

All India Federation of Tax Practitioners

Issues in Faceless Assessment & Appeals

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* Proposed by Finance Bill, 2022

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Overview

Background- Faceless Assessments

- October 2015 - E- assessments on pilot project basis in non-corporate cases.
- 2016-2017- procedures, formats, e-transmission norms.
- 2017 - Project extended from 4 metros to 102 cities
- 2018 - E-proceeding functionality – Introduction to ITBA
- January 2019 - Centralised Verification Scheme
- September 2019 – Faceless and Jurisdiction less assessments
- August 2020- Mandatory Faceless assessments- Section 144B.
- February, 2022- Amendment to section 144B !

Background- Faceless Appeals


- 2016 - E- filing of appeals introduced.
- Feb, 2020 – Faceless Appeals scheme announced, section 250 amended to enable scheme.
- September 2020 – Faceless Appeals Scheme, 2020 introduced with immediate effect.
- December 2021 – Faceless Appeals Scheme, 2021 replacing the earlier one.

Relevant Legislative Provisions


- Section 2(22AA) – Document – means electronic record
- Section 2(23C) – Definition of hearing inserted from 01/06/2016.- communication of data through electronic mode.
- Section 133C(3) - Power to call for information by prescribed income tax authority.
- Section 282 - Service of notice generally. Sub section (2) empowers the Board to make rules to provide for addresses (electronic mails) to which the notices may be issued.
- Section 282A - Authentication of notices and other documents – shall be signed in paper form or communicated in electronic form.
- Sub section 3(A) to 3(C) inserted after subsection 143(3) by Finance Act, 2018 – applicable till 31-03-2021.
- Section 144B – Faceless Assessment section introduced w.e.f from 01-04-2021. (substituted by Finance Bill, 2022)
- Section 250 (addition of sub-section 6B, 6C, 6D w.e.f 01-04-20.
- Several other sections amended after TOLA, 2020.

Salient Features of Faceless Assessments

FACELESS CENTRES



- **CCIT CENTRES**
- **OTHER OFFICES**



FACELESS ASSESSMENT AND APPEAL

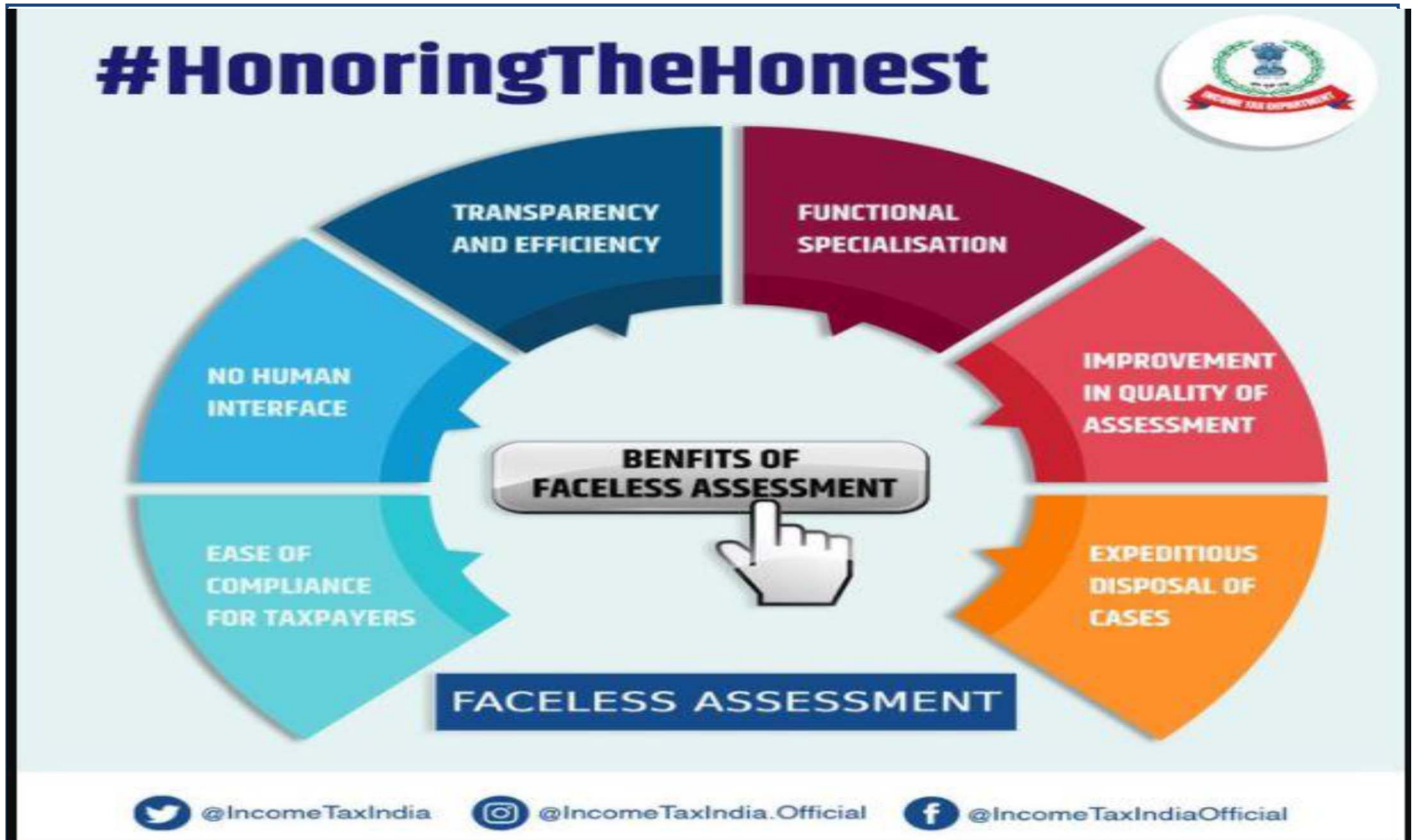
OBJECTIVES

- Imparting greater efficiency, transparency and accountability
- Eliminating physical interface between the taxpayer and tax officers

FEATURES

- Selection only through system using data analytics and AI
- Dynamic Jurisdiction – abolition of territorial jurisdiction
- Automated random allocation of cases.
- Central issuance of notices with Document Identification No. (DIN)
- No physical interface, No need to visit income tax office
- Team-based assessments and Team-based review
- Draft assessment order in one city, review in another city and finalisation in third city
- Objective, fair and just order
- 2/3rd of the manpower is utilised for faceless and balance for other functions

Salient Features of Faceless Assessments



Salient Features of Faceless Assessments

- Jurisdiction - Formation of various Units – NaFAC, AU, VU, TU, RU.
- Scope – Section 143(3), 144, 147
- Exclusions – International tax, search cases, serious fraud cases.
- Use of automated allocation system
- Concept of draft assessment order.
- No personal physical hearing.
- End to end electronic medium
- Notwithstanding provisions
- Complete procedure set out in section to be guided by relevant circulars, notifications, instructions.

Functions of various units

- NaFAC- Central point of contact.
- ReFAC – jurisdiction (now deleted with proposed amendments)
- Assessment Unit- facilitates making assessment-identification of points or issues, material for the determination of any liability (including refund) under the Act.
- Verification Unit – Enquiry , cross-verification, examination of books of account, witnesses, recording of statements.
- Technical Unit – Advisory in Legal, Accounting, forensic, IT, valuation, transfer pricing, data analytics.
- Review Unit - arithmetical correctness, shall check evidences, decisions, issues discussed or not.

Time and place of dispatch of notices

- As per Section 13 of Information Technology Act.
- The dispatch of electronic record occurs, when it enters the computer resource outside the control of the originator.
- The time of receipt of an electronic record shall be determined as follows:
 - (i) If the addressee has designated a computer resource - receipt when electronic record enters the designated computer resource.
 - (ii) If the electronic record is sent to other computer resource not designated- receipt occurs when the electronic record is retrieved by the addressee;
 - (iii) If no designated computer resource - receipt occurs when the electronic record enters the computer resource of the addressee.
- Place of dispatch and receipt of electronic records.

Registered e-mail address

- e-mail address available on the portal;
- e-mail address available in the last income-tax return furnished by the addressee;
- e-mail address available in the Permanent Account Number database relating to the addressee;
- e-mail address of addressee available in the database of Unique Identification Authority of India; or
- e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or
- any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;
- registered mobile number- the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account in designated portal;

Standard Operating Procedures

- Assessment Unit:
 - limited scrutiny –specific questionnaire.
 - Easily available documents should not be asked.
 - Third party documents only if enquiry
 - High pitched assessments without verification to be avoided.
 - 272 A notice only once reminder sent to all emails + physical notice.
 - Complete SOP when to seek reference from other units

- Technical Unit:
 - Legal expert opinion be sought
 - Comprehensive legal repository
 - TPO order to be produced to AU.

Standard Operating Procedures

- Verification Unit:
 - Digital footprint for verification.
 - Physical verification allowed
 - Issuance of notice u/s. 133(6)

- Review Unit:
 - Whether all evidences considered
 - All enquires/verification required for addition is done
 - Arguments and submissions are considered
 - Judicial decision brought on record considered.
 - Arithmetical accuracy
 - Comment if high pitched or frivolous assessments are done.

Proposed amendments to Faceless Assessments

Amendments proposed

- Applicability - Assessments, re-assessments, re-computation under sections 143(3), 144 and 147
- Time limit to reply – as per time limit specified.
- ReFAC removed.
- AU seek help from TU- ALP determination, property valuation, withdrawal of registration, or any technical matter.
- an income or loss determination proposal in case no variations are proposed to the returned income. A show-cause notice shall be issued if there are any variations proposed.
- After review, case to be assigned to same AU by NaFAC.
- Requirement of special audit cases u/s. 142(2A).
- The AU, Verification Unit (VU) TU and RU wherever referred in the amended sections shall mean 'Assessing Officer' assigned powers by the Board.

Amendments proposed

- Authentication of electronic records
 - By NaFAC by way of electronic communication;
 - By AU, VU, RU, TU by affixing digital signature;
 - By assessee through DSC, EVC or by logging into the registered account on the ITD portal.
- Request for personal hearing - Where the request or personal hearing has been received, the income tax authority of relevant unit shall allow such hearing, through NaFAC.
- Sub-section (9)- non-est assessments removed with retrospective effect from 01-04-2021.

Faceless Appeals Scheme, 2021

The Faceless Appeal Scheme, 2021 --- 1

- Introduced on 28-12-2021 – Notification S.O.5429 (E).
- Supersedes faceless appeal scheme, 2020.
- FAS, 2020 applicable from 25.09.2020 to 27.12.2021.
- Review Unit removed.
- The definition of automated allocation tool has been removed from the new scheme. However, the automated allocation system still is part of the scheme.
- NaFAC to facilitate the conduct of e-appeal proceedings in a centralised manner. (the jurisdiction part is removed correctly as faceless appeals cannot have NaFAC as jurisdiction to dispose considering the fact that disposal happens by the AU).
- AU, as it may deem necessary to facilitate the conduct of e-appeal proceedings by the CIT(A). The functions of AU are made more generic by the new scheme and that makes it wide to interpretation.

The Faceless Appeal Scheme, 2021 --- 2

- The AU shall include one CIT(A), and such other income tax authority, ministerial staff, executive or consultant to assist the CIT(A) as considered necessary by the board. The AU shall now comprise only of one CIT(A) as compared to earlier provisions.
- May condone the delay in filing appeal if the appeal is filed beyond the time permitted under section 249 of the Act and record the reasons for such condonation or otherwise in the appeal order passed. (earlier it was just accept or reject).
- CIT(A) shall call for information from the assessee by sending notice through NFAC and shall also send a copy of notice to AO directly or through NFAC.
- The appeal at any stage may be transferred to CIT(A) if considered necessary by an order u/s.120. (without prior approval from Board).
- The appellant is allowed to submit application for additional evidence to CIT(A) directly or through NaFAC.

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The Faceless Appeal Scheme, 2021 --- 3

- CIT(A) shall prepare appeal order in writing stating points of determination, the decision thereon, and reasons for decision, shall sign the order digitally to NFAC along with penalty proceedings if any to be initiated thereon – concept of draft order omitted.
- The authentication of electronic record shall sent by CIT(A) shall be through his own digital signature.
- The concerned CIT(A) shall allow the request for personal hearing and communicate the date & time of hearing to the appellant through the NFAC.
- Guidelines issued dated 29-12-2021 for priority and out of turn applications:
 - Cases having demand > 1 crore
 - Refunds as per original ROI > 1 lakh
 - Directions issued by court.
 - Request made by senior citizens.
 - Any other genuine hardship

Issues under Faceless Assessment & Appeals

Practical Issues

- Limitation of 1000 words.
- Attachment of sizes 50 MB, each less than 5MB.
- Partial submissions /full submissions.
- Upload of wrong attachment
- Post adjournment, fresh notice not issued.
- Case laws – whether to be attached ?
- Shorter time limit –specially issued on Fridays.
- Issues with video conference facility.
- Faceless appeals no time limits specified ?
- Stay gets vacated if appeal orders not passed on time.
- System issues.
- No formats as written in FAS provided.

Legal Issues

- Whether functional and specialized jurisdiction is a reality ?
- Non speaking order – possibility of section 263
- Enhanced scope of section 148
- Set –aside cases
- Cyber threats
- 148 cases, reasons recorded by AO and concluded by faceless – whether valid ?
- Faceless appeal are delegated piece of legislation.
- Where is Tax Payer's Charter ?
- Silence on Remand report, revised grounds, withdrawal of appeal, additional grounds, stay before CIT(A).
- What is risk management strategy ?
- Jurisdiction of filing appeals ?
- Reasonable opportunity to be given –principles of natural justice.

Keys to drafting

Drafting 101

- Language shall be simple lucid and upto the point.
- Ability to communicate analysis of complex legal issues.
- Writer's perspective.
- Readers perspective in prime most important.
- Use of short sentences.
- Basic Grammar skills.
- Use of correct tone depending upon the reader.
- Remember- Madman, Architect, Carpenter and Judge Theory.
- Prepare an outline.
- Chronological order of facts.
- Research well.
- Jot down the most important points of submissions and then elaborate.
- Revise and Editing.
- Read and Re - read.

Drafting Submissions

- Start by stating all undisputed facts of the case.
- Collect all evidences and documents.
- Reply to each question in the notice sequentially.
- Put forth your arguments for each and every issue raised by the AO.
- Co-relate your contentions with the documents filed.
- Notice the notices carefully.
- All the submissions should be dated, should mention the basic details of clients like PAN, assessment year, and should mention specifically against which notice the assessee is responding.
- Always maintain continuity by making reference to last letter or hearing.
- Replies should be exhaustive and elaborate.
- Do not hide any relevant facts.
- Be consistent in your submissions.
- Do not depart from logic
- Make without prejudice submissions for alternative remedies.

Drafting Grounds of appeal

- Grounds should be precise, concise, simple and without any ambiguity.
- Should be wide and not restrictive.
- Should not be argumentative
- Avoid multiple grounds for single issue unless every ground is distinct.
- Last ground should be to grant leave to add, amend, withdraw any ground.
- Never add decisions to grounds unless absolutely essential.
- Nature of dispute and relief expected should be highlighted.
- In case of more than one issues involved, preference of grounds should be decided.
- All grounds needs to be adjudicated in the order so ensure that the grounds are not repetitive or too many.
- Read order carefully to take hidden grounds

Drafting Statement of facts

- SOF should be descriptive and detailed.
- Should not be argumentative
- Ensure to add only those facts which are disclosed in the assessment proceedings.
- SOF should be just facts and not be turned in submissions.
- Add every minute details and facts with dates and sequence of how it happened in earlier proceedings.
- Basic details should be always given like ROI filed date, returned income ,heads of income , about the assessee.
- If too many grounds, better to classify SOF based on each ground taken up.

Practical drafting tips

- Three most important things when you make submissions – Facts, Facts and Facts.
- Keep submissions short but exhaustive.
- Verifications and fundamental factual details or declaration better to be taken on letter head of assessee.
- All the data submitted should be backed up and saved sequentially.
- Name the folders and attachments appropriately.
- Maintain all screen shots of technical confusions and uncertainties.
- What to submit in return so that you don't get into trouble in E-assessments.
- Avoid delaying the submissions till fag end.
- Make use of grievance portal and other communication contacts.
- Check the digital signature of AO, date and other particulars in all notices.
- Never submit attachments without a forwarding letter or written note.
- Keep clients informed about checking their emails and messages. –Ensure correct emails and contact details are submitted.

Way ahead

Some suggestions & way ahead

- Be aware about procedural formalities.
- Avail opportunity to cross-examine documents, witness.
- Take natural justice grounds when no opportunity or non speaking order.
- Use RTI as a tool.
- Importance of updated hardware, softwares, firewalls etc. setting up an IT infrastructure.
- Delegate but control.
- Timely responses.
- Write to these emails in case of concerns and issues:
- Faceless assessments: samadhan.faceless.assessment@incometax.gov.in;
- Faceless penalty: samadhan.faceless.penalty@incometax.gov.in;
- Faceless Appeals: samadhan.faceless.appeal@incometax.gov.in.
- **Positive approach.**

Q & A ???



Thank You !!

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