



An critical analysis of voluntary disclosure scheme

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Abstract

Any Government, mandates residents to pay tax on their income of the Previous Year. People tend to hide their Income due to high tax rates. Such People tend to invest those Money in the Offshore Banking etc. It leads to generation of Black Money. Black Money refers to the Money which is untaxed, even though it has the potential to be taxed. Black Money affects our country economic policies and affects the revenue of our Government, which in turn affects the development of our country and our economy. In order to Bring this Black money into System, Money Laundering is done, which is a national security problem as it may lead to terror financing etc. So Curbing Black Money is a problem that is faced by Governments all over the World. Therefore in order to tap this black money which is left untaxed, Governments will introduced the concept of Voluntary Disclosure Scheme.

Keywords: Voluntary disclosure, tax, scheme, tax rates

Introduction

- Voluntary Disclosure of Income in general refers to the Scheme which allows assesses to declare their income on the assurance that no legal proceeding would be initiated against them for such concealment of Income.
- Voluntary Disclosure Scheme offers a last chance to avoid the criminal charges.
- The tax Authority wants taxpayers, individuals etc., who have failed to comply with the tax requirements to report their income and settle their tax obligations.
- The Tax Authority will be willing to forego the legal proceedings if voluntary Compliance is made ^[1].

Time Line of Voluntary Disclosure Schemes in India

- 1951- Voluntary Disclosure Scheme introduced for the first time-VDS Tyagi Scheme
- 1965- Block Voluntary Disclosure Scheme
- 1975-Voluntary Disclosure Scheme
- 1985-Disclosure of Wealth Scheme
- 1997-Voluntary Disclosure of Income Scheme
- 2016- Income Declaration Scheme
- 2019- Sabka Vishwas
- 2020-Vivad Se Vishwas

Brief Explanation of Different Voluntary Disclosure Schemes in India

1951-Voluntary Disclosure Scheme

This Scheme is called by the Name VDS TYAGI SCHEME. Immunity to the tax payers was provided.

The amount collected through this scheme was nearly 20 crore as tax and income disclosed using this scheme amounts to 70 crore ^[2].

1965-Block Voluntary Disclosure Scheme

Two schemes were introduced in 1965. One of the Scheme was Block Disclosure Scheme in which the disclosed income was treated as block separate from the income declared in the normal course. Disclosure of income through this scheme was nearly 145 Crore and tax upto 20 crore was collected.

Another Scheme introduced in 1965 refers to the “SIXTY FORTY SCHEME”. This scheme refers to disclosing income, so that flat tax rate of 60% would be levied on the income. Nearly 52 crore was undisclosed income was revealed through this scheme and tax amounting to 30 crore was collected. The disclosures made under this scheme was kept confidential and the tax amount could be paid in two instalments ^[3].

One of the drawback of this scheme was the flat rate tax irrespective of the amount of the disclosure.

1975-Voluntary Disclosure Scheme

Slab rates were introduced for the first time for the income to be declared under this scheme, in the year 1975.

The slab rates are as follows:

- Undisclosed income upto Rupees 25,000, the rate of tax will be at 25%.
- Undisclosed income between Rs.25,000-Rs.40,000, the rate of tax will be at 40%.
- Undisclosed income above Rs.50,000, the rate of tax will be at 60%.

Under this scheme, disclosure of income up to 744 crores was made and tax amount totalling to 241 crores was collected ^[4].

1985- Disclosure of Wealth Scheme

Disclosed Wealth were taxed at notified rates.

1997-Voluntary Disclosure of Income Scheme

The Then Finance Minister introduced this scheme. This scheme was introduced through the Finance Act 1997. Under this Scheme the last date to make declaration was 31st December 1997. This Scheme came into force on 1st July 1997.

Any Person can disclose income chargeable under the Income tax Act:

- For which he failed to furnish returns under section 139 of the Income Act 1961.

- b. In respect of the income which he failed to mention in the income tax return filed before the commencement of the Scheme i.e. 1st July 1997.
- c. Income which has escaped Assessment.

Rates of tax under this scheme shall be 35% of the disclosed income for the companies and firms and 30 % of the disclosed income in respect of the other assesses such as individuals, etc.

Under this Scheme the Central Government shared 77.5% of the amount collected with the State Governments of India ^[5].

This Scheme was Quite Successful so tax amounting to nearly 9584 crores was collected through this scheme.

Criticism

The Comptroller and Auditor General of India criticised this Scheme in his report as “Fraud on the honest tax payers” Also the Supreme Court Advised the Legislature to avoid such schemes in the future ^[6].

2016-Income Declaration Scheme

This Scheme was introduced in the 2016 Budget, with effect from the 1st June 2016.

The object of the scheme was to uncover the black money and bring it back into the financial system.

This Scheme for the first time allowed filing of declaration of income through online Mode. Also surcharge and Penalty were introduced for the disclosed income under this scheme.

- a. Income tax at the rate of 30% of the disclosed income under this scheme
- b. Surcharge at the rate of 7.5% of the disclosed income under this scheme
- c. Penalty at the rate of 7.5% of the disclosed income under this scheme ^[7].

2019-Sabka Vishwas Scheme

This scheme is related to the Indirect tax reform. The Scheme is called as Sabka Vishwas Legacy dispute resolution Scheme, 2019.

This scheme was introduced in the year 2019 in the Union Budget of the year 2019.

Service tax and central excise tax and 26 such other taxes were subsumed under GST through the introduction of the GST Amendment, so all pending disputes related to service and excise tax were resolved under this scheme.

This Scheme resolved nearly 189000 cases which were pending.

The idea of this scheme is that the tax payers can pay only the outstanding due tax amount and would be free from the any resulting Penalties or interest etc.

This Scheme came into effect on 1st September 2019.

Success of this Scheme is that nearly One lakh eighty Nine thousand (1,89,000) tax dispute cases were resolved through this scheme ^[8].

2020-Vivad Se Vishwas Scheme

- Vivad Se Vishwas Scheme was introduced in the Union Budget 2020.
- Vivad Se Vishwas is a Term in Hindi, where Vivad refers to dispute and Vishwas refers to Trust, so the general outline of the scheme is that moving from the dispute to trust.

Direct Tax collection in the Previous Years

- From the financial Year 2000-2001, the revenue of the Government through the direct tax collection like income tax etc. was consistently rising, till the financial year 2018-2019.
- But in the financial year 2019-2020, for the first time in the last few years, the direct tax revenue of the Government decreased, approxiametly to 7 trillion rupees.
- So the cause for introducing Vivad Se Vishwas Scheme is that fall in the direct tax revenues.
- Government introduced Vivad Se Vishwas Scheme with the objective of raising the direct tax revenue ^[9].

Vivad Se Vishwas Scheme

Reason for introducing vivad se vishwas Scheme

- As Sabka Vishwas Scheme relates to Indirect taxes, the Vivad Se Vishwas scheme relates to Direct tax measures.
- Nearly 4,83,000 cases were pending at the different Appellate forums like Supreme court, High Court, Income Tax Appellate tribunals, etc.
- Also nearly 9000 crore tax amount was disputed and pending in the different appellate forums ^[10].

Idea of the Scheme

- The general idea of the scheme is that taxpayer need to pay only the disputed tax amount and waiver of interest and penalty would be provided if the disputed tax amount was to be paid before the March 31,2020.
- Additional amount need to paid if the disputed tax amount was to paid after march 2020.
- Initially this scheme will be open till June 30, 2020.
- Later Central board of Direct taxes, through the power vested in the board extended all these dates of the vivad se vishwas Scheme ^[11].

Direct Tax Vivad Se Vishwas Bill,2020

- The Direct Tax Vivad Se Vishwas Bill, 2020 was introduced in the Loksabha on 04.03.2020.
- The bill was subsequently approved by the Rajya Sabha.
- After receiving the assent of the President on 17.3.2020, The said Bill became an Act called as The Direct Taxes Vivad Se Vishwas Act,2020 ^[12].

Applicability of the Scheme

Vivad Se Vishwas Schemes applies to the following categories

1. Appeals pending before the Appellate forums like Commissioner (Appeals), Income Tax Appellate tribunal, High Court and Supreme Court.
2. Appeals filed by the Income tax department also can avail the scheme.
3. Vivad Se vishwas schemes covers the Deemed Appeals, i.e the time limit for filing the appeal has not expired, but the appeal was not actually filed.
4. When there are more than one appeal, the assessee can choose for which appeal he decides to avail this scheme.
5. When both the income tax department and the assessee have filed appeals respectively, the assessee can choose which appeal to be settled under this scheme.

6. Cases which were filed before the Dispute resolution Panel.
7. Revision cases which were filed under section 264 of the Income tax Act, 1961^[13].

Non Applicability of the Scheme

The following cases are excluded from the applicability of the Vivad se Vishwas Scheme

- Appeals related to search under section 132 of the Income tax Act, 1961 or under section 132 A of the Income tax Act, 1961, if the disputed tax is more than 5 crores.
- Cases where prosecution was already instituted.
- Cases related to Undisclosed income from foreign sources, located outside India or Undisclosed Assets located outside India.
- Assessment or reassessment made under section 90 or 90A of the Income tax Act, 1961 (i.e Double Taxation Avoidance Agreement)
- Writ Petition against Notice issued under section 148 of the Income Tax Act, 1961[i.e. the Income which escaped assessment]
- Cases related to the foreign exchange and prevention of smuggling activities Act, Prevention of Money Laundering Act, Prohibition of Benami Transaction Act^[14].

Meaning of Disputed Tax

Disputed tax mentioned in the scheme means

1. Disputed Tax in relation to the assessment order
2. Disputed Interest or Penalty amount
3. Disputed Tax also includes the tax on enhancement Notice^[15].

Payment Amount under the Scheme

1. If the Payment is made before March 31,2020- then only 100% of the disputed tax is to be paid, (125% of the disputed tax in case of search cases) and waiver of interest and penalty or 25% of the disputed interest or Penalty.
2. If the Payment is made before the end date of the scheme (Initially it was 30th June 2020) was 110% of the disputed tax (135% in case of search Cases) and waiver of interest and penalty or 30% of the disputed interest or penalty must be paid^[16].

Procedure Under the Scheme

- Form1-Declaration where the assessee states the nature of tax arrears, details of the order etc.,
- Form2-waiving the right to seek or pursue any other remedy
- Form3- Issued by the Designated Authority (DA) directing the assessee to make payment.
- As per section 5 of DTVsV Act, the DA shall determine the amount payable by the declarant within 15 days from the date of receipt of declaration and grant a certificate to the declarant containing the particulars of the amount payable.
- Form4- Details of the Payment made and proof of the withdrawal of the appeal must be attached.
- The Assessee shall intimate the DA about the payment made and then the DA shall pass an order stating that Declarant has paid the amount. No refund of the amount is allowed in any circumstances

- According to section 6 of the DTVsV Act, no proceeding should be initiated against the Declarant for tax arrear etc.,
- No benefit or concession would be provided for anything which is not declared in the declaration^[17].

Rule Making Power

- Central Government is authorised to make rules under the Direct Taxes Vivad Se Vishwas Scheme, in respect of matters such as manner of payment and manner of calculation of tax etc.,
- Such rules must be laid before the Parliament for approval.
- Using this power the Central Government has published the Direct Tax Vivad Se Vishwas Rule 2020, in the official Gazette^[18].

Conclusion

Vivad Se Vishwas Scheme 2020, was considered to be success as the disputed 90% of tax amount was collected under this scheme till March 2021 according to the Statement of the Finance Minister of the State in the Parliament^[19].

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