BHUJ BRANCH OF WIRC OF ICAI

E-NEWSLETTER FOR THE MONTH OF MARCH-2020

(FOR PRIVATE CIRCULATION ONLY)

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IN THIS EDITION

CHAIRMAN'S COMMUNICATION

Dear professional colleagues,

I am thankful and grateful to the almighty for having showered his blessing by providing opportunity to serve the noble profession as Chairman of Bhuj Branch of WIRC. I would like to express my sincere thanks to our Branch Managing Committee members for reposing their faith & confidence in me and bestowed this responisibility. I accept this onerous role with utmost humility and gratitude. Teamwork is the fuel that allows common people to attain uncommon results. No individual can win against a team in a game by himself.

I would like to assure the member that the great work done by predecessors will certainly be continued. I will try my level best to fulfill the aspirations of members & students to the best of my capacity. I look forward to your support, suggetions, guidance, motivation, encouragement and participation for accomplishment of the common objective of welfare of branch, profession and fraternity.

We had recognized the Innovation and Creativity should be the key strategy in the age of globalisation, Technological evolution and services revolution. To reflect the need of changing times. It would be our constant endeavor to ensure that empowerment though innovative program and seminars will translate from vision to action for the overall benefit of members and students.

The month that was – Feb 2020:

Month was started with new milesstone for our Branch, our branch office shifted to New Premises on 02-02-2020 by worthy hands of CCM Aniket Talati in Presence of MP Vinod Chavda, CCM Jay Chhaira, WIRC Chairman Priti Savla, RCM Hiteshbhai Pomal, RCM Chintan Patel and RCM Vikas Jain . Seminar on Budget by speaker CA Kapil Thacker & CA Deep Koradia & Mentor CA Jagrut Anjaria organised on 03-02-2020 elborately discussed the Direct Tax and Indirect tax proposal. Seminar on Distruption of Business and Tips for Practice for SMP organised with eminent speaker CCM Jay Chhaira

& RCM Vishalbhai Doshi along with facilitation of New CA passout and Changing over ceremony of New Managing Committee.

Meeting with Seniors & Past Chairman

We Managing Committee Members have got guidance and suggetions from experienced seniors in our profession and Past Chairman of Branches one to one meeting with each on important, relevant, critical and emmerging issues to find out the direction for activity of Branch. We also planned an informal meeting of all members and students for suggestion regarding activity. We have received a number of valuable suggestions and we shall pursue them to the best of our ability and resources. We will do our best efforts for betterment of profession.

Celebration of Woman day

Women regarded as first teacher of all human beings need to be positioned and empowered, where they are respected, both socially and professionally. Let us commit to achieve this objective in the best interests of the whole humanity. On occasion of **Women's Day** on 08-03-2020. branch is planning to conduct event on "Nari Shakti" where in discussion amongst the ladies member of on various topics of their concern and interest. Detailed program will sent though mail separetly

Lets Enjoy Dhuleti with Family Members

Considering the upcoming festival of colours, our Branch is planning to celebrate **Dhuleti with family members on** 10-03-2020 at Branch Premises. All join together to celebrate this festival of colours and spread joy, harmony, positivity & enthusiasm and thereby spread the colours of life in other people's lives in true spirit. Detailed program will sent though mail separetly.

Forth Coming Acadamic Program for Members

1.*Bank Branch Statutory Audit* Seminar :Month of March is for Plan & Prepartion for Statutory Bank Branch Audit. We are planning to organise full day seminar on Bank Branch

2. *Seminar on New GST Return* :New Return System under GST would be introduced for taxpayers as decision of GST council. This return system will contain simplified return forms, for ease of filing across

taxpayers registered under GST. We are planning Seminar on GST new form for better clarification.

3.*Vivad se Vishwas scheme*: Amnesty scheme aim to resolve disputes related to direct tax. Chartered Accountant has to play major role in implementation of scheme. We are planning Seminar on GST new form for better clarification

Forthcoming Acadamic Program for Students

1. May-2020 CA exam appoaching hence we are planning to have program on Tips for Passing CA Exams & Organising Mock Test
2. Discussion on Revision Test Papers

Formation of Sub-committees:

Doing activity for development others means development ourselves by improving our skills. Some of our finest work comes through service to others. The nexus of growth and service is inter dependent and hence **"SERVE TO GROW – GROW TO SERVE"**. Branch have to formed various sub-committees for the smooth functioning as per direction of ICAI. We are Invititing members to join subcommitee of interest who volutary want to contribute to the noble profession.

Invitation to contribute as article writter in Branch Newslater and speaker on interested topics

Skills are the ability to *do* something well. While knowledge alludes to the way we realize, understand, and remember information, skills refer to the way that we choose, use, and apply knowledge in different circumstances, facing diverse and frequently unpredictable challenges. Branch Is platform to develop the communication skill and Professional attitude. I request all the members to contribute articles in newsletter of the branch. & Come forward as speaker on interested topics for CPE Programmes

To conclude, I quote The blessed Mother Teresa : ***"Not all of us can do great things. But we can do small things with great love."***

Sincerely yours
CA JITENDRA C THACKER
Chairman, Bhuj Branch of WIRC of ICAI

PRINCIPLES OF NATURAL JUSTICE: A STUDY

CA KHUSHBU MORBIA
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With the evolution of society, as well as legal jurisprudence, the concept of natural justice has also undergone change. Rules of natural justice are not rules embodied in any statute. These rules have become a part and parcel of the law, as well as procedure.

These may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be applied depends on the facts and circumstances of each case.

With the passage of time, the old distinction between a judicial act and an administrative act has withered away. Orders of the disciplinary authority, which involve civil consequence, must be consistent with the rules of natural justice, otherwise the orders are likely to be set aside by the courts.

"Natural justice is a sense of what is wrong and what is right."

Supreme court said that arriving at a reasonable and justifiable judgment is the purpose of judicial and administrative bodies. The main purpose of natural justice is to prevent the act of miscarriage of justice.

Of course, they are not enforceable as fundamental rights, but nevertheless, they ensure a strong safeguard against any arbitrary action that may adversely affect the rights of individuals. These have been laid down by the courts as being the minimum protection to rights of individuals against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. In the past, there were only two rules forming the rules of natural justice; with the course of time, many more subsidiary rules came up to be added to them. These **principles** are now well settled and can be summarised as under:

- Justice should not only be done but seen to be done.
- One cannot be a judge in his own cause.
- No party should be condemned unheard.
- Impartial hearing must be extended to the person against whom a charge is framed to state his case.
- Final decision should be by way of a speaking order, for such an order prevents any bias or prejudice creeping into the decision.

JUSTICE SHOULD NOT ONLY BE DONE BUT SEEN TO BE DONE:

The dictum 'Justice should be done' is satisfied by mere observance of the principles of natural justice. However, the principle does not end here. It extends further. Justice should manifestly be seen to be done. If this is ignored, then the decision would be affected, especially in cases where an allegation of bias or interest or favour is noticed and affording proper hearing is not forthcoming from the decision.

ELEMENT OF BIAS:

It is obvious that decision of the adjudicator would be affected if he is having pecuniary interest in the subject matter of the proceedings. A decision which not based on evidence is biased. Probability of bias is sufficient to invalidate the right to sit in judgment and there is no need to have the proof of actual bias. Bias can be categorized in **three categories**:

Pecuniary bias: If any of the judicial body has any kind of financial benefit, how so ever small it may be will lead to administrative authority to biases.

Official bias or Subject matter bias: When directly or indirectly the deciding authority is involved in the subject matter of a particular case.

Personal bias: Personal bias arises from a relation between the party and deciding authority. Which lead the deciding authority in a doubtful situation to make an unfair activity and give judgement in favour of his person. Such equations arise due to various forms of personal and professional relations. In order to challenge the administrative action successfully on the ground of personal bias, it is necessary to give a reasonable reason for bias.

ONE CANNOT BE A JUDGE IN ONE'S OWN CAUSE:

"Nemo debet esse judex in propria causa" The maxim means that no person can be a judge in his own cause. The fundamental rule of natural justice in departmental proceedings is that the disciplinary authority should be impartial and free from bias. It must not be interested in or related with the cause which is being decided by him.

The personal interest can be in the shape of some pecuniary benefit or some personal relation or even ill-will or malice or any official bias against any of the parties.

The real test is whether a man of ordinary prudence would have a feeling of bias. One who has any interest in the litigation is already biased against the party concerned and the findings of such authority are liable to be struck down.

NEED FOR SHOW CAUSE NOTICE:

Giving of a valid notice to the proper or concerned person of the facts of the matter and nature of the action proposed to be taken is an essential condition of a fair hearing. Notice is to be given even if the statute does not contain any provision for the issue of a notice. However, if the statute specifically waives giving of the notice then no notice need be given as the rules of natural justice do not supplant the law.

The notice must clearly indicate material on the basis of which the proposed action is being taken. The right to know such material is part of the right to defend oneself. Then only the person will have a fair opportunity to defend, correct or contradict them.

The notice must be with reference to the charges on which the proceedings are to be held. The person against whom proceedings are held cannot be punished for a charge different from the one for which notice had been given.

ADEQUATE OPPORTUNITY OF BEING HEARD:

"Audi Alteram Partem" It simply includes 3 Latin word which basically means that no person can be condemned or punished by the court without having a fair opportunity of being heard.

The literal meaning of this rule is that both parties should be given a fair chance to present themselves with their relevant points and a fair trial should be conducted.

This is an important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him.

It is also known as a rule of fair hearing. The components of fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

ADJOURNEMENTS:

Courts grant adjournment liberally. More so, if the cause is sufficient. However, a party who has been allowed sufficiently long time to reply may not be entitled to adjournment. But the necessity to furnish an effective reply against a show cause notice cannot be overstated.

Therefore, to demonstrate that justice is done, the authority has to grant adjournment where the request is for a valid reason.

OPPORTUNITY NOT A RIGID DOCTRINE:

Where nothing unfair can be discerned from the act of not giving opportunity, the rule may not be attracted. It is not a rigid doctrine. The rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice.

This rule cannot be applied to defeat the ends of justice or to make the law 'lifeless, absurd, stultifying and self-defeating or plainly contrary to the

common sense of the situation' and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands.

NEED FOR SPEAKING ORDER:

It would be observed that about three or four decades ago, it was not required that the administrative order or the order of disciplinary authority must be supported with reasons. With the evolution of natural justice, a new dimension of reasoned order has been added to these rules.

There is a feeling among legal luminaries that the requirement of providing reasons for any decision gives an assurance that the evidence relating to the case has been duly considered by the authority. The findings should also be supported by reasons because: it facilitates judicial review of findings of the enquiry officer; findings offer assurance to the parties that the decision is the outcome of rationality based on evidence as well as the records of the case; and it ensures against arbitrary or hasty action on the part of deciding authority.

Due to these developments in the legal jurisprudence, now it is being held by the courts that the order passed by an enquiry officer or administrative agency must be a speaking order. If the order is not supported by reasons, it will amount to violation of the rules of natural justice.

Hence reasons are useful as they may reveal an error of law, the grounds for an appeal or simply remove what might otherwise be a lingering sense of injustice on the part of the unsuccessful party.

SUBSEQUENT EXPLANATIONS CANNOT SUSTAIN A DECISION:

Orders passed by the income tax authorities, be they assessment orders or appellate orders or orders of revision, must speak for themselves while passing the same. Any subsequent explanations to improve or supplement the order passed will not validate the decisions.

This principle can be pressed into service when the revenue tries to justify reopening u/s 147 on the strength of material gathered subsequent to reopening of the case by filing an affidavit.

PRINCIPLES OF NATURAL JUSTICE DO NOT SUPPLANT LAW BUT SUPPLEMENT IT:

The Supreme Court said that the aim of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made, in other words, **they do not supplant law, but supplement it.**

NATURAL JUSTICE OPERATES IN AREAS NOT EXCLUDED BY LEGISLATION:

Rules of natural justice can operate only in areas not covered by any law validly made. If a statutory provision either specifically or by inevitable

implication excludes the application of the rules of natural justice then the Court cannot ignore the mandate of the Legislature.

Whether or not the application of the principles of natural justice in a given case has been excluded in the exercise of statutory power depends upon the language and basic scheme of the provision conferring the power, the nature of the power the purpose for which it is conferred and the effect of that power.

PRINCIPLES OF NATURAL JUSTICE APPLY EVEN WHERE NOT EXPRESSLY PROVIDED:

In case of conflict between a statutory provision and natural justice, the former should prevail. But where there is no such exclusion in the statute, the application of the principles can be assumed in cases where in exercise of administrative jurisdiction the rights of citizens are affected to their prejudice.

WHETHER ORDER PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE VOID OR VOIDABLE?

Where the principles of natural justice are not followed, the order is only voidable and it can be cured with a direction to afford opportunity to the assessee of being heard. Depending on the facts and the circumstances of a case, violation of the principles of natural justice may or may not invalidate an order.

It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the validity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE - EFFECT ON JURISDICTION:

TECHNICALITIES AND IRREGULARITIES DO NOT OCCASION FAILURE OF JUSTICE:

Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

PRINCIPLES OF NATURAL JUSTICE ARE NOT IMMUTABLE AND RIGID:

It would be seen that the rules of natural justice are flexible, and cannot be weighed in golden scales, nor can it be put in any straight-jacket. It depends on the extent to which the rights of an individual are affected. The role of these rules is to ensure justice to both the parties.

Their contravention cannot be presumed, unless it can be shown that injustice has actually been done. In certain matters, only representation may be sufficient, while in others, full-fledged hearing and cross-examination may be necessary. What the courts have to examine is that whether non-observance of any of the rules is likely to prejudice any of the parties.

SILENCE OF THE STATUTE NOT TO BE CONSTRUED AS EXCLUSION OF OPPORTUNITY:

Where the statute is silent as to whether or not the assessee should be heard before an order is passed, it does not mean that opportunity of being heard is excluded. The principle is that unless a hearing is statutorily excluded, an administrator taking a decision affecting the rights of a citizen is bound to hear him. The presumption in common law that the party is required to be given an opportunity of being heard would always apply.

Thus, when the action of a statutory authority results in civil or evil consequences, the principles of natural justice are required to be followed even in the absence of a statutory provision. This can be taken as implicit in a statutory provision.

PRINCIPLES OF NATURAL JUSTICE AND CROSS-EXAMINATION:

The Assessing Officer cannot gather material or evidence at the back of the assessee and use it unilaterally. Evidence has to be tested on cross examination. Not allowing the assessee to cross-examine the witness whose statement has been relied upon to frame the order is a serious flaw. This makes the order a nullity.

APPLICATION OF RULES OF NATURAL JUSTICE IN INCOME-TAX PROCEEDINGS:

It is well settled that while acting in their quasi-judicial capacity the income tax authorities have to adhere to the principles of natural justice.

Supreme Court has held that the assessment proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before any conclusion is arrived at. The assessee has a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provision of the Income Tax Act.

The principles of natural justice have been adopted and followed by the judiciary to protect public rights against the arbitrary decision by the

administrative authority. One can easily see that the rule of natural justice include the concept of fairness. It is supreme to note that any decision or order which violates the natural justice will be declared as null and void in nature, hence one must carry in mind that the principles of natural justice are essential for any administrative settlement to be held valid.

The principle of natural justice is not confined to restricted walls the applicability of the principle but depends upon the characteristics of jurisdiction, grant to the administrative authority and upon the nature of rights affected of the individual.

INTEREST LIABILITY UNDER GST: A RECENT HIGH COURT JUDGMENT

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Interest on belatedly payment of tax under section 50 of Central Goods and Service Tax Act, 2017

GST is applicable in India from 1st July 2017. Under GST regime, nearly 1.4 Crore businesses in India have obtained GST registration. All entities having GST registration are required to file GST returns before due date applicable to it. GST return filing is mandatory for all entities having GST registration, irrespective of business activity or turnover. Hence, even for dormant business entity having GST registration must file GST return in time frame prescribed. Missing the deadline of return filing, results in penalty and interest.

Here, we are going to discuss- interest on tax for belatedly filed return. If entity fails to file GST return within due date, Interest liability arise under section 50 of Central Goods and Service Tax Act, 2017. Section 50 says that,

Interest on delayed payment of tax:
"(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest

on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council."

Thus, interest is payable on tax liability which remains unpaid to government.

Now question arise is that interest is payable on which amount. Whether interest u/s 50 is to be calculated on total tax liability or Net tax liability? Total tax liability can be remitted/discharged by utilising ITC amount and/or payment by cash. So which amount is considered for calculation of Interest? Is interest payable only on amount remitted by cash or is it payable on ITC amount also?

In this regards, we are going to discuss the Judgement of Madras High court dated: 06/01/2020 (Writ Petition Nos.23360 and 23361 of 2019& WMP Nos.23106 and 23108 of 2019). In the said case law, the petitioners have admittedly filed Returns of income belatedly for the period 2017-18 and demand notice issued to recover interest on total tax liability. But the petitioners objected stating that interest could be demanded only on the cash component of the tax remitted belatedly as ITC amount is already held with department. In this case it is held that:

'*The proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee'.*

So, as per this case law, interest is to be calculated only on tax amount which is remitted by cash and not on ITC amount.

Now let us see some points which are discussed in the case law to reach on this conclusion.

1. **Whether section 50 is Automatic or not.**

   The question crystallized for consideration is as to whether interest on belated payment of tax as contemplated under Section 50 of the CGST Act is automatic or whether the same would have to be determined after taking any explanation or further procedure. It is held that **liability to pay** interest u/s 50 is automatic. Thus, quantum on which this liability arises can be

determined after taking any adjustment or procedure. Therefore though the liability to pay interest is an automatic liability, the quantification of such liability is not automatic in the opinion of the Hon'ble Court and in the opinion of the court it certainly needs an arithmetical exercise and includes taking into consideration any representation or objetion that the assessee may have to offer. The court seems to suggest that once the matter is "considered," there is no rationale in leaving the issue of ITC Claim "unattended" and fasten the liability to interest on gross amount.

2. Whether section 50 is Mandatory or not

The Section provides for interest **on belated payment** of tax and the judgment seems to conclude that the same is intended to compensate the revenue for the remittance of tax belatedly and beyond the time frames permitted under law.

To understand whether section 50 is mandatory or not, the court takes recourse to a case law delivered in the context of Income tax Act,1961. The Supreme Court in the case of Commissioner Of Income Tax, Mumbai vs Anjum M.H.Ghaswala & Ors (252 ITR 1), has held that Sections 234 A, 234B and 234C of the Income Tax Act, 1961 for belated filing of return, belated remittances of advance tax and deferment of advance tax are **mandatory as it compensate** the department. The court intends to apply the ratio of this case to Section 50 of the GST Act and held that Section 50 also is intended to compensate the revenue, and hence it is mandatory.

The Hon'ble coret seems to be taking the similarity between the sections of the Income Tax Act and Section 50 of the GST Act a bit further by focusing of the word "delayed" common to the language of the provisions of either statute. The court states that the use of the word 'delayed' connotes a situation of deprival, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. Now if Section 50 compensates the revenue, the point of discussion is that: what is the quantum of deprival for which compensation is needed. Amount of ITC

is already available to department. Hence this amount cannot be considered for quantifying deprival.

So as the department needs to be compensated for deprival and deprival does not include ITC, and hence the authority to levy interest u/s 50 can not be extended beyond the amount of cash remitted belatedly.

3. **Proviso to section 50(1), whether operative retrospectively.**

The Judgment given in this case is supported by provision of the act. Proviso to Section 50(1) says that

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019. According to the Hpn'ble High Court, this only seeks to correct anomaly in the provision as it existed prior to such insertion. Thus it only clarifies the provision. As being of clarificatory nature, according to the court, this section operates retrospectively, irrespective of the fact that the statute tries to give it a prospective effect.

4. What happens to an earlier judgment of another High Court which seems to be upholding the stand of the revenue regarding liability to interest on Gross Amount

Now, at the end, one earlier case of same nature is referred to arrive at conclusion. Regarding Insertion of proviso to Section 50(1),Telengana High Court in the case of Megha Engineering and Infrastructures Ltd. V.

The Commissioner of Central Tax and others (2019-TIOL893). The judgment in the said case had remarked as under;

'Unfortunately, the recommendations of the GST Council are still on paper. Therefore, we cannot interpret Section 50 in the light of the proposed amendment.

The present judgment refers to the said case law, discusses the same. It also takes into account a significant new development since the time the earlier judgment was pronounced. As per that new development, the court notes, the amendment that the Telangana Judgment was referring to as at the stage of press release, now this amendment stands incorporated into the Statute. This judgment distinguishes the decision of the Telangana HC on this particular ground and expresses it considered opinion in favour of the assessee. Thus this case of Telangana High Court is referred to, discussed and then distinguished, the decision pronounced in this case may be considered to have better evidential value and a good law.

Conclusion:

After discussing the Judgement of Madras High court and all the points that are cited in said case law we can conclude that Section 50 of the CGST Act, being mandatory, and automatic in respect of liability to pay interest, levy interest only on delayed payment of tax to compensate the revenue, levy of interest should be only on deprival amount and hence only on cash amount paid belatedly.

Views and discussion are invited, expected and welcome.

VIVAD SE VISHWAS ACT, 2020: A STUDY

CA KAPIL V THACKER
B.Com., FCA

(This write up was finalised before the Bill was Passed by the Lok Sabha on 04-03-2020 and also before the FAQ dated 04-03-2020 were made available by the CBDT)

Pending legacy Direct tax litigation is one of the biggest-cause of concern not only for Government but also for taxpayers. The H'ble FM mentioned in her Budget 2020 Speech as under;

In the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are ***4,83,000 direct tax cases pending*** *in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes. Taxpayers in whose cases appeals are pending at any level can benefit from this scheme. I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process."*

Even as per Statement of Objects and Reasons of The Direct Tax Vivad Se Vishwas Bill, 2020 specifies as under;

"Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is ***Rs. 9.32 lakh crores****. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly* ***one year direct tax collection****.*

Meanwhile, continuing its heat on the field officers, the Central Board of Direct Taxes (CBDT) issued fresh circular asking officers to tabulate the tax dispute.

The CBDT expects officials to get all such cases settled. “The target for assessment of the performance of the field officers in respect of Vivad Se Vishwas has been fixed at 100% of the cases with disputed tax demand which fulfill the eligibility condition under the scheme,” said a February 21 circular issued by the CBDT.

The Income Tax department has drawn up a list of central and state public sector units (PSUs) and tabulated the exact disputed tax demand in a bid to encourage these entities to avail them of the Vivad Se Vishwas scheme.

Mumbai, which contributes one-third of the total tax collections, has already started working on implementing the scheme and has identified around one lakh cases which could come under the ambit of the tax amnesty According to sources, in Mumbai, over 60,000 cases are before the Commissioner of Income tax (Appeals), over 22,000 cases are before the Income Tax Appellate Tribunal and over 13,000 cases before the Supreme Court and the Bombay High Court.

So it looks like there was an actual need for such scheme to be framed to solve the litigation pendency. The scheme is designed in such way that actually it benefits the persons who wants to get rid of litigation process quickly.

Let us understand the scheme terminologies first,

the term tax arrears 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

Where Disputed Tax means

1. In a case where any appeal, writ petition or special leave petition is pending before the appellate forum amount of tax that is payable if such appeal was to be decided against him.

2. In a case where an order has been passed by the AO or the appellate forum the amount of tax payable by the appellant mentioned in the order so passed. (Subject to time limit for filling appeal is not expired)

3. In a case where Dispute Resolution Panel has issued any direction or in a case where objection is pending with DRP then the amount of tax payable as per the assessment order or draft order by DRP.

4. In a case where an application for revision is pending tax payable if such application was not to be accepted.

Disputed interest means

(i) interest which is not charged or chargeable on disputed tax;

(ii) an appeal has been filed by the appellant in respect of such interest;

Disputed Penalty means

(i) penalty which is not levied or leviable in respect of disputed income or disputed tax.

(ii) an appeal has been filed by the appellant in respect of such penalty;

Disputed fee means

The fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;

Specified date definition is very crucial for this scheme as specified date for the scheme is 31st day of January, 2020 so any appeal, writ petition or special leave petition, objections before the Dispute Resolution Panel, and application for revision under section 264 should be pending before such date. In case order is passed by AO it should have been passed before specified date.

The following table summarizes the amount payable by the assessee under the scheme.

Situation 1: if appeal or writ petition or special leave petition is filled by the ASSEESSEE.

Sr. No.	Nature of tax	Amount payable before 31st March 2020	Amount payable after 1st April 2020
1.	amount of disputed tax, interest on such disputed tax, and penalty on such disputed tax	Amount of disputed tax	Amount of disputed tax + 10% of disputed tax. (if 10% exceeds amount of interest or penalty on such disputed tax then excess shall be ignored)
2	the tax, interest or penalty determined in any assessment on the basis of search	Amount of disputed tax + 25% of disputed tax. (if 25% exceeds amount of interest or penalty on such disputed tax then excess shall be ignored)	Amount of disputed tax + 35% of disputed tax. (if 35% exceeds amount of interest or penalty on such disputed tax then excess shall be ignored)
3	disputed interest or disputed penalty or disputed fee	25% of disputed interest or disputed penalty or disputed fee	30% of disputed interest or disputed penalty or disputed fee

Situation 2: if appeal or writ petition or special leave petition is filled by the INCOME-TAX AUTHORITY

In this case the amount payable shall be **50%** of the amount in the Table above calculated on such issue.

Procedure for filling:

Assessee need to file a declaration opting for this scheme and once declaration is filled any appeal pending to CIT shall be deemed to have been withdrawn

and in respect of ITAT, High Court or the Supreme Court, he should withdraw such appeal or writ petition with the leave of the Court.

the Assessee shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrears which may otherwise be available to him under any law for the time being in force.

In case declaration is found to be false at any stage or assessee violates any of the conditions referred to in this Act the assessee acts in any manner which is not in accordance with the undertaking given by him then all the proceeding as per normal provisions of the income tax act shall be deemed to have been revived.

Any amount paid in pursuance of a declaration made shall not be refunded in any circumstances.

Within a period of fifteen days from the date of receipt of the declaration, authority will issue certificate to the declarant containing particulars of the tax arrears and the amount payable under this scheme. Within fifteen days of the date of receipt of the certificate declarant need to pay the amount as mentioned in the certificate above. Once the order is passed 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 or under any agreement.

Scheme is not available to following cases:

1. In search cases the amount of disputed tax exceeds five crore rupees.

2. Prosecution has been instituted on or before the date of filing of declaration.

3. Relating to any undisclosed income from a source located outside India or undisclosed asset located outside India

4. Relating to an assessment or reassessment made for DTAA Relief.

E ASSESSMENT: A RECENT HIGH COURT JUDGMENT

VENIL VIJAY SHAH
Awaiting Membership

FROM "OPPORTUNITY OF BEING HEARD" to "OPPORTUNITY OF BEING READ/EXPRESSED":This is how the new era of E-assessment welcomes us all

After the successful implementation of the pilot project on e-assessment, the CBDT has issued 58,322 notices for FY 2017-18 under the e-assessment or the more popularly termed faceless scheme. The results (positive or negative) of the new scheme are yet to come. But few issues that have creeped up after this implementation have raised a few serious questions over the very foundation of this scheme. One such issue was raised vide a writ petition made to the Madras Highcourt in the case of Saleem Sree Ramavilas Chit Company.

First of all, would like to take you all to the brief facts of this case: The assessee was served a notice under 143(2) for AY 2017-18 for explaining the source of cash deposit of Rs.67,37,500/- during demonetisation. The assessee gave various explanations w.r.t the said amount which were not accepted by the AO and thereby additions were made by treating the money as unexplained u/s 69A. The assessee was engaged in chit business and maintained the registers of amount collected which reconciled with his cash deposit, but somehow the AO could not be convinced about the very nature of business as there was no verbal communication that took place between the AO and the assessee. To this, the assessee moved a writ to the HC challenging the impugned order. The assessee presented all the relevant documents before the HC which were properly taken note of and prayed for referring the case back to the AO. To this, the AO insisted that the assessee should take shelter under the other provisions of the Act. However, the HC was convinced by the petitioner and referred the case back to AO for fresh assessment within 60 days.

All this went well after a long toil of filing a writ. Had it been our client and somehow the AO could not have been convinced owing to lack of face to face interaction, what could have been the best remedy except writ that we may think of:

Obviously, Filing an appeal before CIT (A) u/s 246A: The easiest of all but this remedy has a few of shortcomings:

(i) Mandatory pre deposit of 20% for obtaining stay against demand

(ii) Long queues-- Delayed justice-- Client Dissatisfaction

(iii) Compliance Cost

Further, the GOI itself on recognizing the need to reduce disputes at appeal level, introduced 'VIVAD SE VISHWAS SCHEME' to reduce disputes and work pressure at appellate level. Erroneous orders under faceless scheme would make this heap quite bigger.

So as discussed above, this is not the practical solution.

The writ was accepted by the HC on account of various grounds which the court considered to be the shortcomings of the new system vis-à-vis the erstwhile system:

SHORTCOMINGS OF THE NEW SYSTEM POINTED BY HC	**STEPS TO BE TAKEN BY DEPARTMENT**	**STEPS TO BE TAKEN BY US AS PROFESSIONALS**
(i) While E-Assessment without human interaction is laudable, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and accounts of an assessee without a personal hearing.	The AO needs to properly examine all the relevant facts summing up the case and lead to a conclusion only after careful examination and analysis of the same.	Prepare a SPEAKING SUBMISSION. Written words can exceed the power of spoken words when used properly and wisely.

(ii) Assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the assessee and the AO.	The AO should ask for anything that he finds missing in the submission and give proper time to the assessee to furnish the same and thereafter proceed in the manner discussed in (i) above.	We've to be very clear that this would not just be a one time submission. Wherever any additional documents are called for by the AO, they are to be submitted to the point and in time, alongwith linking of those documents to the favour of our case (even when not asked for).
(iii) The assessment proceeding should have commenced much earlier so that before passing assessment order.	Ensure that the notices are not issued much late to avoid the orders being passed ex-parte to meet the limitation timelines.	Start preparing the submission as soon as the notice and the supporting documents from the client are received so as to maintain proper time for any further explanation and also to make the AO comfortable by not pressurizing him to hurry up.
The AO could have come to a definite conclusion on facts after fully understanding the nature of business of the assessee.	Besides the attached facts and figures, the AO should also go into a bit of details concerning the nature of business so that any transaction, usual to the business may not be treated as unusual by him or vice versa.	Rather than expecting too much from the AO, we should include a brief note about the nature of business. We should also link it to any unusual transaction which may be usual to such nature of business.
No longer involves human intervention.	Here, we cannot expect a remedy as the very objective of this scheme was to get away from the lacunas of the erstwhile human intervention oriented and highly criticized corrupt system.	'DRAFT YOUR STORY SO WELL THAT THE READER FEELS AS IF HE IS HEARING/IMAGINING THE SAME.'

In the end would like to point out that as the system has been rolled out, rather than giving more and more suggestions to the government as mentioned in row 2, we must try to remove those limitations from our side by working more carefully. In the earlier system, a CA who had excellent interpersonal communication skills could easily win cases for his clients, but with this system the role of such skills would come down greatly. Here, the drafting skills (with adequate knowledge of the provisions of law) would play a great role and so it is quite essential for all of us to work on the same. In the end, every tough change to some is an OPPORTUNITY. We must learn to change THREATS to OPPORTUNITIES and this is what makes a professional successful.

EVENTS IN IMAGES: INAUGURATION OF NEW BRANCH PREMISE


MOTTO
Thank U
CA. VISHAL DOSHI
CA. JAY CHHAIRA
CA. HITESH POMAL


CA. JAY CHHAIRA
CA. HITESH POMAL