FACELESS PENALTY SCHEME, 2021

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INTRODUCTION

- Genesis of Faceless Assessment initially laid through introduction of e-Assessment in 2015 on a pilot basis in Metros and certain other larger cities
- Later, e-Assessment was introduced under the Income Tax Act vide Finance Bill 2016
- Thereafter, through Finance Bill 2018, specific provisions, i.e., sub-section 3A - 3D were introduced under section 143 of the Income Tax Act for e-Assessment scheme
- Regarding penalty proceedings, the Finance Bill 2020, inserted sub-section 2A – 2C under Section 274 for enabling the provisions for Faceless Penalty Scheme.
  - This empowered the Government for framing a scheme for e-penalty proceedings
    - And pursuant to this CBDT vide NOTIFICATION S.O. 117(E) [NO. 2/2021/F.NO.370142/51/2020-TPL], dated 12th January 2021, announced the Faceless Penalty Scheme 2021 and made it effective from the same date.
- Currently National Faceless Assessment Centre /Regional Faceless Assessment Centre/ Assessment Unit/ Review Unit to act as the National Faceless Penalty Centre /Regional Faceless Penalty Centre/ Penalty Unit/ Penalty Review Unit under Para 4 of the Faceless Penalty Scheme, 2021

FACELESS PENALTY SCHEME, 2021 - Features

- Specific features of this scheme are (similar to as that of e/Faceless Assessment Scheme, 2019):
  - Greater transparency and accountability
  - Proceedings conducted by dynamic jurisdiction through various units.
  - A national unit to act as a focal point for all communication.
  - Notices to be delivered via electronic communication i.e., SMS, E-mail, etc.
  - Personal hearing via video conferencing to be granted in certain circumstances only (on approval of Chief CIT or Director Genral, RFPC).
  - All communication between the units to be made electronically.

Section 274 of the Income Tax Act, 1961 lays down the procedure to be followed while imposing penalty, which was amended by inserting sub-sections 2A – 2C thereunder:

Section 274 – Procedure:

(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) No order imposing a penalty under this Chapter shall be made—

(a) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(b) by the Assistant Commissioner or Deputy Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Joint Commissioner.

(2A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

FACELESS PENALTY SCHEME, 2021 – Corresponding Amendment in Section 274 ……(2)

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

(2B) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:
Provided that no direction shall be issued after the 31st day of March, 2022.

(2C) Every notification issued under sub-section (2A) and sub-section (2B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

(3) An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.

FACELESS PENALTY SCHEME, 2021 – Paras

- In view of powers conferred by sub-section 2A of Section 274, Faceless Penalty Scheme was introduced w.e.f. 12^{th} January 2021 containing the following paras/ clauses:

  - Para 1: Short title and commencement
  - Para 2: Definitions
  - Para 3: Scope of the Scheme
  - Para 4: Faceless Penalty Centres (under Faceless Assessment Scheme, this is Faceless Assessment Centres)
  - Para 5: Procedure in penalty (there it is Procedure for assessment)
  - Para 6: Rectification Proceedings *(there it is Penalty proceedings for non-compliance)*
  - Para 7: Appellate Proceedings
  - Para 8: Exchange of communication exclusively by electronic mode
  - Para 9: Authentication of electronic record
  - Para 10: Delivery of electronic record
  - Para 11: No personal appearance in the Centres or Units
  - Para 12: Power to specify format, mode, procedure and processes

FACELESS PENALTY SCHEME, 2021 – Para 3: Scope of the Scheme

- The scope of the scheme is laid down by ORDER F. NO. 187/4/2021-ITA-I, dated 20th January 2021 and 26th February 2021, whereby following exceptions have been laid:
  - Penalty proceedings in cases assigned to Central Charges (raid, search & seizure);
  - Penalty proceedings in cases assigned to International Tax Charges;
  - Penalty proceedings arising in TDS charges (Section 271C);
  - Penalty proceedings arising/ pending in the Investigation Wing, the Directorate of Investigation & Criminal Investigation, erstwhile DG (Risk-Assessment) or by any prescribed authority;
  - Penalty proceedings arising out of any statute other than the Income-tax Act, 1961 shall remain outside the purview of the Scheme; and
  - All penalties imposable by the officers of the level of Commissioner/ Director/ Commissioner (Appeals/ Appeal Unit) and above shall remain outside the purview of the Scheme and be disposed by the respective officer, i.e., only the penalty at the level of assessment proceedings shall fall under this scheme.

FACELESS PENALTY SCHEME, 2021 – Para 5: Procedure in Penalty proceedings

Procedure to be followed in penalty proceedings:

- The Income Tax Authority or NFAC shall refer cases to NFPC. In these cases, the penalty proceedings would have either been initiated or been recommended for initiation.
- NFPC will assign the matter to a Penalty Unit under any Regional Faceless Penalty Centre.
- In cases where initiation of penalty proceeding is recommended, Penalty Unit will examine the materials available on record. It can either disagree with the recommendations (subject to recording reasons) or can agree with the recommendation and draft the show cause notice. Penalty Unit will send the reasons or SCN to NFPC.
- In cases where penalty proceedings are already initiated, the Penalty Unit shall prepare a draft show cause notice and send it to NFPC.
- Depending on the PU's proposal, NFPC can either serve the SCN on the assessee or decide not to initiate the penalty proceedings.
- The assessee must file the response to the SCN within the prescribed time limit. Extension of time can be sought by the assessee by applying to NFPC.
- NFPC will send assessee's response to the PU and if no response is filed then it will inform PU about it.

FACELESS PENALTY SCHEME, 2021 – Para 5: Procedure in Penalty proceedings ……(2)

- PU can now request NFPC:
  - to obtain further information from the assessee or NFAC; or
  - to seek technical assistance or to conduct verification.
- Upon PU's request, NFPC can make appropriate requisition to the assessee or NFAC. For technical assistance or verification, NFPC shall request NFAC to furnish a report within a prescribed time-period. Information or report received by NFPC will be forwarded to PU.
- After considering all the materials on record including the responses and the report, PU may:
  - propose for imposition of penalty and prepare a draft order; or
  - propose for non-imposition of penalty and record the reasons.
- PU will send its proposal along with the draft order or the recorded reasons to the NFPC.
- NFPC has to examine the proposal in accordance with the risk management strategy by way of an automated examination tool. After examining it NFPC may decide:
  - to pass the penalty order as per draft, and serve the order to the assessee; or
  - not to impose penalty as per the proposal, and inform assessee about it; or
  - assign case to a PRU under any of the RFPC for review.
- The PRU may either concur with the proposal or suggest modification to it and record reasons for such modification.

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- If PRU has concurred with the proposal, then NFPC will pass an order as per PU's proposal.
- If PRU has suggested certain modifications, then NFPC will assign the case to a specific PU other than the PU which initially proposed the imposition or non-imposition of penalty.
- The new PU will examine all the materials on record including the suggestions and reasons of the PRU. If modifications suggested by PRU are prejudicial to the interest of the assessee, the PU will follow the procedure from point (2.2) to (7) to prepare the revised draft penalty order. If modifications suggested are not prejudicial to the interest of the assessee, then the PU will prepare a revised draft penalty order. PU may also propose non-imposition of penalty and record the reasons for it.
- NFPC shall pass the penalty order as per the draft prepared by the new PU and serve a copy of the order to the assessee and the NFAC. If the NFPC has received reasons for non-imposition of penalty, then NFPC shall not impose penalty and inform the assessee and NFAC about it.
- Regardless of the above-mentioned procedure, the Principal Chief Commissioner, or the Principal Director General (who is in charge of the National Faceless Penalty Centre) can transfer penalty proceedings to NFAC. The proceedings may be transferred at any stage with the prior approval of the CBDT.

FACELESS PENALTY SCHEME, 2021 – Para 6: Rectification Proceedings

- Amendment to an order passed under the Faceless Penalty Scheme can be made on an application for rectification of mistake may be filed with the National Faceless Penalty Centre by:
  - the assessee;
  - penalty unit, which prepared the order;
  - penalty review unit, which reviewed the order;
  - income-tax authority;
  - National Faceless Assessment Centre

Proceedings - Conventional Penalty vs. Faceless Penalty vs. Faceless Assessment

S.No.	Particulars	Conventional Penalty Proceedings	Faceless Penalty Proceedings under Faceless Penalty Scheme, 2021	Faceless Assessment Scheme, 2019
1.	Applicability	All Penalty Proceedings disposed of uptill 11.1.2021	All pending and new Penalty Proceedings w.e.f. 12.1.2021.	(i) All Regular Assessments under section 143(3) for AY 2018-19; (ii) All pending Income Escaping Assessments /Reassessments under section 147, as on 13.8.2020; (iii) Best Judgement Assessments u/s 144.

Proceedings - Conventional Penalty vs. Faceless Penalty vs. Faceless Assessment

S.No.	Particulars	Conventional Penalty Proceedings	Faceless Penalty Proceedings under Faceless Penalty Scheme, 2021	Faceless Assessment Scheme, 2019
2.	Adjudicating Authority	Jurisdictional AO	Dynamic Jurisdiction comprised in any Penalty Unit in Regional Faceless Penalty Centre (RFPC) under the overall monitoring and supervision of National Faceless Penalty Centre (NFPC).	National Faceless Assessment Centre (NFAC)
3.	Notice Issuing Authority	Jurisdictional AO	NFPC	NFAC

Proceedings - Conventional Penalty vs. Faceless Penalty vs. Faceless Assessment

S.No.	Particulars	Conventional Penalty Proceedings	Faceless Penalty Proceedings under Faceless Penalty Scheme, 2021	Faceless Assessment Scheme, 2019
4.	Assignment of Proceedings	There was no assignment of penalty proceedings and the Jurisdictional AO was having a by-default and inherent right of initiating and adjudicating the penalty proceedings pursuant to the assessment order.	The NFPC assigns the Penalty Proceedings to any PU located in any one RFPC through an automated random allocation system.	The NFAC assigns the case to a specific AU in anyone RFAC through an automated allocation system.

Proceedings - Conventional Penalty vs. Faceless Penalty vs. Faceless Assessment

S.No.	Particulars	Conventional Penalty Proceedings	Faceless Penalty Proceedings under Faceless Penalty Scheme, 2021	Faceless Assessment Scheme, 2019
5.	Inquiries/ Adjudication during the course of proceedings	Jurisdictional AO used to issue Notices under section 274 read with 270A for want of further information/documents/records from the assessee.	The NFPC may issue appropriate notice or requisition u/s 274 read with 270A, to the assessee or NFAC/AO, for obtaining any further information, documents or evidence, as required by the Penalty Unit in the RFPC.	The NFAC may issue appropriate notice or requisition u/s 142(1), to the assessee for obtaining any further information, documents or evidence as required by the assessment unit in the RFAC.

Proceedings - Conventional Penalty vs. Faceless Penalty vs. Faceless Assessment

S.No.	Particulars	Conventional Penalty Proceedings	Faceless Penalty Proceedings under Faceless Penalty Scheme, 2021	Faceless Assessment Scheme, 2019
6.	Provision of Draft Order	There was no provision of passing a Draft Penalty Order.	Draft Penalty Order is to be passed by the Penalty unit in RFPC. This Draft Penalty Order shall be examined by NFPC based on Risk Management Parameters and this draft Penalty Order may be sent by NFPC for Review to a Penalty Review Unit.	Applicable in all assessments under section 143(3) of the Act. Draft Assessment Orders are passed by the assessment unit in the RFAC.

- Instances of hardship to the assessee:
  - Assessee already opted for VSVS, penalty orders passed by NFPC as VSVS lying with Jurisdictional CIT and penalty proceedings lying with NFPC – JAOs transferred penalty files to NFPC without verifying whether VSVS have been pending with CIT or not;
  - Assessment records not available with NFPC/ RFPC and penalties imposed without appreciation of facts whether it involved question of law or where two opinions are possible and assessee took a view favourable to it, say in case of Employee Contribution of PF/ ESI deposited after due date of respective law but before filing of ITR [Section 36(1)(va) vis-a-vis Section 43B]
  - Orders of Jurisdictional High Court are applicable to an assessee, but the PU sitting in different High Court Jurisdiction not allowing relief based on such decision.
  - Recently Bombay High Court in the case of Sungard Solutions (I) (P) Ltd. (415 ITR 294) has held that the situs of the assessing officer is not the basis for deciding the High Court. The assessing officer has to file the case in the High Court where the jurisdiction of the assessee lies and not otherwise.

Will Faceless regime
bring Fairness
and
will be Fearless?

Time to tell….

THANKING YOU….

Queries…..

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