

Ref. No.- DTPA/Rep/20-21/5

Dated 2nd November, 2020

To

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 for increasing the monetary limit for initiating prosecution complaints in Income tax matters etc.

Our Association having about 1700 members, dealing in tax matters would like to make the following **Representation for widening the scope of Vivad Se Vishwas Scheme and also for increasing the monetary limit for initiating prosecution complaints in Income tax matters etc.** for your Honour's kind consideration.

A. REGARDING INITIATION OF PROSECUTIONS AND PENDING PROSECUTIONS

1.0 At the outset, we would like to bring to your attention that when the whole mankind is taken aback by the COVID-19 pandemic and when everyone has suffered from financial or personal losses in these troubled times the already stressed business community is very much concerned about the trivial addition of 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.

- 1.1 Your Honours will appreciate that making of additions does not necessarily make a person such a chronic defaulter that he should be sent behind the bars especially when most of the additions are based on deeming provisions without enough evidence, surmises, conjectures, and preponderance of probabilities. Be that as it may, it may be appreciated that the prosecutions have been initiated indiscriminately by the Income tax department.
- 1.2 We also invite your 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.

The said Circular dated 9.9.2019 states that prosecution can be launched only in following cases:

1. **If tax sought to be evaded is more than Rs.25 Lakhs and**
2. **Prosecution should be launched only after the penalty is confirmed by the ITAT**
3. 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 Circular.

The said Circular is available on the Government website at following link:

<https://www.incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf>

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:

- a) 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).**
- b) 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 conditions, as may appear just and equitable to Your Honours.

1.3 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 be revised to at least Rs.1 Crore of tax for initiating any prosecution.

B. REQUEST FOR ENLARGING THE SCOPE OF VIVAD SE VISHWAS SCHEME BY PERMITTING CERTAIN CASES IN WHICH PROSECUTION HAS BEEN INITIATED:

2.1 The Vivad se Vishwas Scheme states that cases wherein prosecution is instituted are not eligible for the scheme. In this regard we are of the view 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 Scheme as in such cases prosecution would not be considered as **instituted**. The word "institution of a case" as per Wharton's Law Dictionary is defined as:

“A case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein”

Accordingly mere filing of complaint should not be considered as a bar to be deprived from the Dispute resolution scheme.

2.2 We would like to submit that the issues on which prosecution has been launched have been decided in favour of both sides by different judicial forums, which makes the addition debatable. The additions made by the Assessing Officers are largely based on deeming provisions without adequate evidence, presumptions, probabilities and surmises on which prosecution is not called for. In cases of offences, under the tax laws, it would be improper for the revenue department to rush with the prosecution without a proper determination by a competent authority, under the Act, of liability which is sought to be made the basis for initiating prosecution, even though such prosecution may not be incompetent in the absence of such determination as held in case of **PNB Finance & Industrial Ltd. v. Miss Gita Kripalani, ITO [1986] 157 ITR 385 (Delhi)**.

Admittedly when penalty cannot be levied on debatable issues, filing of complaint for prosecution before District Court is highly unwarranted and will cause unimaginable hardship to taxpayers.

2.3 Our humble suggestion, without prejudice to above, is that **Scope of The Vivad se Vishwas Scheme, 2020 should also be permitted in cases where prosecution has been initiated and the alleged tax evasion is within Rs.5 Crore (as is the limit in Search cases). 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.** 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.

2.4 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.

C. DECLARATION IN CASE WHERE DEPARTMENT HAS FILED APPEAL OR DEPARTMENT MAY FILE AN APPEAL:

In many cases where assessee has won in appeal before CIT (A) or before ITAT and the assessee wants to file declaration

under Vivad se Vishwas Scheme if department has preferred an appeal or may prefer an appeal. The assessee does not know the appeal number and date of filing such appeal by department, and in absence of filling up such detail the declaration Form No. 1 is not being accepted in the system. We request you to please modify the utility so that such declarations are accepted even without fillip up such detail of appeal by the department whether filed or may be filed.

D. ISSUE OF FORM 3 BY THE CIT:

In many cases where the declaration has been filed the CIT has not yet sent Form 3 under Vivad Se Vishwas Scheme to the assessee declarant. It is desirable that the Form 3 is issued at earliest in all cases by CITs in exercise of the powers conferred by sub-section (1) of section 5 of the Vivad Se Vishwas Act, 2020.

E. CONCLUSION:

In view of above, we humbly request that our submissions in Paragraph A as well as Paragraph B, C and D may kindly be considered as soon as possible, particularly in view of the fact that the last date for filing declaration under Vivad se Vishwas Scheme is 31st December, 2020, 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.

For this act of kindness, we shall remain grateful to you.

With Best Regards,

Yours faithfully,

DIRECT TAXES PROFESSIONALS' ASSOCIATION



CA N.K. Goyal
President



Adv Narayan Jain
Chairman
Representation Committee