



DIRECT TAXES PROFESSIONALS' ASSOCIATION

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Ref.No.DTPA/Rep/20-21/21

Dated: 8th February, 2021

Mrs. Nirmala Sitharaman,
Hon'ble Finance Minister,
Ministry of Finance,
Government of India,
North Block,
New Delhi 110 001

Respected Madam,

Sub: Representation for widening the scope of Vivad Se Vishwas Scheme and also relaxing restrictions in Para 8.1, 8.3, 9 and 9.1 of Guidelines for compounding of offence under Income Tax Act on the petition of an applicant with regard to FAQ No 22.

1. REGARDING INITIATION OF PROSECUTIONS AND PENDING PROSECUTIONS: At the outset, we would like to bring to your kind attention that when the whole mankind is taken aback by the **COVID-19** pandemic and when many taxpayers have suffered from financial or personal losses in these troubled times, even small taxpayers are facing problem in cases where prosecution has been initiated and they have to appear before the District Court. The taxpayers against whom prosecution proceedings were filed were initially delighted when the Vivad se Vishwas Scheme was announced however it was disheartening to note that it did not apply to such assesseees. We humbly urge to kindly consider to allow cases under Vivad Se Vishwas, in which tax involved in upto Rs.25 Lakhs. We submit the following in this context.
2. We invite your kind attention to the **CBDT Circular 24/2019 dated 09.09.2019**, which considered the issue of premature initiation of prosecution i.e. before the issue is tested in appellate proceedings and CBDT has provided specifically that the prosecution complaint should not be launched unless penalty is confirmed by the Income tax Appellate Tribunal. **CBDT Circular 24/2019 dated 09.09.2019** : CBDT has issued the said **Circular 24/2019 dated 09.09.2019** with an objective of removal of doubts which shows that it is a clarificatory Circular. It states that prosecution can be launched only in following cases:
 - a) **If tax sought to be evaded is more than Rs.25 Lakhs and**
 - b) **Prosecution should be launched only after the penalty is confirmed by the ITAT**
Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the **offence has to be proved beyond reasonable doubt**. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes also instructed that prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3 of the said Circular.

The said Circular is available on the Government website at following link: <https://taxguru.in/income-tax/procedure-identify-process-income-tax-cases-prosecution.html>

This Circular is curative, clarificatory and remedial in nature and **it ought to be given retrospective effect and apply to all pending cases where the complaint is filed** and should not be restricted only to those pending cases where complaint is yet to be filed. It is a settled law that a curative, clarificatory and remedial amendment must be given retrospective effect. For this proposition reliance is placed on following judicial pronouncements:

When a provision is inserted/deleted to remedy unintended consequences it should be given a retrospective effect – **CIT vs. Alom Extrusions Ltd.** [2009] 319 ITR 306 (SC).

When a provision is inserted/deleted so as to mitigate hardship caused to the assessee, it should be given retrospective effect – **CIT vs. Calcutta Export Company** [2018] 404 ITR 654 (SC).

Accordingly we request that CBDT should issue a clarification that the said circular will apply to all matters which are pending in Courts and the complaints already filed may be withdrawn based on any undertaking or condition^s, as may appear just and equitable to your Honour.

The limit prescribed under the said Circular **“the tax sought to be evaded is more than Rs.25 Lakhs”** is on the lower side considering the diminishing value of money. Therefore our humble suggestion is that the Monetary limit should also be revised to at least Rs.1 Crore of tax for initiating any prosecution.

3. **Request to permit smaller prosecution cases Vivad se Vishwas Scheme :** Our humble suggestion, without prejudice to above, is that Scope of The Vivad se Vishwas Scheme, 2020 should also be permitted and cases covered as per clarification dated 22nd April, 2020 and its FAQ No. 22 where prosecution has been initiated and also relaxation should be considered regarding restrictions in Para 8.1 8.3, 9 and 9.1 of Guidelines for compounding of an offence under Direct Tax Laws 2019 in a deserving case, on consideration of a report from the Board on the petition of an applicant of in response to FAQ No 22 of Vivad Se Vishwas Scheme by permitting cases in which Prosecution proceedings has been initiated and difficulty being faced by tax payers in follow up at office of CCIT / PCCIT level. FAQ 22 is as under:

Question no 22. In the case of an assessee prosecution has been instituted and is pending; in court. Is assessee eligible for the Vivad se Vishwas? Further, where the prosecution has not been instituted but the notice has been issued, whether the assessee is eligible for Vivad se Vishwas?

Answer: Where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before filing the declaration.

4. The tax payable may be prescribed at the rate of 125 per cent of tax involved in the case, as is applicable in search cases. It may also be applied in case of application for the compounding of offence. It has come to our notice that the office of the CCIT/ PCCIT in Mumbai and other places are rejecting the application on ground of limitations as per para 8.1 8.3, 9 and 9.1 of the guidelines for compounding which are reproduced below.

8.3 Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in Para 8.1 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

9. Relaxation of time

9.1 The restrictions imposed in Para 7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed, where application is filed beyond 12 months but before completion of 24 months from the end of month in which complaint was filed, by the Committee defined in Para 10 of these Guidelines, provided that such delay should be attributable to reasons beyond the applicant's control. However, a plea of pendency of appeal at any stage or before any authority cannot be treated as a reason beyond the applicant's control, because furnishing an undertaking to withdraw the appeal (s) having bearing on the offence is a prerequisite as per clause 7(v) above.

9.2 However, in all such cases where relaxation has been provided in this Para, the compounding charges would be 1.25 times the normal compounding charges as applicable to the offence on the date of filing of the original compounding application.

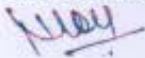
5. Further we urge that cases where the complaint is merely filed and charges have not been framed and have NOT been taken cognizance by the District Court, should be allowed to avail the benefit of Vivad se Vishwas Scheme.

6. The suggestion for expanding the Scope of Vivad se Vishwas Scheme by permitting certain cases in which prosecution has been initiated, will considerably help in reducing unnecessary litigation and at the same time it will help in collection of revenue.

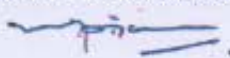
7. CONCLUSION: In view of above, we humbly request that our submissions may kindly be considered as soon as possible, in view of the fact that the last date for filing declaration under Vivad se Vishwas Scheme is 28TH FEBRUARY, 2021, which is approaching fast. We would like to mention that provisions of prosecution under many sections of the Companies Act, 2013 have already been omitted by the Government. Our suggestions are in line with the thinking of the Government to minimize litigations and also in the interest of revenue, which will be collected by the Government. For this act of kindness we shall remain grateful to your honour.

Yours faithfully,

For DIRECT TAXES PROFESSIONALS' ASSOCIATION



CA. N.K. Goyal
President



Adv. Narayan Jain
Chairman, Representation Committee

CC to : Chairman, Central Board of Direct Taxes, New Delhi