BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

The Direct Tax Dispute Resolution Scheme, 2016

- An Analysis

FOREWORD

Sometime in the month of June, 2016, the Taxation Committee decided to release publications on two important schemes announced by the Finance Minister in the Budget 2016 – the Income Declaration Scheme, 2016 (IDS) and the Direct Tax Dispute Resolution Scheme, 2016 (DTDRS). At that time, our plan was to publish a joint publication on both the schemes. Little did we realise then that the schemes were not as simple as they appeared to be at first blush. Finally, after a few months, we were able to finalise and release an independent publication on the IDS. We have now been able to finalise the publication on the DTDRS the credit for which goes to the author Saroj Maniar who is an active member of the Taxation Committee for the past several years. She has very graciously spent hours and hours in unearthing and understanding the large number of intricate issues which in turn necessitated a lot of research, study and deliberation.

The Committee is extremely grateful to Saroj for readily taking up this responsibility and for providing a top quality publication to our members. Her contribution, over the years, to the Committee's activities has been immense and we hope that the same would continue in future too.

This publication would not have been complete and so rich in content without the guidance and help of some of our past presidents – Pradip Kapasi, Gautam Nayak and Sanjeev Pandit all of whom have vetted the publication in great detail. It was during the term of Sanjeev Pandit as chairman of the Taxation Committee that this publication was begun. We are also thankful to another past president Rajan Vora for providing his inputs.

We hope that the reader will find this publication useful. We are witnessing historic changes in our nation and taxation is at centrestage. In this scenario, it would be in the interest of the nation if we, Chartered Accountants, are able to play the role of balanced advisors in helping the government in reducing the backlog of litigation at the various appellate and judicial levels. The DTDRS is one such step taken by the government in that direction. This publication will help us in giving well informed advice to our clients and also in taking correct decisions in our own cases, wherever applicable.

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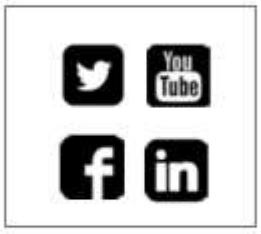

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The Direct Tax Dispute Resolution Scheme, 2016 – An Analysis

INDEX

Chapter 1
Introduction and Overview

"Acche Din" was a term which was oft used during the election campaign of the world's largest democracy. "Acche Din" for an Indian tax payer would mean a tax friendly regime and would perhaps include moderate rates of tax and clarity and certainty in the tax provisions – both in law and equally important, in administration.

Taking forward the commitment of a tax friendly regime by the present Shri Narendra Modi led Government, this budget has introduced two schemes with the twin objectives of curbing black money and reducing backlog of litigation backed by expeditious tax collection.

The intention of the Hon'ble Finance Minister Shri Arun Jaitley is evident from his Budget speech wherein he has stated that "Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the first appellate authority with disputed amount being Rs. 5.5 lakh crore. In order to reduce this number, I propose a new Dispute Resolution Scheme.

In order to give an opportunity to the past cases which are ongoing under the retrospective amendment, I propose a one-time scheme of Dispute Resolution for them, in which, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc. under BIPA, they can settle the case by paying only the Tax Arrears in which case liability of interest and penalty shall be waived"

The above intention has been given effect to by introducing the Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as the 'Scheme').

Prior to introduction of this Scheme, the present Government initiated steps to reduce the litigation undertaken by the tax department by significantly increasing the limits of tax effect, for the appeals to be filed by the tax department. The earlier monetary limits of tax effect were enhanced prospectively to Rs. 4,00,000, Rs. 10,00,000 and Rs. 25,00,000 for appeals before Appellate Tribunal, High Court and Supreme Court respectively by CBDTs Instruction No. 5/2014 dated 10th July 2014. Thereafter the CBDT issued another Circular No 21/2015 dated 10th December 2015 further enhancing the monetary limits for the tax effect to Rs. 10,00,000 and Rs. 20,00,000 for appeals before Appellate Tribunal and High Court respectively. This Instruction is also applicable to pending appeals and appeals having tax effect below the prescribed limits will be withdrawn by the Department. This Circular has reduced litigation by the tax department to a great extent since such matters are being disposed off on the grounds of low tax effect.

It is perhaps in this context that the Finance Minister thought it fit to provide an opportunity to the assessees to resolve their disputes and put an end to the tax litigation, subject to fulfilment of the applicable conditions, as we shall see going forward.

Finance Act, 2016 has introduced a scheme for resolution of disputes vide Chapter X called The Direct Tax Dispute Resolution Scheme, 2016. This Scheme is not a part of the Income Tax Act, 1961 (hereafter referred to as the IT Act). It is a part of the Finance Act, 2016 (hereinafter referred to as FA 2016). Though not specifically articulated in the Budget speech, the Scheme

also seems to be one of the measures of revenue collection which is mentioned in the Memorandum explaining the provisions of the Finance Bill, 2016. As a percentage of the budgeted direct tax collection for FY 2016-17 which is Rs. 8.47 lakh crore, the disputed amount of Rs. 5.5 lakh crore at first appellate authority is a whopping 65% of annual direct tax collection.

This Scheme comprises of 12 sections starting with Section 200, upto Section 211 of the FA 2016. Section 200 states that this Scheme may be called the Direct Tax Dispute Resolution Scheme, 2016 and it shall come into force from 1st June 2016. Though the Scheme per se does not mention a closing date, it requires the Central Government to notify the same in the Official Gazette. Pursuant to the same, notification dated 26th May 2016 [Notification No 34/2016, F. No. 142/11/2016-TPL] has been issued, wherein 31st December 2016 has been appointed as the date on or before which a declaration can be made under this Scheme. The declaration can therefore be filed anytime between 1st June, 2016 and 31st December 2016.

The following are the salient features of the Scheme:

1. This Scheme provides an opportunity to a declarant for settlement of disputed tax, being the tax determined which is disputed, and which is covered under either of the two categories as below:
   (i) 'Tax Arrears' in respect of which appeal is pending before the Commissioner of Income Tax (Appeals) as on 29th February 2016. 'Tax Arrear' has been defined to mean the tax, interest or penalty determined under the IT Act.
   (ii) 'Specified Tax' in respect of which appeal, writ or any proceedings are pending as on 29th February 2016. 'Specified Tax' has been defined to mean the tax determined in consequence of or is validated by an amendment made with retrospective effect for a period prior to the date of enactment of the amendment.
2. Where an appeal relates to Tax Arrear being tax and interest, and the disputed tax does not exceed Rs. 10,00,000, the declarant is liable to pay the disputed tax and interest on the disputed tax till the date of assessment.
3. Where an appeal relates to Tax Arrear being tax and interest, and the disputed tax is more than Rs. 10,00,000, the declarant is liable to pay the disputed tax and interest on the disputed tax till the date of assessment along with 25% of minimum penalty leviable.
4. Where an appeal relates to penalty, the declarant is liable to pay 25% of minimum penalty leviable as well as tax and interest payable on the total income finally determined.
5. Where the case relates to Specified Tax, the declarant is liable to pay the amount of tax determined.
6. Declaration under the Scheme is to be made in the prescribed form to the designated authority, not below the rank of Commissioner of Income Tax.
7. The designated authority shall within sixty days from the date of receipt of the declaration, determine the amount payable by the declarant and issue a certificate giving the particulars of amount payable by the declarant.
8. The declarant shall pay the amount determined within thirty days of receipt of the certificate and intimate the same to the designated authority along with proof of such payment.

9. The designated authority shall pass an Order stating that the declarant has paid such sum and such Order shall be conclusive as to matters stated therein.

10. The amount paid in pursuance of the Scheme shall not be refundable under any circumstances.

This Scheme is applicable to disputes both under the Income Tax and the Wealth Tax Act. For convenience purpose, we have referred to the relevant provisions and the relevant authorities as per the Income Tax Act. The said references should be construed to include references to the corresponding provisions and the corresponding authorities as per the Wealth Tax Act.

One would remember the earlier Kar Vivad Samadhan Scheme (hereinafter referred to as the KVSS) introduced in the year 1998 with similar objectives. As we go forward, we shall compare the current Scheme with the earlier one, as well as have a brief overview of the effectiveness and success of the earlier scheme.

The applicability of this Scheme is restricted to disputes pending in appeal before the Commissioner of Income tax (Appeals). However, if the pending dispute has arisen as a consequence of any retrospective amendment to the IT Act, the Scheme is applicable if an appeal is pending before the Commissioner of Income Tax (Appeals) or Appellate Tribunal or an appeal or Writ Petition is pending before the High Court or Special Leave Petitions pending before Supreme Court or any proceedings have been initiated or notice given for any proceedings for arbitration, conciliation or mediation under any law or agreement.

Chapter 2

Definitions – Section 201

Section 201 of the Scheme contains definitions of 9 terms which are referred to throughout the Scheme. As per Section 201(2) of the FA 2016, the terms and expressions used but not defined in the Scheme but defined in the Income tax Act 1961 or Wealth tax Act 1957 shall have the meanings respectively assigned to them in the respective Acts. Hence, wherever terms are used, which are not specifically defined in the Scheme, but are defined under the Act, take meaning under the respective Acts.

The definitions as per Section 201(1) of the Scheme are as follows:

(a) "declarant" means a person making a declaration under section 202 of the Finance Act, 2016;

Since the word "person" is not defined in the Scheme, one would need to refer to the definition of person as contained in Section 2 (31) of the Income-tax Act which is reproduced below:

"Person includes -

(i). an individual,
(ii). a Hindu undivided family,
(iii). a company,
(iv). a firm,
(v). an association of persons or a body of individuals, whether incorporated or not,
(vi). a local authority, and
(vii). every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation – For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains."

Any person can therefore avail of this Scheme by making a declaration for resolving his/its pending dispute with the Income tax department, irrespective of whether such person is a natural person or an artificial juridical person.

Under the Income Declaration Scheme 2016, there is a specific inclusion of the provisions of Chapter XV of the IT Act, relating to liability in special cases, which includes legal representatives, representative assessees, Firms, AOPs, BOIs, executors, partition of HUF, succession etc. (relevant sections 159 to 180A) in relation to proceedings under that scheme. Though under the Direct Tax Dispute Resolution Scheme, there is no specific inclusion, there does not seem to be any restriction for a declaration to be made in such cases. Hence, the declarant need not be the assessee, but can also be a legal representative or a representative assessee. Declaration can therefore be made by a non-resident, a foreign company, an LLP, a partnership firm, on behalf of a minor, an artificial juridical person, representative assessee, etc. in accordance with the Scheme.

(b) "designated authority" means an officer not below the rank of a Commissioner of Income-tax and notified by the Principal Chief Commissioner for the purposes of this Scheme;

Vide Letter [F.No.279/MISC/M-61/2016] dated 1st June 2016, the Principal Chief Commissioners of Income Tax have been directed to notify that the jurisdictional Principal Commissioner of Income Tax or the Commissioner of Income Tax who exercises jurisdiction under section 120 of the IT Act shall be the designated authority. Accordingly the designated authority before whom the declaration is to be furnished is the jurisdictional Principal Commissioner of Income Tax or Commissioner of Income Tax.

(c) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

The definition of the disputed income is relatable to the disputed tax; and hence it is the definition of disputed tax that is relevant. The disputed income is consequential and has to be related to the disputed tax. The computation of disputed income could however pose certain challenges as we shall see by way of illustrations in the Chapter - Declaration of tax payable and particulars to be furnished.

(d) "disputed tax" means the tax determined under the Income-tax Act, or the Wealth-tax Act, which is disputed by the assessee or the declarant, as the case may be;

Definition of `tax' under section 2(43) of the IT Act refers to income tax chargeable under the provisions of the IT Act and includes fringe benefit tax. In view of the specific definition of tax, any interest charged under the IT Act or penalty levied under the IT Act would not be covered.

The definition of disputed tax seems to require that there should be tax determined. On an initial reading of the definition, it would appear that if both the returned income and the assessed income are a loss, there would be no tax determined and hence there would not be any disputed tax and disputed income. Thus, in such a case, even if an appeal is pending before the Commissioner of Income Tax (Appeals), it would appear that an assessee would not be eligible to make a declaration under the Scheme.

There could however be a possible view, that even in case of assessed loss, the tax is determined, albeit at Rs. Nil and hence, if there is a dispute, a declaration can be made to end the litigation subject to fulfilment of the other conditions. This is on account of the fact that even in case of assessed loss, the notice of demand under section 156 of the IT Act is issued and the income tax computation form in ITNS 150 is prepared determining tax at Rs. Nil.

The clarifications of the CBDT on the Scheme dated 12th September 2016 vide Circular No 33 of 2016 suggest to the contrary. Clarification No 5 is reproduced as under:

Question No 5. ***The addition made in the assessment has the effect of reducing the loss but penalty has been initiated under section 271(1)(c) of the Income tax Act. Is the assessee eligible to avail the Scheme?***

Answer: ***The Scheme is applicable to cases where there is disputed tax. Since in the case of reduction of loss, there is no disputed tax the assessee shall not be eligible to avail the Scheme. However, if an appeal is pending before the Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss, the declarant may file a declaration in respect of such penalty order.***

The view of the Income Tax Department emerging from this clarification regarding appeals pending against reduction of loss does not seem to be justified. However, practical difficulties may arise if one seeks to take a contrary view, as the declaration under the Scheme may be rejected by the Designated Authority. Since the order of the Designated Authority under the Scheme is not appealable, the only remedy available to a declarant is to file a writ petition before the High Court against such rejection.

The use of the term 'assessee' appears only once in the entire Scheme – under the definition of disputed tax. As we have seen earlier, the declarant need not be an assessee, but could be a legal heir, representative assessee and so on. A question that could arise is that if the tax is disputed by an 'assessee' who is deceased or by a company which has subsequently been amalgamated with another company, can the legal heir or the successor company respectively file a declaration? Looking to the overall intention of the Scheme, it should be possible to file a declaration in such cases.

(e) "disputed wealth", in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax;

This is on similar lines as the definition of disputed income.

(f) "Income-tax Act" means the Income-tax Act, 1961;

The same is self explanatory.

(g) ''Specified Tax '' means a tax—

(i) the determination of which is in consequence of or validated by any amendment made to the Income-tax Act or the Wealth-tax Act with retrospective effect and relates to a period prior to the date on which the Act amending the Income-tax Act or the Wealth-tax Act, as the case may be, received the assent of the President; and

(ii) a dispute in respect of such tax is pending as on the 29th day of February, 2016;

Retrospective amendments to the IT Act to reverse the decisions of various rulings of the Apex Court or High Courts have happened time and again in the past. Some of the significant retrospective amendments to the IT Act are the amendments by the Finance Act, 2012 extending the definition of `transfer' in section 2(47) to cover indirect transfers for determining capital gains, regarding deemed accrual of income in India in section 9(1)(i), extending the definition of Royalty in Section 9(1)(vi) to include software with retrospective effect from 1st April 1962, and insertion of the explanation to section 9(1) clarifying that sections 9(1)(v),(vi) or (vii) would apply, irrespective of whether the non-resident has a place of business in India or has rendered services in India.

These amendments have created a furore, and have given rise to huge demands and litigation, as well as caused anguish to foreign corporations and foreign investors. In order to assuage this anguish, the Finance Minister has, through this Scheme, tried to water down the impact by offering complete waiver of interest and penalty on payment of the amount of tax and withdrawal of the appeal.

The definition of "Specified Tax" refers to tax determined on account of a retrospective amendment which relates to a period prior to the date on which the amending Act received the assent of the President. It is therefore pertinent to note that any dispute arising on account of an amendment in respect of any period which is subsequent to the date on which the Finance Act received the assent of the President, would not be covered by the definition of Specified Tax.

Most common instances of Specified Tax would be the tax liability arising on account of:

- Taxation of capital gains on account of indirect transfers pursuant to the amendment by the Finance Act 2012 with retrospective effect from Assessment Year 1962-63, for any period prior to 28th May 2012, being the date on which the Finance Act 2012 received the assent of the President.

- Disallowance under section 40(a)(i) on account of non-deduction of tax at source on sums becoming chargeable to tax in India pursuant to the amendment by the Finance Act 2012 with retrospective effect from Assessment Year 1962-63, for any period prior to 28th May 2012 being the date on which the Finance Act 2012 received the assent of the President.

- Demands for non-deduction of Tax at source, where such requirement of TDS arose on account of any retrospective amendments.

The dispute in respect of Specified Tax could be pending by way of appeal to the Commissioner of Income Tax (Appeals), Appellate Tribunal, or High Court or Writ petition to the High Court or Special Leave Petitions pending before the Supreme Court or by way of proceeding or notice of proceeding for arbitration, conciliation or mediation under any law or under agreement entered into by India with any other country or territory outside India.

(h) "Tax Arrear" means, the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016;

The definition of Tax Arrear refers to amount determined in respect of which appeal is pending before the Commissioner of Income Tax (Appeals). The definition nowhere requires that the amount of tax should be outstanding. Therefore, it appears that even if there is no outstanding demand as on 29th February, 2016 but there is an addition which is disputed in appeal before the Commissioner of Income tax (Appeals), an assessee would be eligible to file a declaration in respect thereof. It would therefore follow that the benefit of the scheme would be available even when there is a net refund determined, or the taxes are fully or partially paid or adjusted against a refund at the time of making the declaration.

This is one of the significant differences between the erstwhile KVSS and the present Scheme.

The definition of Tax Arrear in the erstwhile KVSS 1998 referred to the amount of tax, penalty or interest determined and payable but which remained unpaid as on 31st March 1998. Hence if there were no outstanding dues, there was no eligibility under the Scheme.

The definition of Tax Arrear in the present Scheme stops at the term "determined" as against determined and payable, which has remained unpaid, in the erstwhile KVSS

KVSS was more beneficial if the disputed tax was outstanding. The CAG in its report which is referred to in **Chapter 14** of this publication, had criticised the Scheme as being more beneficial to the litigant tax payers rather than the conscientious taxpayers.

Looking to the definition of the term "Tax Arrear", on a first reading, it appears that where the assessed income is a loss, there may not be any Tax Arrear. However, if the argument succeeds that in case of loss also, tax is determined, albeit at Rs. Nil, there could be a Tax Arrear even in case of assessed loss.

In any case, if there is a levy of penalty, appeal against which is pending before the Commissioner of Income Tax (Appeals), irrespective of whether the income determined is positive or a loss, that the penalty would be considered as Tax Arrear.

It is only the disputes pending before the Commissioner of Income Tax (Appeals) that are covered so far as the disputed tax relating to Tax Arrear is concerned. In other words, if the tax determined is disputed in appeal which is pending before the Income Tax Appellate Tribunal or higher levels, the same would not be considered as Tax Arrear. If the dispute in respect of tax determined is pending for revision before the Commissioner of Income Tax pursuant to the provisions of Section 264 of the IT Act, the same would not be considered as Tax Arrear. Similarly, if the dispute is pending before the Dispute Resolution Panel against a draft Assessment Order, such dispute would also not be covered since there is no Tax Arrear i.e. tax determined pursuant to an assessment order, which is pending in appeal.

While 'Tax arrear' covers tax, interest and penalty, 'Disputed tax' would not include the amount of interest and/ or penalty.

(i) "Wealth-tax Act" means the Wealth-tax Act, 1957.

The same is self-explanatory.

Chapter 3

Declaration of tax payable and particulars to be furnished – Section 202 and 203

The Scheme has come into force on 1st June 2016. To avail of this Scheme, a declaration has to be filed before the designated authority for settlement of disputes. As seen earlier, the designated authority is the jurisdictional Commissioner of Income Tax or Commissioner as may be notified by the Principal Chief Commissioner of Income Tax. Vide Notification No. MUM/PCCIT.Coord/DTDRS/2016-17/266 dated 1st June 2016 Principal Chief Commissioner of Income Tax, Mumbai has notified the jurisdictional Principal Commissioners of Income Tax and Commissioners of Income Tax as the designated authority in Mumbai. The declaration can be filed anytime between 1st June 2016 and 31st December 2016 (both days inclusive).

This Scheme is applicable to all pending disputes in respect of the following:

Tax Arrear

- Where an appeal is pending before Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on 29th February, 2016

Specified Tax

- Where tax is determined in consequence of or is validated by an amendment made with retrospective effect in I Tax Act for a period prior to the date of enactment of such amendment **and**;
- a dispute in respect of which is pending as on 29th February 2016

The last day of making the declaration under the Scheme i.e. 31st December, 2016 being a Saturday; hence it is likely that the Income Tax Department may remain open for accepting the declarations on that day, since the declarations have to be physically filed with the designated authority. Section 202 of the FA 2016 provides for settlement of tax disputes by making a declaration in respect of tax arrear or specified tax in the prescribed form 1. The Scheme envisages two categories of disputes. The dispute could be in respect of Tax Arrears in respect of which appeal is pending before the Commissioner of Income Tax (Appeals) as on 29th February 2016 or it could be in respect of Specified Tax, which has resulted on account of retrospective amendment to the IT Act, in respect of which appeal is pending before the Commissioner of Income Tax (Appeals), Appellate Tribunal, or High Court or Special Leave Petition before the Supreme Court or Writ petition pending before the High Court or proceeding initiated or notice of proceeding given for arbitration, conciliation or mediation under any law or under agreement entered into by India with any other country or territory outside India (including Bilateral Investment Protection Agreement) which is pending before any authority as on 29th February 2016.

Declaration of Tax Payable:

(i) In respect of Tax Arrear

The dispute relating to Tax Arrear can be settled by making the payment of the following amounts in respect of appeals pending before the Commissioner of Income Tax (Appeals):

(ii) If the disputed tax does not exceed Rs. 10,00,000 for the relevant assessment year, the declarant can settle the same on payment of whole of the disputed tax and interest upto the date of assessment. If the disputed tax exceeds Rs. 10,00,000 for the relevant assessment year, the declarant can settle the same on payment of whole of the disputed tax and interest upto the date of assessment, along with 25% of the minimum penalty leviable.

(iii) If the Tax Arrear is in the nature of penalty, the assessee can settle the same by payment of 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined.

It can therefore be observed that the benefits of the Scheme include waiver of interest subsequent to the date of assessment and waiver of entire penalty leviable or balance penalty in excess of 25% of minimum penalty, depending upon the amount of disputed tax.

As seen earlier, disputed tax refers to the tax determined which is disputed. On an analysis of the definition of disputed tax, it appears that the amount of disputed tax could be different under different circumstances, in respect of same amount of addition to income which is under appeal. The quantum of disputed tax is relevant, since the amount of penalty payable for settlement of disputes relating to Tax Arrear is dependent thereon. This can be understood by way of the following illustration:

Let us assume that the amount of addition which is disputed in appeal before the Commissioner of Income Tax (Appeals) is Rs. 1 crore. If a declaration is filed, the amount of penalty payable would be as follows:

Returned Income Rs.	**Assessed Income Rs.**	**Disputed Tax Rs. (tax rate assumed at 33.99%) Rs.**	**Minimum penalty leviable under section 271(1)(c) Rs.**	**Amount of penalty payable Rs.**
(-) 1,10,00,000	(-) 10,00,000	NIL	33,99,000	Not eligible to file declaration*
50,00,000	1,50,00,000	33,99,000	33,99,000	8,49,750
(-) 75,00,000	25,00,000	8,49,750	33,99,000	NIL
(-) 90,00,000	10,00,000	3,39,900	33,99,000	NIL

*in terms of the clarification 5 on the Scheme dated 12th September 2016 vide Circular No 33 of 2016 referred to on **Page 5** earlier stating that in case of reduction of loss, there is no disputed tax. This view does not seem to be justified.

If the Tax Arrear is in respect of penalty, the amount payable pursuant to the declaration is 25% of the minimum penalty leviable, and the tax and interest payable on the total income finally determined.

The computation of 25% of minimum penalty leviable and the tax and interest payable is on the 'total income finally determined'. Hence if the dispute is pending, a question that arises is what would be considered as the 'total income finally determined'? The CBDT has clarified on the significance of the term 'total income finally determined' in Question No 9 of the Circular 33 dated 12th September 2016 referred at **Page 63** which as follows:

Question No 9: ***In a case, appeal against penalty order under section 271(1)(c) is pending before Commissioner (Appeals) and appeal against quantum addition is pending with higher appellate authority. As per the Scheme, the amount payable is 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined. What should be construed as 'total income finally determined' for computing the quantum of tax, interest and penalty payable under the Scheme? Further, what would be the effect of any variation in quantum addition as a result of appellate order(s) passed subsequent to filing of declaration?***

Answer: ***In case of an appeal relating to penalty under section 271(1)(c), the amount payable under the Scheme is 25% of the penalty amount and also the tax and interest payable on the total income finally determined. For this purpose the total income finally determined shall be the total income as determined after giving effect to the last appellate order passed on or before the date of filing declaration under the Scheme.***

Any variation to the total income as a result of any appellate order passed subsequent to the date of declaration shall be ignored for the purposes of computing the amount of penalty payable under the Scheme.

Since the clarification also refers to appellate order passed subsequent to date of declaration and states that the same shall be ignored for the purpose of computing the amount of penalty payable under the Scheme, it is implicit that refund may be claimed if there is a variation to total income on account of relief granted subsequently out of taxes paid from time to time on the regular demand, but not on account of the penalty paid under the Scheme.

Let us consider an illustration of determination of the amount payable pursuant to a declaration filed in respect of an appeal for levy of penalty under section 271(1)(c) in the given facts:

Facts of the case:

Addition to total income by Assessing Officer in March 2014 Rs. 50,00,000.
Tax payable thereon Rs.16,99,500.

Penalty levied under section 271(1)(c) by Assessing Officer in September 2014 @ 100% Rs. 16,99,500.

Appeal filed before Commissioner of Income Tax (Appeals) and is pending as on 29th February 2016.

Penalty amount outstanding for payment.

Addition sustained by Commissioner of Income tax (Appeals) in June 2015 to the extent of Rs. 30,00,000 and presently appeal pending before the Income Tax Appellate Tribunal.

Tax and interest paid of Rs. 12,00,000. No further demand due.

A declaration is sought to be filed in respect of the penalty appeal. Declarant has to compute the amount payable pursuant to the declaration. Tax rate is assumed to be 33.99%

If the Income Tax Appellate Tribunal grants full relief in respect of the quantum appeal, can refund be claimed?

To put another dimension to the above facts of the case, if both the quantum appeal and penalty appeal are pending before Commissioner of Income Tax (Appeals), how would the amount payable under the declaration be computed?

Computation of amount payable while filing declaration:

(j) Tax and interest payable on the total income determined after giving appeal effect. Rs. Nil since the entire amount is paid.

(ii) Rs. 2,54,925 being 25% of Rs. 10,19,700 (minimum penalty leviable under section 271(1)(c) in respect of the addition of Rs. 30,00,000 as per the latest order and not 25% of penalty levied of Rs.16,99,500)

(iii) Refund of the tax and interest paid can be claimed, in the event of the Income Tax Appellate Tribunal grants relief in the quantum proceedings, since such tax and interest is not paid under the Scheme. No refund can be claimed in respect of any amount paid pursuant to the declaration; in this case, the amount of penalty. It may be kept in mind that since no refund can be claimed in respect of any amount paid pursuant to the declaration, if there is any unpaid tax or interest payable, the same should be paid prior to making the declaration and not pursuant to the declaration.

With the same facts, if the demand in respect of the quantum appeal was unpaid and a stay was granted, a declaration could not have been filed unless the entire tax and interest was paid. This provision would create practical difficulties and act as a deterrent for making declaration under the Scheme.

If both the quantum appeal and the penalty appeal is pending before the Commissioner of income Tax (Appeals), the declaration should be made in respect of the quantum appeal. The amount of penalty payable pursuant to the declaration would depend on the Disputed tax. If the disputed tax is below Rs. 10,00,000, there would be no penalty payable; if it exceeds Rs. 10,00,000, it would be 25% of the minimum penalty leviable. No separate declaration needs to be filed in respect of the appeal against the penalty.

The above issue has been clarified by the CBDT in Question No 3 of the Circular referred to earlier as under:

Question No 3 ***Appeal against the quantum as well as penalty under section 271(1)(c) is pending before the CIT(Appeals). If the assessee files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of penalty appeal?***

Answer: ***As per the Scheme, in a case where disputed tax in quantum appeal is more than Rs. 10 lakh, the declarant has to pay the disputed tax, interest and 25% of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed Rs. 10 lakh, the declarant is required to pay only the disputed tax & interest and there is no requirement for payment of any amount in respect of penalty leviable.***

Section 205(b) of the Act provides immunity from imposition or waiver of penalty under the Income tax Act or the Wealth tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in Section 202(1) of the Act. Hence, in both the situations (i.e whether disputed tax in quantum appeal exceeds Rs. 10 lakh or not), where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against penalty levied under section 271(1)(c) of the Income- tax Act, relating to the quantum appeal shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived.

It is therefore concluded that even if penalty is a subject matter of appeal before the Commissioner of Income Tax (Appeals), if the quantum appeal is pending before the Commissioner of Income Tax (Appeals) and declaration is filed in respect thereof, the payment of penalty would be required to be made only if the disputed tax is more than Rs 10,00,000.

There are certain other points that one needs to consider while filing a declaration with regard to the amount of penalty payable. 25% of minimum penalty leviable is only when the disputed tax is more than Rs. 10,00,000. There could be instances where the initiation of penalty proceedings is only with respect to some of the additions which are disputed in appeal. In case the tax in respect of the additions in respect of which penalty proceedings are initiated does not exceed Rs. 10,00,000, but the disputed tax as per the Scheme exceeds Rs. 10,00,000, 25% of the minimum penalty would still be required to be paid since it is the disputed tax which is the basis of determining the amount of penalty to be waived.

Practical experience suggests that while passing the assessment order, penalty proceedings are normally initiated in respect of almost all the additions to income. The said proceedings are subsequently dropped where the disputes are of a legal nature or where two views could be possible and adequate disclosures have been made.

It is therefore felt that payment of 25% of minimum penalty leviable could be a major deterrent for success of this Scheme. This is more so where the disputed tax is of fairly large amounts.

To attract the requirement of minimum penalty leviable, penalty proceedings should have been initiated and be pending, or penalty should have been levied. In a situation where penalty proceedings are not pending nor has penalty been levied, the question of payment of minimum penalty does not arise. Though rare, there could be instances where penalty proceedings initiated have been dropped even during the pendency of appeal before the Commissioner of Income tax (Appeals). In such cases, though the disputed tax may be Rs. 10,00,000 or more, the minimum penalty leviable would be Rs. Nil and hence the question of any payment towards penalty would not arise.

As regards the eligibility in respect of delayed appeals to file a declaration one may refer to the Circular of the CBDT dated 12th September 2016.

Question No.6: ***In a case the time period specified under section 249 of the Income-tax Act for filing of appeal expired on 29.2.2016. The assessee filed an appeal in this case on 5.4.2016 with a request to condone the delay in filing of appeal. The Commissioner (Appeals) condoned the delay in filing of the appeal. Is the Scheme available to the assessee in such a case?***

Answer: ***In condonation cases, a declarant shall be eligible for the Scheme, if:***

(i) the time limit for filing of appeal under section 249 of the Income-tax Act, 1961 has got barred by limitation on or before 29.02.2016;

(ii) the appeal and condonation application has been filed before Commissioner (Appeals) before 01.06.2016; and

(iii) the delay in filing of such appeal is condoned by the Commissioner (Appeals)

Hence, in the present case, the Scheme is available to the assessee.

Based on the above clarification, let us analyse whether a declaration can be filed in the following cases:

(a) Where a belated appeal has been filed before 29th February 2016 and application for condonation of delay has also been filed and is pending?

Appeal will be considered as pending as on 29th February 2016 if the delay has been condoned and appeal is admitted at the time of filing the declaration.

(b) Where there is a belated appeal filed after 29th February 2016 but the due date of filing the appeal was before 29th February 2016 and application for condonation of delay has been made?

In such a case, since the due date for filing the appeal was before 29th February 2016 the assessee would be eligible to file a declaration if the delayed has been condoned and appeal is admitted at the time of filing the declaration.

(c) Assessment order received on 15th February 2016 but appeal filed on 1st March 2016 which is within time but after 29th February 2016. If in the same case appeal would have been filed on 29th February 2016, it would have been eligible.

On a bare reading of the Scheme, it appears that such a case is not eligible for declaration. However, this does seem to be unfair and discriminatory, as merely because the appeal has been filed after 29th February 2016, though within time, the assessee is denied the benefit, as against a similar taxpayer who has also filed the appeal in time but before 29th February 2016.

(d) Whether an application can be made under this Scheme in case of appeal pending before the Commissioner of Income Tax (Appeals) on 29th February 2016 but withdrawn by the assessee thereafter?

Though the primary condition of appeal pending on 29th February 2016 is fulfilled; looking to the above clarification, it would not be possible to file a declaration in such a case.

(e) Whether an application can be made under this Scheme in case of defective appeal filed with the Commissioner of Income Tax (Appeals) before 29th February 2016 and defect rectified after 29th February 2016?

Yes, the appeal is merely defective and not non est in such a case. Upon rectification of the defect, the date of filing of the appeal would be considered as the original date and the same being prior to 29th February 2016, declaration can be made.

(f) If an appeal is pending before Commissioner of Income Tax (Appeals) on 29th February 2016 and is heard thereafter and order passed against the assessee? Can declaration be filed under the Scheme?

Since the basic condition of appeal pending before Commissioner of Income Tax (Appeals) on 29th February 2016 is met, a view could be taken that such a case would be eligible for filing a declaration under the Scheme. However, the CBDT has taken a contrary view has clarified vide Question 1 in the Circular dated 12th September, that the assessee would not be eligible to avail the Scheme.

Question No. 1. ***In a case an appeal was pending before CIT(Appeals) as on 29.02.2016. However, before making declaration under the Scheme the appeal is disposed of by CIT (Appeals). Is the assessee eligible to avail the Scheme?***

Answer: ***In such a case where the appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed.***

It may be noted that this clarification is contrary to the language of the Scheme, which clearly provides that if the appeal is pending as on 29th February 2016, it is eligible for declaration under the Scheme. There is no provision under the Scheme for the appeal to be pending on the date of declaration, as is sought to be made out by the Circular.

Computation of amount payable in respect of Tax Arrear being penalty other than penalty under section 271(1)(c)

In case the dispute is in relation to a penalty which is not relatable to income, such as penalty under section 271A, 271B, 271BA, 271BB, 271D, 271E etc, what would be considered as the amount of disputed tax and disputed income?

As seen in the definition of tax, tax does not include any penalty. In such a case, it may be possible to take a view that there is no disputed tax and or disputed income. The only amount payable would be 25% of the penalty.

Declaration in respect of Specified Tax

The dispute relating to Specified Tax can be settled by payment of disputed tax. The entire interest and penalty relating to Specified Tax would be waived. This is a welcome provision and should evince a lot of interest in the coming months for resolution of pending disputes arising out of retrospective amendments.

If a dispute is pending before the ITAT or higher authorities and only part of the dispute is on account of Specified Tax, the question that arises would be as to the manner of quantification of the amount payable. This is relevant since the complete waiver of interest and penalty is only with respect to Specified Tax, i.e. tax liability arising consequent to a retrospective amendment.

The earlier KVSS applied to the entire demand. This is evident from Question No. 8 of Clarification 1 dated 26th August 1998 under KVSS which is reproduced as under:

Q8: Where only certain items of addition are in dispute can the assessee take advantage of the Scheme for the entire demand of the year?

Ans: Yes. The Scheme is applicable to the entire demand of an assessment year.

KVSS permitted waiver of tax and such waiver was considered applicable even in respect of demand that was undisputed. However, KVSS was a scheme permitting part waiver of the tax, whereas under this Scheme, there is no waiver of the tax. Further, this scheme also applies vis-à-vis the entire appeal. Therefore, under this Scheme, one can make a declaration for the entire appeal, or not at all. It cannot be made for part of the appeal.

This gives rise to various interesting situations. Consider a case where a dispute relating to Specified Tax is pending before the ITAT or a higher judicial forum. If it involves only Specified Tax, there is no difficulty in quantification. Where other issues are also in dispute, this would not amount to Tax Arrears, and would not qualify for declaration under the Scheme. However, if a declaration is made under the Scheme, the appeal or proceeding would have to be withdrawn, effectively resulting in payment of such tax on other disputed items, along with interest till date of payment and possible penalty. A

taxpayer therefore needs to quantify the benefit of making a declaration in respect of Specified Tax against the disadvantage of giving up the dispute in respect of the other issues.

Consider another situation where the appeal relating to both Specified Tax as well as other issues is pending before Commissioner (Appeals) on 29th February 2016. In this case, the tax and interest in respect of other issues would amount to Tax Arrears. There does not seem to be any bar on making the declaration both in respect of Specified Tax and Tax Arrears in the same declaration. It would be possible to break up the demand into two parts – one in relation to Specified Tax, and one in relation to Tax Arrears. In such a situation, the taxpayer has no option but to either make a declaration or not make a declaration. If he makes a declaration only in respect of Specified Tax, since the appeal has to be withdrawn before making the declaration.

The Form does not specifically provide for a case where a composite declaration is made for settlement of dispute relating to Tax Arrears and Specified Tax for the same year. In such a case, the declarant is advised to clearly specify in the form by way of appropriate disclosure that the aggregate disputed taxes paid under the scheme comprise of both the taxes and that the settlement is sought for the disputes relating to the tax arrears as well as the specified tax. A further precaution that may help is to file such a form in consultation with the designated authority.

Filing of declaration under the Scheme – Section 203:

The procedure for filing the declaration under the Scheme, the information required to be furnished and the timelines to be followed is discussed in detail in the **Chapter 9 at Page 31** of the Direct Tax Dispute Resolution Scheme Rules, 2016.

Where a declaration is filed in respect of Tax Arrears for settlement of the Disputed Tax in Form No 1 giving the prescribed particulars, the appeal pending before the Commissioner of Income Tax (Appeals) is deemed to have been withdrawn. There is no obligation under the Scheme on the declarant to inform the Commissioner of Income Tax (Appeals) that a declaration has been filed in respect of a pending appeal. However, as a matter of abundant caution and to ensure timely flow of information, the declarant should send an intimation in writing to the Commissioner of Income Tax (Appeals) regarding the declaration made.

The Income Tax Department has undertaken certain steps towards successful implementation of the Scheme including reaching out to each eligible appellant and interacting with local professional bodies for explaining the benefits of the Scheme.

There is also a Standard Operating Procedure laid down for processing declarations under the Scheme. This procedure includes obtaining an endorsement from the Commissioner of Income Tax (Appeals) that the appeal was pending and has not yet been disposed. Letter F No. 279/ Misc./M-74/2016-ITJ, dated 19th /July 2016 is annexed as **Appendix 6 at Page 57**

Where a declaration is proposed to be filed in respect of Specified Tax, the declarant, before filing such declaration is required to withdraw the appeal filed before the

Commissioner of Income Tax (Appeals), Income Tax Appellate Tribunal, High Court, Supreme Court or writ petition filed before the High Court.

If the declarant has either initiated any proceedings or given any notice for initiation of arbitration, conciliation or mediation under any law or under any agreement entered into by India with any other country or territory outside India for protection of Investment or otherwise, he will have to withdraw the same prior to filing the declaration. The declarant is also required to furnish proof of such withdrawal along with an undertaking in the prescribed form waiving his right to seek or pursue any other remedy or claim for the Specified Tax.

The issue that could arise is whether it is an absolute right of an appellant to withdraw the appeal/ writ petition/any other proceedings or at best the appellant can only request for such withdrawal, and the discretion to permit such withdrawal is with the appellate authority/ court. However, from a practical perspective, there would normally not be any challenge if an appellant wishes to withdraw the appeal/ writ petition or any other proceedings to fulfil the conditions for filing a declaration under the Scheme. The application for withdrawal alongwith the undertaking waiving his right to seek or pursue any other remedy or claim for the Specified Tax should be sufficient compliance by the declarant in order to make such declaration.

Concern of the tax payer as to whether filing a declaration would dilute his claim on similar issues in subsequent years has been addressed in the Circular dated 12th September 2016.

Question No. 11: ***By filing declaration under the Scheme for one assessment year, does the taxpayer forego his right of appeal on the same issue in another assessment year?***

Answer: ***No. The order under the Scheme does not decide any judicial issue. It only determines the sum payable under the Scheme with reference to tax arrear or specified tax, as the case may be. It only provides for a dispute resolution mechanism in respect of cases for which declaration has been made.***

Declaration to be considered as Void in certain cases

Under the following circumstances it would be presumed that the declaration was never made:

(a) If any material particulars furnished by the declarant are found to be false at any stage.

(b) The declarant violates any of the conditions of the Scheme.

(c) The declarant acts in a manner which is not in accordance with the undertaking given by him in respect of withdrawal of appeal or dispute in respect of Specified Tax.

If the declaration is considered as never made, all the proceedings against the declarant shall be deemed to have been revived. The revival as provided for in the Scheme is with reference to all the pending proceedings ***against*** the declarant.

In respect of Tax Arrear, the question that arises is whether appeal petition filed by the declarant before the Commissioner of Income Tax (Appeals) which is deemed to have been withdrawn gets reinstated? It must be kept in mind that a deeming fiction must be taken to its logical conclusion. If it is presumed that the declaration was never made, it would follow that the appeal petition before the Commissioner of income tax (Appeals) would not be deemed to have been withdrawn.

Where the declaration in respect of Specified Tax is considered to be void, a similar question that arises is whether the appeal or other proceedings would be reinstated since the declarant has voluntarily withdrawn the same. A declarant should therefore add a prayer at the time of withdrawing the appeal or other proceedings, for reinstating the appeal or other proceedings if the declaration is considered as void. If for any reason, the declaration is considered as void and the appeal or other proceedings cannot be reinstated, the declarant would be liable to pay up the entire demand along with interest till date of payment as well as face other consequences including penalty and other proceedings under the IT Act.

In view of the above onerous provisions, it is of utmost importance for a declarant to ensure his eligibility under the Scheme, correctness in all the particulars furnished in the declaration as well as timely payment of the amount determined as payable under the Scheme. In case a declarant has made the payment of amount determined pursuant to certificate granted by the designated authority; what happens if the declaration is considered void due to subsequent non compliance? Though section 206 provides that any amount paid in pursuance of a declaration under section 202 shall not be refundable under any circumstances, the issue which arises is whether such payment is made in pursuance of a declaration? Since the declaration is deemed never to have been made, it should be possible to take the view that such payment is not in pursuance of a declaration. It should, therefore be possible to seek credit for the payment and claim a refund or adjust against the income tax dues, if any.

Chapter 4

Time and manner of payment – Section 204

The time and manner of payment of disputed tax is as follows:

1. On receipt of the declaration for Tax Arrear, or receipt of the declaration and undertaking for Specified Tax, the designated authority shall determine the amount payable under this Scheme. This determination and grant of certificate in Form 3 giving the particulars of the Tax Arrears or Specified Tax and the sum payable has to be done within 60 days of the date of receipt of the declaration. The Standard Operating Procedure forming part of **Appendix 6 at Page 60** laid down by the department for processing declarations received under the Scheme provides that the Certificate in Form 3 will be expeditiously issued without waiting for the prescribed period of 60 days.

2. An issue that could arise is that if there is a mistake in computing the amount of tax payable by the designated authority, can it be a subject matter of rectification under section 154 of the IT Act? The provisions of section 154 empower rectification of mistake apparent from record in any order passed under any of the provisions of the IT Act. The issue would be as to whether the certificate issued would be considered as an order capable of being rectified under section 154? Section 204(3) of the FA 2016 refers to this certificate as an order passed under section 204(1) of the FA 2016 determining the sum payable. Section 204 of the FA 2016 is not a part of the IT Act and hence rectification under section 154 of the IT Act may not be permissible.

3. Though Section 204(3) of the FA 2016 states that the order passed shall be conclusive as to the matters stated therein, the conclusiveness is in the nature of protection to the declarant so that the matters covered by the declaration are not reopened. However, rectification of an apparent error in the working, is not a reopening and hence such rectification should be possible. If this view is not accepted by the department, the only recourse remaining would be to file a Writ Petition since this order is otherwise not appealable.

   From a practical perspective, it is therefore advisable to attach a detailed working of the amount payable with supportings of taxes paid earlier, along with the declaration in Form 1, so as to mitigate the chances of computation errors in the Certificate to be issued by the Tax Department.

4. On receipt of the certificate, the declarant shall pay the amount within 30 days of receipt of certificate and intimate the same to the designated authority along with proof of payment.

   Timely payment of the amount determined is critical in order to avail benefits under the Scheme. Non payment for any reason including non realisation of the cheque would make the declarant ineligible for the Scheme. Question No 12 of the clarification which is reproduced below is in respect of the same.

Question No.12: ***The declarant has not paid the tax payable under the Scheme within 30 days of the order under section 204(1) for any reason including the non-realization of the cheque presented to the bank. Will the declarant be eligible for the relief under the Scheme?***

Answer: ***No. The tax payable under the Scheme should be paid to the credit of the Government on or before the due date as specified in the Scheme. The assessees are advised to pay the tax well on time so as to avail the relief under the Scheme.***

A declarant should therefore keep in mind the timelines and plan the cash flows accordingly.

As regards the payment of tax pursuant to the receipt of certificate from the designated authority, adjustment of refund due would also be considered as a mode of payment.

For this purpose one may also place reliance on the clarification issued under the erstwhile KVSS:

Circular 2/98 dated 3-9-1998

Question 3: ***Where refund for an earlier year is adjusted against the demand of any year, will such an adjustment be regarded as the payment of tax?***

Ans.: ***Yes. The adjustment of refund payable is one of the modes of payment of taxes.***

Though the Scheme provides for payment of the amount due within 30 days of receipt of the certificate, it does not provide for a time limit for the intimation of the payment to the designated authority.

This is sought to be clarified vide Question No 13 of the clarifications dated 12th September 2016.

Question No.13: ***There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of order under section 204(2) of the Act by the designated authority. Please clarify?***

Answer: ***The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which time limit for making payment under the Scheme expires. The designated authority shall issue the order under section 204(2) of the Act within one month from the end of the month in which intimation regarding payment is received in Form-4 from the declarant.***

Upon receipt of the Intimation and proof of payment, the designated authority shall pass an order stating that the declarant has paid the sum payable under the Scheme. Though there is no time limit under the Scheme, Question No 13 referred to above provides guidance in the matter. The timeline for issue of order is one month from the end of the month in which the intimation of payment is made by the declarant to the designated authority.

5. The order passed by the designated authority for Tax Arrear or Specified tax, shall be conclusive about the settlement of the dispute and such matter cannot be reopened in any proceedings under the IT Act or WT Act or under any other law or agreement entered into by India with any other country or territory outside India.

The protection provided by the Scheme is with respect to the proceedings in India.

Chapter 5

Immunities and waivers – Section 205 and 207

Upon completion of the entire procedure of submitting the declaration, determination of the amount payable, grant of certificate setting forth the Tax Arrear or Specified Tax payable, payment of the amount determined, intimation thereof and passing of the Order by the designated authority, immunity and waiver in terms of Section 205 of the FA 2016 shall be granted as under:

a) Immunity from instituting proceedings for offences under the IT Act

The designated authority shall grant immunity from instituting any proceedings for offences in respect of an offence under the Income tax Act or the Wealth tax Act. Immunity shall be granted from prosecution for offences as specified under sections 275A to 280D under Chapter XXII of the IT Act for contravention of various provisions of the IT Act.

The provisions for prosecution for offences are part of the tax statute, which are normally enforced in exceptional cases.

b) Immunity from imposition or waiver of penalty

The designated authority shall grant immunity from imposition of penalty in respect of Specified Tax covered in the declaration.

Looking to the nature of Specified Tax, the question of levy of penalty would normally not arise, because an assessee cannot be penalized for non-compliance of a provision which was not in force at the time the compliance was required to be made. Hence, the immunity from imposition of penalty in case of Specified Tax is perhaps not really a benefit which by itself could attract a taxpayer to make a declaration under the Scheme.

As regards Tax Arrear, immunity in respect of imposition or waiver of penalty shall be granted to the extent it exceeds the amount of penalty referred to in clause (I) of Section 202. In other words, complete immunity shall be granted from levy of penalty in respect of Tax Arrear covered by the declaration where the disputed tax does not exceed Rs. 10,00,000/-. In other cases, waiver of penalty shall be granted in respect of excess of 25% of minimum penalty leviable.

c) Waiver of interest

In case of Specified Tax, the designated authority shall grant complete waiver of interest chargeable under the IT Act.

In case of Tax Arrear, the designated authority shall grant waiver of interest chargeable under the IT Act after the date of assessment or reassessment.

The above immunities/ waiver are not discretionary and are to be granted by the Designated Authority in the Order passed in Form 5 or Form 6 for full and final settlement of the Tax Arrears or Specified Tax respectively.

As seen earlier, the certificate issued by the designated authority in Form 3 determining the amount payable in accordance with the provisions of the Scheme shall be conclusive and no matter covered by the order shall be reopened in any other proceeding under the IT Act or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

Section 207 of the FA 2016 provides that the Scheme cannot be construed to confer any benefit, concession or immunity in any proceedings other than those in relation to which a declaration is made.

Chapter 6

No refund of amount paid under the Scheme – Section 206

Section 206 of the FA 2016 provides that any amount paid in pursuance of a declaration made under section 202 of the FA 2016 is not refundable under any circumstances.

This Scheme, as we have seen is for resolution of pending tax disputes. Hence if a tax dispute is resolved by making payment of taxes and availing of immunities and waivers under the Scheme, it is only fair that any amount paid under the Scheme for resolution of disputes should not be refunded back.

There could however be some instances where a refund may be due (in respect of amounts paid before making the declaration) pursuant to filing the declaration. In respect of Tax Arrears, where a declarant has paid the demand along with the interest under section 220, pursuant to the declaration filed, the interest paid under section 220 has to be refunded. If the Tax Arrear is in respect of penalty, and the assessee has paid the amount of penalty levied, penalty paid in excess of 25% of the minimum penalty leviable has to be refunded.

Similarly in case of Specified Tax, where the entire demand on assessment has been paid, subsequent to the filing of the declaration, any interest paid would be refundable.

In the above situations, the payments are not in pursuance to the declaration made, and hence the refund is not of such payments made under the Scheme.

Reliance is placed on the CBDT Circular dated 12th September 2016 as reproduced below:

Question No.14: ***Whether refund will be granted in cases where the assessee has already paid the penalty amount in full or in part while the appeal is still pending at CIT(A) stage and the assessee opts for this Scheme?***

Answer: ***As per section 202(I)(b) of the Scheme, in case of pending appeal related to penalty, 25% of the minimum penalty leviable along with tax and interest on the total income finally determined is required to be paid. Therefore, if an assessee who has already paid an amount over and above the amounts referred to in section 202(I)(b) opts for the Scheme, he shall be eligible for refund of the excess payment already made. However, the declarant shall not be eligible for claim of interest on such refund under section 244A of the Income-tax Act, 1961.***

The clarification that no interest under section 244A would be payable on such refund does not seem to be backed by any authority of law, since the Scheme itself does not so provide.

There could also arise certain situations, where, though the declarant has filed a declaration and made a payment either in full or in part pursuant thereto, subsequently the declaration has been considered as void. One may refer to sub section 5 of Section 203 which provides that if the declaration is considered void, it would be presumed that the declaration was never made. It therefore follows that the provisions of section 206 of the FA 2016 would not apply in such cases.

Hence such payments made would not be regarded as payments made pursuant to a declaration, and should be allowed to be refunded or adjusted against any outstanding tax dues.

Chapter 7

Inapplicability of the Scheme in certain cases – Section 208

Section 208 of the FA 2016 provides for certain cases wherein the provisions of the Scheme are not applicable and hence declaration under this Scheme cannot be made.

The Scheme would not be applicable in the following cases:

(a) in respect of Tax Arrear or Specified Tax , —

(i) relating to an assessment year in respect of which an assessment has been made under section 153A or 153C of the IT Act or assessment or reassessment for any of the assessment years, in consequence of a search initiated under section 37A or requisition made under section 37B of the Wealth-tax Act if it relates to any Tax Arrear;

Hence, where the dispute in respect of tax is arising out of assessment made in case of search or requisition carried out under the IT Act, declaration cannot be made in respect of the same. However this restriction applies only to Tax Arrear and not to Specified Tax, which means that if there is a dispute pending with respect to Specified Tax for an assessment year, even where assessment has been made pursuant to a search conducted, the same can be a subject matter of declaration. This shows the intention and the approach of the Government towards resolution of disputes arising on account of retrospective amendments.

A question that could arise is what happens if there is a dispute relating to both Specified Tax and Tax Arrear in the same year and whether such an assessee would be hit by the exception. Looking to the intention behind the Scheme to give an opportunity to past disputes arising pursuant to retrospective amendment, it would appear that declaration can be made in respect of the Specified Tax.

In the erstwhile KVSS, whilst there was no such restriction in search cases, the only difference was that the amount payable in case of tax arrears determined on the basis of search cases was higher.

(ii) relating to an assessment or reassessment in respect of which a survey conducted under section 133A of the IT Act, has a bearing if it relates to any Tax Arrear;

Since this restriction is also with respect to Tax Arrear, all the comments given under clause (i) above in relation to its inapplicability to Specified Tax would equally apply.

There was no such restriction in the erstwhile KVSS.

(iii) Relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration under section 202;

Chapter XXII of the IT Act (sections 275A to 280D) provides for offences which are liable for prosecution. Assessee shall not be eligible to avail this Scheme, if prosecution has been instituted for the offences referred in sections 275A to 280D of the IT Act for the Assessment year in respect of which declaration is proposed to be made on or before the date of filing the declaration. This clause applies to both Tax Arrears and Specified Tax. A question that arises is that if the prosecution proceedings have been instituted but subsequently dropped or compounded, whether in such a case, the provisions of the Scheme would apply and a declaration can be made after the proceedings are dropped or compounded. Though there is no clarity in respect of the same, clarification 33 (Circular – Samadhan 3/98 dated 7-10-1998) given in respect of a similar provision under the erstwhile KVSS would assist in taking a view that the Scheme would apply in such a case keeping in mind the intention behind introducing the Scheme. The clarification was as under:

Question 33 : Where prosecution has been launched for any particular year but the assessee has since been discharged by the competent court, can the declaration be made under the Scheme?

Ans. : Yes.

(iv) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India ;

This condition of non-eligibility is restricted to undisclosed income or asset outside India. It therefore appears that if Tax Arrear or Specified Tax is in respect of undisclosed income or asset within India, one can avail of the Scheme subject to fulfilment of the other conditions.

The reason for this restriction seems to be on account of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 introduced last year which provided a window for making a declaration of undisclosed foreign assets and foreign incomes by 30th September 2015. If such window was not availed of, stringent penalties have been provided for in the above Act. Hence in such cases, this Scheme cannot be availed of to avoid the penal and other consequences under the above referred Act.

(v) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any Tax Arrear;

India has signed double taxation avoidance agreements with 88 countries and bilateral agreements with 19 countries for automatic exchange of Information for the prevention of evasion or avoidance of income-tax. If any information is received under these Agreements pursuant to which the Tax Arrears has arisen, such cases are not eligible to make declaration under the Scheme. This restriction is applicable only in respect of Tax Arrears, and not in respect of Specified Tax

In any case, most of these cases would relate to foreign income or foreign assets, and would even otherwise not be eligible under the Scheme.

(b) To any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and where such order of detention has not been revoked or set aside.

(c) To any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act 1988 has been instituted on or before the filing of the declaration or such person has been convicted of any offence punishable under any of those Acts;

(d) To any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

(As per section 3(2) of the above mentioned Act, the person notified is a person who has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before the 6th June, 1992 and has been notified in the official gazette by the Custodian. These notified persons are persons involved in the Harshad Mehta and related scams in the securities market during that period).

As seen above, certain persons are ineligible to make a declaration. The basic purpose behind not permitting certain persons to make a declaration is that the Scheme should not facilitate those persons who are engaged in activities which are criminal or harmful to society, such as smuggling, terrorism, drugs, corruption as well as certain types of economic offences relating to the securities market etc.

On a perusal of the above restrictions on applicability of the Scheme, it is noticed that certain restrictions are applicable to both Tax Arrears and Specified Tax and certain restrictions to Tax Arrears only. Certain restrictions are with respect to particular Assessment Years and certain restrictions are with reference to certain category of Persons.

Chapter 8

Other Powers – Section 209 to 211

Section 209 of the FA 2016 empowers the Central Government to issue directions or orders to the authorities for proper administration of this scheme.

Section 210 provides that if any difficulty arises in giving effect to any of the provisions of the Scheme, the Central Government is empowered to pass an Order to remove such difficulty. However, such an Order cannot be passed after the expiry of 2 years from the date on which the Scheme is effective i.e after 31st May 2018.

Section 211 empowers the Central Government to make Rules for carrying out the provisions of the Scheme and also prescribing the form and manner of verification of such declaration, for prescribing the form of certificate to be granted by the designated authority, and other relevant matters for which the Rules are required to be made pursuant to the Scheme. These Rules have to be laid before each House of Parliament.

Pursuant to the same, the Direct Tax Dispute Resolution Scheme Rules 2016 have been notified which lay out the procedure, time lines and the forms to be filled in order to avail of the Scheme for resolution of pending income tax disputes.

Chapter 9

The Direct Tax Dispute Resolution Scheme Rules, 2016

The Direct Tax Dispute Resolution Scheme Rules (comprising of Rules 1 to 6) have been notified pursuant to the powers laid out in section 211 of the FA 2016 vide Notification dated 26-5-2016 [Notification No. 35/2016, F.No.142/11/2016-TPL] The Rules are annexed as Appendix 4

The Rules inter alia lay down the manner and form of making the declaration and the procedures to be followed and time prescribed in implementation of the Scheme as described in the following paragraphs:

Rule 1 Effective Date states that they shall come into force on the 1st June 2016.

Rule 2 Definitions contains definitions of Scheme, Section, Form and a general reference to the definitions in the Scheme and is self explanatory.

Rule 3 -Form of declaration and undertaking under section 203.

The declaration is required to be submitted in Form 1 in duplicate to the designated authority. If the declaration is in respect of Specified Tax, it has to be accompanied by an undertaking in Form 2 for waiver of all rights to seek or pursue any remedy or claim in respect of Specified Tax under any law or any agreement entered into by India with any other country or territory outside India. This undertaking is irrevocable.

The declaration in Form 1 and the undertaking in Form 2 have to be signed by the person competent to verify the Return of Income in accordance with section 140 of the IT Act. Refer Appendix **4**

Section 140 of the IT Act, requires the form to be signed as follows;

- For an individual – self or any person duly authorised by him in this behalf
- For a Hindu Undivided Family – by the Karta or in his absence from India or incapacity by any other adult member.
- For a Company – by the Managing Director or in his absence any director. If the Company is a foreign company, it can also be signed by a person holding a valid power of attorney in this regard.
- For a Firm /LLP– by the Managing partner/ designated partner or in his absence any partner.

Instructions for filling Form 1 specifically provide that no column should be left blank and if it is not relevant, it should be filled as 'Not Applicable'. There is no provision to submit this form electronically.

Form 1 has four parts ;

(i) General Information,

The general information includes name, address, E mail address, telephone number, PAN, income tax range where assessed.

(i) Part A giving details in respect of Tax Arrears,

This includes details of appeal pending with Commissioner of Income Tax (Appeals) with the reference number, assessment year, section under which the order appealed against is passed, date of order, details of disputed income and tax, details of penalty order (if any), etc.

(ii) Part B giving details in respect of Specified Tax , and Verification. The Instructions to the Form require attaching details in respect of payment of tax, interest or penalty made on or before filing the declaration. It also permits attaching more sheets and other relevant information to give complete details. It is therefore advisable to give a detailed computation of the Tax Arrears or Specified Tax and the amount payable under the Scheme which can then form the basis for the Certificate to be issued by the designated authority.

In case the declaration is in respect of Specified Tax, the declarant has to furnish proof of withdrawal of the appeal/ writ petition/ or any arbitration, conciliation, mediation or like proceedings for resolving the pending dispute along with the Undertaking in Form 2.

On receipt of the form of declaration, the designated authority has to issue a receipt of acknowledgement.

Neither the Scheme nor the Rules restrict the number of declarations that can be made. It can therefore be inferred that a declarant can make as many applications under this Scheme at different times during the applicability of the Scheme for different years and/or different appeals**.**

Form-1 requires various particulars including assessment year, assessed income, amount payable, disputed income, disputed tax etc. It is advisable that a separate form is filed for each assessment year. This is on account of the fact that the penalty waiver / payment of 25% is qua each assessment year. Hence, in case, an assessee wants to opt for resolving dispute for more than one assessment year, he should file separate declarations under this Scheme at any time beginning from 1st June 2016, ending on 31st December, 2016.

This can also be inferred from the clarification dated 3-9-98 under KVSS reproduced below:

Q. 24 Could there be multiple declarations under the Scheme?

A. Yes. As long as the conditions relating to the determination of Tax Arrear on or before 31-3-1998 and the existence of such arrear as also the pendency of appeal etc. on the date of the declaration are satisfied, declaration can be filed.

Rule 4- Form of Certificate under section 204(1) of the FA 2016.

The designated authority is required to issue a certificate in Form 3 within 60 days from date of receipt of declaration. This certificate is an intimation of the amount payable as full and final settlement of the Tax Arrear/ Specified Tax covered by the said declaration and it states that the amount payable should be paid within 30 days of receipt of the Certificate.

The details in Form 3 include Assessment Year, Tax Arrears, Specified Tax and Amount Payable. As stated earlier working of the Tax Arrear or the Specified Tax payable should be attached along with the declaration in Form 1, so as to minimise the chances of any computational errors/non grant of credit of taxes paid by the department while issuing the Certificate in Form 3.

Whether the certificate would be issued in case there is no amount payable but there is amount refundable? Looking to the overall provisions of the Scheme and the Rules, the Certificate in Form 3 would be issued in all cases. In a case where the entire demand is paid/ adjusted, the amount payable may be reflected at Rs. Nil.

Rule 5 - Intimation of payment in Form 4 within 30 days of receipt of certificate in Form 3.

The details of payments along with proof thereof, made pursuant to the certificate issued by the designated authority have to be furnished by the declarant to the designated authority in Form 4.

A practical issue that could arise is in case where the demand is paid/adjusted after filing the declaration, how would the declarant get credit? In such a case, the declarant should consider the said payment/ adjustment pursuant to the certificate in Form 3 and accordingly intimate to the designated authority with proof of payment in Form 4. In the alternative an intimation of such payments may be made to the designated authority with a request to give credit for such payments while determining the amount payable. One may also consider the possibility of filing the revised Form 1.

The Scheme provides a window of 30 days for making the payment and intimating the same to the designated authority. It is one of the conditions of the Scheme. Non payment of the amount determined within 30 days would render the declaration void.

Rule 6 -Order for full and final settlement of Tax Arrear/Specified Tax

The designated authority shall pass an order for full and final settlement in Form 5 for declaration in respect of Tax Arrears and in Form 6 for declaration in respect of Specified Tax.

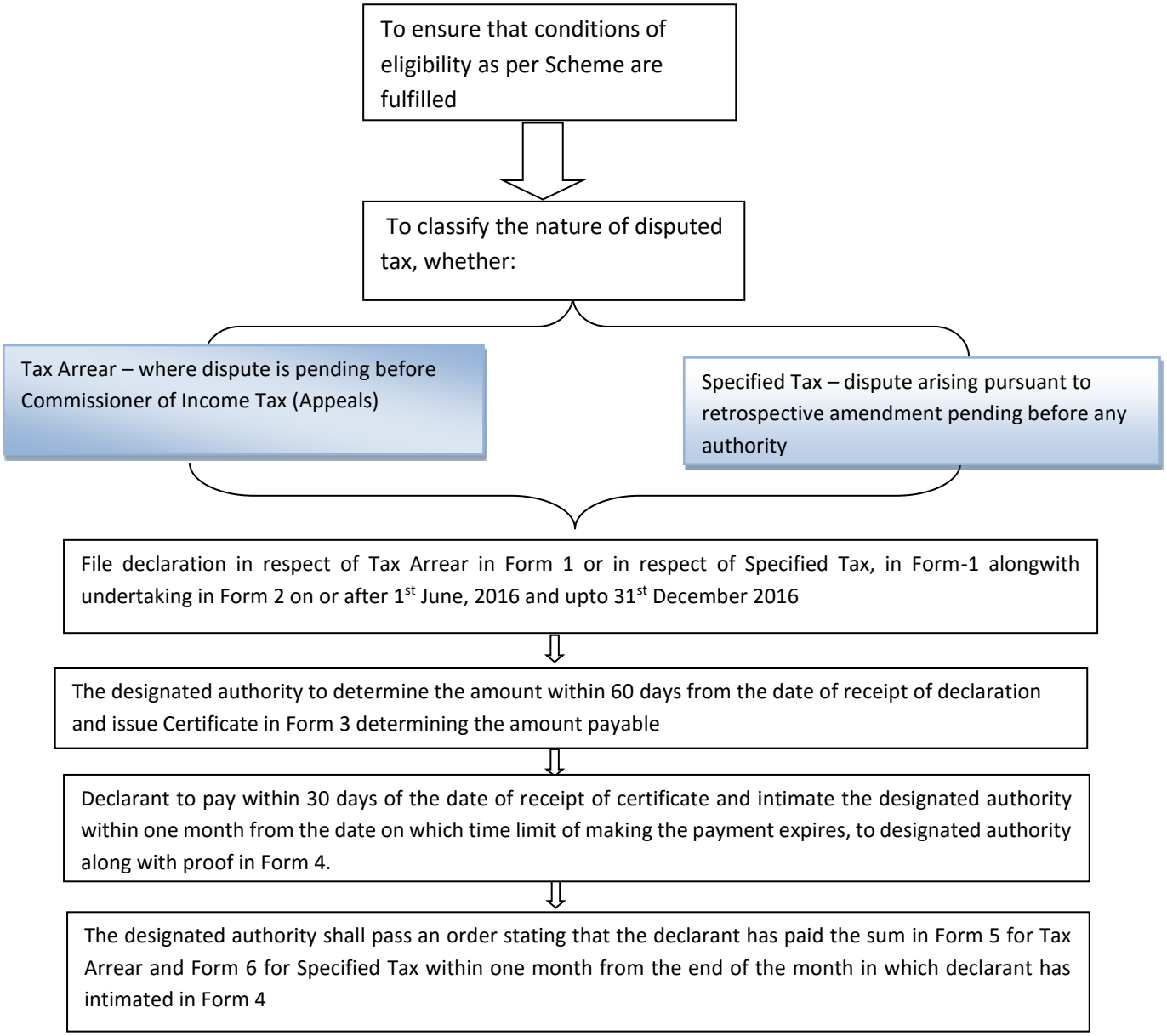
There is no time limit prescribed in the Rules for issuing Form 5/Form 6. The same was the case in KVSS as well. It is however clarified vide the CBDT circular dated 12th September 2016 that the order should be issued within one month from the end of the month in which intimation regarding payment is received from the declarant.

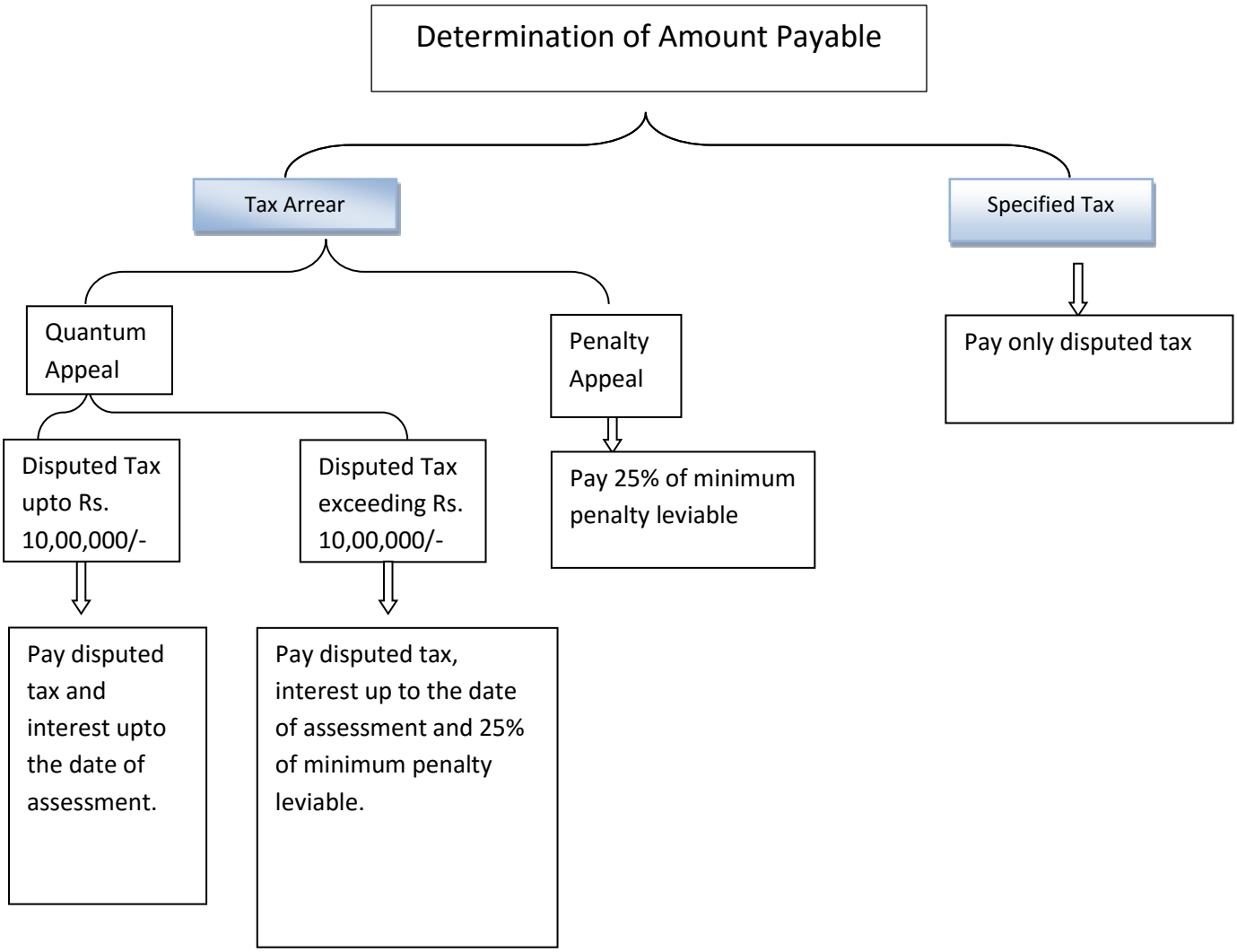
Question No.13: ***There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of order under section 204(2) of the Act by the designated authority. Please clarify?***

Answer: ***The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which time limit for making payment under the Scheme expires. The designated authority shall issue the order under section 204(2) of the Act within one month from the end of the month in which intimation regarding payment is received in Form-4 from the declarant.***

Chapter 10

Bird's eye view of procedure to be followed and amounts payable




Determination of Amount Payable
Tax Arrear
Specified Tax
Quantum Appeal
Penalty Appeal
Pay only disputed tax
Disputed Tax upto Rs. 10,00,000/-
Disputed Tax exceeding Rs. 10,00,000/-
Pay 25% of minimum penalty leviable
Pay disputed tax and interest upto the date of assessment.
Pay disputed tax, interest up to the date of assessment and 25% of minimum penalty leviable.

Chapter 11

Dates and Timelines:

29th Feb 2016	Hon'ble Finance Minster announces Direct Tax Dispute Resolution Scheme, 2016 in his budget speech to reduce backlog of litigations and ensure timely realization of dues.
14th May 2016	Finance Act, 2016 brings into force Direct Tax Dispute Resolution Scheme, 2016
26th May 2016	CBDT issues Notification No. 34/2016 notifying 31st December as the day by which declarant should make declaration to the designated authority
26th May 2016	CBDT issues Notification No. 35/2016 to notify Form-1 representing declaration to be made by the declarant
1st June 2016	Declaration to the designated authority begins
31st December	Last date to make declaration
Within 60 days of filing declaration in Form 1 & undertaking in Form 2 if applicable	Designated authority to issue certificate in Form 3 determining the amount payable
Within 30 days of receipt of certificate in Form 3	Declarant to make payment as per certificate in Form 3
Within one month from the date on which time limit for making payment under the Scheme expires	Intimation of payment in Form 4 alongwith proof to the designated authority
Order for full and final settlement of Tax Arrear in Form 5	Within one month from the end of the month in which the intimation of payment in Form 4 has been made
Order for full and final settlement of Specified Tax in Form 6	Within one month from the end of the month in which the intimation of payment in Form 4 has been made

Chapter 12

Tax Arrears v Specified Tax – a Comparison

Particulars	Tax Arrear	Specified Tax
Definition/ eligibility	Tax, interest or penalty determined under the Income Tax Act or Wealth Tax Act in respect of which appeal is pending before the Commissioner of Income Tax (Appeals) as on 29th February 2016	Tax consequent to or validated by a retrospective amendment and relates to a period prior to the date on which the amendment Act received the assent of the President in respect of which a dispute is pending as on 29th February 2016 before any fora including arbitrators.
Amount payable	**Tax Arrear being tax and interest**: If disputed tax does not exceed Rs. 10,00,000, whole of disputed tax and interest till date of assessment. If disputed tax exceeds Rs. 10,00,000, in addition to whole of disputed tax and interest till date of assessment plus 25% of minimum penalty leviable. **Tax Arrear being penalty:** 25% of minimum penalty leviable and tax and interest payable on the total income finally determined.	Tax determined to be payable on account of the retrospective legislation in respect of which the dispute is pending as on 29.02.2016.
Waiver under the Scheme	Interest post completion of assessment is waived. If Tax Arrear is upto Rs. 10,00,000, waiver of penalty. If Tax Arrear is above Rs. 10,00,000, 25% of minimum penalty leviable has to be paid and the balance is waived. Immunity from institution of any proceedings in respect of an offence under the IT Act	Interest and penalty is completely waived. Immunity from instituting any proceedings in respect of an offence under the IT Act

Particulars	Tax Arrear	Specified Tax
Procedure	Declaration in duplicate in Form 1 to be filed on or before 31st December 2016. Appeal before Commissioner of Income Tax (Appeals) deemed to have been withdrawn without any further action by the declarant	Declaration in duplicate in Form 1 alongwith undertaking in Form 2 waiving rights to seek or pursue any remedy or claim be filed on or before 31st December 2016 Appeal/ dispute / proceeding will need to be withdrawn and proof of such withdrawal to be filed in Form 2.
Order for full and final settlement of Tax Arrear/ Specified Tax	By designated authority in Form 5	By designated authority in Form 6

Chapter 13

Comparison with the earlier scheme - Kar Vivad Samadhan Scheme, 1998:

The Kar Vivad Samadhan Scheme, 1998 (KVSS) was introduced as a part of the Finance Act (No.2) of 1998. Literally translated, it meant the Tax Litigation Settlement Scheme. In his Budget speech, the then Finance Minister Mr. Yashwant Sinha outlined the following benefits from the scheme;

(a) Declogging the system will provide incentive to honest tax payers; and

(b) Government will be able to realise its reasonable dues much earlier.

The scheme envisaged an abatement of 50 percent of the outstanding tax along with waiver of penalty, interest and immunity from prosecution.

Following are some of the major differences between KVSS and the current Scheme:

Particulars	**Kar Vivad Samadhan Scheme, 1998**	**Direct tax Dispute Resolution Scheme, 2016**
Applicability	Applicable only if there was an outstanding demand as on 31st March 1998 and pending appeal at any level on date of declaration. In other words, if the taxes were fully paid/ in refund cases or in case of losses, this scheme was not applicable even though there was pending litigation.	The definition of Tax Arrear and Specified Tax in the Scheme does not require the disputed tax to be outstanding. The scheme has a limited application to appeals pending before CIT(A) on 29.02.2016 in respect of tax arrears. Refund of disputed taxes possible under the scheme.
Benefits	There was an actual abatement of the outstanding tax, interest and penalty	For Tax Arrears, waiver of interest payable for the period after the date of assessment and full/ part waiver of penalty For Specified Tax, waiver of entire interest and penalty. No abatement of taxes in both the cases under the Scheme.
Disputes covered	This Scheme covered dispute related to Income Tax Act 1961, Wealth Tax Act 1957, Gift Tax Act 1958, Expenditure Tax Act 1987 and Interest Tax Act 1974	This Scheme covers disputes related to Income Tax Act 1961 and Wealth Tax Act 1957

Particulars	Kar Vivad Samadhan Scheme, 1998	Direct tax Dispute Resolution Scheme, 2016
Amounts payable	Companies/ Firms and other than companies/ firms were subject to different rates of tax. PLEASE CHECK For instance, company/firm were liable to pay 35% of disputed income and other than company/ firm were liable to pay 30% of disputed income	All declarants are subject to the same conditions in respect of payment of Tax Arrear and Specified Tax depending on the amount of disputed tax.
Tax Arrear	Under this Scheme, Tax Arrear was the amount determined and payable under Income Tax Act 1961, Wealth Tax Act 1957, Gift Tax Act 1958, Expenditure Tax Act 1987 and Interest Tax Act 1974 which was in dispute at any level and was unpaid and/or outstanding.	Under this Scheme, Tax Arrear refers to the amount of tax, interest, penalty determined under Income-tax Act or Wealth-tax Act in respect of which appeal was pending as on 29th February, 2016 before the Commissioner of Income Tax (Appeals) / Commissioner of Wealth Tax(Appeals)
Taxes covered	As above	Two kinds of disputed tax – Tax Arrears and Specified Tax having different treatment regarding both levy of interest and penalty

Chapter 14

Highlights of the CAG comments on Kar Vivad Samadhan Scheme, 1998:

“The Kar Vivaad Samadhan Scheme, 1998 was launched by the government to expedite recovery of Tax Arrears and declogging the system. However, the Scheme failed to fulfil both the intentions of the government. The Comptroller and Auditor General (CAG) reported that “the scheme failed to either declog the system or realise a significant amount of reasonable Government dues. However, it did provide an escape route for several debtors whose liability was little or not disputed,'' it noted. The CAG has also reported extensively on the absence of safeguards to prevent the abuse of the scheme. Most of those who patronised the scheme had cases against them in which the possibility of an adverse judgement was strong. The overall impact of the scheme on the revenue was negative.

The Scheme could only clear less than $1/7^{th}$ of the outstanding cases, thereby failing in its objective to declog the system. The Government sacrificed Rs. 624 crores to realise just Rs. 400 crores. The additional sacrifice was on account of waiver of penalty, interest and fine.

The CAG also discovered that a significant proportion of the cases settled under the Scheme did not involve any dispute. It also came across certain undeserving cases which accounted for almost half of the revenue realised under the Scheme and 51 per cent of the revenue forgone.

From the audit review conducted on the department to evaluate the Scheme, it was found that in eight states only 8.53 per cent of amount locked up in litigation was recovered and recovery against Tax Arrears involved in cases, where declarations filed under KVSS were accepted, was only 29.63 per cent.

There is lacuna in the scheme is as much as where penalty and interest along with tax is outstanding as on 31st March, 1998, the entire penalty and interest is waived. Where, however, only penalty and interest is outstanding, 50% of the amount of penalty and interest is waived. Thus the litigant tax payers rather than conscientious or regular tax payers were focused for availing of the benefit of the scheme.

From the above facts, it is clear that the Scheme was failure and it could not achieve the objective of either recovery of taxes locked up in litigation nor could it reduce the pending litigation significantly. “

Chapter 15
CONCLUSION

On 29th February 2016, there were 73,402 appeals with tax effect above Rs. 10,00,000 and 1,85,858 appeals with tax effect below Rs. 10,00,000 as per letter F. NO. 279/MIsc./M-74/2016-ITJ given in **Appendix 6**. It is understood that the Income tax department is in the process of approaching the appellants informing them of the benefits under the Scheme being timely resolution combined with waiver of interest and/or penalty as may be applicable.

The scheme is an opportunity for smaller assessees in whose appeals the disputed tax does not exceed Rs. 10,00,000, where the cost and efforts in litigation could outweigh the benefits. It provides in such cases a complete waiver of penalty.

Similarly in respect of Specified Tax, this Scheme provides for waiver of entire interest and penalty and in some measure provides relief to the tax payers bearing the brunt of retrospective amendments.

Appendix 1

Finance Minister's Budget Speech 2016

162. Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS).

163. A taxpayer who has an appeal pending as of today before the Commissioner (Appeals) can settle his case by paying the disputed tax and interest up to the date of assessment. No penalty in respect of Income-tax cases with disputed tax up to ` 10 lakh will be levied. Cases with disputed tax exceeding ` 10 lakh will be subjected to only 25% of the minimum of the imposable penalty for both direct and indirect taxes. Any pending appeal against a penalty order can also be settled by paying 25% of the minimum of the imposable penalty. Certain categories of persons including those who are charged with criminal offences under specific Acts are proposed to be barred from availing this scheme.

164. I had in my Budget speech of July, 2014 assured that this Government would not retrospectively create a fresh tax liability. I had also hoped then that the cases pending in various courts and other legal fora relating to certain retrospective amendments undertaken to the Income-tax Act, 1961, through the Finance Act, 2012 will soon reach their logical conclusion. I would like to reiterate that we are committed to provide a stable and predictable taxation regime. We will not resort to such amendments in future. I had also announced constitution of a High Level Committee which would oversee any fresh case where the assessing officer proposes to assess or reassess the income in respect of indirect transfers by applying the retrospective amendment. In order to allay any fears of tax adventurism, this Committee will now be chaired by the Revenue Secretary and consist of Chairman, CBDT and an expert from outside. This Committee will effectively oversee the implementation of the assurances.

165. In order to give an opportunity to the past cases which are ongoing under the retrospective amendment, I propose a one-time scheme of Dispute Resolution for them, in which, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc. under BIPA, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived.

Appendix 2

Explanatory Memorandum to the Budget, 2016

The Direct Tax Dispute Resolution Scheme, 2016

Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrear and specified tax. The salient features of the proposed scheme are as under:

- The scheme be applicable to "tax arrear" which is defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.

- The pending appeal could be against an assessment order or a penalty order.

- The declarant under the scheme be required to pay tax at the applicable rate plus interest up to the date of assessment. However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalty leviable shall also be required to be paid.

- In case of pending appeal against a penalty order, twenty-five percent of minimum penalty leviable shall be payable along with the tax and interest payable on account of assessment or reassessment.

- Consequent to such declaration, appeal in respect of the disputed income and disputed wealth pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

In addition to the above, the scheme proposes that person may also make a declaration in respect of any tax determined inconsequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016 (referred to as specified tax). For availing the benefit of the Scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal. Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India. It is proposed that no appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable.

It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were or are pending, shall be deemed to have been revived. The declarant under the scheme shall get immunity from institution of any proceeding for prosecution for any offence under the Income-tax Act or the Wealth-tax Act. In case of specified tax the declarant shall also get immunity from imposition of penalty under the Income-tax Act or the Wealth-tax Act. However, in case of tax arrears immunity from penalty is proposed to be of the amount that exceeds the penalty payable as per the scheme. The scheme provides waiver of interest under the Income-tax Act or the Wealth-tax Act in respect of specified tax. However, waiver of interest in respect of tax arrears is to the extent the interest exceeds the amount of interest referred in the scheme.

In the following cases a person shall not be eligible for the scheme:-

(i) Cases where prosecution has been initiated before 29.02.2016.

(ii) Search or survey cases where the declaration is in respect of tax arrears.

(iii) Cases relating to undisclosed foreign income and assets.

(iv) Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.

(iv) Person notified under Special Courts Act, 1992.

(v) Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

A declaration under the scheme may be made to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed. The designated authority shall within sixty days from the date of receipt of the declaration, determine the amount payable by the declarant. The declarant shall pay such sum within thirty days of the passing such order and furnish proof of payment of such sum. Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.

No matter covered by order of designated authority shall be reopened in any other proceeding under the Income-tax Act, 1961 or Wealth-tax Act, 1957. The designated authority shall subject to the conditions provided in the scheme grant immunity from instituting any proceeding for prosecution for any offence under the two Acts in respect of matters covered in the declaration.

Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

It is proposed that the Central Government may be given the power to issue such orders, instructions and directions for the proper administration of this Scheme to persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government. In case any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may by order not inconsistent with the provisions of this Scheme remove the difficulty. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force. Every such order, as soon as may be after it is made, be laid before each House of Parliament.

It is proposed that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme. Every rule made under this Scheme be laid, as soon as may be after it is made, before each House of Parliament in the manner specified in the scheme.

Appendix 3

The Direct Tax Dispute Resolution Scheme, 2016

200. Short Title and Commencement

(*1*) This Scheme may be called the Direct Tax Dispute Resolution Scheme, 2016.

(*2*) It shall come into force on the 1st day of June, 2016.

201. Definitions

(*1*) In this Scheme, unless the context otherwise requires,—

(*a*) "declarant" means a person making a declaration under section 202;

(*b*) "designated authority" means an officer not below the rank of a Commissioner of Income-tax and notified by the Principal Chief Commissioner for the purposes of this Scheme;

(*c*) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(*d*) "disputed tax" means the tax determined under the Income-tax Act, or the Wealth-tax Act, which is disputed by the assessee or the declarant, as the case may be;

(*e*) "disputed wealth", in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax;

(*f*) "Income-tax Act" means the Income-tax Act, 1961;

(*g*) ''specified tax'' means a tax—

(*i*) the determination of which is in consequence of or validated by any amendment made to the Income-tax Act or the Wealth-tax Act with retrospective effect and relates to a period prior to the date on which the Act amending the Income-tax Act or the Wealth-tax Act, as the case may be, received the assent of the President; and

(*ii*) a dispute in respect of such tax is pending as on the 29th day of February, 2016;

(*h*) "tax arrear" means, the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals)as on the 29th day of February, 2016;

(*i*) "Wealth-tax Act" means the Wealth-tax Act, 1957.

(*2*) All other words and expressions used herein but not defined and defined in the Income-tax Act or the Wealth-tax Act, as the case may be, shall have the meanings respectively assigned to them in those Acts.

202. Declaration of Tax Payable

Subject to provisions of this Scheme, where a declarant files, on or after the 1st day of June, 2016 but on or before a date to be notified by the Central Government in the Official Gazette, a declaration to the designated authority in accordance with the provisions of section 203 in respect of tax arrear, or specified tax, then, notwithstanding anything contained in the Income-tax Act or the Wealth-tax Act or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be as under, namely:—

(I) in case of pending appeal related to tax arrear being—

(a) tax and interest,—

(i) in a case where the disputed tax does not exceed ten lakh rupees, the whole of the disputed tax and the interest on disputed tax till the date of assessment or reassessment, as the case may be; or

(ii) in any other case, the whole of disputed tax, twenty-five per cent. Of the minimum penalty leviable and the interest on disputed tax till the date of assessment or reassessment, as the case may be;

(b) penalty, twenty-five per cent of the minimum penalty leviable and the tax and interest payable on the total income finally determined.

(II) in case of specified tax, the amount of such tax so determined.

203. Particulars to be furnished

(1) A declaration under section 202 shall be made to the designated authority in such form and verified in such manner as may be prescribed.

(2) Where the declaration is in respect of tax arrear, consequent to such declaration, appeal in respect of the disputed income, disputed wealth and tax arrear pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals), as the case may be, shall be deemed to have been withdrawn.

(3) Where the declaration is in respect of specified tax and the declarant has,—

(a) filed any appeal before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court or any writ petition before the High Court or the Supreme Court against any order in respect of the specified tax, he shall withdraw such appeal or writ petition with the leave of the court wherever required and furnish proof of such withdrawal along with the declaration referred to in sub-section (1);

(b) initiated any proceeding for arbitration, conciliation or mediation or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw such notice or the claim, if any, in such proceedings prior to making the declaration and furnish proof thereof along with the declaration referred to in sub-section (1).

(4) Where the declaration is in respect of specified tax, the declarant shall, without prejudice to the provisions of sub-section (3), furnish an undertaking, in such form and verified in such manner as may be prescribed, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the specified tax which may otherwise be available to him under any law for the time being in force, in equity, by statute or under an agreement referred to in clause (b) of sub-section (3) or otherwise.

(5) Where,—

(a) any material particular furnished in the declaration is found to be false at any stage; or

(b) the declarant violates any of the conditions referred to in this Scheme; or

(c) the declarant acts in a manner which is not in accordance with the undertaking given by him under sub-section (4),

it shall be presumed as if the declaration was never made under the Scheme and all the consequences under the Income-tax Act or the Wealth-tax Act, as the case may be, under which the proceedings against the declarant are or were pending, shall be deemed to have been revived.

(6) No appellate authority or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the specified tax mentioned in the declaration and in respect of which an order had been made under sub-section (1) of section 204 by the designated authority or the payment of the sum determined under that section.

204. Time and Manner of Payment

(1) The designated authority shall, within a period of sixty days from the date of receipt of the declaration, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed, to the declarant setting forth therein the particulars of the tax arrear or the specified tax, as the case may be, and the sum payable after such determination.

(2) The declarant shall pay the sum determined by the designated authority as per the certificate granted under sub-section (1) within thirty days of the date of receipt of the certificate and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon pass an order stating that the declarant has paid the sum.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be re-opened in any other proceeding under the Income-tax Act or the Wealth-tax Act or under any other law for the time being in force, or as the case may be, under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

205. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases

The designated authority shall, subject to the conditions provided in section 204, grant—

(a) immunity from instituting any proceedings in respect of an offence under the Income-tax Act or the Wealth-tax Act, as the case may be; or

(b) immunity from imposition or waiver, as the case may be, of penalty under the Income-tax Act or the Wealth-tax Act, as the case may be, in respect of,—

(i) specified tax covered in the declaration under section 202; or

(ii) tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in clause (I) of section 202;

(c) waiver of interest under the Income-tax Act or the Wealth-tax Act, as the case may be, in respect of,—

(i) specified tax covered in the declaration under the section 202;

(ii) tax arrear covered in the declaration to the extent the interest exceeds the amount of interest referred to in sub-clause (a) of clause (I) of section 202.

206. No Refund of amount paid under scheme

Any amount paid in pursuance of a declaration made under section 202 shall not be refundable under any circumstances.

207. No other benefit, concession or immunity to declarant

Save otherwise expressly provided in sub-section (3) of section 204 and section 205, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

208. Scheme to not apply in certain cases

The provisions of this Scheme shall not apply—

(a) in respect of tax arrear or specified tax,—

(i) relating to an assessment year in respect of which an assessment has been made under section 153A or 153C of the Income-tax Act or assessment or reassessment for any of the assessment years, in consequence of a search initiated under section 37A or requisition made under section 37B of the Wealth-tax Act if it relates to any tax arrear;

(ii) relating to an assessment or reassessment in respect of which a survey conducted under section 133A of the Income-tax Act or section 38A of the Wealth tax Act, has a bearing if it relates to any tax arrear;

(iii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration under section 202;

(iv) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

(v) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988 or for the purpose of enforcement of any civil liability 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;

(d) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

209. Power of Central Government to issue directions, etc.

(1) The Central Government may, from time to time, issue such directions or orders to the authorities, as it may deem fit, for the proper administration of this Scheme:

Provided that no direction or order shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Central Government may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the Central Government is of the opinion that it is necessary in the public interest so to do, be published in the Official Gazette in such manner as may be prescribed.

210. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

211. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which a declaration may be made and the manner in which such declaration may be verified under sub-section (1) of section 203;

(b) the form of certificate which may be granted under sub-section (1) of section 204;

(c) the manner in which orders may be published under sub-section (2) of section 209;

(d) any other matter which by this scheme is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made by the Central Government under this Scheme shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Appendix 4

The Direct Tax Dispute Resolution Scheme Rules, 2016

Notification dated 26th May 2016

S.O. 1903 (E). In exercise of the powers conferred by sub-sections (1) and (2) of section 211 of the Finance Act, 2016, (28 of 2016), the Central Government hereby makes the following rules, namely:

1. Short title and commencement.-

(1) These rules may be called the Direct Tax Dispute Resolution Scheme Rules, 2016.

(2) They shall come into force on the 1st day of June, 2016.

2. Definitions.-

In these rules, unless the context otherwise requires, -

(a) "Scheme" means the Direct Tax Dispute Resolution Scheme, 2016, specified under Appendix X of the Finance Act, 2016 (28 of 2016);

(b) "section" means section of the Finance Act, 2016 (28 of 2016);

(c) "Form" means the Forms appended to these rules;

(d) all other words and expressions used in these rules but not defined in these rules and defined in the Scheme under Chapter X of the Finance Act, 2016 (28 of 2016), shall have the same meanings respectively as assigned to them in that Scheme.

3. Form of declaration and undertaking under section 203.-

(1) The declaration under sub-section (1) of section 203 shall be made in duplicate in Form-1 to the designated authority and verified in the manner specified therein.

(2) The undertaking referred to in sub-section (4) of section 203 shall be furnished in Form-2 along with the declaration and verified in the manner specified therein.

(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.

(4) The designated authority on receipt of declaration shall issue a receipt in acknowledgement thereof.

4. Form of certificate under sub-section (1) of section 204.-

The designated authority shall issue a certificate referred to in sub-section (1) of section 204 in Form-3.

5. Intimation of payment.-

The detail of payments along with proof thereof, made pursuant to the certificate issued by the designated authority shall be furnished by the declarant to the designated authority in Form-4.

6. Order under sub-section (2) of section 204.-

The order by the designated authority under sub-section (2) of section 204 in respect of tax arrear shall be in Form-5 and in respect of specified tax shall be in Form-6.

Appendix 5

Notification No 34/2016 regarding the last date for filing the declaration

Notification dated 26th May, 2016

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
New Delhi, the 26th May, 2016.

NOTIFICATION

S.O.1902(E).- In exercise of the powers conferred by section 202 of the Finance Act, 2016 (28 of 2016), the Central Government hereby appoints the 31" day of December, 2016 as the date on or before which a person may make a declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016.

[Notification No.34/2016, F.No.142/11/2016-TPL]

(Dr. T. S. Mapwal)

Under Secretary to the Government of India

Appendix 6

Letter F No. 279/ Misc./M-74/2016-ITJ, regarding implementation of the Scheme

Letter Dated 19th July, 2016
Circular
F .No.279/Misc./M-74/2016-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 19th July, 2016

To,

All Principal Chief Commissioners of Income Tax,
Principal Chief Commissioner of Income Tax (IT & TP),
Chief Commissioner of Income Tax (Exemptions)

Madam/ Sir,

Sub: Implementation of the Direct Tax Dispute Resolution Scheme 2016 reg.

The Direct Tax Dispute Resolution Scheme, 2016 was introduced with effect from 1-6-2016 to address the issue of pending litigation before CsIT(A). Taxpayers stand to benefit by a timely disposal of their litigation, while the Department stands to reduce its administrative cost in disposing appeals and also to collect its due taxes. Therefore, it becomes expedient on the part of all officers to ensure that the Scheme is a resounding success.

On 29-2-2016, there were 73,402 appeals with tax effect above Rs. 10 lakhs and 1,85,858 appeals with tax effect below Rs. 10 lakhs pending before CsIT (Appeal). Thus, 2,59,260 appellants are eligible for the benefit of this Scheme. Unlike the Income Tax Disclosure Scheme, 2016, the target audience for this Scheme is limited to the above appellants and their representatives. This relatively smaller target group can easily be approached/informed of the benefits of this Scheme by the Designated Authorities being the PCIT/CIT.

The following steps have been taken in the matter:

i) A proforma has been issued to all the Pr. CCsIT for reporting.

ii) Dedicated corner containing the Scheme, Rules, Forms and FAQs relating to DRS Scheme is being created on the Department website. A Dashboard for daily reporting is being created on the website.

iii) Pr. DGIT systems has been requested to forward a list of appeals pending before CIT (A) as on 29-2-2016, not yet disposed, mapped to each PCIT/CIT, containing the name of appellant, PAN, A.Y., category of appeal (tax disputed in appeal), address and e-mail/telephone number, where available.

Towards the successful implementation of the Scheme, Pr. CCsIT/CCsIT may ensure that:-

i. All CsIT (A) peruse the grounds of appeal in each appeal pending before them and draw up a list of cases to be intimated to PCIT/CIT which would be eligible for this Scheme. This may include cases where appeal has been filed against mandatory interest, mandatory fees, covered cases and any other case found fit in the opinion of the CIT (A) to be included in this Scheme.

ii. While paying special attention to the list received from the CIT(A), the PCIT/CIT will reach out to each appellant, as per the list provided by Systems, and address a letter (specimen enclosed - Annexure 'A') for discussing the benefits of this Scheme as applicable to the appellant.

iii. PCIT/CIT must interact with the local CA Associations and Bar Associations to explain the benefits of this Scheme.

iv. A 'Standard Operating Procedure' (Annexure 'B') is enclosed herewith for attention of all PCIT/CIT.

This issues with the approval of Member (A&J).

Annexure 'A'

To, _____

_____

Dear Taxpayer,

Sub: Direct Tax Dispute Resolution Scheme, 2016 - reg.

The Direct Tax Dispute Resolution Scheme, 2016, (Scheme) was introduced with effect from 1-6-2016. The primary aim is to reduce taxpayer grievance and uncertainty caused due to long pending litigation before the Commissioner Income Tax (Appeals). Whereas, litigation before CIT(A) is disposed chronologically and is dependent on tax effect, this Scheme provides an outer limit of 120 days for resolution of the pending matter. Practically, this period would be much shorter.

The Scheme provides for further relief in the following ways:

i. Tax payable would include tax & interest till the date of assessment. Interest accrued thereafter would not form part of tax payable.

ii. If the disputed tax is below Rs. 10 lakhs, penalty would stand waived on payment of tax & interest.

iii. Where the disputed tax is more than Rs. 10 lakhs, penalty of 75% would stand waived on payment of tax, interest and 25% of penalty levied/leviable.

iv. In the case of a penalty appeal, the same can be resolved on payment of 25%, provided the tax and all interest due have been paid.

v. Immunity from prosecution on the disputed tax would be available.

The Scheme, thus, provides a time bound process to resolve pending litigation without any uncertainty of the amount payable, which has been kept at the minimum. You may like to approach the undersigned to discuss the benefits of the scheme as applicable in your case. As per record, your appeal is pending with CIT (A) . . . . . for the A.Y. . . . . ..

Yours faithfully

Pr. Commissioner of Income-tax

Annexure 'B'

STANDARD OPERATING PROCEDURE FOR DIRECT TAX DISPUTE RESOLUTION SCHEME 2016

While introducing the Direct Tax Dispute Resolution Scheme, 2016, (Scheme) in his Budget speech, 2016, the Ho'nable Finance Minister observed that, 'litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the taxpayers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being 5.5 lakh crores." This scheme offers an opportunity to the taxpayers to resolve pending litigation and to bring clarity and certainty in their tax matters. The Department stands to benefit with reduced administrative cost involved in handling appeals as well as timely collection of tax/interest/penalty due.

The following Standard Operating Procedure is laid down for processing declarations received under this Scheme:

a) PCIT/CIT/CIT (Appeals) will provide all counsel, advice and assistance to the taxpayers in the implementation of this Scheme. Any doubts which remain may be sent to ts.mapwal@nic.in

b) On receipt of a declaration under section 202 of the Scheme in Form 1 and Form 2 (where applicable), the same will be entered in the prescribed format by the Designated Authority.

c) The PCIT/CIT will obtain (by hand preferably on the same day) an endorsement from the CIT(A) concerned that the appeal in question was pending on 29-2-2016 and has not yet been disposed.

d) PCIT/CIT will issue a Certificate in Form 3 determining the amount payable by the declarant. This Certificate will be expeditiously issued without waiting for the prescribed period of 60 days.

e) On receipt of details of payment in Form 4, the same will be entered in the Proforma prescribed and the PCIT/CIT will pass the order under section 204(2) of the Scheme in Form 5 or Form 6, well within the prescribed period of 30 days. The date of order will be entered in the Proforma.

f) If any declaration could not be proceeded with, reasons for the same may be entered in the remarks column of the proforma and intimated to the CIT (A) concerned.

g) On expiry of the Scheme and processing of all declarations, the entire data would be transferred by the PCIT/CIT to the Pr. CCIT/CCIT. The Pr. CCIT on consolidating the data of all PCIT/CIT would proceed to analyse the same based on "Person" and "Residential Status" and submit a report thereon to Member (A&J) CBDT with a soft copy to cit.aj.cbdt@incometax.gov.in.

Appendix 7

Circular No. 33 of 2016 dated 12th September, 2016 giving clarifications on the Scheme

Circular dated 12th September, 2016

Circular No.33 of 2016

F.No.142/11/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 12th September, 2016

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as **'the Scheme'**) incorporated as Appendix X of the Finance Act, 2016 (hereinafter referred to as **'the Act'**) provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The Direct Tax Dispute Resolution Scheme Rules, 2016 (hereinafter referred to as **'the Rules'**) have been notified. In regard to the scheme queries have been received from the stakeholders seeking further clarity on certain provisions of the Scheme. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

Question No. 1 – In a case an appeal was pending before CIT(Appeals) as on 29.02.2016. However, before making declaration under the Scheme the appeal is disposed of by CIT(Appeals). Is the assessee eligible to avail the Scheme?

Answer: In such a case where the appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed.

Question No.2: In a case where the appellant has filed a declaration under the Scheme or has intimated the CIT(Appeals) his intention to file declaration under the Scheme, whether the CIT(Appeals) will dispose-off the appeal?

Answer: The CIT(Appeals) have been instructed vide letter F.No.279/Misc./M-30/2016 dated 30.3.2016 that appeals where the appellants have expressed their intention to avail the Scheme should be kept pending. Further, vide letter F.No.279/Misc./M-74/2016-ITJ dated 19.07.2016, the designated authority have been instructed to obtain an endorsement from CIT(Appeals) concerned that the appeal for which declaration has been filed was pending on 29.2.2016 and has not yet been disposed. Therefore, in a case where the declaration has been made under the Scheme or an intention to avail the Scheme has been made by the appellant, the CIT(Appeals) shall not dispose the pending appeal.

Question No.3: Appeal against quantum as well as penalty under section 271(1)(c) is pending before CIT(Appeals). If the assessee files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of penalty appeal?

Answer: As per the Scheme, in a case where disputed tax in quantum appeal is more than Rs.10 lakh, the declarant has to pay the disputed tax, interest and 25% of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed Rs.10 lakh, the declarant is required to pay only the disputed tax & interest and there is no requirement for payment of any amount in respect of penalty leviable. Section 205(b) of the Act provides immunity from imposition or waiver of penalty under the Income-tax Act or the Wealth-tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in section 202(I) of the Act. Hence, in both the situations (i.e. whether disputed tax in quantum appeal exceeds Rs.10 lakh or not), where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against penalty levied under section 271(1)(c) of the Income-tax Act, relating to the quantum appeal pending before the Commissioner (Appeals) shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived.

Question No.4: Section 203(2) reads that consequent to the declaration in respect of tax arrear, the appeal pending before Commissioner (Appeals) shall be deemed to be withdrawn. From what point of time does the provision become operative?

Answer: The appeal pending with Commissioner (Appeals) shall be deemed to be withdrawn from the date on which the certificate under section 204(1) is issued by the designated authority.

Question No.5: The addition made in assessment has the effect of reducing the loss but penalty has been initiated under section 271(1)(c) of the Income-tax Act. Is the assessee eligible to avail the Scheme?

Answer: The Scheme is applicable to cases where there is disputed tax. Since in the case of reduction of loss, there is no disputed tax the assessee shall not be eligible to avail the Scheme. However, if an appeal is pending before Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss, the declarant may file a declaration in respect of such penalty order.

Question No.6: In a case the time period specified under section 249 of the Income-tax Act for filing of appeal expired on 29.2.2016. The assessee filed an appeal in this case on 5.4.2016 with a request to condone the delay in filing of appeal. The Commissioner (Appeals) condoned the delay in filing of the appeal. Is the Scheme available to the assessee in such a case?

Answer: In condonation cases, a declarant shall be eligible for the Scheme, if:

(i) the time limit for filing of appeal under section 249 of the Income-tax Act, 1961 has got barred by limitation on or before 29.02.2016;

(ii) the appeal and condonation application has been filed before Commissioner (Appeals) before 01.06.2016; and

(iii) the delay in filing of such appeal is condoned by the Commissioner (Appeals)

Hence, in the present case the Scheme is available to the assessee.

Question No.7: In a case the Commissioner (Appeals) has given a notice of enhancement. Is such a case eligible for availing the Scheme?

Answer: A case where notice of enhancement has been received by the declarant before the date of commencement of the Scheme i.e. 01.06.2016 shall not be eligible for the Scheme.

Question No.8: A survey was conducted during F.Y. 2013-14. Incriminating documents relating to assessment year 2011-12 were found and assessment under section 147 of the Income-tax Act for the said year was made based on these documents and other enquiries conducted. Is the assessee's case for A.Y. 2011-12 which is pending with Commissioner (Appeals) eligible for the Scheme?

Answer: As per section 208 of the Act, the Scheme shall not be available for assessment or reassessment on which survey conducted under section 133A of the Income-tax Act has a bearing. Hence, in the present case, A.Y. 2011-12 is not eligible for the Scheme.

Question No.9: In a case, appeal against penalty order under section 271(1)(c) is pending before Commissioner (Appeals) and appeal against quantum addition is pending with higher appellate authority. As per the Scheme, the amount payable is 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined. What should be construed as 'total income finally determined' for computing the quantum of tax, interest and penalty payable under the Scheme? Further, what would be the effect of any variation in quantum addition as a result of appellate order(s) passed subsequent to filing of declaration?

Answer: In case of an appeal relating to penalty under section 271(1)(c), the amount payable under the Scheme is 25% of the penalty amount and also the tax and interest payable on the total income finally determined. For this purpose the total income finally determined shall be the total income as determined after giving effect to the last appellate order passed on or before the date of filing declaration under the Scheme.

Any variation to the total income as a result of any appellate order passed subsequent to the date of declaration shall be ignored for the purposes of computing the amount of penalty payable under the Scheme.

Question No.10: Where certain income has been charged to tax in the hands of two different persons or where it has been charged to tax in the case of same person in two different assessment years, one on substantive basis and the other on the protective basis, will the declarant or the other person get advantage in respect of additions made both substantively and protectively?

Answer: The assessees are advised to make declarations in cases or for assessment years where the additions are made on substantive basis. The protective demand is not subjected to recovery unless it is finally upheld. Once the declaration in a substantive case or year is accepted, the tax arrear in protective case/year would no longer be valid and will be rectified by suitable orders in the normal course.

Question No.11: By filing declaration under the Scheme for one assessment year, does the taxpayer forego his right of appeal on the same issue in another assessment year?

Answer: No. The order under the Scheme does not decide any judicial issue. It only determines the sum payable under the Scheme with reference to tax arrear or specified tax, as the case may be. It only provides for a dispute resolution mechanism in respect of cases for which declaration has been made.

Question No.12: The declarant has not paid the tax payable under the Scheme within 30 days of the order under section 204(1) for any reason including the non-realisation of the cheque presented to the bank. Will the declarant be eligible for the relief under the Scheme?

Answer: No. The tax payable under the Scheme should be paid to the credit of the Government on or before the due date as specified in the Scheme. The assessees are advised to pay the tax well on time so as to avail the relief under the Scheme.

Question No.13: There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of order under section 204(2) of the Act by the designated authority. Please clarify?

Answer: The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which time limit for making payment under the Scheme expires. The designated authority shall issue the order under section 204(2) of the Act within one month from the end of the month in which intimation regarding payment is received in Form-4 from the declarant.

Question No.14: Whether refund will be granted in cases where the assessee has already paid the penalty amount in full or in part while the appeal is still pending at CIT(A) stage and the assessee opts for this Scheme?

Answer: As per section 202(I)(b) of the Scheme, in case of pending appeal related to penalty, 25% of the minimum penalty leviable alongwith tax and interest on the total income finally determined is required to be paid. Therefore, if an assessee who has already paid an amount over and above the amounts referred to in section 202(I)(b) opts for the Scheme, he shall be eligible for refund of the excess payment already made. However, the declarant shall not be eligible for claim of interest on such refund under section 244A of the Income-tax Act, 1961.

(Dr. T. S. Mapwal)

Under Secretary to the Government of India

Appendix 8

Kar Vivaad Samadhan Scheme, 1998

89. Short title and commencement

(1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.

(2) It shall come into force on the 1st day of September, 1998.

90. Definitions

In this Scheme, unless the context otherwise requires, –

(a) "declarant" means a person making a declaration under section 91;

(b) "designated authority" means,–

(i) where the tax arrear is under any direct tax enactment, an officer not below the rank of Commissioner of Income-tax and notified by the Chief Commissioner for the purposes of this Scheme;

(ii) where the tax arrear payable is under any indirect tax enactment, an officer not below the rank of Commissioner of Customs or the Commissioner of Central Excise and notified by the Chief Commissioner for the purposes of this Scheme;

(c) "disputed chargeable expenditure", in relation to an assessment year, means the whole or so much of the chargeable expenditure as is relatable to the disputed tax;

(d) "disputed chargeable interest", in relation to an assessment year, means the whole or so much of the chargeable interest as is relatable to the disputed tax;

(e) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(f) " disputed tax" means the total tax determined and payable under the direct tax enactment as reduced by tax paid by the assessee or the declarant or any person, as the case may be;

(g) "disputed wealth", in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax;

(h) "direct tax enactment" means the Wealth-tax Act, 1957 or the Gift-tax Act, 1958 or the Income tax Act, 1961 or the Interest-tax Act, 1974 or the Expenditure-tax Act, 1987;

(i) "disputed value of gift", in relation to an assessment year, means the whole or so much of the value of gift as is relatable to the disputed tax;

(j) "indirect tax enactment" means the Customs Act, 1962 or the Central Excise Act, 1944 or the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 or the relevant Act;

(k) “person” includes–

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority,

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

(viii) assessee, as defined in rule 2 of the Central Excise Rules, 1944;

(ix) exporter as defined in clause (20) of section 2 of the Customs Act, 1962;

(x) importer as defined in clause (26) of section 2 of the Customs Act, 1962.

(xi) any person against whom proceedings have been initiated and are pending under any direct tax enactment or indirect tax enactment;

(l) “relevant Act” means an Act specified in the Schedule to this Scheme;

(m) “tax arrear” means,–

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined and payable under that enactment but remaining unpaid as on the 31st day of March, 1998;

(ii) in relation to indirect tax enactment, duties, cesses, interest, fine or penalty due or payable under that enactment but remaining unpaid as on the 31st day of March, 1998 or is the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 under such enactment but does not include demands relating to erroneous refunds;

(n) all other words and expressions used in this Scheme but not defined in any direct tax enactment or indirect tax enactment shall have the meanings respectively assigned to them in those enactments.

91. Settlement of tax payable

Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 92 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:–

(a) where the tax arrears is payable under the Income-tax Act, 1961,–

(i) in the case of a declarant, being a company or a firm, at the rate of thirty-five per cent of the disputed income;

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent of the disputed income;

(iii) in the case where tax arrear includes income-tax, interest payable or penalty levied, at the rate of thirty-five per cent of the disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the persons referred to in clause (ii);

(iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of the Income-tax Act, 1961,–

(A) in the case of a declarant, being a company or a firm, at the rate of forty-five per cent of the disputed income;

(B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent of the disputed income;

(b) where the tax arrear is payable under the Wealth-tax Act, 1957,–

(i) at the rate of one per cent. of the disputed wealth;

(ii) in the case where tax arrear includes wealth-tax, interest or penalty levied, at the rate of one per cent of the disputed wealth;

(iii) in the case where tax arrear includes only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(iv) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 37A or section 37B of the Wealth-tax Act, at the rate of two per cent of the disputed wealth;

(c) where the tax arrear is payable under the Gift tax Act, 1958,–

(i) at the rate of thirty per cent of the disputed value of the gift;

(ii) in the case where the tax arrear includes gift-tax, interest payable thereon or penalty levied, at the rate of thirty per cent of the tax arrear;

(iii) where the tax arrear includes only the interest payable or the penalty levied, at the rate of fifty per cent of the tax arrear;

(d) where the tax arrear is payable under the Expenditure-tax Act, 1987,–

(i) at the rate of ten per cent of the disputed chargeable expenditure;

(ii) in the case where the tax arrear includes the disputed expenditure-tax, interest payable thereon and penalty levied, at the rate of ten per cent of the disputed chargeable expenditure;

(iii) in the case where the tax arrear comprises only the interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(e) where the tax arrear is payable under the Interest-tax Act, 1974,–

(i) at the rate of two per cent of the disputed chargeable interest;

(ii) in the case where tax arrear includes the interest payable thereon or penalty levied, at the rate of two per cent of the tax arrear;

(iii) in the case where tax arrear comprises only the interest or penalty levied, at the rate of fifty per cent of the tax arrear;

(f) where the tax arrear is payable under the indirect tax enactment, at the rate of fifty per cent of the tax arrear.

92. Particulars to be furnished in declaration

A declaration under section 91 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

93. Time and manner of payment of tax arrear

(1) Within sixty days from the date of receipt of the declaration under section 91, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination: Provided that where any material particular furnished in the declaration is found to be false, by the authority at any stage, it shall be presumed as if the declaration was never made and all the consequences under the direct tax enactment or indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived.

(2) The declarant shall pay, the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, 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 direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority or tribunal or court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn:

Provided that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, furnish proof of such withdrawal along with the intimation referred to in sub-section (2).

94. Immunity from prosecution and imposition of penalty in certain cases

The designated authority shall, subject to the conditions provided in section 93, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 91.

95. Appellate authority not to proceed in certain cases

No appellate authority shall proceed to decide any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made under section 93 by the designated authority or the payment of the sum determined under that section.

96. No amount of refund paid under the scheme

Any amount paid in pursuance of a declaration made under section 91 shall not be refundable under any circumstances.

97. Removal of doubts

For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 93, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than those in relation to which the declaration has been made.

98. Scheme not to apply in certain cases

The provisions of this Scheme shall not apply–

(i) in respect of tax arrear under any direct tax enactment,–

(a) in a case where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 91 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(b) in a case where an order has been passed by the Settlement Commission under any direct tax enactment for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(c) in a case where no appeal or reference or writ petition is pending before any appellate authority or High Court or the Supreme Court or no application for revision is pending before the Commissioner;

(ii) in respect of tax arrear under any indirect tax enactment,–

(a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the date of filing of the declaration under section 91, in respect of any tax arrear in respect of such case under such indirect tax enactment;

(b) in a case where show cause notice or a notice of demand under any indirect tax enactment has not been issued;

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Terrorists and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988, or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;

(iv) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

Provided that–

(a) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(b) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or

(c) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(d) such order of detention has not been set aside by a court of competent jurisdiction;

(v) to any person notified under sub-section (2) of section 3 of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992.

99. Power of Central Government to issue directions

(1) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Central Government may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the Central Government is of opinion that it is necessary in the public interest so to do, be published in the prescribed manner.

100. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

101. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–

(a) the form in which a declaration may be made under section 91 and the manner in which such declaration may be verified;

(b) the form of certificate which may be granted under sub-section (1) of section 93;

(c) the manner in which the orders may be published under sub-section (2) of section 99;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to

be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.