CLARIFICATIONS SOUGHT ON INCOME DECLARATION SCHEME, 2016

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Clarifications sought on Effective Tax Rate :

1. If the tax payable in the scheme is deposited out of undisclosed income, what is the guarantee that the deptt will not ask assessee to prove source of such payment of tax u/s 69A for AY 2017-18 ? They may not ask for the source of payment of tax in the scheme *(refer Q. 5 of Cir. 25/2016 dtd. 30.06.16)* but the AO will ask for source u/s 69A in assessment for AY 2017-18. This will again land effective tax rate to 45% and not 31%. *The* ***CBDT should come out with a clarification that*** *the AO will not ask for source of payment of Tax u/s 69A in assessment for AY 2017-18. Further, the said challan will not be made part of FIU, SFIO, AIR, STR, ED investigations etc. and even the contents of the challan will be kept confidential and will not be allowed be investigated by any authority from every angle.*

2. When assessee discloses undisclosed income in the scheme pertaining to prior years but credits the same to P&L Account of current year, since the books for only said year are open, whether he will still be required to pay MAT/AMT on such income credited to P&L A/c of the year of credit in books ? It is important to refer to s. 188 of FA, 2016 which reads as under :

> ***"Undisclosed income declared not to be included in total income.***
>
> ***188.*** *The amount of undisclosed income declared in accordance with section 183 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under sub-section (1) of section 187."*

It is clear from above provision that undisclosed income will not be added to Total Income for any year. Now, Total Income as defined in s. 4 of the IT Act is different from book Profit defined in s. 115JB. Therefore, in my view, the undisclosed income will again be subjected to MAT at effective rate of 21% approx. A clarification is immediately sought.

3. As per s. 185 of Finance Act, 2016, penalty of 25% is to be paid over tax. Whether this penalty is to be paid only on tax component excluding krishi Kalyan cess or including such cess ? If the penalty is to be paid on tax excluding cess, effective liability in scheme is 45% other wise it is approx. 47%. This is being asked since, presently, the revenue levies penalty on tax including cess and surcharge.

4. If any asset is disclosed in past year(s), the same will not be subjected to Wealth Tax in that year. But what about subsequent years till AY 2015-16 ? S. 194 appears to be silent on this issue. A clarity on this will settle the air. It is important to refer to relevant part of VDIS, 1997 (circular 753 dtd. 10.06.97) which read as under :

> ***"11.*** *In cases where the voluntarily disclosed income is represented by cash, bullion, shares or any other assets and where, (i) the declarant has failed to furnish a return under section 14 of the Wealth-tax Act for any assessment year, (ii) such assets have not been shown in the return of wealth, (iii) the disclosure relates to understated investment and where the same was understated in a return of wealth, then no wealth-tax shall be payable in respect of the assessment year for which the disclosure is made. Wealth-tax shall, however, become payable for the assessment years subsequent to the assessment years for which the declaration was made."*

Further, circular 754 dtd. 10.06.97 clarified as under :

> ***"Question NO. 26 : If disclosure of income is made in respect of assessment year 1988-89 and this is represented by an asset which has not been disclosed for wealth-tax purposes or which has been under-stated in the return of wealth, whether wealth-tax will be payable and, if so, for which assessment years ?***
>
> ***Answer:*** *Some ambiguity has arisen as a result of the answer given to Question No. 19. It is hereby clarified that if a declaration is made during the period of operation of the Scheme relating to any assessment year, no wealth-tax will be payable by virtue of section 73(1) for any assessment year up to assessment year 1997-98. Wealth-tax will, however, be payable in accordance with the provisions of the Wealth-tax Act on the asset, if any, relatable to the income disclosed in terms of clause (a), (b) or (c) of section 73(1) for assessment year 1998-99 and subsequent years."*

EXTRACT FROM MINUTES OF ASSOCHAM MEETING WITH CBDT ON VDIS, 1997 HELD ON 23-7-1997

> ***Question No. 10 : It needs to be clarified that no wealth-tax will be payable by the declarant for any assessment year upto and including the assessment year 1997-98 in respect of the assets specified in the declaration made as representing his voluntarily disclosed income. This is the only view that can be logically considered in the light of the clear provisions of section 73(1) of the Finance Act, 1997. Confusion has arisen in this regard on account of the erroneous interpretation as contained in the CBDT's Circular No. 753 (para 11) and Circular No. 754 (answer to question No. 19).***
>
> ***Answer:*** *There will be no wealth-tax liability on the declarant in respect of the assets specified in the declaration made as representing his voluntarily disclosed income right from the year of disclosure up to assessment year 1997-*

98. The wealth-tax liability in respect of the disclosed assets shall arise only from assessment year 1998-99 onwards. The interpretation in this regard as contained in Circular Nos. 753 and 754 to the above extent should be read as duly modified.

5. ***Where voluntary disclosed income is represented by depreciable assets.*** Where VDI is represented by assets forming part of a block of assets and which are used by the declarant for the purpose of business and profession, a question arises as to whether depreciation in respect of such assets could be allowed in earlier previous years ? Or can he claim set off of unclaimed depreciation with disclosed income in the scheme for years subsequent to the year of declaration in respect of this depreciable asset ?

   To illustrate:

- VDI is declared in respect of AY 2011-12 amounting to Rs. 10 lakhs;
- The said income is invested in purchase of a plant, the total value of which was Rs. 50 lakhs, Rs. 40 lakhs being duly recorded in books;
- Depreciation is claimed and allowed on Rs.40 lakhs for AYs 2011-12 to 2015-16.

In the above illustration, since the assessee is now disclosing additional cost of Rs. 10 lakhs, will it be permissible for him to claim depreciation on such additional cost in respect of AYs 2011-12 to 2015-16 and onwards ? In this query, the particulars about the depreciable asset have already been filed by the assessee and in-fact even the said requirement will not be a hurdle in view of omission of s. 34 w.e.f. AY 1987-88.

Another question is that if a depreciable asset is disclosed in the scheme, whether for subsequent years, the WDV will be taken on the said component of disclosure as reduced by depreciation allowable in the prior years but not claimed ?

It appears that the position would be as follows:

- Depreciation is permissible where an asset is owned and used by the assessee. The source is not relevant for grant of depreciation. Thus, depreciation can be allowed in respect of earlier years in above discussed illustration: reliance may be placed on the decision *in Janardan Prasad Ashok Kumar v CIT [1992] 193 ITR 186* (All.) where depreciation was allowed in respect of a bus which was purchased admittedly from undisclosed sources for which additions u/s 69 were upheld.

Clarification sought on Excluded Persons :

6. As per s. 186(3) of FA, 2016, one person is entitled to make only one declaration. Any other declaration, if made, shall be deemed to be void. However, one person may intend to make more than one declaration in different capacities. For example, a person may make one declaration in his individual capacity while making another declaration as the karta of his HUF. Similar provision existed in the VDS-1997 as well as in 1975. A clarification issued in the context of VDS-1975 reads as follows:

> ***Question : Whether sec 4(3) is a bar to the same individual filing separate declarations u/s 3(1) in different capacities, e.g.,as karta of a Hindu undivided family, managing partner of a firm, trustee of a trust and managing director of a company ?***
>
> *Answer : There is no bar to the same individual filing more than one declaration provided the various declarations are in respect of different taxable entities.*

7. As per s. 183(1)(a) of the Act, persons who have failed to furnish return of income u/s 139 are included. It appears that clause (a) of sec 183(1) envisages that the time prescribed u/s 139 has expired and the assessee has not furnished the return till such time. Reference to s. 139 would include s. 139(4) (belated return) as well and such *'failure to file'* can be established only after expiry of period stipulated u/s 139(4), i.e, within 1 year from the end of the relevant assessment year or before completion of assessment, whichever is earlier.

   Section 139(9) of the Income Tax Act, 1961 provides that when a return filed has been considered as defective and the assessee has not rectified the defect within a period of 15 days or within the extended time as provided under the said section, the return shall be considered as invalid and the provisions of the Act shall apply as if the

assessee had failed to furnish the return. The words *'as if'* appearing in sec 139(9) shows that the said provisions are deeming provisions. It is well settled that a deeming provision should be extended to its logical conclusion. Therefore, it appears that in a case where a defective return is treated as an invalid return and the assessee is regarded as having failed to furnish the return u/s 139, he should also be so regarded for the purpose of IDS-2016 and as such should be entitled for filing a declaration under clause (a) of section 183(1) of the FA, 2016.

The question that arises is that where assessee has not filed ITR for AYs 2015-16 & 2016-17, the time for filing of which has not yet expired u/s 139 (including 139(4), can such a person opt for the scheme ? Whether, where a notice for defective return has been issued and the said person has not rectified such defect, can he opt for the scheme ? Further, can such an assessee declare even his normal income for AYs 2015-16 & 2016-17 in the declaration ? Can such an assessee write to his AO that all incomes have been disclosed in the declaration for AY 2015-16 & 2016-17 ? What would happen to the advance tax/self-assessment tax already paid in respect of these years ? And can AO, subsequently, issue notice u/s 148 for such years ?

It is pertinent to refer to one decision in ***CIT vs. GEORGE JACOB (1997) 225 ITR 548 (Ker.),*** the head-note whereof reads as under :

> *"Rectification—Mistake apparent—If a person (who is a declarant) knows the source of the amount, shows the same in the books of account maintained by him, such a person would not be entitled to the benefits of the Voluntary Disclosure Act, 1976 and such a person having been granted the benefits, there occurred a mistake apparent rectifiable under s. 154"*

It is also pertinent to refer to another decision in ***NORTHERN EXIM (P.) LTD. vs. DCIT (2013) 357 ITR 586 (Delhi),*** the head-note of which reads as under :

> *"Reassessment-Issue of notice-Income escaping assessment-Assessee-Petitioner pursuant to VDIS announced by Finance Act, 1997 filed declaration of income for A.Y. 1989-90 to 1997-98-In respect of impugned A.Y. 1997-98, taxable income was declared by assessee at Rs. X-In accordance with provisions of VDIS, assessee also paid tax at rates prescribed by scheme on 31.12.1997-CIT issued certificate u/s. 68(2) of VDIS declaring impugned sum of Rs.X - as business income under VDIS-Notice issued by DCIT u/s. 148 to file return for impugned A.Y. 1997-98 on ground that income chargeable to tax for that year had escaped assessment-Held, assessee, in return of income filed for A.Y. 1998-99 had stated that return of income for A.Y. 1997-98 was filed under VDIS-Therefore, AO could not have had reason to believe that income chargeable to tax had escaped assessment for A.Y. 1997-98, because of any failure to file return-No income chargeable to tax had escaped assessment for impugned A.Y. 1997-98-Reasons recorded for issue of notice u/s. 148 were factually incorrect-They could not, therefore, form basis for belief that there was escapement of income-Hence, impugned notice and all proceedings taken consequent thereto quashed-Petition allowed"*

A clarification from the CBDT is sought.

8. Whether persons surveyed u/s 133A(1) only are excluded i.e. whether persons surveyed u/s 133A(2A) – TDS Survey unrelated to Income undisclosed and 133A(5) – marriage survey etc are also excluded?

9. As per s. 196(e)(ii), the persons covered under search but on whom notice u/s 153A has not been served and time has not expired are not eligible for the scheme. But what if no incriminating material has been recovered in search, as various courts have taken the view that notice u/s 153A can not be issued in the absence of incriminating material

qua those years and the assessment has not abated ? In this situation, when notice u/s 153A can not be issued, will the assessee be eligible for scheme ?

10. As per s. 196(e), it is being interpreted that it is not the assessee who has been excluded from the scheme, infact it is the undisclosed income which has been excluded. Whether a searched/surveyed assessee whereof no incriminating material has been unearthed can be presumed to have undisclosed income in the search making him ineligible in the scheme ? *Q. 2, 3, 6 of Cir. 17/2016 dtd. 20.05.2016* seems to be not in consonance with provisions of s. 196(e).

11. As per s. 196(e)(ii), the *'other persons'* connected with any search but on whom notice u/s 153C has not been served and time has not expired are not eligible for the scheme. How such an assessee will get to know that the deptt intends to initiate proceedings u/s 153C on him ? If he files declaration and subsequently notice u/s 153C is issued, whether such declaration will be treated as void ? What if no incriminating material has been recovered in search, as various courts have taken the view that notice u/s 153C can not be issued in the absence of incriminating material qua those years and the assessment has not abated ? In these situations, when notice u/s 153C can not be issued, will the assessee be eligible for scheme ?

12. It is arguable that in the context of IDS-2016 {s. 196(e)(ii)}, the words *'search….. or survey was carried out in a previous year'* as appearing in section 196(e)(ii) should be read to mean that for the disqualification in the said section to apply, the search should have been initiated at least before 01.06.2016 or atleast before the date of making of the declaration under the IDS-2016. This raises a question that if an 'A' has filed declaration and the process of issuing final certificate in Form 4 is in process and a search is carried out, whether

the declaration will be accepted and the immunities to the extent of disclosure in the scheme will be granted ?

13. Where proceedings u/s 263 are pending before CIT, whether such a person can opt for IDS for that year and claim adjustment with issues raised by CIT in the SCN u/s 263 ? S. 196 of FA, 2016 does not cover s. 263 revisionary proceedings or even its consequential assessment ?

14. Where in consequence to 263 order by CIT, assessment proceedings are pending before AO who does not issue any notice u/s 143(2) in such consequential proceedings, whether such a person can opt for IDS for that year and claim adjustment with issues raised by CIT in the order u/s 263 ?

15. Whether declaration can be filed for assessment year(s) completed but set-aside in appeal and pending before AO ? It appears that the limitations in section 196 & 189 would apply only in cases of past completed assessments and not where assessments are pending on account of being set aside by the appellate authorities. The above view is supported by the fact that the VDIS-1965 provided for non-applicability of the Scheme in case income declared has been *'detected or is deemed to have been detected'* by the ITO [Section 24(4)(a)]. Such provisions are neither found in VDS-1975 nor in VDS-1997 and also not in IDS- 2016 also. As such, the view that the IDS-2016 applies even to past assessed concealed income where assessment is set aside on appeal, seems to be a justifiable view.

16. Whether employees of Govt. (Central or State) or of Banks, PSUs etc. or organisations, covered under Art. 12 of the Constitution of India, can make declaration in their own name or in the name of family members, if no case of corruption has been instituted against them so far ? What about ex or retired employees of such organisations

making declarations in their own name or family members ? It is pertinent to refer to a Question from VDS-1975 :

> ***"Question: whether a public servant as defined in section 21 of the Indian Penal Code can declare his income/wealth under the Ordinance? Whether secrecy provisions of section 12 of the Ordinance would be applicable to such case(s)?***
>
> *Answer: Any person can make a declaration under the Ordinance. Section 12 will apply in respect of all declarations made under section 3(1) of the Ordinance."*

17. Whether declaration can be filed by minor ? It is important to refer to Clarification dtd. 12.09.97 by CCIT, Mumbai in respect of VDIS, 1997

> **Question No. 26:** ***Can a minor child avail of the VDI Scheme? Can a minor child of an NRI (foreign passport holder) also declare ?***
>
> **Answer**: Yes.
>
> **Question No. 27:** ***If the Answer is yes, who makes the declaration on the minor's behalf ?***
>
> **Answer**: The guardian can sign the declaration.

Clarification sought on Re-opening of Past Assessments due to s. 197(c) of FA, 2016

18. Section 197(c) can not make reopening indefinite. Section 197(c) can not override sec. 148. Besides, 197(c) will die once IDS is over. Also, no retro amendments can be made in Sec.148 as the present NDA govt. has made promise not to make retro amendments. The safety and protection given by sec. 148 can not be taken away by s. 197(c). In all fairness, the Government must come out with a clarification on this, surpassing the FAQ 4 of 30-06-2016. It is earnestly requested to make s. 197(c) applicable only to those years where sec. 148 notice can be issued.

19. The reference to AY 2001-02 in the above reply from CBDT appears to be in line with CBDT's contemplation for extension/ amendment in period for issuance of notice u/s 148. In the present form, section 197(c) shall be non operative because for those years (more than 6 years), no recourse is otherwise permissible.

Clarification sought on Audit/Auditor Related Issues :

20. When assessee discloses income in the scheme and credits the same to his books of current year, what as an auditor I have to qualify in my report ? How is the provision for Tax (AS 22) on the income in the scheme to be calculated ? Further, the assessee clearly pays tax from undisclosed income *(Q. 5 of Cir. 25/2016 dtd. 30.06.16)*, what as an auditor I have to write in my Audit report of such tax paid from sources outside the books ?

21. If the assessee discloses some income for years for which the books were audited by me, whether the deptt will view the auditor negatively and initiate complaint/ disciplinary action/ prosecution against the auditor ? It is important to refer to Clarification dtd. 12.09.97 by CCIT, Mumbai in respect of VDIS, 1997 :

Question No. 21 : ***A Partnership firm have accumulated over the years certain credits in their suppliers accounts. These credits are not payable as they represent credit notes which has been adjusted by the firms while settling the bills. This being a 44AB case, in case the partnership firm disclose whether the Auditor is protected ?***

Answer : Yes.

Clarification sought on Manner of Disclosure + Benefit of Telescoping :

22. Where an 'A' makes declaration in prior year and carries forward the same to subsequent year, whether the benefit of this carry forward will be allowed in subsequent year wherein proceedings u/s 142, 143(2), 148, 153A, 153C etc. are already pending. It is pertinent to refer to one litigation in this regard reported in ***JAINSONS vs. ITAT & Ors. (2013) 352 ITR 0025 (Jharkhand),*** the head-note of which reads as under :

> *"Survey—Voluntary disclosure—Undisclosed Income—Survey was conducted in premises of assessee u/s 133A—Thereafter, assessee disclosed its stock, cash etc. under Voluntary Disclosure of Income Scheme, 1997 and submitted his disclosure declaring his income, which is undisclosed income—AO held that assessee did not disclose any undisclosed stock, cash and amount of sundry debtors for A.Y. 1997-98 and value of opening balance of stock declared in statement of accounts filed with returns of income shown in A.Y. 1997-98 was not subject matter of dispute and this unaccounted stock of the previous year was shown in the concerned year only—In appeal, tribunal held that disclosure made by assessee was not voluntary and it was a compulsion on part of assessee to opt for VDIS when it has been caught with unaccounted income at time of survey under section 133A—Held, presumption of existence of undisclosed income in hand of assessee can be taken for a reasonable period of time, which may be for 8 years and thereafter—A presumption can be drawn that undisclosed assets or profit which is intangible extinguished—Such presumption is not applicable to undisclosed assets, like immovable property, which cannot extinguish by passage of time only—A presumption of existence of stock, cash and amount of sundry debtors could be taken at least for years under consideration, which were only 3 years—Therefore, revenue under wrong impression that assessee is claiming benefit of VDIS for year 1997-98, proceeded to reject assessee's claim of increase in stock, cash and amount of sundry debtors for relevant years—Undisclosed assets' extinction had not been proved—Nor any effort had been made by AO to find out whether those stock, cash and amount of sundry debtors had been sold or utilized and increase of stock, cash and amount of sundry debtors because of increase in stock, cash and amount of sundry debtors due to voluntary disclosure of assessee under Scheme of 1997, was not continuing in hands of assessee—Therefore, stock, cash and amount of sundry debtors, on account of disclosure of assessee on 26th December, 1997, pertaining to closing date of 31st March, 1996 and pertaining to previous year 1995-96 and AY 1996-97 be opening balance as on 1st April, 1996 and effect of increase in stock, cash and amount of sundry debtors due to increase of previous years' increase in stock, cash and amount of sundry debtors is required to be given—Appeals allowed"*

23. Whether if an assessee discloses some asset in the declaration, can the AO still re-open the assessment u/s 148 in respect of such asset ? What if the AO disputes the valuation disclosed in IDS ? It is pertinent to refer to decision in ***CIT vs. Naveen Gera reported as (2010) 328 ITR 516 (Del.),*** the head-note of which reads as under :

> *"Search and seizure—Block assessment—Computation of undisclosed income—Since the details of the properties had already been disclosed under VDIS, it cannot be said that the Department came in possession of any information which it did not possess earlier—In the absence of any incriminating evidence that anything has been paid over and above than the stated amount, no addition could be made—It was not open to the AO to refer valuation of the property by DVO"*

24. Whether the declaration in the scheme is on Gross Income approach basis or Net Income approach basis i.e. if some expenses had been incurred to earn undisclosed income, whether by filing net income, the assessee gets immunity ? It is important to refer to under-mentioned fact from VDIS, 1997 :

LETTER NO. CC/CO-ORD/PRO/VDIS-Q/97-98, DATED 31-10-97 ISSUED BY CCIT, MUMBAI

> *It has been represented to the Chief Commissioner, Mumbai that persons who have entered into lease transactions of questionable nature want to make declaration under VDIS, 1997 the amount of depreciation and other expenses like brokerage, etc., which are claimed as deduction in respect of such lease transaction and pay tax @ 30%, or 35%, as the case may be Clarification has also been sought as to whether the declarant can adjust against such depreciation and other expenses the amount of lease rent which is offered as income from the lease transaction.*

After consultation with the CBDT, the Chief Commissioner of Income-tax, Mumbai has directed me to clarify that in case of lease transactions which are not bona fide, the amount of depreciation and other expenses like brokerage wrongly claimed as deduction can be declared under the VDIS, 1997. The declarant will be well advised to keep his calculation of the declared income which, if necessary, can be produced before the Assessing Officer for necessary action. The Commissioner in his certificate will certify only the amount of income declared and the taxes paid thereon under the VDIS, 1997.

25. What kind of income can be disclosed ? Whether bogus cash-credits introduced in books (s. 68), unexplained expenditure (s. 69C), profit from suppressed turnover, booking of bogus expenses, deemed incomes etc. can be disclosed ? It appears that scheme covers direct undisclosed income and un/under-disclosed assets.

Consider a case where the declarant has earned income in earlier year by under-invoicing its sales. He declares the amount under VDS but without disclosing the nature of the VDI. Subsequently, under the regular assessment proceedings, the AO establishes that the assessee had under-invoiced his sales. The question is whether the assessee will be able to plead that the VDI pertains to such under–invoiced sales and since it is declared in the VDS, income cannot be included in his total income.

It appears that in absence of any disclosure of the nature and sources of income in the declaration, it would be difficult to prove that the VDI is in respect of the same income that the AO has independently detected. The difficulty would be more if the amount detected is different from the amount declared.

In the context of the VDS-1975 the Gauhati High Court in the case of *CIT V. Assam Cold Storage Co. [1993] 204 ITR 540* has held that it was necessary for the assessee to connect the voluntary disclosed income for a particular assessment year with the amount of additions made by the AO in respect of concealed transaction in another assessment year. It further held that in absence of any evidence establishing the connecting link the additions made by the Assessing Officer cannot be deleted.

26. Although the declaration will be kept confidential from even the AO, but sometimes even the 'A' has to present the declaration before AO to stop him from enquiry/investigation or to seek some immunity. Once AO has hands on the declaration, will the AO be allowed to form the basis of assessment or estimation of income u/s 145/144 or formation of belief of income in subsequent years ? Though nothing contained in a declaration made under s. 192 of the FA, 2016 is admissible in evidence against a declarant for the purpose of imposition of penalty or prosecution, there is no provision to the effect that the particulars contained in the declaration is inadmissible in evidence against the declarant for the purpose of proceedings under the IT Act. See ***CIT vs. Aero Club (2011) 336 ITR 400 (Del.)*** where assessee narrowly escaped from the clutches & jaws of the AO. Further, another decision on similar lines was delivered in the case of ***CIT vs. Mangal Engineering Works (2005) 272 ITR 318 (P&H).***

27. If an assessee discloses undisclosed capital gain from sale of an asset, whether this would be used as information for making enquiry about the source of acquisition of asset which was sold and capital gain whereof has been declared in the scheme ?

28. If an assessee discloses value of undisclosed asset, its declared value shall be deemed to be acquisition cost, as per the scheme. Necessary amendment has been made to s. 49(5). However, there has not been amendment in the IT Act relating to period of holding to reckon long term/short term and also for allowing the benefit of indexation u/s 48. Further, where part of value of the asset was undisclosed which has now been declared, on sale, part of the same asset may be long term with different holding period dates and part short term ?

29. As per Notification dtd. 19.05.2016 issued in terms of s. 190 of FA, 2016, the declared asset must be transferred to the declarant by the benamidar on or before 30.09.2017. Sometimes, it is difficult to complete all formalities in such time like benamidar has already expired or he may expire during the upcoming period, the legal heirs of benamidar are non co-operative, benamidar has turned hostile, part share only benami etc. In this situation, only the demonstration by the declarant that he has taken effective steps to get the property transferred from benamidar should suffice. A clarification is sought.

30. When the benamidar transfers the property to the declarant, will the said transaction invite provisions of s. 45/50C in the hands of benamidar ? Will this transaction be treated as amounting to transfer u/s 2(47) ? If the benamidar transfers the property to the declarant by way of gift deed, whether provisions of s. 50C will be invoked in his hands ? Whether the declarant will be assessed to have earned deemed income u/s 56(2)(vii), having received asset without consideration from his benamidar ?

31. When the benamidar was in receipt of rent from the property and he was regularly disclosing such rent in his own ITRs, whether the declarant is still required to disclose such rent in his own declaration now ?

32. There are situations where even the 'A' is not clear in whose hands the income is to be declared. He discloses such type of income in one hand. Whether in the assessment of other person, the deptt will allow set off of such type of income now disclosed in the scheme ? Such type of 'A' is ready to provide complete link of income in the scheme. It is pertinent to refer to one decision from ***Hon'ble Supreme Court in context of VDIS, 1997 reported in Tanna & Modi vs. CIT 292 ITR 209 (2007)*** which went in ***favour of revenue***, the head-note of which reads as under :

> *"Voluntary disclosure—Voluntary Disclosure of Income Scheme, 1997—Maintainability of declaration—Raid was conducted in the premises of the firm on the basis of search warrant issued in the name of a partner—Search revealed some undisclosed income and the partner made disclosure thereof—Purported disclosure made by the firm under VDIS, 1997, relates to the same amount which was disclosed by the partner—Even the source of income was found to be same—Though for the purpose of invoking the provisions of the IT Act and other taxation laws, a firm and its partners are treated as separate entities, it cannot be ignored that a firm is the conglomeration of its partners and the firm acts through its partners—Any action taken by a partner vis-a-vis the firm, unless otherwise specified, binds the firm itself—In a case of this nature where fraud is alleged, the fact that each firm acts through its partner cannot be ignored—Keeping in view the purport and object of VDIS, 1997, the rule of purposive construction should be applied in place of literal interpretation—Therefore, CIT was justified in declaring the certificate to be null and void under s. 64(2)"*

The question that arises is when the income now disclosed in the scheme in one hand is exactly based on some information and in assessment of subsequent years, if the AO forms opinion that such income pertains to other persons, whether the benefit of declaration will be allowed to such other person ? This is more important when the other person is some family member or close relative or firm or company etc. ? It is also pertinent to refer to another decision in ***SMT. ANNAMMA OUSEPH THROUGH LRs vs. ACIT (2006) 284 ITR 298 (Ker.),*** the head-note of which reads as under :

> *"Refund—Entitlement—Assessed income declared under VDIS, 1997—Refund claimed on the ground that very same income assessed in the hands of the assessee was declared by her son under VDIS—Claim not sustainable—Assessments were based on the returns filed and completed under s. 143(1)(a)—Correction, if any, should have been sought by asking for cancellation of certificate issued under VDIS—Since the declarant has not challenged the certificate, Court cannot consider whether the very same income which was assessed in the hands of his mother was returned by him"*

33. Where voluntary disclosed income is represented by assets held by directors

In the case of a company where VDI is represented by assets which are held by the directors, the question arises whether such assets could be regarded as a payment of loan or an advance to a director and whether the provisions of section 2(22)(e) of the Income Tax Act would get attracted ?

It may be noted that the Scheme provides immunity from penalty and prosecution to the declarant. Section 2(22)(e) is neither penalty nor prosecution provision. This section provides that a loan or advance to substantial shareholders would be taxed as deemed dividend in the hands of the shareholder to the extent of accumulated profits of the company.

Apparently, there is nothing in the scheme to preclude taxation of the deemed dividend in the hands of such shareholder. However, a clarification issued by the CBDT in the context of VDS-1975 in this regard is worth taking note of. The said clarification reads as follows:

> ***"Question : If a company makes a declaration under sec 3(1) and 14(1) and it states that the income declared is held for the company by the directors or shareholders (having substantial interest), can any assessment proceedings be taken against such directors or shareholders on the ground that it represents dividends as defined under section 2(22) of the Income tax Act?***
>
> *Answer : The provisions of section 2(22) will not be attracted in cases where income declared by the company is represented by assets held on behalf of the company by its directors/ shareholders."*

From the above, it appears that if the director/ shareholder is holding the assets ***on behalf of the company***, the provisions of section 2(22)(e) shall not apply. If however, the assets are ***held by them in their personal capacities***, then the rigors of the said deeming provision could apply with all other penal consequences. A clarification is sought from the CBDT.

34. Whether assessee can claim deductions from undisclosed Income like Chapter VI-A deductions ? S. 183(4) of FA, 2016 bars claim of expenditure and allowances only. It is pertinent to refer to one of the query of VDIS, 1997 which read as under :

> ***"Question No. 41 : Mr. 'Y' is engaged in export business. Export income was not disclosed. Whether the amount undisclosed can be declared now ? Whether the gross amount, i.e., the export proceeds has to be disclosed or the net amount after computing the deduction under section 80HHC ?***

***Answer** : If undisclosed income is solely from export business, there may be no need for a disclosure under the VDIS, 1997. However, if the undisclosed income is partly from exports and partly from domestic sales, then the declarant should disclose the net income after allowing for deduction under section 80HHC. The amount that should be disclosed is only the taxable income. The declarant would be well advised to keep with him the calculation sheet."*

35. In case disclosure is made by an Individual and the said disclosure is introduced in the books of the Firm or company, whether deptt. will investigate the source of such introduction ? It is important to refer to VDIS, 1997 (circular 754 dtd. 10.06.97) which read as under :

"Question No. 14** : **In the case of ladies and minors making declaration and amounts are later credited the books of account of the firm, etc., it needs to be clarified as to what will be the view of the Department, particularly whether the Assessing Officer can investigate into the source of the amounts so credited ? (Refer Supreme Court decision in Rattan Lal's case).

***Answer** : The declarant lady or minor should first credit the amount declared in their own books of account or any other record. Thereafter, the advance can be made to other persons. Where the amounts credited in the books of the other persons are equal to or less than the amount declared by the lady or the minor then the Assessing Officer should accept the credit entries in the books of the firm. If the amount credited is more than the amount declared the Assessing Officer will be free to enquire into such excess."*

Further, relevant portion of MINUTES OF ASSOCHAM MEETING WITH CBDT ON VDIS, 1997 HELD ON 23-7-1997

"Question No. 1: Whether the Department will ask any question in relation to the capacity to earn, source of income or nature of earning in the case of income voluntarily disclosed by ladies, minors or HUFs ?

Answer : *No such question would be asked by the Department in regard to the nature or source of earning in respect of the income disclosed by any declarant, including ladies, minors and HUFs."*

A question from VDS-1975 is also important to be referred :

Question: Disclosure may be made by minors and ladies or by Hindu undivided families with no nucleus funds of their own. Will any inquiries be made as to real person whose income has been declared by one or more persons falling in these three categories?

Answer: While minors, ladies , and Hindu undivided families are competent to make declarations on their account, they cannot make declarations to help another person on their account, they cannot make declarations to help another person. This is evident from item (c) of the Verification to the Declaration Forms A, B & C wherein the declarant has to solemnly declare that the income/wealth in respect of which he is not chargeable to tax is not included in his declaration. Section 17 of the Ordinance makes it clear that any benefit, concession or immunity conferred under the Ordinance will be available only to the declarant.

A declaration made by a minor, a lady or a Hindu undivided family will not be a starting point for making queries. However, subsequently on evidence available, it is found that the income/wealth, in fact belongs to a person other than the declarant, it will be open to the Income-Tax Officer to assess the former and take further proceedings against him in accordance with law."

Like section 17 of the VDS-1975 or section 75 of VDS-1997, s. 188 of IDS-2016 also lays down that any benefit, concession or immunity conferred under the Scheme on any person shall be available only to that person and to no other person. Accordingly, it appears that the aforesaid view taken for VDS-1975 applies equally to this Scheme.

Supreme Court's judgement in Jamnaprasad's case

The facts of the above case are as under:

This is a case under the VDS -1965. At the outset it may be noted that in the 1965 Scheme there was no provision analogous to section 197(a) of the Finance Act, 2016. The facts of the case before the Supreme Court in **Jamnaprasad Kanhaiyalal V. CIT [1981] 130 ITR 244** were as follows:

- The assessee, a partnership firm, credited certain amounts in its books in the name of five minors.
- The assessee contended that these minors have declared these amounts as their income in the VDS-1965 and thus tried to explain the source.
- The Assessing Officer required the assessee to adduce evidence to support that these minors did have a source of income, the income from which could have been available for disclosures.
- On failure to prove the source and genuineness, the Assessing Officer treated the cash credits as income in the hands of the firm.

The *Judgement*- The matter went to Supreme Court. The main question before the Supreme Court in the words of the Supreme Court (on p. 254) as follows:

> *"The main question in controversy lies within a narrow compass. The question, in fact, is whether the provisions of s. 24 of the Act can be construed as conferring any benefit, concession orimmunity on any person other than the person making the*

declaration under the provisions of the Act. It may be mentioned that to avoid any room for doubt, the legislature has introduced s. 18 in the Voluntary Disclosures of Income and Wealth Act, 1976 (Act No. 8 of 1976) which specifically provides that save as otherwise provided in the Act, nothing contained in the Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. The question for consideration is whether the absence of such a provision as is found in Act No. 8 of 1976 leads to the consequence that acceptance of a declaration under s. 24 of the Act confers a benefit which is not provided by the Act on a person other than the declarants and takes away the power of the ITO under s. 68 of the Income Tax Act, 1961 to make an investigation as to the nature and source of a cash credit appearing in the books of the assessee to reject the explanation offered by the assessee as unsatisfactory and to treat it as his income from undisclosed sources."

After discussion on various contentions raised by both the parties, the Supreme Court (on p. 257) held as follows:

"The scheme of the Act makes it abundantly clear that it was to protect only those who preferred to disclose the income they themselves had earned in the past and which they had failed to disclose at the appropriate time. It is undoubtedly true that the Act was brought on the statute book to unearth the unaccounted money. But there is no warrant for the proposition that by enacting the same, the legislature intended to permit, or connive at, any fraud sought to be committed by making benami declarations. If the contentions were to be accepted, it would follow that an assessee in the higher income group could, with immunity, find out a few near relatives who would oblige him by filing returns under s.24 of the Act disclosing unaccounted income of the assessee as their own and claiming that the said income was kept by them in deposit with the assessee."

The Supreme Court in a subsequent paragraph holds that:

> *"The immunity under s. 24 of the Act was conferred on the declarant only and there was nothing to preclude an investigation into the true nature and source of the credits. The ITO was, therefore, justified in treating the cash credits in the books of account of the assessee in the names of the creditors as unexplained cash credits."*

Conclusion- If the creditors of a assessee cannot prove that they are capable of having an independent source of income, the assessee could be taxed under section 68 of the Income-tax Act in respect of the cash credits even though the creditors have declared the corresponding income under the VDS.

This is in conformity with the settled law that in respect of cash credits under section 68 of the Income-tax Act, the capacity of the creditors is to be established along with his identity and the genuineness of the payment.

Section 197(a) of the IDS, 2016, in clear terms provides that any benefit, concession or immunity conferred under the Scheme on any person shall be available only to that person and to no other person.

However, at the same time, it is also pertinent to refer to a decision in ***Surinder Kumar vs. ITO (2010) 326 ITR 21 (P&H)*** where the Hon'ble HC decided the issue in favour of revenue when the declaration had been filed in the name of a 19 year old boy and the declared amount was invested in the FDR in the name of that boy only. The head-note from the judgement is :

> *"Income from undisclosed sources—Addition under s. 69A—Unexplained fixed deposits in bank—Explanation of the assessee that deposits came out of cash available as at the beginning of year was not found satisfactory as the assessee was only 19 years old and was not having any source of income nor had filed return for any of the prior years—Findings of fact recorded by the AO, CIT(A) as well as the Tribunal that the assessee had unexplained income which could be added to taxable income, cannot be held to be perverse and no question of law arises"*

36. If assessee discloses undisclosed bank account and surrenders peak deposit in that bank account, whether he will be required to explain every cash deposit ? S. 189 of the FA, 2016 only restricts the declarant from making claims of set off / re-opening w.r.t. completed assessments and not pending assessments. Read ***[2013] 352 ITR 28-Jainsons v. ITAT (Jharkhand-HC).***

37. Whether assessee will be required to credit the undisclosed income to his books ? What will be the time period to credit the same to his books ? This issue was answered in Queries in VDIS, 1997 (circular 754 dtd. 10.06.97) as under :

"Question No. 8**: **Will there be a time limit under the VDIS, 1997 Scheme for the declarant to credit the declared income in the books of account and inform the Assessing Officer ?

***Answer**: There is no time limit under VDIS, 1997 Scheme for crediting the same declared vide section 64.*

Question No. 9**: **Whether under the VDIS, 1997, it is mandatory to credit the amount declared in the books of accounts, if so, in which year's books of account it has to be credited - Whether the Assessment Year in respect of which it is declared or the Assessment Year relevant to Financial Year 1997-98 ?

***Answer** : It is expected that the declarant will credit the amount declared in his books of account or if there are no books of account in some other record. The year of credit is left to the declarant's option.*

Question No. 15**: **Under section 68 of the Scheme the amount of the voluntary disclosed income is not to be included in the total income of any assessment year if (a) such amount is credited in the books of account or any other record and the credit so made is intimated to the Assessing Officer and (b) income-tax is paid on such amount.

In such a case, three questions arise (i) what is the meaning of "any other record" particularly when declarant maintains no record ? (ii) who will be the Assessing Officer - whether the regular AO or the designated officer in the office of the Commissioner ? and (iii) what is meaning of "credited in the books of account" ?

***Answer**:(i) Where books of account are not maintained by the declarant, any other record means an entry which will evidence the availability of amount declared.*

(ii) The regular Assessing Officer of the territory and not the designated officer in the office of the Commissioner of Income-tax.

(iii) The meaning of credit in the books of account will vary from case to case depending upon the nature of the disclosure whether it is under-statement of stock or under-statement of turnover or under-statement of sale consideration of a property, etc."

Incidentally, the VDS-1975 also had an identical provision. But one of the clarifications issued in connection with the said scheme read as follows:

Question:** **Is it necessary for any assessee who is maintaining account books to credit the amount in the books? Can he credit it in any other record?

Answer: An assessee who maintains account books may at his option credit the amount in his books or any other record.

38. If the assessee deposits the cash represented by declaration made in his bank account in FY 2016-17, whether the said bank account will be flagged for AIR, STR, FIU etc. and on such deposit then becomes the basis for notice u/s 143(2)/148 or search u/s 132 or survey u/s 133A or summons u/s 131 etc. ? It is earnestly requested that Board should come out with clarity on this issue and instruct the fields to not flag these bank accounts for FY 2016-17 to avoid harassment and litigation to be meted out to the declarant.

Clarification sought on Rejection of declaration, Order by CIT + Revision/ Rectification of Declaration/ CIT Order :

39. 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 ? It is pertinent to refer to one decision in ***Barnala Builders vs. DC Central Excise, CWP No. 26929/2013 (P&H),*** in respect of VCE scheme for service tax brought in by FA, 2013 wherein even the circular provided that the rejection order will not be appealable. The Hon'ble Court has not accepted the correctness of said circular denying right to appeal against rejection order. So, it is earnestly requested that an appeal mechanism must also be set-up for the scheme.

40. Is there any revision or rectification or review mechanism of the declaration and also of the CIT's order in the scheme ? It is pertinent to refer to decision in ***LAHERCHAND DHANJI vs. UOI (1982) 135 ITR 689 (Bom.),*** the head-note of which reads as under :

> *"Voluntary disclosure—Certificate under s. 8(2) of Voluntary Disclosure of Income and Wealth Act, 1976—Withdrawal—Right of Review is a statutory right—In the absence of any statutory provision to that effect—Comm. is not competent to reconsider the material placed before him at the time of issuing certificate under s. 8(2)—Any order pursuant to reconsideration amounts to mere change of opinion—No right available to Commr. to withdraw the certificate once issued—Issuance of s. 8(2) certificate is a quasi-judicial order—Sec. 21 of the General Clauses Act not applicable—An order withdrawing certificate under s. 8(2) accordingly suffers from an error apparent on the fact of record"*

41. Whether revised declaration/corrections in declaration possible ?

The scheme does not provide for enabling a declarant to revise a declaration already filed. However, is it open to him to make corrections in the declarations already filed ? Under the Income tax Act, courts have held that there is a distinction between a revised return and a correction in the originally filed return. An application for correcting a return is not the same as a revised return. A revised return results in withdrawal of the original return and substitution by the revised return. An application for correction does not have such implications. *[Refer Gopaldas Parshottamdas Vs CIT (1941) 9 ITR 130(All.); Dhampur Sugar Mills Ltd. V. CIT (1973) 90 ITR 236 (All.)].* Can it, therefore, be argued that the declarant can make corrections to the declaration he has already made ? An interesting case had arisen before the Calcutta High Court in the context of the VDIUS-1975 in CWT v. Smt. Shirin Paul [1994] 205 ITR 596(Cal.). The assessee filed a declaration of the wealth showing the value of jewellery at a particular value. In the course of assessment proceedings, he claimed that the jewellery be valued at a figure lower than that declared in the declaration. In support of this claim, he even produced a valuation report. The Assessing Officer rejected the claim. The matter went up to High Court. The Court held:

> *"If the assessee requires the wealth Tax Officer in the course of assessment proceedings to arrive at a lower value than what has been shown in the declaration, in that event, Wealth Tax Officer would be at liberty to complete the assessment in accordance with the provisions of the Act and the assessee will not be entitled to the benefit of immunity granted by the Scheme."*

In view of the above, it appears that it would be fatal to attempt to revise a declaration already filed. In the context of section 139(5) of the Income Tax Act, 1961, courts have held that a revised return can be filed by an assessee only when he 'discovers any omission or wrong statement' in the

original return. This is the language used in section 139(5). [Refer Sulemanji Ganibhai V. CIT [1980] 121 ITR 373 (MP)]. Thus, it is doubtful whether in absence of section 139(5) an assessee could ever be able to revise his original return. Drawing an analogy, therefore, it appears that in absence of any specific provision in the Scheme to allow revision, it shall not be permissible to do so. Secondly, the Scheme envisages that one person should file only one declaration [Section 186(3)]. Thirdly, if revised declarations are permitted, there could be cases of refund of tax already paid on the income declared. Refund is clearly prohibited under section 191 of the Scheme.

In view of the above it appears that the declaration once filed would be final and that the Scheme does not envisage any revisions/corrections to the same. A clarification on this issue from the CBDT is sought.

42. If the declaration of the assessee is rejected on valuation issue or other reasons like non payment of taxes, whether this would be used as information for subsequent assessments u/s 148, 263, 132, 133A, 143, 153A, 153C etc. It is pertinent to refer to a decision in ***CIT vs. R.SELVARAJ (2013) 85 CCH 198 (Mad.),*** the head-note of which reads as under :

> *"Reassessment—Concealment of income—Assumption of jurisdiction u/s 147—Validity—Assessee filed declaration under Voluntary Disclosure of Income Scheme before CIT declaring income in form of value of assets—Assessee did not discharge his obligation of paying required tax under scheme—CIT issued directions to AO to proceed further by reopening assessment—AO reopened assessment—CIT confirmed reopening—Tribunal stated that in absence of any independent reason given by AO, assessment cannot be reopened—Held, when AO had necessary materials indicating concealment of income or income which had escaped assessment irrespective of source from which it had come, it being information and*

material indication of escapement of income from assessment for AO to reopen assessment, rightly AO assumed jurisdiction u/s 147—Having admitted to particulars as true and not disclosed in regular course, if assessee had not taken this declaration for further compliance, details given therein could not be lost sight of as providing information for purpose of reopening assessment—Information provided through VDIS Scheme certainly vests necessary jurisdiction with AO u/s 147 to reopen assessment—Order of Tribunal set aside—Matter restored back to Tribunal for considering reassessment on merits."

43. If the assessee's declaration is accepted but he only pays part of the demand raised in the scheme, the declaration will be treated as void *(Q. 1 of Cir. 24/2016 dtd. 27.06.2016)*. What would be the treatment of the part paid tax ? Whether this would be allowed adjustment with assessee's tax liability ? It is pertinent to refer to decision in ***HEMALATHA GARGYA vs.CIT (2003) 259 ITR 1 (SC)*** wherein the head-note reads as under :

*"Voluntary disclosure—Voluntary Disclosure of Income Scheme, 1997—Delay in payment of tax—Time schedule for payment of tax under the Voluntary Disclosure Scheme, 1997, is mandatory and cannot be extended—Since the scheme does not form part of IT Act, 1961 at all, it is doubtful whether the CBDT could have empowered the CIT to extend the time fixed under the scheme—**Since the payments made by the assessees were not in terms of the scheme, the amounts are to be refunded or to be adjusted**"*

44. If after filing of declaration, assessee is able to pay partial tax, whether the declaration would be deemed to valid partially to the extent of income on which tax has been paid ? It is also pertinent to refer to ***s. 197(b)*** of the Act which covers situation of total non-payment of tax but partial payment and partial non-payment is not covered. However, *(Q. 1 of Cir. 24/2016 dtd. 27.06.2016)* is to the contrary. It is pertinent

to refer to decision in ***Hakimchand D. Chotai vs. CIT (2010) 327 ITR 133 (Guj.),*** the Head-note of which reads as under :

> *"Voluntary disclosure—Voluntary Disclosure of Income Scheme, 1997—Refund of tax—On income of Rs. 34,50,000 declared under the VDIS, 1997, assessee having paid a sum of Rs. 3,35,000 towards tax within time but having paid the balance amount of Rs. 7 lacs along with interest of Rs. 42,000 beyond the time allowed under the Scheme, Department was justified in accepting the declaration relatable to the amount of tax paid within time only and issuing certificate to that extent—As regards the balance of tax and interest paid by assessee, the same was however required to be refunded or adjusted—Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC) followed"*

45. Whether an assessee would be allowed to adjust the demand arising from the scheme with refund due to him for other years ? Whether cash seized will be allowed to be adjusted ? A question from VDS-1975 is worth mentioning :

> ***Question: Whether in search and seizure cases the cash seized can be adjusted on the declarant's specific requests towards tax payable according to the declarations under section 14(1) of the Ordinance, if the time for passing order under section 132(5) is not yet over or is available beyond 31-12-1975?***
>
> *Answer: An order under section 132(5) has to be passed before any portion of the seized cash can be considered for adjustment. If on passing an order under section 132(5) some cash is left to be released the same can be adjusted. Regarding adjustment of cash retained under section 132(5) please refer to item (xi) of the Board's Circular No. 181, dated 25-10-1975.*

46. Excess payment of taxes : Section 191 states that any amount of tax paid in pursuance of a declaration made under section 183 shall not be refunded under any circumstance.

Consider a case where individual declares VDI of Rs. 1,00,000. He pays tax of Rs. 35,000 under a mistaken belief @35% instead of 30%. Will he be entitled to a refund of Rs. 5,000? At first blush it appears that he cannot claim such refund. However, on a close examination of the section it can be observed that the refund is prohibited in respect of tax paid *'in pursuance of' a declaration made under specific sections*. The phrase ***'in pursuance of'*** is judicially interpreted to mean, inter alia, 'conformable to' or 'in accordance with' *[Refer Sardaria V. Rajasthan Board of Revenue* AIR 1954 Raj. 224 at 225-*Source: T.P.Mukherjee'sLaw Lexicon,* Vol. 1, 1989 Edn.] It can be argued that the excess tax paid is not 'in conformity with' or 'in accordance with' the declaration filed and hence such excess should be refundable.

47. In case of Trust/institution registered u/s 12AA/10(23C), whether payment of taxes in IDS, 2016 will be accepted as application of Income for AY 2017-18 ? It is pertinent to refer to decision in ***DIT(E) vs. National Association of Software & Services Companies (2012) 345 ITR 362 (Del.)*** decided in favour of assessee on this issue**.**

Clarification sought on Valuation of Assets

48. What would be the acceptable method of valuation of movable property ?

49. *Q. 6 of 27.06.2016* asks for availability of Valuation report. Assessee provides valuation report. Can now CIT object to the valuation ? Whether any action will be taken against valuer for not valuing the property as per the estimates of CIT ? It is important to refer to VDIS, 1997 (circular 754 dtd. 10.06.97) which read as under :

"Question No. 16 : Will the value of assets declared be accepted by the Department as it is or will it be necessary to file a valuer's certificate along with the declaration ? Can the matter be referred by the Department to Valuation Cell ? Is any evidence required to be filed regarding the year or purchase of the jewellery or other assets ? Whether the value of jewellery as on 1-4-1987 will be adopted only for purposes of VDIS or will it also be adopted for Wealth Tax in subsequent years ?

***Answer**: In respect of immovable property, the Department will not insist upon any valuation certificate along with the declaration. It is the responsibility of the declarant to declare the correct value. In respect of the jewellery if it has been acquired prior to 1-4-1987, the value will be taken as on 1-4-1987 as certified by valuer. Further, the value adopted as on 1-4-1987 is for the limited purpose of the scheme.*

Question No. 46 : ***A person declares that his entire undisclosed income is invested in the construction of a building. Whether the Department would sub-sequently get the building valued ? Also, whether it would take action against the person if excess amount of investment is discovered ?***

Answer: It is expected that the true investment will be disclosed under the scheme. No valuation would, therefore, be got done by the Department. However, if on the basis of other information, it is found that a higher amount was invested that the amount disclosed, then suitable proceedings under the Act can be taken in respect of the difference between the true value of investment and the amount disclosed."

Clarification sought on Declaration for Other Persons

50. As per s. 186(3), assessee can file only one declaration and can not file even in representative capacity. Whether, this means that after filing his individual declaration, he can not even file declaration for his HUF or trust or Non-resident principal etc. ?

51. In the verification of Form 1, why should I verify that declaration includes income of assessee himself and all other persons who he represents ? There could be situations where assessee wants to declare for himself only and not for others or vice-versa.

52. If the assessee declares combined figure of himself and for persons whom he represents, how will he get immunity in subsequent assessments of dependent persons when he has a combined declaration and certificate from CIT ? All sections of FA, 2016 confer benefit of declaration on declarant himself only and not to persons whom he represents also. Without any specific provision and details in the form/certificate, the assessee would face difficulty in explaining the credit in the books of other persons for whom he has made the declaration. Even the courts in the past have been strict in not allowing the passing on of such benefit. ***E.g. Udham Singh vs. CIT*** (1988) 171 ITR 471 (Ori.). There should be break-up in Form 1 for declaration figure of assessee himself and of other persons with specification of that person. Further, the CIT order should also specify the same.

Clarification sought on Help of Assessing Officer sought by Assessee

53. Sometimes assessee does not have the copy of his own ITR for old years so as to fill figure of returned income. Will the deptt provide necessary assistance to the assessee for this ?

Clarification sought on Confidentiality of Disclosure

54. When the assessee deposits tax in the scheme in the bank in a specified challan, how the Board will ensure that the information will not be leaked from the banker ?

55. What will the procedure adopted by the deptt. to serve the Certificate of CIT on the declarant ? Whether the same will be permitted to be collected by the AR ? Confidentiality viz-a-viz convenience has to be weighed.

56. What would be the procedure adopted by the CIT to know from the AO that there is no pending proceedings envisaged u/s 196(e) of FA, 2016 against the assessee ? The making of this enquiry directly will amount to leakage of information about declaration.

57. Whether the declarations will be subjected to Audit by CAG or their staff and if they raise any audit objection, what would be the procedure adopted ? If the declarations are exposed to CAG, why not this be treated as leakage of information of declaration ?

58. Courts or authorities should be refrained from directing the officer of deptt or declarant to give evidence about the fact of disclosure and also on the contents of declaration. S. 192 of FA, 2016 is not on these lines. Further, immunities in other Central Laws should be granted. It is relevant to refer to extract from VDIS, 1997 (circular 753 dtd. 10.06.97) on this issue :

*"**10.** The particulars furnished by a declarant shall be kept a secret and shall be treated as confidential. No court or any other authority shall be entitled to require any officer of the Income-tax Department or the declarant himself to produce before it any such declaration or to give evidence before it in this regard. Further, nothing contained in any declaration shall be admissible as evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or launching of prosecution under the Income-tax Act, Wealth-tax Act, Foreign Exchange Regulation Act, 1973 or the Companies Act, 1956."*

Clarification sought on Timing of Deposit of Tax in the Scheme

59. Whether tax can be deposited even before filing of declaration in the scheme ? Q. 11 of Form 1 envisages such situation. What if declaration not filed but tax in respect of the scheme has been paid in advance and during the tenor of scheme, search conducted on the assessee ? What immunity this assessee will get ? It is important to refer to Clarification dtd. 12.09.97 by CCIT, Mumbai in respect of VDIS, 1997 :

> **Question No. 16 :** ***Will a person in the event of search and seizure be entitled to immunity in respect of the items covered in the declaration, which though handed over to his tax consultants or advocates for submission to tax authorities, has remained to be submitted till the date of such search and seizure action or where such a declaration is in course of transmission by post or otherwise; presuming that the declarant has not made the payment with interest as provided under the Scheme ? Will it make any difference, if the tax has been paid before hand ?***
>
> **Answer** : The declarant will get the benefit of declaration only if he has either filed a declaration **or made a payment of VDIS tax before the search.**

Further, PRESS RELEASE DATED 27-8-1997 provided :

> *"One of the frequently sought clarification in respect of VDIS is whether in cases where taxes in VDIS challan are deposited in the bank in Government account periodically and if search is conducted before making the declaration but after payment or part payment of tax, the declarant would get the benefit or proportionate benefit of the VDIS.*

The matter has been considered by the CBDT. It is clarified that if the declarant is holding the relevant challan for VDIS payment, then to that extent, he would enjoy protection of the VDIS. The declarant would not be denied the benefit of the Schedule if he has already made the payment of tax which is done in terms of a special challan even if there is delay in making the declaration and search action takes place before declaration is filed."

Clarification Sought on Scrutiny of Declaration

60. After issuance of certificate in Form – 4, whether deptt will scrutinize the declarations ? *Q. 12 of Cir. Dtd. 20.05.2016* only talks of enquiry at the stage of declaration. Whether declarations will be scrutinized once certificate in Form 2 is issued ?

61. If a Trust/Institution Registered u/s 12AA/10(23C) makes declaration, will the filing of declaration will have any impact on its registration/approval already granted or will the deptt view such declaration negatively ?

62. If after filing of declaration or after issuance of certificate in Form 2 by CIT, the declarant dies, whether the demand would be pressed from the legal heirs ? Whether non-payment of tax by the legal heirs would constitute information for re-opening u/s 148 ?

63. To what extent the AOs will be allowed to enquire about the income/assets/transactions disclosed in the scheme ? It has been the experience of the 'A" that the AOs ask the assessees to prove impossibilities even in respect of declarations. It is pertinent to refer to decision in ***CIT vs.TILAK RAJ KUMAR (2014) 369 ITR 180 (AP),*** the head-note of which reads as under :

> *"Income u/s. 68—Cash credit—Unexplained cash credit— Assessees were Hindu Undivided Family (HUF) and all three assesses had availed benefit under "Voluntary Disclosure of Income Scheme (VDIS)" and declared items,*

which were mostly of jewellery, namely gold and diamonds—Certificates of disclosure were also furnished to them—All three assesses sold away jewellery declared by them under VDIS—Sale proceeds of jewellery were shown in respective returns, as 'capital gains', for AY 1998-99—AO believed transaction of sale of gold, but doubted genuinity of sale of diamonds at Surat—After conducting detailed enquiry, AO treated amount shown as sale proceeds of diamonds in all three assessments, as 'unexplained cash credit', in respective assessment orders passed by him—CIT(A) confirmed order of AO—ITAT allowed Assessee's appeals through separate orders and set aside order of CIT(A)—Held, sale of diamonds did not take at time and it was in phased manner—Purchaser was undoubtedly dealer in diamond—Even assuming that on certain occasions, corresponding Assessee did not proceed to Surat, it could not be factor to disbelieve transaction—Assessee had disclosed wealth in VDIS, also shown sale proceeds as 'capital gains', it was far-fetched, if not unreasonable, on part of AO, to doubt their honesty in that behalf—For all practical purposes, AO subjected Assessees to verification equivalent to one which was made by police officials vis-a-vis a person, who committed crime—Though it was prerogative of State to levy tax, referable to its sovereign power, it could not be extended to level of regulating conduct of citizen to such minute extents—Relief granted by Tribunal was based its findings on pure question of fact—Revenue's appeal dismissed."

Further, there have been situations where the AO makes indefinite enquiry about incomes disclosed and credited to books. The addition results into double taxation in the hands of assessee. One such situation was faced by assessee in ***CIT vs. SEEMA TRIPATHI (2010) 328 ITR 268 (Del.).***

Further, there have been occasions in respect of past schemes that after having valid certificate from CIT in the scheme, AOs start comparing extremely minutely the contents and items in the

declaration and subsequently found in search etc. This is quite evident in case of declaration of jewellery where after filing declaration, assessee remakes the said jewellery and said re-made jewellery is found in the search. The AOs have not been granting benefit of the declaration. *This has become more important now since the Wealth Tax Act has been repealed and the assessees will not be having any evidence of having such quantum of declared wealth.* It is pertinent to refer to a decision in ***CIT vs Tejinder Singh (HUF) 342 ITR 295 (P&H).*** It is also pertinent to refer to a decision in ***CIT vs RAJ JEWELLERS*** *(2013) 85 CCH 120 (All)*, the head-note of which reads as under :

> *"Income from undisclosed sources—Unexplained investment—Addition—Sustainability—Assessee was partnership firm dealing in manufacturing and sale of jewellery—Assessee was participant of an exhibition of jewellery—Search and seizure was conducted—AO made addition on account of unexplained investment in diamond jewellery—CIT(A) and tribunal deleted addition—Held, partners and family members of assessee had enjoyed immunity by filing declaration under VDIS—Partners and family members had given jewellery to assessee firm only for exhibition—Assessee firm, soon after receiving jewellery had issued vouchers—In exhibition, no jewellery was put for sale, it was only to display—Tribunal in its order has given details of vouchers after examining same and wealth tax statement of partners—Both appellate authorities had observed that diamond jewellery studded with gold was same jewellery which was received by assessee from partners and family members and said jewellery was declared by them in wealth tax return before date of search—Assessee's contention that diamond jewellery was remade was substantiated by a bill for labour charge—Tribunal being final fact finding authority, no reason to interfere with its orders passed was found"*

Another judgement on this issue was delivered in ***CIT vs. Uttamchand Jain (2010) 320 ITR 554 (Bom.),*** wherein the Head-note read as under

> *Income from undisclosed sources—Addition under s. 69—Sale of jewellery declared under Voluntary Disclosure Scheme—Certificate issued under VDIS, 1997 being valid and subsisting, it was not open to Department to contend that there was no jewellery which could be sold by assessee—Fact that the jewellery claimed to have been sold by the assessee was not found with the purchaser or his associates cannot be held against the assessee—Decision of the AO in discarding the sale and holding that the amount received by the assessee from T, to whom the jewellary was sold, represented the undisclosed income of the assessee is based on conjectures and surmises and is not based on any independent evidence—AO has not made any efforts to link the cash received and deposited by T in his bank account was in fact paid by the assessee—Finding of fact recorded by the Tribunal is that T has not only retracted his statement recorded on 31st March, 2000 vide letter dt. 4th April, 2000, but has also participated in the reassessment proceedings and stated on oath that the purchase of jewellery from the assessee was a genuine transaction—Tribunal has recorded a finding that the statement of T recorded on 31st March, 2000 was a general statement—Tribunal was therefore justified is deleting the addition in the hands of assessee*

Another judgement on this issue was delivered in Kailashi Devi G. Agarwal vs. CIT (2010) 328 ITR 425 (Kar.), wherein the Head-note read as under :

> *"Income—Cash credit—Assessee sold gold and diamond which were claimed to have been declared by her under Voluntary Disclosure of Income Scheme, 1997 which declaration was accepted and a certificate for the same was also issued —AO made the addition of the amount received after giving deduction of amount declared under VDIS on the ground that the assessee had failed to prove the transaction of sale of gold and*

diamond—CIT(A) ordered that the entire amount of receipts be treated as income and Tribunal upheld order of CIT(A)—Tribunal not justified—Fact that the assessee had filed an application claiming benefit under the Scheme, 1997, declaring gold jewellery and diamond which has been accepted by the Revenue by issuing a certificate cannot be disputed—It is also clear from the perusal of the material on record that the assessee has effected sale transactions in respect of gold jewellery and diamond, as claimed in the regular returns filed—However, the real question that was required to be decided by the first appellate authority and the assessing authority was as to whether the subject-matter of the sale transaction is in respect of the goods that were the subject-matter of declaration filed under the Scheme, 1997, which declaration has been admittedly accepted by the Revenue—If the assessee is able to prove that what is sold under the sale transaction claimed by the assessee in the regular return filed pertains to the gold jewellery and diamond which was declared in the application filed under the Scheme, 1997, the contention of the assessee that what is sold under the sale transaction and declared under the regular returns is the gold jewellery and diamond that was the subject-matter of application filed under the Scheme, 1997, and cannot be taxed under s. 68 has to be accepted—However, if the assessee is not able to prove that the subject-matter of transaction declared in the regular returns is the same goods which is declared under the application filed under the Scheme, 1997, and accepted by the Revenue, then it is clear that the assessee is bound to pay tax on the sale transactions, as what is sold is not the property which is the subject-matter of application under the Scheme, 1997—As the authorities have not given a finding on the material fact, a finding has to be given now by the assessing authority, as to whether the assessee is able to prove that the subject-matter of the goods which are sold as per the sale transactions declared under the regular returns filed for the asst. yr. 1998-99 is in respect of the same goods which were the subject-matter of application filed under the Scheme, 1997, and accepted by the Revenue—Order passed by the Tribunal is set aside and matter remitted to the ITO for passing a fresh order"

Clarification sought on Immunities & Impact of Declaration of liabilities under other Laws

64. The assessee credits the undisclosed income to his P&L A/c. The service tax/VAT deptt asks for details from the IT Deptt which they refuse u/s 138. But the assessee is still directed to show cause that why such amount be not subjected to service tax/VAT. How to come out of this ?

The Finance Minister while introducing the Voluntary Disclosure Scheme, 1997 in his Budget Speech, said in para 92 as follows :

> *"Of the total resources which can be secured under the Scheme, a substantial part - 77.5% will accrue to the State Governments. I hope they will co-operate in our endeavour in attracting people to avail of this new opportunity being offered to those who have shied away from paying legitimate taxes in the past."*

This can be construed to mean that the State Government should provide corresponding amnesty under Sales-Tax/Stamp duty and Octroi laws in respect of declaration made under this Scheme. A similar view from the Ministry is sought.

It is also important to refer to VDIS, 1997 (circular 754 dtd. 10.06.97) which read as under :

> ***"Question No. 12**: The immunity granted under the scheme should be along the lines of section 245H of the Income-tax Act, i.e., should be extended to immunity from penalty and prosecution under IPC and also any other Central Act. The Central Government should recommend to the State Governments that no proceeding be initiated*

under the State Acts like Sales Tax, Excise, i.e., in respect of entries credited in the books as a result of declarations made under the VDIS, 1997.

***Answer**: The question of recommending to the State Governments that no proceeding should be initiated under the Sales Tax Act does not arise because the disclosed income is just a lump sum not falling under any head of income like business and profession, capital gains or other sources. Hence, there is no presumption that disclosed income relates to suppressed turnover or suppressed manufacture."*

It is also pertinent to refer to a decision in ***TEKCHAND ETC. vs. COMPETENT AUTHORITY (1993) 201 ITR 658 (SC)*** wherein it was held that Immunity granted under the VDS, 1976 under ss. 11 and 16 thereof is of limited character and is not absolute or universal—It extends to only those enactments mentioned in ss. 11 and 16 and does not extend to SAFEMA.

65. When declaration is made by Company, Firm, AOP etc., immunity should also be granted to their directors/shareholders, partners, members etc. S. 197(a) of FA, 2016 needs to be toned down in this regard. Please refer decision in ***Deepak Engg Works vs. CIT 352 ITR 161 (Patna)*** wherein the benefit of immunity on declaration by firm was not extended to partners. However, it is important to refer to VDIS, 1997 (circular 754 dtd. 10.06.97) which read as under :

"Question No. 13**: **Immunity should also be granted to Directors of a company, partners of the firm and members of the AOP which makes a declaration under the scheme.

***Answer**: As far as firms and AOPs are concerned, it is enough if firm and AOPs declare. There is no need for partners and members to declare*

separately in respect of the income declared by the firm or AOP. In respect of disclosure by the company, no director of the company shall be prosecuted."

It is also important to refer to one of the clarification in respect of VDS-1975

1. *Enquiries have been made about the immunity to a company from prosecution, etc., under the companies Act in a case a disclosure is made by the company in respect of its undisclosed income. An apprehension has been expressed that in the event of a disclosure by a company, some action may be taken against it by the Company Law Administration for furnishing false statements of profit and loss account.*
2. *It is clarified that the Department of Company Affairs will not invoke the penal provision of the Companies Act in regard o the matter arising out of a declaration in respect of voluntarily disclosed income made under the section 3(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975. Similarly, provisions of Companies Act will not be invoked to collect information in regard to the periods, to which income so disclosed, relates."*

66. Whether immunity from penalty is available to s. 271(1)(c) only ? It is important to refer to VDIS, 1997 (circular 754 dtd. 10.06.97) which read as under :

Question No. 32: Whether immunity from levy of penalty in respect of a disclosure is restricted only to penalty under section 271(1)(c) of the Income-tax Act ?

***Answer**: No. Penalties under other sections would also not be levied for the assessment year(s) to which the disclosure of income relates to.*

***Question No. 50**: If a search is carried out after a declaration is made, what would be the consequences for the declarant ?*

***Answer**: In respect of amount covered by VDIS no tax would be payable. The declarant will get the benefit of no levy of penalty and no prosecution would be initiated in respect of the disclosed income. In*

respect of any income other than the disclosed income discovered during the search, or computed on the basis of evidence gathered, the assessee will be liable to tax, interest, penalty and prosecution.

MINUTES OF ASSOCHAM MEETING WITH CBDT ON VDIS, 1997 HELD ON 23-7-1997

Question No. 5**: **If the proceedings are initiated under section 132, 132A or 133A, after the filing of the declaration by the declarant but before the payment of taxes under the Scheme within the stipulated period of three months, whether the declarant would be entitled to immunities under the Scheme in respect of the income already declared ?

***Answer**: Yes.*

It is also important to refer to Clarification dtd. 12.09.97 by CCIT, Mumbai in respect of VDIS, 1997

Question No. 28: Whether declarants under the VDIS Scheme be actually immune from future prosecution ? Can laws be changed in the future ?

***Answer**: The VDIS Scheme has Parliamentary approval. The benefit of disclosure will be available.*

It is also important to refer to Clarification dtd. 15.07.97 by CCIT, Pune in respect of VDIS, 1997

Question No. 4: Whether declaration filed under VDI Scheme will be treated invalid on the ground of its not being full and true if income/assets in excess of what has been declared under the scheme are unearthed during search after the filing of the declarations and before issue of certificate by the CIT ?

***Answer**: The answer to this Query is No. To the extent the declaration has been made will be treated as valid. Anything discovered after search in excess of what is declared will be dealt with as per the provisions of Income-tax Act, 1961.*

Question No. 5: Whether in computing block income under chapter XIV B, the amount declared under VDIS will be treated as income declared ?

***Answer**: Yes. Since the assessee will be declaring income with reference to a particular assessment year and income for that year will be income declared as per return filed or assessed if any and income returned under the scheme.*

67. Whether when a person declares some income in the scheme which originally was not subjected to TDS, whether the payer would be visited with action u/s 201/271C etc. on the basis of declaration now filed by the deductee ? It is important to refer to Letter dtd. 12.12.97 issued by CCIT Mumbai which read as under :

As directed, extract of letter No. 296/31/97-IT (Inv. III), dated 8-12-1997 of the Member (Inv.), Central Board of Direct Taxes, New Delhi is reproduced below for favour of information and necessary action :

"Section 75 of the Finance Act, 1997, stipulates that nothing contained in the Voluntary Disclosure of Income Scheme, 1997 (hereinafter referred to as the Scheme) shall be constructed as conferring any benefit, concession or immunity on any person other than the person making the declaration, except as expressly provided under Explanation to section 73(1) of the Scheme.

2. A question has been raised as to whether, in a case where an employee declare his undisclosed salary income under the Scheme, the employer will be proceeded against under section 201(1), 201(1A), 221 or 271 or 271C of the Income-tax Act, 1961 for the purpose of levy of interest/penalties.

3. The issue has been considered by the Government. According to section 192 of the Income-tax Act, any person responsible for paying any income chargeable under the head "Salaries' shall, at the time of payment, deduct tax on the estimated income of the assessee under that head for the relevant financial year and any failure to do so shall at least levy of penalties and interest on the employer.

4. However, according to section 68(1) of the Scheme, 'the amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Income-tax Act', if the conditions relating to the payment of tax and the credit of the disclosed income in the books of account are duly satisfied. In other words, the income disclosed under the Scheme does not form part of the total income of the assessee under the Income-tax Act, much less being income chargeable under the head 'Salaries', within the meaning of section 192.

5. Therefore, strictly construed, the question of liability under section 192 or the consequence for any breach thereof would not arise. In any case, as the information' relating to the disclosure by the employees will be treated as confidential under the express provisions of section 72(1) of the Scheme, there is no way the same can be used as evidence in any proceedings against the employer. In somewhat similar context, it was earlier clarified answer to

Question No. 17 in the Circular No. 754, dated 10th June, 1997 that, if the purchaser of an immovable property declares any undisclosed consideration, the seller will not be proceeded against.

6. It is, therefore, clarified that no action either to impose a penalty or to levy interest shall be initiated against the employer based merely on the disclosure under the Scheme of any salary income by the employees."

It is also pertinent to refer to decision and facts in case of ***Dr. B.L. Wadhera vs. UOI (2003) 259 ITR 108 (Del.).*** The facts and the Court judgement reads as :

"The petitioner in this petition filed as PIL prayed for direction against respondents to file current status report about the post-Voluntary Disclosure Income Scheme (VDIS) 1997, situation with regard to deductions and their foreign origin employees indicating whether after availing themselves of the provisions of the VDIS 1997, deductors have been deducting the requisite amount of tax from their employees' salaries/perks and in case all or some of them have not done so what action has been taken or is proposed to be taken against them.

***2.** Mr. Jolly appearing for the Revenue has handed over for our perusal a statement with respect to 16 parties from which it appears that against some of them, as a result of survey under s. 133A of the IT Act, additional tax and interest under s. 201 and 201(1A) has been collected and penalty under s. 271C of the Act has been levied.*

From the status report we are satisfied that genuine efforts were made by the respondents to take care of the interest of the Revenue and in view of that no further directions deserves to be issued in this petition.

The petition stands disposed of."

Also See judgement in ***CIT vs. Japan Radio Co. Ltd. (2006) 286 ITR 682 (Del.),*** wherein the head-note reads as under :

"Penalty under s. 271C—Failure to deduct tax at source—Reasonable cause—Certain confusion existed regarding the liability of the company to deduct tax at source from payments made by it to expatriate employees—

Tribunal has accepted that the assessee had a reasonable cause for not making the deductions and deleted the penalties under s. 271C—Just because one of the employees had made a VDIS declaration in which the income earned by him outside India was also declared for purposes of tax did not negate the effect of the other circumstances which constituted a reasonable cause for the assessee not to make the deduction—Whether or not there was reasonable cause for the default is a question of fact—In the absence of any perversity in the finding recorded by the Tribunal, no substantial question of law arises"

68. It is not possible to take the view that in view of the provisions of the IDS, 2016, the power conferred on the officers of the Department under section 132 is impliedly suspended till the Scheme comes to an end. Continuance of power of search under section 132 while scheme is in force does not result in discrimination and violation of rights guaranteed under article 14 of the Constitution - ***United Credit and Investments* v. *DIT* [1998] 231 ITR 660 (Kar.).** Also see ***TRIBHOVANDAS BHIMJI ZAVERI vs. UOI (1993) 204 ITR 368 (SC).***

69. Whether the department will accept the law settled by various Courts in respect of issues arising in respect of earlier such schemes ? Infact, the CBDT should come up with clarity on the issues that arose in earlier schemes and the parties had to move even upto the level of Hon'ble Supreme Court.

In this regard, a reference may be made to a landmark judgement of the House of Lords in **Barras v. Aberden Stean Trading & Finishing Co. Ltd**. **(1993) AC 402 (HL).** Lord Macmillion in the said judgement held that:

"If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the legislature when using well- known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them."

The above judgement is applied by the Supreme Court in **Banarsi Debi V. ITO (1964) 53 ITR 100,106 (SC)** wherein the following extracts from the aforesaid judgement of the House of LORDS are reproduced:

"It has long been a well-established principle to be applied in the consideration of ACT of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statue which incorporates the same word or the same phrase in a similar context must be constructed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it."

70. The last date for filing of declaration has been appointed as 30.09.2016. It is an undisputed fact that more than 95% of declarations will be filed with assistance of CAs/Advocates. Parallely the last date for filing of ITRs requiring audit is also 30.09.2016. This will put extreme pressure of work on these professionals. It is earnestly requested that either of the dates be extended and the extension be announced in advance to allow professionals to focus on one area.

71. There should be column of date of Birth/incorporation etc. in Form 1?