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CHAPTER

MEANING & COMPUTATION OF 'DISPUTED TAX' WITH PRACTICAL CASE STUDIES

4. UNDERSTANDING THE MEANING OF 'TAX ARREARS'

Under the Vivad se Vishwas Tax Dispute Resolution Scheme, all tax disputes of the “appellant”, involving “**tax arrears**” as defined u/s 2(1)(o) of the Direct Tax Vivad se Vishwas Act, 2020, are covered.

Section 2(1)(o) of the Direct Tax Vivad se Vishwas Act, 2020, defines the term “tax arrears” as, “tax arrear” means,—

- (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
- (ii) disputed interest;
- (iii) disputed penalty; or
- (iv) disputed fees.

4.1 UNDERSTANDING THE MEANING OF 'DISPUTED TAX'

The most significant and crucial aspect of any tax Dispute Resolution scheme is the concession/relaxation in the amount of tax to be paid in such Dispute Resolution scheme in lieu of the tax which is otherwise payable, had such Dispute Resolution scheme been not in existence.

In the 'Vivad Se Vishwas 2020' Tax Dispute Resolution Scheme, also, it has been provided that the assessee availing the benefit of this scheme shall be liable to pay only the '**disputed tax**', and will get immunity from paying the interest and penalty on such disputed tax.

So, the term 'disputed tax', or the 'amount of tax payable under the scheme', constitutes the formidable thrust of this scheme on which the whole foundation of this Dispute Resolution scheme rests.

Therefore, knowing the exact meaning, scope and coverage of this term of 'disputed tax', is an essential and crucial prerequisite to understand and comprehend this Dispute Resolution scheme for better and informed decision making concerning the opting of this scheme.

4.1.1 Definition of 'Disputed Tax', in the Statute

The definition of the term '*disputed tax*' is contained in **section 2(1)(j)** of the Direct Tax Vivad Se Vishwas Act, 2020.

Section 2(1)(j) of the Act, defines the term 'disputed tax' as under:

'Disputed tax', in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess, (hereafter in this clause referred to as the amount of tax), payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:

- (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date (read 31.1.2020), the amount of tax that is payable by the appellant, if such appeal, writ petition or special leave petition was to be decided against him;
- (B) in a case, where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date (read 31.1.2020), and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant, after giving effect to the order so passed;
- (C) in a case, where the order has been passed by the Assessing Officer on or before the specified date (read 31.1.2020), and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant, in accordance with such order;
- (D) in a case, where objection filed by the appellant is pending before the Dispute Resolution Panel u/s 144C of Income-tax Act as on the specified date (read 31.1.2020), the amount of tax payable by the appellant, if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;
- (E) in a case, where Dispute Resolution Panel has issued any direction u/s 144C(5) of Income-tax Act, and the Assessing Officer has not passed the order u/s 144C(13), on or before the specified date (read 31.1.2020), the amount of tax payable by the appellant as

per the assessment order to be passed by the Assessing Officer u/s 144C(13) of Income-tax Act;

- (F) in a case where an application for revision u/s 264 of the Income-tax Act is pending as on the specified date (read 31.1.2020), the amount of tax payable by the appellant, if such application for revision was not to be accepted:

Provided that in a case, where Commissioner (Appeals) has issued a notice of enhancement u/s 251 of the Income-tax Act, on or before the specified date (read 31.1.2020), the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit u/s 115JAA or section 115D of the Income-tax Act, or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

Human memory is conditioned to understand and remember the things, explained in a practical and demonstrative manner, better and faster, so an honest and sincere effort has been made in the ensuing paragraphs to explain and demonstrate the practical aspects and nitty-gritties concerning the meaning of the term 'disputed tax', and its computation, as defined in section 2(1)(j) of the Act (as mentioned *supra*), with the help of 'practical illustrations and case studies.'

4.2 PRACTICAL ILLUSTRATIONS & CASE STUDIES EXPLAINING THE MEANING & COMPUTATION OF 'DISPUTED TAX' U/S 2(1)(J) OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

'Disputed tax', in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess, (hereinafter referred to as the amount of tax), payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:

4.2.1 Case Study on 'Disputed Tax u/s 2(1)(j)(A) of the Direct Tax Vivad Se Vishwas Act, 2020

(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date (read

31.1.2020), the amount of tax that is payable by the appellant, if such appeal, writ petition or special leave petition was to be decided against him.

Assessee Name:	Mr. P
Assessment Year:	2017-18
Nature & section under which order has been passed	Regular Assessment Order u/s 143(3)

Additions/Disallowances: The addition of ₹ 50,00,000/- u/s 69A read with section 115BBE, taxable @ 78% (60% basic tax rate u/s 115BBE plus surcharge 25%), has been made, on account of considering the cash deposits made by assessee in his bank account during the demonetization period, from 9.11.2016 till 31.12.2016, as unexplained deposits.

Date of Passing of Order:	28.12.2019
Date of Receipt of Order & Demand Notice u/s 156:	28.12.2019

In 'e-Proceedings' window, the assessee receives the assessment order as soon as the order is uploaded by the AO in the registered e-filing a/c of the assessee.

The Computation of Income and Income-tax Demand u/s 156, pursuant to the said Regular Assessment Order for AY 2017-18:

	(Rs.)
Returned Income:	28,00,000/-
Addition on account of unexplained investment u/s 69A read with section 115BBE (taxable @ 78% as above)	50,00,000/-
Assessed Income:	58,00,000/-
Tax Liability (a):	39,87,370/-
Add: Interest u/s 234B/234C (b):	14,76,000/-
Total Tax Liability (c):	54,63,370/-
Less: Tax already paid (d):	87,370/-
Net Tax Liability (e):	53,76,000/-

Aggrieved by the said addition, the assessee Mr. P, has e-filed an appeal before CIT(Appeals), u/s 246A, in the prescribed Form 35, on 27.1.2020, i.e. within 30 days from the receiving of the assessment order u/s 143(3) on 28.12.2019.

Therefore, the appeal of the assessee Mr. P is pending on the specified date on 31.1.2020, before the specified appellate authority i.e. CIT(Appeals).

Therefore, this case is covered under section 2(1)(j)(A) of the Direct Tax Vivad Se Vishwas Act, 2020 and accordingly the Disputed Tax payable would be the amount of tax that is payable by the appellant Mr. P, if his appeal before the CIT (Appeals), was to be decided against him.

The assessee Mr. P has filed his appeal against the addition of ₹ 50,00,000/- made by the AO, u/s 69A read with section 115BBE of the Income-tax Act, on account of considering the cash deposits during the demone-tisation period as unexplained investments, in the regular assessment order for AY 2017-18. So, the 'disputed tax', in this case would be the income-tax and surcharge payable (excluding interest u/s 234B/C), on the addition of ₹ 50,00,000/-, as if the appeal of the assessee Mr. P, before the CIT (Appeals), has been decided against him.

Computation of 'Disputed Tax' u/s 2(1)(j)(A) of the Act, in this Case Study

Total Tax Liability (including Income tax & surcharge plus interest u/s 234B/234C) as per column (c) in Notice of Demand u/s 156, above:	₹ 54,63,370/-
Less: Tax Already Paid on Returned Income as per column (d) in Notice of Demand u/s 156, above	₹ 87,370/-
Tax Arrears Payable u/s 2(1)(o)(i) of the Direct Tax Vivad Se Vishwas Act, 2020	₹ 53,76,000/-
Less: Interest u/s 234B/C as per column (b) in Notice of Demand u/s 156, above, in respect of disputed tax	₹ 14,76,000/-
Disputed Tax u/s 2(1)(j)(A) of the Act	₹ 39,00,000/-

Computation of Disputed Tax as per Schedule A annexed to Form 1 (Declaration Form)

S. No.	PARTICULARS		Amount in INR
A	Total income as per order against which appeal filed or to be filed	A	58,00,000
B	Disputed income out of A	B	50,00,000
(i)	Relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order	B(i)	NIL

S. No.	PARTICULARS		Amount in INR
	has not been subsequently Reversed by the Supreme Court.)		
(ii)	Relating to issues other than B(i)	B(ii)	50,00,000
C	Disputed tax in relation to disputed income at B(i)	C	Nil
D	Disputed tax in relation to disputed income at B(ii)	D	39,00,000
E	Tax effect of enhancement, if any, by CIT(A)	E	Nil
F	Total disputed tax (C+D+E)	F	39,00,000
G	Interest charged on disputed tax	G	14,76,000
H	Penalty levied on disputed tax	H	Nil
I	Tax arrears (F+G+H)	I	53,76,000

Conclusion: Thus, in the above Case Study, envisaging the situation u/s 2(1)(j)(A) of the Direct Tax Vivad Se Vishwas Act, 2020, the income tax liability of the assessee Mr. P, as it existed before the opting of this Dispute Resolution scheme was ₹ 53,76,000/-. However, the disputed tax payable by him, if this Dispute Resolution scheme is being opted by him, comes out to ₹ 39,00,000/-. This reduction in tax liability under this Dispute Resolution scheme is on account of immunity from the payment of interest u/s 234B & 234C of the Income-tax Act of ₹ 14,76,000/-.

4.2.2 Case Study on ‘Disputed Tax u/s 2(1)(j)(B) of the Direct Tax Vivad Se Vishwas Act, 2020

(B) In a case, where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date (read 31.1.2020), and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant, after giving effect to the order so passed.

Assessee Name:	Mr. Q
Assessment Year:	2016-17
Nature & section under which order has been passed	Regular Assessment Order u/s 143(3)

Additions/Disallowances: The addition of ₹ 1,00,00,000/- u/s 68 read with section 115BBE, taxable @ maximum marginal tax rate u/s 115BBE, has been made, on account of considering the long-term capital gains

earned by the assessee Mr. Q, on sale of listed shares of M/s. Kappac Pharma, (a penny stock), on recognised stock exchange, as bogus/accommodation entry.

<i>Date of Passing of Order:</i>	28.12.2018
<i>Date of Receipt of Order & Demand Notice u/s 156:</i>	29.12.2018

The Computation of Income and Income Tax Demand u/s 156, pursuant to the said Regular Assessment Order for AY 2016-17:

Returned Income:	15,00,000/-
Addition on account of bogus long-term capital gain on sale of a penny stock u/s 68 read with section 115BBE (taxable @ maximum marginal tax rate)	100,00,000/-
Assessed Income:	1,15,00,000/-
Income Tax Liability (including surcharge & education cess) (a):	35,84,000/-
Add: Interest u/s 234B/234C (b):	12,20,000/-
Total Tax Liability (c):	48,04,000/-
Less: Tax already paid (d):	2,84,000/-
Net Tax Liability (e):	45,20,000/-

Aggrieved by the said addition, the assessee Mr. Q, has e-filed an appeal before CIT(Appeals), u/s 246A, in the prescribed Form 35, on 27.1.2019, i.e. within 30 days from the receiving of the assessment order u/s 143(3) on 28.12.2018.

However, the appeal of the assessee was decided against him by the CIT (Appeals) *vide* appeal order dated 29.1.2020, which has been uploaded on the registered e-filing account of the assessee on the same day and as such is deemed to be received by the assessee on 29.1.2020 only.

The assessee Mr. Q has yet to file an appeal before the next higher appellate authority, Income Tax Appellate Tribunal (ITAT), against the said CIT Appeal Order dated 29.1.2020.

In this case study, the appeal order, disposing of the appeal of the assessee Mr. Q, for the AY 2016-17, has been passed by the CIT (Appeals) on 29.1.2020, i.e. before the specified date of 31.1.2020.

Further, the assessee Mr. Q has a time period of 60 days from the date of receipt of the CIT (Appeals) Order on 29.1.2020, i.e. uptill 30.3.2020, to file an appeal before the ITAT against the said order.

Therefore, the time for filing an appeal against the appeal order passed by the CIT (Appeals) on 29.1.2020, has not expired as on the specified date of 31.1.2020.

So, this case is covered under section 2(1)(j)(B) of the Direct Tax Vivad Se Vishwas Act, 2020 and accordingly the Disputed Tax payable would be the amount of tax payable by Mr. Q, after giving effect to the appeal order dated 29.1.2020, passed by the CIT (Appeals) for the AY 2016-17.

The assessee Mr. Q has filed his appeal before the CIT (Appeals) against the addition of ₹ 100,00,000 made by the AO, u/s 68 read with section 115BBE of the Income-tax Act, on account of considering the long-term capital gain on sale of listed penny stock as bogus, in the regular assessment order for AY 2016-17.

So, the ‘disputed tax’, after giving effect to the order of CIT (Appeals), passed on 29.1.2020, in this case would be the income tax and surcharge payable (excluding interest u/s 234B/234C), by Mr. Q, on the addition of ₹ 1,00,00,000.

Computation of ‘Disputed Tax’ u/s 2(1)(j)(B) of the Act, in this Case Study

Total Tax Liability (including Income tax & surcharge plus interest u/s 234B/234C), as per column No. (c) in Notice u/s 156 of Income-tax Act, above:	₹ 48,04,000/-
Less: Tax already paid , as per column No. (d) in Notice u/s 156 of Income-tax Act, above:	₹ 2,84,000/-
Tax Arrears Payable u/s 2(1)(o)(i) of the Direct Tax Vivad Se Vishwas Act, 2020	₹ 45,20,000/-
Less: Interest u/s 234B/234C as per column No. (b) in Notice u/s 156 of Income Tax Act, above, in respect of disputed tax.	₹ 12,20,000/-
Disputed Tax u/s 2(1)(j)(B) of the Act	₹ 33,00,000/-

Computation of Disputed Tax as per Schedule A annexed to Form 1 (Declaration Form)

S. No.	PARTICULARS		Amount in INR
A	Total income as per order against which appeal filed or to be filed	A	1,15,00,000
B	Disputed income out of A	B	1,00,00,000
(i)	Relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently Reversed by the Supreme Court.)	B(i)	NIL