

Sub: Clarification on queries raised by stakeholders in AP&TS – Regarding.

Ref: Office Order F.No. PCCIT/AP&TS/VsV Scheme/2020-21 dated 13.11.2020.

In pursuance of meeting with stakeholders on 13-11-2020 in context of resolving issues related to administration of Direct Tax Vivad Se Vishwas Scheme, 2020 and constitution of Direct Tax Vivad Se Vishwas Local Coordination Committee (DTVSV LCC), several queries have been received by Direct Tax Vivad Se Vishwas Local Coordination Committee (DTVSV LCC) from the stakeholders in AP&TS Region. The said queries are being clarified in form of answers to FAQs. These clarifications are in terms of Direct Tax Vivad Se Vishwas Act, 2020, Board's circular No. 9/2020 dated 22.04.2020 and circular No. 21/2020 dated 04.12.2020 and are issued with the approval of DTVSV Local Coordination Committee of AP & TS region.

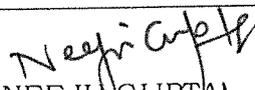
QUESTION ON SCOPE /ELIGIBILITY

<u>Question 15</u>	The capital gains arising out of development agreement entered into by assessee were assessed twice in the AY 2009-10 (relevant for the year of agreement entered) and in the AY 2011-12 (relevant for the year of handing over possession). But in both the assessments, the sale consideration was arrived on different methods i.e. in one assessment value of land was adopted and in one assessment both the land & construction value was adopted. For A.Y 2009-10, separate assessments were also done in HUF on protective basis. On all the assessments the assessee went on appeal for assessment years 2009-10 & 2011-12. For the assessment year 2009-10, the contention of the assessee was that (i) there is no transfer since the physical possession of the land was handed over to the developer on 01.01.2011 and not on 30.07.2008 and (ii) the value of constructed area coming to the share of co-owners is only to be considered as consideration to determine the capital gain but not the value of land transferred and if the value of land was to be taken into account, reference has to be made to the DVO to determine the fair market value of the land. Now the assessee is willing to file declaration under VsV for AY 2011-12 provided credit for taxes paid in the AY 2009-10 is given for the AY 2011-12.
<u>Answer</u>	Since the sum and substance of the disputed tax arising from the set of

	<p>transactions for both assessment years is one and same , committee opines that the above case of the assessee is covered under Question No.78 of clarifications issued by the Board in Circular No.21/2020 dt.4/12/2020. Hence, in committee's opinion, the assessee is eligible to file declaration.</p> <p>Disputed tax has to be paid based on the assessment for 2011-12 (being higher of the two tax liabilities). The regular taxes paid for the A.Y.2009-10 will be given credit for A.Y. 2011-12 after making necessary correction in challans for A.Y. by the A.O. The appeal for both the assessment years is settled in the declaration.</p>
<p><u>Question 16</u></p>	<p>The assessee filed his return of income for the A.Y. 2011-12 declaring total income of Rs. 21,85,130/-. The return of income was processed u/s 143(1). Later the case was reopened and the scrutiny proceeding were completed vide order u/s 147 dated 22.12.2017 by making addition towards Capital Gains of Rs. 36,05,170/- claimed as exempt income u/s 10(38) as unexplained credits. The aggrieved assessee filed the appeal before the CIT(A) and later the CIT(A) dismissed the appeal of the assessee. Aggrieved assessee preferred an appeal before the Hon'ble ITAT and Hon'ble ITAT passed the order dated 26.09.2019 remitting the matter back to the file of the AO with directions to furnish the assessee with reasons for reopening of the assessment in the case of the assessment and if the assessee challenges the same the Ld. AO shall dispose off such objections by passing a speaking order and thereafter proceed with the assessment in accordance with law and merit. The further action on the direction issued by the Hon'ble ITAT is required to be taken at the AO end.</p> <p>The assessee has filed Form-1 & 2 on 12.12.2020 to avail the benefits under Vivad Se Vishwas Scheme. Whether assessee is eligible for the scheme?</p>
<p><u>Answer</u></p>	<p>The committee opines that furnishing reasons and disposing objections is equivalent to giving the assessee proper opportunity as mentioned in Q7 of Board's Circular 9/2020. Therefore, assessee can avail the scheme.</p>

<p>Question 17</p>	<p>An assessee company has filed its return of income under MAT provisions but ACIT order is under normal provisions providing MAT credit. If the Assessee company is in the process of filing for Vivad Se Vishwas Scheme(VsV)</p> <p>(1) How Should MAT Credit be reflected in Part “E” “Information related to payment against tax arrears” in VsV form 1?</p> <p>(2) How/where to report shortfall in credit given for advance tax paid in Form 1 of VsV i.e Advance tax credit in Assessment order is less than the amount claimed in Income tax return filed for that year.How to report this in the Form ?</p> <p>(3) MAT credit in the assessment order has been given after computing surcharge & Cess on tax whereas it should have been reduced from the basic income tax before calculating surcharge & cess..Due to this, there is an increase in the tax liability. How to report this dispute in VsV Form 1 ?</p>
<p>Answer</p>	<p>If credit for MAT/ Advance tax not properly given while passing assessment order, tax payer can file petition u/s 154 before AO specifically requesting to dispose off the matter on priority as assessee is intending to go for VsV. Form 1 can be filed subsequent to 154 order. Part E of Form 1 seeks details of taxes paid subsequent to raising of demand. Hence advance tax credit, MAT credit not allowed by AO can't be reflected there. Also refer Rule 10 of the DTVSV Rules 2020 for computing disputed tax in cases where MAT credit is reduced.</p>

<p>Question 18</p>	<p>Once Form 3 or 5 are issued to the assessee and subsequently, if it is found that there is a mistake apparent, then is there any provision for rectification / revision of the said form 3 or 5 by the Designated Authority.</p>
<p>Answer</p>	<p>As per section 4(6) of the DTVSV Act 2020, Declarations by taxpayer in Form 1&2 (which are the basis of issuance of Form 3& 5), is found false at any stage, would render the proceedings under VsV to be non-est status and Form issued by the DA consequently stands withdrawn.</p>


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 (Member Secretary,
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