal**
 | * **This is in contrast with FAQ 61 of Circular No. 21/2020, which permitted settlement of MA pending as on 31 January 2020, subject to the condition that such MA should be in respect of an appeal which was dismissed in limine (before 31 January 2020).**
* **In this behalf, in Oerlikon Balzers Coating India (P) Ltd. v. UOI (2023) 333 CTR 337 (Bombay HC), it was held that the additional qualification viz. "in limine" added to the word “appeal” in FAQ 61, was contrary to objects of VSV 1.0. Thus, HC held that all issues covered in MA pending as on 22 July 2024 are eligible for VSV 1.0, and not only those issues where appeal was dismissed in limine.**
 | * The present clarification may be withdrawn, and a fresh clarification may be issued along the lines of **FAQ 61 of Circular No. 21/2020 as modified by Bombay HC in Oerlikon Balzers Coating India (P) Ltd. v. UOI (2023) 333 CTR 337**. Thus, any miscellaneous application pending as of 22 July 2024 may be considered to be eligible for VSV 2.0.
* Without prejudice, where miscellaneous application was pending as of 22 July 2024, and has been allowed by the Tribunal before the date of the declaration, it is arguable that such appeal would relate back to 22 July 2024 and is eligible for settlement under VSV 2.0 since the MA has been converted into an appeal. It may be clarified that at least such instances are eligible for VSV 2.0.
 |
| 24 | 1. **Cases set aside to the tax authority are ineligible**
* Cases where the appellate authority has set aside any issue to the tax authority, wholly or partially, which are pending before the tax authority as of 22 July 2024 are ineligible for VSV.
 | * This is in contrast with FAQ 7 of Circular No. 9/2020 which permitted settlement of matters set aside to the tax authority for giving proper opportunity or to carry out fresh examination of the issue with specific direction, except for those matters which are set aside with a direction that assessment is to be framed de novo. In such cases, disputed tax shall be the tax which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.
 | * The present clarification may be withdrawn, and a fresh clarification may be issued along the lines of FAQ 7 of Circular No. 9/2020.
* It may be noted that, VSV forms 2.0 permits settlement in other situations even where quantum of taxable income has not been finally ascertained. For instance, where appeal is pending before CIT(A) and notice for enhancement of assessment is issued by CIT(A) under s. 251 of the ITA, disputed tax includes tax effect on issue under enhancement. As another example, VSV Act 2.0 permits settlement where DRP has issued its directions but AO is yet to pass final assessment order as of 22 July 2024.
 |
| 30 | 1. **Cases where enforceability of an assessment order passed by the tax authority has been stayed by HC or SC are ineligible**
 | * This is in contrast with FAQ 57 of Circular No. 21/2020 which permitted settlement of cases where enforceability of assessment order is stayed by HC or SC, regardless of whether an appeal has been filed against the assessment order. The rationale for excluding these cases from the scope of VSV 2.0 is unclear.
 | * The present clarification may be withdrawn, and a fresh clarification may be issued along the lines of FAQ 57 of Circular No. 21/2020.
 |

**Category 2 - FAQs which contradict with VSV Act 2.0 and/or decisions rendered in the context of VSV 1.0**

| **FAQ** | **Clarification provided by CBDT in FAQ in brief** | **Issue** | **Suggestion** |
| --- | --- | --- | --- |
| **16** | 1. **Despite VSV Act 2.0 not requiring inclusion of enhancement proposed by CIT(A)/JCIT(A), FAQ requires such inclusion**
* Where JCIT(A)/CIT(A) has given an enhancement notice, the taxpayer can avail VSV 2.0 after including proposed enhanced income in the total assessed income.
 | * Proviso to s.2(1)(j) of Direct Tax Vivad se Vishwas Act, 2020 defined the term “disputed tax” by adding a proviso which stated that, “in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued”.
* However, the above proviso has been specifically deleted from Finance (No. 2) Act, 2024. This suggests that disputed tax is not required to be increased on account of the proposed enhancement. Even as per VSV Act 2.0, disputed tax is quantified as if the appeal which is filed by the taxpayer before the CIT(A) is decided against the taxpayer, without considering the impact of the proposed enhancement.
* However, the format of Form 1 prescribed under VSV Rules 2.0 as also the FAQ 16 requires the proposed enhancement to be considered in determining amount payable by taxpayer to settle the appeal pending before CIT(A).
 | * The requirement to increase disputed tax by proposed enhancement may be reconsidered.
 |
| **11** | 1. **Despite VSV Act 2.0 providing choice of appeal-wise settlement, FAQ debars taxpayer from settling penalty appeal while continuing to litigate associated quantum appeal**
* CBDT clarified that if quantum and penalty appeals both are pending, taxpayer does not have an option to settle only penalty appeal while continuing litigation on the quantum appeal.
 | * This clarification is in apparent conflict with FAQ 25 and 31 of Circular No. 12/2024 dated 15 October 2024 which state that choice of availing VSV 2.0 is separate qua each appeal. Hence, this clarification needs reconsideration.
* Consider a case where taxpayer’s quantum appeal involves 10 issues whereas penalty appeal only involves 2 issues – the taxpayer may prefer settling only penalty appeal while continuing to litigate on quantum appeal.

Mandating taxpayer to settle quantum appeal as a precondition for setting penalty appeal may not be fair and reasonable. There appears to be no valid justification for not allowing penalty appeals to be settled separately.* Consider another illustration where, taxpayer has not disputed one addition in the quantum appeal, and on such addition, only penalty appeal is pending. The quantum appeal for the same year includes 10 other additions, on which both penalty appeal and quantum appeal are pending. In such case also, the taxpayer may prefer to settle only penalty appeal while continuing to litigate on the quantum appeal.
* MUFG Bank Ltd. vs. CIT (2023) 330 CTR 379 (Del) dealt with FAQ 7 of Circular No. 9/2020, which stated that “If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail Vivad Se Vishwas. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired.” It was held that, CBDT’s FAQ could not impose mandate on settlement of all appeals for an assessment year, and that the taxpayer was free to settle any appeal and was not required to settle all the appeals filed by the tax authority for an assessment year. The decision also supports that taxpayer has an option to choose which appeal to settle under VSV 2.0.
 | * It is suggested to bring this clarification in line with the other FAQs and allow taxpayer an option to settle penalty appeal independent of quantum appeal.
* Without prejudice, it may be clarified that, in a case where penalty appeal pertains to issues which are not forming part of quantum appeal, the taxpayer has an option to settle penalty appeal independent of quantum appeal.
 |
| 10 | 1. **FAQ states that any appeal involving any issue pertaining to disqualified tax arrear is ineligible in its entirety – this is contrary to decisions rendered in the context of VSV 1.0**

As per the Circular, VSV 2.0 does not envisage issue-wise settlement of dispute, and that the appeal has to be settled in full. Therefore, FAQ 10 states that, an appeal which involves any issue pertaining to non-qualifying tax arrear (e.g., tax arrear relating to any undisclosed income from a source located outside India or undisclosed asset located outside India) is ineligible in its entirety. | * **This is in conflict with judicial precedents in the context of VSV 1.0. In Macrotech Developers Ltd. v. PCIT (2021) 280 Taxman 37 (Bombay HC); Pragati Pre Fab India (P) Ltd. v. PCIT & Ors. (2024) 460 ITR 387 (Bombay HC), it has been held that disqualification in respect of tax arrear contained in s.96(a) does not disqualify the entire tax year, and the taxpayer can settle other issues which are unconnected to undisclosed income. This position is also reconcilable with VSV Act 2.0 – s.96(a) of VSV Act 2.0 only provides that VSV Act 2.0 is inapplicable only insofar as the disqualified tax arrear is concerned, and not the balance tax arrear. S.91(6) provides that the appellate forum is debarred from adjudicating upon those issues which are covered by the order passed by the designated authority – and it is not debarred from adjudicating upon issues pertaining to the disqualified tax arrear. S.91(2) provides for deemed withdrawal of appeal pending before CIT(A) or ITAT, however, read with exclusion in s.96(a), the deemed withdrawal of appeal does not apply insofar as the appeal pertains to the disqualified tax arrear.**
 | * It is suggested that the inconsistency between the FAQs and the judicial precedents may be removed, and a clarification may be issued that presence of disqualified tax arrear u/s. 96(a) does not disqualify the entire assessment year from VSV 2.0, and does not prevent the taxpayer from settling other issues unconnected to the disqualified tax arrear.
 |

**Category 3 – Other issues pertaining to FAQs issued under VSV 2.0**

| **FAQ** | **Clarification provided by CBDT in FAQ in brief** | **Issue** | **Suggestion** |
| --- | --- | --- | --- |
| 26 | 1. **A writ petition where no assessment order has been passed is ineligible – consider if cases where (a) assessment order has been passed as of the date of the declaration, and (b) notice u/s. 148 has been preceded by order u/s. 148A and disputed income is reasonably determinable, can be covered by VSV 2.0**

As per the FAQ, a writ petition filed before the HC against a notice issued for reassessment, where no assessment order has been passed consequent to such notice, is ineligible, since the income is yet to be determined. | * Cases where assessment order has been passed as of the date of the declaration may be considered as eligible to avail VSV 2.0 since the total income has been determined.
* Additionally, there are many cases where orders passed u/s. 148A and notice u/s. 148 issued pursuant to such proceedings have been challenged before the High Court by way of writ.  On account of the new reassessment procedure introduced by Finance Act, 2020 u/s. 148A, a reasonable approximation of the disputed income escaping assessment and tax thereon, is possible even before completion of reassessment proceedings. Accordingly, it is suggested that cases where order u/s 148A(d) has been passed along with notice u/s. 148 may be made eligible for settlement under VSV 2.0, as it will help to reduce disputes pending on reassessment before several High Courts. As against that, cases where notice u/s. 148 has been issued under earlier scheme of reassessment would stand on a different footing, and these cases may be excluded from the scope of VSV 2.0.
 | * It may be clarified that the cases where reassessment order has been passed as on the date of the declaration are eligible to avail VSV 2.0, as the disputed tax and the total income is determinable.
* It may also be clarified that the cases where notice u/s. 148 is issued along with order passed u/s. 148A, where reassessment proceedings have been challenged before the High Court by way of writ, are eligible to avail VSV 2.0, where a reasonable approximation of the disputed income escaping assessment and tax thereon, is possible even before completion of reassessment proceedings.
 |
| 20 | 1. **FAQ provides for granting TDS credit to payee as of the date of settlement of TDS dispute by payer – this unfairly deprives the payee of interest u/s. 244A and/or requires the payee to bear interest u/s. 234B/C and s.220(2)**

If the payer settles the appeal in respect of tax deduction at source under VSV 2.0, credit of taxes paid by payer is to be allowed to the payee but as on the date of settlement of the dispute by the payer. Consequently, the payee is liable to interest, if any, for short payment of advance tax. | * Concern is on the point of time at which credit is provided to the payee. The FAQ does not match with scheme under the ITA for grant of TDS credit in hands of the payee. Consider a case where, ACo (payer) settles its TDS litigation in relation transaction with BCo (payee) under VSV 2.0. BCo remits TDS amount to ACo. Basis this, ACo deducts and deposits TDS, and issues TDS certificate to BCo, and files a TDS correction statement under proviso to s.200(3). Thereafter, ACo files a declaration and settles its TDS appeal under VSV 2.0. In such a case, if TDS credit is not allowed to BCo in the year of income being offered by BCo, an inconsistency would arise with s.199 of ITA. As per s.199 of ITA, grant of TDS credit (including the TDS deducted belatedly) relates back to relevant FY in which BCo offered income, and resultantly, there will not be any interest leviable in hands of BCo under ss. 234B/C or s.220(2).

Under the scheme of ITA, even in a case where taxpayer files its ROI either belatedly or in response to notice under s. 148 of the ITA, TDS credit is always granted to the payee in the relevant year of income being offered.In other words, had the litigation been settled in the normal course, payee would have been eligible to claim TDS credit in year when income was assessable in hands of payee u/s. 199 r. w. Rule 37BA(3). The end-result should not be any different merely because dispute has been settled as part of VSV 2.0.* Consider a converse case where, in the year when BCo raised invoice against ACo, BCo discharged advance tax as the income was received without any TDS compliance by ACo. ACo is treated as assessee-in-default u/s. 201(1) and interest u/s. 201(1A) is levied. ACo cures the TDS default by belatedly deducting and depositing TDS for the purpose of settling ACo’s TDS appeal under VSV 2.0, and for this purpose, ACo recovers TDS amount from BCo. While ACo is able to settle its TDS appeal without any interest or penalty consequences, since FAQ provides for granting TDS credit only at the time of settlement of TDS appeal by ACo, BCo is deprived of interest u/s. 244A for the period comprising the first day of the assessment year till the date of settlement of TDS appeal by ACo, despite BCo having discharged its advance tax in time.

Had the TDS dispute been settled in the normal course, under ITA, BCo would have undoubtedly been entitled to refund of taxes along with interest u/s. 244A from the first day of the assessment year, while payer would be liable to interest u/s. 201(1A). However, as per the FAQ, immunity is granted to payer from interest u/s. 201(1A), while payee is deprived of interest u/s. 244A due to grant of TDS credit prospectively. This results in payee being penalised for TDS default of payer. | * From the payee’s standpoint, the point of time when TDS credit is granted to the payee may not be made dependent on whether payer continues its litigation or settles its litigation under VSV 2.0 - more so, where payee is not a party to the TDS default.

If this anomaly is not corrected, it results in discriminating between the payer and the payee. While payer who has committed TDS default would enjoy a premium of complete waiver of interest and penalty under VSV 2.0 despite being an assessee-in-default, payee would be deprived of interest u/s. 244A without being a party to TDS default. * In view thereof, this FAQ may be modified to bring it in line with the provisions of the ITA to allow TDS credit to payee in the year in which income was offered to tax by payee.
 |
| 22 | 1. **Upon settlement of TDS appeal by payer, payer should have choice to claim expense deduction u/s. 40(a) either in the year in which tax was required to be withheld or in the year in which tax was deposited pursuant to VSV 2.0**

Upon settlement of TDS appeal by the payer under VSV 2.0, the payer shall be entitled to consequential relief of deduction of expenditure (in respect of which the payer failed to comply with the tax withholding provisions) in the year in which tax was required to be withheld, as against the year in which tax is deposited (as provided in ITA). If, however, taxpayer has already claimed such deduction in the past under the ITA in the year in which tax was deposited, deduction in the year in which tax was required to be withheld will not be available. Further, in addition to settlement of appeal for tax deduction, where the payer proposes to also settle appeal contesting the disallowance of expenditure in the hands of the payer in the tax year in which failure to withhold tax took place, no payment is required to settle the issue pertaining to disallowance of expenditure – payment would be required to settle the other issues, if any. | * The FAQ rightly synchronises TDS default with year of claim of expense deduction and provides much needed relief to a payer opting for VSV 2.0. Some further suggestions are as under.
* S. 40(a)(i)/(ia) provides for disallowance of expense in year when TDS default occurred and allows deduction of expense in year in which TDS default is made good (i.e. TDS is deposited). The FAQ provides for deduction of expense in the year in which TDS default occurred. Issue arising is, whether FAQ is at the option of the payer?

Consider a case where, payer defaulted in TDS compliance in year 1 in respect of which appeal against s.201 order is pending before ITAT. The payer also suffered disallowance of related expense for TDS default in assessment order for year 1, for which also appeal is pending before ITAT. Meanwhile, in Year 3, TDS demand is deposited by payer pursuant to recovery proceedings during pendency of litigation. Consequently, payer claimed deduction of expense in Year 3 under proviso to s. 40(a)(ia). If payer opts for settlement of TDS appeal in Year 5, as per the FAQ, payer would be not be entitled to deduction of expense in Year 1, as payer has already claimed deduction of expense in Year 3. As against that, assuming payer had not already availed deduction of expense in Year 3, as per the FAQ, payer would be entitled to deduction of expense in Year 1. While double deduction of same expense is not permissible in law, in a case where the payer has already claimed deduction of expense in Year 3, the payer may still be allowed to choose year of deduction of expense – whether Year 1 or Year 3. | * It may be clarified that payer has a choice to claim expense deduction either in Year 1 (year of TDS default, as per FAQ 20) or in Year 3 (year of depositing TDS, as per proviso to s.40(a)(i)/(ia)), and depending upon choice exercised by payer, Tax Authority should rectify assessment for year 3 by withdrawing the claim for deduction of expense.
 |
| 21 | 1. **Upon settlement of appeal by payee, payer should not only be relieved from its TDS liability u/s. 201(1) but should also be granted expense deduction u/s. 40(a)**

The FAQ states that, if the payee settles its own dispute with reference to assessment of an income which was not subjected to withholding tax by the payer, such payer would not be required to pay the tax amount under default. However, such payer would be required to pay interest for default in withholding of tax. Dispute in respect of such interest, if eligible for VSV 2.0, can be settled separately by the payer. | * A clarification is required on whether deductor is entitled to consequential relief of expense deduction (either in year of TDS default as per FAQ 20 or in year of settlement of dispute under VSV 2.0 by payee as per proviso to s.40(a)(i)/(ia)), where there was disallowance u/s. 40(a)(i)/(ia) in assessment of deductor.
 | * Since disallowance of expense u/s. 40(a) is purely consequential to TDS default by deductor, where payee discharges taxes and settles appeal under VSV 2.0, it may be clarified that, along with relief from TDS liability u/s. 201, deductor shall also be entitled to expense deduction.
* Further, such expense deduction may be granted, at the option of the payer, either in year of TDS default as per FAQ 20 or in year of settlement of dispute under VSV 2.0 by payee as per proviso to s.40(a)(i)/(ia).
 |
| 17 | 1. **While discharging amount payable under VSV 2.0, permit the taxpayer to adjust past refunds which are determined to be due and payable (but not yet credited to the taxpayer’s bank account)**

The FAQ states that, the taxpayer is not entitled to adjust refunds he is expecting to receive from the Tax Department in a different assessment year, while determining amount payable under VSV 2.0. Thus, refunds expected for year 1 cannot be adjusted while determining amount payable by the taxpayer for settling appeal of year 2. | * Where taxpayer is “expecting” to receive refunds on account of pending rectification application or pending request for order giving effect to favourable appellate order, the taxpayer may justifiably not qualify for adjustment of such “expected refund” against amount payable by the taxpayer under VSV 2.0. This is because, while VSV 2.0 provides for settlement of dispute within a short timeframe, the aforesaid proceedings may take longer time to determine refund due to the taxpayer.
* However, adjustment should be permitted of refund that has already been determined as due and payable to the taxpayer, but for some reason the money has not been credited to the taxpayer’s bank account.
 | * It is submitted that, the taxpayer should be able to adjust those refunds which have already been determined as due and payable to the taxpayer, but which have not been issued to the taxpayer on account of administrative issues, and which have also not been set off or withheld u/s. 245.
* Alternatively, when a taxpayer insists, field officers may be issued instructions to adjust such refunds in the years in which the taxpayer is desirous of availing VSV 2.0.
 |

**Category 4 - Additional issues, already addressed as part of VSV Circular 1.0, which need to be repeated in VSV Circular 2.0**

In VSV 1.0 there were 90 FAQs issued as part of 5 different Circulars (Circular 9/2020 dated 22 April 2020, Circular 18/2020 dated 28 October 2020, Circular 21/2020 dated 4 December 2020, Circular 3/21 dated 4 March 2021, and Circular 4/2021 dated 23 March 2021). As against this, there is only one Circular is issued on 15 October 2024, consisting of 35 FAQs. Many of the FAQs in this clarification are similar to FAQs issued in VSV 1.0. It is therefore suggested that the FAQs as per VSV 1.0, which are relevant for VSV 2.0, should be issued immediately, so as to get more clarity. In specific, **the following key aspects which were clarified as part of VSV Circular 1.0 are yet to be clarified in VSV Circular 2.0, and hence, may be repeated accordingly in VSV Circular 2.0:**

1. Where appeal, as also rectification application, is pending as of 22 July 2024 on the same issue, the “disputed tax” is to be calculated after giving effect to the rectification order passed by the Tax Authority (FAQ 25 of Circular No. 9/2020). In order to avoid any confusion, it may also be clarified that rectification applications filed after 22 July 2024 but before date of declaration and pending before Tax Authority may also be considered in calculating the disputed tax.
2. VSV 1.0 can be availed if the order passed by AAR has determined the total income of an assessment year and writ against such order is pending in HC, in which case, the disputed tax shall be calculated as per the order of the AAR (FAQ 3 of Circular No. 9/2020).
3. VSV 1.0 could be availed for settlement of belated appeal filed after 22 July 2024, once delay was condoned by appellate forum before date of filing declaration (FAQ 59 of Circular No. 21/2020). So also, all the appellate authorities may be requested to be liberal in granting condonation in delay in filing of appeals. This was extensively done in many cases during VSV 1.0 which had helped for the success of VSV 1.0.
4. VSV 1.0 could be availed for additional ground filed on or before 22 July 2024 (FAQ 77 of Circular No. 21/2020). It may be noted that additional grounds once admitted becomes part of the main appeal. Hence, such additional grounds should be considered while computing disputed tax. It may also be clarified that, even an additional ground filed after 22 July 2024 but before the date of declaration, once admitted, shall also be considered while computing ‘disputed tax’.
5. VSV 1.0 could be availed where notice for initiation of prosecution has been issued without prosecution being instituted (FAQ 22 of Circular No. 9/2020). A similar clarification may be issued in context of VSV 2.0.
6. Circular No. 3 of 2021 issued under VSV 1.0 stated that, where the DA has passed orders under sub-sections (1) and (2) of section 5 of VSV Act 1.0, the AO shall pass consequential order under ITA. A similar clarification may be issued in context of VSV 2.0.

**Category 5 - Additional issues which were not addressed as part of VSV 1.0, which may be clarified under VSV 2.0**

This caption is divided into following different sub-captions, i.e.:

* + Eligibility to avail VSV 2.0
	+ Computation of disputed tax
	+ Consequential effects of settlement of dispute under VSV 2.0
	+ Procedural aspects
	+ Issues in relation to VSV Rules 2.0

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| **Eligibility to avail VSV 2.0** |  |
| 1. **Where assessment for a specific assessment year has been completed on the basis of search, is the taxpayer eligible to avail VSV 2.0 for other assessment years?**
* VSV Act 2.0 as well as FAQs specifically mentions that if there is a dispute on account of search, irrespective of the quantum involved, it will not be eligible for VSV 2.0.  It is not clear whether taxpayer will be debarred entirely or only in respect of particular year or years for which order in pursuance of the search is made?
 | * It may be clarified that, only the specific assessment year whose assessment has been completed on the basis of a search is disqualified, and not the other assessment years.
* CBDT may also reconsider whether they would like to keep any threshold of disputed tax of Rs. 10 crores or so in respect of search matters, like in VSV 1.0.  This will help in reducing litigation in respect of smaller search matters, where appeals are pending.
 |
| 1. **Where tax department has filed appeal to ITAT before 22 July 2024 and taxpayer has filed cross-objections to ITAT u/s. 253(4) in August 2024 – whether cross-objections are eligible for settlement under VSV 2.0?**
* Consider a case where, CIT(A) ruled in favour of taxpayer on 3 issues and against taxpayer on 2 issues. Taxpayer has not filed appeal to ITAT on 2 issues, but Tax Department has filed appeal to ITAT on 3 issues. CIT(A) passed order in June 2024 and Tax Department filed appeal to ITAT in July 2024. However, taxpayer received notice about appeal being filed by Tax Department only in August 2024. Thereafter, in September 2024, taxpayer has filed cross objections to ITAT on 2 issues confirmed by CIT(A). Whether taxpayer is eligible to settle such cross objections under VSV 2.0?
* It is settled legal position that cross objection is an “appeal” for all purposes under ITA. Therefore, any cross objection filed which is pending before ITAT as on 22 July 2024 is eligible for settlement under VSV 2.0.
* S.253(4) provides that, memorandum of cross objections shall be disposed of by the Tribunal as if it were an appeal presented within the time specified in sub-section (3). Hence, where the cross objections are filed validly within the time limit, the statute itself provides for treating such cross objections as if it is an appeal filed within the time limit.
 | * In the given facts, since the main appeal is filed before 22 July 2024, the cross objections filed within the statutory time at any time after 22 July 2024 should also qualify for settlement.
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| **Computation of disputed tax** |  |
| 1. **Extending benefit of 50% relief in disputed tax, in cases where disputes pending before an appellate forum which are being settled, are covered in favour of the taxpayer by an order of the same appellate forum**
	* S.90 permits 50% relief in the disputed tax, only if the dispute which is settled, which is pending at an appellate forum, is accompanied by an appellate order of a higher appellate forum (which has not been reversed). Consider a case where, taxpayer has won before ITAT in years 1 and 2 on certain issues, for which Tax Department is in appeal before High Court – taxpayer is in appeal for year 3 before ITAT which is pending as on 22 July 2024, which also includes issues decided in favour by ITAT in years 1 and 2. If such taxpayer is to settle pending ITAT appeal of year 3, taxpayer needs to pay 100% of disputed tax, despite the fact that the issues are covered in its favour by ITAT ruling for earlier years 1 and 2. Such proposition is inequitable to the taxpayer, and may discourage taxpayer from settling pending ITAT appeal for year 3 under VSV 2.0.
 | * + It is recommended that benefit of 50% relief may be extended to such cases where disputes pending before an appellate forum which are being settled, are covered in favour of the taxpayer by an order of the same appellate forum which is not being reversed by a higher appellate forum.
 |
| 1. **Extending benefit of 50% relief in disputed tax under second proviso to s.90, where disputes are covered in favour of the taxpayer by an order of ITAT or HC, and the disputes being settled are (a) application u/s. 264 before CIT pending as on 22 July 2024, or (b) DRP has issued its directions and AO has not completed the assessment on or before 22 July 2024.**
	* Second proviso to s.90 permits 50% relief where dispute being settled is:
* an appeal filed by the taxpayer before the Commissioner (Appeals) or Joint Commissioner (Appeals) or ITAT,
* objections filed by the taxpayer before the DRP.

Thus, the pending dispute which is settled should either be an appeal or an objection. 50% relief is not available where the disputes which is settled are the following: * DRP has issued its directions and AO has not completed the assessment on or before 22 July 2024,
* Application u/s. 264 before CIT pending as on 22 July 2024.

This can become relevant where ITAT or HC decides in favour of the taxpayer for any other assessment year after 22 July 2024 – in such case, since DRP had issued its directions before 22 July 2024, DRP had no occasion to consider the impact of favourable ITAT or HC ruling which is rendered after 22 July 2024. This can also become relevant where DRP has, for any reason, decided against the taxpayer before 22 July 2024, despite a favourable ruling ITAT or HC which existed at that point in time. | It is recommended that benefit of 50% relief under second proviso to s.90 may be extended to settlement of following disputes: * + Application u/s. 264 before CIT pending as on 22 July 2024;
	+ DRP has issued its directions and AO has not completed the assessment on or before 22 July 2024.
 |
| 1. **Where starting point of computation of assessed income u/s. 143(3) is income computed as per intimation u/s. 143(1) and the taxpayer has filed a separate appeal against the said intimation, if the taxpayer opts for VSV 2.0 to settle appeal filed against the assessment order, whether the disputed tax will have to be computed only on the disallowance/addition made in the assessment order and not on adjustment made u/s. 143(1)?**
* As per s.143(1), the return is processed and adjustment, if any, is made to income as reported in the return of income in the intimation issued by the Central Processing Center, Bangalore. Against such intimation, taxpayers have an option to file an appeal before CIT(A). Pending the appeal before CIT(A) against the intimation, where order u/s. 143(3) is passed, the AO considers the income as per intimation u/s. 143(1) of the Act as starting point for computing the assessed income without giving an opportunity to provide explanation in relation to the adjustment made u/s. 143(1) of the Act.
* Clarity is requested on the computation of disputed tax in case the taxpayer opts for VSV to settle appeal filed against the assessment order issued u/s. 143(3) of the Act, then the disputed tax should be computed only on the disallowance/ addition made in the assessment order and not on adjustment made u/s. 143(1) of the Act. Illustratively, the total income assessed u/s. 143(3) of the Act is computed as under:

|  |  |  |
| --- | --- | --- |
|  | **Amount**  |  |
| Income as per return of income filed | 100 |  |
| Income as computed under section 143(1) of the Act | 150 | A separate appeal before CIT(A) is filed by the taxpayer against the intimation.  |
| Add: Addition / disallowance as per the assessment | 25 |  |
| Total assessed income / loss determined under section 143(3) of the Act | 175 |  |

* The taxpayers want to opt for VSV against the assessment order. The disputed tax will be computed on the addition / disallowance of INR 25 as per section 143(3) and not on INR 50 (INR 150 – INR 100).
 | * It may be clarified that, if the taxpayer opts for VSV 2.0 to settle appeal filed against the assessment order, the disputed tax will have to be computed only on the disallowance/addition made in the assessment order and not on adjustment made under section 143(1).
 |
| 1. **Clarity on the term “issue", used in the phrase "any issue on which he has already got a decision in his favour"**
* It is possible that the AO may apply different methods for quantifying the addition across different years, even though the underlying provision of the Act is same.
* For e.g., in context of disallowance u/s. 14A of the Act –
	+ For one year, wherein exempt income is earned by the taxpayer, the AO computes the disallowance by applying the proportion that exempt income bears to total income, to the operating expenses of the entity.
	+ For another year, wherein no exempt income is earned by the taxpayer, the AO computes the disallowance by applying the percentage (as prescribed in Rule 8D) with respect to average value of investments yielding exempt income.
* In case the issue of disallowance u/s. 14A has been decided in favour of the taxpayer by a higher court / appellate authority, which has not been reversed thereafter, and the taxpayer opts to settle its appeal (on the issue of disallowance u/s. 14A) pending before a lower appellate authority, benefit of the second and third proviso should be available to the taxpayer as the fundamental issue is the same, i.e., disallowance u/s. 14A, even if the method of quantifying the addition is different across the said years.
 | * It may be clarified that, where the appellate forum has followed its previous decision of any other assessment year while rendering its decision on a specific issue, such decision shall be applied across all the other years while settling dispute for the other years under VSV, regardless of the fact that the AO may have applied a different methodology to compute the disallowance in the other years.
 |
| 1. **Once taxpayer proposes to settle an appeal under VSV 2.0, whether he would also be entitled to take into consideration consequential adjustments in computing total income to disputed tax?**

For instance, consider the following situations:* **Illustration 1:** Few deductions under Chapter VIA of the ITA claimed under tax return are restricted to the gross total income (GTI). For instance, donation to specified charitable trust under s. 80G, certain income-based incentives such as s. 80IA, 80IB, etc. If GTI is increased because of any additions made in the assessment which are subject matter of settlement under VSV 2.0, taxpayer should also be entitled to consequential increase in deduction under Chapter VIA while determining final assessed income / disputed tax.
* **Illustration 2:** Foreign tax credit (FTC) is also restricted to the amount of tax payable under the ITA for the relevant previous year. In case settlement is opted under VSV 2.0, tax arrears should be computed after recomputing foreign tax credit as per applicable provisions of the ITA.

While the above issues are eligible of being rectified by the Tax Authority on application being made u/s. 154, where taxpayer has not applied for the rectification before the Tax Authority for any reason but has raised a specific ground in an appeal pending before the appellate forum, whether DA will take into consideration such factors while determining disputed tax payable under VSV 2.0? | * The settlement under VSV 2.0 generally should not result into any adverse outcome which otherwise does not arise under normal litigation route. Therefore, once an addition / dispute is settled under VSV 2.0, all the logical consequences of the same should be followed under VSV 2.0 as well. Accordingly, benefit of deduction under Chapter VI-A and/or credit for FTC and/or any other consequential relief should be allowed while computing the disputed tax payable for settlement.
 |
| 1. **Where both taxpayer and tax department are in appeal on single issue, how to compute disputed tax?**
* Consider a case where, taxpayer incurred cost on account of goodwill acquired on amalgamation of 1,000. In ROI, taxpayer claimed depreciation thereon @ 25% i.e. 250. In assessment, AO disallowed entire depreciation of 250 on the ground that goodwill acquired on amalgamation is not eligible for depreciation. Disputed tax in respect of such disallowance of 250 is 75 (assuming tax rate @ 30%).
* On appeal, CIT(A) held that taxpayer was eligible to claim depreciation on goodwill but curtailed the depreciable base thereof. As per CIT(A), cost incurred on account of goodwill acquired on amalgamation is only 600 and not 1,000. Hence, as per CIT(A), taxpayer was eligible to claim depreciation only of 150 [i.e. 600 x 25%] as against 250.
* Taxpayer as also tax department have appealed to ITAT, which is pending as on 22 July 2024. Taxpayer is in appeal against order of CIT(A) that curtailed depreciable base from 1,000 to 600. Tax Department is in appeal against order of CIT(A) holding that taxpayer was not at all entitled to claim depreciation on goodwill acquired on amalgamation.
* Assuming taxpayer desires to settle both taxpayer’s appeal as also tax department’s appeal, how to compute disputed tax?
 | * It may be clarified that disputed tax may be computed as under, in respect of taxpayer’s appeal and tax department’s appeal:-
* **In respect of taxpayer’s appeal:-** Out of total depreciation of 250 claimed by taxpayer, CIT(A) has allowed depreciation of only 150, and taxpayer is in appeal before ITAT on disallowance of balance 100. Hence, disputed income in respect of taxpayer’s appeal is 100 and disputed tax thereon is 30 (assuming tax rate @ 30%).
* **In respect of tax department’s appeal:-** Tax Department is in appeal before ITAT effectively on allowance of depreciation of 150. Hence, disputed income in respect of tax department’s appeal is 150 and disputed tax thereon is 45 (assuming tax rate @ 30%). Considering a 50% concession owing to tax department’s appeal, the disputed tax payable for settlement under VSV 2.0 is 22.5.
* Thus, clarify that, taxpayer can settle both appeals under VSV 2.0 by paying aggregate disputed tax of 52.5.
 |

1. **Issues arising in case of amalgamation of two or more entities**

| **Issue** | **Suggestion** |
| --- | --- |
| Consider a case where ACo is merged with BCo with an Appointed Date of 1 April 2023. There was pending litigation as on the Appointed Date of ACo which is to be continued in the name of BCo as a successor entity. Additionally, BCo has its own litigations for past years also which are pending at different appellate forum as on 22 July 2024.**In such case, following issues require clarification:*** + **Issue 1:** Appeals in case of ACo and BCo for AY 2015-16 both are pending as on 22 July 2024. Whether BCo (being successor of ACo) is eligible to settle the appeal in relation to ACo independently under VSV 2.0 while continuing litigation in relation to its own appeal?
	+ **Issue 2:** Whether possible for BCo to file separate declaration in respect of ACo’s pending appeal? Assuming this is not possible, and both ACo’s appeal as also BCo’s appeal are pending at same appellate forum, how does BCo fill up Schedules under Part A of Form No. 1?
	+ **Issue 3:** In case of settlement of appeals pertaining to ACo under VSV 2.0, kindly clarify various factual aspects such as in whose name and PAN declaration is to be filed, who could be authorised to sign such declaration, payment of disputed tax will be in whose name, etc.?
	+ **Issue 4:** Under above fact pattern, consider a case where HC has decided an issue in favour of ACo for a period prior to amalgamation. However, identical issue is pending before ITAT in case of BCo (amalgamated entity). In such case, whether benefit of concessional rate (i.e. 50%) may be granted to amalgamated company on the basis of favourable order in case of amalgamating company on identical facts?
	+ **Issue 5:** Consider a case where appeal in case of amalgamating company for AY 2016-17 is disqualified for opting VSV 2.0 being a search related assessment. In view thereof, whether appeals of amalgamated company for same assessment year may also get disqualified from VSV 2.0?
 | * + It is settled legal position that post appointed date, the amalgamating company ceases to exist in the eyes of law and all pending proceedings of the amalgamating company would become the proceedings of amalgamated company as a successor. Basis such legal principle, following may be clarified.
	+ **Issue 1:** The scheme of settlement under VSV 2.0 is appeal based. Appeals in relation to assessment or reassessment for the same AY can be settled independently. Further, CBDT has also clarified that taxpayer has an option to settle either taxpayer’s appeal or tax departments appeal or both. Basis similar analogy, it may be clarified that appeal in relation to amalgamating company can be settled by amalgamated company independent of its own appeal.
	+ **Issue 2:** VSV Rules 2.0 require that a separate declaration should be filed for settlement of each appeal. Hence, it may be clarified that BCo can file separate declarations in respect of BCo’s pending appeal and ACo’s pending appeal.
	+ **Issue 3:** It may be clarified that for settlement of appeals of amalgamating company (ACo) declaration may be filed in the name ACo (being succeeded by BCo due to amalgamation) as, PAN of ACo may be quoted while filing declaration, signed by the person who is otherwise authorised to sign the declaration of BCo.
	+ **Issue 4:** It is a settled legal principle that from the Appointed Date of amalgamation, it is the amalgamated entity who is in existence and all the rights and obligations (such as assets and liabilities including business, contingent liabilities, etc.) of amalgamating company shall vest on amalgamated company. From the Appointed Date, legally both the entities are to be considered as one entity only. Following the said philosophy, it may be clarified that amalgamated company will be entitled to benefit of concessional rate (i.e. 50%) of disputed tax for those issues which are decided by higher appellate authority in favour of amalgamating company.
	+ **Issue 5:** In line with the clarification at Issue 1 above, since the philosophy of VSV 2.0 is based on appeal wise, the disqualification of appeal of amalgamating company should not affect the eligibility of appeals pertaining to amalgamated company for the same year. Hence, eligible appeals pertaining to amalgamated company shall be independently covered under VSV 2.0 and vice versa.
 |
| Where appeal filed by amalgamating company before CIT(A) is dismissed as defective appeal filed by non-existing taxpayer since such appeal was inadvertently filed by amalgamating company post effective date of amalgamation. Subsequently, amalgamated company has filed 2 appeals that are pending as on 22 July 2024 viz. one appeal belatedly filed by amalgamated company to CIT(A) with condonation of delay and another appeal filed to ITAT against order of dismissal by CIT(A). Issue is how to compute disputed tax assuming both these appeals are to be settled?* + Consider a case where, on 31 March 2021, AO had passed an order making certain additions in the total income of A Co.
	+ A Co merged into B Co from appointed date of 1 April 2020 and effective date of 1 April 2021. Since amalgamation had not yet been effective as on 31 March 2021, AO passed order in the name of amalgamating company i.e. A Co.
	+ However, taxpayer missed to file appeal to CIT(A) in the name of amalgamated company. Taxpayer filed appeal to CIT(A) in the name of amalgamating company.
	+ CIT(A) dismissed the appeal since the appeal was filed in the name of amalgamating company, as the amalgamating company was no longer in existence.
	+ Taxpayer (B Co, amalgamated company) filed appeal to ITAT against CIT(A)’s dismissal of appeal. Taxpayer also filed another belated appeal to CIT(A) in the name of amalgamated company with an application for condonation of delay.
	+ Hence, there are two appeals pending in the name of B Co as on 22 July 2024, one before CIT(A) and another before ITAT arising out of the same assessment order and on the same disputed tax. Issue arises how will the declarant fill up the forms regarding both the appeals since, they constitute same amount of disputed tax?
 | * + Clarify that, in such case, taxpayer needs to pay disputed tax only in respect of any one of the 2 appeals. Also, clarify that, settlement of one appeal should automatically make the other appeal infructuous. For instance, if taxpayer settles ITAT appeal as part of declaration form, the appeal filed before CIT(A) shall automatically become infructuous. S.91(2) of VSV Act 2.0 states that upon filing of declaration, any appeal pending before ITAT or CIT(A) in respect of tax arrear is deemed to have been withdrawn from date of issuance of certificate by DA.
 |
| **Consequential effect of settlement of dispute under VSV 2.0**1. **Impact of settlement on subsequent assessment years**

Consider following scenarios to illustrate the issue:* **Scenario 1:** In a case where taxpayer has offered income spread over a period of – say 3 years whereas Tax Authority taxed the entire income in year 1. In case of taxpayer settles year 1 appeal under VSV 2.0, consequential reduction in income from year 2 and 3 would be warranted.
* **Scenario 2:** Tax Authority treats an expenditure as capital (say, cost of purchase of application software) and disallows revenue deduction claimed by taxpayer. Assuming dispute settled under VSV 2.0, whether taxpayer eligible for depreciation in subsequent A.Y.?
* **Scenario 3:** Taxpayer, a BOT operator, constructs toll road over 2 years at cost of 1,000, for which concession period is 10 years (years 3-13). Taxpayer files ROI for year 3 by claiming depreciation @ 25% [as intangible asset] on construction cost of 1,000 i.e. depreciation of 250. Tax Authority denies depreciation by relying on CBDT Circular No. 9 of 2014 dated 23 April 2014 which provides for amortisation of construction cost equally over concession period of 10 years (i.e. 100 each year). Hence, for year 3, depreciation disallowed by Tax Authority is 150. Taxpayer has filed appeal to CIT(A) that is pending as on 22 July 2024. From year 4 onwards, to avoid litigation, taxpayer changed its position and started claiming amortisation as per Circular. From year 4 onwards, taxpayer claimed amortisation on cost of 750 after reducing depreciation already claimed in year 3 of 250. Assuming appeal for year 3 is settled under VSV 2.0, whether taxpayer is eligible for consequential relief from year 4 onwards by reinstatement of unamortised construction cost from 750 to 900 (considering that deduction granted in year 3 is only 100)?
* **Scenario 4:** Taxpayer, operator of e-commerce marketplace, incurred significant expenditure on discounts/sales promotion to boost/popularise usage of e-commerce platform by customers. While taxpayer claimed such expenditure as revenue deduction, Tax Authority treated amortisation of such expenditure over a period of time and allowed only proportionate deduction in year under settlement. Issue may arise on continuity of deduction as per stand of Tax Department in subsequent year/s of amortised amount once the taxpayer settles appeal for Year 1.
* Above scenarios are illustrative and represent bona fide cases where settlement of appeal for one A.Y. has direct implications on another A.Y. Since the taxpayer has discharged tax liability for A.Y. under litigation, consequential impact thereof should be given in subsequent A.Y.s to ensure consistency across different A.Y.s.
* It is perceived that settlement of appeal for a particular assessment year does not, on principles, impact appeals for subsequent assessment years. Further, Explanation to S.92(4) of the VSV Act 2.0 states that filing a declaration shall not amount to conceding the tax position and it shall not be lawful for the taxpayer to contend that the tax department has accepted the disputed issue by settlement. Therefore, in above scenarios, apprehension is that Tax Department may choose to ignore effect of settlement in the subsequent assessment years. For instance, in Scenario 2, despite taxpayer having discharged tax liability on the assumption that expenditure is of capital nature, Tax Department may deny depreciation in subsequent assessment years on the basis that settlement under VSV Act 2.0 does not provide for any correlative adjustment in same or subsequent year/s. This may result in incongruity, injustice and difficulty to the taxpayer and is contrary to legal position as would have otherwise emerged under normal litigation route. With a view to allay the apprehension, suitable clarifications may be issued.
* It is also possible that, period of limitation for providing consequential relief in subsequent years (either by filing revised return or filing rectification application u/s. 154) may have expired. Suitable clarification may be issued to provide consequential effect of settlement under VSV 2.0 on other years irrespective of limitation period.
* Since the dispute relates only to timing difference of income/expense, if settlement is at 50% of disputed tax, consequential relief in subsequent years may be restricted to 50% of applicable amount. This alternative provides a level playing field to both taxpayers as also tax department and clarity on this issue may greatly encourage taxpayers to avail VSV 2.0.
 | * It may be clarified that consequential impact of settlement shall be given by Tax Department in subsequent assessment years as may be applicable in accordance with the provisions of ITA.
* It may be clarified that for passing order to give consequential relief, period of limitation of 4 years to pass rectification order u/s. 154 shall not apply. Reference may be made to CBDT Circular No. 81 dated 26 March 1972 which states that time limit of 4 years does not apply to rectify penalty order to give effect to quantum order decided in favour of taxpayer where time limit of 4 years for passing rectification order has expired.
* Further, to ensure that such rectification applications are processed in timely manner, Tax Authority may be directed to dispose off such rectification application u/s. 154 within 6 months.
* In such cases where dispute relates to merely timing difference of recognition of income/expense, and taxpayer settles such appeal of tax department by paying 50% of disputed tax under provisos to s.90 of VSV Act 2.0, consequential relief in subsequent assessment years shall be restricted to 50% of the applicable amount.
 |
| 1. **Secondary adjustment should not automatically apply in the subsequent years, because the taxpayer settles dispute regarding primary adjustment under VSV 2.0**
* S.92(4) of VSV Act 2.0 states that “Making a declaration under this Scheme **shall not amount to conceding the tax position** and it shall not be lawful for the income-tax authority or the declarant being a party in appeal… to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.” The term “acquiesced” is defined in dictionaries as: to accept, comply[[1]](#footnote-1); agree to something, often unwillingly[[2]](#footnote-2); to give an implied consent to a transaction[[3]](#footnote-3). Thus, s.92(4) of VSV Act 2.0 states that the tax authority cannot argue that settlement results in the taxpayer having accepted/assented/agreed on the disputed issue.
* S.92CE of ITA triggers secondary adjustment only when the primary adjustment has been accepted by the taxpayer. S.92CE of ITA states that, “where a primary adjustment to transfer price made by the AO has been **accepted** by the taxpayer, the taxpayer shall make a secondary adjustment.”
* Hence, settlement of primary adjustment should not automatically trigger a secondary adjustment, because settlement of primary adjustment does not tantamount to acceptance of primary adjustment by the taxpayer. However, FAQ 54 of Circular No. 9/2020 dated 22 April 2020 issued under VSV 1.0 stated that secondary adjustment shall apply if the taxpayer avails VSV 1.0 for primary adjustment. FAQ 54 is contrary to law, and this created a major impediment for taxpayers intending to settle their transfer pricing disputes under VSV 1.0.
 | * It may be clarified that settlement of primary adjustment does not automatically trigger a secondary adjustment, and that the taxpayer and the tax authority are free to evaluate the merits of the primary adjustment in the subsequent years, with a view to apply the secondary adjustment.
 |
| 1. **Whether penalty u/s. 271BA (for non-filing of Form 3CEB) is also waived upon settlement of appeal relating to ‘disputed tax’?**
* Consider a case where, taxpayer (a permanent establishment of F Co) did not file Form 3CEB to report transactions with Head Office (HO) on ground that, as per taxpayer, such transactions do not constitute an international transaction u/s. 92B. Also, the taxpayer (PE) did not file Form 3CEB.
* AO treated such transactions between HO and PE to be an international transaction and consequently, referred the case to the TPO for determining the variation of transactions with ALP.
* TPO made variations and AO made corresponding additions in assessment order, against which appeal filed by taxpayer before CIT(A) is pending as on 22 July 2024.
* AO also initiated penalty proceedings u/s. 271BA for failure to file Form 3CEB that are also pending as on 22 July 2024.
* On settlement of quantum appeal under VSV 2.0 (wherein, additions are made treating the transactions between PE and HO to be an international transaction), whether taxpayer gets immunity from penalty leviable u/s. 271BA for failure to file Form 3CEB?
* Alternatively, assuming taxpayer had filed Form 3CEB but failed to report aforesaid transactions in Form 3CEB and AO had initiated penalty proceedings u/s. 271AA for failure to report international transactions in Form 3CEB, whether taxpayer gets immunity from penalty leviable u/s. 271AA?
 | * Sl. (a) of s.90 of VSV Act 2.0 provides that, where nature of tax arrear is aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and **penalty leviable or levied on such disputed tax**, amount payable under VSV Act 2.0 is amount of the disputed tax.

S.93 of VSV Act 2.0 provides that, the DA shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the ITA in respect of tax arrear. Hence, on payment of disputed tax, taxpayer gets immunity w. r. t. penalty levied in respect of tax arrear. * In present case, the core issue involved in quantum appeal as also reason behind initiation of penalty for failure to report international transactions is the same i.e. whether the transactions constitute an international transaction u/s. 92B. Hence, once quantum additions are settled under VSV 2.0, all penalties connected to the dispute involving quantum additions should be waived/immunised. In other words, once the very basis of dispute is settled, all consequential effect of such settlement should be applied.
* Clarify that, where declarant settles quantum additions involving issue of determining whether transactions constitute an international transaction, declarant also gets immunity from penalty levied or leviable u/s. 271BA [for failure to file Form 3CEB in respect of aforesaid transactions] or s.271AA [for failure to report aforesaid transactions in Form 3CEB].
 |
| 1. **Impact on taxpayer’s rights and entitlements in relation to appeal settled under VSV 2.0**
* Apprehension arises on the scope and effect of settlement of Tax Department’s appeal. Consider a case where the taxpayer has succeeded fully in his appeal before ITAT. However, Tax Department has filed an appeal on one or more counts before High Court. Taxpayer settles Tax Department’s appeal filed before High Court under VSV 2.0. In terms of first proviso to s.90 of VSV Act 2.0, taxpayer is required to make payment of taxes at concessional rate of 50% of tax involved in Tax Department’s appeal. What are the consequences of such settlement and does payment of tax @ 50% make any difference to rights and entitlements of the taxpayer including consequential effect such as right to carry forward of loss or MAT / AMT credit, etc.?
 | * When taxpayer settles the Tax Department’s appeal under VSV 2.0 by paying disputed tax as if such appeal is decided against the taxpayer, it effectively means that Tax Department has been successful in its appeal. In such case as well, it may be clarified that, final taxable income (including quantification of carried forward losses, MAT credit, and any other consequences) for the year under reference as also for the subsequent years, will be determined on the basis that the Tax Department has been successful in its appeal.
* The payment of disputed tax at 50% is a concession granted in terms of VSV Act 2.0, because the taxpayer has chosen to settle its dispute instead of continuing to litigate. It should not impact or dilute the consequences of the settlement of such appeal under ITA.
 |
| 1. **Where deductor settles TDS dispute under VSV 2.0 and credit of such TDS deposited by deductor is given to payee; whether payee can claim refund arising to payee as a result of such TDS credit?**
* Consider a situation where, I Co (deductor) paid royalty to F Co (payee) of Rs. 100. As I Co believed such royalty is not being taxable in India by virtue of treaty, no TDS was deducted thereon.
* The AO held that withholding was required on the transaction and since F Co had no PAN, I Co was held liable to deduct TDS at 20% as per s.206AA i.e. Rs. 20 as against tax rate of 0% under applicable treaty. The AO also assessed such royalty income as taxable in the hands of F Co @ 10% u/s. 115A of ITA without granting treaty benefit to F Co.
* I Co is in appeal before CIT(A) against TDS order. F Co is also in appeal before CIT(A) against assessment order u/s. 143(3).
* Assuming I Co settles TDS dispute by paying Rs. 20 [20% of 100] under VSV 2.0, F Co would be given TDS credit of Rs. 20 in the year in which the TDS dispute is settled. Assuming F Co also desires to settle its own appeal pending before CIT(A) under VSV 2.0, would F Co be entitled to refund of excess TDS (@ 20% u/s. 206AA) over and above tax rate of 10% u/s. 115A of ITA i.e. refund of Rs. 10?
* Apprehension arises because of s.94 of VSV Act 2.0 which states that any amount paid in pursuance of a declaration made under the VSV Act 2.0 shall not be refundable under any circumstances.
 | * Outcome of settlement under VSV 2.0 cannot be any different than outcome under normal litigation route. In the given case, had I Co (deductor) made TDS payment under normal litigation route, F Co (payee) would have been entitled to claim corresponding TDS credit. Further, assuming royalty income is held to be not taxable in India in the appeal pursued by F Co, F Co would entitled to refund thereof along with interest u/s. 244A. The same consequences should follow even assuming I Co deposits TDS as part of settlement of TDS dispute under VSV 2.0.
 |
| 1. **Interest u/s. 244A on refund due to taxpayer post settlement under VSV 2.0 on account of reasons other than dispute**
* Consider a case where, as per ROI, taxpayer was entitled to refund of say, Rs. 10 L, and on assessment, refund is reduced to Rs. 6 L due to additions made. While taxpayer is in appeal against the additions made, no part of balance refund of Rs. 6 L was received. Upon settling appeal under VSV 2.0, whether taxpayer entitled to interest u/s. 244A on refund of Rs. 6 L?
* S. 94(2) provides as under:

*“Where the declarant had, before filing the declaration under sub-section (1) of section 91, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 90, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act.”** Thus, payment by taxpayer “in respect of his tax arrear” that exceeds amount payable under VSV 2.0 is eligible for refund, but no interest u/s. 244A shall be granted on “such excess amount”. The excess amount that is ineligible for interest u/s. 244A is only such in respect of his tax arrear. The balance refund that arises due to reasons other than dispute is not hit by the limitation and qualifies for interest u/s. 244A. Consistent thereto, in the example mentioned above, refund of Rs. 6 L should be eligible for interest u/s. 244A.
* This is also reconcilable with fact that even under normal litigation route, taxpayer would have been entitled to interest on such refund. Refund in such cases arises not on account of settlement under VSV 2.0 but because of inaction of Tax Department in timely grant of refund.
 | * It may be clarified that interest u/s. 244A shall be granted on refund becoming payable post settlement under VSV 2.0 where such refund is not arising due to settlement of dispute relating to tax arrears under VSV 2.0. This will help avoiding any adverse inference being drawn at field level by the tax authority giving rise to avoidable litigation thereon.
 |
| 1. **Whether amount payable under VSV 2.0 in lieu of ‘disputed tax’ under ITA is eligible for foreign tax credit (FTC) along the same lines as income-tax?**
* Consider a case where, F Co is in appeal against assessment order treating F Co has having a permanent establishment in India. Where F Co settles such appeal and pays amount payable under VSV 2.0 on the basis that appeal is decided against F Co, whether F Co shall be entitled to claim FTC in home jurisdiction in respect of amount payable under VSV 2.0?
* Ambiguity arises because VSV 2.0 is separate enactment and not part of ITA. Amount payable under VSV 2.0 is only in substitution of ‘disputed tax’ demand under ITA and once dispute is settled under VSV 2.0, liability under ITA stands extinguished. Hence, amount payable under VSV 2.0 should be regarded as income-tax discharged for the purposes of all applicable laws in force.
* However, if amount payable under VSV 2.0 is not regarded as taxes on income and consequentially not eligible for FTC, foreign companies may not be inclined to avail VSV 2.0 and this may dampen success of VSV 2.0.
 | * It may be clarified that amount payable under VSV 2.0 shall be considered as payment in lieu of income-tax liability under ITA; and the same should accordingly be eligible for foreign tax credit in the jurisdiction of residence of the taxpayer by treating such amount payable as taxes on income for the purposes of the applicable tax treaty.
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| **Procedural aspects**1. **Enable filing of a declaration in absence of PAN or TAN**
* The format of Form 1 requires quoting PAN or TAN (for settlement of TDS appeal) as a pre-condition to avail VSV 2.0.
* It is possible that foreign entities may not have obtained PAN and a dispute may be pending as of 22 July 2024 challenging their assessment or tax liability in India. Similarly, there could be possibility that a foreign entity acting as a payer may not have any TAN and TDS liability has been imposed upon him under s.201. Ambiguity arises if such taxpayers can settle their disputes under VSV 2.0.
 | * To avoid unintended disqualification of such taxpayers from scope of VSV 2.0, a facility may be provided for such taxpayers to file physical declaration even in absence of PAN or TAN.
 |
| 1. **Whether primary assessee can file declaration through ‘representative assessee’?**
* Where appeal is pending in respect of primary assessee which is a foreign entity not having adequate business presence in India, it may be desirable for such foreign entity to get dispute settled through its ‘representative assessee’ u/s. 163 having presence in India. Whether such foreign entity can file declaration through its representative assessee?
 | * Flexibility may be granted for primary assessee to file declaration through ‘representative assessee’.
 |
| 1. **DA should provide declarant sufficient opportunity of being heard before rejecting or modifying the declaration**
* If DA rejects the declaration for any reason (say, ineligibility u/s. 96) or determines amount payable by declarant at a figure different from amount worked out by declarant, what is the remedy for the declarant?
 | * It may be clarified that, in case where there is proposal to reject the declaration of the taxpayer or modify the working stated in the declaration, DA should provide declarant sufficient opportunity of being heard.
 |
| 1. **Permit taxpayer to file a second declaration where first declaration gets disqualified due to non-payment within 15 days due to financial difficulty**
* Consider a case where, taxpayer is unable to pay amount as per DA’s certificate within 15 days due to financial difficulty. In such case, taxpayer’s declaration may get invalidated due to non-satisfaction of condition of mandatory payment within 15 days. Whether such taxpayer can file another declaration post arranging the funds?
* A concern arises on account of Jharkhand HC decision in case of Value Added Futuristic Management (P) Ltd. v. UOI & Anr. (2022) 447 ITR 48, wherein it was held that, first declaration can be revised multiple times before DA issues certificate, however, a second declaration cannot be filed after the first declaration is accepted by DA and DA has issued a certificate to that effect.
 | * It may be clarified that rejection of declaration due to failure in making payment within 15 days shall not debar taxpayer from filing second or subsequent declaration under VSV 2.0 for settlement of dispute, so long as declaration is filed within the tenure of VSV 2.0.
 |
| 1. **Where DA has issued a rectified certificate revising determination of amount payable under VSV 2.0, will the limitation period of 15 days for declarant to make payment of amount certified by DA be counted from the date of receipt of rectified certificate?**
* Consider a case where, there is a patent error in the certificate issued originally by the DA. Such error is rectified by the DA within say, 4 days from date of issue of original certificate. Whether the limitation period of 15 days for declarant to make payment of amount certified by DA be counted from the date of receipt of rectified certificate?
 | * It may be clarified that such limitation period of 15 days shall be counted from the date of receipt of rectified certificate of DA.
 |
| 1. **Settlement under VSV 2.0 where one assessment year is resulting in refund due to taxpayer and another assessment year is resulting in amount payable by taxpayer. Whether adjustment of refund against amount payable is available?**
* Consider a case where, taxpayer settles appeal of Year 1 and Year 2 under VSV 2.0. Settlement of appeal under VSV 2.0 in year 1 results in refund of amount. However, settlement of appeal under VSV 2.0 in year 2 provides for payment of certain disputed tax. Whether refund of Year 1 and demand of Year 2 can be adjusted?
 | * A facility may be given for setting off amount payable under one declaration against refund due under another declaration such that net sum can be discharged. There is no reason to ask taxpayer to pay on one hand and grant refund on other hand. A 2 way traffic should be avoided which may result into financial difficulties for taxpayer.
 |
| 1. **When would refund under VSV 2.0 be granted to declarant? Whether such refund can be adjusted against outstanding demands under ITA?**
* VSV Act 2.0 does not indicate any time limit for purpose of grant of refund due to declarant. When would refund under VSV be granted to declarant?
* In the context of VSV 1.0, delay in issuing refund resulted in taxpayers approaching HCs for relief – wherein HCs held that settlement under VSV 1.0 obligates the tax authorities to grant refund as soon as final order in Form No. 4 is issued by DA. As per HC, any unreasonable delay by the tax authorities in granting refund would trigger compensatory interest. In one case, there was delay of ~ 2 years[[4]](#footnote-4), in another case, there was delay of 9 months[[5]](#footnote-5) – for which interest was awarded by HC to taxpayer.
 | * It is suggested that, since declarant is required to pay within 15 days of receiving certificate from DA, even refund should be granted within 15 days of receiving certificate from DA.
* It is also suggested that, where such refund is proposed to be withheld or adjusted against outstanding demands under ITA, prior intimation should be given to the taxpayer along the lines of s.245 of ITA.
 |
| 1. **In case of transactions between NRs, remove procedural TDS compliances for NR payer, to enable settlement of TDS litigation under s.201 for NR payer, with benefit of simultaneous TDS credit to NR payee**

**Illustrative fact pattern:*** There is transfer of asset by one NR to another NR. Buyer (i.e. deductor or payer) remitted the payment without deduction of TDS u/s. 195 on the basis that the payment is not chargeable to tax in hands of seller (i.e. payee).
* As per TDS AO, such payment is taxable under the Act and/or DTAA. Tax Authority determines payer’s TDS demand u/s. 201 for not deducting TDS on such payment along with interest u/s. 201(1A). TDS appeal is pending as on 22 July 2024.
* Tax Authority also initiates reassessment proceedings against payee. In most cases, payee may have filed writ to HC challenging validity of reassessment notice u/s. 148, and re-assessment proceedings may be pending as on 22 July 2024. Alternatively, payee’s re-assessment order may have been passed and appeal may be pending as on 22 July 2024.
* Payer may be desiring to settle pending appeal under VSV 2.0. Payee may remit TDS amount to payer who may then pay up disputed tax under VSV 2.0 to settle the TDS litigation. There could be scope that even payee may come up for VSV settlement.
* These litigants (particularly NR payers) are concerned with certain procedural compliances which are coming in the way to close litigation under VSV 2.0.
 |  |
| **Issue from NR payer’s perspective - Dispense the procedural requirement of filing TDS statement by NR payer*** Once NR payer settles his appeal under s.201 under VSV, he will have to undergo lot compliance work in order to enable NR payee to get TDS credit. This will involve lot of hassle and inconvenience to NR payer in compliance of all procedural requirements in relation to one-off transaction which most NR payers would be reluctant to carry out, and express their reservation for such procedural work- more so, as settlement is opted without adjudicating issue on merits. These include:
	+ Obtain TAN and register on e-filing portal
	+ File TDS quarterly return for such one-off transaction
	+ Issue TDS certificate to payee
	+ Obtain digital signature of director/authorised signatory
	+ Pay mandatory fees u/s. 234E for delayed filing of TDS statement (for which there is no immunity provided in VSV 2.0)
* As aforesaid, many of NRs payer have expressed their reservation to undergo such procedural requirements. This is considered as stumbling block to the success of VSV 2.0 in relation to reduce TDS related litigation and hence requires a close look with practical considerations. It may be noted that all the above compliance is for limited purposes of enabling NR payee to get credit of tax deducted and updating the online record in the form of Form 26AS of NR payee.
 | Following alternatives may be considered in their order of preference:**Alternative 1:** TDS credit may be automatically granted to NR payee without requiring NR payer to obtain TAN and file TDS statement u/s. 200(3). There may be no difficulty for Tax Department to grant automatic credit to payee once NR payer settles TDS dispute under VSV. Tax Department is fully aware of the payee’s details and status of payee’s assessment/appeal. Tax Authority of payee can automatically grant TDS credit based on order passed by DA to settle TDS dispute of payer. If assessment or re-assessment proceedings are pending in case of payee, Tax Authority of payee may automatically grant TDS credit while passing the assessment or re-assessment order. Need be, tax department may create separate software containing such data of TDS settlement and corresponding payees for internal control and check.**Alternative 2:** Instead of filing TDS statement u/s. 200(3), a separate form or procedure may be prescribed for NR payers to submit details of TDS deposited under VSV to grant TDS credit to payee and/or to update Form 26AS of payee. This alternative also ensures that NR payer is not exposed to levy of mandatory fees u/s. 234E. |
| **Issue from NR payee’s perspective: Request to create mechanism to allow credit for TDS deposited by NR payer under VSV on contemporaneous basis to NR payee who also proposes to settle his pending appeal under VSV*** This situation is where NR payee had filed nil tax return and is disputing taxation of income which is pending before appellate authority and who wants to settle his appeal under VSV 2.0. However, he is keen to avail credit for TDS paid by payer under VSV while settling s.201 appeal in his calculation of disputed tax.
* Issue, however, arises as to point of time when payee can take into consideration such credit of TDS while filing his declaration. Considering limited window period of the VSV scheme, payee may not have time to wait till payer accomplishing all procedural compliance post his settlement under VSV so as to allow benefit of credit in the assessment of payee. It may be noted that to the extent of TDS paid, amount of disputed tax of payee stands discharged off. There is therefore need of a mechanism whereby payee is able to get credit in his declaration on a contemporaneous basis soon upon payment of disputed tax by payer in his settlement of TDS dispute under VSV or at least, where DA issues order of settlement to NR payer.
* If simultaneous credit to NR payee is not granted, there may be unjust collection of duplicated taxes from both payer and payee under VSV, without any recourse to NR payee for refund since taxes paid under VSV by NR payee are not refundable subsequently.
 | * Specific facility may be introduced where, credit in respect of TDS deposited by NR payer under VSV is simultaneously granted to NR payee at the time of settlement of NR payee’s appeal under VSV.
 |
| 1. **Issues in online declaration forms operationalised under VSV 2.0**

In online form, total in Part F is appearing incorrect. Currently, it is showing aggregate amount i.e. Part D (i) + D (ii) - tax paid whereas it should be Part D (i) - tax paid. D(ii) will be applicable later post 31 December 2024.In case appeal against 201 order was filed through PAN login by mentioning TAN number, Form 1 needs to be filled through PAN login but TAN field is not editable. Kindly allow the TAN to be editable so that TAN can be mentioned.In case appeal against 201 order was filed through PAN login by mentioning TAN number, Form 1 needs to be filled through PAN login but there is no option of ‘Order passed u/s. 201’ in the drop-down for section in which order is passed. Kindly add 201 section in drop-down as well, and enable filling of Schedule B.* In case of settlement of appeal against 201 order involving disputed interest or disputed penalty, in Part B, we are not able to select the applicable schedules i.e., the schedules do not expand/open to fill the details.
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| **Issues in relation to VSV Rules 2.0**1. **Whether reduction of brought forward loss u/s. 72 is also eligible for 2 options as per Rule 9(1)?**
* As per Rule 9(1), where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward, declarant shall have 2 options viz.
	+ Option 1 - Pay notional tax payable on amount by which loss or unabsorbed depreciation is reduced and carry forward the amount ignoring such reduction
	+ Option 2 - No payment under VSV 2.0 – but, right to carry forward loss or unabsorbed depreciation is restricted to reduced amount as assessed
* Assume that:-

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| --- | --- | --- |
|  | **As per return of income** | **As per assessment order** |
| Income as computed by taxpayer for year 2 | 1,000 | 1,000 |
| Additions by A.O. | - | 4,000 |
| Taxable income of year 2 (before set off of brought forward business loss from year 1) | 1,000 | 5,000 |
| Brought forward business loss u/s. 72 from year 1 | (10,000) | (10,000) |
| Net taxable income (after set off) | 0 | 0 |
| Carry forward business loss u/s. 72 to year 3 | (9,000) | (5,000) |

* The taxpayer desires to settle appeal pending against additions of Rs. 4,000 under VSV 2.0 by paying notional tax on such additions and resultantly, carry forward amount ignoring reduction in brought forward business loss.
* Granting such facility may place reduction of brought forward loss on the same footing as reduction of current year’s loss and provide flexibility to the taxpayer to pay notional taxes on the reduction and carry forward original amount prior to such reduction.
 | * Clarify that, options under Rule 9(1) are also applicable to reduction of brought forward losses or unabsorbed depreciation, in the same manner as they are applicable to reduction of current year’s loss or depreciation.
* However, if CBDT believes that Rule 9 cannot be extended to reduction of brought forward unabsorbed business loss and it is applicable only to reduction of current year’s business loss, it may be clarified that such restriction is not applicable to reduction of UAD since UAD for any year becomes current year’s depreciation by virtue of mandate of s.32(2). In other words, it may be clarified that, while reduction of brought forward unabsorbed business loss is not eligible to avail Rule 9, reduction of UAD is still eligible to avail Rule 9.
* It may also be clarified that brought forward unabsorbed capital expenditure u/s. 35(4) also operates along same lines as UAD and hence, reduction of brought forward unabsorbed capital expenditure u/s. 35(4) is also eligible to avail Rule 9 along same lines as reduction of UAD. For the purposes of carry forward and set off, s.35(4) puts unabsorbed capital expenditure u/s. 35(1)(iv) at par with unabsorbed depreciation u/s. 32(2). Thus, such expenditure can be carried forward for indefinite period and set off against any income. S.35(1)(iv) is only an alternative form of claiming deduction on actual cost of capital asset acquired for R&D purposes, instead of normal depreciation thereon. In absence of specific provision u/s. 35(1)(iv), taxpayer would have been eligible to claim depreciation on such capital expenditure on year-to-year basis. Hence, if an option is given to pay notional tax on reduction of UAD, such option should be given even for reduction of brought forward unabsorbed capital expenditure on R&D u/s. 35(1)(iv).
 |
| 1. **Bar against re-instatement of closing WDV where option is exercised to carry forward reduced unabsorbed depreciation under Rule 9(1)**
* First proviso to Rule 9(2) states that, WDV of block of asset on the last day of the year, in respect of which UAD has been reduced, shall not be increased by the amount of reduction in UAD.
* To illustrate [facts involved in case of Delhi HC in Moradabad Toll Road Co. Ltd. v. ACIT [2014] 369 ITR 403 are considered for this example], taxpayer, a BOT operator, constructs toll road over 2 years at cost of 1,000, for which concession period is 10 years (years 3-13). Taxpayer files ROI for year 3 by claiming depreciation @ 15% [as plant/machinery[[6]](#footnote-6)] on construction cost of 1,000 i.e. depreciation of 150. But, Tax Authority granted depreciation @ 10% i.e. 100 by treating such toll road as ‘building’[[7]](#footnote-7). Hence, for year 3, depreciation disallowed by Tax Authority is 50. The net result of year 3’s assessment was reduced unabsorbed depreciation.

Taxpayer’s appeal for year 3 is pending as on 31 January 2020. It is possible that, similar disallowance may have been made in subsequent year/s also, for which appeal is pending before appellate forum.Assuming these appeals are settled under VSV 2.0 and taxpayer opts to carry forward reduced unabsorbed depreciation under Rule 9(1)(ii), first proviso to Rule 9(2) provides that taxpayer cannot claim consequential relief by reinstating WDV i.e. say, for year 3, WDV cannot be reinstated from 850 to 900. If consequential relief is not provided, cost base substantially gets reduced, resulting in such amount being rendered as sunk cost for tax purposes.* To take another example, assume that, depreciation for year 1 is disallowed by AO on the ground that asset is not put to use in year 1 but in year 2 – first proviso to Rule 9(2) creates a bar against claiming consequential depreciation in year 2.
* It is submitted that, outcome of settlement under VSV 2.0 cannot be materially different as compared to outcome of litigation under normal course. In normal course of litigation, taxpayer would have been entitled to consequential relief of reinstatement of WDV even if taxpayer would have lost his battle finally. Claim for depreciation in subsequent year/s would have been basis revised WDV. The consequential effect is an inevitable outcome of litigation and it would be unfair to disallow WDV upgradation to taxpayers settling litigation under VSV 2.0. Not granting consequential relief may result in incongruity and hardship to the taxpayer.

Due to first proviso to Rule 9(2), taxpayer loses his right to carry forward corresponding loss and also forgoes right to suitable upgradation of WDV for depreciation in future year. This would result in sunk cost for taxpayers. Such cannot be legislative intent of any provision.* There is no added advantage to the taxpayers in such cases under VSV 2.0 as compared to position that may emerge under normal litigation route. Since dispute on depreciation relates to a case of reduction of returned loss, taxpayer is in any case not liable to any interest u/s. 234A/B/C in year of settlement of dispute.

If granting depreciation on reinstated WDV results in refund becoming due to taxpayer in subsequent year/s, and CBDT has reservations on granting interest u/s. 244A on such refund, a specific clarification may be issued stating that no interest u/s. 244A shall be granted on such refund arising in subsequent year/s. But, such reservations should not result in complete loss to the taxpayer from getting consequential relief in the first place. If at all, only interest u/s. 244A may be restricted.* Above provision is a major stumbling block for taxpayers desiring to settle dispute under VSV 2.0. If consequential relief is not granted, taxpayers in such sectors may be absolutely discouraged from opting for VSV 2.0.
 | * It is earnestly recommended that first proviso to Rule 9(2) may be omitted from the statute so that consequential relief is granted by reinstating closing WDV in all bona fide cases of disallowance of depreciation claim.
 |
| 1. **Ambiguity in understanding quantum of loss carry forward to subsequent years where 50% relief is available and taxpayer avails option under Rule 9(1)(ii)**
* Where dispute relates to ‘issues covered in favour of the declarant’ and taxpayer opts for carry forward of reduced loss under Rule 9(1)(ii), second proviso to Rule 9(2) states as under:-

*“Provided further that in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.”** Above provision is nebulously worded. Clarity is required as to exact quantum of loss carry forward that taxpayer is entitled to.
* Our understanding of above proviso is illustrated by an example below:-

|  |  |  |
| --- | --- | --- |
| **Particulars** | **Income**  | **Tax** |
| Amount as per ROI | (2,000) | 0 |
| Amount as per assessment order | (1,200) | 0 |
| Addition [deleted by CIT(A), against that tax department is in appeal before ITAT as on 22 July 2024] | 800 | 0 |

* Pending tax department’s appeal is also regarded as ‘issues covered in favour of the declarant’. If taxpayer opts to carry forward reduced loss in terms of Rule 9(1)(ii), as per our understanding, ‘disputed tax’ payable is nil; and quantum of reduced loss carry forward is Rs. 1,600, computed as under:-

(a) loss as claimed by taxpayer [Rs. 2,000], less (b) 50% of amount by which loss stood reduced post final assessment [Rs. 50% x 800].  | * FAQs containing examples may be issued to provide clarity on scope of second proviso to Rule 9(2). Similarly, clarity may be provided on scope of first proviso to Rule 10(2) that corresponds to carry forward of reduced MAT credit in relation to ‘issues covered in favour of the declarant’.
 |
| 1. **Provide clarity on operation of Rules 9 and 10 of VSV Rules 2.0 where dispute relates to reduction of loss/UAD as also reduction of MAT credit**
* Rule 9 governs calculation of disputed tax and quantum of carry forward for settlement of dispute relating to reduction of loss or UAD. Rule 10 governs calculation of disputed tax and quantum of carry forward for settlement of dispute relating to reduction of MAT credit.
* In a scenario where, additions made by AO result in reduction of loss or UAD as also reduction of MAT credit, clarity needs to be provided as to manner of settlement under VSV 2.0.
* Following are possible combinations and clarity needs to be provided as to whether taxpayer has flexibility on adopting any of the following as part of settlement under VSV 2.0:-
	+ 1. Paying notional tax on amount by which loss is reduced; and also on amount by which MAT credit is reduced (and protect right to carry forward full loss and full MAT credit without any reduction)
		2. Not paying any notional tax and carrying forward reduced loss as also reduced MAT credit
		3. Paying notional tax on amount by which loss is reduced (and carrying forward loss before such reduction), while not paying any notional tax on amount by which MAT credit is reduced and carrying forward reduced MAT credit
		4. Paying notional tax on amount by which MAT credit is reduced (and carrying forward MAT credit before such reduction), while not paying any notional tax on amount by which loss is reduced and carrying forward reduced loss
* To illustrate the above combinations, refer **Annexure A**.
 | * Issue needs to be addressed through FAQ. Flexibility may be provided to the taxpayer to avail any combination of the options as discussed above.
 |

**Annexure A:- Dispute relates to reduction of loss/UAD as also reduction of MAT credit**

|  |  |  |  |
| --- | --- | --- | --- |
| **Particulars** | **Normal provisions (tax @ 30%)** | **MAT provisions (tax @ 18.5%)** | **MAT credit** |
|  | **Income**  | **Tax** | **Income**  | **Tax** |  |
| Amount as per ROI | (1,000) | 0 | 5,000 | 925 | 925 |
| Amount as per assessment order | 2,000 | 600 | 5,000 | 925 | 325 |
| Addition [confirmed by CIT(A)] | 3,000 | 900 | - | - |  |

1. Taxpayer’s appeal against addition confirmed by CIT(A) is pending before ITAT as on 22 July 2024.
2. Under normal litigation route, if such pending appeal is to be settled, taxpayer can close appeal by paying nil taxes and carry forward nil loss and MAT credit of 325.
3. Under VSV 2.0, following are the different possibilities, assuming taxpayer opts for filing declaration before 31 December 2024:-

[Notes:- Option 1A relates to Rule 9(1)(i) which provides for payment of notional tax on amount by which loss is reduced and carry forward loss without reduction. Option 1B relates to Rule 9(1)(ii) which provides for carry forward of reduced loss. Option 2A relates to Rule 10(1)(i) which provides for payment of notional tax on amount by which MAT credit is reduced and carry forward MAT credit without reduction. Option 2B relates to Rule 10(1)(ii) which provides for carry forward of reduced MAT credit.]

|  |  |  |
| --- | --- | --- |
| **Particulars** | **In relation to reduction of loss** | **In relation to reduction of MAT credit** |
|  | **Option 1A** **[Rule 9(1)(i)]** | **Option 1B****[Rule 9(1)(ii)]**  | **Option 2A****[Rule 10(1)(i))]** | **Option 2B****[Rule 10(1)(ii)]** |
| Amount payable under VSV 2.0 in relation to positive normal income of 2,000 | 0 [since MAT liability of 925 is higher than normal tax liability of 600] |
| Amount payable under VSV 2.0 as ‘disputed tax’ in relation to reduction of loss from (1,000) to nil; or reduction of MAT credit from 925 to 325 | 300 [1,000x30%] |  | 600 |  |
| Carry forward of loss/MAT credit to subsequent year/s | (1,000) | 0 | 925 | 325 |

1. Whether taxpayer has flexibility to choose amongst following combinations:-

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Choice** | **Combination** | **Amount payable under VSV 2.0** | **Loss carried forward** | **MAT credit carried forward** |
| I | Option 1A + Option 2A | 900 | (1,000) | 925 |
| II | Option 1A + Option 2B | 300 | (1,000) | 0 |
| III | Option 1B + Option 2A | 600 | 0 | 925 |
| IV | Option 1B + Option 2B | 0 | 0 | 325 |

1. <https://www.merriam-webster.com/dictionary/acquiesce> [↑](#footnote-ref-1)
2. <https://dictionary.cambridge.org/dictionary/english/acquiesce#google_vignette> [↑](#footnote-ref-2)
3. Black Law Dictionary with Pronunciations 6th Edition, pg. no. 24 [↑](#footnote-ref-3)
4. UPS Freight Services India (P) Ltd. vs. DCIT (2024) 336 CTR 261 (Bombay HC) [↑](#footnote-ref-4)
5. Dwejesh Acharya vs. ITO (2024) 233 DTR 148 (Rajasthan HC) [↑](#footnote-ref-5)
6. Reason being, concessionaire right relates to tangible property constructed by the taxpayer and during the period of O&M, there is effective exploitation of such tangible property by the taxpayer. [↑](#footnote-ref-6)
7. Notes to Appendix I defines “buildings” to include “roads”. [↑](#footnote-ref-7)