THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020: COMPILATION OF PRACTICAL ISSUES

-BY SHASHI BEKAL, ADVOCATE

Itatonline.org had requested the panel of experts to answers to queries arising on Vivad Se Viswas Schme to assist the tax consultants and tax payers. The forum received more than 400 queries on which have been answered by the panel of experts consisting of Dr. K. Shivaram, Senior Advocate, CA. Rajan Vora and CA Pradeep Kapasi.

For the benefit of the Tax professionals and tax payers, the important queries and answers in a tabular from. Repetitive queries have been avoided.

Further, ***CBDT has vide Circular No. 21 of 2020 dated December 4, 2020*** have provided certain clarifications. The Answers given by the Expert Panel were in consonance with the prevailing at the time. Most of the advises given by the Panel have been clarified by the Circular. However, for the benefit of the readers, the answers have been revised accordingly:

As the declaration under the scheme is only allowed until December 31, 2020, we hope this will help the readers to understand the scheme and address issues, if any.

The important dates: The Direct tax Vivas Se Vishwas Act, 2020 (VSVA)

Sr. No.	Date	Particulars
1.	January 31, 2020	Specified date as defined under the VSVA
2.	February 1, 2020	The Union Finance Minister Nirmala Sitharaman during her budget speech on February 1, 2020 ***(2020) 420 ITR 115 (st) (146)*** proposed to introduce a scheme at para 126 of the speech.

3.	February 5, 2020	The Bill is formally presented before the Parliament.
4.	February 12, 2020	The Cabinet approved certain amendments with a view to widen the scope of the Bill.
5.	March 4, 2020	Central Board of Direct Taxes (**CBDT**) vide ***Circular No. 7 of 2020*** ***(2020) 422 ITR 8 (St)*** provided clarifications on provisions of VSV in the form of FAQs.
6.	March 4, 2020	VSV Bill, 2020 passed in the Lok Sabha
7.	March 5, 2020	Press Release: CBDT issues FAQs on Direct Tax Vivad se Vishwas Scheme, 2020.
8.	March 13, 2020	VSV Bill, 2020 receives a nod from the Rajya Sabha
9.	March 17, 2020	VSV Bill, 2020 receives a nod from the President
10.	March 17, 2020	VSVA ***(2020) 422 ITR 121 (St)*** comes into force
11.	March 18, 2020	VSV Rules, 2020 are notified ***(2020) 423 ITR 1 (St)*** Notification of designated Authority (S.120(1), 120(2) ***(2020) 422 ITR 152 (St)***
12.	April 22, 2020	CBDT issues ***Circular No. 9 of 2020*** ***(2020) 422 ITR 131 (St)*** thereby ***Circular 7 of 2020*** stands withdrawn.
13.	June 30, 2020	Cut-off date for beneficial payment under the VSVA extended by Finance Ministry in view of COVID-19 as per Press Release dated March 24, 2020. (previously the date was March 31, 2020)
14.	December 4, 2020	CBDT issues ***Circular No. 21 of 2020*** with a view to provide further clarifications
15.	December 31, 2020	Cut-off date for declaration & beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 35 of 2020 dated June 24, 2020

16.	March 31, 2021	Cut-off date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Circular No. 18 of 2020 dated October 28, 2020.

The queries addressed are as under:

Sr. No.	Subject	Questions & Answers
1	Eligibility: Settlement Commission- Section 2(1)(a) of VSVA	**Question**: Department has filed Writ against the order passed by the Settlement Commission, can an assessee file declaration under the Scheme.? If yes how to compute the tax is dispute? As per definition of S.2(1)(a), "appellant" means— (i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date; Further, As per S 2 (1) (o) "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; or (iii) disputed penalty; or (iv) disputed fee, as determined under the provisions of the Income-tax Act. The declaration can be filed in respect of Writ petition is filed by the Department. There may be case where the writ is admitted or there may be case the writ may be pending for admission; the appellant can file the declaration. Further, CBDT vide Circular No. 7 of 2020 dated March 4, 2020 at Q. No 24, which reads as under: If the appeal is filed before High Court and is pending for admission as on 31 -1 -2020, whether the case is eligible for Vivad Se Vishwas?
		Answer: As per FAQ No. 63 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is not eligible for VSVA. On plain reading of the provision , earlier we have answered as under , As per definition of S.2(1)(a) , "appellant" means—

		(i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date; Further,As per S 2 (1) (*o*) "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; or (iii) disputed penalty; or (iv) disputed fee,* *as determined under the provisions of the Income-tax Act.* The declaration can be filed in respect of Writ petition is filed by the Department. There may be case where the writ is admitted or there may be case the writ may be pending for admission; the appellant can file the declaration. Further, CBDT vide ***Circular No. 7 of 2020 dated March 4, 2020*** at Q. No 24, which reads as under: *If the appeal is filed before High Court and is pending for admission as on 31 -1 -2020, whether the case is eligible for Vivad Se Vishwas ?* *Ans. " Yes" The same principle will apply to Writ also* As regards the computation of tax arrears is concerned, after passing the order under section 245D(1) of the Income tax Act, 1961 ('**Act'**) allowing the Settlement application to be proceeded with, a copy of annexure to the said application together with a copy of each of the statements and other documents accompanying such annexure shall be forwarded to the Commissioner along with a copy of the said order with the direction that Commissioner shall furnish a further report with in ninety days of the receipt of the said annexure. Normally, the Commissioner quantifies the amount to be settled as per their working. Accordingly, the on the basis of quantification tax can be calculated. The writ being filed by the department only 50% tax in disputes is to be paid. (Refer CBDT ***Circular No. 7 of 2020 dated March 4, 2020***, at Q. No. 28 & Ans.). On receipt of the certification the querist through their advocate on record can make an application to with draw the appeal of the revenue. On hearing other side, the Court will pass the order dismissing the appeal of the revenue.
2	Eligibility:	**Question**: The assessee has filed a petition before the Settlement commission, which is pending for admission as

	Settlement commission-Section 2(1)(a) of VSVA	on 31st January, 2020, can the assessee avail the benefit of the Scheme?
		Answer: As per FAQ No. 63 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is not eligible for VSVA.
3	Eligibility: Appellate Tribunal-Specified Date.	**Question:** Appeal before the Income tax Appellate Tribunal ('ITAT') was heard on 27th December 2019 and the order is pronounced on 2nd February, can the assessee approach under the scheme?
		Answer: As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for VSVA. As per Rule 34 (4) of the ITAT Rules, 1963, after hearing the appeal the order has to be pronounced and signed in the Court. Till the order is pronounced and signed the appeal is considered as pending before the Tribunal. Accordingly, the assessee can avail the benefit. The Hon'ble Supreme Court, in the case of ***Chattisgarh State Electricity Board v.s Central Electricity Regulatory Commission & Ors. AIR 2010 SC 2061*** held that the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The Hon'ble Supreme Court in the case of ***ITAT v. V.K Agarwal (1999) 235 ITR 175 (SC)*** held that unless order of a Bench is signed by all Members constituting it and is dated, it is not an order of Tribunal. The date of hearing is not relevant; it is the date of signing and pronouncement date. On the facts the appeal of the assessee was pending on the date specified date i.e. 31 -1 - 2020. The assessee is eligible under the scheme. In ***Pradeep K. R. Sangodker v. State of Goa & Anr.2007 (1) AIR Bom R 80, Ajay Singh and Anr and etc. v. State of Chhattisgarh and Anr. AIR 2017 Supreme Court 310***. The Courts have held that judgment has to be pronounced in open Court, signed and dated.
4	Eligibility: Appellate Tribunal-Rectification Application	**Question:** The Tribunal has passed the order against, which the rectification is pending, can an assesee avail the benefit of the scheme? Rectification application was pending for hearing as on 30 -01 -2020
		Answer: As per FAQ No. 61 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. Reads as under : Q "whether Miscellaneous Application (MA) pending as on 31 Jauary 2020

		will also be covered by the scheme .Answer: If the MA pending as on 31 Januray 2020 ia in respect of an appeal whaich was dismissed in limine (Before 31 st Jamuary , such MA is eeligible . Disputed tax will be computed with reference to the appeal which was dismissed . That is dismisal 'on the threshold' is only covered . If appeal is dismiised on merit and pendency of MA is not eligible . However according to us, Rectification u/s 254 (2) is continuation of appeal proceedings before the ITAT, hence one may take the view that even when rectification application is pending it can be construed as pending. let us take an example if rectification is allowed the appeal is restored, it relates back the date of filing of an appeal. Hence the assessee can opt for the scheme when the miscellaneous application is pending for final disposal. One may have to consider in following cases the Courts have held that order rejecting the application made u/s. 254(2) of the Act is not maintainable. ***Chem Amit v. ACIT (2005) 272 ITR 397 (Bom.)(HC), Safari Mercantile Pvt. Ltd. v. ITAT (2016) 386 ITR 4 (Bom.) (HC), CIT v. Singhal Industries (2017) 395 ITR 264 (Raj) (HC), Madhav Marbles & Granites v. ITAT (2012) 65 DTR 217 / 246 CTR 243 / 2012 Tax LR 465 (Raj.)(HC)*** However, in ***L. Shobanraj v Dy.CIT (2003) 260 ITR 155 (Karn) (HC) DCIT v. H.V. Shantharam (2003) 260 ITR 156 (Karn)(HC)*** The Hon'ble Karnataka High Court has taken a view that an appeal u/s. 260A lies against an order u/s. 254(2) of the Act on a substantial question of law. Now the issue being debatable if application is dismissed, the assessee may have to try filing a writ before High Court .
5	Eligibility: Belated Appeal	**Question:** Assessee whose appeal was to be filed before 30th January; however, he has filed on 2nd Februray before CIT (A) or Tribunal or High Court, can he avail the advantages of the Scheme.
		Answer: As per FAQ No. 59 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee should eligible for VSVA. Which reads as under Q.No. 59. *Whether the taxpayer in whose case the time limit for filing of appeal hasexpired before*31"'*Jan 2020 but an application for condonation of delay has been filed is eligible?* Answer: If the time limit for filing appeal expired during the period from 1"April 2019 to 31"Jan, 2020 (both dates included in the period), and the application forcondonation is filed before the date of issue of this circular, and appeal is

		admitted by the appellate authority before the date of filing of the declaration,such appeal will be deemed to be pending as on 31"Jan 2020. The assessee should approach the authorities concerned and may be requested to pass an order on condonation of delay. If the delay is condoned the assesee may be able to avail the benefit of the VSVA. Till delay is condoned the appeal may not be considered as a valid appeal is pending. Eg.If an delayed appeal is filed before the Tribunal before 31 -01 2020, and the matter is not yet fixed for hearing, in case the assessee desired to take advantages of the VSVA, the assessee can make an application to the Honourable Vice -President of the respective Zone or before the senior member of the Bench to fix the matter out of turn hearing only to decide the condonation of delay. If the delay is condoned the assessee can avail the benefit of VSVA. Refer: unreported judgement of Bombay High Court in the case of ***Awantika Pratap Singh Morarji v Ashwin Kumar (CIT) WP No 1691 of 2005 dt 9-07 -2014*** dealing with KVSS honourable High Court has directed the designated authority to grant the benefit of the scheme, when the delay was condoned by the Appellate Tribunal.
6	Computation: Tax deducted at Source	**Question:** While computing the tax arrear as per S.2 (o) of the Vivad Se Vishwas Act, 2020, whether TDS paid relating to the assessment has to be considered?
		Answer: Yes, TDS paid has to be considered, dealing with IDS scheme the Delhi High Court held that there is no bar for an assessee or declarant to claim credit of advance tax and TDS paid previously relating to assessment years for which it seeks benefit under. ***Kumudam Publications P. Ltd. v. CBDT (2017) 393 ITR 599 /247 Taxman 25/294 CTR 54 /150 DTR 33 (Delhi) (HC) SLP of revenue is dismissed; CBDT v Kumudam Publications P. Ltd (2020) 269 Taxman 207 (SC).*** The Direct Tax Vivad Se Viswas Act 2020 S. 2(k) reads as under "Income-tax Act", means the Income -tax Act, 1961; S.2. 2. reads as under "The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act." Accordingly, the TDS paid relating to the assessment has to be considered.

7	Eligibility: Appellate Tribunal-Pendency of Appeal	**Question:** Appeal is pending before ITAT as on 31-1-2020, one of the issue raised in the appeal is the issue which was not raised before the CIT (A), Can the assessee avail the benefit of the scheme in respect of entire appeal which is pending before the ITAT?
		Answer: Yes. As per FAQ No. 77 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee can raise such issues In ***Jehangir H.C. Jehangir v ITO (2015) 229 Taxman 392 (Bom) (HC)*** held that issue specifically taken before the AO could not be refused to be considered by Tribunal merely because the CIT (A) did not have any view on it. Order of Tribunal was set aside. Accordingly, the Querist can avail the benefit of VSVA. In respect of all the issues pending before the Tribunal In ***All Cargo Global Logistics Ltd. v. Dy. CIT (2012) 16 ITR 38 (SB)(Mum.)(Trib.)*** the SB held that, a pure question of law arises for which facts are on record of the authorities below, the question should be allowed to be raised if it is necessary to assessee the correct tax liability. Revenue has challenged the order of Special Bench before the High Court on other grounds and not on the issue of admission of additional grounds. ***CIT v. All Cargo Global Logistics Ltd. (2015) 374 ITR 645 (Bom.)(HC)*** Accordingly, the assessee can avail the benefit of the scheme in respect of entire appeal which is pending before the ITAT.
8	Eligibility: Cross objection	**Question:** Department appeal is disposed of on account of low tax effect. The Cross objection is pending for disposal as on 31-1-2020, can an assessee take benefit of issues pending in cross objection?
		Answer: CBDT ***Circular No. 21 of 2020 dated December 4***, 2020. Q.No. 60. Reads as under " *Whether cross objections filed and pending as on*31 *January 2020will alsobe covered by the scheme?* Answer: Yes. However, the main appeal is also required to be settled along with cross objections. In ***ACIT v. Ajay Kalia (2016) 157 ITD 187 (Delhi) (Trib)*** held that though the cross objection of the revenue is dismissed because of low tax effect, the cross objection could not be dismissed. Cross objection survives and considered as an appeal. In ***CIT v. Purbanchal Paribahan Gosthi (1998) 234 ITR 663 (Gau) (HC)***, the Court held that the memorandum of. Cross objection has to be accepted as if it

		was an appeal. In ***Badru (Since Deceased) through L.R. and Ors. v. NTPC Ltd and Ors. AIR 2019 SC 3385*** the Apex Court held that cross objection to be disposed of independently on merits. Accordingly, the assessee is eligible for VSVA. According to us where the departmental appeal dismissed as withdrawn due to low tax effect , the asseesse's cross objection can be considered as eligble for VVS . In case the revenue dismisses the application , the assessee may have to file before High Court .
9	Eligibility Appellate Tribunal – Order set a side	**Question:** ITAT has set aside the matter partly to the CIT (A) and one issue before the AO. The AO gave effect to the order of the Tribunal, and confirmed the addition against which separate appeal is pending before the CIT (A). The asseessee desires to avail the benefit of the scheme in respect of only the issues set aside to the CIT (A), matter is not taken up for hearing. Can the Assessee avail the benefit of the scheme?
		Answer: Yes. As per FAQ No. 66 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for VSVA. In such a scenario, the assessee should be permitted to treat the matter set aside to the CIT(A) as different from the appeal against the order of the Ld. AO as both appeals emanate from different orders of the AO. The assessee can avail an option to declare either of the two appeals or both under the VSVA. One may refer Q. No.14 which reads as under "Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues? " Further, "Refer to answer to question no 11. of ***CBDT Circular 9 of 2020 dated April 22, 2020*** Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must choose to settle all issues and then only he would be eligible to file declaration." On the facts of the querist there are two separate orders and two separate appeals. Accordingly, the querist can avail the benefit in respect of either of the two appeals or both under VSVA.
10	Eligibility: Deemed Appeal – Not filed	**Question:** For instance, the statutory period for filing of appeal has not completed as on January 31, 2020, making the appeal a deemed appeal for the purpose of VSVA, but the assessee was not able to file the appeal within the stipulated time on account of COVID-19. What would be the situation them?

		Answer: It is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of ***Suo Motu Writ Petition 2020 SCC OnLine SC 343*** wherein it has been held that to ease the difficulties faced by the litigants and their lawyers across the country in filing their petition/ applications/ suits/ appeals, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. Therefore, in the event where the last date for filing of appeal was on or after March 15, 2020, the same shall be extended according to the order. Therefore, the status of the deemed appeal under VSVA shall not be affected.
11	Advice: General- Opting for the scheme	**Question:** Which are the cases the assessee should opt for the scheme?
		Answer: There cannot be general guidelines, one has to take the decision considering the facts of each case. One may consider following issues may be worth settling; -Honourable Tribunal in many of the matters held that no disallowance u/s 14A of the Act can be made in respect strategic investments however the Honourable Supreme Court in ***Maxopp Investment Ltd (2008) 402 ITR 640 (SC)*** up held the disallowances on strategic investments also refer, ***Ashish Estate & Properties (P.) Ltd. v. CIT (2018) 257 Taxman 585 (Bom.)(HC)*** -The department may be in appeal before the High Court or before Appellate Tribunal. Now the Supreme Court hold the same against the assessee, hence such issues it may be desirable to settle by paying only 50% of tax in dispute. -In case of Bogus purchases, the Tribunal has estimated the GP and the assesees have filed an appeal against the order of the Tribunal to avoid the penalty and prosecution. In such cases it may be desirable for the assesees to approach the scheme. -Appeal matters relating to, bogus penny stocks, bogus share capital, bogus expenses etc are desired to be settled under the Scheme. -In Bombay High Court appeals since 2003 are pending for final disposal. There could be matters which are covered against the assessee by the Supreme Court, Jurisdictional High Court, or other High Courts considering the merits of the case the it may be desirable for such an assesses to avail the Vivad se Vishvas Scheme.

12	Eligibility: Search cases- Section 9 of VSVA	**Question:** The assesse has filed appeal against order u/s 143[3] before CIT appeal say for AY 2015-16 which is pending. The demand in dispute is 10 cr. Pending the first appeal there was search at business premises. The assesse was again assessed for search period u/s 153A including for the year for which appeal is pending i.e. AY 2015-16. Since there was no incriminating material for the relevant year same income assessed earlier was assessed again and demand of 10cr [as increased by interest] was raised. Assesse again filed appeal before another CIT appeal as after search case was centralised. the issue for consideration is eligibility to avail the benefit of scheme. original appeal filed and pending before regular CIT appeal can be settled under this scheme but same issue in another appeal pending before CIT appeal central is not eligible as the tax effect is more than 5 cr. moreover if assesse avails of scheme to settle first appeal agaist order u/s 143[3] will income assessed u/s 153A be rectified or second appeal will become infructuous as there is no other addition please advise.
		Answer: According to us, the matter cannot be settled under VSVA by virtue of section 9 (a) (i) of the VSVA. Which reads as under " The provisions of this Act shall not apply— (*a*) in respect of tax arrear,— (*i*) relating to an assessment year in respect of which an assessment has been made under sub-section (*3*) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees; The second appeal would be against an order under section 143(3) read with section 153A of the Act, on the basis of search initiated. Therefore, with the tax effect being more than Rs. 5 Cr, the assesee may not be eligible under VSVA.
13	Eligibility: Revision- Ordinance	**Question:** Application under section 264 of the Act filled in Jan 19, pending as on 31.1.20 i.e. Up to here Applicant is qualified for VsV, but PCIT does not consider press note dt. 24.3.20 extending dates & disposes off 264 by rejecting it on 31.3.20. Can Assessee now file VsV? Considering i) dispute is now not pending on specified dt. 31.1.20 but on 31.3.20 ii) Writ can be filled in High Court against 264, If yes then what would be the relevance of specified date? Also, then, all Appeals disposed after 31.1.20 also can be settled under VsV? kindly suggest.

		Answer: Yes, as on January 31, as per Section 2(1) (v) of the the assessee is an appellant under VSVAct, 2020. The order passed by the PCIT is not in accordance with the provisions of the Act and also ordinance. The querist is advised to file a rectification application before the PCIT. The PCIT may pass the order recalling his order. The assessee can avail the benefit of the Scheme. One may have to consider whether the PCIT has afforded the assessee a reasonable opportunity to be heard while deciding the matter. As there is no provision for appeal against order u/s 264 it may be desirable to file the Writ against the order u/s 264 of the Act.
14	Eligibility: Summary Assessment under section 143(1) of the Act	**Question:** The assessee has filed an appeal against the addition made at the time of processing of return of income in intimation order u/s 143(1). Such appeal is pending as on specified date. Can the assessee take benefit of the scheme under VsVS against such appeal? If the answer to the above question is affirmative, then it may further be noted that there is no option to select the order u/s 143(1) in the dropdown box provided by the income tax department in form no.1 on income tax portal. In such cases, how to file application in from no. 1 under VsVS?
		Answer: Refer ***Circular No 21 / 2020 dt 4-12 -2020*** Q.No. 71. Vivad se Vishwas forms do not contain a specific option to settle appeal filed against intimation u/s143(1) of the Act. Accordingly, please clarify how to settle such appeal, which is pending as on 31st Jan 2020 (or time to file appeal has not expired on 31 Jan,220. Answer: Appeal filed against intimation u/s 143(1) of the Act is eligible under Vivad se Vishwas if adjustment has been made under sub-clauses (iii) to (vi) of clause (a)of section 143(1) of the Act. As per Section 2 (1)(a) (ii) of the VSVA, an 'appellant' means, a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;

		The word "Order" is not defined under the Act. Since an order under section 143(1) of the Act is passed by an Assessing Officer defined under Section 2(7A) of the Income tax Act, 1961. Section 246A (1) (a) also refer order u/s 143(1) is also an appealable order. Therefore, in our opinion, the same should allowed under the VSVA. ?
15		**Question:** In a case where prosecution proceedings under any of the provisions of the Income Tax Act has been instituted against the assessee immediately after framing of assessment against him by filing a complaint in the Competent Court though against the Spirit of ***Circular No.24 /2019 Dated 09.09.2019 (2019) 417 ITR 5 (St)*** issued by CBDT since the penalty has not been confirmed by the ITAT and simultaneously, the Department withdraws the Complaint filed before the Competent Court, whether such withdrawal from the Court would tantamount to Non-institution of Prosecution Proceedings and the Benefit of the DTVsV could be availed by the assessee?
		Answer: Yes, the same in our view should amount to non-institution of prosecution proceedings and the assessee should be eligible under VSVA. In ***Tigrania Steel Corporation v. CIT [2017] 291 CTR 496 (Bom)(HC)*** has held that, the assessee had been discharged by Criminal Court before it filed its application under Kar Vivad Samadhan Scheme, he was entitled to avail benefit of scheme.
16	Eligibility: Immunity to Directors	**Question:** In a case where the proceedings under section 179 of the Income Tax Act have been instituted against the Directors in respect of tax liability of the Private Limited Company and the Company opts for the DTVsV Scheme, whether the immunity extended by the provisions of Section 6 of DTVsV apply to the parallel proceedings undertaken u/s.179?
		Answer: Since proceedings are initiated against the Directors in respect of the tax arrears payable by the Private Limited Company. If the Company opts under the VSVA, the immunity in our opinion should extend to the directors as well.
17	Eligibility: Review before High Court	**Question:** If a party has won in the ITAT, lost in the High Court and filed a Review Petition in High Court. Would he be able to take advantage of the scheme, if he so decides?

18		**Answer:** According to us yes; They can take advantages of the Scheme. Review is nothing but an extension of appeal. It can be considered as pendency of appeal. In the meeting had with the Chairman CBDT a request was made to clarify whether pendency of Rectification can be considered as pendency of Appeal. We have opined that pendency of Rectification application is also eligible for availing the benefit of the Scheme. The same principle can be applied to Review petition pending before High Court or even Supreme Court In ***State of Uttar Pradesh and Ors.v. Anil Kumar Sharma and anr (2015) 6 SSC 716*** Dealing with the review petition the Honourable Supreme Court held that, person, however high, is above the law. No institution is exempt from accountability, including the judiciary. Accountability of the judiciary in respect of its judicial functions and orders is vouchsafed by provisions for appeal, revision and review of orders. It seems the Govt is keen to settle all the disputes, according to us the querist can avail the benefit of the Scheme.
18	Eligibility-Remand report	**Question**: The Appellant filed his ITR by the due date, declaring the profits under S. 44AD, ITO did not consider the ITR issued notice under S. 147, notice could not be served because of some postal issues, case was decided ex party, Appeal filed before the CIT (A) along with Additional evidences, application for additional evidences considered, and remanded the matter to AO. AO sent the remand report and reduced the demand to 20%, rejoinder against the remaining 20% also filed before the CIT (A). CIT (A) transferred, New CIT (A) Joined but matter is still not fixed, Though the case is very good on merits, still to purchase peace of mind, assessee wish to opt for VVS scheme, can it be filed on the basis copy of remand report, if we move an application for early hearing to the CIT (A) about our willingness to opt for the scheme, it may give a wrong message to the CIT(A) and may pass the orders with the increased addition i.e. more than the addition confirmed in the remand report.
		Answer: There is one appeal pending on the specified date against the order of S. 147 read with S. 144 of the Income tax Act. Only this appeal can be settled under VSVA. There is no clarification on the implications of a remand report on the appeal. The querist can make an application to the AO to

		rectify the order. If the AO rectify the order the querist can file revised grounds of appeal before the CIT (A). If the order is rectified, the querist may have to settle only on the basis of rectified order. Otherwise the querist may have to settle the original appeal without taking in to consideration the remand report
19	Advice-Protective assessment	**Question:** One of my clients has been passed assessment order protectively. He has gone on appeal and the appeal is pending as on 31.01.2020 with CIT (A). If my client wants to go for the scheme what is your advice
		Answer: One may refer: Clarifications on provisions of the Direct Tax Vivad se Vishwas Bill, 2020 - reg. CBDT Circular No 9 of 2020 dt 22- 4 -2020 issued by CBDT, Q. No 35 Reads as under: Q. No 35 : If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered? Similarly, if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas? Answer: If the substantive addition is eligible to be covered under *Vivad se Vishwas,* then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee. Considering the intention of the legislature, if the assessee against whom the order is passed protectively, and the appeal is pending as on 31-01 -2020, the assessee can avail the benefit of Vivad se Vishwas Scheme. The order against whom the substantial addition is made have to be deleted. One may file rectification application or may point out in appeal proceedings. Normally the appeal relating to substantial addition and protective addition are always heard together. If the appeals are not fixed together the assessee may have to make an application to fix the appeals together at the time of withdrawal of appeal.
20	Advice-Rectification-section 154	**Question:** As per FAQ 25, if any rectification is pending before AO as on 31st January, 2020 then the same will be given effect while calculating disputed tax. In a case where there is some apparent mistake, however, rectification for the same was not pending as on 31st January, 2020 will the error be corrected? Will filing of rectification now help assessees?

		Answer: Ans to FAQ. 25 reads as under, "The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any." One may make an application even today and the AO may be requested to rectify the order before the application is filed under the Scheme. Rectification need not be pending as on 31 -1 -2020, the appeal must be pending. On the facts the appeal was pending hence the disputed has to be computed after considering the rectification order.
21	Eligibility: Revision – Section 263	**Question:** If the Revision Order under section 263 has been passed on 21st Jan, 2020 and the matter has been set-aside to the file of the AO with a specific direction where he has to freshly examine a claim of the assessee like deduction made under section 54F amounting to Rs. X. The order of the AO is pending. Can the assessee avail the benefit of Vivad se Vishwas Scheme?
		Answer: Yes, the assessee has a deemed appeal pending before the ITAT as on the specified date. Therefore, the assessee can avail the benefit of VSVA provided an appeal is filed within the stipulated time. Further, the time prescribed for filing an appeal before the ITAT is 60 days from the date of receipt of the order. Therefore, the assessee would also be able to take shelter of the decision of the Supreme Court in the case of ***Suo Motu Writ Petition (Civil) No(s).3/2020 dated March 23, 2020.*** wherein it has been held that to ease the difficulties faced by the litigants and their lawyers across the country in filing their petition/ applications/ suits/ appeals, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. It may be desirable to the assessee to file an appeal before the Tribunal explaining that the last date for filing the appeal was 21 st March however due to lock down, it could not be filed, now the querist is filing an appeal, the delay if any may be condoned. This may help to avoid any controversy.
22		**Question:** CIT(A) dismissed condonation of delay Description: Appeal against penalty order as filed with

	Eligibility – Condonation of delay	CIT(A) after delay of 10 days. CIT(A) dismiss condonation of delay. We are at appeal in ITAT against the order of CIT(A)for condonation of delay. whether we can opt for VSV Scheme against the penalty order passed by the AO.
		Answer: Please refer, *Circular No 21/20 dt 4-12-2020.* Q.No. 59. *Whether the taxpayer in whose case the time limit for filing of appeal has expired before*31"'*Jan 2020 but an application for condonation of delay has been filed is eligible?* Answer: If the time limit for filing appeal expired during the period from 1 April 2019 to 31"Jan, 2020 (both dates included in the period), and the application forcondonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration,such appeal will be deemed to be pending as on 31"Jan 2020. The assessee should approach the Honourable Tribunal to condonation of delay. If the delay is condoned the assesee can avail the benefit of the VSVA. The assessee can make an application to the Honourable Vice -President of the respective Zone or before the senior member of the Bench to fix the matter out of turn hearing only to decide the condonation of delay. The Tribunal may condone the delay and set aside the matter to CIT (A) to decide the matter on merits. Once the matter is set aside the appeal relate back to the date of filing of an appeal. The assessee can avail the benefit of the VSVA scheme. In Mumbai one can make online application to hear the matter out of turn to consider the application on condonation of delay.
23	Computation – Constitutional validity	**Question:** As per 2nd Proviso to Section 3 of VSVA "*Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed*"

		The assessee is not given shelter of a Supreme Court judgement or jurisdictional High Court judgement, which is not of the assessee but having identical facts. Please provide further clarity.
		Answer: Yes. On plain reading of the proviso, it seems to be *ultra vires* the Constitution. One may also refer Q. No 28 and answers given by the CBDT.The decision of the Honourable Supreme Court is binding on all courts, Tribunals and tax authorities across the country as per the provisions of Article 141 of the Constitution of India. One may refer ***CWT v Aluminium Corporation of India Ltd (1972) 85 ITR 167 (SC)***. There is no express provision in the Constitution like Article 141, in respect of the High Courts. High Courts has the power of superintendence over the Tribunals and authorities under Article 227 of the Constitution. In ***East India Commercial Co Ltd v Collector of customs AIR 1962 SC 1893*** observed that "we therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence and they cannot ignore it ". Similar view is expressed by the Honourable Supreme Court in ***Baradakant Mishra v. Bhimsen Dixit AIR 1972 SC 2466***. Accordingly, in an appropriate case it can be challenged before High Court
24	Procedure: Delay in Form 3	**Question:** An assessee filed his declaration under Vivad se Vishwas on 21.03.2020 and also paid due tax before filing declaration. The CIT had to issue form 3 within 15 days as per section 5(1) but even after lapse of 20 days Form 3 has not been issued. What will be the fate of declaration? Will it be deemed to have been rejected for no fault of the assessee ? Will it be deemed to never have been filed? Will it be deemed to have been accepted?
		Answer: From our understanding if your query, there is a delay on the part of the department to issue certificate i.e. Form 3 within a period of 15 days as per section 5(1) of VSVA. Given the current pandemic situation, it would be rational to assume a delay in the functioning of Offices. Rest assured, the declaration will not be deemed to be rejected or never been filed as it will be protected under the decision of the Supreme Court in the case of ***Suo Motu Writ Petition (Civil) No(s). 3/2020 dated March 23, 2020 (2020) 2020 SCC OnLine SC 343 www.itatonline.org)*** wherein it has been held that to ease the difficulties faced by the litigants and their lawyers across the country in filing

		their petition/ applications/ suits/ appeals, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. If the application is rejected, it is against the principle of natural justice. One can challenge the such order by filing writ petition. In ***C.B. Gautam v. UOI (1993) 199 ITR 530 (SC)*** the Court held that, though the provisions of Chapter XXC did not provide an opportunity to be heard to be given before order of purchase as also do not provide to disclose reasons recorded to affected parties on challenges as to being violative of Article 14 of the Constitution of India. In ***Dhakeswari Cotton Mills Ltd v. CIT (1954) (SC)***, where the principle of natural justice was violated, the Supreme Court set aside the assessment.
25	Eligibility – Specified date	**Question:** Penalty order issued and served upon the assessee on 31.1.2020. Whether the assessee can opt for Vivad se Vishwas scheme? The disputed penalty is defined in the act does not include cases where time to file appeal is not expired whereas disputed tax includes such cases as per the definition given in the act.
		Answer: Yes. The assessee will be considered to be a declarant as per section 2(1)(a) (ii) of VSVA. Therefore, the assesssee can opt for the Scheme.
26	Advice – Book entries	**Question:** The assessee desired to avail the benefit of the scheme and pay the tax there on there are certain cash credits which are shown as payable and not paid and there are share capital introduced by the parties who are not traceable. If the assessee pays the tax how they can pass the entries in the books of account?
		Answer: As regards loans if the assessee is not in the money lending business they may transfer the said amount to reserve then there may not be any tax liability, the provision of S. 56 or 28(i) or 41 (1) may not apply. As regards the shares which are issued and parties are not traceable one may transfer the amount to reserve however there is no immunity under the Companies Act. Apart from the above this is not voluntary disclosure scheme, it is only tax litigation avoidance scheme, hence one should not venture in to bringing the amount in to regular books of account, it may lead to other consequences. Also refer

		circular No 21/2020 dt 4-12 -2020 *81. In respect of some loan, addition was made U/S*68 *of the Act. Appeal pendingbeforeCIT(A) and the assessee is eligible for opting Vivad seVlshwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capitalaccount?* Ans .No, *Vivad seVishwas*is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee.
27	Eligibility – Specified date	**Question:** Appeal was pending on 31-1-2020 before ITAT, the matter was heard in the month of Feb 25 the order is pronounced and signed on 15th March can the assessee avail the benefit of the Vivad Se Vishwas scheme.
		Answer: Yes. As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for VSVA. However, the FAQ has not envisaged a situation where the matter is contested after the specified date A view can be taken, if the order is passed and pronounced by the Tribunal, when an application is made by the querist there is no pendency of appeal hence the assessee cannot avail the benefit of the scheme. One of the conditions is pendency of appeal when an application is filed. If the case is heard and order is not received then an avail the benefit of the scheme. Q. 36 of CBDT ***Circular No. 7/2020*** refers to a situation where the order of the ITAT is passed before January 31, 2020.
28	Eligibility- different issues	**Question:** I submitted my appeal with CIT(A) for two different addition made by AO. CIT (A) has delivered decision on 25.01.2020 by allowing one ground of my appeal. Now I can go to file second appeal with ITAT for delete addition allowed by CIT(A). appeal revenue effect for deleted addition is below prescribed limit for which department wouldn't go for file appeal with ITAT.

		My query is that whether I can go into scheme for only for second ground which not decided by CIT in my favour or has to go for both grounds in spite of the fact that such addition has been deleted by CIT(A).
		Answer: You can go under the Scheme for the ground not decided in your favour. *Please refer Circular No 7/ 2020 dt 4-03 2020 Q. no 36. Which reads as under ; Q. 36 : In a case ITAT has passed order giving relief on two issaes and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department will file appeal or not?* Ans : The *Vivad se Vishwas* allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. *Vivad se Vishwas* also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT. Accordingly, the querist can avail the benefit of the scheme.
29	Computation	**Question:** If Addition made by AO u/s 50C and Sec 56(2)(X) without referring to DVO and made addition. Aggrieved by Addition Assessee filed Appeal before CIT Appeal. Now Assessee want to go in Vivad se Vishwas scheme, then want will Purchase Cost of immovable property as mention above after opting under VSV scheme. Means, At the time of Sale of property, Purchase cost of property should have take Sec 50C value on which I pay tax under the scheme or original purchase cost for which I have bought the property? (Simple meaning Will Assessee be allowed to increase the Purchase cost to Sec 50C value if the pay tax under the Scheme)
		Answer: The assessee may have to settle the addition made by the AO. Cost will be as per the assessment order. It may

		be desirable to the querist to contest the appeal rather than opting the VSV Scheme.
30	Computation	**Question:** Facts: – Assessee had paid demand of say Rs. 100 under protest during the appellate proceedings before CIT(A). CIT(A) gave substantial relief and Assessee did not challenge the order before the ITAT. In the appeal effect order, the AO adjusted say Rs. 25 against the undisputed demand and refunded Rs. 60 (Short – Rs. 15). Thereafter, department preferred an appeal on two issues against the order of CIT(A) before the ITAT. On one of the issues, the demand was upheld by ITAT and on other issue ITAT has set-aside to AO for fresh investigation. The Assessee has filed an appeal before the High Court for both the issues i.e. disallowance and set-aside, and is now desirous of opting for VsV Scheme. Issues: – i. In point (ii) of Part E of Form 1 – details of challan paid has to be given in case taxes (either in full/ in part) have already been paid. How does one show the details of Rs. 15 (partial unadjusted challan) there? ii. Further, since on one of the issues, order was set-aside to the AO with specific directions to examine and verify the evidence afresh and the matter is currently pending with the AO, would tax be payable on this issue, if the Assessee opts for the VsV Scheme? If yes, would it be 100% /50%/Nil? [It may be noted that this issue was adjudicated in favour of the Assessee by the CIT(A)]. Reference is invited to Question no. 7 and Question no. 27 of the FAQs issued by CBDT on March 4, 2020. iii. Which section Assessee must select under column (2) Part B of Form 1 – Section under which order has been passed? (254 or 143(3) r.w.s 254)
		Answer: We would wish to answer to question no. ii first, so as to then answer other questions. ii) What you seek to settle is Assessee' appeal before HC and not an appeal filed by department. FAQs no. 7 has clarified that set aside issues can be settled. In such a scenario, since Assessee's appeal is being settled, 100% would be applicable and not 50%. iii) FAQ No. 7 & 27 make clear that with respect to set aside issues, declarant may fill the form as if an appeal is pending before CIT(A). Hence for set aside issue, it should be under section 143(3) r.w.s 254. And for other, as if the appeal is against ITAT order and pending before High Court. i) Considering the above two answers, there could be a situation wherein amount is payable and not refundable. Hence you may fill the details of challan paid has to be given

		in case taxes (either in full/ in part) have already been paid after reducing the refund of tax amount (without interest u/s 244A)
31	Computation - losses	**Question:** As per the proviso to Rule 9(2), if the declarant opts not to pay tax and carry forward the reduced losses, then in subsequent years the assessee shall be liable to pay interest. Suppose there are two pending appeals of A Ltd and for Year 1 the returned loss was Rs 15 lakhs and the addition made by the AO was of Rs 15 lakhs. For year 2, the returned income was 5 lakhs after set off of loss of year 1. In this, the addition made is of Rs 10 lakhs and also denied the loss i.e, assessed income became 30 Lakhs Here, the assessee wishes to opt for VsV scheme for both the years and exercise the option of carry forward the reduced loss. Whether Interest u/s 234B, 220 is leviable in year 2?
		Answer: Rules are subordinate legislation. Subordinate legislation can also be questioned on the ground that it violates article 14 of the Constitution of India as held in ***J.K Industroies Ltd v UOI (2008) 297 ITR 176 (SC)*** (at 178 - 179) Rules cannot beyond the Act. Though the Rule 9(2) states that Assessee shall be liable to interest it seems that the intentions would be to levy interest on non-VsV years. This is because, if you chose to file declaration for year 1 and year 2 both together, option to carry forward loss does not make any difference, unless there is a tax – arbitrage for the difference in tax rates. In both years, interest and penalty is waived off, and in such a case, whether you opt or not to set off and carry forward would not make a difference. Please note that this answer is specific to the facts of your case.
32	Computation – penalty	**Question:** The CIT(A) has given part relief in an appeal. The department is in appeal for that portion before ITAT, however the assessee has not preferred appeal for against the issues decided against him. 2. The AO has levied penalty on the total additions and against which the assessee is in appeal before CIT(A). 3. Now the assessee wishes the settle the quantum in the scheme by paying 50% of the tax on the disputed additions.
		Answer: You may settle the department appeal by paying 50%. There would be no penalty on those issues. On the issues which have been decided against you and accepted, you can settle my paying 25 % of penalty.
33	Computation - settled penalty	**Question:** Quantum appeal pending before ITAT filed by Assessee against adverse order passed by CIT(A). Pursuant

		to order of CIT(A), penalty proceeding initiated u/s 271(1)(c) and levied. Assessee paid the penalty. No appeal filed against penalty order and time limit elapsed. On opting of VSV scheme for quantum appeal, whether penalty already paid will be refunded?
		Answer: The amount paid as penalty should be allowed as set off. Comparison can be drawn where penalty is paid and quantum is deleted by a higher forum. The amount of penalty paid is refunded.
34	Eligibility – Specified date – condonation of delay	**Question:** My client was required to file appeal in Feburary,2016 but appeal was filed in Feb.,2018 whether the same will be considered in the Vivad Se Vishwas Scheme if the client is willing to settle the dispute
		Answer: Yes. As per FAQ No. 67 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for VSVA. In ***CIT v. Shatrusailya Digvijaysingh Jadeja (2005) 277 ITR 435 (SC)*** rendered in the context of similar provisions of KVSS, 1998, referring the judgement In the case of ***Dr. Mrs. Renuka Datla v. CIT (2003) 259 ITR 258 (SC)*** has held on interpretation of section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration under section 88 of the Scheme, it is not for the DA to hold that the appeal/revision was 'sham', 'ineffective' or 'infructuous'. In the case of ***Raja Kulkarni v. State of Bombay AIR 1954 SC 73***, the Supreme Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to decide and such determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court. Accordingly, the court held that for the afore stated reasons, orders of the designated authority rejecting the declarations filed by the assessee were to be quashed. No infirmity, to that extent, was found

		in the impugned judgment of the High Court. The appeal was to be dismissed accordingly. In ***Tirupati Balaji Developers (P.) Ltd. v. State of Bihar [2004] 5 SCC 1,*** in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent. It may be desirable to file an application for condonation of delay and get the matter fixed only for condonation of delay.
35	Computation	**Question:** In case where matter is argued before ITAT and the order is awaited as on 31.01.20, can the assessee opt to go for the scheme. If yes, whether the amount of tax payable will be after giving effect to such ITAT order or before?
		Answer: Yes. As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for VSVA. As per Rule 34 (4) of the ITAT Rules, 1963, after hearing the appeal the order has to be pronounced and signed in the Court. Till the order is pronounced and signed the appeal is considered as pending before the Tribunal. On the facts it may be debatable whether the assessee can avail the benefit of the Schme . The Hon'ble Supreme Court, in the case of ***Chattisgarh State Electricity Board v.s Central Electricity Regulatory Commission & Ors. AIR 2010 SC 2061*** held that the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The Hon'ble Supreme Court in the case of ***ITAT v. V.K Agarwal (1999) 235 ITR 175 (SC)*** held that unless order of a Bench is signed by all Members constituting it and is dated, it is not an order of Tribunal. The date of hearing is not relevant; it is the date of signing and pronouncement date. In ***Pradeep K. R. Sangodker v. State of Goa & Anr.2007 (1) AIR Bom R 80, Ajay Singh and Anr and etc. v. State of Chhattisgarh and Anr. AIR 2017 Supreme Court 310***. The Courts have held that judgment has to be pronounced in open Court, signed and dated. On the facts the appeal of the assessee was pending on the date specified date i.e. 31 -1 -2020. The asssessee should make an application before the Appellate Tribunal stating that the appeal was heard and the order has not been passed . The assessee desires to make an

		application under VVSA , the honourable members may not passs the order .Even when the matter kept for pronouncement at the time of pronouncement also the assessee can request the Honourable Bench not to pronounce the judgemnt as the aassessee desires to file an application under VVSA. The tax payable will be the on the amount of tax in dispute before the Appellate Tribunal
36	Eligibility	**Question:** I was submitted my appeal with CIT for two separate addition made by AO. CIT(A) delivered the decision on 08.02.2020 by deleting only one addition. Since Appeal effect is low so department will not go into ITAT while I can since I have time for that. My first query is that whether I can go into VSVS scheme only for the ground which CIT (A) not given the relief or has to go for both addition made by AO means for that ground too which CIT(A) allowed. Second query is that whether I have to fill appeal with ITAT first to go under vsvs scheme or can submit application for VSVS without filling appeal with ITAT.
		Answer: It seems that your appeal was pending as 31 -1-2020, however the CIT (A) delivered the judgment on 8 -2-20. If the CIT (A) has passed an *ex parte* order, the assessee should make an application under section 154 of the Act before the CIT (A) to recall the order as the opportunity of hearing was not given. It is desirable to file an appeal before the ITAT and also take a specific grounds of natural justice . One can request the ITAT to take up the matter for an early hearing . The Tribunal may set aside the matter to the CIT (A). Once the matter is set aside it relates back to the date of filing of an appeal.
37	Eligibility - penalty order	**Question:** A penalty u/s 271D has been imposed and order served upon the assessee on 25.01.2020. The time to file appeal against such order as on specified date is not expired. As per section 2 ‘disputed tax’ and ‘disputed penalty’ have been defined differently. While disputed tax includes cases where the order is served upon the assessee before the specified date i.e. 31.01.2020 and the time to file appeal against such order is not expired but it is not so in the case of disputed penalty. Circular issued by CBDT wherein some FAQs are there and Question 20 relates to penalty which states that where there is an appellate order passed by the CIT (A) and the time to file appeal before ITAT is not expired such case is covered.

		Answer: The Assessee qualifies as an appellant as per section 2(a)(ii) of the VSVA. The question thereafter is whether it is a "disputed penalty" as defined sec. 2(1)(i) is a penalty. The definition of disputed penalty has two limbs; (i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be; (ii) an appeal has been filed by the appellant in respect of such penalty; The Assessee qualifies in limb (i) above, however not in limb(ii). It may be seen that the two limbs do not bear a conjunction. Hence one can read that both limbs are cumulative and have to be fulfilled and other may read to say that both limbs are exclusive and do not need to be fulfilled together. In such a scenario, one in favour of the assessee should be taken, and hence it would be safe to conclude that in the present facts, the Assessee may be eligible for VsV. Though, Question no. 20 of the CBDT Circular No. 7/2020 dated March 4, 2020 buttresses this point, it would be worth mentioning that CBDT Circular is prior to the amendment to the Bill, and though the intention was to include such cases as well, it's a blatant error in drafting the Act + the amendments. One may also note the Circular No 9 of 2020 dt 22 -04-2020, answer to question No 20. once again clarified that the though there is no disputed tax appeal for penalty is disputed the assessee will be eligible to avail the benefit. Please also refer Circular No 21/2020 dt 4 -12 -2020 Q. No 80. Whether appeal against penalties that are not related to quantum assessment like penalty U/S 271B, 271BA, 271DA of the Actetc. are also waived upon settlement of appeal relating to ʻdisputed tax? Ans : No, appeal against such penalty order is required to be settled separately.
38	Benefit – immunity - merits	**Question:** Return under sec.153A filed withdrawing LTCG claimed u/s.10(38). Search Assessment Order passed u/s.153A r.w.s. 143(3) in November, 2017 assessing the entire sale proceeds of listed shares u/s.68 thereby, in effect, making an addition of the purchase price to the returned income. Penalty u/s.271(1)(c) initiated separately. Assessee filed appeal against the addition of purchase price only and charging of interest u/s.234A etc. due to delay in filing of

		return for the reason of belated supply of seized material. Penalty Proceedings u/s.271(1)(c) kept in abeyance by A.O. Appeal of the assessee partly allowed in respect of purchase price by CIT(A) in July, 2018 but interest was held to be mandatorily chargeable. Assessee filed an appeal before the ITAT in respect of interest only. In term of VSV, the assessee wants to avail of the DTVsV. What would be the fate of penalty proceedings u/s.271(1)(c) after DTVsV [though no appeal had been filed against penalty element on LTCG declared in return u/s.153A and the addition on account of purchase price deleted by CIT(A)]?
		Answer: As we understand from your query, penalty proceedings are in abeyance with the Ld. AO and quantum stands accepted. Only the purchase price of the shares was disputed by the assessee, which was allowed by CIT(A). Settlement of interest under VSVA will have no implications on the penalty proceedings. Since no appeal was filed by department against purchase price of shares, hence the question of penalty does not arise. As far as penalty on LTCG for shares is concerned, there is no immunity even if you go and file for VSV for the appeal pending before ITAT. Section 6 of the VSVA reads as under *“6. Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act* ***<u>in respect of tax arrear</u>****.”* Section 2(1)(o) of the VSVA defines “**<u>tax arrear</u>**” as under; *(o) “****<u>tax arrear</u>****” 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; or* *(iii) disputed penalty; or* *(iv) disputed fee,* *as determined under the provisions of the Income-tax Act.* Reading these sections together, it is clear that immunity is restricted to settlement of disputed issues only. However when the quantum is settled there cannot be any penalty in respect of amount settled .
39		**Question:** My questions are as under:

	Eligibility – Foreign Income - immunity	1) one of the condition for exclusion as per section 9(a)(iii) is "relating to any undisclosed income from a source located outside India or undisclosed asset located outside India" Now if a private limited company has received share capital from a party based in country outside India. Such share capital has been added u/s 68 of the Act as income of the assessee vide order passed u/s 143(3). Can department say that such share capital is undisclosed income of the assessee from the country outside India; hence, not eligible for the VSV scheme. 2) For exclusion from the scheme there are two instances given for prosecution "instituted" and prosecution "Initiated" which are reproduced below: Section 9(a)(ii): "relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;" Section 9(d): (d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income tax authority;" How to interpret both these clauses harmoniously, Kindly enlighten us.
		Answer: As per Section 2(2) of VsV Act, the words and expressions used in VsV Act and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them as per Income-tax Act. The term "Undisclosed income" is not defined in VsV Act. However, Section 271AAA, 271AAB defined undisclosed income as under; *(a) "undisclosed income" means—* *(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—* *(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or*

		(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or *(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted;* In the present case share capital must have been reflected in the books of accounts. Section 68 talks about unexplained credits in the books of accounts, which cannot to equated to undisclosed income. Hence your case may be eligible for the VsV Scheme. Just a point to ponder that the exclusion as mentioned in 9(a)(iii) is contrary to Black Money Act. Because such undisclosed income has to be taxed under the Black Money Act and not under Income Tax Act. The irony is that VsV only deals with tax arrears under Income -tax Act. As rightly pointed out Section 9(a)(ii) and 9(c) uses the word 'instituted' where as section 9(d) uses the word 'initiated'. It may be noted that in the VSV Bill Section 9(c) and 9(d) were combined wherein it used the word 'instituted'. The Circular no. 7 of 2020 dt. 4th March, 2020 created a confusion at FAQ no. 22. The revised circular no.9 of 2020 dt. 22 April, 2020 tried to resolve the issue. It is clear that the words 'instituted' and 'initiated' have been used differently, and cases where prosecution is instituted is out of preview of VSV. Initiation is of the process for prosecution. The AO cannot himself prosecute a person and he has to institute a criminal complaint with the Magistrate. Hence till the time a Tax Authority files a criminal complaint, a tax arrear can be considered under VSV and not thereafter. Though it appears to be a sheer drafting error while separating 9(d), to harmoniously interpret the sections of the Act, it can be said that section 9(d) talks about offences under Indian Penal Code and initiation in such cases can only start with filing of criminal complaint.

40	Computation – set off	**Question:** is the cash seized by department under seizer laying with department in PD Account, can be adjusted or treated to be paid through adjustment of PD Account
		Answer: If there is no demand pending against the assessee the asseseee can request for adjustment of cash seized against VVS liability. One may refer the judgement in ***Sicom Ltd v. DCIT (Bom) (HC)*** www.itatonline.org the court held that the burden is on the revenue to grant the refund. The honourbale court directed the Registrar of High Court to forward copy of order to the PCIT, and chairperson of CBDT.
41	Eligibility - Prosecution	**Question:** no case filed in court or notice from court -but on record of assessee only letter from CIT for prosecution – whether he can opt for vsv
		Answer: Yes. He can opt for VSVA. This has been clarified under Q. 22 vide CBDT Circular 7/2020 dated March 4, 2020 and also Circular No 9 of 2020 dt 22-04- 2020 also once again clarified that the assessee will be eligible to avail the benefit of the Scheme.
42	Computation – Cross Appeal	**Question:** IN original assessment under section 143(3) AO rejected books of account and estimated net profit @10 of turnover. On appeal CIT reduced the deemed profit from 10@ to 6 @ of turnover. Both assessee and department in appeal before ITAT. Now what is disputed tax and amount payable under Vivad se Vishwas scheme.
		Answer: As we understand, there is an assessee appeal against addition of 6 percent turnover and there is a departmental appeal on the addition of 4 percent of turnover. The assessee is at liberty to settled the assessee's appeal under VSVA or the Departmental appeal or both. The departmental appeal will be settled at 50 per cent of disputed tax amount.
43	Eligibility – CBI case	**Question:** Assessee is a Govt. salaried employee and in 2013 CBI filed a FIR against him and his spouce and the criminal case under Pmla is going on but no charge sheet is yet filed this. Assessee wife like to settle her pending case under Vivad SE Viswas. Is she is eligible to take benefit of Vivad SE Viswas.
		Answer: Given the brief facts, As per Section 9 (c) of VSVA, the provisions of this Act does not apply to a person in respect of whom prosecution for any offence punishable under the provisions of the Prevention of Money Laundering Act, 2002 has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts. Since the wife is not "that person" she should eligible under VSVA. In ***State, CBI v. Shashi Balasubramanian (2006) 289 ITR 8 (SC)***

		Dealing with S. 91 of the Kar Vivad Samadhan Scheme, the Court held that, Immunity under Kar Vivad Scheme is not available in respect of offences under Prevention of Corruption Act. Public servants who can never file declaration would not come within the purview thereof. Section 95 Clause (iii) would be attracted, if inter alia, any prosecution for any offence enumerated there under has been initiated on or before filing of declaration. On the facts no prosecution or charge is levied against the wife of the salaried employee of Govt, hence she can avail the benefit of the Scheme.
44	Eligibility - Penalties	**Question:** Penalties have been levied on my client u/s 271A for not maintaining books of accounts u/s 44AA & also u/s 271B for not getting the said books of accounts audited u/s 44AB for the same assessment year. These proceedings have been initiated under separate notices issued under separate sections and as such are two different penalty proceedings. I wish to settle Penalty u/s 271A but continue to contest penalty u/s 271B. Is it possible to do so without impacting or influencing the outcome of the future proceedings u/s 271B due to acceptance and settlement of penalty u/s 271B.
		Answer: As per FAQ No. 80 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is not eligible for waiver of penalty under section 271B, 271BA, 271DA etc. They have to be settled separately. As we understand, there are two separate penalty appeals. As per *explanation* to Section 5 of VSVA, a declaration under this Act 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 or writ petition or special leave petition 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. Therefore, the settlement should not impact the outcome of the other penalty proceedings.
45	Eligibility – Prosecution	**Question:** Please clarify that reply to question no. 22 in last line it has been clarified that "assessee covered under prosecution is not eligible to file unless prosecution is compounded before filing the declaration." For compounding assessee has to pay Tax, Interest, penalty relating to offence, further undertakes to pay compounding charges, withdraw the appeals. Is it mean that the assessee had first to pay

		compounding fee equal to 125/150 percent of tax sought to be evaded, compounding charges then only he can go for VSV. Then what benefit such assessee gets from this scheme. Further what will be the effect on right of compounding in future as compounding is one-time feature.
		Answer: Under the Scheme of Income tax, Quantum proceedings, penalty proceedings and prosecution proceedings are separate. Compounding charges are with respect to settlement of the prosecution proceedings and to avoid imprisonment; this has no bearing on the quantum proceedings. What the last lines means is that, where an assessee has compounded the matter i.e. although a case of instituted against him in the criminal court, he shall be eligible to settle the quantum appeal under VSVA. Circular No 9 of 2020 dt 22-04-2020 also clarified once again clarified the position on prosecution proceedings. Further, the right of compounding is not a one-time feature, please refer to Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated June 14, 2019. Future compounding will not be affected.
46	Eligibility – Condonation of Delay	**Question:** CIT(A) refused to condone delay in filing of appeal against penalty order. Assesse filed appeal against the CIT(A) order with the ITAT.
		Answer: Our suggestion will be make an early hearing of the appeal before the ITAT. If the assessee is able to explain the condonation of delay, The Tribunal will condone the delay hence the assessee can avail the benefit of the Scheme. One may refer the following case laws which may be relevant, in ***CIT v. Shatrusailya Digvijaysingh Jadeja (2005) 277 ITR 435 (SC)*** rendered in the context of similar provisions of KVSS, 1998, referring the judgement In the case of ***Dr. Mrs. Renuka Datla v. CIT (2003) 259 ITR 258 (SC)*** has held on interpretation of section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration under section 88 of the Scheme, it is not for the DA to hold that the appeal/revision was 'sham', 'ineffective' or 'infructuous'. In the case of Raja Kulkarni v. State of Bombay AIR 1954 SC 73, the Supreme Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to decide and such determination is possible only after the appeal is heard but

		there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court. Accordingly, the court held that for the afore stated reasons, orders of the designated authority rejecting the declarations filed by the assessee were to be quashed. No infirmity, to that extent, was found in the impugned judgment of the High Court. The appeal was to be dismissed accordingly. In ***Tirupati Balaji Developers (P.) Ltd. v. State of Bihar [2004] 5 SCC 1***, in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent. Please also refer Circular No 21/2020 dt 4-12 -2020 Q.No. 59. *Whether the taxpayer in whose case the time limit for filing of appeal hasexpired before*31"*Jan 2020 but an application for condonation of delay has* *been filed is eligible?* Answer: If the time limit for filing appeal expired during the period from 1"April 2019 to 31"Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31"Jan 2020.
47	Advice - Merits	**Question:** Appeal before CIT(Appeals) is pending regarding deduction under section 54F as on 31-01-2020. Even though one hearing took place before 31-01-2020, neither order nor enhancement notice was issued. In the meanwhile, notice under section 263 was issued on the ground that the assessing officer failed to apply section 50C in the month of August 2019. The assessee replied that as per the decision of the jurisdictional high court decision in the case of Renuka Phillip, section 263 cannot be invoked during the pendency of Appeal and the assessee is willing to avail the VVS scheme if the proceedings under section 263 are dropped. However, order has been passed under section 263 setting aside the assessment with a direction to the assessing officer to apply section 50C on 21-03-2020 in spite of the willingness of the assessee to avail VVS. Now that the assessment is set aside,

		whether the appeal would become infructuous and the assessee will not be able to avail VVS. Can he avail VVS in respect of the dispute with reference to section 54F only and dispute the application of section 50C by requiring the assessing officer to make a reference to valuation officer. Or can he file appeal to the Honourable Chennai ITAT against 263 order. Is the PCIT correct in setting aside the assessment when appeal is pending before CIT(Appeals) and it is possible that that the assessment order may be annulled for technical reasons like non issue of notice under section 143(2) and enhancement notice was not issued before 31-01-2020 even though the case was already heard by the CIT(Appeals) in February 2019 itself.
		Answer: It is desirable to file an appeal before the Tribunal against the order of revision. One can also request for an early hearing before the Tribunal. Considering the facts of the case the assessee may get the relief from the ITAT. Appeal regarding the issue of deduction under section 54F of the Income tax Act, 1961 does not become infructuous and the same can be settled under VSVA.
48	Computation - MAT	**Question:** The addition was made u/s.68 in the case of a Company. The assessee-company has b/f. MAT Credit of which part adjustment is made during the subject year in the Return filed and balance c/f. to subsequent year. Post addition u/s.68 made by AO, the Company is entitled to MAT Credit based on assessed tax under normal rate of tax being higher than as per ROI when Book Profit u/s.115JB remained the same. While raising demand, credit for MAT was given as claimed in ROI. The assessee-company filed appeal before 31-1-2020 which is pending on that day disputing addition u/s.68. MAT credit not allowed properly is not disputed in GOA but rectification application application is filed u/s. 154. Whether excess MAT credit that should have been granted be considered while arriving at disputed tax liability under VSV Scheme Act?
		Answer: The assessee should request the AO to pass the rectification order for granting MAT Credit. Once the rectification order is passed the assessee will get the credit for excess MAT Credit. It is desirable to the assessee to raise an additional ground before the CIT(A) as regards not granting of excess MAT credit. CIT (A) may direct the AO to grant the MAT credit or direct the AO to pass the order on rectification application.

49	Advice – demonetization case	**Question:** Assessee had been running an industry which was locked out and fuel material lying unusable was sold in cash in period prior to 'note bandhi' was held as non genuine by AO and addition has been made u/s 68. Appeal is pending. For the sake of settling dispute if party chooses VSV then in that event whether it will be justified to revise books of accounts reversing cash sales not accepted and its effect into inventory of goods (i.e adding back quantity sold earlier not accepted as genuine) and such revalued stock in revised accounts can be allowed to be treated opening stock next year. Is there any other problem in doing so?
		Answer: From our understanding, if the amount was disclosed in sales and tax has been paid on profit earned, the same cannot be taxed again under section 68 of the Act. Therefore, *prima facie* the case seems to have merit. If the assessee avails the benefit of the scheme. Whether consequential entries in the books of account can be passed or not is debatable. Each case may have to be judged from the facts of the case.
50	Eligibility – only penalty order	**Question:** my clients appeal for a.y 13-14 is pending before Tribunal and he does not want to take benefits under vsv and wants to continue the appeal, but penalty order for a.y 13-14 was passed by ITO and same is pending before CIT (A) and he wants to take benefit in vsv for only penalty order can he take benefit,
		Answer: As per Question No. 8 of ***CBDT Circular No. 9 of 2020 dated April 22, 2020***, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.
51	Computation - Loss	**Question:** If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?
		Answer: As per the amendment proposed in *Vivad se Vishwas,* in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the **amount** of tax related to such MAT credit or loss or depreciation in the **amount of** disputed tax and carry forward the MAT credit or loss or depreciation or (ii) to carry forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases.

52	Benefit - immunity	**Question:** In a case where an assessee opts for the DTVsV and a Final Certificate is issued by the DA in terms of the said Act, whether the Department would be debarred from reopening the assessment case u/s.148 of the Income Tax Act for the particular assessment year as per the provisions of section 5 of the DTVsV, even on the basis of any Audit Objections, fresh tangible material post assessment etc.??
		Answer: Once certificate is issued it is binding on the revenue, hence none of the mater(s) covered under an order of section 5 of VSVA shall be reopened. In ***Killick Nixon Ltd. v. Dy. CIT (2002) 258 ITR 627 (SC)*** dealing with S.87 of the Kar Vivad Samadan Scheme, the Honourable Supreme Court held that **,**upon declaration being made tax arrears being determined, paid and certificate issued under KVSS, there is no jurisdiction for the Assessing Officer to reopen the assessment by a notice under section 148 except where case falls under the proviso (2) of sub-section (1) of section 90 of the scheme and it is found that any particular material furnished in the declaration is found to be false.
53	Computation – rectification application	**Question:** 1. The assessee is before CIT(A) against certain additions U/s. 68 say 10 Lakhs as on 31.01.2020. There is a mistake in calculating 10 Lakhs ; hence petition U/s. 154 is filed and the same is pending today. Now the AO rectify the mistake and the addition is restricted to 6 Lakhs only. The assessee will file Declaration under VsVS for 6 Lakhs ? 2. The appeal is pending before CIT(A) as on 31.01.2020 against 2 following additions say First Addition 3 Lakhs Second Addition 5 Lakhs. THE CIT(A) passes appellate order now deleting addition of Rs.5 Lakhs. The declaration are to be filed for 3 Lakhs only ? 3. There is an addition of Rs.5 Lakhs U/s. 69 for the A Year 2013-14 and set off of losses are not allowed. Assessee has filed petition U/s. 154 as per the Board Circular that such set off is allowable upto A Y 2016-17. Now the rectificatory order is passed U/s. 154 allowing set-off of losses and cancelling the demand but penalty proceedings are pending. Hence, assessee can file declaration under VsVS for set off of losses so that the issue is settled.

		4. The AO has given appeal effect U/s. 251/254 for the issues deleted by the appellate authorities but no effect is given for the issues setaside for verification. Assessee has filed petition u/s. 154 and the same is pending. Can assessee file declaration under VsVS accepting the additions pending for adjudication.
		Answer: *First case:* Yes, assessee can file declaration for only 6 lakhs under VSVA. Please refer Circular no 9 of 2020 dt. 22-04 -2020 Q. No 50. The CBDT clarified that the AO will pass the rectification order. *Second case:* Yes, assessee will file declaration for only 3 lakhs. Provided, there is no departmental appeal. (since the numbers provided are for assumption purposes, implications of pecuniary jurisdiction on departmental appeals have cannot be considered) *Third case:* The assessee can avail the benefit of the Scheme and get immunity from imposition of penalty, provided there is an appeal or deemed appeal pending on the specified date. *Fourth case:* From what we understand from your query, matter has been set aside by the ITAT to the AO. There is no appeal pending on the specified date. However, the assessee can avail the benefit of the scheme if the assessee has a deemed appeal as per section 2 (1)(a) (ii) of VSVA.
54	Advice - Merits	**Question:** O is a company and subsidiary of PSU It is implementing a project and recently started production. It claimed the amortisation of lease premium over the lease period on time basis amounting to about 20 crores pertaining to current AY 2017-18. The AO disallowed the claim and the loss is reduced in assessment. Penalty proceedings are initiated for mis-statement/ understatement of income. The company is in appeal before CIT(A). Now the revenue authorities are pressurising the co to make a declaration under the scheme and pay tax and penalty as provided under the scheme. The appeal is pending before the CIT(A). Should the co opt for the scheme? I strongly feel that the company has good chance of success in appeal. Your considered opinion is sought.
		Answer: From our understanding of your query, there is a quantum appeal pending before CIT(A) & penalty proceedings are only initiated. All particulars are provided in the return of income.Loss was reduced due to change of opinion. The assessee has a fair chance of succeeding in appeal before ITAT in respect of penalty matter. It may be

		desirable to contest in appeal. One may refer ***CIT.v. Indusind Bank Ltd (2014) 369 ITR 682*** held that The assessee entered into lease transactions. The AO disallowed the claim of depreciation on the ground that the lease transactions were not genuine and levied the penalty. Appellate authorities found that there was no concealment of particulars of income nor furnishing of inaccurate particulars of income, accordingly deleted the penalty. On appeal by revenue dismissing the appeal the Court held that all materials were before the revenue hence deletion of penalty by the Tribunal was held to be justified.
55	Eligibility – multiple issues	**Question:** Assessing officer had made 5 additions, all are pending in CIT (appeal). Can the appellant choose to offer only 2 additions under Vivad Se Vishwas scheme.
		Answer: Please refer Circular No 9 of 2020 dt 22-04 2020 which reads as under. Q. no 14. *Whether assessee can avail of the Vivad se Vishwas for some of the* ***issues and not accept other issues?*** Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.
56	Benefits - immunity	**Question:** Whether by virtue of provisions of clause 5(3) of the VSV Bill, once application made is accepted and taxes paid thereon, whether the Assessee would be eligible for immunity from other laws (Benami, etc.)
		Answer: As we understand, none of the mater(s) covered under an order of section 5 of VSVA shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India. It can be interpreted that, matters which aren't covered under the said order can be reopened. It would be precarious to assume a blanket clearance for a particular assessment year. Once certificate is issued it is binding on the revenue, hence none of the mater(s) covered under an order of section 5 of VSVA shall be reopened. In ***Killick Nixon Ltd. v. Dy. CIT (2002) 258 ITR 627 (SC)*** dealing with S.87 of the Kar Vivad Samadan Scheme, the Honourable Supreme Court held that **,**upon declaration being made tax

		arrears being determined, paid and certificate issued under KVSS, there is no jurisdiction for the Assessing Officer to reopen the assessment by a notice under section 148 except where case falls under the proviso (2) of sub-section (1) of section 90 of the scheme and it is found that any particular material furnished in the declaration is found to be false. The assessee will be eligible for immunity from other laws.
57	Eligibility - Prosecution	**Question:** As per Question 22 of latest circular, in case, only notice for initiation of prosecution has been issued, Assessee can opt for VsV Scheme. Issue is regarding the amount of tax to be paid in this scenario?
		Answer: Yes. 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. **As per Circular No 20/ 21 dt 4-12-2020** Q.No. 74. *If the prosecution is for a different assessment year and the appeal for a* *different one, would it debar the assessee from the benefit ofthis scheme?* Answer: Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible
58	Eligibility – Revision under section 263	**Question:** Assessee filed an CIT appeal against the order u/s 143 of the Act. The case has not yet heard. Subsequently notice u/s 263 of the Act is issued by the CIT and as on 31.1.2020, order u/s 263 has not yet been issued. In Feb 2020, order u/s 263 is issued to revert the case back to A.O on certain issues without quantifying any demand. In such case, whether assessee can go under VSV. If yes, what would be the demand payable.
		Answer: As we understand, there is an appeal pending before the CIT(A). The same can be settled under VSVA as the order under section 263 of the Income tax Act, 1961 is for certain specific issues not being the ones under appeal. It may be desirable for the assessee to file an appeal before the Tribunal against the revision order.
59	Computation	**Question:** Addition on certain ground u/s 14A was made in Original Assessment Order us 143(3) say for Rs. 50 Lakhs.

		Subsequently addition of Rs. 50.00 Lakhs was again made on the same ground in Assessment Order u/s 143(3) r.w. 153(3). As per the present scheme addition for multiple orders for the same assessment year can be offered under the Scheme. As per Q 19 of Clarification dated 22.04.2020 if multiple orders are being settled disputed tax will aggregate amount of tax in both the appeals i.e Rs. 1.00 Crores instead of addition of Rs. 50.00 Lakhs in both the order for same ground. This will lead to double taxation of same addition for the same ground for the same assessment year.
		Answer: According to us only one declaration to be filed. The assessee may have to pay tax only on Rs 50 lakhs. If revenue insists for payment of tax on Rs 1 crores, it may lead to double taxation. One may challenge the said computation by filing Writ petition before High Court.
60	Eligibility - penalty	**Question:** in a case where tribunal has passed an order after 31/01/2020 confirming levy of penalty under section 271b of the act, and time for filing appeal before the high court has not yet expired, can the assessee avail the benefit of vsv scheme.
		Answer: Please refer Circular No 21 /2020 dt 4 -2 2020 Q. No 56: Appeal or arbitration is pending with appellate authority as on 31 St Jan 2020 (or time for filing has not expired as on 31[St] Jann 2020). However, subsequent to that date, and before filing of the declaration, the appeal has been disposed by the appellate authority. Whether it is eligible under Vishwas se Vishwas? If yes, how the amount under Vivad Se Vishwas shall be computed? Answer, Yes. Amount payable under Vishwas shall be computed with reference to the position of appeal or arbitration as on 31st January, 2020
61	Eligibility – Condonation of delay - ITAT	**Question:** If my client has not opned the traces site for one year and ex party order is given by CIT-A and came to know after 31/1/20, hence could not able to file appeal In ITAT. Wants to go in VsV.
		Answer: It is desirable to file an appeal before the Appellate Tribunal with condonation of delay. Request the Honourable vice president to fix the appeal for hearing only on condonation of delay. Once the delay is condoned it relates back and the assessee can avail the benefit of the VSVA**. Please refer Circular No 21 /2020 dt 4-12 -2020** Q.No. 59. *Whether the taxpayer in whose case the time limit*

		for filing of appeal has expired before 31"' *Jan 2020 but an application for condonation of delay has been filed is eligible?* Answer: If the time limit for filing appeal expired during the period from 1" April 2019 to 31" Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31" Jan 2020.
62	Eligibility – SEBI issue	**Question:** The assessee fulfils all the criteria for filing of declaration under VSV Act. However, in Feb, 2020 assessee received a summon from SEBI Special Court Mumbai for same issue which was involved in appeal. As per the notice the his attendance was enforced to answer a charge u/s 26(1) r.w.s 24(10 and section 27 of SEBI Act, 1992 r.w.s.193 of Code of Criminal Procedure for Violation of section 129A) of SEBI Act and Regulation 3(a), (b), (c), (d) and Regulation 4(2)(a), (e) of SEBI (Prohibition of Fraudulent and unfair trade practices). Will assessee still be eligible for the scheme or will he be covered by exceptions as provided in section 9 of DTVSV Act, 2020
		Answer: As we understand, the assessee fulfils all the criteria to be eligible under VSVA. Section 9 of VSVA is an exhaustive list to whom the Act shall not apply. As the case of the assesee does not fall under any of the criterion under section 9 of VSVA. The assessee can avail the benefit of the scheme.
63	Eligibility – Miscellaneous application	**Question:** One of my relatives has assessment completed ex-parte. Unfortunately, none of his tax advisors have represented his case before CIT(A) and ITAT, even though appeals were filed before them in time. HON'BLE ITAT has passed order ex-parte with a direction that the matter may be heard again if the assesses proves genuineness of not being able to represent facts and plead his case before ITAT. He has filed MA before ITAT with affidavit from his tax consultant confessing negligence on his part for nor effectively handling all the tax related litigation before

64		authorities. Such MA is pending to be disposed of by ITAT as on the cut off date. Can he take benefit under this scheme in so far as disputed tax involved in the order which is subject matter of the MA,
		Answer: Yes, this has also been clarified by CBDT ***Circular No. 21 of 2020 dated December 4, 2020***, an MA pending on the specified date can be eligible for VSVA only if the appeal was dismissed *in limine.* If the ITAT has set aside the matter to CIT (A) to decide the matter on merit the appeal is pending as on the specified date.ie 31-1-2020. If the appeal is set aside to the AO, it is desirable to file a Miscellaneous application before the Tribunal and pray for recalling of the order. The miscellaneous application can be filed within six months of the receipt of the order. In ***Devendra G. Pasale v ACIT (2010) 333 ITR 263 (Guj) (HC)*** has held that even ex parte order passed on merits can be set aside as per Rule 24 of the ITAT Rules also refer. ***Lalitnirman Business Development (P.) Ltd v ITO (2018) 259 Taxman 23 (Bom) (HC)***
64	Eligibility – Specified date	**Question:** Can I still go for Vivad se Vishwas scheme when the CIT (A) has passed the order in May, 2020. Appeal was filed in 2015. Since the Appeal was pending with CIT(A) on the designated date, i.e., 31-01-2020.
		Answer: If the CIT (A) has passed the ex parte order without giving an opportunity of hearing, the assessee should file an rectification application before the CIT(A) to rectify the order. The assessee can also file an appeal to Tribunal on the grounds of violation of principle of natural justice and make an application for an early hearing of appeal.If the Tribunal set aside the appeal to CIT (A) to decide the appeal on merits giving an opportunity of hearing the assessee can avail the benefit of the scheme. One has to consider whether the assessee has given an intimation to the CIT (A) in writing that the assessee is desirous of availing the benefit of the scheme still the order was passed by the CIT (A) one may approach the High Court by way of writ petition.
65	Eligibility – prosecution cases	**Question:** The assesse has been issued a show cause notice u/s279(1) of the income tax act asking for an explanation as to why prosecution u/s278B should not be initiated on account of failure to deposit TDs on time.

		Section 9 of the Scheme of the VSV act provides for certain exceptions wherein the provisions of the Scheme would not apply. – One of them being in Cases in which prosecution under the Act has been instituted on or before the date of declaration. Since the Prosecution has still not been instituted the assese is trying to opt for relief under the VSV scheme but is unable to do so as the drop down in the form is not facilitating the exercise of this option. Please advice.
		Answer: Yes, your understanding is correct. The assessee is eligible to avail the benefit under VSVA, the same is also clarified by CBDT Circular 9 of 2020 dt 22-04 2020. Q. no 22 Ans. 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. Regarding any shortcomings on the portal it is advisable to approach your concerned Designated Authority with your issue.
66	Eligibility – Specified date - Delay	**Question:** Assessing officer had passed the order in the month of October-2019 and we have filed appeal before the CIT on 22.02.2020 through online. And due to not available of some documents for filing of condonation of delay we have not filed physically before the CIT. Now my query is whether I can file declaration application under section 3 of VSV Act, 2020 and can I avail the benefits of the VSV scheme?
		Answer: As per FAQ No. 59 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020.*** The assesee is eligible for the scheme once delay is condoned provided a valid application for condonation of delay is made before December 4, 2020. One may to find out when the assessment order was received by the. As the appeal was filed on 22-02-2020, it is desirable to file an application for condonation of delay by filing an affidavit and explanation for condonation of delay Once delay is condoned, the appeal relates back the due date of filing of an appeal. Accordingly, the assessee can avail the benefit of the scheme. The assessee should approach the CIT (A) with the request to take up the matter for an early hearing of

		application for condonation of delay. In case CIT (A) rejects the application for condonation of delay, the assessee should file an appeal before Tribunal and request for early hearing of the appeal. The Tribunal will take up the application for early hearing. Once the Tribunal decides the issue of condonation of delay and send the matter to CIT (A) to decide the matter on merits, the assessee can avail the benefit of the scheme.
67	Eligibility – Specified date	**Question:** I filed the DTVSV application during first week of May 2020 and sent the acknowledgement to assessing Officer and copy of the acknowledgement also sent to CIT(A) by mail on 25/05/2020. Today I received the enhancement notice from the CIT(A) asking to file the reply on or before 05/06/2020. I request you clarify whether CIT(A) has any Jurisdiction over the enhancement after filing the DTSV application
		Answer: The amendment proposed In the *Vivad se Vishwas* allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31" January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued. According to us issue of enhancement notice is after filing the declaration and also intimating is illegal and against the spirit of the scheme. The assessee should write to the CIT (A) to with draw the enhancement notice. In case enhancement notice is not withdrawn the assessee can write to the Chairman CBDT to take necessary remedial action. If there is no response from the CIT (A) or CBDT, the assessee can file writ before the High Court praying for quash the enhancement notice.
68	Procedure – proof of withdrawal	**Question:** In Form 4 of Vivad se Vishwas there is a requirement of mandatory attachment regarding proof of withdrawal of appeal. The appeal relates to Income Tax Appellate Tribunal and as per Vivad se Vishwas Act appeal pending before Income Tax Appellate Tribunal are deemed to be withdrawn from the date Certificate in Form 3 is received. Form 3 Certificate received from CIT on 21.05.2020. Now the System is asking to submit Form 4 but there is no proof of withdrawal of appeal to attach. Sub section 2 of Sec 4 of Vivad se Vishwas Act, 2020 —upon filing of declaration any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrears shall be deemed to

		have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.
		Answer: Yes, your understanding is correct. For matters before the ITAT & CIT(A) there is no requirement to submit a proof of withdrawal. It is only after getting certificate from the designated authority, the assessee has to intimate to the CIT(A), if the appeal is pending before CIT (A). If the appeal is pending before the ITAT the assessee has to intimate to the Registrar of ITAT giving details of ITA No and Bench. The Tribunal will pass the consequential order.
69	Computation – Covered appeal	**Question:** An issue in appeal was decided in favor of assessee in A. Y. 2010-11 by CIT(A) appeal. The same issue is pending before CIT(A) in appeal for A.Y.2012-13. Whether assessee shall be eligible for tax rate of 50% of the applicable tax rate under VSV?
		Answer: No, As per second proviso to section 3 of VSVA, to avail the benefit of 50 per cent of disputed tax, the issue should be covered by an order of ITAT or higher forum.
70	Computation – substantive - protective	**Question:** A.O. had made addition of Rs. 1.68 correction on protective basis in A. Y. 2015-16 and on substantive basis in A. Y. 2014-15 in the case of a company. Can assessee offer protective addition to tax in A. Y. 2015-16 so that substantive addition in A. Y. 2014-15 shall be deleted? The clarification issued by CBDT is that if substantive addition is offered to tax in VSV then protective addition shall be deleted. Here the case is vise versa.
		Answer: Considering the intention of the legislature, if the assessee against whom the order is passed protectively, and the appeal is pending as on 31-01 -2020, the assessee can avail the benefit of Vivad se Vishwas Scheme. The order against whom the substantial addition is made have to be deleted. One may have file rectification application or may point out in appeal proceedings. Normally the appeal relating to substantial addition and protective addition are always heard together. If the appeals are not fixed together the assessee may have to make an application to fix the appeals together at the time of withdrawal of appeal. Representation is made to the CBDT to clarify the issue on protective assessment.
71	Computation – loss – only penalty	**Question:** company claimed expenses u/s 35D which were allowed in assesement. then AO reopened a case and disallowed the same and said it was wrongly allowed earlier

		which resulting in decreased in losses and levied penalty u/s 271(1)(c). now case is pending before ITAT for the allowance of an expenditure and Appeal is pending before CIT(A) for penalty u/s 271(1)(c). Company is a loss-making company and the case is related to AY 2007-08
		Answer: From our understanding, if you wish to settle the dispute under VSVA, as per FAQ 8 of CBDT **Circular 9 of 2020 dated April 22, *2020,*** Settlement of Quantum will result in settlement of penalty issue. However, only penalty issue cannot be settled
72	Computation – waiver of interest	**Question:** What will be the treatment of refund earlier granted as per intimation u/s 143(1)(a) in VsV Act, 2020? Also, whether the interest levied under section 234D will also be waived if the assessee opt for VsV Scheme.
		Answer: Please refer S. 234D (2) which says that where as a result of an order u/s 154 or 155 or 250 or 254 or 260 or 262 or 263 or 264 etc is passed the amount of refund granted under Sub section 143(1) is held to be correctly allowed, either in whole or in part as the case may be then interest chargeable, if any, under section sub -section (1) shall be reduced accordingly. Accordingly, once the issue is settled under VSVSchme, the AO has to pass consequential order reducing the interest.
73	Computation – waiver of interest & penalty	**Question:** An appeal before CIT(A) was filled in January 2020 contesting part of the addition. Now the appellant wants to contest remaining additions by filing additional grounds. Whether appellant will be eligible for waiver of interest and penalty on the addition which is being contested by filling additional ground under VSV scheme.
		Answer: It is desirable to file the revised grounds of appeal along with additional grounds which was not taken up at the time of filing of the appeal. The assessee can make an application before the CIT (A) to admit additional grounds of appeal. If CIT (A) admits the additional grounds, the assessee will be eligible for waiver of interest, penalty on the addition contested by filing an additional ground.
74	Eligibility – Prosecution	**Question:** In a case where Prosecution Complaint under the provisions of Section 276C r.w. 279 of the Income Tax Act has been filed against the assessee in the Competent Court however, till date, no summons/notices/process has been issued by the Magistrate nor the Court Fees has been paid by the Department, Whether mere filing of Complaint in the

		Court could tantamount to "Institution of Prosecution Proceedings" and if not, Whether the Benefit of the DTVsV could be availed by the assessee?
		Answer: Please read question No 22 and answer there in which reads as under "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." Filing of complain may be treated as "Institution of Prosecution Proceedings". Accordingly, the assessee cannot avail the benefit under VSVA. It seems the assessee has not received any intimation from the Court or from the Office of the Assessing officer as regards the launching of the prosecution. Assessee can consider filing the application for compounding the alleged offences. If the application for compounding the offences are accepted, the assessee can avail the benefit of the Scheme. If compounding application is rejected only on technical ground that the prosecution has been instituted though not served, the assessee can explore the possibility of filing a writ against the rejection of compounding application only on technical ground.
75	Procedure - Withdrawal	**Question:** can we withdraw of application under vsva ? if yes, then what is the procedure for that.
		Answer: If payment is not made after receipt of form 3, it will be assumed that no application under the scheme has ever been made. You may write to the designated authority that your assessee is not interested in availing the benefit of the scheme hence the application may be treated as withdrawn.
76	Computation – Covered matter	**Question:** As per FAQ no 39 (Circular no 9 of 2020) dated 22 April 2020, if the ITAT has decided the issue in favour of tax-payer for any prior year, then the tax-payer would be eligible to compute disputed tax @ 50% on similar issue pending before the ITAT in later years. Can the said principle be applied in case the CIT(A)has decided the issue in favour of tax-payer in year 1 and similar issue is pending before CIT(A)in year 2
		Answer: The same is included as 2nd proviso under section 3 of VSVA. As a proviso it is a carve out from the meaning of the section and the same cannot be given a wider interpretation to include more than what is expressly

		mentioned. Accordingly, the disputed tax @ 50 % of tax cannot be made applicable where the CIT (A) has decided the issue in favour of the assessee.
77	Eligibility – Specified date – condonation of delay	**Question:** AY 2012-13 assessment order passed u/s 144 on 20/12/2019. Appeal not filed. Can the assessee take any benefit with VSV SCHEME.
		Answer: As we understand from your question, no appeal is filed until date. For eligibility under VSVA, an appeal or deemed appeal is required to be pending on the specified date i.e. Jan 31, 2020. That said, it is advisable to file an Appeal with an application for condonation of delay. The issue of condonation of delay has not yet been clarified by the department. VSVA being a beneficial legislation, a beneficial interpretation in favour of the tax payer out to be given. Therefore, there is a possibility that upon the delay being condoned, the appeal will be eligible under VSVA. It is desirable to make an application before the CIT (A) to decide the issue of condonation of delay before proceeding further in respect of merits of the case
78	Eligibility – Penalty waiver	**Question:** In our case, the CIT(A) has passed order as on 20.11.2019. Further the AO has passed order giving effect to the order of CIT(A) as on 10.12.2019. However, with regards to penalty proceedings, the AO has passed penalty order as on 27 February 2020 which is after designated date i.e. 31.01.2020. The query is can we consider our case with regards to penalty order under Vivad se vishwas.
		Answer: Reference is drawn to Question No. 8 of CBDT ***Circular No. 9 of 2020 dated April 22, 2020,*** wherein it is clarified that, if both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form covering both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending. The assessee may consider filing an appeal against the order of CIT (A) dt 20-11-2019 with condonation of delay and request the CIT (A) to decide first only on condonation of delay. If CIT (A) condone the delay the assessee can take the advantages of the scheme. Please refer unreported judgement of Bombay High Court A***wantika Pratap Singh Morarji v Ashwin Kumar (CIT) WP No 1691 of 2005 dt 9-07 -2014*** dealing

		with KVSS honourable High Court has directed the designated authority to grant the benefit of the scheme, when the delay was condoned by the Appellate Tribunal.
79	Eligibility – Penalty – Search cases	**Question:** In a search, certain declarations were made. This was included in the return filed u/s 153A. In concluding the 153A assessments, certain other additions were made which are contested in pending first appeal. The penalty notice u/s 271AAB has been issued in respect of the declaration and no order is yet passed. In case, VSV Scheme is opted for, can we, in law, expect the penalty u/s 271AAB to be dropped? Our understanding is that, the penalty does not relate to “tax arrears” nor is the declared amount an issue under appeal. Will be grateful to your views.
		Answer: If the quantum is pending as on 31 -01 2020, the assessee can opt for the scheme in respect of quantum appeal. Once quantum appeal is settled the dept cannot levy the penalty. Please refer Q. No 45 CBDT *Circular No. 9 of 2020 dated April 22, 2020, wherein the CBDT clarified that As per S.6 subject to the provisions of S.5 DA shall not initiate any proceedings or impose or levy any penalty.*
80	Eligibility – beneficial payment	**Question:** Can the taxpayer opt for the scheme even if the pending appeal as on 31 Jan 2020 is disposed against the taxpayer before 31 December 2020 or last date to be notified (with additional 10% payment of disputed tax)?
		Answer: As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***, the assessee is eligible for the Scheme. However, the FAQ has not envisaged a position where the matter is contested after January 31, 2020 on merits. Please refer Q. No1 CBDT *Circular No. 9 of 2020 dated April 22, 2020, www.itatonline.org* Ans : Appeals pending before the appellate forum as on the 31 St day of January 2020 (Specified date) are covered. From what we understand, the appeal has been disposed by a competent authority after the specified date. Ie 31-01 2020 and appeal is pending in higher forum. The assessee can avail the benefit of the scheme, if the assessee is able to show that the appeal disposed by the competent authority without following the due process of law, eg. Ex parte. In such a situation the assessee can take the ground of principle of natural justice. If the appellate forum set aside the appeal to the competent authority to decide the appeal in accordance with law. when the appeal is set aside, the assesssee can avail the benefit of the VSVS.

		On facts it seems the assessee may not be covered under the VSVS.
81	Computation - refund	**Question:** Are we eligible to claim refund under vivad se Vishwas scheme? Eg. Demand order under dispute at appellate tribunal (tax Rs. 700 + interest Rs. 300) = Rs. 1000 Payment made towards demand Rs. 850 In above case, can we get refund of Rs. 150 (payment 850 less tax demand Rs.700) Please let me know your opinion on above.
		Answer: Yes, according to explanation to section 7 of VSVA, it is clarified that where the declarant had, before filing the declaration, paid any amount under the Income-tax Act in respect of his tax arrears which exceeds the amount payable under VSVA, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount.
82	Computation - refund	**Question:** As per form 1 and 2 of VSV the amount payable before 31/12/2020 works out to Rs.2,27,11, 500/-.However as per Rectification order for AY 2015-16 there is refund of Rs.2,52,00,000/-. So as per scheme there will be refund of Rs. 24,88,500/-. However, there is no coloumn in the form 1 & 2 for adjustment of refund. What is the remedy?
		Answer: As we understand, you have filled Form 1 & 2 thereby declaring an amount payable of Rs. 2.27 Crores and thereafter, a rectification order is passed to refund Rs. 2.52 Cr, by virtue of which there is now an amount refundable to the assessee under VSVA. It is advisable to file revised Form 1 & 2. In case the revised form is not accepted, the querist may approach the designated authority.
83	Procedure – refiling declaration	**Question:** Initially Appeal is disallowed by CIT(A).I preferred to ITAT later. I filed declaration under vivad se viswas scheme on 28.05.2020 as the appeal is pending at ITAT. The status showing in the portal is waiting for Form 3. However meanwhile I received letter of hearing from ITAT on 10/07/2020 because of the CIT(A) preferred an appeal against me. Whether CIT(A) can do so. If it is yes what are the consequences. Can I file declaration under vivad se viswas scheme again if in case any enhancement done by ITAT as a result of this appeal by CIT(A)?
		Answer: When the appeal is decided against the assessee. The department cannot file the appeal. The Department can

		file an appeal against a ground held in favour by the CIT(A). The Tribunal has no power of enhancement please refer ***Mcorp (P) Ltd v CIT (2009) 309 ITR 434 (SC)***. The declaration is valid. You may write to the ITAT to serve the grounds of appeal of the department. On reading the grounds one may be able to decide whether the departmental appeal is valid or not. If the departmental appeal is in accordance with the law, one may think of contesting the appeal on merit or may also file a separate application under the scheme to settle the departmental appeal.
84	Computation - Interest	**Question:** We have won the case against advance tax late payment and it been allowed even penalty has been waived off, interest on late payment of advance tax has been levy, we have already filled an appeal against same. under VSV scheme can this Interest amount be waived off?
		Answer: From what we understand from your query, the appeal is only pertaining to interest amount. As per section 3 of VSVA, where the tax arrear relates to disputed interest or disputed penalty or disputed fee, the same can be settled at 25 per cent of the disputed amount (before December 31, 2020).
85	Eligibility – Specified Date	**Question:** Can we take benefits of scheme under vivad se vishwas if appeal decided against assessee on 20/06/2020 by cit[A] THE said appeal were pending as on 31/01/2020
		Answer: According to us it may not be possible. The appeal is already disposed off by the competent authority. However if the appeal is decided by the Commissioner (Appeals) without following the due process of law and in appeal before the Tribunal if the Tribunal set aside the appeal to the Commissioner (Appeals), the assessee can avail the benefit of the scheme as when the appeal is set aside, it relates back to the date of the filing of the original appeal.
86	Computation – Rectification – waiver of interest	**Question:** An order u/s 143(3) was passed making certain additions. The total income was a loss. Appellant filed appeal on additions made. Subsequently the order u/s 143(3) was rectified u/s 154 making modifications to the income. This resulted in payment of taxes and interest (including 234D). No appeal was filed on the order u/s 154. My query is whether the interests charged as per order u/s 154, including 234B, will be waived under the scheme.
		Answer: We presume that the in the order u/s 154 the Assessing officer has made further addition in the rectification order. The assessee may have to file an appeal

		also against the order u/s 154 of the Act. If the assessee desires to avail the advantages of the scheme, the appeal can be filed by making an application for condonation of delay with supporting affidavit explaining the delay. When the appeal is condoned, the assessee can settle the amount is dispute in respect of original appeal as well as appeal under section 154 of the Act. Once the appeals are settled interest charged u/s 234B will also be settled. One may have to consider whether the rectification order passed by the Assessing Officer is on debatable issue. If the issue is debatable it may be desirable to file an appeal with condonation of delay with supporting affidavit explaining the delay.The assessee may have a fair chance of succeeding in appeal. Once the appeal is decided in favour of the assessee, consequential demand and interests will also be quashed.
87	Eligibility – Miscellaneous Application	**Question:** ITAT passed the order on 25.03.2019 confirming the addition which was received on 03.05.2019. Against order of the ITAT, MA u/s 254(2) was submitted on 02.12.2019 fixing the case on 14.02.2020. On 03.02.2020, the counsel of the assessee submitted an application that he will be out of station, hence cannot attend on 14.02.2020. As the MA was pending as on 31.01.2020, whether the case is covered under Vivad Se Vishwas Scheme. Please note that 30.11.2019 was saturday and 01.12.20119 was Sunday.
		Answer: As per CBDT ***Circular No. 21 of 2020 dated December 4, 2020***, an MA pending on the specified date can be eligible for VSVA only if the appeal was dismissed *in limine.*
88	Eligibility – Specified Date -Condonation of Delay ITAT	**Question:** An appeal was filed belatedly on 27.02.2019 with an application for condonation of delay to ITAT. The ITAT fixed hearing on 04.03.2020 notice whereof was not received by the appellant but the ITAT decided not to condone delay and ordered that the appeal is not maintainable. The assessee wishes to apply for Vivad se Vshwas. Is he eligible for the same
		Answer: As per CBDT ***Circular No. 21 of 2020 dated December 4, 2020***, an MA pending on the specified date can be eligible for VSVA only if the appeal was dismissed *in limine.* The assessee must file miscellaneous application before the Appellate Tribunal to recall the order as the notice of hearing was not received by the assessee. Please take inspection of the record to verify whether notice is served or not. If notice is not served, file an affidavit stating that the notice is not

		served. In ***Rainbow Agri Industries Ltd. v. ITAT (2004) 266 ITR 38 (Bom.)(HC)*** the court held that ex-parte order decided on merits can also be recalled if the assessee was unaware of date of hearing. In ***Lalitnirman Business Development (P.) Ltd. v. ITO 259 Taxman 23 (Bom.)(HC)*** Court held that passing Ex-parte order without ascertaining whether notice was duly served and assessee had avoided intentionally and deliberately to attend case of hearing would result in miscarriage of justice-Ex-parte order is set aside.(Also refe**r** ***Devendra G. Pasale v.ACIT (2010) 333 ITR 263 (Guj) (HC)***. It may desirable to make the miscellaneous application at the earliest and also make an application for early hearing of the application, which normally Appellate Tribunal will entertain. Once the appeal is recalled make proper application with supporting affidavit for condonation of delay. When the delay is condoned the appeal is entertained the assessee can avail the benefit of VSVS.
89	Computation - losses	**Question:** An assessee has incurrent substantial loss in the business operations while framing the assessment loss has been reduced in respect of amount of server storage charges remitted to USA entity alleging failure to deduct withholding tax for the remittance US firm. The appeal has been filed before CIT and the same is pending since 01.10.2019. There was no order for penalty for non-deduction of withholding tax as on date hence no appeal has been preferred. The issue is whether in case the assessee opts for settlement under Viwad se viswas scheme whether withholding tax for server storage has to be remitted to the department. Will the same be insisted for giving effect to the scheme
		Answer: As per FAQ No. 53 of Circular No. 9 of dated April 22, 2020; in a case where the dispute in relation to an assessment year relates to reduction of reduction of loss, the appellant shall have an option either to: (i) include the of tax related to loss in the amount of disputed tax and carry forward the loss amount (ii) to carry forward the loss. Rule 9 of VSV Rules, 2020 prescribes the manner of computing disputed tax in cases where loss is reduced. Once the tax is paid on disallowances and the issue is settled the department will not insist for remitting the tax to be deducted at source.

90	Computation	**Question:** A ltd issued FCCB and they were redeemed at premium, which is treated as interest payable as per section 115AC and on same TDS is to be deducted. Company utilised premium in India and outside India. TDS was deducted on premium utilised in India and on other it was not deducted. For the purpose of VSV what shall be disputed tax? and how computation is to be done?
		Answer: *One of the condition for availing the benefit of the scheme is a valid appeal must be pending as on 31 -1 -2020 before the competent authority.* If yes, the disputed tax amount against which appeal is made can be settled under VSVS. Once the appeal is settled interest will be waived and the assessee will get the immunity from penalty & prosecution. There is no evaluation of merits under the VSVS
91	Computation – interest waiver	**Question:** We paid tax alongwith interest in response to demand u/s 148 r.w.s 144 of Income Tax Act due to non - filing of return of that year. can we get refund of interest under Vivad se vishwas scheme
		Answer: Yes, as per explanation to section 7 of VSVA, 2020. where the declarant had, before filing the declaration under VSVA, paid any amount under the Income-tax Act in respect of his tax arrears which exceeds the amount payable under VSVA, he shall be entitled to a refund of such excess amount, however shall not be entitle to interest on such excess amount under section 244A of the Income -tax Act. Please also refer F.No. IT(A) 1/2020 -TPL Circular No 9/2020 dt 22-04 2020 Q No 29 and answer where in the Board has clarified that the credit for earlier taxes paid against disputed tax will be available against the payment to be made.
92	Computation - Method of revenue recognition	**Question:** I am in Contract service business in which each contract will be having period of more than 90 days. In computing income from said business, I recognized 25% of revenue in Year 1 and balance revenue in next three years (this method is based on survey method). During assessment proceedings, the Ld. AO has contended that the entire income should be offered in Year 1 itself. This issue is pending before the Hon'ble ITAT for about 10 years. In this situation, if I file VSVS petition and offer the income based on Ld. AO position, can I claim the amount offered for AY 2017-18 as reduction in subsequent years.
		Answer: As per our understanding, the AO has made entire addition in one year and the assessee is appeal before the Appellate Tribunal for that assessment year as well as other

		years. If the AO has made protective addition in later years and if the assesseee takes the benefit of the scheme in first year the protective assessment may not survive. On the other hand, if later years additions are on other accounts the assessee will not get automatic benefit. The assessee may have to contend that it will lead to double addition. The assessee may have to approach the designated authority, if designated authority or the Assessing officer passes rectification order based on the declaration made in the first year the assessee can avail the benefit of the scheme.
93	Computation – Penalty	**Question:** We have a Quantum and Penalty appeal of the same year in CIT. Would like to know if we opt for VSV scheme only for Quantum, whether the penalty appeal will be set off? Or we have to pay both the quantum and penalty appeal?
		Answer: Yes, on settlement of quantum, penalty would be waived. Please refer to Q. No. 8 of ***CBDT Circular 9 of 2020 Dated April 22, 2020***. Which states that, if both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form covering both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.
94	Eligibility – Deemed appeal	**Question:** CIT(A) appeal has dismissed the Appeal on 04.01.2019 as nobody has attended the appeal and Assesee has not filed the ITAT appeal – Now question is can we go for V2V Scheme.
		Answer: Yes, A deemed appeal exists as on the specified date
95	Computation - Loss	**Question:** If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?
		Answer: As per the amendment proposed in *Vivad se Vishwas,* in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the **amount** of tax related to such MAT credit or loss or depreciation in the **amount of** disputed tax and carry forward the MAT credit or loss or depreciation or (ii) to carry

		forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases. It is desirable to wait and reads the clarification of CBDT as and when issued and take the appropriate decision. As regards the merger one has to read the order of the Court sanctioning the scheme of merger. In **DCIT v. TCS E-Serve International Ltd. (2019) 182 DTR 273 / 201 TTJ 997 (Mum.)(Trib.)** Dismissing Revenue's appeal, Tribunal held that even though no specific provision is provided in the Act in respect of carry forward and set off of MAT credit in respect of demerger, the credit for such MAT credit needs to be allowed to the assessee, and not to the demerged Company (SEZ units). The issue being debatable the designated authority may not be able to take view unless the Board issues clarification.
96	Eligibility	**Question:** I Sold my mother site after 41 years I divide the amt to 6 persons each 15 lakhs.IT issued Sectionb148 to me.IT taken 5-person amt 75 lakhs less for tax. remaining amt taxed to me. whether my amt of 15 lakhs will be get Tax exemption but I paid 3 lakhs tax 2017_18 this amt reduced by IT, on total amt they again put the tax for 15 lakhs. what form I have to use vsvs and which ITO to be submitted form.
		Answer: As per our understanding the revenue issued notice u/s 148 and assessed the income at higher amount. One of the conditions for availing the benefit of the scheme is the appeal must be pending as on 31 -1-2020 ie the specified date. We presume that the appeal is pending as on 31-1 2020. We have to find out the quantum of addition is made and the tax in dispute in. appeal. The property being old the assessee is entitle to indexation benefit. We presume the AO has given the indexation benefit. When the assessee avails the benefit VVSA he will get the tax paid for the year under consideration. If indexation is not given it may be advisable to take additional grounds before CIT (A) and contest the appeal on merits.
97	Procedure – VSV Application rejected – Withdrawn Appeal	**Question:** We have applied for DTVSV and are in receipt of Form 3 signed by commissioner of income tax showing refund amount on 13 June 2020 and due to present COVID condition we will be uploading Form 4 and simultaneously withdrawing CIT APPEAL by presenting Physical Letter of withdrawing appeal on 15 September 2020

		Now if withdraw appeal and if our DTVSV is rejected than what will be the consequences
		Answer: If DTVSV is rejected the appeal will survive. You can make an application to the concerned CIT (A) stating that as the application is rejected the appeal may be restored. Once tax is paid, certificate is issued by the designated authority the said certificate is final withdrawal of appeal is only technical formality.
98	Eligibility – Specified date	**Question:** As on the specified date the case is pending with ITAT. After the specified date an order is passed against the assessee. Whether the assessee can opt for Vivad Se Vishwas scheme
		Answer: If the appeal is passed ex parte, the assessee can make an application for recalling the order, once the appeal is recalled it relates back the date of filing. Once the appeal is decided on merits the assesse cannot avail the benefit of the scheme.
99	Clarification	**Question:** Now a days CPC Centre Bengaluru is disallowing u/s 36(1)(va) late deposit of PF / ESI (employees share) but deposited before the due date of filing of return and claimed by the assessee u/s 43B. There are lots of judgments on this issue by Supreme Court in ***Vinay Cement Ltd. and Altom Extrusion Ltd***. Delhi High Court also gave judgment in favor of assessee in ***AIMIL Ltd., Dhamendra Sharma, SPL Ltd.*** etc. Recently, DHC confirmed the disallowance in Bharat Hotel Ltd case and keeping in view the judgment the CIT (A) in Delhi and ITAT in Delhi are confirming the disallowance. Some High Courts have confirmed the addition and some decided in favor of the assessee. Sir, Income Tax Act is a central govt. act. Do you think it is fair some High Courts are disallowing and some are allowing. It is against the principle of judicial discipline and comity of course. There is no loss to the revenue if there is some delay in deposit as assessee pays interest on late deposit under PF / ESI Act. Unnecessary litigation is increasing as CPC Centre has feeded disallowance in every case. On the one hand, govt is encouraging that litigation should be reduced by filing application under Vivad Se Vishwas Scheme but here due to automatic disallowance by the CPC Centre the litigation is increasing. Please clarify the issue and the matter should be taken with the govt. There should be one law in the whole country not state wise decisions.

		Answer: We agree with your understanding. We being a common law country every assessee would be subject to the decision of their jurisdictional High Court. Till the decision of the Supreme Court the Assessing office of respective State is bound to follow the judgement of Jurisdictional High Court With respect to the errors in the CPC order i.e. under section 143(1) of the Act. A redressal mechanism is laid down by fling a rectification application under section 154 of the Act or an appeal against the intimation. As per Article 141 of the Constitution of India, the law declared by the supreme Court shall be binding on all courts with in the territory of India**.** As per the Article 227 of the constitution of India, every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. legislature cannot pass any law which is against basic structure of the Constitution of India.
100	Eligibility – Penalty Order	**Question:** Quantum Appeal was pending as on 31/01/2020 Before ITAT. On 20/03/2020 department passed penalty order u/s 271(1)(c). Now if I may apply for Vivad Se Vishwas scheme, can I get immunity for penalty?
		Answer: Yes, as per FAQ No. 8 of ***CBDT Circular 9 of 2020 dated April 22, 2020***, If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form covering both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. On facts as the Assessing Officer has already passed the penalty order, it is advisable to file an appeal before the CIT (A) on penalty. While filing the form for VVSA give details of both the appeals.
101	Computation – refund	**Question:** Asssessment completed u/s 143(1) was re-opened u/s 147. the assesssee did not file return in response thereto. But he paid the additional taxes. The assessment was completed making addition one addition under capital gains. Addtional taxes paid was given credit as taxes paid while determining the demand. Appeal against assessment pending before CIT(A) challenging the addition. My query is whether additional taxes paid can be claimed as payment made against tax arrears before filing declaration.
		Answer: To settle the appeal under VSVA, only the disputed tax amount needs to be paid. Interest would be waived off. If

		any amount is already paid, the same would be adjusted against the dispute tax amount.
102	Computation - MAT	**Question:** Taxes were paid as per MAT. Then addition was made, which was the dispute. Now under DTVSV scheme will I adjust the taxes already paid in determining the tax payable?
		Answer: We presume that though the taxes were as per MAT provision the AO has made addition and the assessment is made on regular basis. Once the tax in dispute is settled the assessee will get the credit for the taxes under MAT.
103	Procedure – Rectification Application	**Question:** AY 2015-16. Appeal filed against assesment order dt 05.12.2017 is pending with CIT(A). Subsequent to filing of appeal rectification orders u/s 154 were passed on 12.02.2018 and 23.03.2020. One out of the rectification order is after 31.01.2020. By both these orders the demand has been reduced. In the instruction to fill Form 1, it has been stated that the date of order cannot be after 31.01.2020. In the above circumstances what will be the disputed tax? How to fill the date of order in Form 1?
		Answer: As we understand, The Declarant ought to be given the benefit of the rectification order passed after the specified date under VSVA. Reliance is placed on Question No. 25 of CBDT Circular 9 of 2020 date April 22, 2020 which states that, in a case appeal is pending on the specified date, but a rectification application is also pending with the Ld. A0 which if accepted will reduce the total assessed income. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any. Tax in dispute to be considered after considering the rectification order.
104	Procedure – Withdrawal	**Question:** Since one of my appeals, though pending in ITAT, as on 31.01.2020, was decided against me after 31.01.2020. As the law is very clear that the appeal should be pending as on 31.01.2020, which in my case is true. However, while filing Form 4 of VSVS, it wants the proof of withdrawal (while the Act says in ITAT, it will be deemed withdrawal). However, since my appeal has been already heard, how can I file this withdrawal proof.
		Answer: If your appeal is already heard and adjudicated by the ITAT, you may not be eligible under VSVA. Unless you have intimated the ITAT about your intention to avail the Scheme in writing, and the ITAT still proceeded with the case. Please verify whether the order is signed by the Honourable Members. If the order is not signed and not

		pronounced, it can be presumed to have been pending. The assessee can write to the Honourbale ITAT not to pass the order. In such circumstances the assessee can avail the benefit of VVSA. If the appeal is decided ex-parte without giving an opportunity of hearing the assseessee a miscellaneous application before the Appellate Tribunal.
105	Computation – Departmental Appeal - ITAT	**Question:** The CIT(A) accepted the contention of the taxpayer and deleted the disallowance made by the Assessing Officer. The Revenue preferred an appeal before the Income Tax Appellate Tribunal. If we opt for the VsV scheme, since the disallowances have been deleted by the CIT(A), would the taxpayer still be liable to pay taxes as per the order of the Assessing Officer or the decision of the CIT(A) form the base of payment of tax.
		Answer: As first proviso to section 3 of VSVA, on departmental appeal, the declarant-assessee has to only pay half of the amount under VSVA i.e. 50 percent of the disputed tax amount and not as per the assessment order.
106	Computation – Departmental Appeal - ITAT	**Question:** Assessee files Return declaring total income of Rs. 35 Lacs. Addition made by AO by enhancing valuation of stock by 25 lacs. Assessee gets 100% relief before CIT appeals. Department files appeal before ITAT which is still pending. If assessee pays the 50% of tax as stipulated in the scheme and ask the department to withdraw the appeal. After withdrawal of appeal by the department whether addition will be deemed sustained or returned income will be restored.
		Answer: From what we understand, as per Section 5(3) of VSVA, 2020, Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force. Further, making a declaration under this Act 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 or writ petition or special leave petition 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.

107	Eligibility – Specified date	**Question:** One search case which was not eligible for VSVS in January as the demand in dispute was more than 5 cr. Last month CIT appeal order has come and now dispute is less than 5 cr. So as on announcement date of scheme the case was not eligible. Now if the criteria remains the same the assessee is eligible. If he files the VSVS application, will he get the certificate from PCIT?
		Answer: According to us No, only appeals pending or deemed appeals as on the specified date i.e. 31-1-2020 are eligible for VSVA.
108	Rectification application – 154 of the Act	**Question:** If Original assessment order passed by AO contains a mistake apparent on record in one of the issues/ additions. Can assessee file application under the Vivad Se Vishwas Scheme and simultaneously Rectification Application u/s 154 to the A.O. The time limit for filing rectification has not expired.
		Answer: Yes the assessee can make an application under section 154 of the Act. The assessee should request the Assessing Officer to pass the rectification order. After the receipt of the rectification order the assessee can avail the benefit of the VSVA on other issues which are pending before the appeal before the Commissioner Income- Tax (Appeals)
109	Computation - Merger	**Question:** ABC Ltd has got merged into XYZ Ltd on 1 April 2010. Both the companies have pending litigation. a) Assuming both the companies have litigation for AY 2008-09 only. Whether for settlement for AY 2008-09, should all appeals of both the companies are to be considered together or both companies can file separate applications? b) Assuming both the companies have multiple years in litigation. Will the answer be same as part a) c) In case of death of a person or conversion of firm into LLP, whether same principle will apply? d) In whose name and PAN declaration is to be filed, who could be signatory to sign the declaration, payment of disputed tax is made in whose name, how credit for prepaid taxes of amalgamating company be considered while computing disputed tax, etc.? Whether section 159 of the Income tax Act, 1961 (legal representative) will be applicable here?
		Answer: 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. a) and b) The scheme of settlement under VSV is "appeal based". Appeals in relation to assessment or reassessment for the same assessment year can be settled independently (FAQ 19). Further, CBDT has also clarified that taxpayer has an option to settle either taxpayer's appeal or tax departments appeal or both (FAQ 40). Based on same, it may need to be clarified by CBDT that appeal in relation to amalgamating company can be settled by amalgamated company independent of its own appeal (including for same year). Each appeal of ABC Ltd and XYZ Ltd will need to be treated separately. c) In case of death of person, the registered legal representative, who is filing or required to file the return on behalf of the deceased person, can file the VSV declaration. In case of conversion of firm into company, the successor company can file declaration in respect of the pending litigation of Firm, as post conversion firm will cease to exist and all pending proceedings of firm will be carried to the successor company. Again need to be clarified by CBDT that there would be separate appeals for firms as sucessors and for its own appeal. d) Declaration is to be filed by Amalgamated company with its PAN. as a successor to amalgamating entity. Declaration to be signed by MD/ Director of amalgamated entity. Payment to be made in name of amalgamated entity as a succesory to amalgamating entity. Sec 159 of the IT Act will be applicable. Accordingly, declaration for ABC's appeal will filed in PAN of XYZ as successor of ABC and will be signed by MD/ director of XYZ being successor to ABC.
110	Computation – tax effect	**Question:** It is a requirement that an appeal should be pending as on 31-01-2020. In a case where one of the departments appeals pending in respect of an assessment year got dismissed on monetary limit ground after 31-01-2020, would it be necessary to include such an appeal also.
		Answer: The scheme of settlement under VSV is appeal based. Q40 of the FAQ Circular 9 of 2020 clarifies that taxpayer has option to settle assessee appeal or department appeal or both for a particular AY. Accordingly, if the

		department appeal is below the tax effect limit, the Assessee has option to choose and settle only Assessee's appeal under VSV and may continue to defend department's appeal at the forum where it is pending and wait for department appeal to get dismissed which is intended
111	Eligibility – Transfer pricing cases – Draft AO order	**Question:** Where draft order has been passed by the AO and no objections have been preferred to the DRP and time limit to pass the final assessment order has not expired. Whether such cases are covered?
		Answer: Yes. Disputed tax to be computed based of draft assessment order and time limit to file objection with DRP is not expired should be mentioned in declaration.
112	Eligibility – Specified date	**Question:** Whether taxpayer is eligible to avail VSV where decision was orally pronounced by Court as on 31 January 2020, but formal appellate order was passed post 31 January 2020?
		Answer: As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020.*** The assessee should be eligible for the Scheme. If the oral pronouncement is considered, then a deemed appeal will be pending as on January 31, 2020. Where the matter is decided by the Court as on 31 January 2020 and order is pronounced, the said matter is no longer pending before that Court. However, time limit to file appeal before the higher appellate forum is pending and same will be considered as deemed appeal as on 31 Janaury 2020 [not applicable in case where the order is pronounced by SC in case of the assessee against which no appeal can be filed]. For quantification, intention of the legislature view seems to be that disputed tax is to be computed after giving effect to appellate order passed. (Refer answer to Question 7 above)
113	Eligibility – Revision – Section 263 of the Act	**Question:** In a case, where section 263 revision notice is issued to the taxpayer and no revision order has been passed till 31 January 2020 but is passed later (say 15 February 2020 ie before filling the VSV declaration). Whether such an order is eligible for settlement under the VSV scheme?

		Answer: Notice under section 263, is specifically not covered within definition of Appellant under section 2(1)(a) of the VSV, Act.
114	Eligibility – SLP	**Question:** Cases where the High Court has passed an order in an appeal u/s 260A of the Act and time limit to file SLP has not expired. Whether such cases are covered?
		Answer: Albeit, section 2(1)(a)(ii) of VSVA is silent with respect to a deemed appeal arising from an order of the High Court on matters other than a Writ Petition. There is no logical reasoning as to why an Appeal or Reference as section 2(1)(a)(i) of VSVA includes an Appeal pending before a High Court to be settled under VSVA. VSVA being a beneficial legislation, the same should be interpreted in favour of the assessee. The assessee should file a declaration under the scheme and immediately approach the designated authority under VSVA. In the event of an unfavourable response from the department, it is advisable to approach the Hon'ble High Court by filing a Writ Petition.
115	Eligibility - MAP	**Question:** Whether VSV Scheme can be availed where proceedings are pending before Mutual Agreement Procedure (MAP) authorities?
		Answer: Mutual Agreement Procedure (MAP) is not an appeal pending and hence, will not be eligible for VSV settlement. Mutual Agreement Procedure (MAP), however, can also be availed, in cases where appeals are pending before CIT(A)/ ITAT. Hence, where appeals are pending as on 31 January 2020 (even though application is made before MAP authorities), VSV could be availed for such matters. In such cases, if settlement is done under VSV of the appeals pending, Mutual Agreement Procedure (MAP) can be withdrawn. It however needs to be clarified by CBDT, that tax credit for taxes paid in India will be available to the foreign entity based on the DTAA provisions.
116	Payment – Foreign tax credit	**Question:** Whether amount payable under VSV by settling the appeal will be considered as "tax paid" under the DTAA and the taxpayer in foreign country will be able to take tax credit of the same?
		Answer: As per FAQ No. 56 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***

<table>
<tr><td></td><td></td><td>In our view, since the tax is paid by the same challan as used under the income tax law. the VSV disputed tax paid should be viewed as tax paid under Income tax law and should be eligible for foreign tax credit in the jurisdiction of the residence of taxpayer as per the applicable DTAA in the same way as income tax is allowable.</td></tr>
<tr><td rowspan="2">117</td><td rowspan="2">Eligibility – Foreign Income</td><td>Question: Where one of the additions made is in respect of undisclosed foreign assets, does one settle the dispute for the remaining issues or one cannot settle such dispute?</td></tr>
<tr><td>Answer: No. As per section 9(iii) VSV would not apply to Tax Arrears in respect of undisclosed foreign assets. Further, Q11 clarifies that if tax arrears include issues that are excluded from VSV, such cases are not eligible under the scheme.</td></tr>
<tr><td rowspan="2">118</td><td rowspan="2">Computation – TDS</td><td>Question: If 201 order is settled under VSV and taxes are paid by the deductor, then while computing disputed tax liability for 143(3) order, no disallowance u/s 40(a)(ia) is to be taken into account. As clarified, benefit of payment under VSV will be available to the deductor in the same year in which section 40(a)(ia) additions are made. However, as per clarifications issued, deductee will get credit of taxes paid by deductor on the date of settlement of dispute and consequentially interest u/s 234A/B/C will be applicable i.e. where 201 order for FY 2015-16 is settled by in FY 2019-20 by the deductor, then deductee will be required to pay interest u/s 234A/B/C till FY 19-20. Is this not a hardship caused to deductee, without being at fault?</td></tr>
<tr><td>Answer:
As per FAQ No. 84 of CBDT Circular No. 21 of 2020 dated December 4, 2020, the Decuctee will be liable for interest or penalty which can be settled under the Scheme.

<u>Payers case</u>

Where payer makes a payment to the payee without deduction of TDS, then he will be liable to payment along with interest u/s 201(1)/201(1A). Further, payer will be liable to disallowance under section 40(a)(i)/ 40(a)(ia).

If the payer pays the TDS liability later on, he pays the same along with interest.</td></tr>
</table>

		<u>Payees case</u> After amendment in Finance Act 2012 in section 209, the payee will get credit of TDS only when the same is paid by the payer only in that year and not in prior years. In case payee pays on his own (since no TDS has been deducted), then payer is absolved from the liability and need to pay only interest on delayed payments. <u>Anomaly</u> As per the proviso to section 40(a)(i)/ section 40(a)(ia), payer will get deduction in the Financial year in which TDS has been paid. The VSV scheme allows deduction in the year to which the addition pertains ie as per VSV scheme, where TDS pertaining to FY 2015-16 is paid in 2020 by the deductor, then deductor will get allowance in FY 2015-16 instead of 2020. Accordingly, the VSV scheme is overriding the Act and is beneficial for the payer. In contrast, the payee will get credit of TDS only in the year in which deductor has made payment, without any fault of the payee. This is genuine hardship to the deductee. In our view, the FAQ should be amended to give credit to the deductee in the FY in which the deductor gets the 40(a)(ia) disallowance deletion – maintaining the equity between deductee and deductor.
119	Benefit – immunity – Beneficial owner	**Question:** Assessee was a US resident which had invested in Indian company through a Mauritia's based company (SPV). The SPV sold shares of Indian company and claimed treaty benefit. In assessment, treaty benefit was denied on the grounds that SPV is not the beneficial owner and income is to be taxed in the hands of principal investor ie US resident. If the Mauritius company settles under the scheme, whether the US resident investor will get protection under the scheme ie will the proceedings in case of US investor be dropped? Will the the treatment be on similar lines as protective assessment – Refer Q35 of the FAQ dt 4 March 2020?
		Answer: Q35 of the FAQ dt 4 March 2020 states that if substantive additions are covered under VSV, then on

		settlement of disputes related to substantive addition, the AO shall pass rectification order deleting the protective additions made on same issue in case of assessee or in case of another assessee. Accordingly, in the given case, where the Mauritius company settles under the scheme, then proceedings in hands of US resident investor should be dropped. Since this issue is fact specific, the case should be discussed with the jurisdictional AO/CIT to get clarifications from CBDT.
120	Benefit – immunity - directors	**Question:** In case of a declarant who is a company, will benefit of immunity from penalty and prosecution be extended to directors and principal officer of the company as well – say, in case of settlement of TDS dispute? Similarly, whether such immunity extends to partner of LLP/firm where declaration is filed by LLP/firm?
		Answer: As per FAQ No. 82 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***, where appeal of company is settled, immunity from prosecution should be granted to the principal officers as well.
121	Payment – Non residents	**Question:** Whether non-resident taxpayers will be allowed to make payments under VSV through foreign bank account? Presently, such is not permissible mode. NR taxpayers to get payment through Indian bank account of associates or authorised person. Such process may involve time and hence may be a cause for delay in payment.
		Answer: No separate challan has been introduced for payment under VSV. Accordingly, same challan which was earlier used for payment of regular demand by non-resident, can be used by non-resident also for payment of amount payable under VSV. Since, the time-limit of payment under VSV has been extended up to March 31 2021, NRs have enough time to decide and arrange payments.
122	Computation – Refund – time period	**Question:** What is the time limit for granting refund due under VSV to declarant? Whether such refund can be adjusted against outstanding demands under ITA?
		Answer: The time limit has not been prescribed under the Act/ Rules. CBDT may issue necessary directions to CIT's for timely grant of refund. Further, this aspect may be prescribed in Rules. If any outstanding demand is existing, then it is likely that refund due under VSV can be adjusted against such outstanding demand after giving notice to the taxpayer regarding the same.
123	Authorized representative	**Question:** Whether Authorised Representative (AR) can file declaration under VSV on behalf of the taxpayer?

		Answer: As per the Rules, the declaration can be filed by person authorised to sign the return of income of the taxpayer as per section 140. Authorised representative can not file the declaration .
124	Computation - Losses	**Question:** In cases of reduction in loss where taxpayer settles the dispute by payment of notional tax with a right to carry forward full loss as claimed. However, assessment records may continue to reflect the reduced losses as per the assessment order. Also, what is the mechanism to upgrade the assessment records with eligible amount of loss so as to avoid possible mis-match in subsequent year where loss is to be setoff? Similar issue may also arise in case of reduction in MAT / AMT credit as well.
		Answer: We understand that CBDT will issue administrative instruction to field officers to pass rectification order to rectify the assessment records based on the settlement under VSV. However, no such instructions are in place. Further, to get over difficulty of limitation period under section 154, it is likely to be clarified that such rectification order will be passed under VSV and not under Income-tax Act.
125	Computation – Amalgamation	**Question:** Consider a case where appeals pertaining to ACo being an amalgamating company are proposed to be settled under VSV by amalgamated company. In relation thereto clarification may be required as to in whose name and PAN declaration is to be filed, who could be signatory to sign the declaration, payment of disputed tax is made in whose name, how credit for prepaid taxes of amalgamating company be considered while computing disputed tax, etc.?
		Answer: Declaration is to be filed by Amalgamated company with its PAN. as a successor to amalgamating entity. Declaration to be signed by MD/ Director of amalgamated entity. Payment to be made in name of amalgamated entity as a successor to amalgamating entity. Sec 159 of the IT Act will be applicable. The said issues may be clarified by CBDT in coming FAQs.
126	Computation – Search cases – set off	**Question:** An assessee has preferred appeals against additions made under Section 153A. The assessments were made in March, 2015. The assessee subsequently has made payments under Tax on Regular assessments on various dates for (6 +1) assessment years. Now the assessee decides to opt for VSV. For some of the assessment years, the assessee has made excess payments than the amount payable under VSV. For some of the assessments years, the assessee has to pay the balance amount. Is there any

		provision that excess payments made for some years can be adjusted against the liability? The AO is of the opinion that since Form 3 is separately given for each assessment year, adjustment of excess payments of one year against the liability of another year is not possible. If that being the legal position, in the instant case the assessee is subjected to enormous financial strain. It is requested that the Panel throws more light on this.
		Answer: There is no clarification available in amended Act/ FAQ regarding adjustment of refund of year 1 of VSV with demand for year 2 of VSV (assumed year 1 and 2 for sake of understanding) • It is represented before the CBDT that flexibility should be allowed to allow single application for multiple assessment years or where separate declarations are filed, allow adjustment of refund against demand under VSV. • Though, we understand that Department's prima facie view is that netting off of refund against demand will not be allowed. However, this should be reconsidered.
127	Eligibility – ITAT – set aside	**Question:** The Honorable ITAT has allowed the appeal for statistical purpose and issued the order during August 2019. The AO has issued the giving effect order on 28.02.2020. The order of AO omitted to consider certain allowable deductions. The AO did not rectify the order. The assessee made appeal with Honorable CIT. The assessee prefers to go for the Vivad se Vishwas Scheme, provided the deductions omitted by AO is given effect. Kindly advise whether the case is eligible for the scheme and how to go about.
		Answer: There is no specific clarification in the scheme or the FAQs. However, the order of ITAT was passed in August 2019 and as on the specified date i.e. 31 January 2020, there is no pending appeal or disputed demand for which the scheme can be opted for. The OGE is passed on 28.02.2020 against which appeal is filed to CIT. However, the same is after cut-off date and ideally the case would not be eligible for VSV scheme.
128	Computation – search cases - penalty	**Question:** Assessee in appeal before CIT(A) for quantum. Penalty imposed under 271AAB for both sub clause (a)and (c) of sub section (1) and this appeal is also pending before CIT(A). The issue in respect of penalty under clause (a) which is on surrendered income and disclosed in the return not pending in quantum appeal before CIT(A).

		Whether under VSVS the assessee would be required to pay 125% for the settlement of quantum and penalty under clause (c) of section 271AAB(1) and 25% for penalty penalty under clause (a) of section 271AAB(1).
		Answer: In the present case, appeal is pending before CIT(A) for quantum as well as penalty. Penalty is levied under 2 sub clauses i.e. (a) and (C) of section 271AAB(1) of the Act. Therefore once the quantum appeal is settled, the penalty under clause (c) of section 271AAB(1) will automatically be waived off. Therefore, the penalty under clause (a) will have to be separately settled and the same can be done by paying 25% of the penalty demand as there is no consequent addition made under the quantum proceedings.
129	Computation – Search case	**Question:** search u/s 132 taken place and block assessment for a. Y. 2003-04 to a. Y. 2009-10 completed. A. Y. 2002-03 has been reopened by issuing notice u/s 148. Order u/s 143(3) rws 147 pased. Whether additional 25 % tax to be paid under the scheme though the order passed u/s 143(3) rws 147 of the act.
		Answer: The search and block assessment made is for AY 2003-04 to AY 2009-10 whereas the reopening proceedings are for AY 2002-03 which is an independent appeal for the year which is not covered under search/block assessment. Therefore, if the appeal is pending for AY 2002-03 against the reopening proceedings, the same can be independently settled by paying the disputed tax demand (i.e. without paying additional 25%). Accordingly, only the disputed tax amount will have to be paid.
130	Computation – waiver of interest	**Question:** Quantum Appeal is pending before ITAT. Meanwhile penalty u/s 271(1)(c) was levied by AO in respect of additions contested before ITAT and appeal against the same is also pending before CIT(A). Thereafter, AO passed order levying interest u/s 220 in respect of demand outstanding (Tax + Interest + Penalty). Waiver petition against the order levying interest u/s 220 is pending before Pr. CIT. Now, while reporting in declaration in form 1 under VSV, whether the interest charged on disputed tax (Part F, Schedule-I, Column G) shall include interest u/s 220 along with int. u/s 234A/B/C? Whether interest levied u/s 220 shall also be waived?
		Answer: Yes. The interest levied under section 220 shall also be waived.
131	Computation – ITAT -set aside	**Question:** AO made addition U/s 68 of Rs. 57 crore in various assessment year. CIT(A) confirm the same. Before ITAT appellant took a plea that loan taken in initial years

		were repaid in subsequent years and out of cash received on such repayment it has taken fresh loans/ share capital. AO made addition in both the years without giving benefit of telescoping. Once such benefit given the addition will reduce to Rs. 17 crore. ITAT set aside the matter to AO to grant benefit of telescoping after verification of nexus, which is pending as of date. Now assessee wants to opt for VSVS. Whether he has to consider Rs. 57 crore as addition or 17 crore and what will be rate of tax, whether 100% of tax or 50% of tax? Kindly suggest.
		Answer: Appeal effect of the ITAT order should be requested. If the same is given before filing of declaration, then disputed tax can be computed on 17crs income. Issue as to whether disputed tax can be modified based on appeal effect given after 31 January 2020 is not clear. However, in our view, the same can be done – Refer Q25 and Q50 of the FAQ Circular 9 of 2020. If the appeal effect is not given, then disputed tax will have to computed considering entire 57crores (Refer Q7 of the FAQ Circular 9 of 2020).
132	Computation – Demonetization cases	**Question:** In many cases assessing officers have applied tax rate under section 115 BBE without applying proper mind and giving reasons for doing so. I am sure many appeals are in respect of this issue for AY 2017-18. If the same are accepted at normal rates, it will be a great in serving this V se V scheme
		Answer: Since no clarification has been provided until date. The same will have to be declared as per the prevailing disputed tax amount.
133	Computation – Rectification application	**Question:** Completed case reopened by issuance of notice u/s.148 for non-inclusion of "X" Amount in Computation of Book Profit u/s.115JB. Assessment Order passed u/s.147 r.w.s. 143(3) on 03.12.2019 in respect of the same issue viz. inclusion of "X" Amount being Profit on sale of agricultural land for computation of Book Profit u/s.115JB. Against the said inclusion, Assessee filed an Appeal before the CIT(A) before the specified date viz. 31.01.2020. No Rectification Proceedings were initiated till the specified date viz. 31.01.2020. Rectification Order passed u/s.154 on 12.03.2020 enhancing the "X" Amount to "Y" Amount assigning the reason that "X" Amount was typographical error. If the assessee opts for VSVA, what would be the amount of "Tax Arrears"/ "Disputed Tax", the tax liability of

		X Amount or the tax liability determined after rectification u/s.154?
		Answer: As per Q 25 and Q 50 of FAQs, rectified amount is to be considered, therefore, even though rectified post 31 January 2020, revised amount to be considered.
134	Eligibility – Search cases	**Question:** We have won the search case u/s 132 at ITAT forum, now IT deptt preferred appeal in Delhi High court In above matter Addition made on Substantive basis in Company A disputed tax demand exceeding 5 crore say 7 crore, hence not eligible for Scheme Whereas in above AO made addition in B & C each 3.5 crore on Protective basis Can we go in scheme on protective basis, ignoring the substantive basis?
		Answer: It is recommended not to go for VSV. However, even if opted for VSV the same will not be eligible for set off against addition made on substantive basis in Company A.
135	Computation – MAT - Rectification	**Question:** The addition was made u/s.68 in the case of a Company. The assessee-company has b/f. MAT Credit of which part adjustment is made during the subject year in the Return filed and balance c/f. to subsequent year. Post addition u/s.68 made by AO, the Company is entitled to MAT Credit based on assessed tax under normal rate of tax being higher than as per ROI when Book Profit u/s.115JB remained the same. While raising demand, credit for MAT was given as claimed in ROI. The assessee-company filed appeal before 31-1-2020 which is pending on that day disputing addition u/s.68. MAT credit not allowed properly is not disputed in GOA but rectification application application is filed u/s. 154. Whether excess MAT credit that should have been granted be considered while arriving at disputed tax liability under VSV Scheme Act?
		Answer: If the rectification is done, then the rectified amount to be considered.
136	Eligibility – Search cases	**Question:** Whether a declaration is possible under the scheme, in a case where an appeal is filed and is pending on the specified date, against an order of assessment passed u/s 143(3) r.w.s 147 where the reopening and the consequent reassessment are made on the basis of a search action u/s 132 in the case of a firm where the assessee is a partner?

		Answer: Section 9(a), vide clause (i), prohibits an assessee from claiming benefit of the scheme in relation to an assessment year for which an assessment has been made on the basis of a search initiated u/s 132/132A of the Act and the amount of disputed tax exceeds Rs. 5 crores. Admittedly no search has taken place in the case of an assesse, neither a special assessment has been made u/s 153A or u/s 153C of the Act. However, the addition is made in his case on the basis of the material found in the search in the firm's case. Additions made on the 'basis of the material found in a search' is not the same as an assessment made on the basis of 'search'. Accordingly, the dispute relating to the third-party assessments not made u/s 153C though based on material found in someone's search should be eligible for settlement under the scheme.
137	Eligibility – Foreign Assets	**Question:** An assessee has filed a declaration u/s 4 of the scheme to settle the dispute that was being contested in an appeal before the Commissioner (Appeals) for A.Y. 2017-18 in respect of the addition made to the total income, under the Income tax Act, on the ground that the assessee owned an undisclosed asset located in a foreign country, outside India. An identical addition is also made under the provisions of the Black Money Act which is separately contested in an appeal under the BMA. The assessee seeks to settle the dispute under ITA by opting under VSV and as a consequence thereof desires to persuade the appellate authority under the BMA that income once taxed cannot be doubly taxed. The authorities have rejected the declaration by invoking the provisions of clause(iii) of sub-section(a) of s.9.
		Answer: There is a doubt that the assessee qualifies to file a declaration u/s 4 under the scheme for settlement of the disputed tax which has arisen on account of an assessment under the Income tax Act in relation to an undisclosed asset located outside India. Ordinarily, such an addition should have been made under the BMA and not under the ITA and surely not under both the Acts. The doubt has arisen on account of the language of the provision which provides for blanket prohibition for assessments involving undisclosed foreign assets irrespective of the parallel assessment made under the BMA. What however is not possible but is desirable to avoid double taxation is the consequential withdrawal of the assessment made under BMA and the deletion of the addition made therein in cases where an

		assessee succeeds in settling his dispute under ITA under the scheme.
138	Eligibility – Foreign Income	**Question:** An assessee has filed a declaration u/s 4 of the scheme to settle the dispute that was being contested in an appeal before the Tribunal for A.Y. 2013-14 by the Income tax Department in respect of the relief given in appeal by the Commissioner(Appeals) against addition made to the total income by the AO on the ground that the assessee had interest income from foreign sources as was informed by a foreign Government to the Government of India under the Exchange Information Agreement between the two Governments. The authorities have rejected the declaration by invoking the provisions of clause(iv) of sub-section(a) of s.9.
		Answer: Clause(iv) of s.9(a) prohibits an assessee to file a declaration for settlement of a dispute in relation to an assessment made on the basis of information received form a foreign government as per the agreement made u/s 90 and 90A of the Act. Admittedly, the addition was made on the basis of the information received form a foreign government and therefore the assessee would not be entitled to file a declaration under the scheme leading to a withdrawal of appeal by the Income tax Department on payment of 50% of the disputed tax. The Government has not much to lose to permit the settlement of a case which it has already lost and in the process be enriched.
139	Computation– Departmental Appeal	**Question:** In an appeal, the Commissioner (Appeals) has allowed the claim of the assessee that his income be taxed at the concessional rate u/s 112A instead of the MMR as was done by the AO. The appeal by the Income tax Department to the Tribunal is pending for disposal. The assessee wishes to settle the dispute under VSVS and seeks your advise about the manner of computing the tax payable by him under the scheme.
		Answer: The case of the assessee satisfies all the conditions of the scheme. The tax payable under the scheme by the assessee us should be reduced by one-half as per the Proviso to s.3 of the Scheme. In other words, the assessee would be entitled to get a further concession in rates to the concessional already granted by the Commissioner (Appeals).
140	Advice – Penalty ordere	**Question:** An assessee seeks to file a declaration for settlement of his dues payable out of the orders of penalties

		levied u/s 271D and 271E for violation of the provisions of s. 269SS and 269T. The assesssee has filed appeals against such order before the specified date.
		Answer: Clause (i) of s. 2 defined the term 'disputed penalty' to mean a penalty determined in any case under the provisions of the Act where such penalty is not levied in respect of disputed income or tax and an appeal has been filed in respect of such penalty. The penalties in question satisfy the requirement of being classified as the disputed penalty which therefore can be classified as tax arrears and on being so defined become eligible for settlement u/s 3 of the scheme and the assessee is entitled to file a declaration u/s 4 for the disputed penalty independent of assessment. In fact, the penalty associated with the assessment gets settled under the settlement of the disputed tax itself; the settlement of the disputed penalty rather mandates that such a penalty is not levied in respect of the disputed income or the disputed tax.
141	Eligibility-Compounding Application	**Question**: An Assessee has filed an application with the CCIT for compounding of offences u/s 276B /276BB. Is this application maintainable /covered under the VSV scheme?
		Answer: A Declaration can be filed under S. 4 of the DTVSV Act, 2020 only in respect of the 'tax arrear'. In the given facts, it is gathered that the assessee is not seeking to settle any dispute relating to the disputed tax, interest or penalty and that any appeal relating thereto is pending before any appellate forum. The desire of the querist is to seek immunity from prosecution on compounding of the offence. The correct thing for him to stay on the course as he has already filed an application for compounding of offence and once its entertained, the prosecution launched would be dropped. Assuming that an appeal is filed by the querist and is pending on the specified date before an appellate forum in respect of the disputed tax, interest or penalty and the querist desires to file a declaration in respect of the tax arrear arising out of such disputed amounts, the querist should look in to the provisions of S..9(1) and in particular clause(ii) which prohibits the filing of the Declaration in a case where a prosecution has been instituted on or before the date of filing the declaration relating to an assessment year in respect of the tax arrear. In our considered opinion, the institution of proceedings u/s 276B or 276BB should not disentitle an assesssee form filing the declaration for

		settlement of the tax arrear in as much as the said sections 276B and 276BB provide for prosecution in relation to the offences for TDS, DDT or TCS violations that are unrelated to the tax arrear of the kind that is being dealt with under the DTVSV Act.
142	Eligibility - Penalty	**Question**: Assessees Quantum order is dismissed upto ITAT. Penalty order dismissed upto cit(A) but pending before ITAT. How much amount the assessee will pay. If he has not filed appeal against quantum order before High Court If has filed appeal against quantum order. Whether is he eligible for penalty amount and if yes at what rate?
		Answer: From what we understand from your query is that there is a quantum appeal and penalty appeal. Assuming the quantum appeal is eligible for VSVA i.e. a deemed appeal exists on the specified date i.e. 31 -1 -2020, upon declaring the same under VSVA, the declarant assessee will have to pay only the disputed tax amount, penalty would be waived and the penalty proceedings would also be settled. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending. This has also been clarified at Question & Answer No. 8 in the Circular no. 9 of 2020 dated April 22, 2020. Also refer question No 23 and 24 and answers where in the Board clarified that. If the due date of filing appeal is after 31-1 2020 the appeal has not been filed, will such case be eligible for Vivad Se Viswas? Ans. yes Q. No. 24. If the appeal is filed before High Court and is pending for admission as on 31-1 -2020, whether the case is eligible for Vivad se Vishwas? Ans. Yes. Also refer Q. No 20 which deals with when there is no disputed tax, however only penalty appeal is pending as on 31-1-2020 before Appellate Tribunal, the assessee can avail the benefit in case of disputed penalty / interest / fee are similar nature to terms in case of disputed tax
143	Eligibility – Set aside & remanded back	**Question:** In the facts of the given case, the Appeal of the assessee company against the Order of ITAT was pending in the High Court (pending as on 31st January, 2020). Now the High Court has allowed the appeal of the assessee setting aside the Order of ITAT and restoring the Appeal of Department for decision afresh [Assessee was successful at the stage of CIT(Appeals)]. Now, the assessee company wants to avail of the DTVsV Scheme so as to give quietus to the issue. What would be the quantum of "Disputed Tax" – 100% or 50% (since, now the pending appeal in ITAT is that of the

		Department) in terms of Section 3 r.w. the First Proviso of DTVSV Act?? Please advise.
		Answer: From, what we understand is that, the High Court has passed an order after January 31, 2020 for fresh adjudication and now the matter is pending before the ITAT. Since the order pending as on the specified date i.e. January 31, 2020 is already adjudicated upon. The assessee may not be eligible for VSAV. However, may one may have to read the order of the High Court. Though it may be debatable one may contend that when High Court quashed the order of the Tribunal and set aside the matter back to the Tribunal, the departmental appeal is revived and it relate back to the date of filing. One may try to settle the dispute by paying 50% tax in dispute. If department accepts the application, it will be conclusive and binding on the revenue and assessee.
144	Eligibility – Additional Grounds	**Question**: Dear Sir, The assessee filed return of income declaring loss under both normal provisions and section 115JB of the Act. The AO made additions under normal provisions. However, due to availability of b/f losses, the tax payable under normal provisions was Nil. The AO also made additions to book profit and determined a book profit on which MAT is payable. Accordingly demand has been raised. The assessee filed appeal before CIT(A) for additions made under the normal provisions (Additions to book profits were not contested before the CIT(A)). The CIT(A) order was passed against the assessee. The assessee filed appeal before the ITAT and the same is pending before the ITAT as on 31.01.2020. The assessee has also filed additional grounds before the ITAT in respect of the additions made to the book profit. The appeal is pending as on date. The assessee wishes to file under VsV and c/f reduced losses under the normal provisions. Queries:

		1. Whether the assessee can file under the VsV scheme for the additional grounds raised before ITAT which have not been raised before CIT(A). 2. If yes, do the assessee need to file separate applications under VsV, one for normal provisions and other for book profit additions. Request your valuable views on above.
		Answer: Yes, As per FAQ No.77 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is eligible for new grounds pending on the specified date for VSVA. In ***Jehangir H.C. Jehangir v ITO (2015) 229 Taxman 392 (Bom) (HC)*** held that issue specifically taken before the AO could not be refused to be considered by Tribunal merely because the CIT (A) did not have any view on it. Order of Tribunal was set aside. Accordingly, the Querist can avail the benefit of VSVA. In respect of all the issues pending before the Tribunal In ***All Cargo Global Logistics Ltd. v. Dy. CIT (2012) 16 ITR 38 (SB)(Mum.)(Trib.)*** the SB held that, a pure question of law arises for which facts are on record of the authorities below, the question should be allowed to be raised if it is necessary to assessee the correct tax liability. Revenue has challenged the order of Special Bench before the High Court on other grounds and not on the issue of admission of additional grounds. ***CIT v. All Cargo Global Logistics Ltd. (2015) 374 ITR 645 (Bom.)(HC)*** Accordingly, the assessee can avail the benefit of the scheme in respect of entire appeal which is pending before the ITAT.
145	Eligibility-section 154	**Question:** 154 petition pending before Assessing officer assessee filed vsv and AO rejected the 154 petition can assessee file appeal before CIT (A) on November and go for vsv.
		Answer: No, the rectification order passed by the AO is not before the Specified date i.e. January 31, 2020. Therefore, a deemed appeal nor appeal against the same exists on the specified date. Therefore, the same is not eligible for VSVA.
146	Eligibility	**Question**: A sold land at 5 Cr, claimed 1 Cr expense on removing encroachment and Rs.1cr transfer/improvement cost. AO disallowed 1Cr expense but allowed 1 Cr improvement cost.

		A challenged 1 Cr addition. CIT-A allowed full relief in Apr 2020. Later on CIT passed 263 directing AO to disallow Rs.1 cr cost of improvement. Order u/s 143(3) r.w.s 263 passed disallowing 1 cr improvement cost. A challenged order 263 before ITAT and order u/s 143(3) res 263 before PCIT. If A wish to avail VSVS then what ld be tax demand? Will it be against addition of rs 1 cr or 2 Cr (1 cr allowed +1 Cr pending appeal)? AY is same. Two different appeal filed. Both were pending as on 31.01.2020.
		Answer: The assessee is eligible for VSVA. He has to settle the appeal which is pending against the order under section 263 of the Act. Once the order under section 263 is settled, consequential order passed by the AO giving effect to the order of under section 263, which is pending before the CIT(A) will not survive. In ***ACIT v.Oscar Investment Ltd. (2020) 81 ITR 81 (SN) (Delhi) (Trib)*** the Tribunal held that when an order under section 263 had been quashed by the Tribunal, all resultant proceedings including the present appeals would not survive.
147	Computation - Search	**Question:** In case of search assessment u/s 143(3) passed earlier with addition made of Rs 20,00,000/-. appeal filed and pending. Subsequently their was search and the relevant assessment year also falls in the Block. Assessment U/s 153A/143(3) passed on the same addition of Rs 20,00,000/-. If we file for VSV what will be the tax rate applicable 100% or 125% on the above income which was earlier assessed U/s 143(3) and same repeate again in 153A.
		Answer: We presume that there was search earlier and the assessment was finalised under section 143(3) of the Act and the appeal is pending. Mean time one more search and seizure action was initiated and the order was passed u/s 153A, read with section 143(3) of the Act. One the relevant assessment is covered under the search and seizure action the rate of tax applicable will be at 125% as per section 3 (b) of the VSV Act.

148		**Question:** In the facts of the given case, on the disputed issue (viz. Disallowance of Employees Contribution to PF & ESIC) in an earlier year viz.A.Y.2010-11, the Appeal of the assessee was allowed by the CIT(Appeals). Against the same, the Department went into appeal before the ITAT. The ITAT dismissed the appeal of the Department on the ground of low tax effect viz. monetary limits. In subsequent year viz. A.Y.2012-13, disallowance on the same issue was made by the A.O. The assessee has preferred an appeal before the CIT(Appeals) which was pending on the 'specified date'. Now, the assessee wants to opt for the DTVSV Scheme. What would be the quantum of 'disputed tax' – 100% or 50% since, considering the fact that Appeal of the Department on 'disputed issue' was dismissed by ITAT (in view of 2nd Proviso to Section 3 of DTVSV Act)?
		Answer: The proviso reads as under " Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed" By reading the proviso it is clear that the dismissal of appeal by the Appellate Tribunal will also amount to order of the Appellate Tribunal hence the assesee is eligible for concessional rate of 50% of disputed tax. From what we understand, the issue seems to be *prima facie* good on merits and there doesn't seem to be a need to avail VSVA.
149	Rectification – VSVA Form	**Question:** Due to an error in Form 1 of VSV, instead of amount refundable to the assessee, the form shows amount payable by the assessee. Can the same be rectified by filing another Form 1? How many times the same can be refiled? Currently the status under VSV scheme is "Awaiting Form 3 from CIT". Please suggest.
		Answer: The assessee can once again file under VSVA and this time chose the filing type as "revised" for the same AY.

150	Computation – Covered issue and non-covered issue	**Question:** Can order by the Hon'ble ITAT be considered as FAVOURABLE order as addition @ 8%/100% is reduced to 3 % which is less than 5% (for which VSV is being opted). Will answer be different if parties for which addition is made differs, but the addition is under purchases from Bhanwarlal Jain Group
		Answer: As we understand, in a case if CIT adds 100 rupees, and subsequently the ITAT reduces it by 50 percent i.e. 50 rupees. It is a favourable order to the extent of 50 percent. Therefore, the assessee should be allowed to avail the scheme by settling the dispute at tax payable on 25 percent addition along with the upheld addition of 50 percent i.e. 75 percent. Applying the same principle, if 8 percent addition is reduced to 3 percent i.e. 5 percent relief is granted. The disputed tax amount should be computed at 5.5 percent. [3 percent + 50% of (5 percent)]. As per 2nd proviso to section 3 of VSVA, the favourable order should be of the assessee only and cannot be in case of any other assessee with similar/identical facts. Whether the purchases from Bhanwarlal Jain Group or other group may not be any difference. We have to refer section 9 which deals with certain exceptions referred therein only. Facts of the querist is not covered under the exception.
151	Rectification - remedy	**Question:** If the Assessing Officer fails to rectify error apparent on record, whether a writ can be preferred on the premise that no alternate efficacious remedy is available and the assessee will not be able to file VSVS application if rectification is not permitted. What would be the answer in case, the rectification is summarily disposed off
		Answer: An appeal is pending before CIT(A), however, the AO did not rectify a mistake apparent on record. As per FAQ 25 of ***CBDT Circular No. 9 of 2020 dated April 22, 2020***, where the rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any. If the AO is not passing the

		rectification order, the assessee can file the writ petition, with the prayer an disposal of rectification application, High Court may direct the AO to pass order at the earliest. However, in case of an adverse order under section 154 of the Act, the assessee has no recourse, apart from settling the appeal pending before CIT(A). VSVA is a scheme for declaration and the merits are not taken into consideration.
152	Refund under VSVA	**Question:** If by any reason the process of verification of Form 4 is failed or say if later it comes to knowledge that there was a technical error is filling VSV form. However, if the assesee has made the payment of taxes by that time. My question is whether the said payment of tax will be refundable/ adjustable or it will be no refundable/adjustable at all if the VSV process becomes invalid due to some technical reason
		Answer: As per section 7 of VSVA, any amount paid in pursuance of a declaration made under section 4 of VSVA shall not be refundable under any circumstances. Therefore, it is advisable to rectify Form 4 and contact your designated Authority under VSVA.In case no response is received by the assessee from the designated authority, the assessee may file a writ before the High Court.
153	Declarant – VSVA – Legal Heir	**Question:** My father Late XXXX died in the year 2006 and had recovery disputed matter from the assessment year 1986-1992. This case is pending in tribunal court, Indore. As per income tax recovery notice I am legal heir. Kindly suggest how can I apply for vivad se vishwas scheme and get benefit from it.
		Answer: Yes, the legal heir can file the declaration however the tax has to be paid on the disputed amount, the interest will be waived. The Form can be filled and at the time of verification of the Form, your capacity can be disclosed. In the event of any hardship it is advisable to contact your Designated Authority under VSVA.
154	Computation - Refund	**Question:** The AO added back to our income transactions they considered as hawala. They then deducted the full tax and penalty and interest there on against a refund we had owing to us. We appealed against the hawala decision. Matter has not been heard as of date. How do we deal with this matter under the vsv scheme. Thanks
		Answer: Assessee can file the declaration, however the assessee has to pay the tax in dispute. If the tax is paid, there

		will not be interest and penalty, the assessee will get the refund of the interest and penalty.
155	Computation – No details on account of adjustment	**Question:** The appeals in respect of demand of the Assessee for various years are pending as on 31.01.2020. The Department had attached bank accounts of Assessee and recovered almost more than half of the total outstanding demand for all the years. However, the breakup of the same is not known i.e. how much for each Assessment year The Department may have records of these, but due to several changes in jurisdiction in the past years, we may not be able to obtain the same from the Department and we may have to run from pillar to post. While filing Form 1, how to input these amounts paid [recovered by attachments] since the Assessee does not have the details of BSR Code, Challan No., Date and details of amount paid [by attachment] for each assessment year? Kindly advise.
		Answer: You please make an application to the AO and also under RTI to give the datils of adjustments. You can also make an application for inspection of records by paying prescribed fees. In the form you may refer as refund due to the assessee. If the assessee does not get any response the assessee may file writ petition before High Court.
156	Computation – reduction of loss - option	**Question:** The Assessment order received for AY 13-14, revises the Total Income to Rs -8706142 from -14499445; after adding 2 incomes under sec 69C to the return filed by the assessee. A notice of demand is also received showing outstanding tax to be paid on those 2 incomes. An appeal has already been filed against the same. Kindly suggest as to what can be done regarding this notice under Vivad se vishwas scheme in form 1. Will the additional tax be payable even though the Total Income is -ve as per order?
		Answer: As per Rule 9 of VSV Rules, 2020, i.e. **Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced**. Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to – (i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or (ii) carry forward the reduced amount of loss or unabsorbed depreciation.

		Therefore, the declaration may be filled according to the above options.
157	Computation	**Question:** Addition of Rs. 15 lakhs were made vide order u/s. 143(3) dt. 03-03-2014 in case of Pvt. Ltd. Co. The Hon'ble CIT(A) has deleted addition of Rs. 3 Lakhs and Hon'ble ITAT has further deleted addition of Rs. 2 Lakhs. The company has not filed further appeal against remaining quantum of Rs. 10 lakhs and paid the taxes. Meanwhile AO has levied penalty on addition of Rs. 15 lakhs vide order u/s. 271(1)(c) Dt. 23-03-2017. The company filed an appeal against order u/s. 271(1)(c) before Hon'ble CIT(A) on 25-04-2017. The appeal is still pending before Hon'ble CIT(A). The company after receipt of order of the Hon'ble ITAT in quantum appeal has requested AO to rectify quantum subjected to penalty from Rs. 15 lakhs to Rs. 10 Lakhs. The company want to opt for Vivad Se Vishwas Scheme Whether the company has to pay 25% of penalty on Rs. 15 lakhs or Rs. 10 Lakhs?
		Answer: Make an application for giving effect to the order of the Tribunal. The company has to pay 25% of 10 lakhs and not on 15 Lakhs. If the AO is not giving effect to the order of the Tribunal, appropriate legal remedy can be taken including filing of Writ before the High Court.
158	Computation – Interest - refund	**Question:** I have received refund for an AY along with interest u/s 244A. Disputed tax computed under VSVS is Nil after adjustment of refund received. Do I need to refund the interest u/s 244A amount received earlier?
		Answer: The Act is silent on this issue; it can be assumed that the interest does not have to be refunded. As the collection only refers to disputed tax amount and waives interest. If the interest is wrongly granted, the revenue may pass an order for refund of interest.
159	Accounting Entry - VSVA	**Question:** An addition was made in respect of stock found during survey as the department did not rely on the evidence of a challan filed by the assessee, who had taken the stock on approval from the party. The department made addition considering the same to be assessee's stock. Now the assessee is in an appeal before the CIT(A), appeal filed before 31.1.2020 and wants to go for VSV scheme. Once he pays the tax for the stocks found with him, can he capitalise the stocks in his books of account?
		Answer: The CBDT ***Circular No 21 of 2020 dt 4-12-2020*** Q No 81 reads as under; In respect of some loan, addition was made under section 68 of the Act. Appeal is pending

		before CIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account. No, *Vivad se Vishwas* is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee. We have clarified earlier stating that the accounting entries will be independent and would not be saved by the scheme. It is fair to assume that the accounting entries by itself would not attract the income tax under the regular provisions of the Income Tax Act. However, the liability to MAT u/s 115JB for that year would require to be contested if such tax is levied. The issue under the Companies Act and SEBI laws and the listing agreements and of the corporate governance and also of the CSR spends would require to be deeply examined. There is no immunity as per the scheme.
160	Time period for payment under VSVA	**Question:** Since the assessee appellant company had filed under VSVS Scheme and consequent upon receipt of Form 3 and the assessee paying the settled due amount is required to filed form no 4 under VSVS Scheme. One of the pre-conditions in submitting form 4 is that the pending appeal is to be withdrawn and a withdrawal proof is to be attached. Since the appeal was origin ally filed with CIT A 36 who in response to withdrawal application says that the appeal jurisdictions are now changed in view of the faceless appellant provisions applicable with effect from 1st October 2020. It is not known who is to be contacted for the purpose of such withdraw al as there is no facilities to contact national E Faceless appeal centre. Now how to comply with the 15 days period time limitation required for filing form 4. Please help out urgently.
		Answer: CBDT vide ***Circular No. 18 of 2020 dated 28.10.2020*** has clarified that where a declarant files a declaration under *Vivad se Vishwas* on or before 31st December 2020, the declarant shall make the payment without additional amount on or before 31st March 2021. The 15-day period for making payment along with Form 4 has been removed. The Declarant has time until March 31, 2021 to make the payment.
161	Eligibility - Penalty – 234E	**Question:** whether penalty leived on 234E fees is fully waived off under scheme or 25% is to be paid?

		Answer: As per section 2(1)(o) of VSVA i.e. "tax arrears", tax arrears includes penalty. Accordingly, section 234E of the Act is also covered under the scheme.
162	Accounting - VSVA	**Question:** Can addition U/S 68 cash credit in form of unsecured loan made in assessment settled under Vivad to vishwas scheme, can appellant be able to credit? to capital account of unpaid loan still appearing in balance sheet of appellant
		Answer: The CBDT Circular No 21/20 dt 4-12-2020 Q No 81 reads as under; In respect of some loan, addition was made U/S 68 of the Act. Appeal is pending beforeCIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account? No, *Vivad seVishwas*is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee. We have clarified earlier stating that the accounting entries will be independent and would not be saved by the scheme. It is fair to assume that the accounting entries by itself would not attract the income tax under the regular provisions of the Income Tax Act. However, the liability to MAT u/s 115JB for that year would require to be contested if such tax is levied. The issue under the Companies Act and SEBI laws and the listing agreements and of the corporate governance and also of the CSR spends would require to be deeply examined. There is no immunity as per the scheme.
163	Refund – filling of form - process	**Query**: As the Form 1 & 2, i have to recieve refund and form 3 confirms the same, but while filing Form 4, it is showing as it is mandatory to fill up the Challan details, so what should be filled up at that place.
		Answer: If revenue has adjusted the amount of refund, then the assessee may write the date of adjustment, in case the revenue has recovered the tax by attaching the bank account or payment made to recovery officer the details of challans may be available with the assssee, the same may be written. In case excess payment of advance tax or self-assessment tax is made the details will be available with the assessee, which can be filed. However, if no details are available, it is advisable to contact assessee's designated authority and seek clarification on this issue.

164	Condonation of delay	**Query**: Assessee received the Hard copy of the Scrutiny Order U/s 143(3) on 30th December, 2019. Assessee filed Appeal on 29th January, 2020. As per Dept. contention, they have sent the Order to the Authorized Representative (AR) e mail id on 19th December, 2019. The AR has not received the e mail. As per I T records, the assessee e mail id was registered. They have not sent the Order to Assessee e mail id. Based on the receipt of date of Hard copy, the assessee filed Appeal in time. So the Assessee has not filed any letter for condonation of delay. The CIT has not released Form 3 for the past 5 months. What are the chances of admitting the Form 1&2 under the Scheme.? The Assessee paid the tax amount as per the Assessee calculation. The AO confirmed orally that the calculation is correct. Kindly advise on the above issue.
		Answer: Please verify in the appeal form which address is given or email of tax consultant is provided in the appeal memo. File an affidavit of the Tax consultant in case if he has not received the order by email. In case the email is not received by the Tax consultant the appeal of the assessee is on time. The VVS declaration may not be rejected. As per circular ***No 21/2020 dt 4-12-2020*** Q. N0 59. *Whether the taxpayer in whose case the time limit for filing of appeal has expired before 3J'" Jan 2020 but an application for condonation of delay has been filed is eligible?* Ans : If the time limit for filing appeal expired during the period from 1" April 2019 to 31" Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31" Jan 2020. On facts of the query it is presumed that there was no delay in filing the appeal. In case the declaration is rejected, the assessee may approach the High Court by filing a writ petition.
165	Eligibility – Deemed Appeal	**Query**: Assessee DREI. For AY 2011-12, the assessee's appeal was disposed off in assessee's favor and the entire addition on 2 issues were fully allowed. Before the ITAT in the Dept. Appeal, the matter was restored to AO on specific issues only vide order dated 18.01.2020 served on assessee on 04.02020. In Form No. 1 and 2 it requires the details of appeal filed before the HC, which has not been filed as the time for appeal has not expired. Because of the Form no. 1 & 2 cannot be uploaded.
		The Assessee has a deemed appeal pending before the High Court as on the specified date. On the other hand, in light of

		FAQ 56 of CBDT ***Circular No. 21 of 2020 dated December 4, 2020***, the assessee can settle the appeal pending before the ITAT under VSVA too.
166	Procedure – verification - adhaar	**Query**: The assessee is not able to verify the Form as Aadhar OTP is not enabled and other modes of verification not possible. How to submit the Form 2 and subsequently Form 4
		Answer: In ***Binoy Viswam v. UOI (2017) 396 ITR 66 (SC)*** the Honourable Court held that the proviso to section 139AA (2) cannot be read retrospectively as it takes way vested rights. It will only have prospective effect. In ***Hussain Indorewala v UOI (2018) 408 ITR 338 (Bom) (HC)*** held that in case of system does not accept the return the asssessee is at liberty to file their return of income in physical form with jurisdictional Assessing Officer. Assessee may write to the designated authority the designated Authority will be in a position to direct the concerned officials to accept the form. In case no response is received the assessee may have to file writ before High Court
167	Declaration – VSVA -154	**Query**: AO made additions double the amount of information received from DDIT (inv), appeal and rectification application filed. No decision is taken by AO on application 154. AO saying, he cannot amend the order u/s 154. In given circumstances, on which amount assessee can go under VSV Scheme 2020
		Answer: What we understand, there is a *prima facie* case of incorrect double addition and the AO refuses to rectify the same. Unfortunately, under VSVA, the assessee has no choice but to settle the unrectified Order as there is no evaluation of merits under VSVA. The assessee may file Writ petition before the High Court and pray for direction to pass the order. High Court may direct the Assessing Officer to pass the order.
168	Computation - MAT	**Query**: Sir, The assessee filed ROI under 115JB and pay tax of Rs. 75 lacs wherein normal tax is around Rs. 50 lacs. So it carry forward MAT credit of Rs. 25 lacs. In next two years it had utilized Rs. 10 lacs from MAT credit of Rs. 25 and Rs. 15 lacs is still not utilized. Thereafter, assessment was made and tax was determined Rs. 150 lacs due to some disallowances. The matter is pending with CIT(A). Which amount is payable under option 1 and 2(with interest)?
		Answer: The assessee has to find out what is the amount disputed in appeal and tax payable thereon. Once tax is paid

		interest is waived. As regards MAT credit the assessee can refer circular No 9 dt 22-4 2020, Question no 53 the Board has to clarify. It is desirable to contact the designated authority and get the clarification.
169	Penalty – waived – not waived	**Query**: In case of my client, Transfer Pricing adjustment has been made because of which my returned loss is converted into a taxable income. However, the client is having brought forward business losses which if adjusted will lead to a NIL income. The AO has also initiated penalty under section 271(1)(c), 271AA and 271G. The AO has passed the assessment order without offsetting the previous year losses. Rectification application is filed however the order is awaited. The following are our queries. 1. Can we offset the losses at the time of filing VSV. 2. If we opt for VSV whether penalty under section 271(1)(c), 271AA and 271G would be waived off?
		Answer: Addressing query No. 1, As per FAQ No. 53 of ***Circular No. 9 of dated April 22, 2020***; in a case where the dispute in relation to an assessment year relates to reduction of reduction of loss, the appellant shall have an option either to: (i) include the of tax related to loss in the amount of disputed tax and carry forward the loss amount (ii) to carry forward the loss. Addressing Query No. 2, as per FAQ No. 8 of ***CBDT Circular 9 of 2020 dated April 22, 2020***, If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form covering both disputed tax appeal and penalty appeal. However, he would be required to pay a relevant percentage of disputed tax only. Therefore, penalty under section 271(1)(c) of the Act will be waived. As per FAQ No. 80 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee is not eligible for waiver of penalty under section 271B, 271BA, 271DA etc. They have to be settled separately. It can be understood that penalty imposed on account of non-compliance are not waived along with quantum appeal and have to be settled separately. Therefore, penalty under section 271AA & 271G of the Act have to be settled separately at 25 per cent of the amount.

	Payment of tax	**Query**: In Vivas se Vishwas scheme we have recieved Form 3, now we need to pay the amount. Whether it is to be paid under Self-Assessment or Regular Assessment?
		Answer: Regular assessment tax Code 400
170	Legal Heir – Non-PAN case	**Query**: in the case of NON-PAN Assesses or the case through legal heir. there Legal Heir have the PAN but the the actual assesses has not have any PAN Allotted so this person can file the VSV
		Answer: We do not see any reason why the legal heir should not be allowed to file under VSVA. In the form the assessee may refer as legal heir and quote the PAN No of legal heir. The assessee may also write to the designed Authority. In case the application is rejected the assessee may file writ before High Court.
171	Chery picking issues – under VSVA	**Query**: If the Assessing officer has made 3 additions to the Total Income of assessee, but the Assessee wants to avail the benefit of Vivad se vishwas scheme only for a single addition & continue the appeal for the remaining additions, then in form 1&2 of VSV, where can we specify that the total additions are Rs.42,30,056 and the only Rs.17,50,000 is for filing under VSV? kindly suggest
		Answer: Cherry picking of issues is not allowed in VSVA, this has been clarified in FAQ no. 14 of CBDT Circular No. 9 of 2020 dated April 22 of 2020. With respect to one order, the appellant must choose to settle all issues and then only he would be eligible to file declaration.
172	Process – filling of Form	**Query**: The Assessee is opting for not to pay tax and go for reduction of losses. Schedule D to be filled up. As there is NIL tax liability on account of loss return as well as assessed loss. whether to fill Schedule A ? Can we say disputed tax is NIL and disputed income is the amount of disallowance?
		Answer: Schedule D form No 1 to be filed.
173	Condonation of delay – mere filing of application – won't suffice	**Query:** 1. The petitioner had filed a revision application u/s 264 of the act before CIT against penalty order u/s 271(1)(c) of the Act. 2. The date of order was 29.04.2013. 3. There was a delay in filing the petition. 4. The petition was filed along with an application for condonation in delay. 5. The said petition was pending on the date of announcement of VSV Scheme. 6. The petitioner filed a declaration under VSVS but the same was rejected by Pr.CIT on the ground that the petition filed u/s 264 of the Act was not in time

		A request to kindly suggest a solution available to the assessee.
		Answer: As per FAQ No. 59 of ***CBDT Circular No. 21 of 2020 dated December 4, 2020***. The assesssee should eligible for VSVA. Merely filing of a condonation of delay application will not suffice, the same has to be condoned. Therefore, the assessee may approach the authority concerned and request in writing to pass the order. In case the order is not passed the assessee may file writ before the High Court. In case the application for condonation of delay is rejected it is desirable to file before High Court against the rejection order.
174	Refund under VSVA	**Query:** I have a refund of 1 crore as per VSV in AY 2010-11 and demand of 2 crores under IT Act in AY 2011-12. If I go under VSV only for AY 2010-11, will I get cash refund of 1 crore or it will be completely adjusted against demand of AY 2011-12? Provide basis for your answer if you have any. As per my understanding, they cannot adjust because both are separate Acts.
		Answer: The Direct Tax Vivad Se Vishwas Act, 2020 is code by itself. Section 245, of the Income -tax Act, 1961 which deals with Set off of refunds against tax remaining payable under certain circumstances is not applicable to VVS Act. Accordingly, the revenue cannot adjust the demand of AY. 2011-12. In case the revenue adjusts the demand the assesssee may have to file writ before High Court.

Book/Articles for reference:

1. **The Direct Tax Vivad Se Vishwas Act, 2020: CBDT Circular No. 21 0f 2020 – Better Late Than Never**
   By Advocate, Shashi Bekal
   https://itatonline.org/articles_new/the-direct-tax-vivad-se-vishwas-act-2020-cbdt-circular-no-21-of-2020-better-late-than-never/

2. **Analysis of the Direct tax Vivad Se Vishwas Act, 2020** (E-publication)
   By Advocates Vipul Joshi & Dinkle Hariya
   https://aiftponline.org/e-publication-50-discount-to-members/

3. **Income Tax Measures Under Economic Stimulus Packages**
   By Advocate, Shashi Bekal
   https://itatonline.org/articles_new/income-tax-measures-under-economic-stimulus-packages/

4. **Vivad se Vishwas-Impact of Extension Of Date Of Vivad Se Vishwas Act, 2020**
   By CA Shivangi Samdhani
   https://itatonline.org/articles_new/impact-of-extension-of-date-of-vivad-se-vishwas-act-2020/

5. **Vivad Se Vishwas Act, 2020: Circular No. 9 of 2020 – Old Circular Re-Energized**
   By Advocate, Shashi Bekal
   https://itatonline.org/articles_new/vivad-se-vishwas-act-2020-circular-no-9-of-2020-old-circular-re-energized/

6. **Controversies of Vivad Se Vishwas Scheme and Possible Reasons For Its Failure**
   By CA Shivangi Samdhani
   http://itatonline.org/articles_new/controversies-of-vivad-se-vishwas-scheme-and-possible-reasons-for-its-failure/#more-6796

7. **Vivad Se Vishwas Scheme: The Law, Procedure and Dilemma**
   By Advocate, Shashi Bekal
   http://itatonline.org/articles_new/vivad-se-vishwas-scheme-the-law-procedure-and-dilemma/

8. **Vivad Se Vishwas Scheme -Quick Fix version 3 Required**
   by Advocates, Paras Savla and Harsh Shah
   http://itatonline.org/articles_new/vivad-se-vishwas-scheme-quick-fix-version-3-required/

9. **Amendments to the Direct Vivad Se Vishwas Bill 2020: Major improvement but minor lacuna remains**
   by Advocate, Shashi Bekal
   http://itatonline.org/articles_new/amendments-to-the-direct-vivad-se-vishwas-bill-2020-major-improvement-but-minor-lacuna-remains/

10. **Vivad Se Vishwas Scheme: Comparison with KVSS and compilation of Judgements**
    by Advocate, Ms. Neelam Jadav
    http://itatonline.org/articles_new/vivad-se-vishwas-scheme-comparison-with-kvss-and-compilation-of-important-judgements/

11. **Tax Counsel Explains intricacies of "Vivad Se Vishwas Scheme**
    by Senior Advocate, Firoze Andhyarujina
    http://itatonline.org/articles_new/tax-counsel-explains-intricacies-of-vivad-se-vishwas-scheme/

12. **FAQ on the Direct Tax Vivad Se Vishwas Bill, 2020**
    By CAs Ketan Ved, Urvi Mehta & Shraddha Jain

http://itatonline.org/articles_new/faqs-on-the-direct-tax-vivad-se-vishwas-bill-2020-by-experts/

13. **"Vivad Se Vishwas" Scheme: Is It A Penalizing or Pardoning Tax Regimen?**
by CA Nidhi Surana Jain
http://itatonline.org/articles_new/vivad-se-vishwas-scheme-is-it-a-penalizing-or-pardoning-tax-regimen/

14. **Analysis of The Direct Tax Vivad Se Vishwas Bill, 2020**
By CA Ashish Chadha
http://itatonline.org/articles_new/analysis-of-the-direct-tax-vivad-se-vishwas-bill-2020/

15. **Controversies of Vivad Se Vishwas Scheme and possible reasons for its falure**
by CA Shivangi Samdhani
http://itatonline.org/articles_new/controversies-of-vivad-se-vishwas-scheme-and-possible-reasons-for-its-failure/

16. **The Direct tax Vivad Se Vishwas Bill, 2020**
By, Advocate Dharan V. Gandhi and Viraj Mehta (2020) The Chamber's Journal – Feb- P. 87
https://ctconline.org/wp-content/uploads/pdf/2020/chamber-journal/CJ_February_2020.pdf

Disclaimer

The contents of this compilation are solely for educational and information purpose. It does not constitute professional advice or formal documentation. Neither the panellists or compiler publisher nor itatonline.org accepts any liabilities for any loss or damage of any kind arising out of inaccurate or incomplete information in this compilation nor action can be taken in reliance thereon. No part of this compilation should be distributed, except for non-commercial use. - Editorial Board