

The Chamber of Tax Consultants


Faceless Appeal Scheme 2021

28 January 2022

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Features

FACELESS CENTRES



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



FACELESS ASSESSMENT AND APPEAL

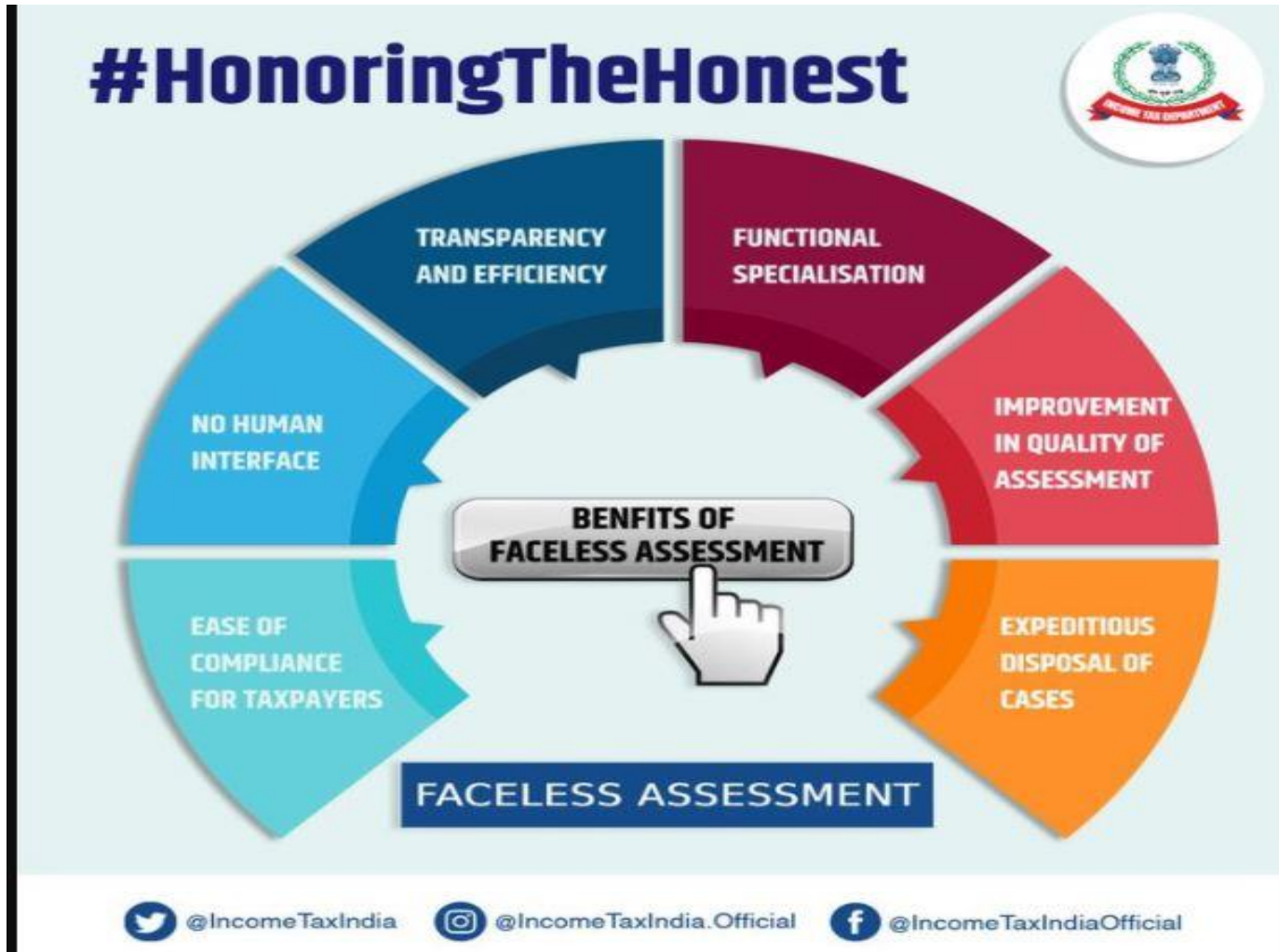
OBJECTIVES

- 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

Features



Appeals under traditional mechanism

Faceless Appeals

Tradition concept of hearing:

- Part A of Chapter XX of the Act, deal with appeals to CIT(A).
- CIT(A) is a quasi-judicial and first appellate authority to adjudicate disputes between the assessee and Department. He has to act independently, though he is an employee of one of the party to dispute.
- Section 246A enumerates the orders which can be challenged before the CIT(A).
- Section 249 prescribes the form of appeal and limitation, whereas section 250 prescribes the procedure in respect of such appeal.
- Section 250(1) states that the CIT(A) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the AO against whose order the appeal is preferred.
- Section 250(2) states that the appellant, either in person or by an authorised representative as well as the AO, either in person or by a representative, shall have a right to be heard at the hearing of the appeal.
- Section 250(6A) provides that in every appeal, the CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed.

Old Faceless Appeal Scheme

Faceless Appeals

Faceless appeal provisions

250(6B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;

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

(c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

250(6C) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) 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.

250(6D) Every notification issued under sub-section (6B) and sub-section (6C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Faceless Appeals

Notification No. 76 and 77 of 2020 dated 25.09.2020

Faceless appeal scheme is *pari materia* with the faceless assessment provisions. Some of the material features of the scheme as under:

- NFAC, RFAC, Appeal units
- An assessee would not be aware who is the concerned CIT(A), though vice versa is possible.
- An order passed by the CIT(A) will be subjected to review either by National Faceless Appeal Centre ('NFAC') or by another CIT(A).
- There doesn't appear to be a team based disposal of appeals, though provisions are made in this regard.
- Faceless scheme is not to apply in certain cases – appeals relating to serious frauds, major tax evasion, sensitive & search matters, international tax and Black Money Act.
- Steps are prescribed to specifically adjudicate on condonation of delay, allowing non-compliance of conditions prescribed in section 249(4)(b), admission of additional ground and/or evidence before proceeding with the disposal of appeal.

Faceless Appeals

Other features

- Additional evidence at the instance of the AO
- Penalty proceeding for non-compliance
- Rectification proceeding
- Communication by electronic mode
- **No personal appearance –**
 - **Assessee or his representative may make a request for oral hearing**
 - **The Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, under which the concerned appeal unit is set up, may approve the request for personal hearing**
 - **Such oral hearing only via video conferencing.**

Faceless Appeals

Issues:

- Physical hearing gone and oral hearing at the discretion of the Department
- Review of order
- Delegated piece of legislation
- Penalty proceedings for non-compliance – no such provisions
- Rectification proceedings – different officer
- Additional ground/ evidences to be raised/ filed in a prescribed form
- Opportunity of being heard in case of condonation of delay or application for non-compliance with section 249(4)(b) or application for admission of additional ground/ additional evidence
- Fixing date of hearing and assessee to file the submission

Faceless Appeals

Issues:

- The concept of 'hearing' and as a consequence, 'appeal' is dying
- Fear of compromise of independence- CIT(A) is a quasi judicial authority
- Travelling hassles/ Bureaucratic issues – positive outcome

PIL by CTC and other matters before the Apex Court

- Not happy with the said scheme, CTC had filed a Writ Petition (later converted into Public Interest Litigation) to challenge the entire Scheme per se before the Hon'ble Bombay High Court
- Various grounds raised
- In transfer petition, the Tax Department, on 01.10.2021, made a statement that they are having a relook at the entire faceless appeal scheme. Similar statements were made before the Hon'ble Bombay High Court in the PIL filed by CTC

New Faceless Appeals Scheme

Notification No. 139 of 2021 dated 28.12.2021

- Substantial changes have been made in the new scheme as compared to the old scheme.
 - From the scheme, it can be seen that the Petition of CTC has been taken into account.
- Firstly, instead of two separate notifications, one under section 250(6B) and another under section 250(6C) of the Act, one single notification has been issued.
- Supersession of earlier Scheme
- **Effective Date**
 - scheme is effective from date of publication i.e. 28.12.2021.

Comparison

Sr No.	Particulars	Traditional Approach	Old Scheme	New Scheme
1	Jurisdiction	Commissioner (Appeals) (A quasi-judicial authority)	<ul style="list-style-type: none"> a. National Faceless Appeals Centre b. Regional Faceless Appeal Centre (Both are administrative authorities) c. Appeal Units 	<ul style="list-style-type: none"> a. Commissioner (Appeals) (A quasi-judicial authority) b. Order to be signed by CIT(A) c. RFAC removed d. Appeal units replaced by CIT(A)
2	Procedures prescribed under:	Income-tax Act, 1961 (Legislature)	Notification No. 76 and 77 of 2020 dated 25.09.2020 (A delegated piece of legislation)	Notification No. 139 of 2021 dated 28.12.2021 (A delegated piece of legislation)
3	Opportunity of being heard before dismissing on the ground of delay	Yes	No	No

Sr No.	Particulars	Traditional Approach	Old Scheme	New Scheme
4	Opportunity of being heard before dismissing u/s 249(4)	Yes	No	No provision to deal with s. 249(4) dismissal
5	Notice of hearing	Yes	No. Notice issued only if, Appeal Unit requires some information from the Appellant. (See para 5(v) of Notification No. 76/2020)	Yes
6	Hearing by way of written submission	Yes	Yes	Yes
7	Oral hearing by way of video conferencing	Yes	No. Assessee can only make a request. Such request to be disposed by CCIT in charge of RFAC (administrative authority and respondent) as per the circumstances prescribed. (See para 12(2) and 13(3) of Notification No. 76/2020)	Mandatory if the Appellant has sought

Sr No.	Particulars	Traditional Approach	Old Scheme	New Scheme
8	Physical hearing	Yes	No. There is no physical hearing envisaged in any situation. (See para 12(1) of Notification No. 76/2020)	Virtual hearing to the extent technologically feasible [Para 12(4)]
9	Administrative interference in hearing	No	Yes. In fact, the entire appellate process is through NFAC. Orders are to be finalised by NFAC. Many instances of interferences are pointed out in the Petition	No
10	Review of order	No	Yes. Mandatory review if the tax effect crosses the particular amount. If tax effect is less, then NFAC shall examine the draft order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool and either confirm it or send it to another appeal unit for review. Thus, an administrative authority to perform review of an order of quasi-judicial authority. (See para 5(xix) of Notification No. 76/2020)	No

Sr No.	Particulars	Traditional Approach	Old Scheme	New Scheme
11	Penalty for non-appearance	No	Yes. There is no such provision in the Act. Thus, the Notification travels beyond the Act. (See para 6 of Notification No. 76/2020)	Yes same as old scheme
12	Additional evidence at the instance of Department	No	Yes. In fact, no additional conditions prescribed for Department though for assessee Rule 46A has been laid down which is to be strictly complied with. (See para 5(xv) and 5(xvi) of Notification No. 76/2020)	Yes same as old scheme
13	Rectification of order	By the same Officer	By an appeal unit as elected by random automated allocation system. (See para 7 of Notification No. 76/2020)	same as old scheme
14	Opportunity of being heard before dismissing application for additional evidence/ground	Yes	No	No

Sr No.	Particulars	Traditional Approach	Old Scheme	New Scheme
15	Stay of demand	Yes	Not clear	Not clear
16	Early hearing	Yes	Not clear	Not clear. Can be made to Pr. CCIT (NFAC)
17	Communication	By email or by way of post	By way of email or uploading on the portal followed by a real time alert (See para 9 and 11 of Notification No. 76/2020)	Same three modes continue. However, there appears to be some typographical error, in as much as, the real time alert is now required only in case of uploading an authenticated copy on the mobile app In violation of IT Act, 2000

Some other issues

- Fate of appeals disposed under the old scheme
 - savings clause in the new scheme which states that the supersession of the earlier notification shall be except as respects things done or omitted to be done before such supersession
 - substantial changes in the new scheme as compared to the old one
 - An assessee, whose appeal has been disposed of under the old scheme may take an argument before ITAT, that the matter can be sent back to be disposed of as per the new scheme, as the appeal was disposed of under an absolutely flawed scheme
- Notification No. F. No. 279/Misc./66/2014-SO-ITJ(Pt.1) 29 December 2021,
 - CBDT has notified that all appeals filed under section 246A and 248 of the Act, other than those in the Central Charge and International Tax Charge
 - What is the meaning of the term Central Charge and International Tax Charge?
 - No such notification under para 3 of the old scheme – thus, all appeals disposed off earlier are bad in law?
- Communication from the side of the Appellant
 - only one mode of communication from the side of the Appellant i.e., by way of registered account
 - Practical difficulty
 - The Tax Department can open a help-desk at various Offices for assisting the appellants with such uploading.

Some other issues

- Transfer of Appeal
 - Para 5(2) of old scheme has been continued but with some changes.
 - Under old scheme, power to transfer was with Principal Chief Commissioner of NFAC with prior approval of CBDT.
 - Under new scheme, appeal would be transferred in accordance with section 120 of the Act. The said power, it appears, is to be exercised by the Board.
 - However, in what circumstances, such powers would be exercised is not yet clear. Further, it also, remains to be seen, as to whether on request of assessee, will such power be exercised.
- Guidelines for priority disposal dated 29.12.2021 – F No 279/Misc./M-102/2021-ITJ
 - Request made to be considered by PCCIT NFAC
 - Demand above Rs. 1 crore/ refund exceeds Rs. 1 lakh/ directions issued by Courts/ Senior Citizens/ other case of genuine hardships

Some other issues

- Appeal units converted into CIT(A) and various notifications for appointment
 - Notification 141 of 2021 dated 29.12.2021 conferring jurisdiction on CIT(A)
 - Setting up of NFAC – Order 3 dated 29.12.2021
 - Notifying Appeal units – Order 4 dated 29.12.2021
 - Order No. 05 of 2022 dated 07.01.2022 – redesignation

- **Delegated Piece of legislation**

Faceless ITAT on cards

- FA 2021 has proposed Faceless ITAT –
- Last fact finding authority.

Taxpayers' Charter

THE INCOME TAX DEPARTMENT

is committed to

1. provide fair, courteous, and reasonable treatment
2. treat taxpayer as honest
3. provide mechanism for appeal and review
4. provide complete and accurate information
5. provide timely decisions
6. collect the correct amount of tax
7. respect privacy of taxpayer
8. maintain confidentiality
9. hold its authorities accountable
10. enable representative of choice
11. provide mechanism to lodge complaint
12. provide a fair & just system
13. publish service standards and report periodically
14. reduce cost of compliance

and expects taxpayers to

1. be honest and compliant
2. be informed
3. keep accurate records
4. know what the representative does on his behalf
5. respond in time
6. pay in time

Apex Court in case of **CIT vs. J.H. Gotla [(1985) 156 ITR 323 (SC)]** has held that *“Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.”*

QUESTIONS, IF ANY?

THANK YOU

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