

AMENDMENTS TO FACELESS ASSESSMENT SCHEME / ASSESSMENT & REASSESSMENT PROVISION



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AMENDMENT RELATED TO FACELESS ASSESSMENT

The Faceless Assessment was originally introduced by Faceless Assessment Scheme 2019 and later section 144B was inserted to the Income tax Act, 1961 (the Act), by the Taxation and other Laws (Relaxation and Amendment of Certain provisions) Act 2020 with effect from 01.04.2021.

The Finance Bill 2022 proposes to revamp entire section 144B, in order to streamline the process and to address various procedural and legal issues.

The existing section 144B of the Act provides for faceless assessment for assessment u/s. 143(3) and 144 of the Act only. The proposed section 144B provides for faceless assessment for assessment, reassessment, or recomputation u/s. 143(3) or 144 or 147 of the Act.

As per the proposed scheme, following 'centres' or 'units' will be operational.

- **A National Faceless Assessment Centre (NaFAC)** – to facilitate the conduct of faceless assessment proceedings in centralised manner
- **Assessment Units (AU)** – to perform the function of making assessment. The term 'Assessment Unit' refers to Assessing Officer having power so assigned by Board.
- **Verification Units (VU)** – for enquiry, verification, examination of books of accounts, recording of statement, etc. The term 'Verification Unit' refers to Assessing Officer having power so assigned by Board.
- **Technical Units (TU)** – for technical assistance, legal advice, etc. The term 'Technical Units' refers to Assessing Officer having power so assigned by Board.
- **Review Units (RU)** – for reviewing the draft assessment order. The term 'Review Units' refers to Assessing Officer having power so assigned by Board.

All the communication between the assessee and the units mentioned above shall be through NaFAC.

The existing section also provides for '**Regional e-Assessment Centres**' under the jurisdiction of the regional Principal Chief Commissioner for making assessment, which is proposed to be deleted under new section 144B proposed in the Finance Bill 2022.

Procedural lapse cannot make assessment void:

The existing sub-section (9) to section 144B provides that the assessment proceedings shall be void if the procedure mentioned in the section is not followed. This sub-section is proposed to be deleted from the date of its insertion, i.e. w.e.f. 1st April 2021. Hence assessment should not be considered as void merely because prescribed procedure is not followed.

Principle of Natural Justice:

The current scheme of faceless assessment is challenged before the various Courts mainly on the grounds of violation of principle of natural justice. The proposal in this Finance Bill makes an attempt to address such issues by providing for few measures like, requirement to first issue a show cause notice and only then prepare an income of loss determination proposal, etc.

Opportunity for hearing:

Further with reference to personal hearing, there exist some ambiguity under the existing provisions. As per existing section 144B(7), assessee may request for personal hearing where a variation is proposed in the draft order and assessee is served with show cause notice. Further the Chief Commissioner of Director General in charge of the Regional Faceless Assessment Centre may approve the request for personal hearing, if such request is covered by the circumstances laid down by the Principal Chief Commissioner with the approval of CBDT. Further the CBDT, vide Circular dated 23.11.2020 & 31.03.2021 states that personal hearing would be granted where:

- Assessee has submitted written submission in response to draft assessment order, and
- In such submission assessee disputes the facts underlying proposed modification and make a request for personal hearing

In view of word 'may' used in s. 144B(7)(viii) and the SOP in CBDT Circular dated 23.11.2020, the tax authorities have taken a stand that the personal hearing is discretionary and could be granted only where a dispute on facts is involved. The Delhi High Court in the case of Bharat Aluminium Company Ltd. [WP(C) 14528/2021] held that even under faceless assessment scheme the assessee would have a vested right of personal hearing and the same has to be granted, if an assessee ask for it. The proposed section addresses such ambiguity by use of words "shall allow such hearing" as opposed to "may approve the request for personal hearing".

The relevant provisions of the proposed sub-section (6) of section 144B, as is relevant to the personal hearing, is summarised hereunder:

- In a case where a variation is proposed in the income or loss determination proposal or the draft order, an opportunity is provided to the assessee by serving show cause notice and the assessee or his authorised representative may request for personal hearing.
- Where a request for personal hearing has been received, the income tax authority of the relevant unit shall allow such hearing through NaFAC via video conferencing.

No opportunity when matter is referred to Review Unit

The opportunity of hearing is provided at the time of preparation of the income or loss determination proposal by the AU. When the AU finalise income or loss determination proposal after considering the submission of the assessee and taking into account all the material available on record and forward the same to the NaFAC, the NaFAC may refer the same to the Review Unit (RU) and the RU may suggest some modification. If the AU accepts any of the modification suggested by the RU which is prejudicial to assessee, then again, the assessee should be given an opportunity of hearing, which somehow seems to be missing.

Apprehension that such hearing opportunity should not become mere formality:

The bill provides that the income tax authority of the relevant unit shall allow hearing through NaFAC through video conferencing or video telephony. Now if the officer doing assessment is different from the one who hear the assessee, then again purpose is not achieved. Further, the officer who hears the assessee should reveal his identity during the hearing otherwise it will not be possible to ascertain whether the officer who pass the assessment order is the one who heard the assessee. Currently, after the negative remarks from the various High Courts, the opportunity is given to the assessee through video conferencing, but in many cases the officer refuses to reveal his identity!!

Faceless assessment scheme for Transfer Pricing and International taxation:

The date for introducing faceless scheme for section 92CA and 144C of the Act, dealing with transfer pricing and international taxation, is extended till 31st March 2023.

The process prescribed in sub-section (1) of section 144B is briefly summarised hereunder:

- The National Faceless Assessment Centre (NaFAC) to assign case to the specific assessment unit (AU) through automated system and intimate to the Assessee that assessment will be faceless
- The assessment notice u/s. 143(2) / 142(1) will be served through the NaFAC and the assessee is required to submit its response to the NaFAC
- The AU, through NaFAC, calls for further information, documents or evidence from the assessee or other person and the assessee or any other person is required to furnish the same within specified time to the NaFAC.
- The AU may request through the NaFAC to conduct further enquiry or verification by Verification unit (VU), and NaFAC to assign such request through automated system to a VU. The report received from such VU shall be forwarded by the NaFAC to the concern AU.
- The AU may request through NaFAC for seeking technical assistance on any matter by referring the matter to the technical unit (TU), and the NaFAC to assign such request through automated system to a TU. The report received by such TU shall be forwarded by the NaFAC to the concern AU.

Ex-party assessment

- Where assessee fails to comply with the notice served u/s 143(2) or 142(a) or 144B(1)(v), the NaFAC shall intimate such failure to the AU and the AU then serve to the assessee, a notice u/s. 144 through the NaFAC.
- The assessee shall file his response to 144 Notice to the NaFAC within specified time, which the NaFAC shall forward to the AU.

Income or loss determination proposal and opportunity of hearing

- If assessee fails to file response to 144 Notice within specified time, then the NaFAC shall intimate such failure to the AU and the AU, after taking into account all the material available on record, prepare an income or loss determination proposal.
 - o If no variation prejudicial to assessee is proposed in such proposal, then such income or loss determination proposal is forwarded to the NaFAC
 - o In other case, a show cause notice as to why proposed variation should not be made, is served on the assessee through the NaFAC.

- o The assessee shall file his reply to the show cause notice to the NaFAC within specified time which the NaFAC shall forward to the AU. If assessee fails to respond within specified time, the NaFAC shall intimate such failure to the AU.
- The AU, after taking into account all the relevant material available on record, prepare an income or loss determination proposal and (a) where no variation prejudicial to the assessee is proposed, forward the same to the NaFAC or (b) in other case, issue a show cause notice on assessee through NaFAC call him to submit as to why the proposed variation should not be made
- The assessee shall file his reply to such show cause notice to NaFAC, which NaFAC shall forward to AU. If assess fails to respond to such show cause notice, NaFAC shall intimate such failure to the AU.
- The AU, after considering the response or after receipt of intimation about failure, and taking into account all the relevant material available on record, prepare an income or loss determination proposal and forward the same to the NaFAC.

On receipt of income or loss determination proposal from AU

- On receipt of the income or loss determination statement, the NaFAC on the basis of guideline issued by the Board, may
 - o (a) convey to the AU to prepare a draft order in accordance with the income or loss determination proposal, or
 - o (b) assign the income or loss proposal to review unit through automated system, for conducting review of such proposal.
 - The review unit shall conduct the review of such income or loss determination proposal and forward its review report to the NaFAC, which the NaFAC shall forward to the AU.
 - o The AU, after considering the review report, accept or reject, some or all of the modifications proposed therein and after recording its reasons for rejection of such modification, prepare a draft order.
- The AU shall forward such draft order to the NaFAC.
 - o Where there is a proposal to make any variation which is prejudicial to the interest of assessee as mentioned in section 144C(1), the NaFAC shall serve such draft order on the assessee
 - o In other case, NaFAC convey to the AU to pass final assessment order in accordance with such draft order and the AU shall pass final assessment order and initiate penalty proceedings, if any, and forward it to the NaFAC.
- On receipt of final assessment order, NaFAC shall serve copy of such order and notice for initiating penalty proceedings, if any, on the assessee along with the demand notice.
- Where a draft order is served on the assessee, such assessee shall (a) file his acceptance to the variation proposed with the NaFAC, or (b) file his objection, if any, to such variation, with Dispute Resolution Panel (DRP) and NaFAC, with the time prescribed u/s. 144C(2).
- The NaFAC, upon receipt of acceptance from the assessee or not receiving any objection from the assessee within specified period, intimate the AU to complete the assessment as per the draft order. In which case the AU shall pass the assessment order within the prescribed time and initiate penalty proceedings, if any, and send order to the NaFAC.

- Where the assessee files objection with the DRP, the NaFAC shall send such intimation along with a copy of objection to the AU. On receipt of direction from the DRP, the NaFAC forward such direction to the AU. The AU to complete the assessment in conformity with the direction issued by the DRP within the time prescribed u/s. 144C(13) and initiate penalty proceedings, if any, and send copy of assessment order to the NaFAC.
- The NaFAC, upon receipt of assessment order from the AU, serve the copy of such order and notice for initiating penalty proceedings, if any, on the assessee.
- After completion of assessment, the NaFAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the case.
- If at any stage of proceedings, having regard to the nature and complexity of the accounts, volumes of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, AU is of the opinion that the provision of sub-section (2A) of section 142 may be invoked, it may refer the case to NaFAC, after recording its reasons in writing.

Conclusion:

The faceless assessment scheme was started initially for the scrutiny assessment u/s. 143(3) / 144 of the Act and now proposed to be extended for reassessment u/s. 147 of the Act. In future such faceless scheme will be extended for the transfer pricing assessment and also for the international taxations. Hence any attempt to remove the difficulties faced by the administration and tax payer will go long way in the ultimate success of faceless assessment scheme.

The proposal in the current Finance Bill has addressed the issue on the principle of natural justice by ensuring opportunity for hearing to the assessee. If this opportunity for hearing does not remain mere formality, then in reality this will be a step towards ensuring principle of natural justice. Further the opportunity of hearing, when a matter is referred to a Review Unit, seems to be missing, which appears to be unintentional and hopefully the same should be rectified once it is brought to their notice.

RATIONALISATION OF PROVISIONS RELATING TO ASSESSMENT AND REASSESSMENT

Amendments proposed for section 148 and 148A of the Act

Under the existing provisions of the Act, as per the proviso to section 148 of the Act, the notice for reassessment u/s. 148 can be issued only when the Assessing officer is in possession of some information which suggest that the income chargeable to tax has escaped assessment and a prior approval from specified authority is obtained to issue such notice.

Section 148A was introduced by Finance Act 2021, which requires AO to comply with certain procedure.

- a) 148A(a) : AO to conduct enquiry, if required, with prior approval
- b) 148A(b) : Opportunity of being heard to be given to assessee, with prior approval
- c) 148A(c) : AO to consider reply of assessee
- d) 148A(d) : Order to be passed as to whether it is a fit case for issue of notice u/s. 148, with prior approval

The present Finance Bill 2022, proposes to insert a new proviso to section 148, which provides that when an order is passed u/s. 148A(d), the approval from specified authority is not required to issue notice u/s. 148 of the Act. Since the order u/s. 148A(d) can be passed with the prior approval, there is no need for one more approval for issue of notice u/s.148.

Scope to trigger reopening is widened

Currently, under clause (ii) to Explanation 1 to section 148 of the Act, the final objection from Comptroller and Auditor General is considered as information to trigger issue of notice u/s. 148 of the Act. The bill proposes to replace such clause (ii) with following:

- (ii) any audit objection which suggest that a particular assessment was not made in accordance of the Act
- (iii) any information received under an agreement referred in section 90 and 90A of the Act
- (iv) information made available to the AO under the Scheme notified u/s. 135A of the Act (i.e., faceless collection of information like AIS information)
- (v) information which requires action in consequence of the order from Tribunal or Court

Insertion of New Section 148B

It has been provided that no order of assessment or reassessment or re-computation under the Act shall be passed by an AO below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.

Section 149 – Time limit for issue of notice

It is proposed to extend the time limit for issue the notice to ten years from the end of relevant assessment year, where the AO is in possession of books of accounts or other documents or other evidences, which reveals that income escaping the assessment represented in the form of (a) an asset, (b) expenditure or (c) any other entries in the books of account, amounts to or is likely to amount to Rs. 50 lakhs or more.

It is also provided that no notice u/s. 148 shall be issued, if the time limit prescribed for issue of notice u/s. 148 or 153A or 153C has expired on or before 1st April 2021.

Also, a new subsection (1A) is proposed to be inserted to provide that, where income escaped assessment and represented in the form of an asset or expenditure in relation to an event or occasion and investment in such asset or expenditure in relation to such event or occasion has been made or incurred in more than one year, the notice u/s. 148 shall be issued for each of such years for assessment, reassessment or re-computation, as the case may be.

Conclusion

The provisions of the Finance bill propose to rationalise the assessment and reassessment procedure. However, in a process of rationalisation, the time limit to reopen an assessment is extended to ten years, where escaped income which is represented in the form of assets or expenditure or entries in the books of account exceed Rs. 50 Lakhs. So, maintain all the documents for a period of more than ten years will be a real challenge for most of the tax payer.

