

# FACELESS ASSESSMENT - AMENDMENT, PRACTICAL ASPECTS AND CHALLENGES.

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This Covid-19 pandemic has given acceleration to digital communication across the globe. We have accepted the faceless communications in our daily routine, now Indian Revenue has been agile to keep up this change. Faceless Assessment Scheme is going to bring the major change to our Tax administration. Adding it to the list of Structural Reforms, Hon'ble Prime Minister, Shri Narendra Modi, launched the platform for "Transparent Taxation - Honouring the Honest" in August 2020. Government has launched such a major change so swiftly and at the same time caution has been placed on making the direct tax administration 'seamless', 'painless', and 'faceless'. As we are all aware that motto behind this scheme is to remove the physical interface between the taxpayers and the revenue so as to bring the greater transparency. Earlier, entire assessment procedure was based on the judgment of the one person, Assessing Officer. He was the only karta dharta for us. Considering the nature of the scheme, it appears that this issue has been properly addressed. The assessments will now be taken care of by a dedicated assessment unit, in contrast to the Assessing officer as was the case in traditional assessments. Further, the procedure offers the opportunity for review of the assessment order at various stages. It is indeed a path-breaking reform.

## **Background :**

Finance Act, 2018, introduced us with faceless assessment by inserting section 143(3A), section 143(3B), section 143(3C) and the Faceless Assessment Scheme, [earlier "E-Assessment" Scheme] was introduced vide Notification No. S.O. 2745(E), dated 12th September 2019, and amended by Notification No. S.O. 2745 (E), dated 13th August 2020. Thereafter, The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, amended the Income-tax Act, 1961 (ITA) by inserting new provisions to incorporate the Faceless Assessment Scheme within the ITA. Section 143(3D) is inserted with effect from 1st April 2021, stating that the provisions of sections 143(3A)/(3B) shall not be applicable in case of assessments made on or after 1st April 2021. A new section 144B is inserted, to take effect from 1st April 2021. Thereafter, on 17.02.2021, The Faceless Assessment (1st Amendment) Scheme, 2021 is notified vide Notification No. S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL] to bring the provisions of Faceless Assessment Scheme, 2019 at par with provisions of Section 144B of the Income-tax Act, 1961.

## **Highlights of the Notification No. S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL] :**

- The amendment scheme is named as Faceless Assessment (1st Amendment) Scheme, 2021 (FAS 2021)
- Issues for selection of case for audit : The requirement to specify the issues for selection of the case for audit in the notice to a taxpayer, has been done away with.
- Definition of eligible assessee inserted
- Definition of Dispute Resolution Panel inserted
- The Scheme provides an option for eligible taxpayers to approach the DRP after passing of draft assessment orders under the FAS 2019
- It also amends para 11 of the Faceless Assessment Scheme, 2019 relating to personal appearance in the Centres or Units.

**Practical Aspects of scheme including revised procedure :**

For the purpose of this scheme, the Board to set up following centres and units :

1. National e-Assessment Centre (NeAC) : It will act as Central Cell between Taxpayer and Income Tax Department.
2. Regional e-Assessment Centre (ReAC) : It shall comprise of Assessment unit, Verification unit, Technical unit, and Review unit.
3. Assessment Unit (AU) : It shall perform function of making assessment including identification of issues, seeking information, analyzing the material to frame draft assessment order.
4. Verification Unit : It shall perform functions of verification which includes enquiry, cross verification, examination of books of accounts, examination of witness, and recording of statements, and such other function as may be required for the purpose of verification.
5. Technical Unit : To perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases.
6. Review Unit : To Review of Draft Assessment Order – Whether material evidence brought on record, points of facts and law incorporated, Whether issues on which addition/disallowance should be made have been discussed in draft order, application of judicial decisions considered, arithmetic correctness etc.

All the communications among these units or with the assessee or any person shall be through National e-Assessment centre only.

**Steps involved in Faceless Assessments :**

1. NeAC shall serve a notice on the assessee u/s 143(2).
2. Assessee is required to file a response within 15 days from the date of receipt of the notice.
3. In cases where a notice has already been issued by the Assessing Officer (AO) either u/s 143(2)/142(1)/148 etc., the NeAC to intimate the assessee that assessment shall be completed under this Scheme (for the existing cases/as well as other exceptional cases)
4. Through an automated allocation system, NeAC shall assign the case selected to a specific assessment unit in any Regional e-Assessment Centre.
5. Assessment unit shall make a request to NeAC for
  - a) obtaining further information, documents or evidence from the assessee or any other person,
  - b) conducting of certain enquiry or verification by the verification unit
  - c) seeking technical assistance from the technical unit
6. In cases where the AU approaches the NeAC as stated in 5(a) above, NeAC shall issue appropriate notice or requisition of any information sought, either to the assessee or any other person for obtaining the information, documents or evidence. The assessee or any other person, as the case maybe, shall file his response to the notice referred to above within the time specified therein or extended time as allowed.

7. In case where AU has made verification request, the NeAC shall assign it to Verification Unit in any one ReAC through an automated allotment system. Same way, if AU has asked for technical assistance, the NeAC will assign it to a Technical Unit in any one ReAC through an automated allotment system.
8. The Report of the Verification Unit and/or the Technical unit to be sent to the Assessment unit.
9. Where assessee fails to reply to the notice, NeAC shall serve upon him SCN u/s 144 giving him an opportunity specifying the date and time in the notice.
  - Now assessee is required to file his response within the specified time
  - If the assessee fails to reply, the NeAC shall intimate the AU of such failure.
10. Draft assessment order shall be made by the AU:
  - after taking into account all the relevant material available on the record
  - In case of failure on the part of the assessee to reply - make in writing, a draft assessment order to the best of its judgment.
  - Either accepting the income, or sum payable by, or sum refundable to, the assessee as per his return or modifying the said income or sum
  - send a copy of such order to NeAC
11. Assessment unit shall provide details of penalty proceedings to be initiated, if any, at the time of making the draft assessment order while making the draft assessment order.
12. NeAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool. On such examination, the NeAC may decide to:
  - finalize the assessment as per the draft assessment order and serve a copy of the order along with notice initiating penalty and notice of demand (if no variation proposed) or
  - In case any variation prejudicial to the interest of assessee is proposed, then issue SCN to assessee or
  - Assign such draft order to one review unit of REAC for review
13. If the draft assessment order is referred to the Review Unit, it shall Conduct a review and
  - either concur with Draft order and intimate the same to NeAC
  - or Suggest variation and send to NeAC
14. If no suggestions are proposed by the Review Unit, then the NAC shall–
  - Finalize the assessment as per the draft assessment order and serve a copy of the order along with notice initiating penalty and notice of demand or
  - If variation is proposed originally, then issue a show-cause notice to assessee.
15. After receiving suggestions for variation from the review unit, assign the case to AU, other than the AU which had prepared original draft assessment order through an automated allocation system.
16. Such AU after considering the variations, send the final draft assessment order to NeAC.
17. On receipt of this draft order - NeAC shall either finalize the order or any variation there, then issue SCN.
18. Assessee to response to such SCN on or before the date and time specified therein or as extended by NeAC.
19. In cases where no reply has been received to SCN issued to the assessee, the NeAC shall finalize the draft assessment order and issue notice of demand/penalty. In cases where reply received – send the response received to the concerned AU.

20. The AU shall consider the response and send the revised draft order to the NeAC.
21. On receipt of the revised draft assessment order, the NeAC shall finalize the assessment in cases where no variation prejudicial to the interest of the assessee has been proposed. In cases where variation is proposed – issue SCN to the assessee (2nd SCN) (as compared to the original order). The response furnished by the assessee shall be dealt with the manner as stated above.
22. On receipt of the draft assessment order or final draft assessment order or revised assessment order, the assessee shall file his acceptance of the variations with the NeAC within a period specified u/s 144C(2).
23. The NeAC shall upon receipt of acceptance or if no objection received within prescribed time limit, finalize the assessment within the time allowed and serve a copy of such order and notice for initiating penalty proceedings, if any, along with demand notice or refund due on the basis of assessment.
24. In case the assessee files any objections with the Dispute Resolution Panel, the DRP will issue directions under provisions of section 144(5) to the NeAC, which will forward the same to the concerned AU.
25. The AU to prepare a draft assessment order in conformity with the directions received from the DRP and send a copy of the same to the NeAC.
26. The NeAC shall finalize the assessment within the time allowed u/s 144C(13) and serve a copy of the order and the notice for initiating penalty proceedings, if any, along with the demand notice on the basis of such assessment.
27. After completion of the assessment, the NeAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case, for such action as may be required under ITA.

#### **Other Practical Aspects :**

- No personal appearance in the centres or units :
  1. The assessee is not entitled to the right of a personal hearing and has to request for the same to the Chief Commissioner or the Director General at the Regional e-Assessment centres.
  2. Where such personal hearing has been approved by the chief Commissioner or the Director General, such hearing shall be conducted exclusively through Video conferencing, including use of any telecommunication application software which supports video telephony.
- Penalty proceedings for non compliance :
  1. Any unit may, in the course of assessment proceedings, send recommendation for issuance of penalty under chapter XXI of the act for non compliance of any notice, direction or order issued under this scheme, to NeAC.
  2. NeAC on receipt of such recommendation, server a SCN on the assessee or any other person as the case may be, calling upon him to show cause why penalty should not be imposed on him.
  3. The response submitted by assessee, NeAC to submit it to respective AU.
  4. After considering the said response, said unit, may make a draft order of penalty and send a copy to NeAC or drop the penalty after recording reason and intimate to NeAC.
  5. NeAC to levy penalty as per the said draft order of penalty and server a copy of the same along with demand notice on assessee or other person as the case may be, and thereafter transfer electronic record of penalty proceedings to Assessing Officer having jurisdiction over the said case.

- Exchange of communication by electronic mode :

All the communications between NeAC and assessee, or his AR or any other person shall be via electronic mode only.

And all the internal communication between NeAC , ReAC, or various units shall be via electronic mode only.

- Authentication of electronic record :

1. NeAC to authenticate electronic record via affixing its digital signature
2. And Assessee to authenticate via affixing digital signature or via EVC.

- Delivery of Electronic record :

1. Every notice or order or any electronic communication to be delivered the addressee, being the assessee, by way of -
  - a. Placing an authenticated copy thereof in the assessee's registered account; or,
  - b. Sending an authenticated copy to registered email address of assessee or his authorized representative; or
  - c. uploading an authenticated copy on the assessee's Mobile App. and followed by real time alert.
2. The assessee shall file his response through his registered account, and the response shall be deemed to be authenticated when acknowledgement is received by NeAC.

### **Coming times and Challenges in front of us :**

First of all, let us accept that Faceless Assessments has come and it is real. There is no going back on this. It is not old wine in a new bottle. The new system is paradigm shift from old system. The Faceless Assessment Scheme and the Faceless Appeal Scheme (faceless scheme) are arguably the biggest tax reforms that have been witnessed by the Income-tax Act, 1961, in recent times. This throws up completely new challenge before the professionals. And are we prepared for it?

- A. Writing skills : We need to understand here that , earlier we had option to submit written submission as well as making officer understand with face to face communication. Now, there is no such option available. We'll have to rely on our written communication only. Proving or justifying or expressing our point through written communication is going to be a task. We shall Ensure that our office has excellent skillsets for effective written communication on technical matters. Writing skills were never tested so much as it would be tested now. The representation side of practice was pre-dominant relying on the oral representation skills and at times networking skills. Nothing of this sort would work. This is single most important challenge. This can have an impact on retaining the clients also.
- B. Electronic equipments : We must try to go paperless as to save our time in future. We shall have enough and updated scanners as required. We should have more of VC equipped rooms for effectively doing the e-hearings. Each of the offices would have more than 1 simultaneous hearings or appeals going on and in such a scenario, having only 1 place from where the E-hearings could be done would be inadequate.

- C. Data uploading : Scanning the each document to compressing it is going eat a lot of time followed by the gathering data and saving in the formats. Above all this dealing with the given size limit is also an obstacle. We shall try to make our office paperless as much as possible. And developing a process so as to make the whole process very smooth
- D. Geographical location : Physical location of the professional would become completely irrelevant. Geographical location of client, AO, etc. would become totally irrelevant. This would therefore mean that the client would be able to source the services of a representative from anywhere. Assessee will be able to hire professionals from anywhere. It can be major threat as well as a great opportunity
- E. Personal Hearings & Natural Justice : The Faceless Assessment Scheme provides limited opportunity of personal hearing. As it has been left on the discretion of the Chief Commissioner or the Director-General of Income Tax, who may or may not entertain appellant's request for virtual hearing. A right to fair hearing in terms of natural justice includes giving every possible opportunity to a person to present his/her case. In view of this, every person should be given broad opportunity to present the case. Faceless assessment will narrow down the opportunity only to written communication. The written responses lack oral communication's spontaneity. Written communication cannot be immediately adjusted to meet the authority's needs, clarify a question or respond to a rebuttal. Personal hearing enables the authority concerned to watch the demeanor of the witnesses and clear up its doubts during the course of the arguments. This is a real challenge in front of us
- F. Non receipt of notice : In certain cases, assesses are not well-versed with technology and do not get email alert nor they check email on regular basis. or they might have changed email id due to some reason. The scheme however provides for a system of phone messages which is likely to be started which will help in avoiding missed notices.
- G. Time Consuming : There are many level of assessment procedure. This can lead to substantial time delays and issues of co-ordination. If at every stage team approach is adopted, then decision making could be an issue.

### **Conclusion :**

Whenever a new system is introduced, it is in human nature to oppose to it at start. But we must remember that only thing which has been constant is the change! For long term gain, we'll have to go through short term pain. We as a partner in nation building must positively accept these major changes and contribute to our hon'ble prime minister Shri Narendra Modi's dream of corruption free India.

