Faceless Assessments

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Faceless Assessments

Meaning of Faceless Assessments

"Faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal. CBDT has prescribed www.incometax.gov.in as the "designated portal" for the purpose of Faceless Assessment.

Metamorphosis/Evolution of Faceless Assessments

Friends, just as the baby caterpillar sheds its cocoon and metamorphose itself into a beautiful butterfly, the faceless assessment scheme, which was introduced as a pilot scheme for just 58,000 odd assessment cases in October, 2019, has now blossomed itself into its 'PAN India Avatar' with its full-scale implementation across the Country, covering almost the entire gamut of assessments and reassessments, barring just search and international taxation cases.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has introduced faceless assessment under section 144B w.e.f. 1st April, 2021.

Faceless Hierarchy

Restructuring and Re-organisation of Income Tax Department

The newly substituted sub section (3) of section 144B provides that CBDT may, for the purposes of conduct of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:

National Faceless Assessment Centre (NaFAC) to facilitate the conduct of faceless assessment proceedings in a centralised manner;

Assessment Units (AU), to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term “assessment unit”, wherever used in this section, shall mean an assessing officer having powers so assigned by the Board;

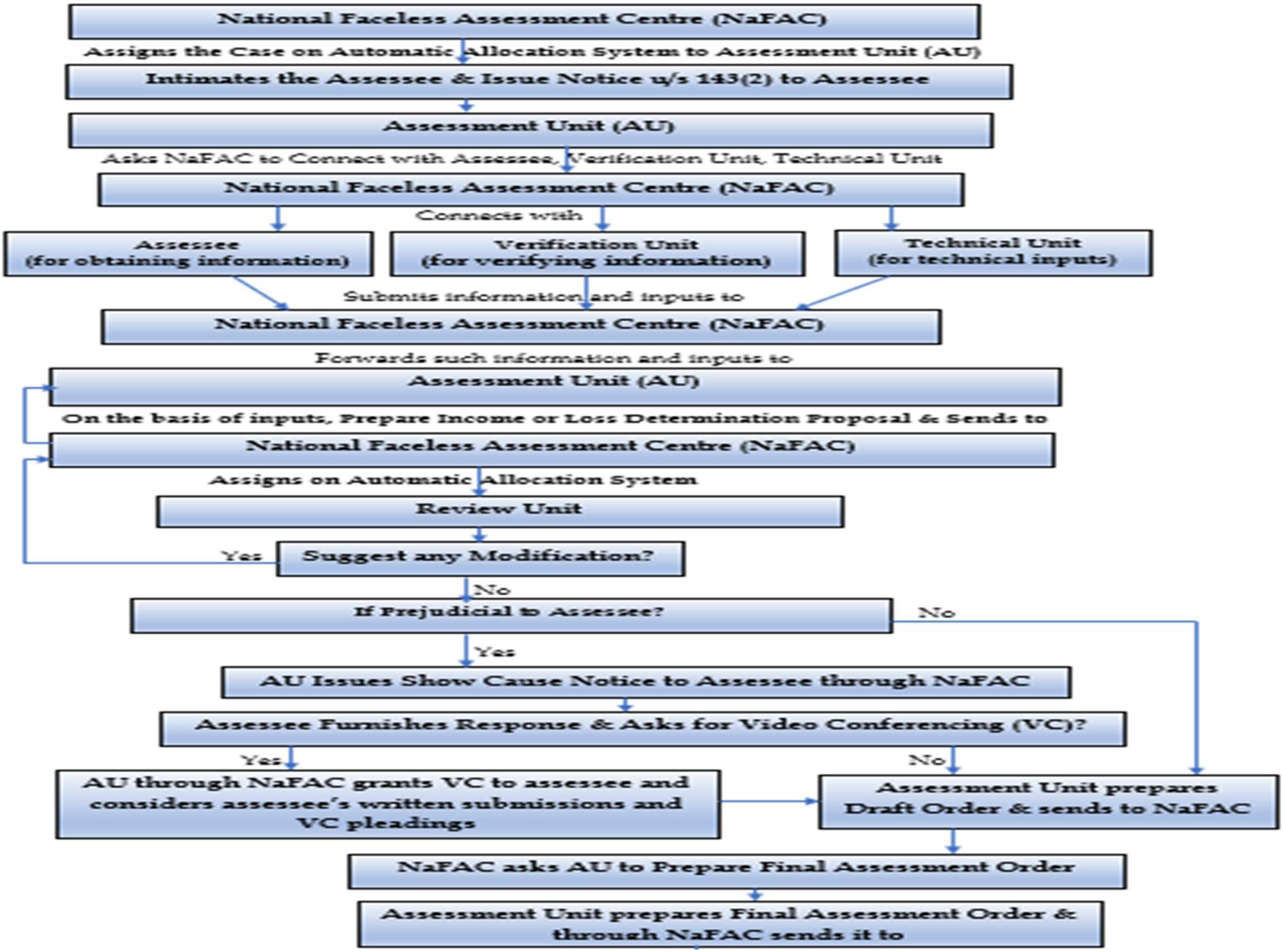
Verification Units (VU), to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term “verification unit”, wherever used in this section, shall mean an assessing officer having powers so assigned by the Board.

Also, the function of VU for faceless assessment may also be performed by a VU located in any other faceless center set up under the provisions of the Act or under any scheme notified under the provisions of the Act and the request for verification may also be assigned through the NaFAC to such verification unit.

Technical Units (TU), to facilitate the conduct of faceless assessment, 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 under the Income-tax Act or an agreement entered into under section 90 or section 90A which may be required in a particular case or a class of cases, under this section and the term “technical unit”, wherever used in this section, shall mean an assessing officer having powers so assigned by the Board.

Review Units (RU), to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned to it, which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term “review unit”, wherever used in this section, shall mean an assessing officer having powers so assigned by the Board.

Infographic on Faceless Procedure



Procedure for Faceless Assessments

The newly substituted sub section (1) of section 144B, by the Finance Act 2022, stipulates the modified procedure of the conduct of faceless assessments as under:

i) **Assignment of Case on Automatic Allocation basis & Intimation to Assessee by NaFAC:** The National Faceless Assessment Centre (NaFAC) shall assign the case selected for the purposes of faceless assessment to a specific assessment unit (AU) through an automatic allocation system and intimate the assessee that assessment in his case shall be completed as per the said section.

ii) **Serving of Notice & Furnishing of Response by Assessee, through NaFAC:** The assessee shall be served a notice under section 143(2) or under section 142(1) of the Act, through the NaFAC. The assessee may file his response to the aforementioned notice, within the date specified in such notice, to the NaFAC, which shall forward the same to the AU.

iii) **Requisition for Further Information from Assessee by AU through NaFAC:** The AU may make a request, through the NaFAC, for obtaining such further information, documents or evidence from the assessee or any other person, as it may specify and the NaFAC shall serve appropriate notice or requisition on the assessee or any other person for obtaining the same.

Procedure for Faceless Assessments

iv) Request for Assistance in Enquiry, to Verification Unit by AU through NaFAC: The AU may also make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit (VU) and the request shall be assigned by the NaFAC to a VU through an automated allocation system.

v) Request for Technical Assistance, to Technical Unit by AU through NaFAC: The AU may also similarly make a request for reference to the Technical Unit (TU) for seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter and the request shall be assigned by the NaFAC to a TU through an automated allocation system.

vi) Sending of Reports received from VU & TU by NaFAC to AU: The NaFAC shall send any report received from the VU or TU to the AU.

vii) Furnishing of Response by Assessee: The assessee or any other person, as the case may be, shall file his response within the specified or extended time, in compliance to the said notice served by NaFAC, at the request of AU, to the NaFAC, which shall forward the reply to the AU.

Procedure for Faceless Assessments

viii) Intimation of Failure of Assessee to Respond: If the assessee fails to comply with the said notice served by NaFAC, at the request of AU, or the earlier notice under section 143(2) or under section 142(1), the NaFAC shall intimate the same to the AU.

ix) Issuing of Show Cause Notice (SCN) u/s 144 to Assessee: The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144 giving him the opportunity to explain as to why the assessment in his case should not be completed to the best of its judgement.

x) Furnishing of Response by Assessee to SCN: The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice or approved extended time, to the NaFAC which shall forward the same to the AU.

Procedure for Faceless Assessments

xi) Preparation of Income or Loss Determination Proposal by AU:

a) If the assessee fails to respond, the NaFAC shall intimate the same to the AU. The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no variation prejudicial to assessee is proposed and send the same to the NaFAC.

b) In any other case, the AU shall serve a show cause notice on the assessee stating the variations proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made, through the NaFAC.

c) The assessee shall file his reply to such show cause notice, to the NaFAC, on date and time as specified in Notice or within the approved extended time, and NaFAC shall forward the reply to the AU.

d) If the assessee fails to respond within the specified or extended time, the NaFAC shall intimate the same to the AU.

e) After considering the response of the assessee or the intimation of failure of assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal and send the same to the NaFAC.

Procedure for Faceless Assessments

xii) Action on Income or Loss Determination Proposal & Preparation of Draft Order in case of Assessee other than Eligible Assessee u/s 144C:

a) Upon receipt of such income or loss determination proposal, with or without any variations proposed to the income of the assessee, as the case may be, the NaFAC may, on the basis of guidelines issued by the Board, convey to the AU to prepare draft order in accordance with the income or loss determination proposal, and the AU shall thereafter prepare a draft order.

b) The NaFAC may also assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.

c) The NaFAC shall forward the review report received from the RU to the AU which had proposed the income or loss determination proposal. The AU may accept or reject some or all of the modifications proposed in such review report, prepare a draft order accordingly, and send it to NaFAC.

Procedure for Faceless Assessments

xiii) Passing of Final Assessment Order in case of Assessee other than Eligible Assessee u/s 144C:

a) In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to pass the final assessment order in accordance with such draft order which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the NaFAC.

b) The NaFAC shall serve a copy of the final assessment order, notice for initiating penalty proceedings, if any and the demand notice, to the assessee.

Procedure for Faceless Assessments

xiv) Preparation of Draft Order & Passing of Final Assessment Order, in case of Eligible Assessee u/s 144C:

a) The NaFAC shall, upon receiving draft order in a case of eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee under sub-section (1) of section 144C, serve such draft order on assessee.

b) An eligible assessee, as referred to in section 144C, has to file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations with the Dispute Resolution Panel, under section 144C and the NaFAC, within the period specified in sub-section (2) of the said section.

c) In case the variations proposed in the draft order are accepted by the assessee or not objected to within the time given in section 144C(2), the NaFAC shall intimate the AU of the same, which shall pass the assessment order, on the basis of the draft order, within the time allowed under section 144C(4) and initiate penalty proceedings, if any, and send the order to the NaFAC.

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Procedure for Faceless Assessments

a) Where the eligible assessee files objections with the Dispute Resolution Panel against the variations proposed in the draft order in his case, the NaFAC shall send such intimation along with a copy of such objections to the AU.

b) Upon receipt of the directions issued by the Dispute Resolution Panel in the case of an eligible assessee, the NaFAC shall forward such directions to the AU.

c) The AU shall complete the assessment within the time allowed in section 144C(13) and initiate penalty proceedings, if any, in conformity with the directions issued by the Dispute Resolution Panel under section 144C(5), and send a copy of the assessment order to the NaFAC.

d) The NaFAC shall, upon receipt of final assessment order, in the case of an eligible assessee under section 144C or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice.

xv) Completion of Faceless Assessment & Transfer of Assessment Records to JAO:

The NaFAC shall, after completion of assessment, 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 the Income-tax Act.

Mode of Interface

Mode and Manner of Interface/Communication

The newly substituted subsection (5) of section 144B, by the Finance Act 2022, provides that:

(a) the communication, among the AU, RU, VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC only.

In simple words, all the assessment notices, requisitions, orders or any other communications shall be issued by NaFAC to the assessee and there shall not be any interface or interaction between the assessment unit actually conducting the assessment with the assistance of review unit, verification unit or the technical unit, and the assessee. Similarly, the assessee shall furnish his or her assessment reply, response or submission to NaFAC only and not the assessment unit conducting the assessment.

(b) all the communication between the NaFAC and the assessee, or his authorized representative, or any other person shall be exchanged exclusively by electronic mode and all communications between the NaFAC and various units shall be exchanged exclusively by electronic mode.

Service of Notice & Order

Manner and Mode of Service of Assessment Notice and Order

Clauses (ii) to (v) of the newly substituted subsection (6) of section 144B provides that:
(ii) every notice or order or any other electronic communication shall be delivered to 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 thereof to the registered email address of the assessee or his authorised representative; or
(c) uploading an authenticated copy on the assessee's Mobile App,
and followed by a real time alert;
(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;
(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;
(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000).

No Personal Visits or Appearances

No Personal Visits or Appearances

Clause (vi) of the substituted subsection (6) of section 144B provides that a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section.

Therefore, all the communication correspondence and interaction between the assessee and the income tax department, in the conduct of faceless assessment shall be done exclusively through electronic modes only and no personal visits or appearances by the assessee or authorised representative before the assessment unit is allowed in the faceless regime.

Personal Hearing through VC

Personal Hearing through Video Conferencing

Clauses (vii) and (viii) of the substituted subsection (6) of section 144B provide that in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a show cause notice upon him, the assessee or his authorized representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit.

Where the request for personal hearing has been received, the income-tax authority of the relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

Personal Hearing through VC

Rationale for bringing in this Amendment

The income tax department's Faceless Assessment Scheme has come under intense scrutiny from the hon’ble high courts in the last two years. While the department has amended the Faceless Appeal Scheme to allow all requests for personal hearing via video conference when a tax demand is raised, no such change was made in the faceless assessment scheme or section 144B of the Income Tax Act.

The Hon’ble Delhi High Court in the cases of **‘Sanjay Aggarwal vs. National Faceless Assessment Centre [2021 (6) TMI 336 Delhi High Court]** and **‘Umkal Healthcare (P.) Ltd. vs. NFAC [(2021) 131 com 325 (Delhi)]** has held that it was incumbent upon the revenue authorities, to accord a personal hearing to the assessee where such a request was made under Section 144B(7) and failure to do so would amount to violation of principles of natural justice as well as mandatory procedure prescribed in the Faceless Assessment Scheme under Section 144B of the Act.

Personal Hearing through VC

There are a plethora of judgements of the hon'ble High Courts on Pan India basis on similar lines. However, the recent judgment of the Hon'ble Delhi High Court, in the case of '**Bharat Aluminum Company Ltd vs. Union of India [2022] 134 taxmann.com 187 (Delhi) dated 14.1.2022, stands out on this issue, as it comprehensively addressed all the aspects of this litigative issue.**

In this landmark case, the hon'ble Delhi High Court has read 'may' as 'shall' in the erstwhile provision that gives discretion to the chief commissioner or the director general to grant a personal hearing. The court noted that it is settled law that having regard to the context, the expression "may" has varying significance.

The hon'ble Court held that,

"The word "may" is capable of meaning "must" or "shall" in the light of the context. In fact, where a discretion is conferred upon a quasi-judicial authority whose decision has civil consequences, the word "may" which denotes discretion should be construed to mean a command…..

Personal Hearing through VC

To address the revenue department's concern that the scheme aims for no one-on-one interface, the court suggested the identity of the assessing officer can be hidden or protected while granting personal hearing by either creating a blank screen or by decreasing the pixel, density or resolution.

The hon'ble Court specifically observed that,

"It is not understood as to how grant of personal hearing would either frustrate the concept or defeat the very purpose of Faceless Assessment Scheme….

A taxpayer has a vested right to personal hearing and the revenue department has to grant it if such a request has been made. The right to personal hearing cannot depend upon the facts of each case."

Therefore, in order to give cognizance to such findings and observations of the hon'ble High Courts, holding the revenue authorities' discretionary power of grant of personal hearing through video conferencing in faceless assessments, as against the principle of natural justice, in numerous such similar decisions, and with a view to reduce probable tussles and litigations, the Legislature has finally deemed it appropriate to grant a by-default and vested right of personal hearing through video conferencing, to the assessees who seek such opportunity.

Omission of Subsection (9) of Section 144B

Omission of Subsection (9) of Section 144B

The erstwhile subsection (9) of section 144B read as under:

"(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) other than the cases transferred under sub-section (8), on or after the 1st day of April, 2021, shall be nonest if such assessment is not made in accordance with the procedure laid down under this section."

The Finance Act 2022 has omitted this subsection (9) of section 144B, retrospectively w.e.f. 1.4.2021.

Omission of Section 144B(9)

It is pertinent to mention here that in numerous High Court Judgements, (some of which are listed below), the faceless assessments for the AY 2018-19, have been set-aside, on the grounds of non-adherence to the prescribed assessment procedure by virtue of section 144B(9)/ faceless assessment scheme.

(i) DJ Surfactants vs. National E-Assessment Centre in W.P.(C) No. 4814/2021 dated 3.5.2021 (Delhi High Court);

(i) SAS Fininvest LLP vs. National e-Assessment Centre in W.P.(C). No. 5087/2021 dated 4.5.2021 (Delhi High Court);

(i) K L Trading Corporation vs. National e-Assessment Centre in W.P. (C) 4774/2021 dated 16.4.2021 (Delhi High Court).

Principle of Natural Justice

Whether the Omission of Subsection (9) of Section 144B, Make Faceless Assessments Made in Contravention of Principle of Natural Justice, Immune?

The Principle of Natural justice is the principle of Common Law which implies fairness, reasonableness, equality and equity. **In India, the 'Principle of Natural Justice' has been given the Constitutional backing by Article 14 and Article 21 of the Constitution of India.** Article 14 enshrines that every person should be treated equally. Article 21 provides that the law and procedure must be of a fair, just and reasonable kind. [Maneka Gandhi vs. The Union of India (SC) AIR 1978 SC 597].

In Indian Income Tax Laws, this Latin maxim ***'Audi alteram partem'*** meaning **"no one should be condemned unheard"**, has been given an absolute recognition and our Indian counterpart to this Latin phrase is ***"Reasonable Opportunity of Being Heard"***.

The Hon'ble Supreme Court in the case of ***'Manohar s/o Manikrao Anchule vs State of Maharashtra & Ors'***, has held that adjudicatory process has to be in consonance with the doctrine of *audi alteram partem,* i.e., no one should be condemned unheard and *nemo debet esse judex in propriacausa sua,* i.e. no one should be judge in his own case.

Principle of Natural Justice

Whether the Omission of Subsection (9) of Section 144B, Make Faceless Assessments Made in Contravention of Principle of Natural Justice, Immune?

It is also pertinent to mention here that sub section (1) of section 144B of the Income Tax Act, mandates that assessments covered under the said section shall be made in a faceless manner as per the prescribed procedure. Therefore, even after the omission of sub section (9) of section 144B retrospectively w.e.f. 1.4.2021, the compulsory requirement of adherence to the prescribed procedure of conduct of faceless assessments, u/s 144B, still remains intact, by virtue of subsection (1) of section 144B of the Act.

In view of the well settled legal position that the principle of natural justice is a principle of common law and has the constitutional backing of Article 14 and Article 21 of the Constitution of India, and as such even after the proposed omission of the said sub section (9) in section 144B, the faceless assessments, conducted in contravention of the principle of natural justice, say, without issuing the mandatory show cause notice, or granting an opportunity of personal hearing to the assessee through video conferencing, are still liable to be set aside and considered as nonest in law.

e-Proceedings

Launch of New Income Tax 'e-Filing Portal' & New 'e-Proceedings' Utility

The Central Board of Direct Taxes (CBDT) has launched the new income tax e-filing portal on 7th June 2021. The new portal '**www.incometax.gov.in**' has replaced the existing e-filing portal 'www.incometaxindiaefiling.gov.in'. The portal is being redesigned for the convenience of the taxpayers that will provide the facility of income tax return filing and other tax-related services in a modern and seamless manner.

- As a part of e-governance initiative, to facilitate conduct of assessment proceedings electronically, Income-tax Department has developed the **'e-Proceedings' facility**. It is a simple way of communication between the Department and assessee in a hassle-free manner, through electronic means, without the necessity to visit Income-tax Office for conduct of assessment proceedings. This new facility is also environment friendly as assessment proceedings have now become paperless.

- In assessment proceedings through the 'e-Proceedings' functionality, there is a seamless flow of letters, notices, questionnaires, orders etc. from assessing officer to assessee's e-Filing account. On receipt of departmental communication, assessee is able to submit his response along with attachments, if any, by uploading the same on the e-Filing portal. The response submitted by the assessee is also viewed by the assessing officer electronically. Thus, besides saving precious time of the taxpayer, 'e-Proceedings' also provides a 24X7 anytime/anywhere convenient facility to submit response to the departmental queries in course of assessment proceedings.

Poetic Tribute to Faceless Assessments

"What's in a Face?"

"What's in a Name?", said Shakespeare,
"What's in a Face?", CBDT Veers.

With "Anonymity" as the New Norm,
Faceless Assessments have Born.

Artificial Intelligence,
Captures Transactions' Evidence.

Machine Learning,
Digs into Assessee's Earnings.

Between the Assessee & Assessor,
NaFAC acts as a Match-maker.

Cases are assigned through automatic allocation,
Assessments are now agnostic location.

AOs have been Replaced with Dynamic Jurisdiction,
Assessments are now Expected to have more Conviction.

Poetic Tribute to Faceless Assessments

"What's in a Face?"

Thing of the Past is now Physical Appearance,
What will now Count is Assessee's Perseverance.

Notices are sent through e-Filing Portal,
Assessees need to e-file their replies, full Throttle.

Written Submissions have Replaced Verbal Pleadings,
All e-Filings to be done only through e-Proceedings.

Increasing the per-attachment uploading size from 5 Megabytes,
May act as Shining Armour in the Knight.

All Communications are to be in Electronic Mode,
Income Tax Offices, have become the Less Travelled Road.

Faceless Assessments do avoid 'Conveyance-kharcha',
Though Miss out on that 'Chai pe Charcha'.

Poetic Tribute to Faceless Assessments

"What's in a Face?"

High Courts set-aside Faceless Assessment Orders bringing Injustice,
And Mandate Adoption of Principle of Natural Justice.

With Addition of Personal Hearing through Video Conference,
Principle of Natural Justice gets the much-needed Credence.

Faceless Assessments strengthen, with VCs being Embodied,
Though, Omission of Section 144B(9) could have been Avoided.

Assessment Units to prepare Income or Loss Determination Proposal,
Before giving Assessment Order, the Final Disposal.

Getting Acknowledgements of Filed Submissions is No More Difficult,
As Acknowledgements are Automatically Generated with Hash Result.

Technology gives Faceless Assessments, an Amazing Facelift,
Tax Administration undergoes a Paradigm Shift.

Lets' Accept & Embrace them, without any Dismay,
As Faceless Assessments are here to Stay.

(By Mayank Mohanka)

PPT on Faceless Assessments

Thank You