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VKG

Direct Tax

Vivad Se Vishwas Scheme, 2024

CA Sailee Gujarathi



Vivad Pe Vishwas ?

Aata dal ka bhaav toh sabko pata hai, par dispute ka kya?

Memorandum to Finance Bill, 2024

2. The pendency of litigation at various levels has been on the rise due to larger number of cases going for appeal than the number of disposals. Keeping in view the success of the previous Vivaad Se Vishwas Act, 2020 and the mounting pendency of appeals at CIT(A) level, introduction of a Direct Tax Vivad se Vishwas Scheme, 2024 is proposed with the objective of providing a mechanism of settlement of disputed issues, thereby reducing litigation without much cost to the exchequer.

3. It is proposed that this Scheme shall come into force from the date to be notified by the Central Government. The last date for the Scheme is also proposed to be notified.

[Clauses 88 to 99]

ATTEMPTS IN THE RECENT PAST

Revenue involved - ~INR 10.5 lakhs crores

No. of cases involved – ~6 lakhs

- Reduction in scrutiny cases
- Increasing monetary threshold for appeal filing

2016

Direct Tax Dispute Resolution Scheme 2016

2019

Sabka Vishwas (Legacy Dispute Resolution) Scheme -2019

Applicable only for the Indirect Taxes dispute under pre-GST era

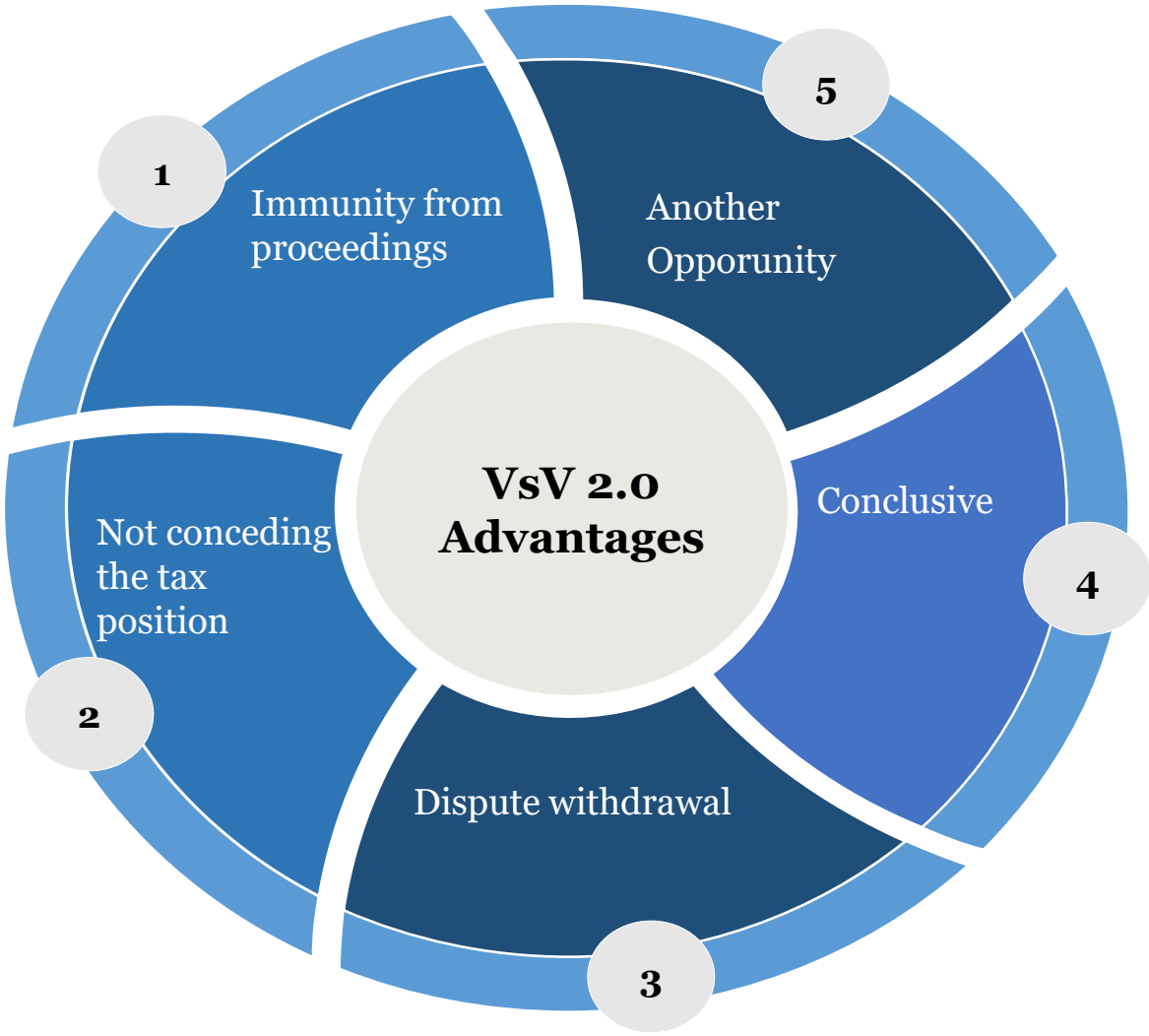
2020

The Direct Tax Vivad se Vishwas Act -2020

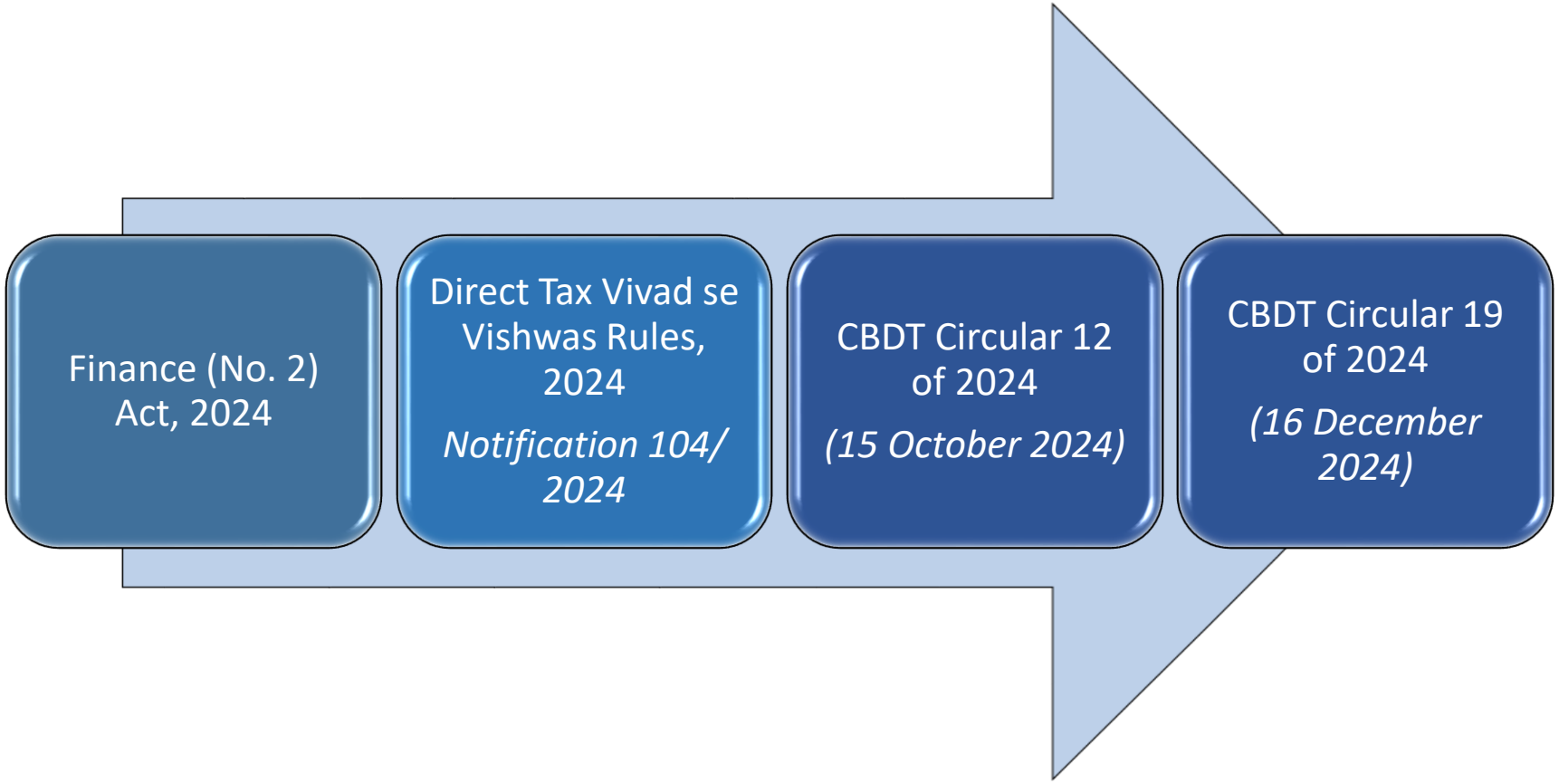
2024

The Direct Tax Vivad se Vishwas Scheme -2024

ADVANTAGES OF VSV



RELEVANT PROVISIONS



VSV 2.0 – APPLICABILITY

01

Appeal or writ or special leave petition filed either by appellant or income tax authority or by both before any appellate forum viz Commissioner (Appeals) or Income Tax Appellate Tribunal or High Court or Supreme Court, **and such appeal is pending as on 22 July 2024, or;**

02

Objections have been filed before the Dispute Resolution Panel ("DRP") and no directions have been **received on or before 22 July 2024, or;**

03

DRP has issued directions under Section 144C(5) of the Act, but the Assessing Officer ("AO") **has not completed the assessment as on 22 July 2024, or;**

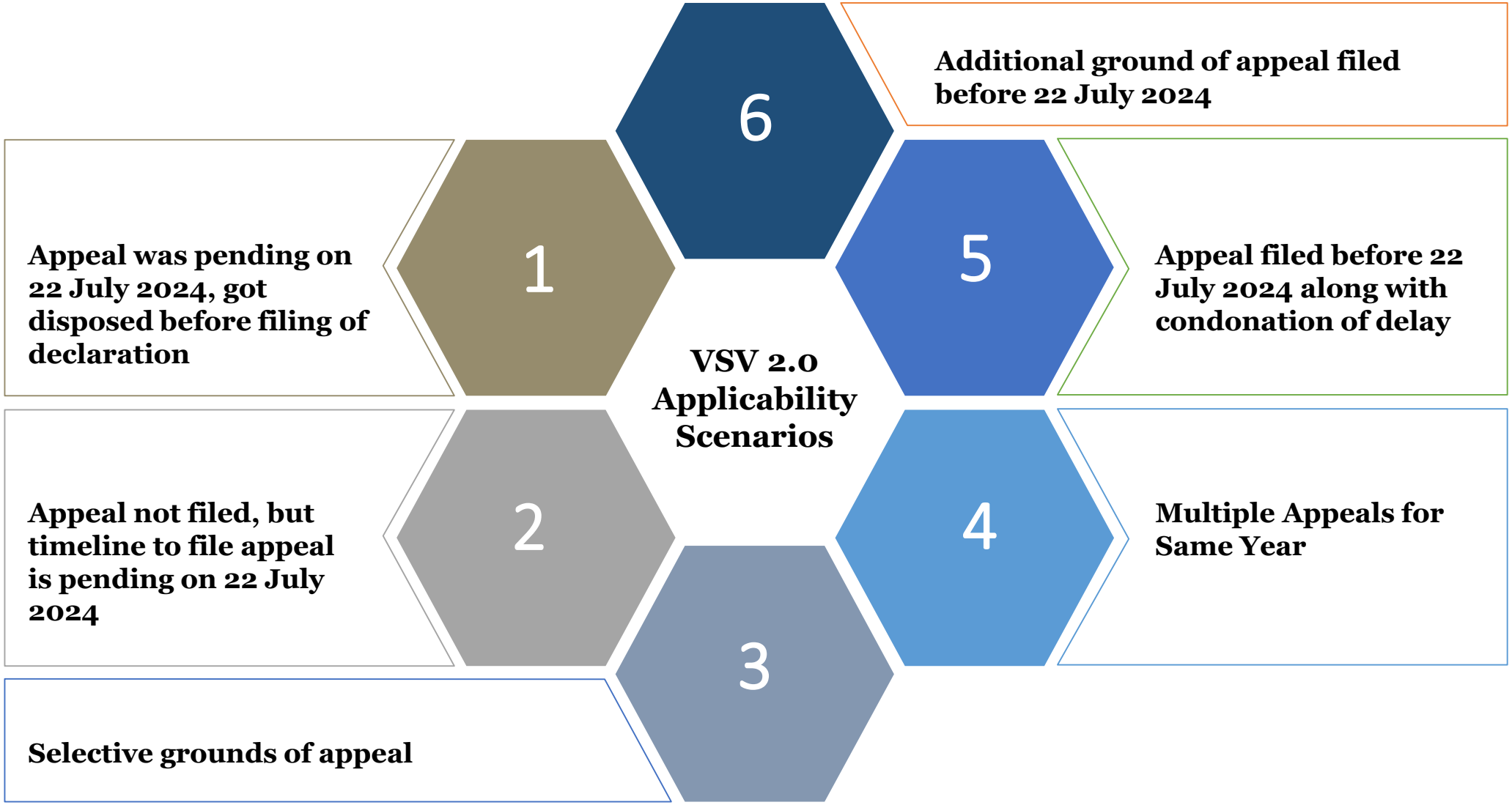
04

Application for revision has been filed and is **pending before the Commissioner of Income-Tax as on 22 July 2024**

05

Also covers disputes relating to Tax Deducted as Source ("TDS") and Tax Collected at Source ("TCS")

VSV 2.0 – APPLICABILITY (2 of 2)



AMOUNT PAYABLE UNDER THE SCHEME – 1/3



Appeals filed after 31.01.2020 but on or before 22.07.2024

Sr No	Nature of tax arrear	Amount payable on or before the 31st day of the December, 2024	Amount payable on or before the 01.01.2025 but before ***
1	Disputed Tax including Interest and Penalty thereon	Amount of Disputed tax (100% of Disputed tax)	Amount of Disputed Tax + 10% of Disputed Tax (110% of Disputed tax)
2	Disputed Penalty, Disputed interest or Disputed Fee	25% of Disputed Penalty, Disputed interest or Disputed Fee	30% of Disputed Penalty, Disputed interest or Disputed Fee

*** End date not notified

CASE STUDY

- New Appellant
- Declaration for VsV in Form 1 done on 25 December 2024
- Tax not paid upto 31 December 2024
- Whether tax to be paid equivalent to 100% of disputed tax or 110% of disputed tax?

Finance Act (No. 2), 2024

TABLE

Sl. No.	Nature of tax arrear.	Amount payable under this Scheme on or before the 31st day of December, 2024.	Amount payable under this Scheme on or after the 1st day of January, 2025 but on or before the last date.
(1)	(2)	(3)	(4)

CBDT Circular

Rates

3	Kindly provide the amount payable on the tax arrears as per the DTVSV Scheme, 2024?	Table-1

S. No.	Nature of tax arrears	Amount payable where declaration made on or before 31.12.2024	Amount payable where declaration made on or after 1.1.2025 & before last date
1	Tax arrears include disputed tax, interest, penalty (New appellant)	100% of disputed tax	110% of disputed tax
2	Tax arrears include	110% of	120% of

AMOUNT PAYABLE UNDER THE SCHEME – 2/3

Appeals filed on or before 31.01.2020

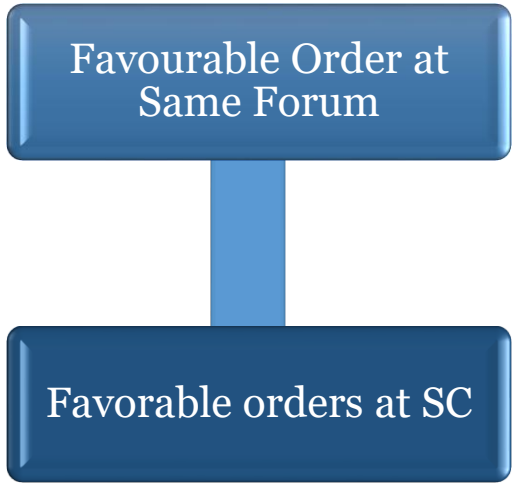
Sr No	Nature of tax arrear	Amount payable on or before the 31st day of the December, 2024	Amount payable on or before the 01.01.2025 but before ***
1	Disputed Tax including Interest and Penalty thereon	Amount of Disputed Tax + 10% of Disputed Tax (110% of Disputed tax)	Amount of Disputed Tax + 20% of Disputed Tax (120% of Disputed tax)
2	Disputed Penalty, Disputed interest or Disputed Fee	30% of Disputed Penalty, Disputed interest or Disputed Fee	35% of Disputed Penalty, Disputed interest or Disputed Fee

*** End date not notified

AMOUNT PAYABLE UNDER THE SCHEME – 3/3

Appeal by Department / Covered Issues

Sr. No.	Nature of tax arrear	Amount payable	Condition, if any
1	Appeal/ Writ/ SLP by Department	50% of amount payable (as determined in earlier slides)	
2	Appeal pending before CIT(A) or JCIT(A) and favorable order received from ITAT or High Court on such issue		Decision not reversed by higher forum
3	Appeal pending before ITAT and favorable order received from High Court on such issue		Decision not reversed by Supreme Court



DISPUTED TAX

What is Disputed Tax

Situation	Disputed Tax
Where appeal is pending before Appellate Forum on 22 Jul 2024	Tax that is payable if the appeal /petition/ SLP was to be decided against him
Objection filed by appellant before DRP is pending as on SD	Amount of Tax payable if DRP was to confirm the variation proposed in draft assessment order
DRP has issued directions but final order of AO is pending as on SD	Amount of Tax payable as per Asst. Order to be passed by AO as per the directions of DRP
Revision petition u/s 264 is pending as on SD	Amount of Tax payable as if the revision application will not be accepted

Disputed Tax Proviso

Where the dispute relates to reduction of MAT credit or AMT credit or reduction of loss or depreciation →
Appellant has option to

- Include the amount of tax related to tax credit or loss or depreciation
- Carry forward reduced tax credit or loss or depreciation in the manner to be prescribed

CASE STUDY – FOR COMPUTATION OF DISPUTED TAX - 1

Particulars	AY 2018-19	AY 2019-20	AY 2020-21
Additions during assessment u/s 143(3)			
(i) Unexplained cash credits	25,000	20,000	60,000
(ii) Disallowance of cash payments	30,000	50,000	40,000
(iii) Disallowance for TDS defaults	50,000	40,000	70,000
(iv) Disallowance u/s 40A(2)	25,000	60,000	90,000
TOTAL ADDITION BY AO	**1,30,000**	**1,70,000**	**2,60,000**
Tax on assessed income	*50,000*	*60,000*	*105,000*
Interest u/s 234B/234C	10,000	15,000	20,000
Penalty	30,000	45,000	80,000
ADDITIONS AFFIRMED BY CIT(A) AND PENDING BEFORE ITAT BEFORE 22/7/24	**1,30,000**	**1,70,000**	**2,60,000**
Questions			
What is the tax payable in VsV (before 31 December 2024 case)?	50,000	60,000	105,000

CASE STUDY – FOR COMPUTATION OF DISPUTED TAX - 2

Particulars	AY 2018-19	AY 2019-20	AY 2020-21
ADDITIONS AFFIRMED BY ITAT			
(i) Unexplained cash credits			60,000
(ii) Disallowance of cash payments	30,000	50,000	
(iii) Disallowance for TDS defaults	50,000		70,000
(iv) Disallowance u/s 40A(2)		60,000	
TOTAL ADDITIONS CONFIRMED BY ITAT	**80,000**	**1,10,000**	**1,30,000**
Tax on income after ITAT Additions	24,000	33,000	66,000
Interest u/s 234B/C	4500	11,000	12,000
Penalty u/s 270A	12,000	40,000	55,000
ADDITIONS DELETED BY ITAT	**50,000**	**60,000**	**130,000**
Tax on deletions	26,000	27,000	39,000
Assessee and Department have filed appeals against all adjustments before High Court			

Does Assessee need to settle both appeals?

Amount of diputed tax if VsV is opted only for taxpayer's appeal

← Disputed tax

Amount of diputed tax if VsV is opted for Dept appeal

← 50% of such amount to be added to Disputed tax

CASE STUDY – FOR CARRY FORWARD OF LOSS/ UD

Particulars	Computed by Assessee in ITR	Recomputed by AO	Remarks
Year 1			
Long term capital loss on sale of shares	(10,00,000)	NIL	This is reduction of loss as determined during assessment
Year 2 – Long term capital gain (without loss)	10,00,000		As per return of income – Tax paid on Nil (after set off of 10,00,000 from year 1)

Option 1 – Pay the tax in year 1 itself

No tax was paid originally in ITR due to loss situation. Now entire loss is ignored and tax is paid in first year itself.

Year 1	
Tax at 20% on loss reduced (10,00,000*20%)	2,00,000

Year 2	
Long term capital gain	10,00,000
Less: Loss from Year 1	(10,00,000)
Tax on Balance Income	NIL

CASE STUDY – FOR CARRY FORWARD OF LOSS/ UD

Particulars	Computed by Assessee in ITR	Recomputed by AO	Remarks
Year 1			
Long term capital loss on sale of shares	(10,00,000)	0	This is reduction of loss as determined during assessment
Year 2 – Long term capital gain (without loss)	10,00,000		As per return of income – Tax paid on Nil (after set off of 10,00,000 from year 1)

Option 2 – Not Pay Tax in Year 1

Tax carry forward will reduce for year 2. Interest u/s 234B on enhanced income for year 2 will apply.

Year 1	
No tax paid – Loss situation	Nil

Year 2	
Long term capital gain	10,00,000
Less: Loss set off	Nil
Tax on Balance Income	2,00,000

VSV 2.0 INELIGIBLE DISPUTES/ PERSONS

In respect of tax arrears

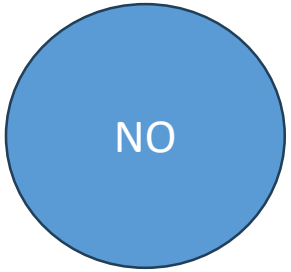
- Relating to an assessment year ("AY) of which an assessment or reassessment has been made under section 143(3), 144, 147, 153A or 153C on the basis of search
- Relating to an AY in respect of which prosecution has been instituted on or before the date of filing of declaration
- Relating to an undisclosed income from a source outside India or undisclosed asset located outside India
- Relating to an assessment or reassessment **made on the basis of information received under tax information exchange agreements**

Following Persons

- Detention order (not revoked or set aside) under Conservation of Foreign Exchange or Prevention of Smuggling Activities Act, 1974
- Prosecution/ Convicted for any punishable offence :
  - Unlawful Activities (Prevention) Act, 1967
  - Narcotics Drugs and Psychotropic Substances Act, 1985
  - Prohibition of Benami Property Transactions Act, 1988
  - Prevention of Corruption Act, 1988
  - Prevention of Money Laundering Act, 2002
- Prosecution instituted by an income-tax authority ; or convicted under provisions of Bhartiya Nyaya Sanhita, 2023 / enforcement of any civil liability under any law
- Person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

CASE STUDY – INELIGIBLE DISPUTES

- An appeal is filed by assessee for multiple issues as below before CIT(A)
  - Addition of house property income – Rs. 1,00,00,000/-
  - Addition of salary income – Rs. 10,00,000/-
  - Addition of undisclosed income from a source located outside India – Rs. 2,00,000/-
- Whether taxpayer can opt for VsV 2.0?



CASE STUDY – SEARCH CASES

- Taxpayer has filed appeal on 1 January 2020
- Assessment reopened on the basis of documents found during search on another person on 1 January 2017
- Assessment order was passed under section 147 r.w.s. 143(3) of the Act
- Whether taxpayer is eligible to opt for VsV?

Finance Act (No. 2), 2024

Scheme not to apply in certain cases.

96. The provisions of this Scheme 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 147 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;

Circular 12/2024

		payer has paid the full and final amount.
Search assessments		
6	Kindly clarify which assessments shall be considered to have been made on the basis of search initiated under section 132/132A of the Act?	Assessments framed under section 153A or 153C are clearly made on the basis of search initiated u/s 132/132A. Therefore, such cases shall not be eligible for the DTVSV Scheme, 2024. For other cases where assessments have been made u/s 143(3)/144/147, following three sets of cases shall be considered as cases where assessments have been made on the basis of search initiated u/s 132/132A. These cases are:- (*i*) Where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee and assessments have been made consequently; or (*ii*) Where the Assessing Officer has drawn satisfaction, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee and assessments have been made consequently; or (*iii*) Where the Assessing Officer has drawn satisfaction, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee and assessments have been made consequently.

CASE STUDY PROSECUTION

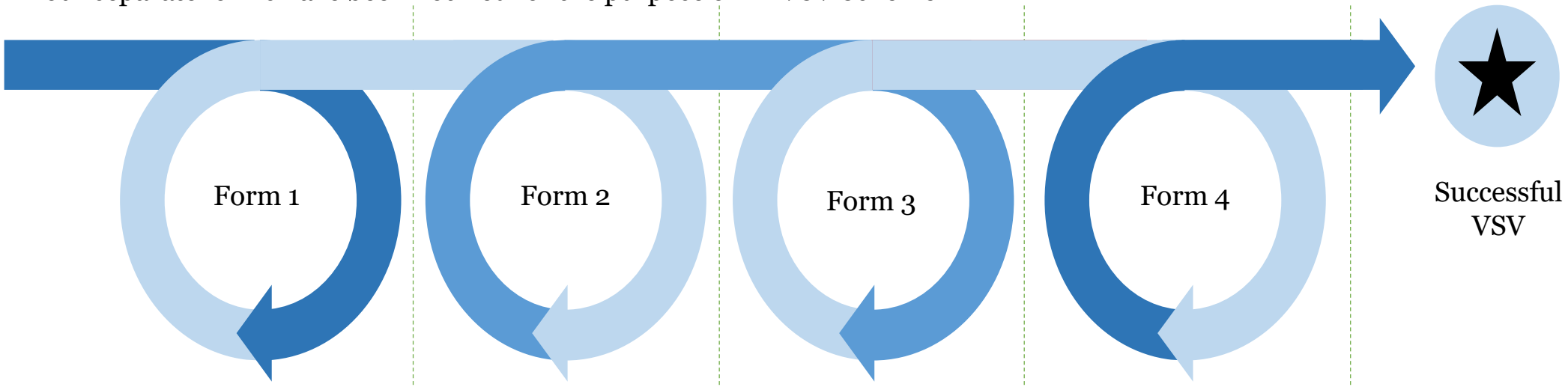
- Prosecution not instituted on 22 July 2024
- Prosecution Instituted on 22 December 2024

- Prosecution instituted in Year 1
- Same issue in year 2, but prosecution not instituted

Whether eligible to opt for VsV 2.0?

PROCEDURAL ASPECTS

Four separate forms have been notified for the purpose of DTVSV Scheme



Form for filing declaration and Undertaking by the declarant

Form for Certificate to be issued by Designated Authority

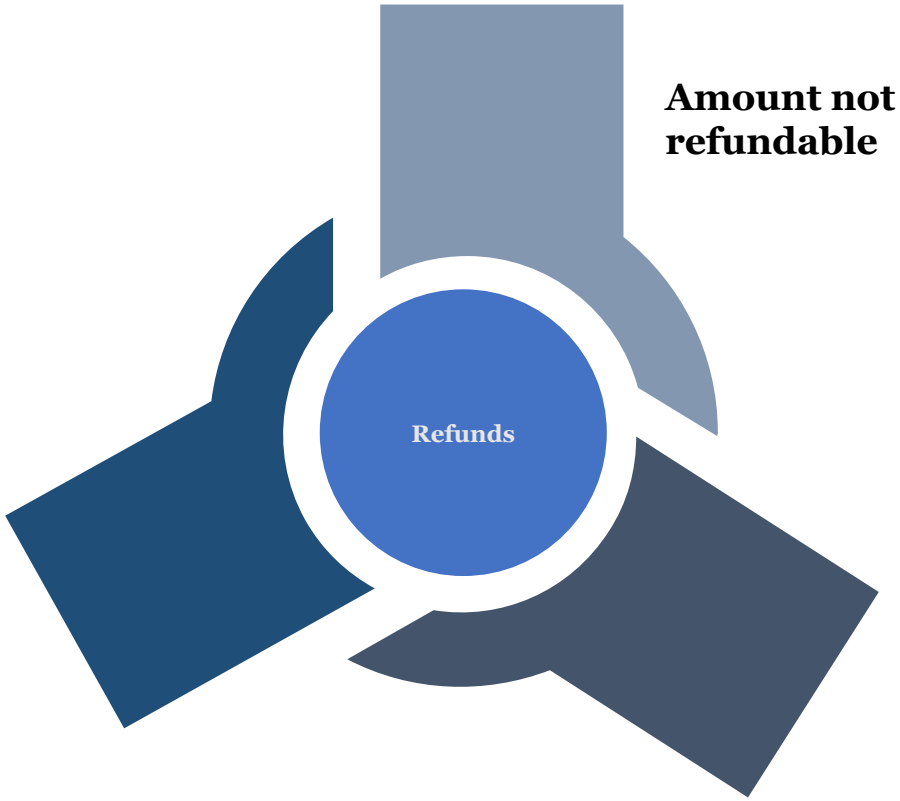
Form for intimation of payment by declarant

Order for Full and Final Settlement of tax arrears by Designated Authority

Single form qua an order

Withdrawal of Appeal

REFUNDS



Amount not refundable

Adjustment of payment made earlier

Excess amount paid refundable without interest

OTHER MATTERS

Settling issues in part

Settling penalty appeal while continuing to litigate the associated quantum appeal?



AR for foreign entity or deceased taxpayers

Protective v Substantive Additions

Secondary Adjustment

Multiple Appeals

Conceding position

Rectification of order by designated authority

TDS ISSUES

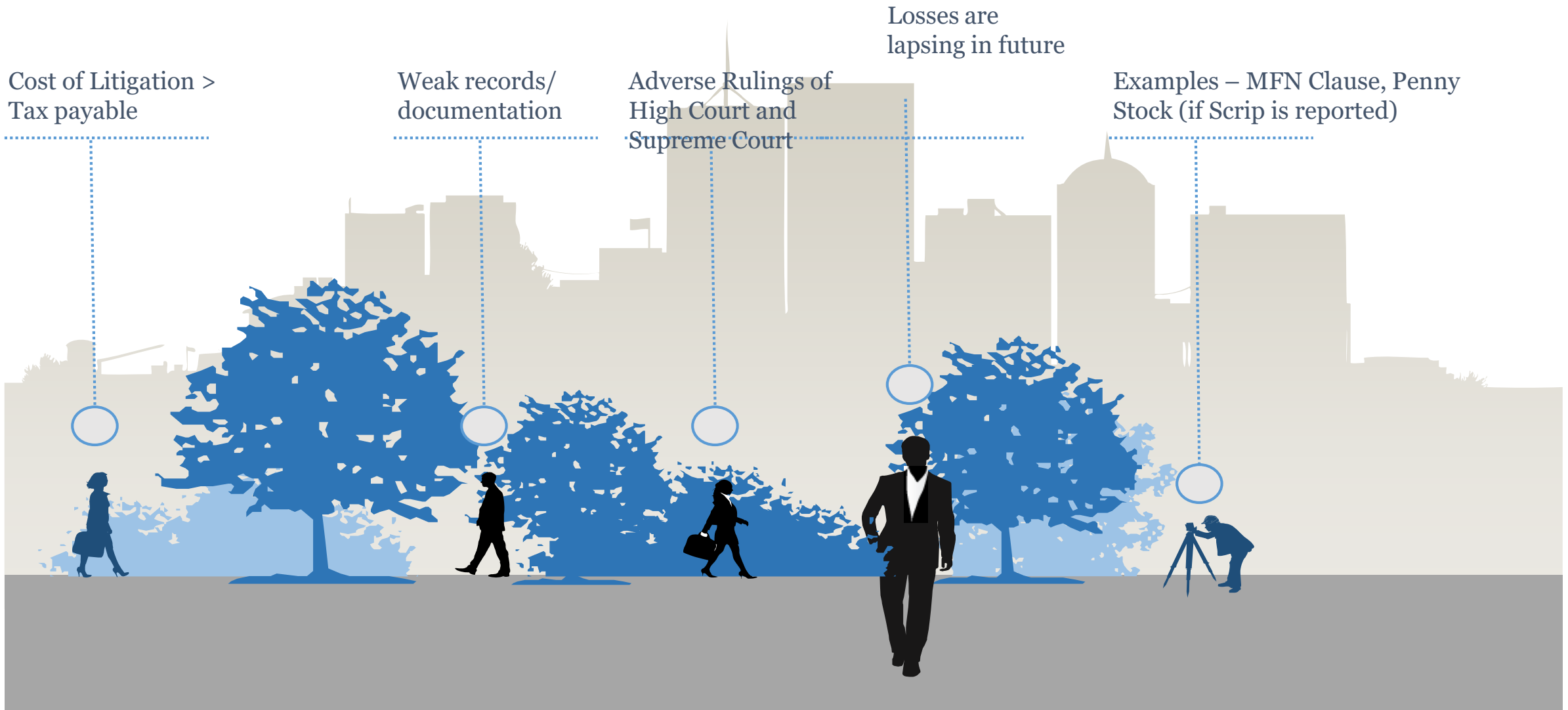


Delay in deposit of TDS/TCS	Covered under the Scheme
Credit of TDS to deductee	• Credit allowed • On date of settlement of dispute. Hence, deductee to bear interest
Deductee settles the appeal under VsV	• Deductor not required to pay tax • Interest u/s 201(1A) will continue to apply

CLIENT INTERACTIONS ON VSV – PRACTICAL CONSIDERATIONS

- Understanding the Merits and updated Legal Position
- Availability of records and documentation
- Immediate Fund Availability
- Interest and Penalty Exposures
- Group Dynamics/ Past Restructurings
- Lapsing Losses
- IPO Listing or Fund Raising Plans
- Taxpayer Sentiments

CASES SUITABLE FOR VSV 2.0



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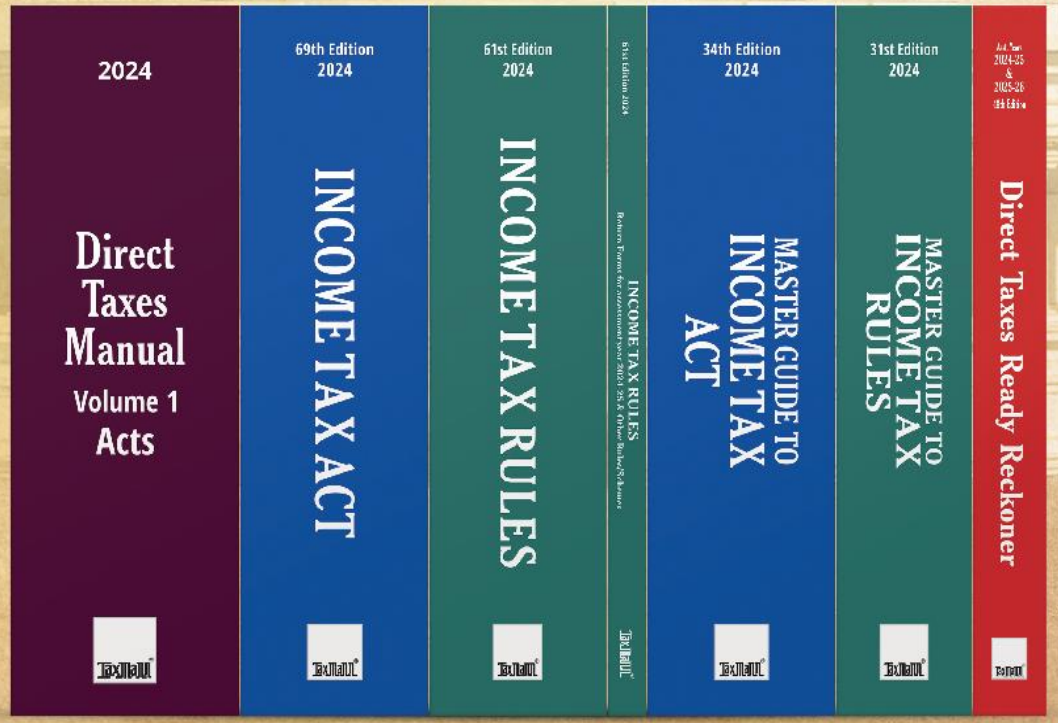

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