

Technical Guide on Appeal before CIT(A)

Part-II (FAQ)



Direct Taxes Committee
The Institute of Chartered Accountants of India
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New Delhi

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FAQ on Technical Guide on Appeal before CIT(A)

General Questions

Q1. Is it possible to file appeals manually?

Ans. No, Appeals have to be filed electronically on the ITD Portal through PAN.

Q2. What is the cutoff date for Faceless Appeal Scheme 2020?

Ans. 25/09/2020 – Notification No 76/2020 dated 25.09.2020.

Q3. What is the objective of Faceless Appeal Scheme 2020?

Ans. The objective of fostering 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.

Q4. Which are the governing sections provided under the Act for Faceless Appeal Scheme 2020?

Ans. Section 250(6B) & Section 250(6C) of the Income-tax Act 1961.

Q5. Are the provisions of Faceless Appeal Scheme similar to the provisions of Faceless Assessments?

Ans. Certain provisions of the Faceless Appeal Scheme are in pari materia with those under the Faceless Assessment Scheme

Q6. What is the composition of Faceless Appeal Scheme, 2020?

Ans. Under Faceless Appeal Scheme, 2020, by issuing appropriate notifications under the Act, following units are instated:

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1. NFAC, Delhi - will be located at Delhi comprising of Principal Chief Commissioner of Income-tax, Commissioner of Income-tax ('CIT'), Additional/ Joint CIT, Deputy/ Assistant CIT - to facilitate the conduct of e-appeal proceedings in a centralized manner.
2. RFAC, Regional Head Quarters - (Delhi, Mumbai, Kolkata and Chennai) have been notified. Each RFAC comprises of Chief Commissioner of Income-tax ('CCIT') and other income-tax officers to facilitate the conduct of e-appeal proceedings.
3. AU - One or more Commissioner (Appeals);
Other Income-tax Authority, Ministerial Staff, Executive or Consultant to assist the Commissioner (Appeals)

Q7. Whether pursuant to Introduction of Faceless Appeal Scheme, 2020 suitable changes in the definitions as well as in respect of powers and duties of Income Tax Authorities are instituted under the Act?

Ans. Yes, vide Notification No 77/2020 dated 25.09.2020, all relevant changes as needed are incorporated in the Scheme.

Q8. Are there any substantial changes in filing of appeals electronically after the introduction of Faceless Appeal Scheme, 2020?

Ans. No, there is no change in methodology of filing of appeals electronically after the introduction of Faceless Appeal Scheme.

Who can file the appeal?

Q1. Who can file the appeal?

Ans. Any aggrieved person viz. assessee or any other person can file the appeals in respect of situations specified under section 246A and/or Section 248 of the Income-tax Act 1961.

Questions regarding Authorised Representative

Q1. Can appeal be filed through Authorised representative?

Ans. Yes, provided such Authorised Representative is registered on the ITD portal with valid power of attorney duly registered on the ITD portal of the assessee.

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Q2. Who is defined as Authorised representative?

Ans. “Authorised representative” shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act.

Q3. Is any stamp duty payable for registration of such power of attorney in favour of authorised representative? Is stamp duty payable on PAN India basis?

Ans. Yes, Stamp duty is payable on registration of such power of attorney in favour of Authorised Representative. Stamp Duty payable rates varies from state to state. Stamp paper of proper value should be used while granting power of attorney.

Q4. Is it possible to appoint multiple Authorised Representatives?

Ans. Legally yes, but on ITD portal only one Authorised Representative can be appointed for representing the matter in the appeal as ITD systems do not allow appointment of multiple authorised representatives.

Time Limits for filing of appeals

Q1. What is the time limit for filing of the First Appeal under Faceless Appeal Scheme, 2020?

Ans. Appeal can be preferred by the assessee within 30 days from the date of receipt of order along with Notice of demand u/s 156 of the Income-tax Act 1961.

Q2. Considering the scheme of Faceless Assessments, whether assessment orders along with Notices of demand would be delivered physically or electronically?

Ans. All assessment orders framed under Faceless Assessments would be served only electronically viz. on registered ITD account of the assessee, to registered email of the assessee or on mobile app to be introduced in future or any other means of electronic communication etc.

Q3. Time limit of 30 days should be counted from which date?

Ans. 30 days' time limit should be counted from the date of serving the order and notice of demand electronically as per means of electronic communication specified under Faceless Assessment Scheme.

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If the assessee has applied for immunity from penalty u/s 270AA, the time from the date of application till the date of rejection (if so) will be excluded for computing the time of 30 days.

Q4. Is it possible to file appeal under Faceless Appeal Scheme if time limit of 30 days has expired?

Ans. Yes, an appeal can be filed with request for condonation of application.

Q5. If Appeal is filed within time limits prescribed or if the same is filed with condonation request, is it deemed to be accepted under the scheme?

Ans. If Appeal is filed within time limit of 30 days, then it is deemed to be accepted unless some defect in the documents filed are notified and they are not corrected by the Appellant.

In the cases where appeal filed is beyond time limit, and is filed along with condonation request, then, unless it is notified by NFAC in writing to the Appellant, such appeal cannot be deemed to be treated as admitted. Communication notifying admission of such appeal pursuant to condonation request is mandatory.

Q6. If Appeal is filed beyond time limits along with condonation request, is it deemed that condonation is granted to the appellant?

Ans. No, it can be never assumed that condonation is deemed to be granted. AU on receipt of such appeal through NFAC may accept the condonation request or reject the same by giving reasons in writing.

Q7. If Appeal is rejected by NFAC, can it be challenged by the Appellant by filing before appropriate jurisdictional authorities?

Ans. Yes, if appeal is rejected by NFAC then appellant can seek alternative remedies by challenging the same before appropriate jurisdictional authorities.

Illustrative situations when appeal can be filed?

Q 1. Specify under what circumstances appeal can be filed under Faceless Appeal scheme 2020?

Ans. As per section 246A –

- Order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act.

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- Intimation issued under section 143(1)/(1B) where adjustments have been made in income offered to tax in the return of income.
- Intimation issued under section 200A (1) where adjustments are made in the filed statement.
- Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel.
- An assessment order passed under section 144/144BA
- Order of Assessment, Re-assessment or Re-computation passed after reopening the assessment under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel.
- An order referred to in section 150.
- Rectification order passed under section 154 or under section 155 or order giving effect to appellate order, which is passed by an assessing officer.
- Order passed under section 163 treating the taxpayer as agent of non-resident.
- Order passed under section 170(2)/ (3) assessing the successor of the business in respect of income earned by the predecessor.
- Order passed under section 171 recording the finding about partition of a Hindu Undivided Family.
- Order passed by Joint Commissioner under section 115VP (3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies.
- Order passed under section 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee-in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government.
- Order determining refund passed under section 237.
- Order imposing penalty under section(s) - 221/271/271A/271AAA/271AAB/271F/271FB/272A/272AA/272B/

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272BB/275(1A)/158B FA (2)/ 271B/271BB/ /271C/271CA/
271D/271E/271AAB.

- Order imposing a penalty under Chapter XXI.
- When the deductor of TDS u/s 195, who bears the tax in respect of such payment to the non-resident, denies liability to pay tax (S. 248)
- an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Q2. Specify under what circumstances appeal cannot be filed under Faceless Appeal Scheme 2020?

Ans. Faceless Appeal Scheme 2020 shall not apply in the following circumstances: -

- Appeal arising out of **serious fraud and investigation matters**;
- Appeals arising out of **major tax evasion matters**;
- Appeals arising out of **sensitive and search matters**;
- Appeals arising out of **international taxation matters**;
- Appeals arising out of **Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015**.

Standard List of Documents/ Checklist for filing the Appeal.

Q1. Please specify the standard list of documents needed for filing the appeal?

Ans. Following is the standard list of documents for filing the appeal before NFAC:

1. Form 35;
2. Assessment Order / Re-assessment order / Penalty order
3. Appeal Fees Challan

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4. Statement of Facts
5. Grounds of Appeal
6. If it is an appeal against imposition of penalty, also attach assessment order
7. If there is delay in filing appeal, attach affidavit explaining reasons therefor along with the request for condonation of such delay.

All documents would be filed electronically only through PAN Number of the assessee on the ITD portal.

Q2. Is there any requirement to file above appeal documents physically again?

Ans. No, there is no requirement to file any documents physically.

Q3. While filing appeal documents, please kindly advise whose contact details such as e-mail address and mobile number should be specified in the form?

Ans. It is always desirable that E-mail ID and Mobile Number of the Appellant are reported/stated/mentioned for all kinds of communications pertaining to proceedings in appeal matters. Besides above, even on ITD portal of the Appellant only the email- id and mobile number are updated or modified in cases where E-mail IDs and Mobile Number of Authorised Representatives are updated. In fact, above practice should be adopted for all kinds of assessees.

Q4. How to file the appeal electronically?

Ans. Steps for filing of Appeals as per FAS, 2020, please read the article law on Faceless Appeals.

Steps on old Income Tax websites were as under: -

Step 1 visit www.incometaxindiaefiling.gov.in

Step 2, Login to the account by using PAN Number and Password

Step 3 Select - e-file options

Step 4 Select - Income Tax Forms

Step 5 Select - Form No 35-drop down menu

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Step 6 Select - Prepare and Submit online and continue

Step 7 Select - the either or 1. option File appeal for an order with DIN Number or 2. File an appeal for an order without DIN

Step 8 Select - Assessment Year

Step 9 Select - Financial Year based order

Step 10 Select - DIN Number of the order against which appeal is filed or in block assessment cases appeal can be filed without DIN Number

Step 10 Form 35 would be auto populated; fill all relevant details that need to be entered - Information can be saved in between too.

Step 11 – Preview and Submit – Preview version ready for upload

Step 12 – attach the following

- a. Copy of Order appealed against
- b. Notice of Demand
- c. Any other attachment

Once the above documents are attached.

Step 13 - Submit

Step 14 - Validate appeals filing through DSC or EVC or Aadhaar OTP. (It is necessary to re-register the DSC on Income Tax Dept.'s new website)

Step 15 - on successful validations, final filed Form 35 would be generated which can be saved for the record and Document ID would be generated on successful filing of such e-appeal.

Q5. Is any Form or Format prescribed for the filing of additional grounds of appeal in proceedings?

Ans. No Form or Format prescribed as of now.

Q6. If NFAC through RFAC/AU accepts/rejects the filing of additional grounds in appeal, is it communicated to the Appellant.

Ans. Yes, it is communicated in writing to the Appellant by NFAC.

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Q7. Is any Form or Format prescribed for the filing of additional evidence in appeal proceedings?

Ans. No Form or Format prescribed as of now.

Q8. If NFAC through RFAC/AU accepts/ rejects the filing of additional evidence in appeal, is it communicated to the Appellant?

Ans. Yes, it is communicated in writing to the Appellant by NFAC.

Signing of Appeal Documents

Q1. Who can sign the above documents?

Ans. The person filing the appeal should sign such documents either electronically using DSC or through EVC code generated for successful filing of the appeal.

- (1) In case of appeal by an individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney
- (2) In case of a Hindu Undivided Family, by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.
- (3) In case of a company, by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.
- (4) In case of foreign company, by a person who holds a valid power of attorney from such company
- (5) In case of a firm, by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor).
- (6) In case of a LLP, by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.
- (7) In case of a Local Authority, by the Principal Officer thereof.
- (8) In case of a Political Party, by the Chief Executive Officer of such party.

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- (9) In case of any other Association, by the Principal Officer thereof or by any member of the Association.

Q2. Can any other person viz. Authorised Representative file such appeal?

Ans. Yes, provided such authorised representative is registered on ITD account of the person who is filing such appeal. For various classes of persons (supra) such clarification is appropriately provided.

Payment of Tax

Q1. Does appellant need to pay the tax on account of accepted tax liability? Is it a must before filing the appeal?

Ans. An appeal will be admitted by NFAC only:

1. if tax as per the returned income has been paid prior to filing of appeal.
2. Where return of income has not been filed, the appeal can be admitted only if advance tax payable has been paid.
3. In the latter situation, i.e., where no return of income has been filed, tax payer can apply to the NFAC for exemption from such condition for good and sufficient reasons.

Q2. If Appeal is admitted, then is the act of such admission termed as equivalent to the grant of a stay order so as to avoid recovery of dues on account of additional Tax and Interest by AO under Demand and Recovery provisions as per the provisions of the Act?

Ans. No, unless stay order is obtained by the appellant, the AO can proceed with Demand and recovery as per the provisions of Act. If Stay order is granted, then AO cannot recover such demand on account of interest and Penalty.

Q3. How to obtain stay order against the recovery of such additional Tax and Interest etc. under the provisions of the Act?

Ans. Appellant can pre-deposit 20% of such additional tax and interest and obtain stay order from the AO against the balance tax demand and stay recovery proceedings under the provisions of the Act by filing application providing all requisite details in respect of matter under consideration.

Appeal Filing Fees Questions

Q1. For filing any appeals, what fees are payable by the Appellant?

Ans.

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

Appeal fee can be paid by cash/cheque in any branch of authorised bank/ State Bank of India/Reserve Bank of India along-with challan or paying electronically through Net Banking/ Debit/Credit Card etc.

Stamp Duty Related Questions

Q1. Is any stamp duty payable for registration of power of attorney in favour of authorised representative? Is stamp duty payable on PAN India basis?

Ans. Yes, Stamp duty is payable only on registration of such power of attorney in favour of Authorised Representative. Stamp Duty payable rates varies from state to state. Stamp Duty is payable as per the provisions of respective State Stamp Duty Act.

Please note that no stamp duty is payable on filing of appeals as per the provisions of the Income-tax Act 1961.

Q2. Is there any Standard Format available for the letter of authority?

Ans. Yes, it is available under e-proceedings tab of the ITD Portal. In addition to standard format of such letter of authority, even rates of stamp duties payable for each of the states are also notified in the same.

Language, Local Languages Transcripts Related questions

Q1. Is it mandatory to file the appeal in English Language only?

Ans. Normally, Appeal is filed in English Language but considering the provisions of the Rules governing filing of appeal, Appeal can be filed in any other language viz. Hindi, Marathi, Gujarati etc.

Q2. If Appeal is filed in language other than English, will it create any issues?

Ans. Technically, no problems should arise if Appellant has received the orders in the local language, then appeal can be filed in the local language. But considering the schema of Faceless Appeal Scheme, 2020 with its inherent dynamic jurisdictions concept, whereby NFAC would be allocating appeals to RFAC who in turn would be allocating the same to AU by using AAS, it is desirable to file the appeal in English. But if the same is filed in local language, then it is recommended that such uploaded local language documents are supported by English Transcripts of the same and the same are authenticated by Notary or SEO etc. which are duly registered in the records maintained by them. Such transcripts filed in English will mitigate the time consumed in the disposal of the appeal under schema. Normally, all documents can be filed in English and/or Hindi.

Q3. After the appeal is admitted, can appellant file submissions in local languages other than English?

Ans. Yes, normally all documents can be filed in English and/or Hindi but considering the Schema of Faceless Appeal Scheme, 2020 with its inherent dynamic jurisdictions concept whereby NFAC would be allocating appeals to RFAC and who in turn would be allocating the same to AU by using AAS, it is desirable to file the appeal in English. But if the same is filed in local language, then it is recommended that such uploaded local language documents are supported by the English Transcripts of the same and are authenticated by Notary or SEO etc. which are duly registered in the records maintained by them. Such transcripts filed in English will mitigate the time consumed in the disposal of the appeal under schema.

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Q4. Please specify the standard list of documents needed for filing the appeal?

Ans. Following is the standard list of documents for filing the appeal before NFAC:

Form 35;

Assessment Order / Penalty order

8. Appeal Fees Challan

9. Statement of Facts

10. Grounds of Appeal

11. If it is an appeal against imposition of penalty, also attach assessment order

12. If there is delay in filing appeal, attach affidavit explaining reasons therefor along with the request for condonation of such delay.

All documents would be filed electronically only through PAN Number of the assessee on the ITD portal.

Questions on Jurisdictions

Q1. What is the purpose of Dynamic Jurisdictions as contemplated under Faceless Appeal Scheme, 2020 as well as Faceless Assessment Scheme?

Ans. Concept of Dynamic Jurisdictions is new and novel when interpreted vis-à-vis Faceless Appeals as well as Faceless Assessment, which can be explained by the following example:

If Tax Payer is located in Mumbai, Maharashtra India and if he/she files the appeal either u/s 246A or u/s 248 of the Income-tax Act 1961, then after appeal is admitted by NFAC, it would be allocated by using AAS to any of the RFACs established under the scheme and in turn the RFAC would also allocate to any AU using AAS. So, in a given situation, Tax Payer could be located in Mumbai, NFAC could be located in Delhi, RFAC could be located in Chennai and AU could be located in Tripura. Thus, Tax Payer can be based anywhere and ultimate adjudicating authority can be based elsewhere, and both of them would not enjoy the opportunity of personal interface with each other.

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In the Faceless Appeal Scheme, the identity of the Appellant is not revealed. Also not revealed is to whom the appeal is allocated and where such Tax Payer/RFAC/AU is located, who is reviewing the documents, statements and information, as all communications will take place only through electronic means and none of the parties involved will communicate with each other directly. The interaction has to be routed through multiple layers of communication using remote technology. None of them shall have personal interface with each other.

If draft order is reviewed due to variations, the same AU will not be entitled to review the same matter. Instead, such review matter would be allocated to another AU using AAS.

On finality of the appeal, AU will frame the order, it would be forwarded to RFAC. Thereafter, RFAC would forward the same to NFAC and who in turn will share it with the Appellant. Thus, in nutshell who is doing what is actually not known to any one technically, but all would be aware about the process that would be followed for adjudicating the appeals under the scheme.

To summarize, process of adjudication in the appeal proceedings is aimed at becoming flawless, painless, seamless and faceless with dynamic jurisdictions using economies of scale and optimal utilization of technology.

Q2. What is meant by “ address” ?

Ans. “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);

Q3. What is meant by AAS?

Ans. “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;

Q4. What is meant by AET?

Ans. “Automated examination tool” means an algorithm for standardised examination of draft orders, by using suitable technological tools,

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including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

Q5. What is computer resource?

Ans. “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);

Q6. What is computer resource of appellant?

Ans. “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;

Q7. What is meant by Digital signature?

Ans. “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);

Q8. What is termed as Designated portal under the scheme?

Ans. “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;

Q9. What is termed as E-appeal as per scheme?

Ans. “E-appeal” means the appellate proceedings conducted electronically in 'e-appeal' facility through the registered account of the appellant in designated portal;

Q10. What is meant by electronic record as per scheme?

Ans. “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);

Q11. What is meant by E-mail or electronic mail and electronic mail message as per scheme?

Ans. “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

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device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

Q12. What is “hash function” & “hash result” as per scheme?

Ans. “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);

Q13. What is meant by “Mobile app” as per scheme?

Ans. “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;

Q14. What is meant by “Originator” under the scheme?

Ans. “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);

Q15. What is termed as “real time alert” as per scheme?

Ans. “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;

Q16. What is meant by “registered account” as per scheme?

Ans. “Registered account” of the appellant means the electronic filing account registered by the appellant in the designated portal;

Q17. What is meant by “registered e-mail address” as per scheme?

Ans. “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

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- (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;

Q18. What is meant by “registered mobile number” as per scheme?

Ans. “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;

Q19. What is meant by video conferencing or video telephony as per scheme?

Ans. “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.

Q20. Where video recording is done during personal hearing, will a copy of it be provided to appellant?

Ans. Yes, Appellant can demand the copy of such recording by filing request to NFAC and NFAC shall provide the same. As of now, modality of such application is not formalized but appropriate guidelines would be provided in the future by the NFAC through SOPs.

Q21. While conducting personal hearing through Video Conferencing, would it be possible for appellant to sight income tax authorities conducting such hearing?

Ans. No, Appellant won't be able to make out who is conducting such hearing as Appellant would be conversing while facing a black board, but the Authority would be able to see the Appellant or the Authorised

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Representative clearly and such Income Tax authorities may use facial recognition techniques using AI to draw inferences from the expressions of the applicant. Proper dress-code should be observed while conducting a VC.

Q22. Is it desirable that appellant or authorised representative needs to be very tech savvy for filing, compiling, submitting and attending the appeal matters under the scheme?

Ans. It is not necessary that one should be very tech proficient. But reasonable knowledge of technology and its uses would be useful as it will reduce the dependency of the person on others while going through the different stages of the appellate process. It can be presumed that progressively the Govt. will increase the deployment of technology to optimize processes and achieve further economies of scale.

Q23. Is it desirable that appellant or authorised representative should use only licensed software for filing, compiling, submitting and attending the appeal matters under the scheme?

Ans. No, it is not technically necessary but licensed software provides the edge over unlicensed software in terms of more features, stability, reliability, support and legality. The future is about paperless documentation, validation, verification, data security, AI etc. involving newer technologies which will change rapidly. It is inevitable that the culture of licensed software will prevail sooner than later.

Documentation Maintenance Related Questions

Q1. How many copies of each submission should be typically maintained for the record?

Ans. Typically, as all submissions are required to be filed and uploaded only in the electronic record format, it is recommended that for each appeal matter separate folders should be maintained on the internal & external hard disk as well as on cloud server (if possible). Sub-folders should be maintained in the chronological form as per date of submissions and hearings.

Besides digital records, one or two sets of physical printed records should be maintained in the master file after hash result is generated on the successful upload of appeal documents, statements and

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submissions. It is important to create and preserve a synopsis of the submissions made and what transpired on each date of hearing.

Q2. Is it recommended to quote legal jargons in appeal submissions?

Ans. Legal jargons can be quoted if backed by proper research and where the judicial context is appropriate. If in doubt, it is recommended to avoid the use of legal jargons.

Q3, Is it appropriate to use complex words, non-standard language while drafting written submissions?

Ans. As a matter of prudence, it is advised that communications drafted which form part of written submissions should be simple, precise, accurate, clear and unambiguous. This will ensure qualitative expressions and easier understanding for the reader when going through the synopsis, facts, grounds, well-researched neutral arguments and/or logical holistic comprehensive submissions. The desired conclusion and relief sought from the appellate authorities should be explicitly stated and conveyed.

Further, always use small sentences conveying constructive communication. Avoid commenting adversely about the first adjudicating authority viz. Jurisdictional Officer.

Use of complex and non-standard English language in communication creates ambiguity, the consequent lack of understanding can adversely affect the outcome of the case. Simple English communication always ensures that the recipient comprehends the issue well and helps steer the deliberations in a conducive manner.

Q4 Is it recommended to quote legal judicial precedents while preparing submissions?

Ans. While drafting any submissions, always carry out a thorough research of judicial precedents. Repeatedly study them under the lenses before quoting the same in the written submissions. Do maintain the record of complete judicial citations in your records as it may be required to be furnished during the appeal proceedings. It may be required to be presented if alternative remedies are sought at higher levels.

Citations should preferably be downloaded from Taxmann, ITR, ITAT or any other reliable resource provider, as citations/orders downloaded

from such credible sources are considered as reliable, authentic and they add value to arguments filed as part of written submissions.

Q5. Is it recommended that after every written submission or after every hearing internal synopsis of discussions carried out should be kept on file?

Ans. Yes, it is always recommended to maintain the synopsis of written submissions and discussions so that it helps to recall the matter when needed at any given point of time during appeal proceedings or at the higher level of alternative remedies.

Q6. What care should be exercised while naming the files by Appellants or advisors?

Ans. While naming any files which needs to be uploaded as a part of written submissions in any proceedings, please ensure that the file name shall not contain any special characters like “/”, “\”, “*”, “&”, “.”, “_”, “-”, “:” and Space

Q7. If above characters are not permitted which characters are allowed while naming any files?

Ans. For naming files, following characters can be used viz. “_”, “-”.

Q8. What care should be taken while scanning the documents for filing online appeal submissions?

Ans. Scanners:

HP Scanners with ADF features or Equivalent hardware (Use of all-in-One scanner would suffice).

Scan Settings

- DPI settings should be minimum 300. Set the Scan Clarity to at least 300 DPI.
- Always scan documents in PDF formats.
- Preferably, use Black and white settings if permitted.
- PDF Document created is never password protected.

Scanning Source Documents:

- Original document is often termed as best sourced document

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- A4 Size scanned document is usually considered as normal
- File size should not exceed 5 MB
- If desired, multiple files can be created if document is large and can't be scanned within the 5 MB limit.
- After scanning, check clarity of the document as well as File size to confirm that it doesn't exceed 5 MB.

To avoid poor quality:

- Always use Original Documents
- Avoid handwritten documents if possible and if not, ensure that they are clearly written with adequate spacing
- Avoid documents which are damaged due to misuse or pilferage or if they are folded multiple times
- One can merge various pdf files or demerge pdf files. Laos, if a pdf file is larger in size, it can be compressed.
- As for scanning of bank statements issued by banks, it is advisable to upload pdf statements issued by banks via e-mail or downloaded from its portal rather than scanning physical statement or pass-book to get more clarity at lesser size.
- Original documents issued in pdf format also ensures search functionality thru Ctr + F keys which is not possible for first printed and then scanned document.

Q9. Which browsers can be used for uploading the documents?

Ans. Google Chrome/Internet Explorer/Mozilla Firefox or any equivalent browser can be used for uploading the documents.

Q10. Can all such documents be uploaded from Cybercafé?

Ans. Uploading documents from Cybercafé should be strictly avoided wherever possible as data safety, integrity can be compromised.

Q11. Ideally from where such documents should be uploaded during the submissions?

Ans. Document can be uploaded from Office or any place of business where licensed broadband with reasonable speed is available.

Serving of Notice/ Communication Questions

Q1. What would be the mode of service of notice/communications in the Faceless Appeal scheme?

Ans. Notice as well as all communications would be served only electronically either on e-mail, mobile app or SMS on registered mobile numbers only.

Q2. Can you describe the mode of serving notice/communications through email in detail?

Ans. Serving of Notice/Communications on Registered E-mail address:

“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;

Q3. Can you describe the mode of serving notice/Communications through SMS on Registered mobile Number in detail?

Ans. Serving of Notice/Communications through Registered Mobile Number:

“Registered mobile number” means the mobile number of the appellant, or his authorised representative, appearing in the user profile of the

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electronic filing account registered by the appellant in the designated portal;

Q4. Can you describe the mode of serving notice/communications through Mobile App on Registered mobile in detail?

Ans. Serving of Notice through Mobile App:

“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;

Q5. Will serving of Notice/communication through above viz. E-mail, Mobile App and/or SMS etc. override the existing provisions of section 282 of the Income-tax Act 1961?

Ans. Overriding of Section 282 of Income-tax Act 1961.

Yes, existing provisions of section 282 would be overridden. The latest provisions of serving Notice/communication through E-mail, Mobile App and/or SMS etc. under the Faceless Appeal Scheme 2020 ensures that

if notice is not served in the traditional manner, the fact of it will not in any way invalidate the appeals proceedings initiated and concluded as per the provisions of the said scheme.

Adjudication Proceedings and Order Questions (includes Penalty Proceedings also)

Q1. Whether all adjudication proceedings would be conducted only electronically?

Ans. Yes, they would be conducted only electronically.

Q2. Whether all internal communication between NFAC, RFAC, AU, NaEAC and AO would be conducted only electronically?

Ans. Yes, they would be conducted only electronically.

Q3. Whether all documents, statements and information in connection with or in relation to appeal proceedings need to be uploaded only electronically?

Ans. Yes, all documents, statements and information in connection with or in relation to appeal proceedings need to be uploaded only electronically.

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No physical filing of any such documents, statements and information is envisaged as of now. Unless in the future some practical difficulties arise, in which case suitable SOPs may be provided by issuing appropriate notifications under the scheme.

Q4. If during ongoing appeal proceedings under the faceless appeal and adjudication scheme, if a Taxpayer is contacted personally and thereafter if appeal order is passed by NFAC, can such order be still termed as a valid order?

Ans. Considering the objective of the scheme, such order passed by NFAC would be termed as invalid, illegal, void ab initio and against the principles of natural justice as well as in contravention of the Tax charter of the Income Tax Department.

Q5. Is it mandatory to file the written submissions demanded by way of notice received from NFAC?

Ans. It is desirable that to the extent possible, such documents, statements and information are filed within the time and date specified in the notice. If it is not possible to file the full submission for some reason, a partial submission can be uploaded by the Appellant citing the reasons for not filing the complete submission. Also, a written request should be filed seeking extension of time for the filing the balance submission.

It is observed that adjournment confirmation may or may not be provided to the appellant.

Q6. If written request for adjournment is desired, is it possible?

Ans. Appellant can apply for adjournment by filing electronic request citing reasons for seeking such adjournment viz. out of station, gathering of material from multiple sources requires time, medical grounds, pre-occupied with filing activity and others. Documents justifying such reasons can be uploaded in the PDF file with a size limit of 5MB.

It may be noted that whatever reasons are provided, Appellant needs to maintain the documentary evidence to justify such reasons for seeking adjournment as it may be called for if desired.

It is observed that adjournment confirmation may or may not be provided to the appellant.

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Q7. Is there any time limit for the completion of Faceless Appeal proceedings?

Ans. As of now there is no time limit prescribed as per the scheme provisions, but in future, they may be provided by releasing appropriate SOPs.

Q8. If NFAC has obtained Remand Report from NeFAC/AO in relation to appeal proceedings, is it shared with appellant?

Ans. As of now there is no such provision for sharing of remand reports with Appellant which are obtained from NeFAC/AO. Ideally, such a provision should be enabled under the scheme.

Q9. Is there any provision in the Faceless Appeal scheme whereby a Draft Order/Revised order formulated and issued by AU is, shared with the Appellant?

Ans. As of now there is no provision for sharing of such orders with Appellant before passing the final order. Only the Final Order shall be communicated by NFAC to the Appellant on the conclusion of adjudication proceedings. Ideally, such provision should be enabled under the scheme.

Q10. Whether all adjudication orders would be served only electronically?

Ans. Yes, they would be served only electronically.

Q11. Whether any SOPs are issued in public domain in connection with Faceless Appeal Scheme?

Ans. As of now there are no SOPs which are released in public domain in connection with Faceless Appeal Scheme.

Personal and Video Hearing Questions.

Q1. Does the Appellant need to apply for personal and/or video hearing?

Ans. Yes, Appellant needs to apply for personal hearing and/or video hearing as a part of written submissions justifying the need and requirements of the same viz. materials require explanation due to complexity, inability to explain properly in writing, oral evidence and others etc. Supporting document to justify the same can be uploaded in the PDF file having a size limit of 5MB.

Q2. If Personal Hearing or Video Hearing is requested by Appellant, is it granted automatically.

Ans. No, it is not granted automatically. If AU is of the opinion after considering the matter that such personal hearing and/or video hearing is warranted then AU will communicate to RFAC. RFAC will communicate to NFAC and then NFAC will communicate to the Appellant. If such request is rejected, then there is no option as of now to seek Personal Hearing in any manner.

Q3. If Personal hearing or Video Hearing is granted, what is normal time limit provided for the purpose of hearing? Can it be extended if needed?

Ans. As of now, for any Personal Hearing or Video Hearing maximum time limit of 30 minutes is provided and the same cannot be extended by either party. For additional time required, again a request needs to be made which may or may not be approved by AU.

Q. While conducting personal hearing through Video Conferencing, would it be possible for appellant to sight the income tax authorities conducting such hearing?

Ans. No, Appellant won't be able to make out who is conducting such hearing as Appellant would be conversing while facing a black board, but the Authority would be able to see the Appellant or the Authorised Representative clearly and such Income Tax authorities may use facial recognition techniques using AI to draw inferences from the expressions of the applicant.

Q5. If request for granting Personal Hearing or Video Hearing is not granted by AU, can it be termed as violation of the principles of natural justice as well as contravention of the Tax Charter of the Income Tax Department?

Ans. Yes, refusal of not granting personal hearing or video hearing is violative of principles of natural justice and is in contravention of the Tax Charter issued by the Income Tax Department.

Appellant should maintain appropriate documentation of such requests made and opportunity of hearing not granted, which can act as support if alternative remedies are resorted to or when disputes unfold in the litigation process.

Q6. If PH/VC was granted but Appellant or AR is unable to attend, what is the recourse?

Ans. Appellant can reapply by stating the following illustrative reasons viz. VC facility not available, Medical Grounds, Pre-occupied with other unavoidable activity and others. Supporting document to justify the same can be uploaded in the PDF file having a size limit of 5MB.

Faceless Penalty Proceeding Questions

Q1. Is the process of receiving notices/communications by Appellant similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of receiving notices/communications by Appellant is similar to that under the Faceless Appeal scheme.

Q2. Is the process of responding/replying/personal hearing/video conferencing etc. to notices pertaining to Faceless Penalty proceedings similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of responding/replying/personal hearing/video conferencing etc. to notices pertaining to Faceless Penalty proceedings is similar to that under the Faceless Appeal scheme.

Q3. Is the process of formulating draft order/revised order due to variations pursuant to SCN pertaining to Faceless Penalty proceedings similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of formulating draft order/revised order due to variations pursuant to SCN pertaining to Faceless Penalty proceedings is similar to that under the Faceless Appeal scheme.

Q4. Whether Faceless Penalty adjudications orders pertaining to Faceless Penalty Scheme would be served only electronically?

Ans. Yes, Orders pertaining to Faceless Penalty Scheme would be served only electronically to the Appellant.

Faceless Rectifications Proceedings Questions

Q1. Who can initiate the rectifications as per scheme?

Ans. Rectifications can be initiated by any of the following by filing the request before NFAC:

1. Appellant or any other person as the case may be;

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2. AU preparing or reviewing or revising the draft order;
3. NaFAC or AO, as the case may be.

Q2. Will such rectification order be passed in writing?

Ans. Yes, such order would be passed in writing and communicated only electronically.

Q3. Are such proceedings of rectifications applicable only in the cases of mistakes which are apparent from the record?

Ans. Yes, such proceedings would be initiated only in respect of mistakes which are apparent from the record.

Q4. Is the process of receiving notices/communications in connection with rectification proceedings similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of receiving notices/communications in connection with rectification proceedings by Appellant is similar to that under the Faceless Appeal scheme.

Q5. Is the process of responding/replying/personal hearing/video conferencing etc. to notices pertaining to rectification proceedings is similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of responding/replying/personal hearing/video conferencing etc. to notices pertaining to rectification proceedings is similar to that under the Faceless Appeal scheme.

Q6. Is the process of formulating draft order/revised order due to variations pursuant to rectification proceedings similar to that under the Faceless Appeals scheme?

Ans. Yes, the process of formulating draft order/revised order due to variations pursuant to rectification proceedings is similar to that under the Faceless Appeal scheme.

Other Questions

Q1. If Appeal is filed manually before 25.09.2020 and not adjudicated till date, then after the introduction of Faceless Appeal scheme 2020, does the appellant need to file all such papers again electronically?

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Ans. No, Appellant need not file them again electronically. Once the appeal is filed by the appellant and if the same is admitted, then in such cases Department will convert all such documents electronically and file with NFAC.

Q2. Will it possible to withdraw the admitted appeal under Faceless Appeal Scheme?

Ans. There is no provision under the scheme to withdraw the appeal after it is admitted. Appeal gets concluded only on its disposal by either upholding or rejecting the same.