

DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

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To

The Hon'ble Principal Chief Commissioner of Income Tax (NWR),
Chandigarh.

**Sub: Request for issuance of clarifications in respect of
Direct Tax Dispute Resolution Scheme, 2016**

Hon'ble Sir,

Kindly refer to the matter cited as subject above. Vide Finance Act 2016, the Direct Tax Dispute Resolution Scheme, 2016 (DTDRS) has been launched for window period of 01.06.2016 to 31.12.2016. The present scheme is almost pari-materia to the earlier schemes like KVSS, 1998 etc. with slight changes here and there.

We have gone through the text of the Scheme including rules framed there-under and forms notified so far. We have also gone through many judgments rendered by Hon'ble courts in regard to earlier schemes. In many cases, the litigation arose only due to lack of clarity on the issues and also the extent of the powers the AO can issue subsequent to issuance of certificate by CIT accepting the declaration. To avoid such situation, necessary clarifications should be issued.

Based on our interpretation, certain clarifications are required in respect of this Scheme. The queries in respect of which this clarification is being sought are attached herewith. We seek your Honour's indulgence in seeking necessary clarifications in regard to those issues from the CBDT. It is prayed that the same may please be looked into. We shall be highly obliged.

Thanking You,
Yours Faithfully,

For Rupesh Parikshit & Associates
Chartered Accountants

(Parikshit Aggarwal)
Chartered Accountant

(Aditi Aggarwal)
Chartered Accountant

Clarifications required relating to Direct Tax Dispute Resolution Scheme, 2016

1. In many cases, the assessee is not aware about the status of outstanding demand as the AO/CPC keeps on charging interest u/s 220(2) and adjusts with subsequent deposits or refunds. What is the mechanism set-up by the department to co-relate the demand with the assessee and ensure that only the interest upto the date of assessment is charged, tax is correctly computed, TDS credit, if not allowed earlier, is now allowed, challan mismatches are settled etc. ?
2. Where one of the issue in appeal is denial of TDS credit by the AO, how the same will be dealt when the assessee has now TDS reflecting in 26AS ? Can the deptt be asked to first grant TDS credit, then compute correct demand and thereafter demand in the scheme be computed? Can the assessee suo-motto claim TDS credit from amended 26AS and then report balance demand in Form under scheme?
3. What would happen if the appeal is decided in favour of the declarant after filing of the declaration and before the order by designated authority in the scheme?
4. What would happen to assessments of same issue on 2 persons or same assessee in 2 different years i.e. substantive and protective assessments? If the filing of declaration by assessee under one of the mechanism will automatically settle the appeal of other also?
5. What would be the point where it can be said that prosecution is pending? Further, the pendency of prosecution should have live link with the pending appeal? What if the appeal is pending but the court has acquitted the assessee from prosecution?

6. If the assessee's application is rejected, whether he would be given a speaking and reasoned order by CIT? Whether this rejection order would be appealable and if yes before which authority?
7. Appeal pending before CIT(A) on 29.02.2016. After 29.02.2016 but before filing of Form in the scheme, the appeal is disposed off. Whether still "A" is eligible?
8. "A" opts for or is in the process of applying for in the scheme. The matter pending before CIT(A) is on quantum. In the meantime, AO initiates penalty process by issuing SCN or he may in fact levy penalty during such period. Should not the deptt direct the AOs to strictly keep the penalty in abeyance till the decision by CIT(A) or decision on the scheme?
9. Where appeal before CIT(A) is against intimation u/s 143(1), whether creation of such demand will be treated as tax ?
10. Appeal against quantum as well as penalty pending before CIT(A). Quantum less than Rs. 10 Lacs. Whether still 25% of penalty is to be deposited to avoid the situation. In case quantum tax is more than Rs. 10 Lacs and appeal against the same as well as penalty is pending, whether by paying 125% of tax + interest, penalty appeal automatically goes?
11. Whether all types of penalties like 271(1)(c), 271A, 271B, 271C, 271D, 271E, 272A(2)(k) etc. covered in the scheme ? Further, only search assessments are excluded from scheme. What about penalties levied u/s 271AAA, 271AAB, 271(1)(c) etc. ?

12. Whether TDS based assessments u/s 201 covered in the scheme?
13. Whether fees charged u/s 234E in order passed u/s 200A is covered in the scheme i.e. whether this fees can be called as a penalty covered in the scheme? The appeal against levy of this fees u/s 234E is pending.
14. Where appeal on quantum as well as multiple levy of penalties are pending, by applying in the scheme towards withdrawl of quantum, whether appeal towards all penalties automatically stands withdrawn and settled and no need to pay separate for penalty appeals?
15. What is the meaning of Tax effect?
 - a. 'A' has paid tax under 115JB. There is addition in Total Income only and the c/f MAT credit has been reduced. This reduction is more than Rs. 10 Lacs. What if this is less than Rs. 10 Lacs.
 - b. 'A' has paid tax under 115JB. There is addition in book profit as well as Total Income also. The tax effect both ways is more than Rs. 10 Lacs. What if tax effect on addition in Total Income is more than Rs. 10 Lacs but on book profit it is less than Rs. 10 Lacs.
 - c. The addition made reducing the loss only. The notional tax effect on loss reduced is more than Rs. 10 Lacs. Whether extra 25% still payable?
16. 'A' has already paid quantum tax as well as penalty. Appeal against both pending before CIT(A). Whether, 'A' is eligible for refund of 75% or 100% of penalty as the case may be?

17. The scheme prescribes paying of interest only upto date of assessment. But CPC has already suo-motto charged interest u/s 220(2) and has recovered it by adjustment with refund of other years. Whether, this interest would be allowed to be set off with quantum or penalty demand?
18. 'A' has been levied penalty u/s 271(1)(b) for non-compliance of notices issued u/s 131/133(6) etc. issued in case of ongoing assessment of some other assessee. The other person does not intend to opt for scheme. There is no appeal on quantum of 'A' but appeal against levy of penalty u/s 271(1)(b) is pending before CIT(A). Whether he can pay 25% of penalty and opt for scheme?
19. The assessee withdraws the appeal in the scheme. Whether this would be treated as concession of the same assessee in appeal on same issue for other years for which appeal is pending before CIT(A) or higher appellate authority or for which issue may arise in future?
20. Whether deposit made under the scheme if rejected be allowed to be adjusted subsequently with outstanding demand?
21. Whether appeals filed beyond statutory time limit will be treated as pending on 29.02.2016? What if application for condonation of delay is attached thereto and what if not attached? Whether depts will direct the CIT(A) to decide the condonation issues and decide the issue of pendency and admittance so that these assessees can also get the benefit of the scheme?