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# **FACELESS ASSESSMENT AND APPEALS:** **TRANSFORMATIVE BREAKTHROUGH**

AUTHORED BY - SARANYA K

## **ABSTRACT**

*In this article the author has evaluated the viability and practicality of faceless assessment and appeals and constraints faced by the assessee. The author has also evaluated the constitutional jurisprudence of the faceless scheme. The scheme will revolutionise the way in which the scrutiny assessments of the tax returns that are filed by taxpayers are conducted and will fully digitise the interactions between taxpayers and the revenue. The scheme has been introduced with the intention of making direct tax administration seamless, painless, and faceless. Similar to the revenue audits that are carried out in many countries, the Indian revenue authorities also conduct assessment proceedings in order to determine whether any adjustments are required to the income that taxpayers have declared on their tax returns. Historically, such proceedings have involved sitting across the table from the tax officer, providing details and clarifications from time to time. The faceless assessment scheme aims to change that completely.*

**KEYWORDS:** Faceless assessment Scheme, faceless Appeal scheme, background, structure, process, Assessee, Tax, appellate authority, Income, Principles of Natural Justice, impact and constraints.

## **INTRODUCTION**

The tax scenario before the introduction of faceless assessment was that a taxpayer's case was selected for assessment through the system, manually or based on certain information available with the Income-tax Department. The assessment was conducted by the jurisdictional tax officer. This has led to the so many limitations such as issuance of notices, through the system and manually which made record keeping difficult leading to disputes. It often entailed multiple physical meetings between the taxpayer and Income-tax Department officials<sup>1</sup>. Moreover, the discretionary power vested with tax officers led to a subjective approach and varying

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<sup>1</sup> M. P. Jain, *Principles of Administrative Law* 490 (N.M. Tripathi Pvt. Ltd, Bombay, 1986).

interpretations, either in the same location or across various jurisdictions on similar issues. In order to overcome these limitations, it was necessary to transform the assessment mechanism to enable transparency, efficiency, accountability and optimal utilisation of technology.

The Finance Act of 2019 established the faceless assessment method, and the Finance Act of 2020 extended the idea to first appeals. In faceless assessment, the entire evaluation procedure is carried out virtually by a group of officers without any direct communication with the assessee. For instance, a resident in Pune may receive a notice from the Mumbai office, while another official in Delhi may view the resident's response. Without visiting the tax office, all notices must be responded to electronically. Moreover, neither the assessee nor the assessing officer is aware about the party on the other end. The Finance Bill of 2021 endeavours to change the Income Tax Appellate Tribunal (ITAT) in a similar manner by shifting the appeal procedure online, ultimately making the agency responsible for fact-finding faceless. People have the impression that the administration is moving quickly towards the "faceless period" without giving the first appeals and faceless assessments enough time to wind down. At the same time, experiments in the course of a tax dispute signal imminent catastrophe.

The idea behind this scheme is game-changing, as it promises to streamline the tax administration while also increasing transparency and accountability. This can also be said to be a major change in the direct tax management procedure, as it reduces the authority of tax authorities, tax extremism, and the potential for corruption and lawsuits<sup>2</sup>.

## BACKGROUND

Over the years, the government has worked to modernise our nation's tax system in an effort to eliminate the discretion and needless harassment that taxpayers face. The department started a project to allow income tax returns to be filed electronically in 2006, which is when the GoI's e-Governance income tax-related activities began. The Income Tax Act of 1961 (the "IT Act") permits the electronic filing of many applications and returns, thanks to the persistent planning and work of the Indian Revenue Authorities (IRA).

The new procedures for electronic filings have required constant upgrading of the IT infrastructure of the IRA. Taking a giant leap forward in this direction, the government came

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<sup>2</sup> P. Craig, *Administrative Law* 388 (Sweet & Maxwell, London, 2008).

up with the idea of conducting the faceless assessment proceedings.

In 2007 Mandatory e-filing of returns for corporate taxpayers and taxpayers who are required to have their accounts audited under Section 44AB of the Act, and thereafter, for other taxpayers at different points in time. Later, 2009 the Government of India established the Centralised Processing Centre Online (CPC) and viewing of Form 26AS. Thereafter, in 2015 Online verification of tax returns through Aadhaar and Electronic Verification Code was introduced.

Consequently, in 2015, the Central Board of Direct Taxes (CBDT), the Apex Tax Authority, ushered in a paperless environment for tax assessment proceedings on a pilot basis by using emails to correspond with taxpayers. In April 2017, the CBDT launched an e-Proceeding facility to enable electronic tax assessments, under which a tax officer or assessing officer could communicate with a taxpayer through the Income-tax e-Filing portal.

In the speech of 2018-19 budget, the finance minister mentioned that E-assessment was introduced in the year 2016 on a pilot basis, and in 2017 it was extended to 102 cities, with an objective of reducing the interface between the department and the taxpayers.

The experience gained by the government between the period 2016 to 2018 was sufficient to rollout the scheme of E-assessment throughout the country. With effect from 7.10.2019, the e-assessment scheme 2019, was being launched with the setting up of National e-Assessment Centre in New Delhi and on pilot basis 58,322 regular assessment cases on a voluntary basis for the AY 2018-19 were being shortlisted under the scheme. The e-Assessment scheme was notified on 12 September 2019<sup>3</sup> for automation of the various assessment procedures mandated under the Act.

However, w.e.f. 13.8.2020, the e-assessment scheme, 2019 has now been replaced with the new Faceless Assessment Scheme, 2019<sup>4</sup> by Hon'ble Prime Minister during the initiation of the Faceless Assessment and Taxpayers' Charter as a portion of "Transparent Taxation – Honoring the Honest". The Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, has inserted an altogether new section 144B in the Income Tax Act

<sup>3</sup> vide SO 32644 and 32655.

<sup>4</sup> CBDT F No. 225/267/2015-ITA-II dated October 19, 2015;

itself, w.e.f. 1.4.2021, and accordingly all the regular assessments u/s 143(3), will be conducted in a faceless manner from AY 2019-20 onwards and all pending income escaping assessments u/s 147 barring the cases under the central and international taxation charges, have been covered under this new scheme. Likewise, under the new faceless appeals system that goes into effect on September 25, 2020, the dynamic jurisdiction—rather than the jurisdictional CIT—will decide and handle all taxpayer appeals, both new and pending, before the CIT (Appeals).

For the purpose of conducting faceless appeals, the National Faceless Appeal Centre and the Regional Faceless Appeal Centres and the Appeal Units comprising of one or two CIT (Appeals) are in the process of being set up<sup>5</sup>.

### FACELESS ASSESSMENT STRUCTURE

- National Faceless Assessment Centre (NaFAC) – At the top of the pyramid is the NFAC, which will be responsible for the overall conduct of faceless assessment in a centralised manner.
- Regional e-Assessment Centres -The RFAC will be responsible for facilitating the conduct of the proceedings of faceless assessments. Every RFAC will have AUs, VUs and RUs, and will be assisted by the technical units. Every RFAC will be headed by a Chief Commissioner of Income-tax. RFAC are under the jurisdiction of the regional Principal Chief Commissioner for making assessment. The following units are under the control of the RFAC and NFAC.
- Assessment Units (AU) – the primary function is to identifying points and issues that are material for the determination of a tax liability or refund. Then seeking assistance from the VU and the TU. The process of analysing the material or submissions furnished by the taxpayer or any other person rest with AU. Finally, preparing a final draft assessment order based on receipt of comments from the RU and determining whether penalty proceedings should be initiated or not.
- Verification Units (VU) – The VU carries out enquiries and cross verification, examines books of accounts and witnesses, and records statements etc
- Technical Units (TU) – The TU provides assistance or advice on legal, accounting, forensic, IT, valuation, Transfer Pricing, data analytics, management or any other technical matters that may be required.

<sup>5</sup> [https://icmai.in/TaxationPortal/upload/DT/Article/63\\_1903\\_21.pdf](https://icmai.in/TaxationPortal/upload/DT/Article/63_1903_21.pdf)

- Review Units (RU) – Check whether the relevant and material evidence has been put on record and the correctness of fact and law have been incorporated in the draft order. Verify the arithmetical accuracy of modifications proposed and to check the applicability of the judicial decisions. Finally, to review the draft assessment order and to communicate this to NFAC.

### **PROCEDURE OF FACELESS ASSESSMENT SCHEME**

- a) The AU may ask for information or clarification from a taxpayer and/ or request assistance from the VU and the TU, through the NFAC, at various stages of a faceless assessment. The AU will prepare a draft assessment order, based on material collected during the assessment proceedings and input received from the VU and TU, either accepting the returned income or making changes in the returned income, and send a copy of the order to the NFAC. The AU may also be required to provide details of penalty proceedings to be initiated in a draft assessment order<sup>6</sup>.
- b) Once the NFAC receives a draft assessment order from the AU, it can either finalise the order or provide an opportunity to the taxpayer to respond or send the draft to RU for review.
- c) If the NFAC has sought a review from the RU, the suggestions received from the RU will be sent to an AU other than the AU that has sent the draft assessment order. Thereafter, the assigned AU will send the final draft assessment order to the NFAC, and accordingly, the assessment procedure will continue until the final assessment order is received.
- d) At any stage of an assessment, the NFAC can, if it considers it necessary, transfer a case to the tax officer with jurisdiction over the case (with the approval of the CBDT).
- e) After completion of an assessment, the NFAC will transfer all the electronic records of the case to the tax officer with jurisdiction over the case, as may be required under the Income-tax law.

### **FACELESS APPEAL: STRUCTURE AND PROCEDURE**

The entire process of an appeal, from the communication of notice, questionnaire, verification, enquiry and till the communication of the appellate order will be online<sup>7</sup>. The scheme also

<sup>6</sup> [https://www.incometaxindia.gov.in/communications/notification/notification\\_no\\_2\\_2021.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_no_2_2021.pdf)

<sup>7</sup> <https://incometaxindia.gov.in/booklets%20%20pamphlets/faceless-assessment-under-income-tax-act-1961.pdf>

prescribes the electronic process for filing of additional grounds, admission of additional evidence, penalty proceedings for non-compliance of notices and rectification proceedings.

At the top of the pyramid is the NFAPC (National Faceless Appeals Centre) set up by CBDT, which will be responsible for the overall conduct of the appeal proceedings in a centralised manner. All correspondence about information, documents, evidence, or any other details that may be needed between the appeal unit and the taxpayer or any other individual, the NFAC, or the Assessing Officer will go through the NFAPC<sup>8</sup>. Notifications will be sent by the NFAPC to taxpayers via the Income-tax department's mobile app, registered email addresses, and e-filing portals.

This will be followed by a real-time alert. Under the NFAPC, there will be the RFAPC (Regional Faceless Appeal Centres), which will be responsible for facilitating appeal-related proceedings and disposal of appeals. Every RFAPC will have multiple Appeal Units and each Appeal Unit will have one or more CITs (A) and other Income-tax authority or staff<sup>9</sup>.

During and following the appeal process, taxpayers' and the NFAPC's roles and practices will mostly mirror those of the in-person hearing. The internal operations and protocols of the NFAPC and its various units would resemble faceless evaluation processes in this regard.

The scheme with requires that any additional grounds for appeal filed by an appellant is to be forwarded to the AO or the NFAC for their comments before such grounds are admitted and it is subject to absolute discretion of CIT for admission of any additional grounds. Under the scheme, a draft appeal order will be mandatorily reviewed by an Appeal Unit other than the Appeal Unit that has issued the draft appeal order, if the aggregate amount payable in respect of issues disputed in appeal exceeds the threshold to be prescribed by the CBDT based on risk management strategy.

If the NFAPC has sent the draft order to a review appeal unit and that unit has offered feedback on the order, it will need to forward the draft order to another Appeal Unit for the purpose of creating a new draft appeal order. Consequently, it is recommended that an appeal that exceeds

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<sup>8</sup> Rakesh Mishra, *Faceless Assessment under Income Tax Act, 1961*, The Institute of Cost Accountants of India, available at [https://icmai.in/TaxationPortal/upload/DT/Article/63\\_1903\\_21.pdf](https://icmai.in/TaxationPortal/upload/DT/Article/63_1903_21.pdf)

<sup>9</sup> Shefali Singh 2021, Ministry of Finance, accessed 25 March 2022 [https://www.incometaxindia.gov.in/communications/notification/notification\\_no\\_2\\_2021.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_no_2_2021.pdf)

the threshold restrictions be heard by bigger appeal units, which satisfy court criteria, are effective, and benefit taxpayers by allowing them to submit their cases before all the concerned units<sup>10</sup>. As far as a personal hearing is concerned, taxpayers or their authorised representatives will have to make a request from the Chief Commissioner or the Director General of the RFAPC.

## CONSTRAINS AND IMPACT OF FACELESS ASSESSMENT AND APPEALS

### ➤ 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 st date of its insertion, i.e. w.e.f. 1 April 2021. Hence assessment should not be considered as void merely because prescribed procedure is not followed.

Section 144B (9) states that assessment made under section 143(3) or under section 144 shall be *non est* if such assessment is not made in accordance with the procedure laid down under this section. In *Gurgaon Realtech Ltd. V. National Faceless Assessment Centre, Delhi*<sup>11</sup>, the Department should proceed with the assessment process by following the procedure prescribed under section 144B. A notice-cum-draft assessment was to be issued and a personal hearing was to be accorded if there was variation in income. order was set aside for AY 2018-19.

### ➤ 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<sup>12</sup>. 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.

*Nemo judex in causa sua*(the rule against prejudice) and *Audi alteram partem* (no one should be condemned without being heard) are the two main inalienable facets of the

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<sup>10</sup> Directorate of Income Tax 2021, accessed 24 March 2022  
<https://incometaxindia.gov.in/booklets%20%20pamphlets/faceless-assessment-underincome-tax-act-1961.pdf>

<sup>11</sup> (2021) 436 ITR 280/203 DTR 129/321 CTR 266 (Delhi) (HC)

<sup>12</sup> Kinjal Bhuta, *Practical Guide to Faceless Assessment and Appeal* (2022).

of the natural justice principle which was reiterated in many judicial precedents such as Olga Tellis case, Menaka Gandhi case and so on. Moreover, the said scheme is also said to be in violation of Section 250 and Section 251 of the Income Tax. The dependency on the written request is very high in this scheme which has to be handled in a formal and time-bound manner<sup>13</sup>.

The Delhi HC in RKKR Foundation v. NFAC<sup>14</sup> also acknowledged the need for formal disposal of adjournment requests. It was held that the benefit of doubt must be given to assessee as it is not clear if notices are sent to the email ids mentioned in the latest ITR or email of the authorised representative. The AOs should be equitable and reasonable with respect to due date extension for assessments and adjournment and admission of additional evidence before the appellate authorities<sup>15</sup>. The authorities should do away with such strict adherence to timeliness.

In BL Gupta Construction (P.) Ltd V. National E-Assessment centre<sup>16</sup>, it was held that faceless assessment and appeal scheme should not defeat Audi alteram partem principles as it was passed to plug widespread alleged corruption.

➤ 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 at the satisfaction of underlying conditions<sup>17</sup>;

- i. Assessee should have submitted written submission in response to draft assessment order, and
- ii. In such submission assessee disputes the facts underlying proposed modification and should have made a request for personal hearing.

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<sup>13</sup> Commissioner Of Income-Tax (Appeals) Gets Masked: Government Introduces Faceless Appeal Scheme. Retrieved from Mondaq: <https://www.mondaq.com/india/transfer-pricing/990598/commissioner-of-income-tax-appeals-gets-masked-government-introduces-faceless-appeal-scheme>.

<sup>14</sup> [2021] 127 taxmann.com 643 (Delhi)

<sup>15</sup> A Agrawal (2020) Faceless assessment A paradigm shift in interacting with Indian revenue authorities

<sup>16</sup> (2021) 127 taxmann.131(Delhi)

<sup>17</sup> CBDT, vide Circular dated 23.11.2020 & 31.03.2021

In view of word 'may' used in s. 144B (7)(viii), 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<sup>18</sup>.

The Delhi High Court in the case of Bharat Aluminium Company Ltd<sup>19</sup> 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 he request for it. There is an ambiguity in the proposed section 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 which states that 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 and 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.

The Delhi HC in Sanjay Aggarwal V. NFAC<sup>20</sup> the usage of the word “may”, to our minds, cannot absolve the respondent from the obligation cast upon it, to consider the request made for grant of personal hearing in the matter. Moreover, sub-clause (h) of section 144B (7)(xii) read with section 144B (7)(viii), the revenue has been given the power to frame standards, procedures and processes for approving the request made for personal hearing. But no such standards and procedures are framed yet creating a vacuum.

➤ 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.

<sup>18</sup> the SOP in CBDT Circular dated 23.11.2020

<sup>19</sup> [WP(C) 14528/2021]

<sup>20</sup> (2021) 127 taxmann.com 637 (Delhi)

- 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<sup>21</sup>. 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.
  
- Technical Glitches:  
various instances have been recorded regarding the computational error of the department etc. in such case the taxpayers do not have the option to file rectification applications online and have to visit their jurisdictional AOs again and they are not disposed within the prescribed timeliness as well.  
Though multiple submissions can be made the size of the file is restricted upto 5 Mb and the number of attachments is maximum 10. Hence, this is a hurdle for large companies with voluminous data leading to segregating the files into several pieces.

## CONCLUSION

Faceless assessment and appeals is definitely a step in the right direction which was much anticipated and awaited, but the actual efficacy of the new assessment scheme can be seen only after achieving the factors of functional specialisation, transparency and efficiency. The scheme needs to be re-evaluated and restructured in order for it to fit within the Constitutional limits to clear the constitutionality test. Provisions pertaining to penalizing the Assessing officer for incorrect need to be incorporated in the Income Tax Act, 1961 in order to ensure that the interests of tax-payers. The constitutional jurisprudence should be considered with respect to the personal hearing and principles of natural justice.

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<sup>21</sup> Gopal Mundhara, Income tax assessment- It is faceless but not voiceless.(2022)

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