

Technical Guide on Appeal before CIT(A)

Part-I



Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Committee/Department : Direct Taxes Committee

Email : dtc@icai.in

Website : www.icai.org

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Foreword to the First Edition

With the increasing complexity in taxation laws and different interpretations, scope for litigations has also increased, which has widened the areas of Chartered Accountancy services manifold. With a view to cope up with various challenges emerging in the area of taxation, Chartered Accountants must keep on enhancing their professional competencies to attain newer heights of success.

Keeping pace with the latest technological advancements is a prerequisite now a days. The thrust of the Government is on e-governance. Accordingly, to bring in transparency and thereby to reduce the corrupt practices and to make compliances easier for tax-payers, income-tax department is fast moving towards faceless regime. Recently, procedures for faceless assessment, faceless appeals and faceless penalty have been implemented by the Income-tax department. Faceless regime being new and dependent on technological aspects is prone to certain challenges for all the stakeholders.

The Institute of Chartered Accountants of India (ICAI) too has always been proactive in disseminating the knowledge and honing the skills of its members. I am really happy to note that yet another step in this direction has been taken by the Direct Taxes Committee of ICAI as they have come out with this publication namely ***“Technical Guide on Faceless Appeal Proceedings before CIT(A)”*** to assist the members in meeting their professional commitments in an effective manner.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee and CA. Satish K. Gupta, Vice-Chairman, Direct Taxes Committee who have worked selflessly for bringing out this publication in a timely manner.

I am sure that this publication will help the members in understanding the different aspects of the faceless regime and discharging their professional commitments in a more efficient manner.

Date: 31.08.2021

Place: New Delhi

CA. Nihar N Jambusaria

President, ICAI

Preface to the First Edition

Direct Taxes continues to be a predominant area of interest to the chartered accountants including those in practice as also to a great extent those in employment. Ascertaining correct income and assisting in payment of correct amount of taxes is the role of a chartered accountants play, as 'partners in nation building'.

Frequent changes in law, interpretation and compliance have made 'direct tax' through legislation, judiciary and administration. This makes 'direct tax' a specialized area. This calls for close monitoring of developments taking place in the field.

Chartered Accountants, are possessed of expert knowledge of income tax law, finance, accounts and business environment are best suited in attending to income tax appellate matters. They sharpen the skill-sets by participating in CPE programmes, of the ICAI and reading and monitoring developments in the field. Cases have emerged as a predominant professional class, *inter alia*, in the income tax planning, compliances, and litigations.

Riding on e-evolution, field of income tax is embracing information technology in tax administration. This affords much needed ease and comfort for stakeholders. Filing of appeals electronically has been implemented successfully. The stakeholders experience in filing of appeals before Commissioner of Income tax (Appeals) [CIT(A)] is heartening.

The CBDT has now introduced a scheme for faceless hearing of appeals preferred before the first appellate authority i.e. the CIT(A). It is, but natural for the chartered accountants to take note of this development. To understand and study and then to practice faceless hearings of appeal is necessary for chartered accountants' fraternity.

These technological developments have their own pros and cons. They need to be understood thoroughly well by all the stakeholders involved in the process.

To discuss the e-procedure for faceless CIT (Appeals) process and to provide guidance to the members, this publication shall prove very useful. This publication covers the law and procedures relating to faceless proceedings before the CIT(A) enabling the members to better understand the new provisions.

Under the aforesaid circumstances, we at the Direct Taxes Committee thought it fit to bring out this publication namely **"Technical Guide on Appeal before CIT(A)"** as a handy tool to assist the fraternity to make proper compliance of the new provisions and procedures in more objective manner and with consciousness towards related documentations. Of course, readers are expected to update themselves continuously.

We are sincerely thankful to CA. Nihar Nirajan Jambusaria, President, ICAI and CA. (Dr.) Debashis Mitra, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are pleased to place on record my sincere gratitude for the involvements and contributions by all the Committee members and our dear Council Colleagues of ICAI. We are sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the new provisions.

We are extremely thankful to our Members of the Study Group formed under the convenorship of Chairman, DTC, who worked selflessly and dedicatedly to prepare the draft of this publication after taking all inputs from the said group members formed in this regard. We especially appreciate the efforts of our following study group members who provided valuable inputs for this publication; CA. Dr. Vishnu Kanhere, CA. Sharad Shah and CA. Nitin Bhuta.

Last but not the least, I appreciate the dedicated efforts of the CA. Shrutika Oberoi, Secretary, Direct Taxes Committee and the entire Secretariat of Direct Taxes Committee for their technical and administrative assistance in bringing out this first edition of the said publication in limited time.

CA. Satish K. Gupta
Vice-Chairman,
Direct Tax Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Tax Committee, ICAI

Date: 31.08.2021

Place: New Delhi

Acknowledgement

The Direct Taxes Committee of ICAI acknowledge the contribution made by the following members of the study group constituted for the purpose of developing the publication namely ***Technical Guide on Appeal before CIT(A)***. We place on record our gratitude for their contribution in enrichment of knowledge of the members:

- **CA. Chandrashekhar V. Chitale, CCM – Convenor**
- **CA. Nitin Bhuta**
- **CA. Dr. Vishnu Kanhere**
- **CA. Sharad Shah**
- **CA. S R Rahalkar**
- **CA. P A Akkalkotkar**
- **CA. Prasanna Joshi**

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Glossary of Commonly used Terms

AAS : Automated Allocation System means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

ACIT : Assistant Commissioner of Income Tax

Act : The Income Tax Act, 1961 e-proceedings

Additional Evidence : The Evidences which are being submitted for first time in appellate proceedings

Addl. CIT : Additional Commissioner of Income Tax

AET : Automated Examination tool

AO : Assessing Officer

Assessment Order : Assessment Order includes Revised Assessment Order.

AU : Assessment Unit in the context of Faceless Assessment Scheme

CAU : Used this term for Appeal Unit under the scheme of Faceless Appeal proceedings to differentiate between the Assessment Unit and Appeal Unit

CCIT : Chief Commissioner of Income Tax

Circulars : Circulars as may be notified issued by the Central Board of Direct Taxes from time to time in pursuance to the powers conferred under the Income T-tax Act, 1961.

CIT : Commissioner of Income Tax

CIT(A) : Commissioner of Income Tax (Appeals), also refers to, in this publication, NFAC as all the functions of CIT-A are now performed by NFAC

Communication : E-Mails, SMS etc.

DIN : Document Identification No. generated Automatically by the Income tax portal for all the documents after 1st October, 2019

DIT : Director of Information Technology (Systems)

Draft Assessment Order : The draft Assessment Order given under the Faceless Assessment Scheme

Dy. CIT : Deputy Commissioner of Income Tax

E- Proceedings : The appellate proceedings conducted electronically in 'e-appeal' facility through the registered account of the appellant in designated portal.

E-Assessment Scheme : The scheme where filing of papers was, at the option of the assessee, in electronic mode (in contrast to Faceless Assessment Scheme).

Effective Date : 25-09-2020

Faceless Appeal Scheme, 2020 : The scheme notified S.O. 3296(E) Notification No 76 Dt 25-09-2020 (FAS, 2020)

Faceless Assessment Scheme : Faceless Assessment Scheme, 2019

Final Draft Appeal Order : The final Draft Order prepared by the AU3 (Referee AU)

ITBA : Income Tax Business Application (ITBA) – Appeal Module

JAO : Jurisdictional Assessing Officer under territorial jurisdiction rules

Jt. CIT : Joint Commissioner of Income Tax

NaFAC / RaFAC : National/Regional e-Assessment Centre (used for this publication, although CBDT has now changed the acronyms)

NFAC/RFAC : National/Regional Faceless Appeal Centre

Notifications : Notifications for this publication includes Notification NO. 76/2020 and No. 77/2020 dated 25-09-2020 or any other notifications issued in connection with the faceless appeal scheme and includes any further notification or modifications may be notified by the Central Board of Direct Taxes from time to time in pursuance to the powers conferred under the Income T-tax Act, 1961.

PCCIT : Principal Chief Commissioner of Income Tax

PCIT : Principal Commissioner of Income Tax

PH or VC : Personal Hearing or Video Conferencing

Revised Appeal Order : The Draft Order, if revised, by AU other than the AU conducting main appeal process (reviewing AU)

RMS : Risk Management Strategy

RU : Review Unit under Faceless Assessment Scheme

Rules : The Income-tax Rules, 1962

SOP : Standard Operating Procedure prescribed by the CBDT for carrying out E-assessment or Faceless Appeal as the context requires.

Technology : Technology initiatives for the implementation of the Faceless assessment and /or appeal scheme

TU : Technical Unit under Faceless Assessment Scheme

VC : Video Conferencing

VU : Verification Unit under Faceless Assessment Scheme

Chapter 1

Objectives and Purpose of Faceless Assessments, Appeals and penalty Proceedings

IT revolution ushered in by Information Technology, has altered meaning of abbreviation IT, which used to mean only Income-tax in last century. However, now Income-tax department riding on information technology wave is making effort to dispense transparent and efficient service to stakeholders and reclaim the abbreviation IT in its true sense. Initiative in this behalf having commenced with tax withholding, has moved ahead to e-filing audit reports and ITR filings. Now the circle is getting widened with assessment and appellate proceedings before the first appellate authority in an electronic mode. The future of faceless proceedings before Income-tax appellate tribunal is likely to follow suit with the help of Ministry of Law and Justice dealing with jurisprudence.

1.1. Journey of Computerization:

The journey of computerization of the Income tax department and its processes began in 1982 with the appointment of Directorate of Income-tax (DIT)(Systems) to introduce electronic data processing of income tax returns.

Payment of taxes (advance tax and tax deducted/collected at source – TDS/TCS), filing of returns, processing of returns and grants of refunds in prevalidated bank account /recovery of demands was switched to the electronic mode (e-mode). This was done with the help of TRACES based at Ghaziabad and Central Processing Centre (CPC Bengaluru). The advent and matching of 26AS eliminated bogus tax credits and after few initial hiccups made the system smooth and efficient, barring few glitches that are experienced even now.

Having introduced this and with its stability and success, nearly all returns barring few exceptions were being filled and processed online. It was not a surprise when the subsequent process of scrutiny assessment whether it was with proper response by assessee and due compliance being made (u/s 143 (3)), or an exparte assessment (u/s 144 of IT Act 1961) was proposed to be also made electronic by way of e-assessment.

E-proceedings were necessary for e-assessments and in June 2016, definition of hearing was amended on 01.06.2016 to provide that hearing includes communication of data and documents through electronic mode.

However, since in e-assessment only the nature of communication i.e., mode of hearing between assessee taxpayer and the Assessing officers changed, it was not a major departure from the regular physical assessment as the proceedings were still conducted by the jurisdictional officers whose identity was known.

1.2. Launch of Faceless assessment, penalties and appeals

“The Honorable Prime Minister on 13th August, 2020 while inaugurating the National e- assessment centre announced that henceforth, there will be transparency in the department and honest taxpayers will be honored “.

With these words, he ushered in the era of Faceless Assessments and follow up where the face-to-face time between the departmental officers and authorities and that of the assessee, tax- payer was minimized.

Honoring the honest taxpayers-

“Emphasis is on making every law and policy People Centric and Public Friendly rather than Power Centric.

The framework of faceless assessment and penalty and appeals provide for a path breaking departure from the face-to-face interaction since introduction of the Income-tax Act, in India. By eliminating face to face contact, it provides an environment and framework to honor and make the lives of honest taxpayer easy ensuring fairness, privacy, timely decisions based on merit, confidentiality and accountability. Taxpayer Governance enables elimination of corruption and bribery and unfair and unjust demands on the honest taxpayer.

This is the primary objective of faceless mode of assessment and appeals.”

1.3. The objective of the Faceless Appeal Scheme 2020 for the first appeal stage involving Commissioner Appeals can thus be summarized as under:

(1) To provide greater efficiency, transparency & accountability (over 4,60,000 plus appeals are pending at first appeal stage and nearly 85% will be covered by faceless appeal scheme 2020.)

Objectives and Purpose of Faceless Assessments, Appeals and Penalty...

- (2) Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible. This will minimize corruption, bribery, victimization and ensure fair merit-based treatment to all.
- (3) Optimizing utilization of resources through economies of scale and functional specialization
- (4) Dynamic allocation and electronic communication will ensure all appeal units are kept busy and utilized to fullest extent/capacity.

1.4. Electronic communication – No Human Interface/ Tech Driven:

An important feature of the faceless appeal scheme is that all communication between the appellant, the National Faceless Appeal Centre, the National e-Assessment Centre, and/or any other parties will be only through electronic means by way of email to appellant/authorized representative or uploading and placing the communication in the appellant's registered account, uploading same on appellant's mobile app under real time electronic/SMS alert on the appellants' registered mobile number.

Thus, neither has the communication any human interface, all communication being addressed by National Faceless Appeal Centre is tech driven based on registered account of taxpayer/appellant on Income-tax department website, email and/or mobile app and real time alert.

There is no provision for physical attendance or personal hearing or face to face contact.

1.5. Dynamic Jurisdiction:

When an appeal is filed, it is allotted by the National Faceless Appeal Centre through the Regional Faceless Appeal Centre to an Appeal unit. This allocation system is an automated allocation by an electronic/computerized system.

Thus, it is never possible for the appellant to know who is dealing with his/her appeal, and similarly not possible for the appellate authority/Commissioner (Appeals) handling the appeal to get in touch with the appellant.

1.6. Functional Specialization:

Dynamic allocation and electronic communication will not only promote economies of scale by best/most efficient utilization of resources, but over the

years, regional faceless appeal Centres and appeal units under them may develop expertise in certain types of cases of a certain industry e.g., manufacturing sector, or financial and banking sector or even relating to a certain head of income e.g., capital gain arising from transactions in immovable property.

This will not only improve efficiency of appeal units and of the process of faceless appeals but enable development of expertise in specific areas of tax laws improving the quality of appellate orders and decisions and ensure a kind of uniformity.

1.7. Team Based Working:

Rather than an individual appellate commissioner with his/her limited exposure, experience, knowledge and skills, the appeal will be dealt with by a team with improved results.

The entire process including different stages of the appeal process of interacting with the appellant, the National Faceless assessment unit, the regional faceless appeal unit, the appeal units, assessing officer etc.- will be handled by the National Faceless Appeal unit, whereas the other steps including review by the different appeal units. Therefore, it will be a team exercise.

The advent of Faceless proceeding will not alter principals of jurisprudence. However, certain aspects like natural justice, the process of arguments will be redefined over the time on gathering experience. There may be certain limitation and skillsets for articulation of presentation would be different. However, considering the trend of judgements rendered by court, principle of natural justice is of uppermost importance and practical convenience has to yield before natural justice.

Chapter 2

Faceless Assessment

2.1 Launch of Faceless Assessment Scheme

“The Honorable Prime Minister on 13th August, 2020 while inaugurating the **National e- assessment centre** (now known as NaFAC – National Faceless Assessment Centre) announced that henceforth there will be **transparency** in the department and **honest taxpayers** will be **honored** “.

With these words, he ushered in the **era of Faceless assessments** and follow up where the **face-to-face time** between the departmental **officers and authorities** and that of the **assessee, tax- payer** was **minimized**.

Honoring the honest taxpayers-

“Emphasis is on making every law and policy *People Centric* and *Public Friendly rather than Power Centric*.

The framework of faceless assessment and penalty and appeals provide for a **path breaking departure** from the **face-to-face interaction** since introduction of the Income-tax Act, in India. By eliminating face to face contact, it provides an **environment and framework to honor** and make the **lives of honest taxpayer easy ensuring fairness, privacy, timely decisions based on merit, confidentiality and accountability**. **Taxpayer Governance** enables **elimination of corruption and bribery and unfair and unjust demands on the honest taxpayer**.

This is the **primary objective of faceless mode of assessment and appeals.**”

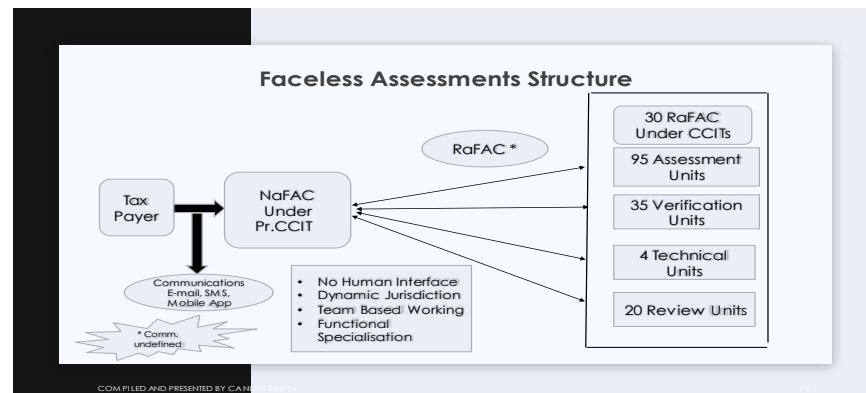
2.2 Scheme provides for the following:

- No direct communications between the units of the scheme;
- All communication would be done in writing through electronic means of communication viz. E-mail, SMS and Mobile App or any other means as approved under the scheme;
- No Personal Interface between Taxpayer and Govt. Authorities
- It provides for Dynamic Jurisdiction for completing the assessment as per the provisions of the Act.

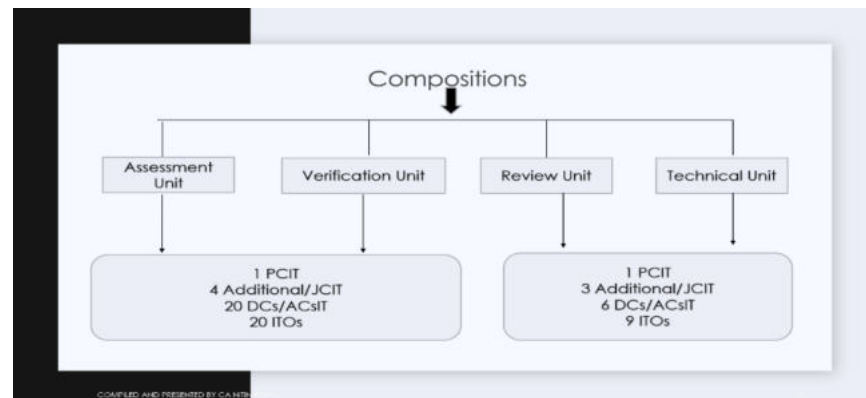
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- It provides for Team based working and seeking the help from Functional specialist for executing the assessment of the income as per the provisions of the Act.
- SOPs and Protocols are shared in public domain for following all kind of procedures by NaFAC, RaFAC, Assessment Units, Verification Units, Review Units and Technical Units;
- On completion of assessment proceedings as per Faceless Assessment Scheme as notified under the Act, all procedures to be completed post assessment are allocated back to Jurisdictional Assessing Officer of the Assessee like Rectification, Demand and Tax Recovery etc.

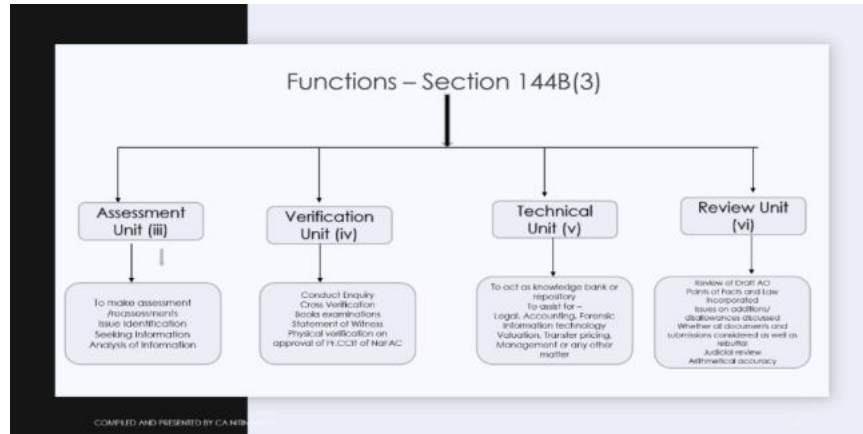
2.3 Structure of National Faceless Assessment Center



2.4 Compositions of Assessment Unit, Verification Units, Technical Units and Review Units:



2.5 Functions of Units



2.6 Protocols followed for completing assessment Procedures are as under: -

- a) NaFAC will identify the cases for doing the assessment as per scheme;
- b) On Selection of cases, they would be allocated to RaFAC;
- c) RaFAC using AAS would allocate the cases to Assessment Units;
- d) Assessment Units will review the cases and in review they will try to identify the issues and would seek information, statements and documents from NaFAC;
- e) NaFAC will seek information/statement/document from Assessee on receipt of notification from Assessment Unit for the assessment of the case;
- f) On receiving notification from NaFAC, Assessee will provide such information/statement/document to NaFAC within time limit specified in writing to them;
- g) On receiving information/Statement/document etc. from Assessee in the electronic format, NaFAC would provide the same to Assessment Units other than Assessment Unit who sought such information/Statement/document etc. originally;
- h) Assessment Unit will review such information/statement/document received from NaFAC will seek any additional information/statement/document if required or needed as the case may be; if Assessment Units

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desires to seek any verification of any information/statement/document then it shall notify the same to Verification Unit through NaFAC;

- i) On receiving request from NaFAC, Verification Unit will conduct inquiry, cross verification, examine books of accounts, witness examination, recording of statements and if needed conduct physical verification in respect of various instances notified as per SOPs subject to approval of Pr. CCIT of NaFAC;
- j) On completing verification, Verification Unit will provide such report about information/statement/document to NaFAC who will notify in writing to Assessment Units other than Assessment Unit who sought such information/Statement/document etc. originally using AAS;
- k) On receiving such verification report from NaFAC, Assessment Unit other than Assessment Unit who sought such information/Statement/document etc. originally will review and analysis such information and if desired as the case may be may seek the help of Technical Unit which acts as knowledge bank or repository and such technical unit will provide necessary technical expertise and support in respect of Legal, Accounting, Forensic, Information Technology, Valuation, Transfer Pricing, Management or any other matters;
- l) Technical Unit will provide technical report in respect of Legal, Accounting, Forensic, Information Technology, Valuation, Transfer Pricing, Management or any other matters etc. based on information/statement/document desired by NaFAC through Assessment Unit and such technical report would be provided to NaFAC for forwarding the same to Assessment Units other than Assessment Unit who sought such information/Statement/document etc. originally;
- m) On receiving such technical report from RaFAC, such report would be shared with Assessment Unit other than Assessment Unit who sought such information/Statement/document etc. originally will review such information/statement/document and if any further information it can sought again by following above steps from (e) to (l) till the matter is addressed suitably and concluded;
- n) On completing the analysis of information/statement/document, Assessment Unit will prepare draft Assessment Order and the same would be forwarded to NaFAC for forwarding the same draft Assessment order to Review Unit;

Faceless Assessment

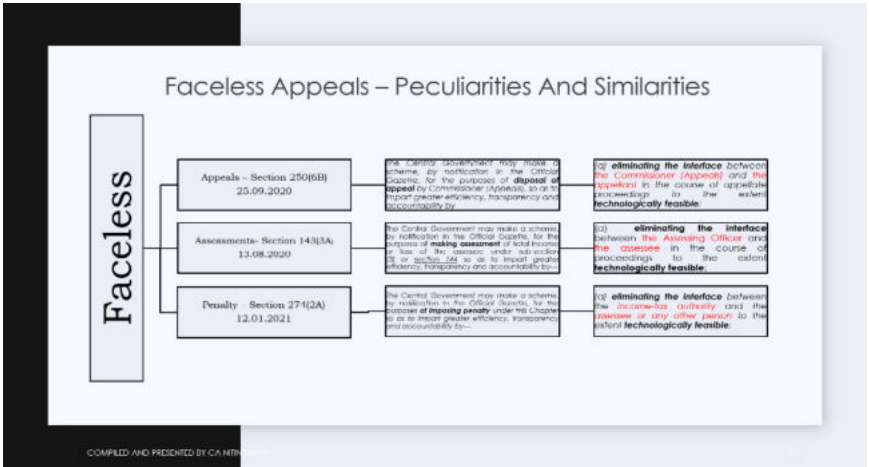
- o) After receiving draft assessment order, Review Unit will review such order from the perspective to consider whether all points of fact & points of law whether appropriately recorded in the order; whether issues on additions/disallowances are apt discussed in the order; whether all documents and submissions considered as well as rebuttal are considered in the order, whether proper judicial review is followed or not and whether arithmetical accuracy is correct;
- p) On review of order if any variations are proposed whereby if Income determined is revised by way of increase/decrease or refund reduced/increased or loss increased/decreased or exemptions and/or deductions allowed/disallowed etc., then such revised review order would be forwarded to NaFAC who in turn would forward the same to Assessment Unit other than Assessment Unit who originally passed draft assessment order;
- q) On revision of draft assessment order, all steps from (e) to (p) till the matter is addressed suitably and concluded;
- r) On conclusion, Final Order would be passed by Assessment Unit other than Assessment Unit who originally passed draft assessment order and/or revised assessment order, it would be notified to NaFAC;
- s) On receiving final assessment order, NaFAC will forward the same to the Assessee and with matter will reach its finality as per Faceless Assessment Scheme as per the provisions of the Act.

2.7 On receiving the Final assessment order from NaFAC, if assessee is aggrieved then he can seek alternative remedy of filing appeal under Faceless App3eal Scheme notified w.e.f from September 25,2020 or he can approach jurisdictional AO for future rectifications.

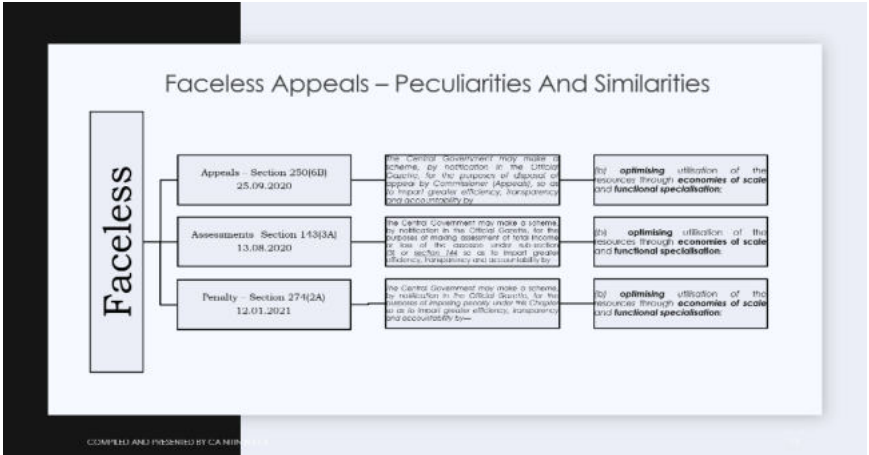
2.8 If we do the comparison of definitions provided for each of the Faceless Scheme viz. Appeal, Assessment, and Penalty we observe as under: -

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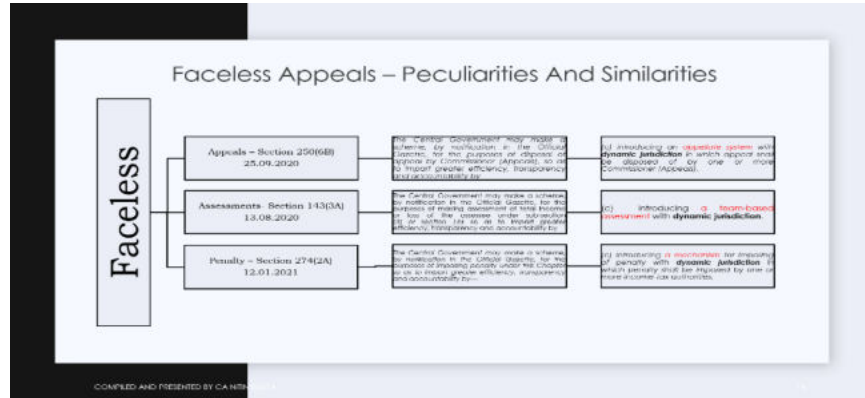
Clause (a)



Clause (b)



Clause (c)



Chapter 3

Law on Faceless Appeal

Judicial and Law provisions

Faceless Appeal Scheme 2020 has been ushered in by introducing section 250(6B) in the Income-tax Act, 1961

1. The Scheme is to provide a mechanism for conducting Faceless Appeal Proceedings under newly introduced Section 250(6B) and Section 250(6C) of the Income-tax Act 1961. Faceless Appeal Scheme, 2020 has been notified vide Notification No 76/2020 dated 25/09/2020. It is provided that proceedings relating to all pending appeals on 25/09/2020 shall also be dealt with under this scheme. This Scheme is following empowerment of under Section 250(6C) read with Notification No. 77/2020 dated 25/09/2020

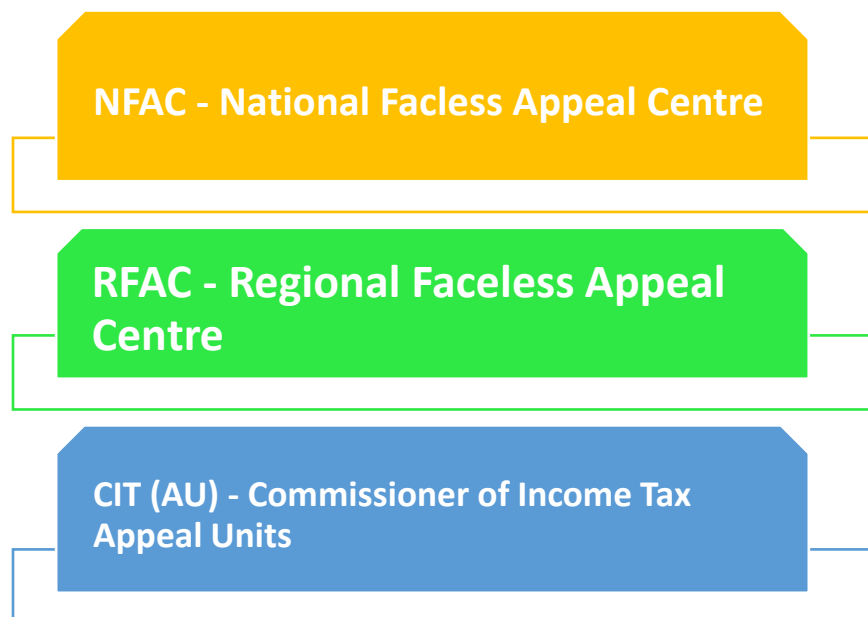
2. Notification No 77/2020 incorporates following procedural changes in the Income-tax Act 1961:

- a. Definition of Commissioner Appeals (Section 2(16A) which means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117);
- b. Jurisdiction of Income Tax Authorities (Section 120);
- c. Change of incumbent of an office (Section 129);
- d. Power regarding discovery, production of evidence, etc. (Section 131)
- e. Power to call for information (Section 133)
- f. Power to inspect registers of companies (Section 134)
- g. Proceedings before income-tax authorities to be judicial proceedings (Section 136)
- h. Chapter XX - APPEALS AND REVISION (Section 246 to Section 251);

3. Under section 120 in respect of FAS, 2020 and scheme notified u/s 250(6B) and 250(6C) of the Income-tax Act 1961, **official /titles** of following jurisdictional authorities were **instituted** under National Faceless Appeal Centre (hereinafter referred as NFAC) by notification No 80/2020 dated 25.09.2020:

- a. Principal Chief Commissioner of Income-tax (NFAC), Delhi
- b. Income-tax Officer (NFAC)(HQ), O/o Principal Chief Commissioner of Income-tax (NFAC), Delhi.
- c. Commissioner of Income-tax (NFAC), Delhi
- d. Income-tax Officer (NFAC)(HQ), O/o Commissioner of Income-tax (NFAC), Delhi
- e. Additional /Joint Commissioner of Income-tax (NFAC), Delhi
- f. Deputy /Assistant Commissioner of Income-tax (NFAC), Delhi
- 4. In addition there are the following jurisdictional authorities :
 - Regional Faceless Appeal Centre (hereinafter referred as RFAC)
 - CIT Appeal Units (hereinafter referred as CAU) under the charge of RFAC and Commissioners have been given charge, they shall exercise powers and perform functions under Faceless Appeal Proceedings in respect of such territorial areas or persons or class of persons or incomes or class of incomes or cases or class of cases as specified by the Board

Diagrammatically, composition of NFAC would appear as under: -



5. Faceless Appeal Scheme 2020

Faceless Assessment scheme, 2020 has been announced under Notification No 76/2020 dt. 25.09.2020, The scheme would apply to appeal proceedings in connection with appeals filed as per section 246A or section 248 of the Income-tax Act 1961;

6. The appeals under this FAS, 2020 shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

7. The FAS, 2020 shall not apply to the following Appeals arising out of: -

- a. serious frauds and investigation matters;**
- b. major tax evasions matters;**
- c. sensitive and search matters;**
- d. international taxation matters;**
- e. Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015.**

Definitions

Specific meaning for certain terms has been provided in the scheme, Words and expressions used herein and not defined but defined in the Act shall have the same meaning respectively assigned to them in the Act.

8. Important definitions under Faceless Assessment Scheme are summarised below: -

- a. “Act” means the Income-tax Act, 1961 (43 of 1961)**
- b. “addressee” shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);**
- c. “appeal” means appeal filed by a person under sub-section (1) of section 246A or section 248 of the Act;**
- d. “appellant” means the person who files appeal under section 246A or section 248 of the Act.**
- e. “authorised representative” shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;**

- f. ***“automated allocation system” means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;***
- g. ***“automated examination tool” means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;***
- h. ***“computer resource” shall have the same meaning as assigned to them in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);***
- i. “computer system” shall have the same meaning as assigned to them in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- j. ***“computer resource of appellant” shall include the registered account in the designated portal of the Income-tax Department, or the Mobile App linked to the registered mobile number, or the registered email address, of the appellant;***
- k. “digital signature” shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- l. ***“designated portal” means the web portal designated as such by the Principal Chief Commissioner or Principal Director General, in charge of the National Faceless Appeal Centre;***
- m. ***“e-appeal” means the appellate proceedings conducted electronically in 'e-appeal' facility through the registered account of the appellant in designated portal;***
- n. ***“electronic record” shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);***
- o. “email” or “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

- p. ***“hash function” and “hash result” shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);***
- q. ***“Mobile app” shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the appellant;***
- r. ***“National e-Assessment Centre” shall mean the National e-Assessment Centre set up under scheme notified under sub-section 3A of section 143 of the Act; (but now it is known as National Faceless Assessment Centre);***
- s. ***“originator” shall have the same meaning as assigned to it in clause (za) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);***
- t. ***“real time alert” means any communication sent to the appellant, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;***
- u. ***“registered account” of the appellant means the electronic filing account registered by the appellant in the designated portal;***
- v. ***“registered e-mail address” means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-***
 - (a) ***the email address available in the electronic filing account of the addressee registered in designated portal; or***
 - (b) ***the e-mail address available in the last income-tax return furnished by the addressee; or***
 - (c) ***the e-mail address available in the Permanent Account Number database relating to the addressee; or***
 - (d) ***in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or***

- (e) *in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or*
- (f) *any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;*
- w. *“registered mobile number” means the mobile number of the appellant, or his authorised representative, appearing in the user profile of the electronic filing account registered by the appellant in the designated portal;*
- x. *“Rules” means the Income-tax Rules, 1962;*
- y. *“video conferencing or video telephony” means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.*

Note: -

These definitions are in line with the underlying theme of using technology optimally to reduce the personal or human interface amongst the stakeholders through a mechanism of dynamic jurisdiction and functional specialisation thereby ensuring timely and efficient disposal of appeals under the FAS, 2020.

Functions & Intercommunications :

9. Functions of NFAC, RFAC and AU

NFAC:

- To facilitate the conduct of e-appeal proceedings in a centralised manner
- Jurisdiction to dispose appeal as per scheme

RFAC

- To facilitate the conduct of e-appeal proceedings
- Jurisdiction to dispose appeal as per scheme

AU

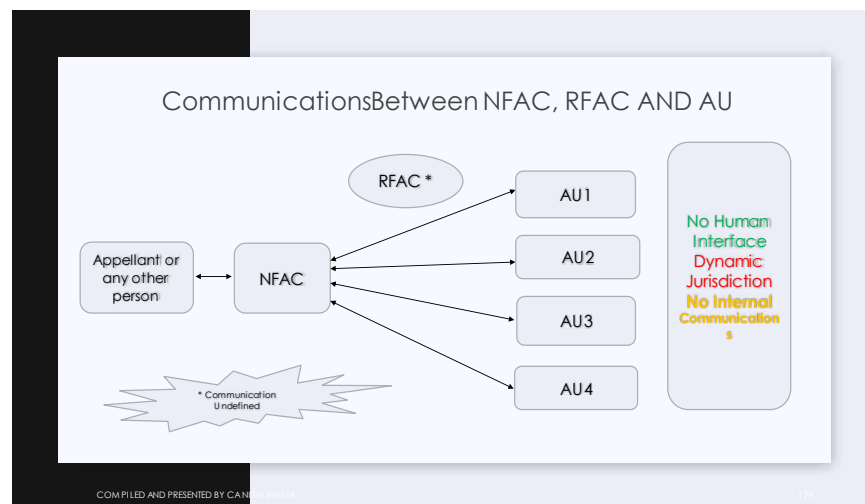
- To facilitate the conduct of e-appeal proceedings

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- Disposing of Appeal
- Admission of additional grounds of appeal and making inquiry
- making further inquiry as desired
- Directing NFAC or AO
- Seeking information and/or verification
- Seeking documents
- Granting opportunity of being heard;
- Analysis of information
- Review of Draft Order
- Determination of Jurisdiction

10. Electronic Communications Only:

Communications between Appellant, NFAC, RFAC and AU due to dynamic jurisdictions - Communication will flow from Appellate ↔ NFAC ↔ RFAC ↔ AU and vice versa. Each one has to communicate to seek information/documents/statements etc. with each other and anyone can't be demanding the same from any appellant or any other person directly. All communications will happen electronic mode and not otherwise.



There should be no Direct communication between

1. Appellant and RFAC/AU or vice versa
2. NFAC and AU and vice versa
3. RFAC and AU

Thus, Scheme provides communication only in the electronic mode through use of the prescribed channels.

Appeal Procedures –

Filing of Faceless Appeals under the scheme –

–Para 5 of the Notification

- a. Step 1 -Appellant files the appeal electronically on ITD portal;
- b. Step 2- On receipt of valid appeal, NFAC shall assign the appeal to the specific appeal unit in any one RFAC through an automated allocation system;

First Review of Appeals Filed

- c. Step 3- RFAC will examine the appeal filed by appellant to ensure it is complete in all respects in the following manner:

Appeal Filed within time limits

- (i) If Appeal is filed within time limit of 30 days as permitted u/s 249 with all valid documents, then NFAC will proceed with procedure specified in Step -4;

Appeal not filed within time limits but filed with condonation requests

- (ii) If Appeal is not filed within time limits specified but filed along with condonation request as per section 249(2), then RFAC shall examine to determine if the appellant had sufficient reasons or cause for not filing the appeal within the said time limits, admit the appeal and if admitted then it would notify and communicate to NFAC and NFAC in turn will notify Appellant about admission of the same on acceptance of request for condonation ;
- (iii) If Appeal is not filed within time limits specified but filed along with condonation request as per section 249(2), then RFAC shall examine to determine if the appellant had sufficient reasons or

cause for not filing the appeal within the said time limits, if RFAC is not convinced, such appeal would be rejected and notify and communicate to NFAC and who in turn will notify Appellant about the rejection of such appeal filed by them;

Appeal Filed within time limits by seeking exemptions u/s 249(4)(b) in the cases where Return not filed by the Appellant

- (iv) If Appeal is filed within time limits specified but filed along with *seeking exemptions u/s 249(4)(b)*, then RFAC shall examine if the appellant had sufficient reasons and exempt the appellant from the operation of provision of such clause for good and sufficient reasons to be recorded in writing and thereafter admit the appeal than it would notify and communicate to NFAC and which in turn will notify Appellant about admission of the appeal ;
- (v) If Appeal is filed within time limits specified but filed along with *seeking exemptions u/s 249(4)(b)*, then RFAC on examination determined that the appellant had no good and sufficient reasons, then RFAC can reject such exemption in writing (assumed such reasons of rejections would be kept on record), and notify and communicate to NFAC and who, in turn, will notify the Appellant about the rejection of such appeal filed by them;

Admission or Rejection of Appeal

- d. Step 4 – the NFAC shall intimate the admission or rejection of appeal, as the case may be to the appellant;

Comment:

- 1. *If the Appeal is rejected by the NFAC, one of the remedies available with the appellant is to approach the Jurisdictional High Court under writ route.*
- 2. *If the Appeal is admitted then the NFAC shall forward appeal to RFAC who in turn shall allocate the appeal through AAS to any of the AU as per the scheme for further processing of the appeal filed by the appellant.*

Procedure post admission of appeal

- e. Step 5- On admission of the appeal, the following procedures would be followed: -

CAU Communication to NFAC

- (i) The appeal unit CAU may request NFAC to obtain such further information, document or evidence from the appellant or any other person it may specify;
- (ii) The appeal unit may request the NFAC to obtain report of National Faceless Assessment Centre or the Assessing Officer, as the case may be, on grounds of appeal or information or document or evidence filed by the appellant during assessment proceedings;
- (iii) The appeal unit may request the NFAC to obtain report of National Faceless Assessment Centre or the Assessing Officer, for making further inquiry under section 250(4) of the Act and submit a report thereof;
- (iv) The NFAC shall serve a notice upon the appellant or any other person, as the case may be, or the National Faceless Assessment Centre or the Assessing Officer, as the case may be, to submit such information, document or evidence or report, as the case may be, as may be specified by the appeal unit or as may be relevant to appellate proceedings, on specified date and time;

Appellant or any other communication to NFAC

- f. Step 6- the appellant or any other person, as the case may be, shall file a response to the notice referred as per step 4(supra), within the date and time specified therein, or such extended date and time as may be allowed on the basis of adjournment application made in this regard, with NFAC;

National Faceless Assessment Centre or AO's communication to NFAC

- g. Step 7 -the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case

may be, shall furnish report in response to notice referred as per Step 5 (supra), within the date and time specified therein, or such extended date and time as may be allowed on the basis of application made in this regard, with NFAC;

Communication by NFAC to AU on receipt of response/non receipt from Appellant or any other person or National Faceless Assessment Centre or AO

- h. Step 8- where a response is filed by Appellant or any other person (As per step 6-Supra), as the case may be, or a report is furnished by National Faceless Assessment Centre or Assessing Officer (As per step 7-Supra), as the case may be, the NFAC shall send such response or report to the appeal unit, and where no such response or report is filed, inform appeal unit;

Filing of additional grounds of appeal by appellant

- i. Step 9- the Appellant may file additional grounds of appeal in such form, as may be specified by the NFAC, specifying therein the reasons for omission of such ground in the appeal filed by them;

Notes:

1. *To date, no form has been specified by the NFAC. But it may be presumed that in the interim the Appellant can file the same through the designated portal on normal paper in the acceptable electronic format seeking admission of additional grounds of appeal.*
2. *There is a substantial difference between additional grounds of appeal vis-à-vis Additional evidence as contemplated under Rule 46A of the Income-tax Rules, 1962.*
3. *Readers should aptly validate and corroborate such appeal submissions while filing the appeal under the scheme. It is emphasised here that at times, Appellant and/or their advisors don't differentiate between "additional grounds" of appeal and "additional evidence" in the appellate proceedings. They are inclined to think that both the terms can be used interchangeably. Essential difference – "additional grounds" of appeal would mean grounds of appeal which could have been emphasised by the*

appellant at the first stage of assessment proceedings even though such document/statement and information was filed before the AO but was overlooked and it then came to notice while reviewing application for the filing of first appeal. Whereas “additional evidence” would require to justify the test of stipulations and/or conditions specified under Rule 46A of the Income-tax Rules 1962 and such additional evidence would draw support from the provisions of the Indian Evidence Act 1872 and its subsequent amendments.

4. *It is always better to file an appellant’s response as partial response and not as final response since then only, additional grounds can be raised or additional evidences can be filed or additional appellate submission can be filed. It should also be checked whether additional ground of appeal needs to be raised w.r.t. a point or whether an alternative set of argument can be advanced in written submission while dealing with a ground of appeal.*

Action by NFAC on filing additional grounds of appeal by appellant

- j. Step 10- on filing of additional grounds of appeal by appellant, NFAC will follow following procedures:
 - (i) the NFAC shall send the additional grounds of appeal to the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, for providing comments, if any and to the appeal unit;
 - (ii) the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, shall furnish their comments, within the date and time as may be allowed on the basis of application made in this behalf, to the NFAC;
 - (iii) where the comments are filed by the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, NFAC shall send such comments to the appeal unit, and where no such comments are filed, inform appeal unit; **(Comment:**

communication with AU is a must on receipt of comments, even on non-receipt of comments);

- (iv) The appeal unit, after taking into consideration the comments, if any, received from the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, -
1. If it is satisfied that the omission of additional grounds from the form of appeal was not wilful or unreasonable, admit such grounds; or
 2. In any other case, not admit the additional ground;
- for reasons recorded in writing and intimate the NFAC;

Communication by NFAC with Appellant on admission or rejection of additional grounds.

- k. Step 11- the NFAC shall intimate the admission or rejection of the additional ground, as the case may be, to the appellant;

Notes:

- (i) *The Scheme does not provide an option to file cross objections in a scenario where such additional grounds of appeal are rejected. It is desirable that the Scheme should provide such an opportunity to ensure and demonstrate fairness and transparency in the faceless appeal mechanism. Such an inbuilt recourse would benefit both the parties, by not being compelled to raise the additional grounds of appeal later through alternate remedies available, such as when filing before the Tribunal or resorting by way of writ petitions under the article 14 of the Constitution of India before the High Court's having jurisdiction over the matter.*
- (ii) *Protocol to be followed for further response on rejection of additional grounds, options available and communication/declaration related thereto can be provided in the scheme itself.*

Filing of additional Evidence by Appellant as per Rule 46A

- l. Step 12- the appellant may file additional evidence, other than evidence produced by him to the National Faceless Assessment Centre (earlier

known as National E-assessment Centre) or the Assessing Officer, as the case may be, in such form, as may be specified by NFAC, specifying therein as to how his case is covered by the exceptions specified in Rule 46A (1);

Note: To date, the NFAC has not specified any form for filing additional evidence, but it may be presumed that in the interim the Appellant can file the same through the designated portal on normal paper in the acceptable electronic format till such form or format is specified under the scheme.

It is always better to file an appellant's appellate response as partial response and not as final response since then only, additional grounds can be raised or additional evidences can be filed or additional appellate submission can be filed.

It is advisable to file justification alongwith application made under rule 46A requesting the NFAC to accept additional evidence. The appellant should also emphasis that non-acceptance of additional evidence will cause injustice to him.

Action by NFAC on filing of additional evidence by the Appellant

- m. Step 13- on filing of additional evidence by appellant, NFAC will follow following procedures: -
- (i) the NFAC shall send the additional evidence to the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, for furnishing report within the specified date and time on the admissibility of additional evidence under Rule 46A;
 - (ii) the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, shall furnish the report as referred above in clause (i) to NFAC, within the date and time specified or such extended date and time as may be allowed on the basis of application made in this behalf, by the NFAC;
 - (iii) where the report is filed by the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the

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Assessing Officer pursuant to (i) above, as the case may be, NFAC shall send such report to the appeal unit, and where no such report is furnished, inform appeal unit; **(Comment: communication with AU is a must on receipt of report as well as non-receipt of report);**

- (iv) The appeal unit, may after considering additional evidence and the report, if any, furnished by the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing and intimate NFAC;
- (v) the NFAC shall intimate the admission or rejection of the additional evidence as the case may be, to the appellant and the National Faceless Assessment

Centre (earlier known as National E-assessment Centre) or the Assessing Officer, as the case may be;

Admission of Additional Evidence

n. Step 14- where the additional evidence is admitted

- (i) the appeal unit shall, before taking such evidence into account in the appellate proceedings, prepare a notice to provide an opportunity to the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, within the date and time specified there into, examine such evidence or to cross-examine such witness, as may be produced by the appellant, or to produce any evidence or document, or any witness in rebuttal of the evidence or witness produced by the appellant, and furnish a report thereof, and send such notice to the NFAC;
- (ii) the NFAC shall serve the notice, as referred to in sub-clause (i), upon the National e-Assessment Centre or the Assessing Officer, as the case may be;
- (iii) National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, shall furnish the report, as referred to in sub-clause (i), to the NFAC, within the date and time specified, or such extended date

- and time as may be allowed on the basis of an application made in this behalf, by the NFAC;
- (iv) the NFAC shall send the report furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, to the appeal unit or where no such report is furnished, inform the appeal unit;

Notes:

Request by National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer to NFAC to seek any additional documents vis-à-vis appellate proceedings

- o. Step 15 –National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, may request the National Faceless Appeal Centre to direct the production of any document or evidence by the appellant, or the examination of any witness, as may be relevant to the appellate proceedings;

Comment: If we examine above, it appears that in view of this scheme, NaFAC or AO can't seek information directly from the appellant but it has to mandatorily route such request through NaFAC and/or AU only and who in turn will call for such information/documents and/or statements.

Action by NFAC on receipt of request from NaFAC and/or AO

- p. Step 16- where the request referred to in Step 15 is received-
- (i) the NFAC shall send such request to AU;
- (ii) the AU shall consider such request and may, if it deems fit, prepare a notice –
1. directing the appellant to produce such document or evidence, as it may specify;
 2. for examination of any other person, being a witness;
- and send such notice to the NFAC
- (iii) the NFAC shall serve the notice referred in sub-clause (ii) upon

the appellant or any other person being a witness, as the case may be;

- (iv) the appellant or any other person, as the case may be, shall file his response to the notice referred in sub-clause (iii), within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, to the NFAC;
- (v) where response is filed by the appellant or any other person, as the case may be, the NFAC shall send such response to the AU, or where no such response is filed, inform the AU.

AU intends to enhance an assessment, or enhance a penalty or reduce the amount of refund

- q. Step 17- Where AU intends to enhance an assessment or a penalty or reduce the amount of refund, -
 - (i) the appeal unit shall prepare a show-cause notice containing the reasons for such enhancement or reduction, as the case may be, and send such notice to the NFAC;
 - (ii) the NFAC shall serve the notice, as referred to in sub-clause (i), upon the appellant.
 - (iii) the appellant shall, within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, file his response to the NFAC;
 - (iv) where a response is filed by the appellant, the NFAC shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit.

Methodology, Formulation and passing of Appellate Orders

- r. Step 18 – The appeal unit shall, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case may be, or report furnished by the National e-Assessment Centre or the Assessing officer, as the case may be, and after considering any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised in the appeal, —

- (a) prepare in writing, a draft order in accordance with the provisions of section 251 of the Act; and
 - (b) send such order to the NFAC along with the details of the penalty proceedings, if any, to be initiated therein;
- s. Step 19 – the NFAC shall upon the receipt of the draft order, as referred to in clause (l) (a) of Step 18-
 - (i) Where the aggregate amount of tax, penalty and interest or fee, including surcharge and cess payable in respect of issues disputed in appeal, is more than a specified amount, as referred to in clause (i) of Step 10 & clause (m) of step 14, send the draft order to an AU, other than the AU which prepared such order, in any one RFAC through AAS, for conducting the review of the order;
 - (ii) in any other case, examine the draft order in accordance with risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to –
 - 1. Finalise the appeal as per draft order; or
 - 2. Send the draft order to an AU, other than the unit which prepared such order, in any one RFAC through AAS, for conducting review of such order;
- t. Step 20 – the AU shall review the draft order, referred to it by the NFAC, whereupon it may decide to –
 - (i) Concur with draft order and intimate the NFAC about such concurrence; or
 - (ii) Suggest such variations, as it may deem fit, to the draft order and send its suggestions to the NFAC;
- u. Step 21-the NFAC shall, upon receiving the concurrence of the AU, finalise the appeal as per draft order;
- v. Step 22- the NFAC shall, upon receiving suggestion for variation from the AU, assign the appeal to an AU, other than the AU which prepared or reviewed the draft order, in any one RFAC through AAS;
- w. Step 23-the AU, to whom the appeal is allocated as per step 21, shall, after considering the suggestions for variations –

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- (i) Where such suggestions intend to enhance an assessment or a penalty or reduce the amount of refund, follow the procedure laid down in clause (k)- step 17 and prepare a revised draft order as per procedure laid down in clause (l) – step 18; or
- (ii) In any other case, prepare a revised draft order as per procedure laid down in clause (l) in step 18;

and send the such order to the NFAC along with the details of penalty proceedings, if any, to be initiated therein;

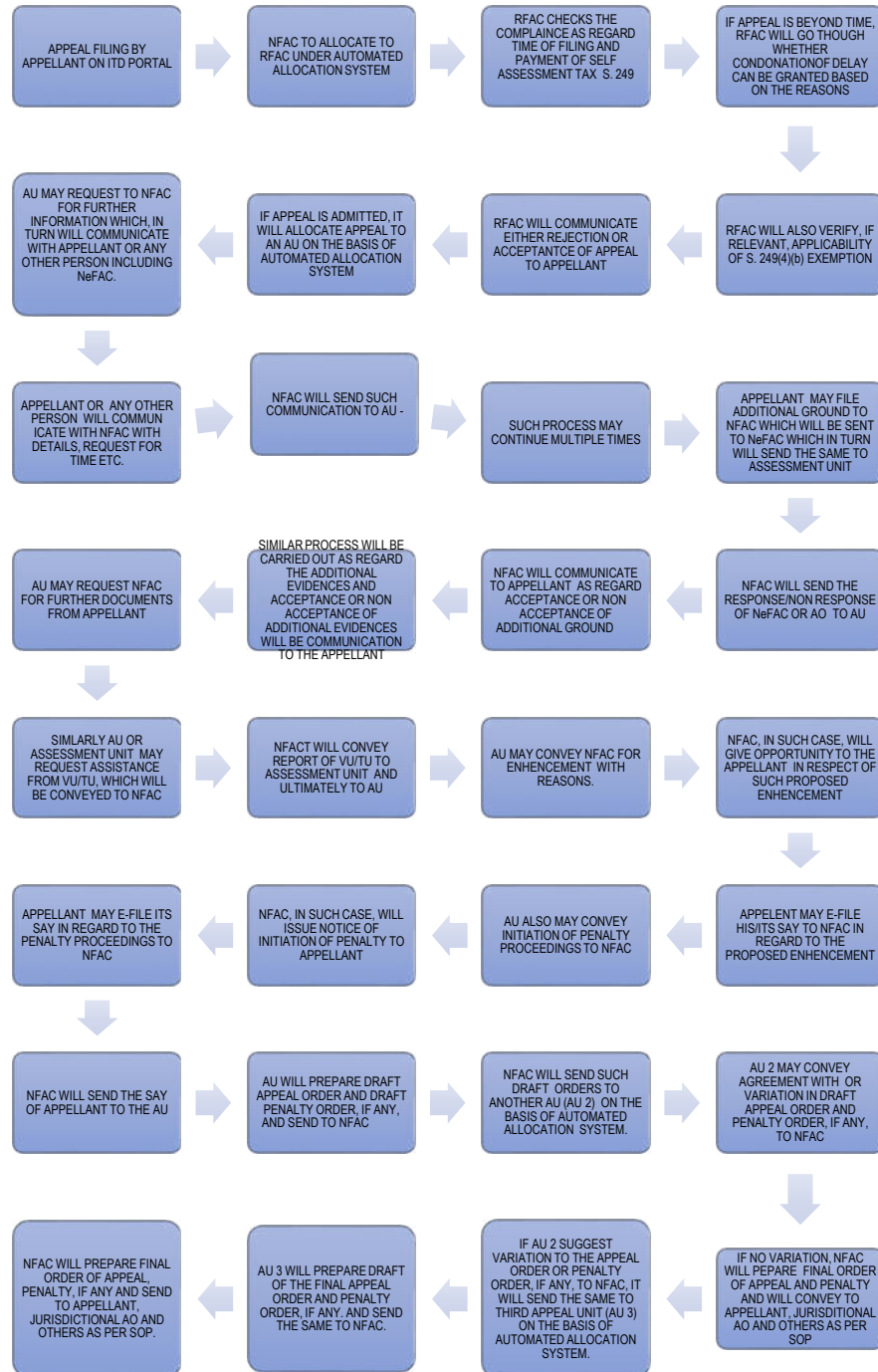
- x. Step 24- the NFAC shall after finalising the appeal as per item (1) of sub-clause (ii) of Step No 19 or Step 21 or upon receipt of revised draft order as per step 23, pass the appeal order and –

- (i) Communicate such order to the applicant;
- (ii) Communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per section 250(7) of the Act;
- (iii) Communicate such order to the National Faceless Assessment Centre (earlier known as National E-assessment Centre) or the assessing officer, as the case may be, for such action as may be required under the Act;
- (iv) Where initiation of penalty has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act;

It has been expressly stated vide non-Obstante clause that notwithstanding anything contained in above scheme, the Principal Chief Commissioner or the Principal Director General, in charge of National Faceless Appeal Centre, may at any stage of the appellate proceedings, if considered necessary, transfer, by an order, the appeal with the prior approval of the Board to such Commissioner (Appeals) as may be specified in the order.

Law on Faceless Appeal

APPEAL PROCESS FLOW CHART



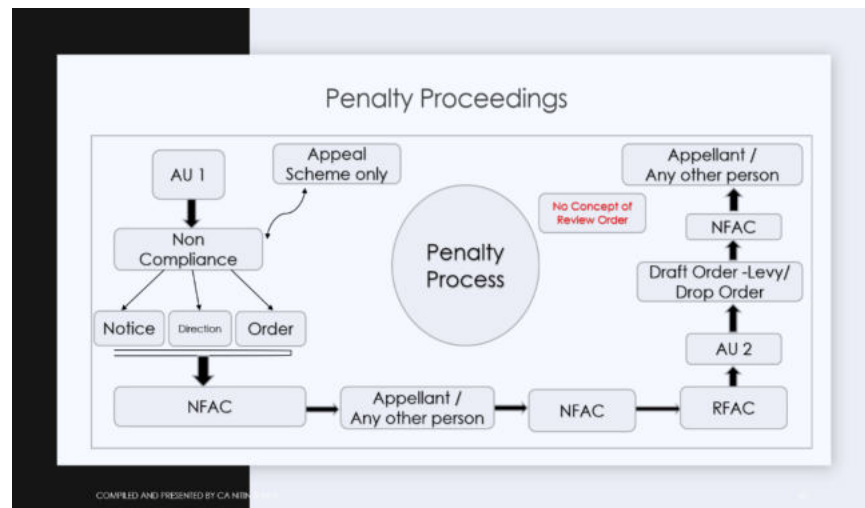
**Faceless Penalty proceedings– Chapter XXI of the Act –
Para 6 of Notification – Faceless Penalty scheme,2021
notified vide Notification No 02/2021 & 03/2021 dated
January 12,2021 – Section 274(2A) /Section 274 (2B)**

- (1) Appeal unit may, in the course of appeal proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the appellant or any other person, as the case may be, send recommendation for initiation of any penalty proceedings to the National Faceless Appeal Centre.
- (2) The National Faceless Appeal Centre shall, upon receipt of recommendation under sub-paragraph (1), serve a notice on the appellant or any other person, as the case may be, calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.
- (3) The appellant or any other person, as the case may be, shall file a response to the show-cause notice referred to in sub-paragraph (2) or in sub-clause(d) of clause(xxiv) of sub-paragraph (1)of paragraph (5),within the date and time specified in such notice, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre.
- (4) The National Faceless Appeal Centre shall assign the recommendation for initiation of penalty proceedings, as referred to in sub-paragraph (1),along with the response filed, if any, by the appellant or any other person, as the case may be, to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.
- (5) The appeal unit shall, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case maybe, —
 - a. prepare a draft order and send a copy of such order to the National Faceless Appeal Centre; or
 - b. drop the penalty after recording reasons, under intimation to the National Faceless Appeal Centre.
- (6) where the appeal unit has dropped the penalty, the National Faceless Appeal Centre shall send an intimation thereof, or where the appeal unit

sends a draft order, the National Faceless Appeal Centre shall pass the order for imposition of penalty as per such draft, and communicate such order, to,—

- (a) the appellant or any other person, as the case may be; and
- (b) the National-Assessment Centre or the Assessing Officer for such action as may be required under the Act.

To present Faceless Penalty provisions graphically



14. Rectification Proceedings. – Para 7 of the Notification

(1) With a view to rectify any mistake apparent from the record, the National Faceless Appeal Centre may amend any order passed by it, by an order to be passed in writing.

(2) Subject to the other provisions of this Scheme, an application for rectification of mistake referred to in sub- paragraph (1) may be filed with the National Faceless Appeal Centre by the, —

- (a) appellant or any other person, as the case may be; or
- (b) appeal unit preparing or reviewing or revising the draft order; or
- (c) the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be.

(3) Where any application referred to in sub-paragraph (2) is received by the National Faceless Appeal Centre, it shall assign such application to a

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specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.

(4) The appeal unit shall examine the application and prepare a notice for granting an opportunity -

- (a) to the appellant or any other person, as the case may be, where the application has been filed by the National-Assessment Centre or the Assessing Officer, as the case may be; or
- (b) to the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, where the application has been filed by the appellant or any other person, as the case may be; or
- (c) to the appellant or any other person, as the case may be, and the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, where the application has been filed by an appeal unit referred to in clause(b) of sub-paragraph (2);

and send the notice to the National Faceless Appeal centre.

(5) The National Faceless Appeal Centre shall serve the notice referred to in sub-paragraph (4) upon the appellant or any other person, as the case may be, or the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, calling upon him to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act.

(6) The appellant or any other person, as the case may be, or the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, shall file a response to the notice, as referred to in sub-paragraph (5), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre.

(7) Where a response, as referred to in sub-paragraph (6), is filed by the appellant or any other person, as the case may be, or the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, the National Faceless Appeal Centre shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit.

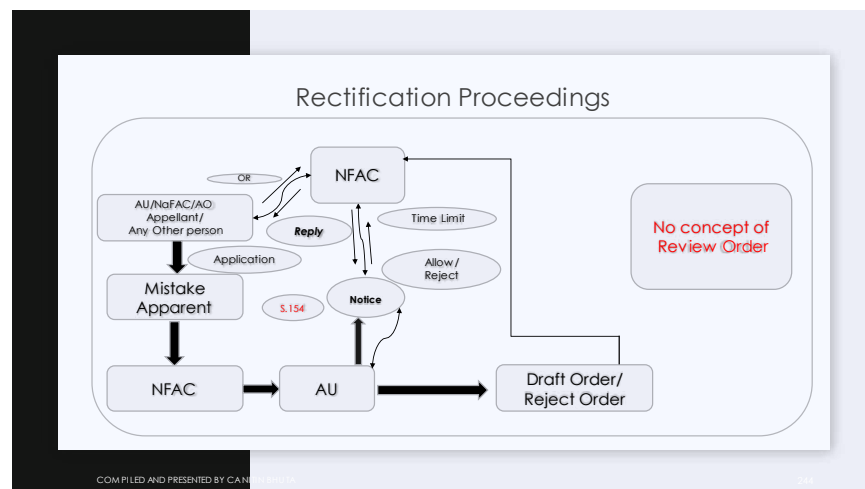
(8) The appeal unit shall, after taking into consideration the application and response, if any, filed by the appellant or any other person, as the case may be, or the National Faceless Assessment Centre (earlier known as National e-Assessment Centre) or the Assessing Officer, as the case may be, prepare a draft order, —

- (a) for rectification of mistake; or
 - (b) for rejection of application for rectification, citing reasons thereof;
- and send the order to the National Faceless Appeal Centre.

(9) The National Faceless Appeal Centre shall upon receipt of draft order, as referred to in sub-paragraph (8), pass an order as per such draft and communicate such order, —

- (a) to the appellant or any other person, as the case may be; and
- (b) to the National-Assessment Centre or the Assessing Officer, as the case may be, for such action as maybe required under the Act.

To present the Faceless Rectification proceedings graphically:



15. Appellate Proceedings.— Para 8 of the Notifications

- (1) An appeal against an order passed by the National Faceless Appeal Centre under this Scheme shall lie before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional Assessing Officer.
- (2) Subject to the provisions of paragraph (3) of the scheme as per

notification and Para 12 of this article, where any order passed by the National Faceless Appeal Centre or Commissioner (Appeals) is set-aside and remanded back to the National Faceless Appeal Centre or Commissioner (Appeals) by the Income Tax Appellate Tribunal or High Court or Supreme Court, the National Faceless Appeal Centre shall pass the order in accordance with the provisions of this Scheme.

Electronic Exchange and Means of Communication

16. Exchange of communication exclusively by electronic mode. — Para 9 of Notifications

For the purposes of this Scheme, —

- (a) all communications between the National Faceless Appeal Centre and the appellant, or his authorised representative, shall be exchanged exclusively by electronic mode; and
- (b) all internal communications between the National Faceless Appeal Centre, the Regional Faceless Appeal Centres, the National-Assessment Centre, the Assessing Officer and the appeal units shall be exchanged exclusively by electronic mode.

17. Authentication of electronic record. — Para 10 of Notifications

For the purposes of this Scheme, an electronic record shall be authenticated by the—

- (i) National Faceless Appeal Centre by affixing its digital signature;
- (ii) the appellant or any other person, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case by affixing his digital signature or under electronic verification code;

Explanation. — For the purpose of this paragraph, “electronic verification code” shall have the same meaning as referred to in rule 12 of the Rules.

18. Delivery of electronic record. — Para 11 of Notifications

- (1) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the appellant, by way of—
 - (a) placing an authenticated copy thereof in the appellant’s registered account; or

- (b) sending an authenticated copy thereof to the registered email address of the appellant or his authorised representative; or
 - (c) uploading an authenticated copy on the appellant's Mobile App; and followed by a real time alert.
- (2) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.
- (3) The appellant shall file his response to any notice or order or any other electronic communication, under this Scheme, through his registered account, and once an acknowledgement is sent by the National Faceless Appeal Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.
- (4) The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000).

19. No personal appearance in the Centres or Units. — Para 12 of Notification

- (1) A person shall not be required to appear either personally or through authorized representative in connection with any proceedings under this Scheme before the income-tax authority at the National Faceless Appeal Centre or Regional Faceless Appeal Centre or appeal unit set up under this Scheme.
- (2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submission to represent his case before the appeal unit under this Scheme.
- (3) The Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, under which the concerned appeal unit is set up, may approve the request for personal hearing referred to in sub-paragraph (2), if he is of the opinion that the request is covered by the circumstances referred to in clause (xi) of paragraph 13.
- (4) Where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, such hearing shall be conducted exclusively through

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video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board.

(5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) in any appeal unit under this Scheme, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board.

(6) The Board shall establish suitable facilities for videoconferencing or videotelephony including telecommunication application software which supports video conferencing or videotelephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to videoconferencing or videotelephony at his end.

Notes:-

1. Virtual hearing: This may not be in accordance with the settled doctrine of *Audi Alteram Partem* in the traditional sense, which inherently requires personal/face to face hearing for the simple reason that written words have their own limitations and even a thesis may not fully convey to the reader understand what the author wants to convey.
2. To what extent these proceedings are deemed to be judicial proceedings within the meaning of sections 193, 196 & 228 of Indian Penal Code, as the notification only prescribes the mechanism and the modalities, the emphasis is more on the procedure prescribed. Similar situations were examined by the High Court in *J.S. Parker v. V.B. Palekar*, 94 ITR 616 held that what was meant by saying that the Evidence Act did not apply to proceedings under the Income Tax Act was that the rigour of the rules of evidence contained in the Evidence Act, was not applicable to income tax proceedings. So, applying such judicial precedent and ratio decidendi, readers can validate that even though the proceedings under the Income Tax Act, 1961 in the course of faceless assessment and faceless appeal are no doubt quasi-judicial in nature, and to that extent strictly speaking the Code of Civil

Procedure, the Code of Criminal Procedure and Law relating to Evidence as applicable in Courts of Law in judicial proceedings may not strictly apply.

3. As protocol guidelines & SOPs are not yet formulated and therefore not made available in public domain in respect of the scheme, the question arises as to how satisfaction would be recorded under the schema u/s 14A, 68 to 69C etc. for any appeal matter under consideration? Will it be recorded by Assessment Unit or Verification Unit or Review Unit or Technical Unit or RFAC or NaFAC?
4. Other comments relevant for Para 18 are covered in Para -12 Appeal Procedures too – Step 16 & 17 (Supra)

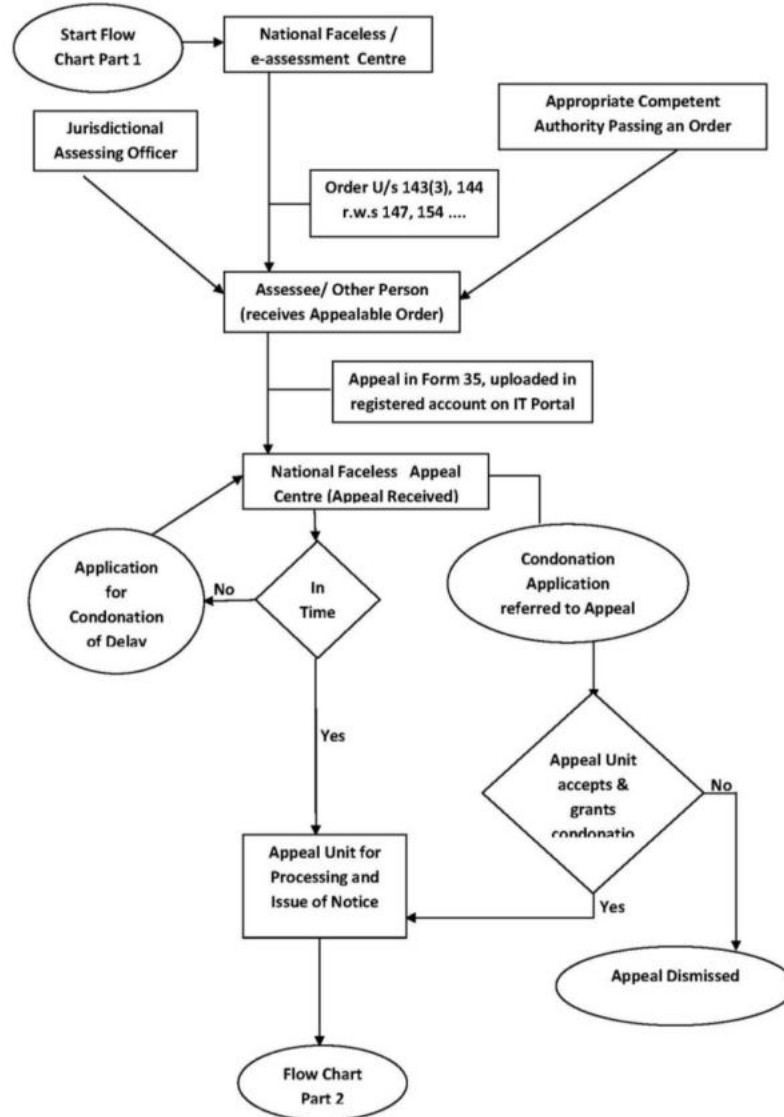
20. Power to specify format, mode, procedure and processes. — Para 13 of Notification

The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Appeal Centre shall, with the prior approval of Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Appeal Centre, Regional Faceless Appeal Centres and the appeal unit set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:

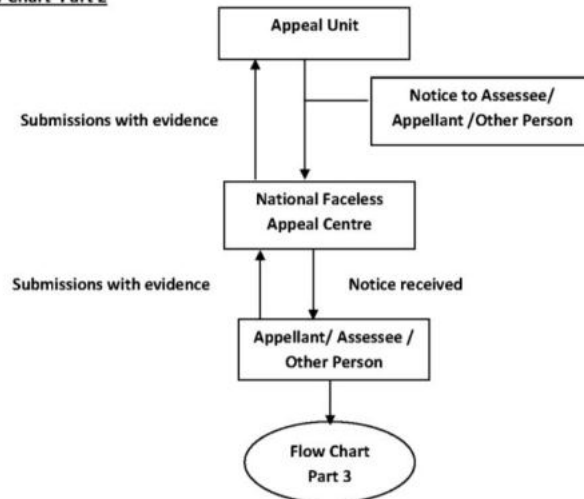
- (i) service of the notice, order or any other communication;
- (ii) receipt of any information or documents from the person in response to the notice, order or any other communication;
- (iii) issue of acknowledgment of the response furnished by the person;
- (iv) provision of “e-appeal” facility including login account facility, tracking status of appeal, display of relevant details, and facility of download;
- (v) accessing, verification and authentication of information and response including documents submitted during the appellate proceedings;
- (vi) receipt, storage and retrieval of information or documents in a centralised manner;
- (vii) general administration and grievance redressal mechanism in the respective Centres and units; (viii) filing of additional ground of appeal;
- (ix) filing of additional evidence;

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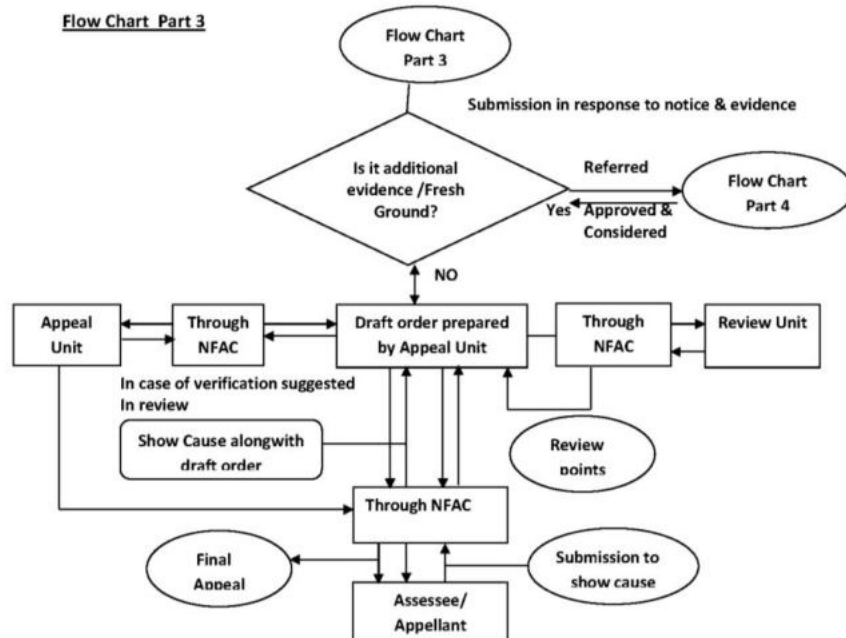
- (x) specified amount referred to in sub-clause (a) of clause (xix) of sub-paragraph (1) of paragraph 5;
- (xi) circumstances in which personal hearing referred to in sub-paragraph (3) of paragraph 12 shall be approved.

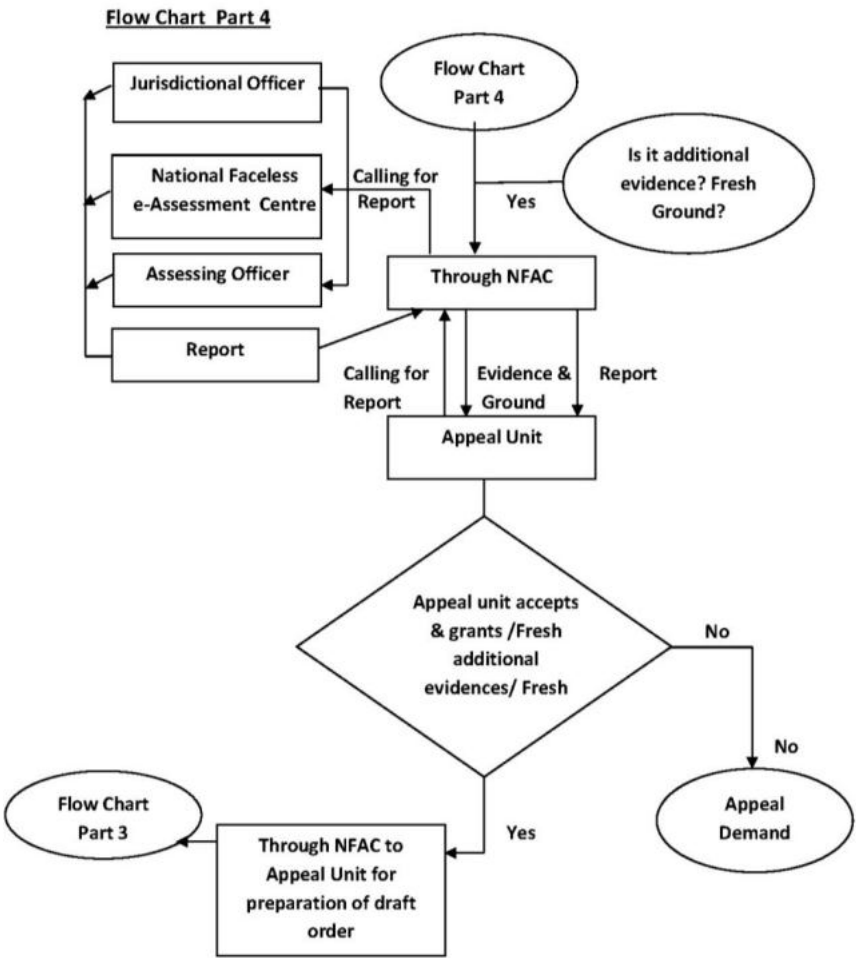


Flow Chart Part 2



Flow Chart Part 3





Chapter 4

Who can file an Appeal?

4.1 Who can file an appeal?

(a) Appeal:

The right to appeal is a statutory remedy/right given to every assessee under the Income-tax Act, 1961 whereby the assessee aggrieved by an (appealable) order passed against him/her by a lower authority can approach a higher jurisdictional authority for appropriate relief. This is not an inherent right but only arises if provided by the Statute. The provisions of the Income-tax Act, 1961 that deal with appeals and revisions are covered in sections 246 to 264 of the Income-tax Act, 1961.

Generally, for all orders passed by assessing officers/ National faceless Centre/ Authority, the first appeal lies with the Commissioner (Appeals) having jurisdiction. Now it lies with the National Faceless Appeal Authority/Centre.

(b) Revision Application:

One exception being where an aggrieved assessee seeks remedy by approaching the range jurisdictional Commissioner under section 264 seeking revision of an order prejudicial to the said assessee. It is a revision application and not an appeal.

(c) Rectification Application:

Similarly in certain cases where there is a prima facie mistake/error in the order which the aggrieved assessee feels is apparent from the record, he/she may approach the assessing officer, National e-Assessment/Faceless Appeal Centre as applicable for rectification of the said order under section 154 of the Income-tax Act, 1961.

(d) First Appeal:

Thus, an appeal against an order of the lower jurisdictional authority can be filed with a higher jurisdictional authority e.g., order of assessing officer/National Faceless Assessment Centre, can be appealed against with the National Faceless Appeal Centre by an aggrieved assessee – who becomes the appellant, and this becomes a first appeal.

(e) First Appeal to ITAT:

In a situation where the initial order is passed by a higher authority say a Commissioner (e.g. in case of grant of registration u/s 12AA of the Act) the appeal against the same will lie directly before the Honourable Income Tax Appellate Tribunal by way of first appeal.

(f) Who can sign the appeal:

Based on who the assessee/appellant is, namely, individual or HUF, or AOP/BOI/or Firm or Company the person authorized to file the Income Tax return under section 140 of the Income-tax Act, 1961 as applicable to the assessee/appellant can sign the appeal.

The same is to be signed by affixing digital signature of the signatory where it is so required for authenticating the return of Income, or by using EVC – Electronic Verification Code as the case may be for the respective assessee/appellant/signatory.

4.2. Why appeal should be filed?

- (a) It is one of the fundamental principles in tax cases that in the normal course each assessment year is separate and independent of the other. Hence the initial criteria for filing an appeal or otherwise should be on the basis of the issues relevant for the particular assessment year in question.
- (b) Appeal is generally filed when
- (1) a deduction claimed has been disallowed or reduced
 - (2) an exemption claimed has not been granted or reduced
 - (3) an addition has been made to the computation of income
 - (4) there is change in the characterization of income prejudicial to the interest of assessee
 - (5) the assessee is made liable to tax where he/she denies his/her liability to be taxed as such
 - (6) The assessee objects to the income assessed or loss computed (including claim for c/f and set off) under an order under section 143(3) or 144
 - (7) An order under section 147 read with section 143(3) /144 or section 150 or section 153A

Who can file an Appeal?

- (8) Denial of liability to tax in respect of TDS u/s 195, which is borne by the Deductor (s. 248)
 - (9) An exhaustive list of appealable orders, that is, orders in respect of which appeal can be filed (S. 246A and S. 248) under the Income Tax Act, 1961 has been given in the FAQ s
 - (10) Although plain reading of S. 144C gives an impression that any order of assessment includes Transfer Pricing Adjustment is either to be taken to DRP or to be accepted, CBDT has clarified that DRP proceedings are optional and one can also opt for an appeal before CIT-A.
- (c) Thus, an appeal should be filed where the assessment departs from the return filed by the assessee and results in either a higher income being assessed or a lower loss being determined or a claim rejected etc. resulting in reduction of carried forward loss etc.

Where no return has been originally filed, appeal should be filed where the assessee is aggrieved by the assessment order, due to determination of a certain amount of income or loss for the year.

The department has set up certain threshold limits upon itself for filing appeal (since if the tax effect is below the same, appeal is not filed by the Department. It does not however mean that the point is conceded in favour of the assessee.)

The assessee can work this out based on the tax impact and the cost and effort of filing and pursuing an appeal as a tradeoff.

- (d) Impact on other years-

However, even though each assessment year is independent, sometimes to keep an issue/claim for subsequent year alive/or not to affect a claim already allowed earlier, it may be advisable to go on for filing/preferring an appeal even if the tax effect in the year in question may not be significantly high.

4.3. (a) Time limit for filing of appeal

Under the faceless appeal scheme 2020, time limit of filing of appeal continues to be governed by section 249(2) in the case of first appeal.

The appeal has to be filed / uploaded and electronically signed using digital

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signature/EVC code, complete in all respects and uploaded within a period of 30 days of

- (i) Date of service of notice of demand in case of an assessment or penalty order,
- (ii) Date of payment of tax where appeal is vide Section 248 or
- (iii) Date on which intimation of the order sought to be appealed against is served in any other case.

(b) The exclusions from the time limit are as under:

- (i) In case of application made u/s 270AA (1) for condonation of penalty, the period from date of such application to the date it is rejected by the Assessing officer.
- (C)** Further exclusions of days from time limit for filing the appeal are as per section 268 of Income-tax Act 1961. (Period for obtaining copy of order if not furnished with notice of demand is excluded.)

4.4. Condonation of delay in filing appeals

- a) If there is a delay, beyond the due date in filing an appeal; application for condonation of delay has to be filed/uploaded along with the appeal in form 35 which is uploaded electronically from the registered account of the aggrieved assessee/appellant.
- b) Such application should clearly mention relevant date of service of notice/order etc.(S), the due date which will be (S+30), the actual date of filing and a chronological explanation day/ week/ month wise of the reasons for the delay in filing the appeal along with supporting evidence for the same. In case an order is received through speed post or registered post, its actual date of receipt should be verified on postal department tracking facility.
- c) The cause/reasons for such delay should be a sufficient cause that prevented the assessee/ appellant from filing the appeal including circumstances beyond control or inadvertent lapse which is not intentional in nature. There should be no gaps in the chronological dates of delay in terms of explanation for the application to be considered favorably for condonation of delay.
- d) Apart from such evidence for cause of delay as may be available e.g.,

Who can file an Appeal?

explanation of a natural calamity, medical certificate of severe illness involving complete bed rest of the appellant, newspaper reports etc. assessee/appellant shall do well to file an affidavit stating and reiterating complete facts and circumstances that led to the delay and how it was a sufficient and reasonable cause beyond control, which may be executed on oath or solemnly affirmed before appropriate authority.

- e) The National Faceless Appeal Centre will refer same through regional Faceless Appeal Centre to appeal unit which will adjudicate on the same and either
 - (i) Condone the delay and admit the appeal for being heard
 - (ii) Reject the condonation application and not accept/entertain the appeal and dismiss it for fatal delay.
- f) Thus, in every case when there is a delay and assessee intends to file appeal, a proper application for condonation of delay as above, may be prepared and uploaded and filed before the National Faceless Appeal Centre along with the appeal memo itself.

Chapter 5

Notice Serving - Methodology in the Digital Communication Framework

5.1. Modern mode of delivery:

- a) Under Faceless Appeal Scheme 2020, as in faceless assessment scheme rolled out before that, the emphasis is on a purely electronic mode of communication with complete avoidance of physical contact/presence/reaching out or communication; in keeping with the faceless paradigm and electronic mode of communication.
- b) Modern mode of delivery –

Clauses 9,10 and 11 of the Faceless Appeal Scheme 2020 notified vide the Notification No.76/2020, dated 25-09-2020 (S.O.3296 (E)) gives the methodology for communication and service of notice-

Clause 9: specifies that all exchange of communication between National Faceless Assessment Centre (NFAC) and the appellant, or authorized representative shall be exclusively by electronic mode.

Similarly, all internal communication between National and Regional Faceless Appeal Centre as well as appeal units, National e-Assessment Centre & Assessing officer shall also be exclusively by electronic mode.

Clause 10: gives the manner of authentication of the electronic record/communication which is authenticated by NFAC by using its digital signature.

For the appellant/authorized representative or any other person, it is authenticated by using digital signature or Electronic Verification Code (EVC) as applicable.
- c) Clause 11 of the scheme covers delivery of the notice/electronic record. In case of assessee/appellant any one of the three modes. Viz, placing an authenticated (digitally signed) copy in appellants registered account on IT Portal, sending such copy on registered email address (Refer profile & PAN details on IT Portal) or uploading such copy on mobile App of the appellant followed by real time alert (SMS), in all these cases is the specified mode.

Notice Serving - Methodology in the Digital Communication Framework

- d) In the case of an address of notice/communication being other than assessee/appellant, authenticated copy as above shall be sent to the registered email address of such person.
- e) The appellant/ authorized representative filing in his behalf shall file response to notice/order communication only through this registered account (not by any other means) and once acknowledgement is received from NFAC it shall be deemed to be authenticated.

Place & time of dispatch and receipt shall be as per section 13 of Information Technology Act, 2000 (21 of 2000).

5.2. Section 282 traditional mode whether replaced:

Section 282 provides *inter alia* service of notice/communication on assessee by:

- a) Post or courier service approved by Board
- b) As provided under CPC for issue of summons (notice server, pasting on door, etc.)
- c) in the form of electronic record
- d) by any other means of transmission of documents.

Thus, although other modes of communication are not replaced and assessee/appellant may and do often even now receive notices by post/courier even for Faceless proceeding, as envisaged in the scheme, down the line it will be restricted to service by electronic mode on email address as provided in Income Tax Return, profile or as communicated by assessee or in case of Company as per website of MCA etc.

Thus, down the line and as per objects of Faceless Appeal Scheme 2020, preferred mode will be electronic mode.

5.3. The assessee appellant and authorized representative is well advised to take care and precautions as follows:

- 1) Ensure that the email address and mobile number of assessee in his/her registered account on IT portal is correct. The same is in Sync with that in PAN record as well as Income Tax Return and faceless appeal submitted online.

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- 2) In case of different email address and phone number is required, same to be specifically communicated to assessing officer as envisaged in section 282 of the Act.
- 3) Advise the assessee to regularly check registered account in e-filing portal of assessee, his registered email as well as his mobile app / mobile for real time SMS alert.
- 4) If authorized representative has been entrusted the same, he/she should regularly check registered account of taxpayer /assessee for pending compliances and notices.
- 5) The assessee/appellant /AR should note that all responses to notices and communications in connection with / under Faceless Scheme are to be on and through registered account of assessee on e-filing portal. Email or any other mode of communication are likely to be ignored and not considered as valid/sufficient compliance.
- 6) In the assessee's given email account, the email address of NFAC should be white listed so that mails regarding notices etc. do not go into spam. Similarly email inbox should not be full/near full that communication may bounce.
- 7) It is advisable to regularly view and check registered account of assessee on IT portal for communication when any proceedings are pending.
- 8) At times, secondary contact details about mobile no. and e-mail id given in an assessee' account are those of his Authorised Representative. In such a situation, the AR should also be vigilant about receipt of notices via SMS on his cel no and his personal mail id. Any negligence on part of AR may create trouble for the assessee even though his contact details are enlisted as secondary ones.

5.4. Others:

Thus especially in faceless mode, as compliance dates are generally strictly followed with the window for uploading response being deactivated post the specified due date for compliance, and given the electronic mode of all communications, assessee and authorized representative will do well in keeping digital signature valid, registered and handy, have EVS system enabled, ensure correct email/phone in profile and generally be vigilant and ask assessee to be vigilant for notices/communications.

Chapter 6

Checklist For Appeal Before CIT-A (before NFAC under the Scheme)

(A) Suggested steps before filing the appeal.

- (1) Proposal including specification of things to be done/provided by the assessee and scope of the assignment be prepared and the approval of the appellant be obtained.
- (2) The Assessment Order be vetted and prepare Statement of reconciliation of Income and Tax liability as compared to the Return filed by the appellant including any additional claim raised by the assessee in the course of the assessment.
- (3) The assessee be educated as regard the immunity from penalty provided u/s 270AA and get his confirmation as to whether he wishes to avail the immunity benefit or whether wishes to go ahead with appellate proceedings. If one is not sure about the outcome of immunity but still would like to try out, that may be done as the time for filing appeal before CIT(A) gets extended for the time taken in that process.
- (4) The time limit of filing the appeal is 30 days from the date of receipt (or E-receipt, as the case may be). For computing the period of 30 days, in case the assessee applies for immunity from penalty u/s 270AA and the application is rejected, the time from the date of application till the date of rejection of application is to be excluded.
- (5) The identification of the issues to be appealed against together with the category of the issues divided in strong and weak from the point of likely outcome in the opinion of the counsel.
- (6) Assessment order needs to be vetted as to whether there is any rectification application is to be made u/s 154 of the Act w.r.t. a mistake apparent from record. It may be noted that an apparent mistake of law is also a mistake apparent from record. In such a situation, it is always better to file an appeal where time limit of filing is 30 days and also to file rectification application u/s 154 simultaneously where time limit is 4 years.
- (7) Obtain soft copies of all the notices and questionnaire received by an

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assessee during the course of scrutiny. Also obtain copy of all submissions which the assessee had filed and which are relevant for the issues to be appealed against and should be revisited, more so if the counsel for appellate process is different than the one who handled assessment or penalty proceedings.

(8) Carry out the process of identification and suggestion as regard additional evidences desired for arguments in support of the issues appealed against. Obtain copies of Additional evidences which are readily available and advise client to arrange/obtain balance of Additional evidences as soon as possible but before the hearing process starts.

(9) Carry out Primary Research as regard judicial decisions which can support the issues appealed against and make a note of the same. (Search can continue till the appeal is heard)

(10) Carry out drafting process regarding Grounds of Appeal

(11) Prepare Statement of Facts /Synopsis of Facts relevant for Ground of Appeal

(12) List out the evidences, which are to be submitted along with filing of the appeal, separating Additional evidences and other.

(13) Final list of additional evidences required for prosecution of appeal separating out those which are readily available and those which need to be obtained.

(14) Drafting of Statement of Facts with the cross referencing of evidence and copies of submissions which are being attached along with the appeal.

(15) Drafting the prayer for admission of additional evidences together with why and under which sub-rule of Rule 46A (or if the reliance is placed on any judicial pronouncement, the reference thereof), the same should be admitted. (This process should be followed at each time of submission of additional evidence).

(16) In case, there is delay in filing appeal list out the reasons for delay. On the basis of the reasons for delay, appropriate petition be prepared for condonation of delay. A note on the reasons for delay should be approved by the assessee.

(17) Although, the petition of condonation of delay is now part of appeal filing schema and one can argue that the verification of appeal by assessee takes

Checklist For Appeal Before CIT-A (before NFAC under the Scheme)

care of affirmation, it is still advisable to support the reasons by way of an affidavit and a copy thereof be filed along with the appeal. It should be checked whether an assessee is in appeal before High Court or Supreme Court or whether Revenue has approached the Supreme Court on similar issue(s). Special provisions u/s 158A and u/s 158AA should be kept in mind where an assessee / revenue claims that identical question of law is pending before High Court of Supreme Court.

(18) Get appropriate approval from the assessee for following and it may be kept on record:

(i) Grounds of Appeal

(ii) Statement of Facts

(19) Ensure that either the digital signature of the person authorized to sign appeal is readily available and still valid for use or such person is educated for e-verification of the appeal. The DSC should also be re-registered on new website of tax department.

(20) Simultaneously, if the assessee wishes, ensure preparation and filing for stay of demand and the prayer for keeping penalty proceedings in abeyance. As per CBDT guidelines, balance demand will normally be stayed if the appellant pays 20% of the demand. This also may be considered while praying for stay of demand.

(21) Online Form 35 also requires details of all pending appeals before CIT (NFAC under the scheme and therefore the details should be ready. If involves similar issues under appeal in different years,

(22) Ensure the payment of appeal fees. The following table gives the fees payable in respect of appeal.

Appeals to CIT(A)/NFAC under the scheme	Amount of fees payable
Assessed Income Not exceeding Rs. 1,00,000	Rs. 250
Assessed Income exceeding Rs. 1,00,000/- but not exceeding Rs. 2,00,000	Rs. 500
Assessed Income exceeding Rs. 2,00,000	Rs. 1,000
When the subject matter of the appeal is not covered by the aforesaid cases	Rs. 250

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In case of loss returns, many take position that the income assessed is less than Rs. 1,00,000/- and fees should be Rs. 250/- only. However, it will be safer to consider assessee's loss amount at par with Income range specified aforesaid for paying fees.

(23) At present it takes about 48 hrs. to reflect duly paid challans in the systems. The appeal schema asks for the details of challan and if not reflected in system, it gives warning of challan mis-match. It is advisable, wherever possible, to pay the appeal fees at least 48 Hours before. Of course, one can continue filing the appeal ignoring the warning if fees have actually been paid.

(24) If any of the documents or evidence is in a language other than English or Hindi, a certified translation thereof in English should also be prepared. Hindi documents, technically, do not require translation but considering dynamic jurisdiction, it is advisable to translate Hindi Documents also. Otherwise, file may move between AU and TU for this purpose.

(25) Although CBDT has clarified that in case of TP adjustments, the DRP Reference is optional and one can opt for, after passing the final order of assessment, for appeal before CIT-A, it is advisable that one intimates the Assessing Officer as regard appellant opting for appeal before CIT-A within the time limit of 30 days of receipt of the assessment order.

(26) At this stage, convert all the files in PDF or in ZIP Folder

(27) The following data limits be kept in mind while making the preparations (as the system stands on the date of this publication).

Particulars	Limit	Remark
Statement of facts	1000 words	It can be filed as Annexure, if larger in size 1.
Each Ground of Appeal	100 words	It can be filed as Annexure, if larger in size 2.
Prayer for condonation of delay	500 Words	It can be filed as Annexure, if larger in size

Checklist For Appeal Before CIT-A (before NFAC under the Scheme)

The following also should be noted:

- a) Individual attachment size limit – 5 mb
- b) Total data limit is 50mb
- c) All the files should be in PDF form or Zip Form

B) Suggested guidance at the timing of filing the appeal.

- (1) Form 35 is to be filled Online and many data will be automatically captured from the system itself.
- (2) The entry into the system requires login ID and Password, which should be handy with the counsel.
- (3) Address and Mobile No. can be changed in the prefilled data. Other prefilled data can be changed only through profile in the PAN Data.
- (4) Many of the data filling in the form is with the help of user-friendly Drop-down Boxes (auto-populated) and the counsel should select correct alternative from such box. This includes assessment year also.
- (5) One of the dropdown boxes requires Document Identification Number or DIN of Order to be appealed against or as an alternate choice of no DIN, if you choose DIN, it will show the list of specific order with DIN of appealable orders. One need to select specific order.
- (6) One can fill statement of facts in the form itself. However, it has the limit of 1000 words. If the space is insufficient, it is advised to attach by way of Annexure and in the place provided in Form 35, write “**Attached as Annexure ____**”.
- (7) Similarly, one can fill up Grounds of Appeal. It may be noted that each ground should not exceed 100 words. In case any of the Ground is more in length, better reword or split it up appropriately. Alternatively, can be attached as Annexure and write here “**Attached as Annexure ____**”. **Form 35 requires section number to which ground of appeal pertains and brief heading.**
- (8) If the Appeal is delayed, there is a box available in the form for prayer for condonation. It has a limit of 500 words and if necessary, it can be attached by way of attachment and advised to write “**Attached as Annexure ____**”. Although, Rules do not specifically state, it is advised that reasons for delay be filed by way of an affidavit also and the copy of the affidavit be attached with Form 35.

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- (9) Compulsory attachments include PDF copy of Order Appealed against (assessment order or penalty order as the case may be) and relevant Notice of Demand. In case the reassessment order appealed against is passed u/s 143(3) r.w.s. 147 of the Act, scanned copy of the original assessment order passed u/s 143(3) of the Act also needs to be uploaded.
- (10) If it is a penalty arising out of an assessment order, one should attach relevant assessment order also in addition to order of penalty appealed against. It should be noted that separate appeals should needs to be filed against each kind of penalty.
- (11) If additional evidences are being attached along with Form 35, it should be accompanied by the prayer to admit (with Reference to Rule 46A) and should be by way of separate attachment. In case, all or some of the additional evidences are not ready, it is advisable to write in the space specified for it **“Additional evidences will be submitted in the course of Hearing”**.
- (12) All other attachment and enclosures need to be attached (in either PDF or Zip file version).
- (13) The skill of naming the files is very important for easy cross referencing in future. Further one can get all the attachments serially numbered either by way of computerized tool or first taking physical copy of the entire set and manually numbered and scanned again. Continuous Page serial numbers help great way in further submissions during the course of proceedings.
- (14) Finally, there is a box provided for listing out and attach all attachments and annexures which should be properly filled in and digitally attach by browsing the computer.
- (15) It is advisable to take a preview copy of the Form 35 before signing. It is also advisable to take separate approval of Draft Form 35 from the assessee.
- (16) After verifying the print, it should be digitally signed if the Return of Income was required to be digitally signed under the Rules. In other case, it may be signed by e-verification.
- (17) A copy of Letter of Authority or Power of Attorney should also be uploaded. If, however, specific counsel has not been identified, his letter of Authority or Power of Attorney may be uploaded in the course of hearing. There is separate process for uploading the authority on the e- portal. This may be carried out during the appeal filing process or at any time afterword.

Checklist For Appeal Before CIT-A (before NFAC under the Scheme)

The process is as under:

- (a) The AR will have to create his account as AR with login and password steps (which is generally created by all practicing CA – called as “ARCA <Membership no> ” login).
- (b) First step is to be taken by the assessee/ appellant through his login. One will find ‘add Authorized Representative’ tab against each of the pending proceedings. The assessee/appellant should add the name of the Authorized Representative in process relating to specific appeal.
- (c) The AR/CA will have to accept the appointment as AR supported by copy of the Power of Attorney /Vakalatnama/ authority letter.

C) Suggested guidance in the course of hearing

- (1) Upload a copy of Letter of Authority or Power of Attorney if not filed earlier. The process is as described para no. 17 in B section.
- (2) Keep the synopsis ready immediately after the appeal is filed and time to time update on the basis of Research (of Judicial Pronouncements) as well as based on additional evidences received subsequent to the filing of Appeal.
- (3) In case, it is found that Additional Ground is necessary to be filed, such action may be taken by following same process as in preparing the original grounds – drafting, approval of assessee etc. The Scheme provides for a special form (s) to be prescribed for additional Ground. However, till this publication, no special Form is prescribed.
- (4) While filing additional ground, it is necessary to submit a prayer for admission of additional ground. It is also advisable to file supporting papers for such ground and if such papers happened to be “**Additional evidences**”, Prayer for admitting such evidences with reference to Rule 46A and/or with the support from judicial pronouncements.
- (5) On receipt of Notice of hearing, one should study whether there is any specific requirement in such notice, the same should be complied with.
- (6) Considering all the above, the draft of the submission with cross referencing of papers already filed (such as Page No., File Name etc.) be prepared. We find many times, in faceless processes, proper attention to the attachments is not given. Therefore, if possible, the specific content of that attachment be reproduced in the submission. Again, instead of merely citing a case law reference, it is better to highlight specific conclusion in the submission together with the fact of that case.

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- (7) It is always better to first highlight the merits of the case based on particular facts of that case rather than to straightway cite judicial precedents.
- (8) Another important point is to highlight the fact of applicability of a case in the jurisdiction in which the assessee is assessed. Law of precedence, if supports the appeal, is always better to highlight.
- (9) It is advisable that reference of previous submission is given after every submission apart from the reference of the notice of hearing.
- (10) Every draft reply be vetted to ensure that all the points and grounds are appropriately covered in the submission as unlike physical hearing, there is possibility that order will be passed stating based on 'assessee has nothing to say as regards ground or issue raised in the notice. It is then difficult to get positive result by ITAT, more so if it becomes faceless process.
- (11) Finally, draft reply also should be shared with the assessee and one should get approval for submission.
- (12) At present no VC is being granted in the faceless appeal proceedings. If and when VC is provided, one should opt for VC to explain complex matters. Unlike faceless assessment, assessee will not get any draft appeal order and therefore, one should be more alert about proper written submission. Drafting skill is the most valuable tool in the entire process.
- (13) There are 2 specific processes, which may arise in the course of hearing, namely:
 - (a) Remand Report:**
 - (i) Whenever, there arises a question of Additional evidences or a ground of appeal on a matter, which was not raised before assessment units, CIT-A (NFAC) under the scheme remands the matter to AU for its report on the matter.
 - (ii) This process is built in the scheme itself. However, giving a copy of such report was neither there in the physical hearing nor in this scheme. Only admission and non-admission need to be conveyed by NeAC to the assessee.
 - (iii) Sometimes, though admission is not objected by AU, it gives certain adverse remarks in its Report.
 - (iv) Judicial pronouncements have made the law clear that such report should be shared with the assessee and he be allowed rebuttal or arguments against adverse remark, if any.

Checklist For Appeal Before CIT-A (before NFAC under the Scheme)

- (v) It is hoped that the process continues in the form of Show Cause Notices or similar correspondence.
- (vi) If such communication happens, an appropriate rebuttal or remark be filed by way of submission.
- (b) Enhancement:**
 - i) CIT(A) has power to enhance assessment or penalty within the four corners of the Income-tax Act, 1961. As per Law and in the scheme of faceless assessment also, the same is provided.
 - ii) An appropriate objection to such enhancement be taken in the course of hearing. If CIT-A (NFAC under the scheme) still makes such enhancement, at least a good ground is prepared for further appellate proceedings.

D) On receipt of Appeal Order

- (1) One should examine the appeal order as to whether all the grounds have been adjudicated and whether all the arguments have been properly considered. Further, wherever figures have been written, the same should be rechecked. If, there is any error, the same should immediately be noted.
- (2) A Memorandum be prepared as to which grounds have been accepted, which grounds have been rejected and whether any error or omission in the nature of error apparent from records, rectification of error be filed online.
- (3) Although, technically a copy of order is marked to the Jurisdictional AO, the assessee should send a copy to Jurisdictional AO for giving effect to the order.
- (4) On the basis of the Memorandum, a conference should take place between the counsel and the assessee for further action including appeal before ITAT.
- (5) It is also advisable to include errors and omissions in the appeal before ITAT, which can be unpressed if the rectification is carried out.
- (6) The client should be made aware about the right of appealing by the Department against the Grounds decided in favor of assessee.
- (7) It may be noted that the time allowable for filing the appeal by the assessee is 60 days from the date of receipt of order (including e-receipt).

Chapter 7

Do's and Don'ts (Including drafting skill)

The major change under the faceless appeal scheme is the representation by the assessee and counsel – oratory skill is to be replaced by writing skill. That too, without knowing how the other party is taking up the argument, whether he has grasped the fact and the argument, whether he has any confusion about any fact or argument or whether he has any other view point about the issue. Therefore, one should anticipate probable questions or issues that can arise in the mind of the Appeal Unit, whether arising out of the assessment, submissions, evidences, legal interpretations, judicial pronouncements and submission should be accordingly prepared.

(A) Preparation of Appeals

1. Language should be clear and concise. Lengthy submissions can detract the authorities from main issues and arguments. It does not mean to omit any important issue or argument.
2. The above point is very important while drafting statement of facts and grounds of appeals also. No mixing up of grounds in statement of facts or vice versa should be there.
3. Statement of facts should not contain what is really a ground, e.g., 'AO erred', 'AO ought to have' should not be in statement of facts. It can be simple statement that 'Ld. AO disallowed.....'
4. Similarly, grounds should also be brief and to the point, such as 'Ld. AO erred in disallowing Rs.... out of interest' or 'Ld. AO ought to have allowed/ought not to have disallowed, 'Ld. AO ought to have considered/ appreciated the.....'
5. Traditionally last ground of appeal is on the following line:

'Assessee craves his/her/its right to add/amend/alter ground of appeal at any time before the adjudication of the appeal'.
6. The submission should be neatly drafted and proper care should be taken while choosing fonts, size of fonts, alignment and line spacing.

(B) Paper Book:

1. It is advisable to file paper book at the time of appeal as well as at the time of submission. Knowing the limitation of file sizes for transmission, after preparing paper book and numbering pages, the same can be split in smaller bunches/files for scanning and creating digital files.
2. If convenient, it is suggested that separate paper books be prepared for each of the following categories:
 - a) Group 1: Annexures which are part of Form 35 such as, Statement of Facts, Grounds of Appeal, reason and prayer for condonation of delay, affidavit for condonations of delay, Prayer for admission of additional evidences.
 - b) Group 2: Orders relating to the appeal, namely, order appealed against, rectification orders, if any, quantum order, if it is an appeal against penalty, notices relating to penalty order, and annexures, if any, relating to statement of facts.
 - c) Group 3: Copies of the supporting papers which are not in the categories of Additional evidences.
 - d) Group 4: Copies of the supporting papers which are in the categories of additional evidences.
 - e) Group 5: Statute compilation, such as case laws, circulars, etc.
 - f) Group 6, 7..... N: Further submissions-submission letter, together with annexures etc.
3. Although, the above is stated to be separate paper books, it is possible to give continuous number and it is advisable to do so for cross referencing in the submissions.
4. Indexing of paper-book and putting it at beginning of paper-book is always helpful.

(C) Submission:

1. Language should be simple and lucid, grammatically correct, without difficult words and without using complex legal jargon.
2. As far as possible, the submission should be in sync with either the notice or the grounds of appeal.

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3. One can suggest following order of submission for each ground:
 - a) Ground reproduction
 - b) Facts submitted
 - c) Observation of AO on the subject
 - d) Argument in support of the Ground of Appeal fortified with the facts and cross references with the evidences submitted
 - e) Support by apt judicial pronouncements, circular, notification etc. -
 - f) If there are more than 1 set of arguments for any ground, better be taken in the sequence from strong arguments first. Do not forget to add 'without prejudice' while taking an alternate ground for the same issue.
4. Wherever possible, cross referencing should be with the assessment order (or the order appealed against) and also submissions already made. File title and page number of paper book does give an easy support to the cross referencing.
5. Use of logical paragraphs, paragraph numbers and bullets of different kind should be used to present the submission better.
6. Use of different fonts like, bold fonts/Italic fonts, colored highlighting 'QUOTE' - 'UNQUOTE' etc. will help easy appreciation of submissions.
7. Sometimes, mere references to various file and page number do not get proper attention and therefore, if the relevant paragraph or content is reproduced in the main submission letter so that the submission becomes self-sufficient to the extent possible, it will serve a better purpose. However, one should avoid reproduction of large paragraph of documents and attach only very specific abstract only.
8. In case of use of judicial pronouncement, sometimes, head notes are not in sync with the actual decision. It would be better to read the entire decision before using the same.
9. Wherever applicable, draw attention to the fact that the judgment is binding considering the jurisdiction in which the assessee falls. This is more important in dynamic faceless appeal as the person adjudicating the grounds might not be aware of the judicial precedence applicable in the case of the assessee.

Do's and Don'ts (Including drafting skill)

10. Use appropriate salutations like Ld AO, Hon. HC, Hon. Justice etc.
11. Never make any type of allegation and avoid using phrases like 'without application of mind'.
12. Support descriptive arguments with tables and charts as also impress photo of relevant document, if necessary to support.
13. Make the submissions in time allowed and one needs planning for the same by way of time line for draft submission, approval or consent of client and ultimate submission.
14. If time is insufficient for any reason, file prayer for granting time well in advance.
15. If time given by the Department is insufficient, make polite reference to it and submit prayer for granting time. Even if not granted, it may help for submission of additional evidences in further appellate proceedings.
16. Ultimately, once again review the submission from content as well as grammar point. Share a copy with the assessee and get his consent and thereafter submit.
17. Submissions can be filed in two ways. One – take a print of written submission, sign it and then scan the same for its uploading. Other and better way is to covert the word format of submission into pdf format and append DSC sign of either appellant or the AR before uploading it. This option saves space.

(D) Receipt of Order: (discussed more in checklist chapter)

- 1) Review the Appeal Order.
- 2) Prepare synopsis of what is allowed and what is not allowed along with advise relating to whether to appeal.
- 3) Transfer all the digital documents in a folder created specifically for particular appeal and create security against storage hazards. If desired, send copy of the folder also to the assessee.
- 4) If desired, prepare and file appeal before ITAT.

Chapter 8.

Alternative Remedies: Documentation Post Faceless Appeals Adjudication and Orders – inclusive ITAT filing Road Map

The National Faceless Appeal Centre (NFAC) has communicated the final appellate order to the taxpayer assessee/appellant by uploading a copy on the registered account in IT portal and proceedings are closed.

Let us look at the next steps that need to be taken in the matter.

8.1. Granting of Appeal Effect:

An order is passed and communicated to the assessee/appellant by the Commissioner Appeals under section 250 of the Income-tax Act 1961. Under faceless appeals such order is communicated by the NFAC.

Effect of such order has to be given and the Assessing Officer has to recompute the income accordingly. The assessee/appellant can move the Assessing Officer having jurisdiction for grant of such appeal effect.

8.2. Rectification Application:

An assessee/appellant can move a rectification application u/s 154 of the Income-tax Act 1961 in case he/she finds a prima facie mistake in the appellate order.

Under the Faceless Appeal Scheme 2020 too, an application for rectification of mistake may be filed with NFAC by the appellant, or any other person, appeal unit preparing or reviewing or revising the draft order, or the National e-Assessment Centre or other Assessing Officer.

NFAC shall assign such application to an Appeal unit under automated allocation system.

After examining the application, appeal unit shall prepare a notice for granting opportunity to other parties which shall be sent by the NFAC which after receipt of replies shall forward notice and replies to Appeal unit.

Appeal unit will make draft rectification order or reject application citing reasons which shall be communicated by NFAC to the appellant and other parties.

8.3. Second Appeal to Income Tax Appellate Tribunal:

In case the assessee/appellant or the Assessing officer are not satisfied with the appellate order, communicated by the NFAC, they can file appeal to Income Tax Appellate Tribunal within sixty days of communication of the order in prescribed Form No.36. Note, in case there is an error/or failure in granting appeal effect by the Assessing officer, such order is also appealable to ITAT.

Haryana State Coop Supply and Marketing Federation Limited vs DCIT, ITAT Chandigarh ITA No. 791/ Chad 2013/ 16-06-2015 (The procedure for filing of such appeal is referred in the chapter checklist on completion of faceless appeal order matters).

8.4. Cross Objections:

Upon receipt of intimation of filing of appeal by the other party, the assessee/appellant or Assessing officer can file a memorandum of cross objections within thirty days of receipt of such intimation of appeal being filed.

8.5. Re Stay/Payment of Demand:

In case, there is disputed demand which has been stayed upon payment of certain amount (generally 20%) by the Assessing officer, upon passing of appellate order and having given effect to it after deduction and credit of taxes already paid, the net demand becomes due and payable as per fresh/revised demand notice as specified therein.

Where the assessee is filing second appeal to ITAT, the assessee has to take care either to make proper arrangement for payment of demand that has become due, or apply for the stay of the balance disputed demand and/or pay part and request for stay of balance disputed demand.

The assessing officer and the higher administrative authorities will adjudicate upon the stay application after granting the opportunity to the assessee.

In case the stay is refused or only partially granted, and all administrative avenues up to Pr. Chief CIT are exhausted, the assessee/appellant can make an application to the Hon. Income Tax Appellate Tribunal for grant of stay in the matter.

8.6. Penalty proceeding relating to the appellate proceedings:

The appeal unit may recommend to NFAC for initiation of penal proceedings in the course of appeal proceedings for non-compliance of any notice, direction or order against appellant or any other person.

NFAC shall send notice to the concerned person and upon receipt of reply along with notice send same to appeal unit under automated allocation system.

Appeal unit may prepare draft order which shall be finalized or drop the proceedings which shall be communicated to the concerned through the NFAC.

Assessee/appellant shall do well to respond in time and in a complete manner to such notice of show cause for penalty to represent his/ her case effectively.

8.7. Regular Penalty Proceeding Arising Out of Assessment:

Apart from the above, it is possible that certain penalty proceedings initiated at the time of passing of assessment order and kept in abeyance/pending till disposal of first appeal may be revived and notices received for the same.

The assessee will do well to keep track of the same and reply to such notices to ensure effective compliance.

8.8. Condonation of delay in filing second appeal and raising additional grounds/furnishing fresh evidence

As applicable in case of first appeal and discussed in detail herein, delay due to reasonable and sufficient cause in filing second appeal to ITAT which is to be filed within sixty days, can be condoned upon an application being made in this behalf and appeal admitted. Similarly, additional grounds of appeal can be raised and fresh evidence furnished in appeal subject to satisfaction of certain conditions. (Refer earlier chapters of this booklet in this regard)

Chapter 9

Faceless Schema – International Jurisprudence

As we started to finalize this publication, our team felt that it would be appropriate for the study to cross the frontiers and research on international jurisprudence to provide an international perspective on the Faceless schema. It was an enlightening study as we tried to trace its prevalence in other geographies across the globe. The lurking question is how much of it is in vogue in various countries? Our search involved studying the systems prevalent in countries such as USA, Canada, UK, Japan, Australia, New Zealand, Thailand, Ireland, China, South Korea and Bermuda etc. This was a painstaking effort, a search that spanned the available literature across so many geographies.

In this section on Faceless Appeal Scheme, the relevant information compiled and presented reflects common practices followed worldwide by deploying contemporary technology for Revenue Audits, Revenue Assessments, Arbitration and Dispute Resolution Practices, Remote Judicial proceedings, Contactless Proceedings other areas related with discharge of various administrative and compliance functions. The philosophy behind the “faceless movement” is to usher in a tech governed evaluation and compliance ecosystem to achieve the objectives of timely, fair, transparent and well documented digital trails, developing user friendly systems of compliance, conducting forensic audits, investigations, and cost effectiveness programs etc. more efficiently. The same thought process, underlying theme and design seen internationally undergird the faceless scheme in India as it presently goes through its foundational phase since its recent launch. The future will see important lessons being learnt empirically as the faceless assessments play out, and the consequent rolling out of more protocols and SOPs in the interest of all stakeholders.

International Jurisprudence - Precedence:

1. Ireland is a country which has recognised mandatory remote hearings in the Statute, which also governs the functioning of its Supreme Court providing a statutory mandate for holding remote hearings.

2. USA deploys special purpose computer programs based on algorithms and AI for faceless assessments, using some of the following techniques independently or in conjunction with one another:

- i. **“The Discriminant Function System (DIF)”** (similar to Automated Income Tax Inquiries selections) for conducting **revenue** audits based on Returns filed by using the tools of statistical analysis by using score techniques to validate and confirm the correctness of returns filed.
- ii. **“The Unreported Income Discrimination Function”** (similar to Compliance Portal introduced in India) to track the potential of unreported income by analyzing the expense and income ratios, weighted ratios, exemptions and deductions etc. The details of such functions are not shared in public domain and the information is closely guarded.
- iii. **“The Information Return Processing System”** (similar to SFT in India) where different fields of information are captured through a reporting mechanism involving employers, Brokers, Banks, Brokerage Firms, Social Security Administration & other institutions etc.
- iv. **“Incriminated documents turned over to IRS”** (similar to Criminal and Investigations Matters in India) and
- v. **“Audit of Related Entities”** (similar to AS 15 – Related Party Disclosures under Companies Act 2013 and/or SAAR and Transfer Pricing Provisions under Income-tax Act 1961) and other likewise provisions.

3. China has established Internet courts that handle a variety of disputes which cover intellectual property, e-commerce, financial disputes related to online conduct, performance online, domain name issues, property and civil rights involving internet and product liability arising from online purchases and certain administrative disputes. Such courts are extremely popular and have proven successful in establishing performance yardsticks and gathering critical intelligence such as having an average hearing time of 37 minutes, 80% litigants being individuals and 98% of the rulings having been accepted without appeals.

Under Faceless schema, most of the countries have laid down the following protocols for remote hearings in models of varying permutations and combinations:

Faceless Schema – International Jurisprudence

1. Full Remote Hearings whereby all participants and stakeholders participate remotely (***Comment: Under Indian Faceless Appeal Scheme, only Full Remote Hearings are proposed***)
2. Partial Remote Hearings whereby one or more parties are participating remotely;
3. Physical Hearing plus whereby all parties are present at one location, where adequate safety protocols are adhered to.

International Jurisdictions which provide specialized and well-developed dispute resolution/addressal structures tend to display certain typical features which are summarized below:

1. Video conferencing systems are well equipped with supporting connectivity through Google Meet, Skype, Cisco WebEx, Zoom, Microsoft Teams, GoToMeeting, Blue jeans etc.;
2. Such Video Conferencing Systems are adequately supported by High-Speed Wi-fi stable transmissions of images, data, audio and visual data;
3. Vantage camera positioning ensures a 360-degree view of the conference room;
4. All Participants can sight others seated remotely in any other location;
5. Official Language Interpreters are available to narrate/provide for transcripts of discussions to the participants involved if sought on real time basis;
6. Impeccable Integrity, Equality and Confidentiality are foundational to their discipline and culture;
7. System driven maintenance of records ensures that information collated is bifurcated logically between relevant and irrelevant files;
8. Case Histories with judicial precedents are made available to the parties who have opted for such dispute resolution mechanisms;
9. Standard protocols for attending the virtual or remote hearings are prescribed. These cover the dress code, dos and don'ts, other rules of Etiquettes etc. to be followed before, during and after such hearings;
10. Systemic checks are established for Self-Managed Video Hearings Tutorials, File and Screen sharing capabilities, Recording Functions, Private Discussion Rooms, Internet and Browser Speed Tests etc.

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11. Well laid out systems are in place for testing audio and visual functionalities before the commencement of hearings; to put the participants at ease.
12. Emergency contact details of all the participants like Help Line Numbers, Landline Numbers, Mobile Numbers, Fax Numbers, E-mail Ids, Identity details and/or Emergency contact numbers are captured in the data sheets before the commencement of hearings;
13. User friendly adjournment proceedings;
14. Consent for recording is obtained from all the participants and post hearing, such recordings are shared with participants voluntarily or on request basis;
15. Well laid down provisions regarding the presence and role of the Invigilator/Compliance Officer ensure the fairness and integrity of such remote proceedings;

Chapter 10

Landmark Judicial Precedences As Regard Appeal To CIT (Appeals)

There are decisions, from ITAT to High Court and Supreme Court, on this topic. Applicability of such decisions continue to be for faceless appeals also. Only some important landmark judicial precedences are listed herein.

Powers and Duties of CIT(A) in General:

A) *CIT VS. KANPUR COAL SYNDICATE 53 ITR 229*: The powers of CIT(A) are co-terminus and co-extensive with the Assessing Officer. This decision gives power to CIT(A) on the same strength as that of AO.

The Act itself provides for power to enhance the assessment subject to due process of law giving opportunity to the assessee. The powers are, in a way, even more than that of ITAT.

B) However, these powers do not extend so as to enhance the assessment on sources not disclosed in the Return of Income or not considered by the AO while making assessment as held in ***CIT Vs. Shapoorji Pallonji Mistry 44 ITR 891(SC)***, ***CIT Vs. Raj Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)***.

However, readers are cautioned of a contrary decision of the Apex Court in the case of ***CIT Vs. Nirbheram Daluram 224 ITR 610 (SC)***.

C) CIT(A) has powers to reject books of accounts in the course of appeal although the AO might not have in the course of assessment - ***CIT-Vs. Mc Millan And Co. 33 ITR 182 (SC)***.

D) CIT(A) cannot declare any provision to be ultra vires- ***CIT vs. Straw Products Ltd. 60 ITR 156 (SC)***.

E) *Goetz India Ltd. vs. CIT (284 ITR 323 SC) read with Pruthvi Brokers and Shareholders Pvt. Ltd. (Bombay HC)*: Although AO does not have power to consider additional claim in the course of assessment not raised by way of revised Return under the law, CIT(A) has all the powers to entertain such claim. In fact, the decisions cast duty on CIT(A) to consider such claim on merit.

F) Although powers are co-extensive with the AO, CIT(A) cannot improve upon the satisfaction as regard the levy of penalty.

G) *CIT vs. Janasampark Advertising & Marketing Pvt. Ltd. 375 ITR 373:*

CIT(A) is duty bound to conduct proper inquiry if the AO has failed to carry out such inquiry and cannot simply allow the appeal of assessee (this was given in situation of some fallacy in conducting inquiry as regard addition u/s 68).

H) *Jute Corporation Ltd. vs. CIT and others 187 ITR 688* CIT(A) has power to admit additional ground.

I) One may draw a line of limitation of power of CIT(A) on the basis of the principal laid down by Delhi High Court in *CIT Vs. SPL's Siddhartha Ltd. (345 ITR 223)*.

If statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion, such discretion if exercised under direction or in compliance with some higher authorities' instruction, then it will be case of failure to exercise discretion altogether. This gets support from the decision of Bombay High Court in ***Teletronics Dealing Systems Pvt. Ltd. case (228 taxman 194)***.

Above principal should cover satisfaction as regard penalty proceedings arising out of the matters in the course of assessment proceedings.

This, of course, will not limit the power of levying penalty in respect of enhancement by CIT(A) and he may record his satisfaction in that regard.

Powers and Duties as Regard Additional Evidences

J) Additional evidences should be admitted if CIT(A) finds that the same is crucial for the disposal of the appeal and direct bearing on the quantum of Income (*CIT vs. Virgin Securities and credits P. Ltd. 332 ITR 396 Delhi*) or submission of unblemished evidences which are crucial for the cause of justice (*Chandra kant Chanu Bhai Patel 79 CCH 268 Delhi*). Of course, the AO must be given opportunity in this regard, otherwise, the order may fail.

Powers and Duties as Regard Condonation of Delay:

K) The power of the CIT(A) is discretionary and should be utilised judiciously and he should use his discretion pragmatically and liberally (*Collector, Land Acquisition vs. Mst. Katiji and Others 167 ITR 471 SC*)

L) H'ble Gujarat High Court in its ruling in case of Jayvantsingh Vaghela (40 taxmann.com 491) (2013) has held that an appeal cannot be dismissed on technical ground like delay, etc. unless it is found that there is

Landmark Judicial Precedences As Regard Appeal To CIT (Appeals)

gross negligence on part of assessee and / or there is any mala fide intention on part of assessee in not preferring appeal within period of limitation and / or in filing appeals.

M) Apex Court in case of **Improvement Trust v. Ujagar Singh in Civil Appeal No.2395 of 2008** has observed that there cannot be any straight jacket formula to define “Sufficient Cause”.

As Regard the Precedence of Judicial Pronouncements

N) NFAC is bound to follow the decision of the High Court, which exercises jurisdiction over the territorial Assessing Officer of the assessee [**Mahadev Cold Storage – TS-441-ITAT-2021(Agra) decided on 14-06-2021**]

As Regard Withdrawal of Appeal by Appellant

O) Appeal, once filed, cannot be withdrawn by the appellant but appellate authorities, on application by the appellant, may allow withdrawal at their discretion: **CIT v.Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)**

Chapter 11

Evidence Law - Provisions Applicable to Faceless Appeals (Current First Appeal Procedure/ Scheme (CIT Appeals) and ITAT

11.1. The contentions relating to submission of evidence by the assessee/ appellant in support of his/her grounds of appeal could arise at the time of the first appeal to CIT(A) and/or second appeal to ITAT. This issue of submission under the evidence law and its acceptability or otherwise arises due to the possibility that such evidence may be in the nature of additional evidence not furnished before the lower authorities.

The provisions both under faceless appeal scheme 2020 and the law relating to evidence remain the same as in the earlier regular process of hearing and disposal of appeals, which have been in force since inception of the Income-tax Act.

11.2. Additional Evidence – Process of Admission:

The Appellants may file/upload additional evidence along with reasons for not filing same earlier and stating how their case is covered under the circumstances mentioned in Rule 46(1) so as to warrant admission of the said additional evidence.

NFAC will obtain report on same from National-e-Assessment Centre/ Assessing officer and forward the evidence and report to Appeal Unit. Appeal Unit will admit such evidence if it is satisfied with the reason for filing additional evidence or will reject the same.

This will be communicated by NFAC to all concerned.

11.3. Rule 46A-which additional evidence is permitted to be presented?

In the normal course as prescribed in the said rule, only such evidence as has been produced during the course of proceedings before the Assessing officer (whether oral or written) is permitted to be produced before the first appellate authority.

Evidence Law - Provisions Applicable to Faceless Appeals ...

The exceptions provided in Rule 46A where additional evidence can be produced at the first appellate stage are: -

- a) the Assessing officer has refused to admit evidence which ought to have been admitted, or
- b) Appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO.
- c) appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any grounds of appeal,
- d) where AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

The Appellate authority has to record reasons for admitting such evidence, in writing.

The evidence cannot be considered unless reasonable opportunity has been given by the Appellate authority to the Assessing officer/lower authority passing the order:

- (i) to examine evidence/document and/or to cross examine the witness.
- (ii) to produce evidence/document/witness in rebuttal of additional evidence produced by the appellant

The rule does not affect or curtail power of CIT(A) which is coterminous with that of the Assessing officer, to suo moto consider and call for any evidence u/s 250(4) of the Act and or to reduce/enhance income assessed/penalty etc.

11.4 The procedure laid down under Rule 46A has to be strictly followed to admit additional evidence.

Certain references to judgements on evidence and related case laws are presented below with a note in brief on each item

1) *CIT v/s Sun Engineering (1992) 198 ITR 297 (SC) (320)*

Article 141 of the Constitution of India lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

- 2) If there are defects in the appeal/process, an opportunity must be given to cure the defects.

Bharat Industries v/s State of Maharashtra (1995) 98 STC 417 (424,425) (BOM)

- 3) Order giving effect to appellate order can be appealed against.

CIT v/s Industrial Machinery Manufacturing Pvt Ltd. (2006) 282 ITR 595 (Guj)

Bakelite Hylam Ltd v/s CIT (1988) 171 ITR 344 (AP)

- 4) Power of CIT(A) are coterminous with those of the AO.

CIT v/s Narbheran Duekram (1997) 224 ITR 610 (SC)

- 5) CIT(A) can admit additional evidence or documents only after applying Rule 46A.

CIT v/s Manidi Buildwell Pvt Ltd. (2011) 63 DTR Judgements 369 (Delhi H.C.)

ITO v/s Kuber Chand Sharma – ITAT Delhi ITA N-3982/ Del/ 2009

- 6) To render justice, CIT(A) can admit new evidence.

- 7) Rule 46A cannot override principle of natural justice.

Jute Corporation of India Ltd v/s CIT 1991 AIR 241 (SC)

Avan Gidwani v/s ACIT (ITAT Mumbai ITA No.5178/Mum/2015)

Evidences and documents which are vital to be considered in order to adjudicate the issue have to be considered by admitting additional evidence.

The case law states the principle of “Audi Alteram Partem”.

No man should be condemned unheard is the basic principle of natural justice and accordingly Rule 46A cannot override principles of natural justice.

- 8) If CIT(A) calls for remand report on additional evidence, it is sufficient opportunity to AO and no contravention of Rule 46A.

Bhavya Lakhani Traders and Suppliers Pvt Ltd (ITAT Delhi ITA No.5409/Del/2010)

- 9) Admitting additional evidence by CIT(A) without calling for remand report from AO violates Rule 46A.

ACIT Delhi v/s Late Avtar Singh Bahl ITA No.1831/Del/2012. ITAT Delhi

11.5. Evidence can be varying in terms of types, qualitative significance, third party based etc. Documentary evidence can be more persuasive than affidavits/circumstantial evidence, though the latter is also important.

Care may be taken by the appellant / assessee and the authorized representatives to produce all possible evidence as early as possible during the proceedings of scrutiny assessment, should also bring the fact of such submission on record. Especially where books of account, vouchers etc are produced for verification.

Now with assessment going faceless, the advantage is that such evidence as books of account, vouchers, and records produced/submitted will be documented in the normal course of the faceless assessment proceedings. Hence there will be no room for confusion as to what evidence was produced before the Assessing officer and what was not.

It is also therefore advisable at each stage for the assessee / authorized representative to communicate in the written representation to the Assessing officer, willingness to submit such further evidence, documents and details as may be required by the Assessing officer to complete the assessment.

11.6. The proceedings under the Income Tax Act, 1961 in the course of assessment and first appeal are no doubt quasi-judicial in nature and to that extent, the Code of Civil Procedure, the Code of Criminal Procedure and Law relating to Evidence as applicable in Courts of Law in judicial proceedings may not strictly apply. The High Court in *J.S. Parker v. V.B. Palekar*, 94 ITR 616 held that what was meant by saying that the Evidence Act did not apply to proceedings under the Income Tax Act was that the rigour of the rules of evidence contained in the Evidence Act was not applicable to income tax proceedings.

11.7 Digital Evidence

Electronic Records, be it a word or pdf file uploaded by the assessee / appellant containing a document, or be it by way of an audio-visual recording generated as a result of video conferencing hearing conducted during such proceedings, constitute evidence both for the faceless assessment as well as for the appeal process.

Electronic record is a documentary evidence under section 3 of the Evidence

Act and any information contained in an electronic record is deemed to be a document. An electronic record may be computer printout, Compact Disc (CD), Video Compact Disc (VCD), Pen Drive etc or in other words, it may be stored, recorded, copied in media produced by the computer or may be printed on a paper.

Electronic Evidence: As a part of documentary evidence, electronic evidence was included as Section 65(A) & 65(B) through an amendment in Indian Evidence Act 1872. Therefore, electronic evidence is a form of documentary evidence in electronic form. Hard Discs, SD cards, memory cards etc., where electronic information or pictures or audio or video are directly saved, are primary evidence. However, CDs or any other copies made from them in any other manner are secondary evidence.

Evidence can be recorded through video conferencing: There are numerous guidelines given by the Supreme Court of India and various High Courts, from time to time about recording of evidence through video conferencing. The law which would be applicable to recording of evidence through video conferencing will be the same as applicable to recording of evidence in courts. Section 272-283 of Code of Criminal Procedure and Order 16 & 18 of Civil Procedure Code Cr.P.C r.w amendment of 2009, added a proviso to subsection (1) of 275 Cr.P.C which says "provided that evidence of a witness under this subsection may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence". After analysing the proviso, it can be said that obtaining evidence from a witness through video conferencing is permissible.

Cross-examination through video conference: In case of State of Maharashtra Vs Dr. Prafull Desai and Anr⁴ the apex court interpreted Section 273 of Cr.P.C in the light of technological advancements. Bench comprising of Justice S.N Variava and Justice B.N Agrawal observed that recording of evidence through video conferencing is absolutely legal. Justice Variava further added that "In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record evidence by way of video conferencing". The Supreme Court further observed that the cross-examination can be done in the presence of Presiding Officer of the Court or get it recorded by a Commissioner appointed by the court after the documents are filed in Court along with the affidavit and after the relevancy and admissibility of such documents are determined by the court.

Thus, as is the present trend based on technological advances both for faceless assessments as well as appeals, an electronic record is acceptable as valid evidence.

11.8 Security and Privacy Issues

The assessee as well as appellant in the course of the faceless proceedings submits documents and evidences which are sensitive in nature. These are critical from two perspectives -1. integrity and 2. tamper proof manner of preservation of the furnished electronic record. This is essential as the current proceedings as well as future proceedings arising out of these would be decided based on these electronic records. If their integrity is lost due to them being corrupted or damaged etc., the outcome of the case / matter would be unfair to the assessee / appellant.

Assurance of integrity and security of the electronic record / evidence submitted in the course of proceedings will have to be responsibility of the Income Tax Department.

Thus, this data has to be confidential, its integrity and availability for the required period has to be ensured.

Further, as this data contains sensitive Personally Identifiable Information (PII) maintaining its privacy becomes a very critical requirement.

Going forward, with the advent of faceless assessment and appeals at a fast pace, it is important that the security and privacy of the same is fully maintained and preserved, to provide required assurance to the taxpayer assessee, appellant and all concerned stakeholders.

Chapter 12

Faceless Schema- Natural Justice – Reality or Dream or Fantasy

The principle of “Natural Justice” essentially derives its essence from the legal maxims “Rule against bias” (*nemo iudex in causa sua*) and “the right to a fair hearing” (*audi alteram partem*). Both the terms fundamentally stress on the “duty to act fairly as well as neutrally” while reaching any suppositions in connection or in relation or ancillary and incidental to matters under reviews.

Nemo iudex in causa sua (or *nemo iudex in sua causa*) is a Latin phrase that means, literally, "no-one is judge in his own cause." It is a principle of natural justice that no person can judge a case in which they have an interest. In many jurisdictions the rule is very strictly applied to any appearance of a possible bias, even if there is actually none: "Justice must not only be done, but must be seen to be done"

This principle may also be called:

- *nemo iudex idoneus in propria causa est*
- *nemo iudex in parte sua*
- *nemo iudex in re sua*
- *nemo debet esse iudex in propria causa*
- *in propria causa nemo iudex*

Audi alteram partem (or *audiatur et altera pars*) is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

"Audi alteram partem" is considered to be a principle of fundamental justice or equity or the principle of natural justice in most legal systems. This principle includes the rights of a party or his lawyers to confront the witnesses against him, to have a fair opportunity to challenge the evidence presented by the other party, to summon one's own witnesses and to present evidence, and to have counsel, if necessary at public expense, in order to make one's case properly.

Natural justice-Legal Framework

Natural justice is a creation of common law. When human beings first organised themselves and became civilised, they started living in groups within a community and norms of social behaviour developed. These norms, customs and the mores of society were eventually enshrined in the form of different laws and legislation that was codified. However certain aspects of law that are general in nature were never codified and natural justice is one such ethical principle and value which has remained a part of common law.

It does manifest itself in many ways. It is found, for example, in article 14 of the Constitution of India, which applies not only to discriminatory class legislation but also to arbitrary decisions taken by the State or an arm of the State. It is also essential that fairness be maintained in whatever procedure is followed for carrying out any process. An example of this is the, "collection of taxes". Collection of taxes by the State through its department, bodies, agencies need to be conducted by **following due procedure as laid down in a free, fair, just equal, equitable and transparent manner**. In the absence of such a due and fair process put in place, rule of law itself may be lost and deprived to the citizens of a State. Thus, it is essential that the State is duty bound to discharge its functions in a fair and just manner. **Natural justice does imply equity, fairness, reasonableness and equality**. Equity in the eyes of law, this concept of natural justice finds its place in all judicial systems which are based on different tenets.

In the **United States** the judicial system achieves this by adopting **the jury system**. It is ensured that a procedural due process is followed and judgments are fair and reasonable in fact by incorporating independent members of the public being third parties in the process of dispensation of justice. Thereby bias, unreasonableness, unfairness is eliminated to a great extent.

The UK system, on which **the Indian judiciary** is also shaped, is based on the process of a judge or judicial officer hearing both the parties directly as well as through their lawyers being authorised representatives. He then arrives at a decision and gives the judgement. In this system, holding the hearings and or **proceedings in an open court that is in front of the public**, as well as making the orders public, makes the process transparent and minimises bias, unreasonableness and unfairness on the part of the judicial system or any components thereof. It is only in an exceptional situation and in **exceptional cases** where the privacy of individuals is at stake or there is

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extreme urgency or emergency that proceedings may be held in camera and or without due notice. It is essential that this is kept at the back of the mind before looking at the concept of natural justice and its essential principles.

Primarily therefore natural justice may be affected due to **unconscious or conscious prejudice** in relation to the parties involved or the issue at hand. This could be personal bias (against a person), pecuniary bias (relating to money / monetary impact), subject matter bias (relating to the issue / subject at hand), bias arising out of culture, upbringing, education, society or other reasons (mind is made up before considering the case), and bias arising due to nexus (person from the same department hearing the matter). (A person cannot decide his /her own case).

Natural justice may also be affected adversely if a **fair hearing** to the party is not given. This would cover aspects like the following

1. Requirement of a proper notice being given (often referred as show cause notice)
2. Right to present the case and evidence
3. Right to rejoinder – rebutting adverse evidence
4. Right to copies /access to material used / proposed to be used against a party
5. Right to cross examine any party, witness deposing in a case and on which reliance is being placed in passing an order
6. Right to proper representation by a competent person
7. Proper hearing

Finally, decisions need to be logically derived from the evidence as garnered above in a proper **judicious reasoned manner that is fair and transparent**. This principle that has slowly taken root as a part of natural justice means that every decision must contain reasons for the decision. Reasons may be elaborate or may be brief. But these are required to be present to ensure fair decision making. There are many grounds for requiring reasons like ensuring that application of mind, consideration of all material and arguments, cogent thinking and absence of bias on part of the deciding authority will all be reflected and thus ensured in the reasons given. A non-speaking order may not be able to achieve this.

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Justice should not only be done, but seen to be done. As has been said therefore, the need for the officers / authority / judges passing any orders, like Caesar's wife, to be above suspicion.

Natural justice can get impacted in faceless hearings both for faceless assessments as well as faceless appeals, which is the current subject matter,

The faceless appeals raise certain issues in the area of fair hearing in as much as

- 1) It is not open to the public and not necessarily transparent with internal communications and processes and administrative decisions being opaque to the appellant / assessee. As the officers dealing with case are all departmental officers, keeping it in this manner does not eliminate or even reduce the departmental bias. In the famous case of "A.K. Kripak vs. Union of India AIR 1970 SC 150" the Supreme Court held that administrative decisions were also open to judicial scrutiny and could be evaluated and assessed on the touchstone of natural justice. In fact, the Honourable Court went on to hold that it would no longer accept in this country any distinction between administrative decision making and quasi-judicial decision making.
- 2) All parties to the case are not afforded an opportunity to be present at the same time. It thus does not normally permit a simultaneous two-way communication essential for delivering justice.
- 3) There are multiple teams that take over and act and decide at different stages that too in a random manner as allotted by the National Faceless Appeal Center through the Regional Faceless Appeal Center. In the normal course a change in the adjudicating official calls for a fresh notice and a fresh hearing ab-initio as what was argued before and understood by the predecessor does not automatically imbibe into the successor's mind. The multiple teams for the appeal (as well as assessment) process under faceless regime, results in multiple handoffs that may affect natural justice in an adverse manner. The assessee / appellant cannot be expected and should not be made to represent before and deal with three different sets of people all opaque to him.
- 4) Faceless proceedings that rely only on written communication, which is primarily asynchronous strike at the very root of a fair hearing as they deny the parties feedback as well as feed forward mechanisms so very

important for proper communication and for making out a case. Any communication has to be audio, visual as well as written to be complete. It is only when all three modes are used together that it is most effective. The absence of other elements as well as vital feedback in terms of body language may affect judgement especially in matters where intention of the parties is very important to be understood. It will not only affect understanding and retention but also affect a fair reasonable logical decision. There are many instances under Income Tax Act, 1961 where intention of the parties is important to gauge and understand. For example, whether the case of a sale of a solitary valuable asset falls under capital gains or being an adventure in the nature of trade commerce or manufacture is a business income.

- 5) It has often been attempted to be argued that income tax proceedings are quasi-judicial in nature and therefore are not strictly judicial proceedings. Further it has also been said that there is no equity about taxes. However quasi-judicial proceedings too need to follow principles of natural justice. One of the well-known enunciations of the principles of natural justice is in the case of **Ridge vs. Baldwin (1963) 2 AER 66 (HL)**. In that case Lord Hudson observed: “No one, I think, disputes that three features of natural justice stand out.
- a. The right to be heard by an unbiased Tribunal,
 - b. The right to have notice of charges of misconduct,
 - c. The right to be heard in answer to that charge.”

Actions of the officers of the Government or an arm of the State, like the Income Tax Department and their actions are open to scrutiny if they involve quasi-judicial decisions / proceedings. Thus, both Faceless appeals as well as Faceless Assessments have to follow principles of natural justice, otherwise their decisions and orders issued otherwise are liable to be struck down. Attention is invited to the judgment of the Punjab and Haryana High Court in the case of **CIT v. Sham Lal (1981) 127 1TR 816 (P&H)**, in support of this contention, wherein it was held that in cases of violation of rules of natural justice, the only course open to the Tribunal was to annul the assessments made by the assessing officer.

In fact, since unlike Faceless Appeals which have only recently been enabled Faceless Assessments have been completed and some matters have travelled

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to court and been already decided. These give a glimpse of the issues that can further arise in terms of natural justice being affected or denied in the course of Faceless Assessments under Section 144B of Income Tax Act, 1961.

It is in the context of these aspects that steps may have to be taken to see how the faceless appeal as well as assessment process can become more conducive to preserving and providing natural justice to the appellants and assesses.

Therefore, now let us try to examine whether the term “Natural Justice is a reality or is it to be looked at as a dream or a Fantasy when correlated with the stated objectives and purposes of Faceless Schema?

The primary objective of Faceless Assessment:

“The Honorable Prime Minister on 13th August, 2020 while inaugurating the **National e- assessment centre** (now known as NaFAC – National Faceless Assessment Centre) announced that henceforth there will be **transparency** in the department and **honest taxpayers** will be **honored** “.

With these words, he ushered in the **era of Faceless assessments** and follow up where the **face-to-face time** between the departmental **officers and authorities** and that of the **assessee, tax- payer** was **minimized**.

Honoring the honest taxpayers-

“Emphasis is on making every law and policy *People Centric* and *Public Friendly rather than Power Centric*.

The framework of faceless assessment, penalty and appeals provide for a **path breaking departure** from the practice and protocol of **face-to-face interaction** since introduction of the Income-tax Act in India. By eliminating face to face contact, it provides an **environment and framework to honor** and make the **lives of honest taxpayers easy** thereby ensuring **fairness, privacy, timely decisions based on merit, confidentiality and accountability**. This progressive emergence in **Tax Governance** will lead to marked reduction in **corruption, bribery, unfair and unjust demands on the honest taxpayer**.

The primary objective of Faceless Appeal:

To foster greater efficiency, transparency and accountability by:

- a. **Eliminating Human Interface** between Appeal Units and the Appellant to the extent possible by harnessing **technology**;

- b. **Optimising** the use of **resources** through **economies of scale** and **functional specialisation**;
- c. **Introducing** an appellate system with **dynamic jurisdiction** in which an appeal shall be disposed of by one or more Appeal Units.

When objectives are reviewed under the lenses, salient features emerge which are as under:

- No Human Interface or face to face communications
- Transparency and efficiency
- Dynamic Jurisdiction
- Team Based Working
- Functional Specialisation
- Optimum Utilisation of Technology resources

In the light of the above discussion, there is this emerging thought as to which are the areas of vulnerability or systemic weaknesses which could militate against the principles of natural justice in the Faceless Assessment and Appeal Proceedings?

When we delve into the provisions of Faceless Scheme, we are posed with a query whether such schema honours and fulfils the clauses of Tax Charter of ensuring transparency and conferring the principles of “Natural Justice” in administrating the schema, especially when we consider the following systemic weaknesses therein:

1. Non disclosing of Internal electronic communications between NFAC/RFAC/AU/NaFAC/RaFAC/ ASU/VU/TU/RU etc. with the Taxpayers;
2. Non disclosing of Internal authorisation processes between NFAC/RFAC/AU/NaFAC/RaFAC/ ASU/VU/TU/RU etc. with the Taxpayers;
3. No opportunity to file cross objections in the cases where appeal is rejected or where remand report is derived from NaFAC/JAO etc. or where additional grounds of appeal is rejected or where additional evidence as per Rule 46A of the Rules is rejected;
4. No opportunity to cross examine the witnesses which are examined for passing adversarial and prejudicial orders against the Taxpayers and

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also countering their statements collated during such faceless proceedings;

5. Discretionary and non-liberal policies for granting the opportunity of personal hearing or video conferencing and/or any other means of electronic communications etc. and even if the same is granted it is restricted to just 30 minutes in general and recording of such proceedings is also not shared with the Taxpayer;
6. Non-Liberal policy as well as curtailing the right of adjournments to maximum of 3 times or not providing time limits exceeding 15 days to the Taxpayer;
7. Any other situations which may be encountered after the waters are tested.

In retrospect, let us examine the principles of “Natural Justice” which has been repeatedly emphasised by several judicial pronouncements; as well as examining the provisions of Article 226 of the Constitution of India which are often referenced in judicial contexts. Readers are expected to go through the blueprint of judgement before relying upon the same for seeking alternative remedies in the quest for appropriate relief:

1. Serving of Show Cause Notice is a must and obligatory – Held “SCN is a must”

- a. *A. K. Kraipak v. UOI* AIR 1970 SC 150
- b. *Tar Lochan Dev Sharma v. State of Punjab* [2001] 6 SCC 260.
- c. *Umanath Pandey v. State of UP* [2009] 12 SCC 40
- d. *Biecco Lawrie Ltd v. State of West Bengal* [2009] 10 SCC 32
- e. *Maruti Suzuki India Ltd. v. Addl. CIT* [2010] 192 Taxman 317 (Delhi)
- f. *CCE v. ITC Ltd.* [1995] 2 SCC 38 (SC)

2. All proceedings must provide adequate opportunity of being heard - Held “Opportunity has to be given “

- a. *CIT v. Panna Devi Saraogi* [1970] 78 ITR 728 (Cal.)
- b. *Smt. Ritu Devi v. CIT* [2004] 141 Taxman 559 (Mad.)
- c. *E. Vittal v. Appropriate Authority* [1996] 221 ITR 760 (AP)

3. **Adjournment should be granted liberally & such opportunity should not be termed as “Rigid Doctrine” – Held – “to be granted liberally and it cannot be rigid”**
 - a. Union of India v. W. N. Chadha AIR 1993 SC 1082
 - b. Chairman Mining Board v. Ramjee 1977 AIR 965 SC
4. **Orders must be “speaking order” covering all facts clearly and they should be factual – Held – “Order has to be speaking order”**
 - a. Kishan Lal v. UOI [1998] 97 Taxman 556 (SC)
 - b. Asstt. Commissioner Commercial Tax Department, Works Contract and Leasing Quota v. Shukla & Bros. [2010] (4) JT 35 (SC)
 - c. Santosh Hazari v. Purushottam Tiwari [2001] (2) JT 407 (SC)
 - d. S. N. Mukherjee v. Union of India AIR 1990 SC 1984
 - e. Woolcombers of India Ltd. v. Woolcombers Workers' Union AIR 1973 SC 2758
 - f. Baidya Nath Sarma v. CWT [1983] 11 Taxman 158 (Gau.),
 - g. Rasiklal Ranchhodbhai v. CWT [1980] 121 ITR 219 (Guj.)
5. **Principles of Natural Justice do not supplant law but supplement it -Held “Supplement it “**
 - a. Thakur V. Hariprasad v. CIT [1987] 32 Taxman 196 (AP HC).
6. **Principles of Natural Justice operate in areas not excluded by Legislature – Held “Yes “**
 - a. Swadeshi Cotton Mills Co. Ltd. v. Union of India [1981] 51 Comp. Cas. 210/AIR 1981 SC
7. **Principles of Natural Justice apply even when they are not expressly provided in the law – Held “it applies.”**
 - a. Peerless General Finance & Investment Co. Ltd. v. Dy. CIT [1999] 236 ITR 671 (Cal.)
 - b. Rajesh Kumar v. Dy. CIT [2006] 157 Taxman 168 (SC)
 - c. Sahara India (Firm) v. CIT [2008] 169 Taxman 328 (SC)

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- 8. Whether order passed in violation of natural justice is void or voidable? – Held Void ab initio**
- a. Thakur V. Hariprasad v. CIT [1987] 32 Taxman 196 (AP HC)
 - b. Grindlays Bank Ltd. v. ITO [1980] 3 Taxman 38 (SC)
 - c. State of Orissa v. Dr. (Miss) Binapani Dei [1967] 2 SCR 625
 - d. Ridge v. Baldwin [1964] AC 40
 - e. Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 AC 147
 - f. R. B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission [1989] 43 Taxman 34 (SC).
 - g. R. v. Paddington Valuation Officer [1966] 1 QB 380, 402 (CA)
- 9. If principles of Natural justice are not followed – whether it has any impact on jurisdiction – Held Yes**
- a. Ponkunnam Traders v. Addl. ITO [1972] 83 ITR 508 (Ker.)
 - b. Addl. ITO v. Ponkunnam Traders [1976] 102 ITR 366 (Ker.).
 - c. State of Kerala v. Shaduli Grocery Dealer (K.T.) AIR 1977 SC 1627
 - d. Barnard v. National Dock Labour Board [1953] 2 QB 18/1 All ER 1113 (CA)
- 10. Whether technicalities and irregularities do not occasion failure of justice – Held “No “**
- a. State Bank of Patiala v. K Sharma [1996] 3 SCC 364
- 11. Silence provided under the law can’t be deemed as exclusion of opportunity- Held “yes “**
- a. Smt. Maneka Gandhi v. Union of India AIR 1978 SC 597, 624.
 - b. Swadeshi Cotton Mills Co. Ltd. v. Union of India [1981] 51 Comp. Cas. 210/AIR 1981 SC 818
 - c. Dy. CIT v. Muthoottu Mini Kuris [2003] 128 Taxman 240 (Ker.).

12. **Principle of Natural Justice and Cross Examination – Held “they need to be followed always”**
 - a. Kishinchand Chellaram v. CIT [1980] 4 Taxman 29 (SC)
 - b. Sona Electric Co. v. CIT [1984] 19 Taxman 160 (Delhi)
 - c. Nathu Ram Prem Chand v. CIT [1963] 49 ITR 561 (All).
13. **Do principles of Natural Justice apply to Income Tax Proceedings? – Held “yes”**
 - a. Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri [1954] 26 ITR 1 (SC),
 - b. Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC)
 - c. Gargi Din Jwala Prasad v. CIT [1974] 96 ITR 97 (All. HC)
 - d. Sirpur Paper Mill Ltd. v. CWT [1970] 77 ITR 6 (SC).
14. **Applicability of Article 226 of Constitution of India by following the principles of Natural Justice – Held “Followed “**
 - a. Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal 2014 (1) SCC 603
15. **Failure to follow mandatory procedures prescribed in the Statute can’t be termed as procedural irregularity**
 - a. Zuari Cement Ltd V. ACIT (decision dated 21st February 2013 in WP(C) No.5557/2012),
 - b. Vijay Television (P) Ltd. Vs. Dispute Resolution Panel & Ors. (2014) 369 ITR 0113 (Mad),
 - c. Turner International India (P) Ltd. Vs. Deputy Commissioner of Income Tax,
 - d. JCB India Vs. Deputy Commissioner of Income Tax (2017) 298 CTR 0558 (Del)
16. **Assessment Order passed without considering Assessee’s request for adjournment**
 - a. Magick Woods Exports Private Limited v Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/ Income Tax Officer, National E-Assessment Centre, Delhi WP No.10693/2021 (Madras High Court)

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- b. KBB Nuts (P.) Ltd. v. National Faceless Assessment Centre Delhi [2021] 127 taxmann.com 194 (Delhi)

17. Final Assessment Order passed before lapse of time given in Notice

- a. Antony Alphonse Kevin Alphonse v ITO National E-Assessment Centre, Delhi WP No.8379/2021 (Madras High Court)
- b. Ekambaram Sukumaran v ITO National E-Assessment Centre, Delhi WP No.10433/2021 (Madras High Court)

18. Final Assessment Order passed without passing draft assessment order

- a. YCD Industries v National Faceless Assessment Centre, Delhi WP (C) 5552/2021

19. Final Assessment Order passed without giving opportunity of personal hearing

- a. Ritnand Balved Education Foundation v NFAC W.P.(C) 5537/2021, TS-426-HC-2021(Del)
- b. Satia Industries Limited v NFAC TS-423-HC-2021-(DEL)

Similar issues may arise in implementation of Faceless Appeals if there is a failure to follow and uphold principles of natural justice in the process of Faceless Appeals.

The recent judgements post judgement of the Honourable Supreme Court in the case of *Mc Dowell & Co. Ltd. vs. CTO* (1985) 154 ITR 148 (SC) and clearly laid down that there was no scope for colourable devices and planning, and after introduction of legislation like GAAR, it is clear that taxation does involve ethics, fair-play and equity.

To conclude, considering all above judicial precedents and references and instances of lacunae observed in the Faceless Scheme, it is desirable that suitable and remedial changes are enabled in the schema. This would not only mitigate the prospects of avoidable litigation but would also lay down a robust design, a solid foundation of principles and related operative systems. It is easy to imagine that this nascent Indian experience involving Faceless Schema will be closely watched by the world for drawing cues, imbibing and adapting them in their Tax Ecosystems. If enabling changes are introduced

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swiftly, then verdicts delivered under the Faceless Schema would be looked upon as conforming to the vital tenets ingrained in the overall principle of “Natural Justice.” Only then, it can be conclusively stated that this vital and sacred legal pre-requisite of “Natural Justice” is seen as an embodiment of reality, rather than as a dream or fantasy in the blurring distance. Only the time to come will reveal how the whole schema of Faceless Assessment will play out, whether the concept progressively unfolds to harvest the fruits of an efficient, effective, techno-enabled, seamless and truly faceless mega-initiative, which constitutes a generational advancement in the annals of tax governance in our country.