

**Drafting of Replies for various issues in
Income Tax Assessment**
(Special focus on Faceless Assessments)

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Need for communication with Department

A. Communication in relation to Assessment of Income

- ❑ Response to Notices issued u/s 143(2) or 148 or 153A or 153C of the Act
 - ❑ Preliminary response to aforesaid notices enclosing return and further request for furnishing reasons to believe
 - ❑ Raising objections to reasons to believe provided by AO
 - ❑ Furnishing of response on legal issues
 - ❑ Furnishing of factual details
 - ❑ Response to Show Cause Notice before final conclusion of assessment proceedings
 - ❑ Request for Stay of Demand and Stay of Penalty Proceedings
 - ❑ Application for rectification of errors apparent from record
- ❑ Response to Summons issued u/s 131 of the act
- ❑ Response to notice issued u/s 133(6) of the act

B. Communication in form of Applications/ Requests for other matter

- ❑ Application for registration of trust with CIT (Exemptions) for various exemptions,
- ❑ Application for grant of certificate for lower deduction of TDS.
- ❑ Request for Adjournment
- ❑ Request for Communication via Video Conferencing.

Content of communication with Department

- ❑ Communication of Facts to the Assessing Officer
 - ❑ Facts to be communicated in a pointed manner
 - ❑ Ensure precise and accurate matter to be reported therein
- ❑ Explaining situations or perspective to the Assessing Officer
 - ❑ Situations or perspectives shall be mentioned with specific sub-headings
 - ❑ Pointed findings under a different situations shall be mentioned in reply with its practical implications.
 - ❑ Alternate Claims shall also be mentioned where implication under different situations are explained.
- ❑ Raising legal issues i.e. Point of Law before the Assessing Officer
 - ❑ Relevant extracts of legal references shall be quoted in the reply
 - ❑ Inference drawn from specific point of law shall be explained in context of the matter in hand separately
 - ❑ In context of matter in hand, conclude each observation with implication of such point of law on actual addition

Basic Principles for Drafting of any Response

- ❑ Ensure accuracy of facts to be mentioned in response
- ❑ Ensure proper grammar and language in drafting a response
- ❑ Be concise and use short sentences while drafting a response
- ❑ Ensure important points are not overlooked while drafting a response
- ❑ Incorporate Introduction and Conclusion to every specific issue while drafting a response

What is Assessment?

- ❑ Procedure for determining tax liability and recovery of tax.
- ❑ Section 2(8): “Assessment” includes reassessment
- ❑ “Assessment” is wide enough to include all types of assessments including penalty proceedings
- C. A. Abraham v. ITO [41 ITR 425 (SC)]

Basic Features of Assessment

- ❑ Quasi-judicial proceedings
- ❑ Sufficient opportunity of being heard
- ❑ Speaking order
- ❑ Rule of Evidence
- ❑ Issue of notice must be issued within time limit prescribed under the act and shall be served upon the assessee in accordance with provisions of section 282 of the act.

Type of Assessment under Income Tax Act?

- ❑ Inquiry before Assessment u/s 142(1)
- ❑ Summary Assessment u/s 143(1)
- ❑ Scrutiny Assessment u/s 143(3)
- ❑ Best Judgment Assessment u/s 144
- ❑ Income Escaping Assessment/ Reassessment u/s 147
- ❑ Search Assessment u/s 153A (*Will be discussed later*)
- ❑ Survey Assessment u/s 153C (*Will be discussed later*)

Legal Provisions related to Assessment u/s 143(3)

Issuance of Notice u/s 143(2)

(2) Where a return has been furnished u/s 139, or in response to a notice u/s 142(1), the AO or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the AO or to produce, or cause to be produced before the AO any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

Assessment of Income u/s 143(3)

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment

Legal Analysis of Faceless Assessment Scheme 2020

- Central Government by Finance Act, 2018, inserted 2 new sub-section i.e. 143(3A) & 143(3B) which read as follows:

Section 143(3A): The CG may make a scheme, by notification in the Official Gazette, **for the purposes of making assessment of total income or loss of the assessee under sub-section (3)** so as to impart greater efficiency, transparency and accountability by—

- Eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- Optimizing utilization of the resources through economies of scale and functional specialization;
- Introducing a team-based assessment with dynamic jurisdiction.

Section 143(3B): The CG may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss 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, 2020.

- Thereafter, Finally, the Government notified a Scheme names as "E-Assessment Scheme, 2019" u/s 143(3A) vide Notification No. 61/2019 dated 12.09.2019 (further supplemented by the direction u/s 143(3B) vide Notification No.62/2019 dated 12.09.2019) to conduct e-Assessments proceedings w.e.f. 12.09.2019
- Scope of E-assessment Scheme, 2019:-** As per the definition of "Assessment" provided in E-assessment Scheme, assessment means "**the assessment of total income/loss u/s 143(3) of the Act**".

- **CG Vide Finance Act, 2020 made following amendments in section 143(3A) & 143(3B):-**
 - In Section 143(3A), Word “Section 144” inserted. **Now CG can also make scheme for the purpose of making assessment u/s 144 of the Act in addition to assessment u/s 143(3).**
 - In Proviso to Section 143(3B), “Year 2020” is substituted with “Year 2022”. It means now CG can issue direction for scheme notified u/s 143(3A) upto 31st March, 2022.

Hon’ble PM on 13th August 2020 announced that all the assessment proceeding from 13th August, 2020 shall be conducted in Faceless Manner. To give the effect to PM’s announcement, CG issued following two notification:

- i. Notification No. 60 of 2020:-** In exercise of the power conferred u/s 143(3A) of the Act, CG amend the E-Assessment Scheme, 2019 and rename it is as Faceless Assessment Scheme, 2019. Further in the definition of “Assessment” assessment u/s 144 is also included which means now assessment order u/s 143(3) and best judgment assessment u/s 144 shall be passed under Faceless Assessment Scheme, 2019.
- ii. Notification No. 61 of 2020:-** In exercise of the power conferred u/s 143(3B) of the Act, CG amends direction issued vide notification no. 62 of 2019.

To give the effect to PM’s announcement CBDT issued an order u/s 119 of the Act dated 13th August, 2020 and directs that all the assessment orders shall be passed by NeAC through Faceless Assessment Scheme, 2019 except the following two assessment order:-

- i.** Assessment order in case assigned to Central Charges.
- ii.** Assessment order in case assigned to International Charges.

COMPARISON BETWEEN E - ASSESSMENT SCHEME AND FACELESS ASSESSMENT SCHEME

Particular	E Assessment Scheme, 2019 (Applicable upto 12 th August 2020)	Faceless Assessment Scheme, 2019 (Applicable from 13 th August 2020)
Applicability	Applicable only in relation to assessment proceeding u/s 143(3) of the Income Tax Act, 1961.	All assessment proceeding under the Income Tax Act except with central charge and international taxation charge
Non – Applicability	<p>Following categories of assessments were kept outside the purview of E-Assessment:</p> <ol style="list-style-type: none"> 1. Re-assessment u/s 147. 2. Assessment u/s 153A & 153C. 3. Best Judgement assessment u/s 144. 4. Assessment related to International Taxation. 	<p>Following categories of assessments are kept outside the purview of Faceless Assessment:</p> <ol style="list-style-type: none"> 1. Assessment cases with Central Charges. 2. Assessment related to International Taxation.
Compulsion	Assessment order which was required to be passed under this scheme, if passed otherwise shall not be treated as Non - Est	Any assessment order passed by department which is required to be passed through Faceless Assessment Scheme, 2019, shall be treated as Non – Est, if passed otherwise

SOP for Assessment Unit

- CBDT vide SOP dated 19.11.2020 lays down guidelines for Operation of Assessment Units in the Faceless Assessment Scheme, 2019.
- The SOP provides guidance on following:
 - **Issue of Initial Questionnaire u/s 142(1)**: The SOP states that for reducing compliance burden on assessee and for framing a quality assessment order, a focussed and issue specific questionnaire is necessary which reflects the application of mind and due diligence of the AU.
 - **Process of Issuance of Notice u/s 142(1)**: The notice is to be sent to the assessee through the NeAC with approval of the unit Head of AU.
 - **Grant of Adjournment to initial Notice u/s 142(1)**: The assessee has an online option to seek adjournment during pendency of Notice u/s 142(1). The AU may grant Adjournment on such request or suo-moto.
 - **Procedure in case of Non compliance of any Notice u/s 142(1) and Passing Best Judgement Assessment u/s 144**: In case the assessee stops responding after submitting only part reply or after seeking adjournment the AU should proceed with making ex-parte assessment u/s 144 of the Act.
 - **Issue of Penalty Notice & Levy of Penalty u/s 272A for non-compliance of 142(1)**: Show cause notice for levy of penalty for non-compliance u/s 272A(1) along with the Show Cause Notice for passing order u/s 144 with modified income shall be issued to the Assessee. Such notice ideally would give a time of 15 days for response.

- **Analysis of Information submitted in response to questionnaire u/s 142(1):** The AU is to examine the reply of the taxpayer with reference to the issue involved in the case and cross verify it with the information available on record of the AU. An opportunity is to be given to the assessee before finalization of the assessment through an SCN if the assessee's reply conflicts with information on record of the AU, or the VU or the TU has given an adverse report against the assessee.
- **Issue of Additional Questionnaire u/s 142(1):** The AU shall issue additional questionnaire, if the information/ reply received from the Assessee differs from the information or the record of the assessee with AU or where any further information or clarification is required and such clarification/further information is not available on record or in department's databases or through the Reporting Agency. The AU is to ensure that principles of the natural justice are met and the assessee gets an opportunity to rebut any adverse finding against him before the AU finalizes the assessment.
- **Reference to Verification Unit for online enquiry/Verification:** After examining the case records, the AU may decide to get specific enquiry/verification conducted from a Verification Unit. The reference should not be made for collection of information like bank statements or ROC data etc, but for an enquiry or investigation of on any issue in dispute.
- **Sending reference to VU for field physical verification:** Physical verification can be conducted in select cases through the designated VU, where the assessee is non-compliant or where the third party from whom information/document/evidence is to be collected doesn't have a digital footprint.

- **Sending reference to Technical Unit (TU):** Technical assistance may be called for in the following circumstances listed below:
 - A. Interpretation of law / legal issues
 - B. Analysis of Books of Accounts
 - C. Forensic Analysis of documents, data, device etc.
 - D. Special Audit/ Forensic Audit
 - E. Assistance for finding passwords and deciphering digital files, applications etc.
 - F. Valuation of tangible or intangible assets.
 - G. Determination of Armed Length Price and Fair Market Value.
 - H. Translation, transcription etc.
 - I. Assistance on trade related practises, technical or Management Issues
 - J. Other technical matters.
- **Handling Re-assessment under section 148:** The cases u/s 148 shall be assigned to respective AUs and the notice issued u/s 148 along with reasons/supporting documents shall be made available on the ITBA. Ideally, the sharing of notices/reasons/supplementary documents and evidence with NeAC would take place within 30 days of the issue of notice.
- **Handling approval for withholding of refunds u/s 241A:** The AU shall record the reasons in writing along with specific recommendation for withholding of refund or otherwise as per provisions of section 241A for approval of PCIT(AU).

- **Handling of revised return cases:** A Return of Income may be Revised by the taxpayer either prior to the case being assigned for Faceless Assessment or during the pendency of the Faceless Assessment.
- **Handling of unverified return cases:** Such instances are to be reported to the NeAC through the PCIT AUs.
- **Handling of cases with CPC related defect issues:** Such instances are to be reported to the NeAC through the PCIT AUs.
- **Handling of reference for attachment u/s 281B:** Where during the course of pendency of assessment proceedings, AU is of the opinion that for the purpose of protecting interest of the revenue, it is necessary to do so, it would submit proposal for provisional attachment under section 281B to PCIT(AU) through the workflow on Systems.
- **Handling of Compulsory Scrutiny cases & Handling of Legacy Set Aside cases:** The cases assigned to the NeAC shall be allocated to the respective AUs as per random allocation norms of NeAC.
- **Handling of PAN marked as fraud PAN:** In the case where PAN has been marked as fraud by ITBA and the case is under scrutiny, the AU shall refer the matter to verification unit for physical verification of assessee.
- **Preparation and Submission of draft assessment order:** The draft assessment order ideally should be submitted for RMS within reasonable time and not later than 15 days of receipt of complete and final information required for submission of draft order. It is advisable that all references to RMS are made 45 days prior to the date of limitation of passing of order. The AU shall ensure that draft assessment order is speaking, reasoned and judicious and all issues have been duly dealt with.

- **Issue of Show Cause Notice:** The show cause notice, except in the case of order under section 144 of the Act shall accompany draft assessment order. The AU should ensure that reasonable time is given in the show cause notice to the assessee so as to comply with the principle of natural justice.
- **Passing of Final Assessment Order:** The AU is to invariably preview the assessment order to be issued to ensure that the assessment order has properly framed the issue in dispute and incorporated all facts relevant to the issue. Further, penalty proceedings, if any required to be initiated for imposition by Jurisdictional Assessing Officer, should be discussed in the body of order as well as should be initiated in the system through a specific format.
- **Handling Clarifications sought by VU / TU:** Any clarification sought by VU or TU or RU should be responded to within a reasonable time generally not later than 5 days of receipt. The clarification by AU should be given in clear language, be specific and to the point.
- **Handling of cases received by new AU after suggestion of modification by RU:** If, during the process of finalisation of draft order that takes into account the report of the RU, the new AU finds an additional fact or a point that arises from such examination and which is not mentioned in the Report of RU then the additional fact or point can be raised in the assessment proceedings. This action shall be initiated only after obtaining approval of the Pr.CIT (AU).

SOPs for VU, TU and RU are covered later.

(Copy of the SOP as per PDF Enclosed)

SOP for Video Conferencing

- CBDT vide SOP dated 23.11.2020 lays down circumstances in which personal hearing through Video Conference shall be allowed in the Faceless Scheme, 2019.
- Where any modification is proposed in the draft assessment order (DAO) issued by any AU and the Assessee or the authorized representative in his/her written response disputes the facts underlying the proposed modification and makes a request for a personal hearing, the CCIT ReAC may allow personal hearing through Video Conference, after considering the facts & circumstances of the case, as below:-
 - The Assessee has submitted written submission in response to the DAO.
 - The Video Conference will ordinarily be of 30 minutes duration. It may be extended on the request of the Assessee or authorised representative.
 - The Assessee may furnish documents/ evidence, to substantiate points raised in the Video Conference during the session or within a reasonable time allowed by the AU, after considering the facts and circumstances of the case.

(Copy of the SOP as per PDF Enclosed)

Personal hearing in special circumstances would be provided through the Video Conference by using any telecommunication application software which supports video telephony. The assessee can make such request from their Portal.

e-filing Anywhere Anytime
Income Tax Department, Government of India

Welcome [User Name] Last Login: [Date] Idle Session Timer: 4 4 [Icons] Logout

Dashboard My Account e-File e-Proceeding e-Nivaran Compliance Worklist Vivad Se Vishwas

e-Proceedings

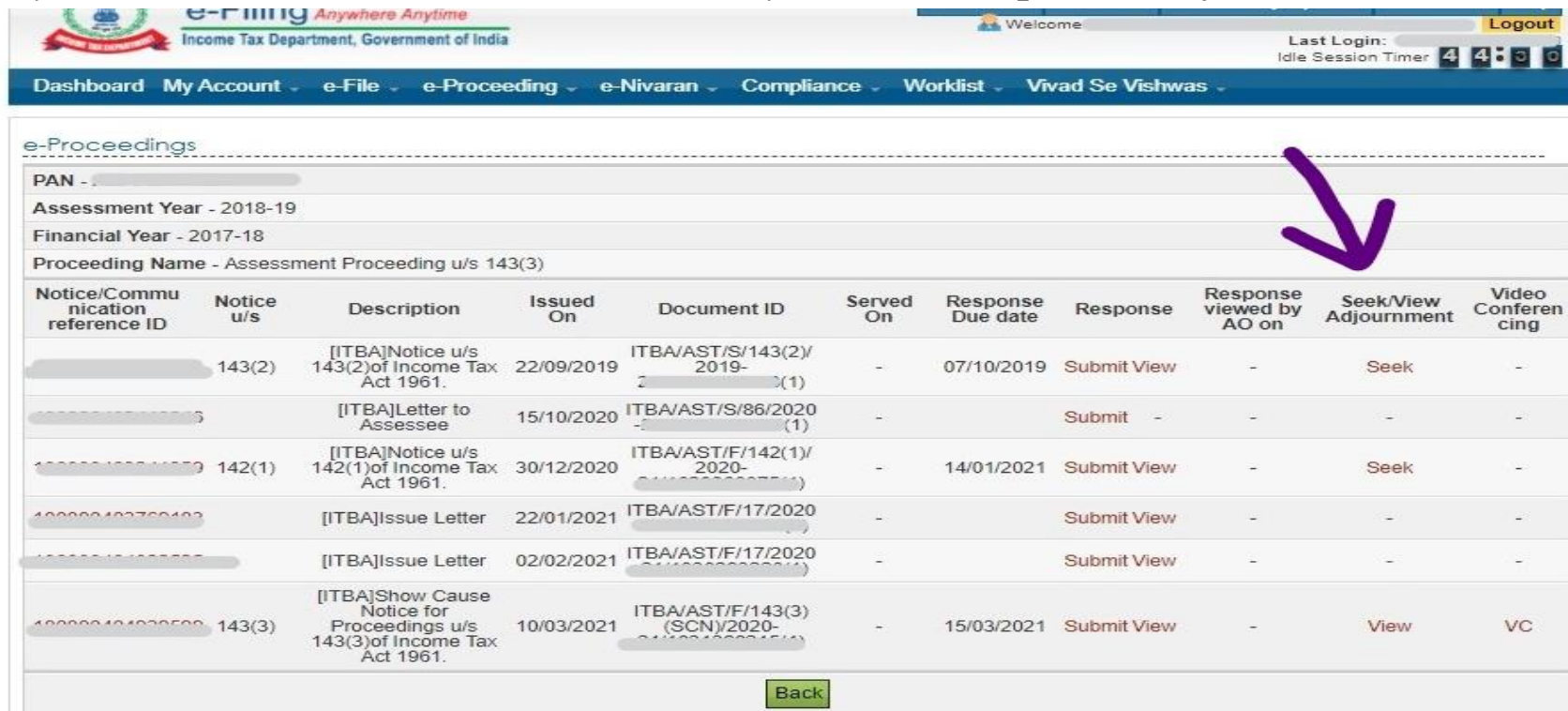
PAN - [Redacted]
Assessment Year - 2018-19
Financial Year - 2017-18
Proceeding Name - Assessment Proceeding u/s 143(3)

Notice/Communica- tion reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on	Seek/View Adjournment	Video Conferencing
[Redacted]	143(2)	[ITBA]Notice u/s 143(2)of Income Tax Act 1961.	22/09/2019	ITBA/AST/S/143(2)/2019-[Redacted](1)	-	07/10/2019	Submit View	-	Seek	-
[Redacted]		[ITBA]Letter to Assessee	15/10/2020	ITBA/AST/S/86/2020-[Redacted](1)	-		Submit	-	-	-
[Redacted]	142(1)	[ITBA]Notice u/s 142(1)of Income Tax Act 1961.	30/12/2020	ITBA/AST/F/142(1)/2020-[Redacted]	-	14/01/2021	Submit View	-	Seek	-
[Redacted]		[ITBA]Issue Letter	22/01/2021	ITBA/AST/F/17/2020-[Redacted]	-		Submit View	-	-	-
[Redacted]		[ITBA]Issue Letter	02/02/2021	ITBA/AST/F/17/2020-[Redacted]	-		Submit View	-	-	-
[Redacted]	143(3)	[ITBA]Show Cause Notice for Proceedings u/s 143(3)of Income Tax Act 1961.	10/03/2021	ITBA/AST/F/143(3)(SCN)/2020-[Redacted]	-	15/03/2021	Submit View	-	View	VC

Back

Seeking Adjournment in Faceless Proceedings

Under the faceless regime, the Income-tax Department will provide specific timelines to taxpayers to furnish details and submissions, and they will have a limited window to seek adjournment. The assessee can seek Adjournment upto 15 days from their Portal.

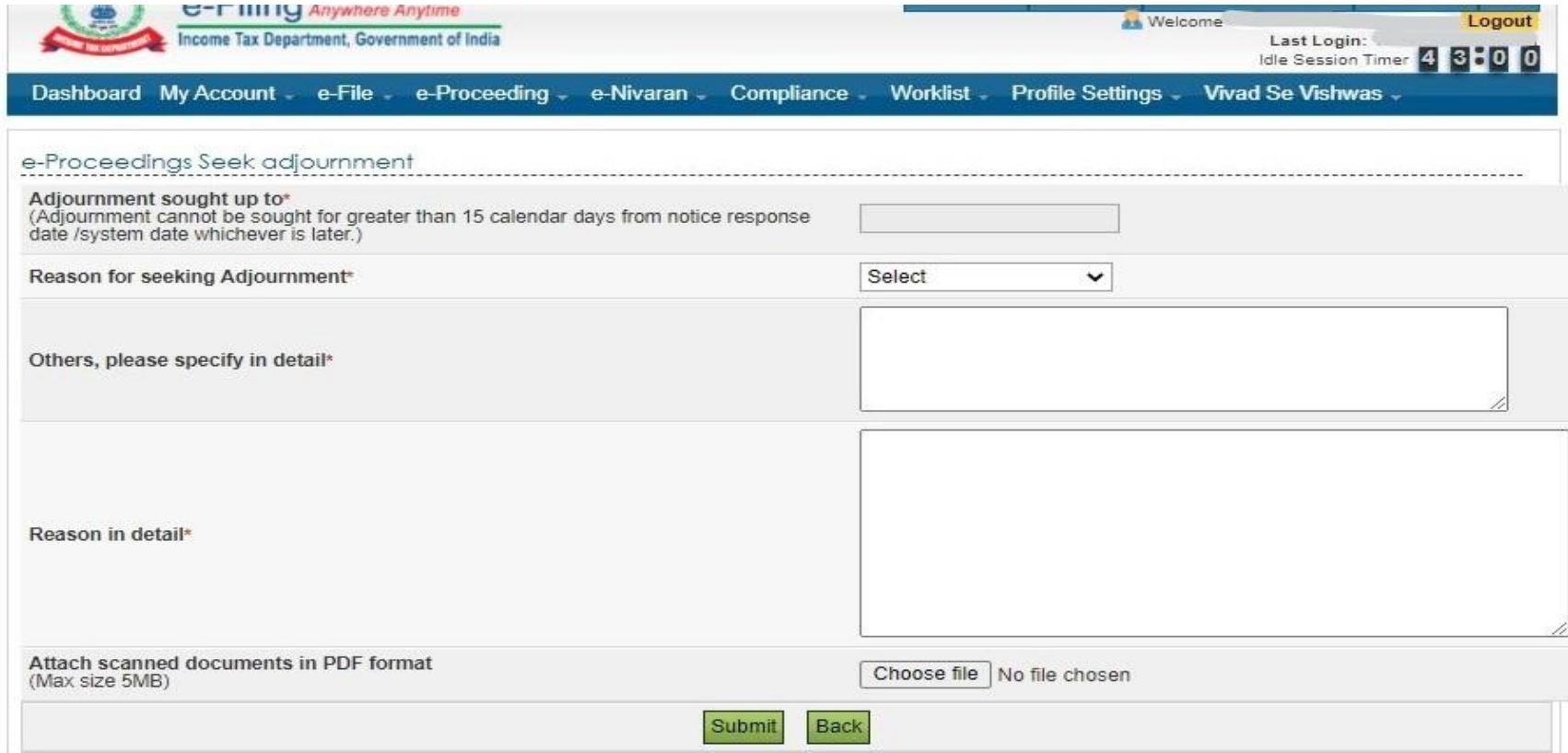


The screenshot displays the e-Procceedings portal interface. At the top, there is a navigation bar with options like Dashboard, My Account, e-File, e-Procceeding, e-Nivaran, Compliance, Worklist, and Vivad Se Vishwas. Below this, the 'e-Procceedings' section is visible, showing details for a specific proceeding: PAN, Assessment Year (2018-19), Financial Year (2017-18), and Proceeding Name (Assessment Proceeding u/s 143(3)).

Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on	Seek/View Adjournment	Video Conferencing
[REDACTED]	143(2)	[ITBA]Notice u/s 143(2)of Income Tax Act 1961.	22/09/2019	ITBA/AST/S/143(2)/2019-[REDACTED](1)	-	07/10/2019	Submit View	-	Seek	-
[REDACTED]	[REDACTED]	[ITBA]Letter to Assessee	15/10/2020	ITBA/AST/S/86/2020-[REDACTED](1)	-	-	Submit	-	-	-
[REDACTED]	142(1)	[ITBA]Notice u/s 142(1)of Income Tax Act 1961.	30/12/2020	ITBA/AST/F/142(1)/2020-[REDACTED]	-	14/01/2021	Submit View	-	Seek	-
[REDACTED]	[REDACTED]	[ITBA]Issue Letter	22/01/2021	ITBA/AST/F/17/2020-[REDACTED]	-	-	Submit View	-	-	-
[REDACTED]	[REDACTED]	[ITBA]Issue Letter	02/02/2021	ITBA/AST/F/17/2020-[REDACTED]	-	-	Submit View	-	-	-
[REDACTED]	143(3)	[ITBA]Show Cause Notice for Proceedings u/s 143(3)of Income Tax Act 1961.	10/03/2021	ITBA/AST/F/143(3)(SCN)/2020-[REDACTED]	-	15/03/2021	Submit View	-	View	VC

A purple arrow points to the 'Seek' button in the first row of the table. A 'Back' button is located at the bottom center of the page.

The assessee needs to provide a reason for adjournment and provide the details for the same. Supporting documents can be attached to substantiate the same.



The screenshot shows the 'Seek adjournment' form on the e-Filing portal. The header includes the e-Filing logo and 'Income Tax Department, Government of India'. The user is logged in as 'Vivad Se Vishwas' with a session timer showing 43:00. The form fields are:

- Adjourment sought up to***: A text input field with a note: '(Adjourment cannot be sought for greater than 15 calendar days from notice response date /system date whichever is later.)'
- Reason for seeking Adjourment***: A dropdown menu currently set to 'Select'.
- Others, please specify in detail***: A large text area for additional details.
- Reason in detail***: A large text area for the primary reason for adjournment.
- Attach scanned documents in PDF format (Max size 5MB)**: A file upload section with a 'Choose file' button and the text 'No file chosen'.

At the bottom of the form are two buttons: 'Submit' and 'Back'.

Other Legal Points related to Assessments

- Issuance of notice is condition precedent for making assessment u/s 143(3) of the Act. If no notice was issued or the notice issued is proved to be invalid, then the assessment proceeding would also be treated as void-ab-initio.
- Provision of Section 282 shall be applicable on notice issued under section 143(2) of the Act, and accordingly service of notice can be made through registered post or speed post.
- As per the provisions of second proviso to section 153(1) of the act, for assessments being conducted or to be conducted in relation to AY 2019-20 or thereafter u/s 143(3) or 144 shall be completed within 12 months from the end of assessment year in which the income was first assessable.
- As per the provisions of first proviso to section 153(2) of the act, for assessments/ reassessments being conducted or to be conducted in relation to AY 2019-20 or thereafter u/s 147 shall be completed within 12 months from the end of the financial year in which the notice u/s 148 was issued.

Selection of cases for issue of Notice u/s 148

- CBDT vide Circular No. 'F No. 225/40/2021/ITA-II dated 04.03.2021 provided Instructions regarding selection of cases for issue of Notice u/s 148 of the Income Tax Act, 1961.
- Following categories of cases can be considered as 'potential cases' for taking action u/s 148 of the Act by 31.03.2021 for AY 2013-14 to AY 2017-18:
 - Cases where there are Audit Objectives (Revenue/ Internal).
 - Cases of Information from any other Government Agency/ Law Enforcement Agency.
 - Cases including Reports of Directorate of Income Tax (Investigation).
 - Cases including Reports of Directorate of Intelligence and Criminal Investigation.
 - Cases from Non-Filer Management System (NMS).
 - Cases where Information arising out of Survey action, requiring action u/s 148 of the Act.
 - Cases of information received from any Income Tax authority requiring action u/s 148 with the approval of Chief Commissioner of Income Tax concerned.
- No other category of cases except the above shall be considered for taking action u/s 148. The AO can take action only after forming a reasonable belief that Income has escaped assessment and reasons to believe shall be recorded and required sanctions u/s 151 of the Act shall be obtained.

(Copy of the circular issued by CBDT as per PDF Enclosed)

Issues encountered in Assessment or Reassessment

According to my experience of handling assessment and reassessment cases, following are the illustrative list of issues faced by professionals while handling such cases:

1. Further issue of shares during the year in light of section 56(2)(viib) of the act.
2. Unexplained Cash credit u/s 68 of the act on following transactions:
 - ▣ Share Application Money or Unsecured Loan
 - ▣ Sundry Creditors
 - ▣ Cash Sales
3. Deemed Dividend u/s 2(22)(e)
4. Disallowance u/s 14A r.w.r. 8D
5. Gifts received from relatives u/s 56(2)(x)
6. Additions for variance in Gross Profit or Net Profit from Last Year
7. Remission or cessation of trading liabilities u/s 41(1)
8. Disallowance of Cash Payment exceeding Rs. 10,000 u/s 40A(3)
9. Mismatch in quantitative details

1. Further issue of Share Capital [Section 56(2)(viib)]

As per the provisions of section 56(2)(viib) of the act, a private limited company shall issue new share capital at a consideration not exceeding the fair value of shares as computed under the provisions of Rule 11UA of the Income Tax Rules, 1962. In this regards, file following documents:

- ❑ Computation of Fair Market Value of shares as on date of issue
- ❑ Copy of Valuation Report where valuation have been conducted in accordance with rule 11UA.
- ❑ Relevant supporting documents indicating:
 - ❑ Stamp Duty Value of the Immovable Property and/or
 - ❑ Market Value of Jewellery/ Bullion/ Piece of Art etc. and/or
 - ❑ Market Value of Intangible Assets - Goodwill/ Patent/ Trademark etc.
- ❑ Bank statement indicating receipt of money and other statutory documents regarding allotment of shares such as allotment letter, share certificate and return filed with ROC.

(Specimen Copy of Reply to be Filed in case of Issue of Shares u/s 56(2)(viib) of the Income Tax act, 1961 as per PDF Enclosed)

2A. Share Capital or Unsecured Loan [Section 68]

As per the provisions of section 68 of the act, any amount found to be credited in the books of account shall be deemed to be unexplained cash credit where the assessee fails to offer any explanation or the explanation offered is not satisfactory in view of the AO. In its explanation, assessee is required to substantiate three aspects of the transaction i.e. Identity & Creditworthiness of the Lender and Genuineness of the transaction. In this regards, assessee shall submit following:

- ❑ List of Share Allottees or Unsecured Loans with address and PAN of said person.
- ❑ Attach copy of PAN, ITR-V, Bank Statements indicating impugned receipts and Confirmations from such share allottee or the lender in regards to each and every such transaction. Where share allottee or the lender is a corporate entity, attach copy of audited balance sheet indicating schedule wherein impugned transaction have been reported.
- ❑ Payment proof of interest on loan account and TDS return showing the TDS amount deducted on such Interest.
- ❑ Indicate specifically opening balances and actual amount received during the year being the amount received during the year can be considered to be cash credit u/s 68 of the act.

(Specimen Copy of Reply to be Filed in case of alleged unexplained receipt of Share Capital Money u/s 68 of the Income Tax act, 1961 as per PDF Enclosed)

2B. Sundry Creditor [Section 68]

In respect of the sundry creditors, assessee shall submit following:

- ❑ List of Sundry Creditors with address and PAN of said person.
- ❑ Attach copy of Invoice received from vendor in respect of corresponding purchases, copy of account, Bank Statements indicating payment made for such outstanding balance in subsequent period and Confirmations from such creditor in regards to each and every such transaction.
- ❑ Where sundry creditor is a corporate entity, attach copy of audited balance sheet indicating schedule wherein impugned transaction have been reported. (*Required in the case where bogus creditors are alleged.*)
- ❑ Payment proof of TDS and TDS return showing the TDS amount deducted on such expenses in respect of which creditor is outstanding.
- ❑ Indicate specifically opening balances and actual amount of purchases made or services received during the year being the additions during the year can be considered to be cash credit u/s 68 of the act.

(Specimen Copy of Reply to be filed in case of alleged unexplained balances of creditors u/s 68 of the Income Tax act, 1961 as per PDF Enclosed)

2C. Cash Sales [Section 68]

In respect of the cash sales, assessee shall submit following:

- ❑ A comparative detail of monthly cash sales and other sales.
- ❑ Invoice Wise detail of cash sales with quantitative details and GST/ VAT collected thereon and deposit of same to the credit of exchequer.
- ❑ Comparison of closing stock as per stock register with stock details in Tax Audit Report/ Audited Financial Statements
- ❑ Detail of corresponding purchases of stock item sold in cash and detail of suppliers (incl. GSTIN and/or TAN) with amount of VAT/ GST paid thereon. In case of trader of agricultural produce, copy of mandi tax receipts etc. shall be attached to substantiate genuineness of purchases made from farmers in cash.

(Specimen Copy of Reply to be filed in case of alleged unexplained cash sales u/s 68 of the Income Tax act, 1961 as per PDF Enclosed)

3. Deemed Dividend

As per the provisions of section 2(22)(e) of the act, any loan or advance forwarded by any private limited company to any of following persons or concerns shall be deemed to be dividend paid to the extent such company possesses accumulated profits:

- Shareholders (*being beneficial owner*) holding 10% of voting rights in the company, or
- A concern in which such shareholder is a member or a partner and holds substantial interest therein i.e. at least 20% of profit sharing ratio, or
- Payment on behalf or for the benefit of such shareholder or concern.

However, such payments made in ordinary course of business are exempt from such deeming provisions. In this regards, assessee shall submit following documents:

- ❑ Detail of Shareholders including their PAN and Address and % of shareholding.
- ❑ List of concerns in which shareholders are substantially interested
- ❑ List of loan and advances forwarded to such shareholders or concerns and specific purpose for such loan or advance to establish that such payments are exempt from deemed dividend. Some of the explanations/ issues are as under:
 - ❑ Amount received from subsidiary as security for providing corporate guarantee will be exempt. **CIT vs. Accel Ltd. [2020] 118 Taxmann.com103 (Mad.)**
 - ❑ Advance received from company under an agreement to do job work for such company shall not be treated as deemed dividend. **CIT vs. Amrik Singh [2015] 62 Taxmann.com 213 (SC)**

(Specimen Copy of Reply to be filed in case of Deemed Dividend as per PDF Enclosed)

4. Disallowance u/s 14A r.w.r. 8D

As per the provisions of section 14A, no expense incurred in relation to any income which is exempt from tax shall not be allowed as deduction from total income of the assessee. In this regards, Rule 8D(2) prescribes specific method for computation of such disallowances as under:

Total Disallowance u/s 14A r.w.r. 8D = Higher of:

- ✓ Total expense claimed by the assessee, or
- ✓ Sum of A & B, where

A = Expense directly attributable to exempt income

B = 1% of annual average of the monthly average of opening and closing balance of value of such investments where income from such investments are exempt

In this regards, file following details:

- Detail of total exempt income earned during the year and corresponding expenses incurred specifically for earning such income.
- Monthly detail of investments from which income earned is exempt.
- Refer to judgement of Hon'ble High Court of Delhi in Case of **Cheminvest Ltd. Vs. CIT [2015] 61 Taxmann.com 118 (Del.)** where it has been held that provisions of section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

(Specimen Copy of Reply to be filed in case of disallowance u/s 14A r.w.r. 8D as per PDF Enclosed)

5. Gift received from relatives [Section 56(2)(x)]

During the normal course of business, whenever assessee feels shortage of capital, he take gifts from relative. While accepting the gift, assessee did not consider the tax implication and simply accept the gift. During the assessment proceeding, if assessee is claiming any gift to be exempt u/s 56(2)(x) of the act, then initial onus is upon assessee to prove the genuineness of the gift, otherwise AO can make addition of the gift amount as undisclosed income u/s 68 of the Act.

- **Details to be Furnish to Prove Genuineness of Gift** - The assessee can furnish following evidence to make a *prima facie* case in its favour that the gifts are genuine:
 - Name, address & PAN of the Donor.
 - Bank statement of donor indicating the amount of gift paid.
 - Bank statement of donee indicating the amount of gift received.
 - Copy of ITR of donor to proved the creditworthiness of donor.
 - Affidavit by donor confirming the relationship with donee and that he has given gift to donee.
 - Audited Financial Statement of donor along with audit report, if available.
- Production of the above details would make out a *prima facie* case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.

(Specimen Copy of Reply to be filed in case of gift received from relative as per PDF Enclosed)

6. Variance in GP/NP Ratio from Last Year

In most of the notices issued u/s 142(1) of the act for conducting complete scrutiny assessment, a common question encountered thereby relates to comparison of Gross Profit Ratio and Net Profit Ratio in comparison to preceding years. In this regards, a comparative detail of Sales and Gross Profit Ratio and Net Profit Ratio shall be filed alongwith a subjective reply explaining reasons for any abnormal change in GP ratio. The reason behind such variance can be either increase in cost structure or due to abnormal reduction in quantum of revenue due to circumstances prevailing during the period under consideration.

(Specimen Copy of Reply to be filed in case of alleged addition for variance in GP/NP Ratio as per PDF Enclosed)

7. Remission or cessation of trading liabilities u/s 41(1)

As per the provisions of section 41(1) of the act, where any trading liability or expense incurred during any previous year by the assessee or its predecessor, stands reduced or any cash benefit received in such regards, due to remission or cessation during the year shall be taxable in such FY. The remission and cessation of any trading liability shall include unilateral act of the assessee where such liability is written off. Herein, issues involved is that department consider any liability remain outstanding for period beyond 3 years shall be deemed to be reversed being the creditor losses it right to claim such payment after expiry of three years from the date of such transaction under Limitation Act.

The assessee can furnish following submissions to make a *prima facie* case in its favour that provisions of section 41(1) is not attracted:

- ❑ Attach details regarding creditors outstanding beyond three years alongwith their PAN and Address, file copy of audited balance sheet indicating schedule wherein impugned outstanding balance have been reported and also obtain confirmation from such creditor.
- ❑ If payment have been made subsequently, attach relevant extract of bank statement indicating such payment.
- ❑ Refer decision of Hon'ble Apex Court in case of **CIT vs. Sugauli Sugar Works Pvt. Ltd. [1999] 102 Taxman 713 (SC)** where it was held that the principle that expiry of period of limitation prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well-settled.

(Specimen Copy of Reply to be filed in case of alleged addition u/s 41(1) of the Income Tax act, 1961 as per PDF Enclosed)

8. Disallowance of Cash Payment in excess of Rs. 10,000 u/s 40A(3)

As per the provisions of section 40A(3) of the act, aggregate of payment made to single person in a single day for any expenses in excess of Rs. 10,000/- shall be disallowed if such payment is made in cash or a bearer cheque/DD. In this regards, specific exemptions have been prescribed u/r 6DD of the rules. Some of the payments exempt from provisions of section 40A(3) are as under:

- payments made to specified organizations such as RBI, SBI, Co-operative Banks, Primary Credit Society, LIC, or
- Payment made through Letter of Credit, Bill of Exchange or through book entry, or
- Payment made to farmers, growers or producer of agricultural produce, fishery products, horticulture products, or produce of animal husbandry

The assessee can furnish following submissions to make a *prima facie* case in its favour that provisions of section 40A(3) is not attracted:

- ❑ Before filing cash book/ day book, ensure that no payments made in excess of Rs. 10,000/- in cash to single person in a single date.
- ❑ Attach copy of receipt vouchers obtained at the time of purchase from farmers etc. to substantiate payment to exempted person. Attach list of purchases with details of such specified persons including their address and supporting receipts of Mandi Tax paid in respect of such purchases.

(Specimen Copy of Reply to be filed in case of alleged disallowance u/s 40A(3) of the Income Tax act, 1961 as per PDF Enclosed)

9. Mismatch in Quantitative Details

In recent times, department is including queries regarding mismatch in quantitative details as per ITR of period under consideration and ITR of preceding year. In this regards, a stock item wise comparative detail of stock shall be filed with the department indicating quantity and amount disclosed in ITRs/ Audited Financial Statements/ Tax Audit Report for both years and an subjective explanation shall be filed explaining reason for change in manner of disclosure in current year financials. More or less, mismatch in quantitative detail between closing stock of preceding year and opening stack of current year may arise due to rearrangement or regrouping of different stock items in current year financial statements and the same can be explained through comparative chart indicating grouping of each stock item in both financials.

(Specimen Copy of Reply to be filed in case of alleged mismatch in quantitative details as per PDF Enclosed)

Reasons for selection of cases CASS

According to my experience of handling assessment and reassessment cases, following are the illustrative list of reasons for which cases are selected by CASS for scrutiny assessments:

1. Discrepancy in Stock Valuation – *From Quantitative details reported in ITR and Tax Audit report*
2. Expenditure of Personal Nature – *From STR reporting by Credit Card Companies or other entities where substantial payment discretionary expenses made but drawings reported in ITR is not in parity.*
3. Significant increase in amount of investments/ advances/ loans with no corresponding increase in profitability/ income.
4. Refund claimed in ITR is higher in ratio as compared to TDS deducted for the period.
5. Increase in unsecured loans in comparison to previous years.
6. Investment in immovable property with no or insignificant amount of capital gain tax paid in comparison to sales consideration received.

7. Verification of Duty Drawback received as shown in Export Import Data.
8. Substantial amount of deduction u/s 35(2AA), 35(2AB), 35CCC & 35CCD claimed in ITR.
9. Expenditure incurred for earning exempt income debited to P&L is not in parity with quantum of investments made for earning such exempt income.
10. Non-filing of ITR whereas TDS have been deducted u/s 194J in respect of receipts around minimum amount not chargeable to tax.
11. Difference in amount of disallowances in ITR as compared to Tax Audit Report.
12. Large amount of expenditure reported under head '*Expenses by way of penalty or fine or violation of any law for time being in force*'.

SOP for Verification Unit

- CBDT vide SOP dated 19.11.2020 lays down guidelines for Operation of Verification Units in the Faceless Assessment Scheme, 2019.
- As per Faceless Assessment Scheme, 2019, the AU can request VU for specific enquiry or verification, examination of books of accounts, examination of witnesses and recording of statements and such other functions as may be required for the purposes of verification.
- The SOP provides guidance on following:
 - Handling of case(s) having digital footprint, received for Verification or Enquiry
 - Handling of case(s) not having digital footprint, received for Verification or Enquiry.
 - Handling of case(s), where request is received for physical verification or VU decides for physical verification: The VU shall make request for physical verification to the designated VU after recording reasons in writing and obtaining the approval of Pr.CIT in the following circumstances:
 - a. It is a high risk potential case
 - b. The impugned PAN is a potential fraud PAN
 - c. AU suspects a large tax evasion in the case
 - Handling of case(s), received by designated VU for physical verification: On receipt of request for physical enquiry/verification, the designated VU shall decide the strategy to be adopted for verification and the Inspectors (atleast two) to be deputed for the purpose. Ideally this strategy shall have to be approved by PCIT(VU) within 5 days of receipt of request .

- **Seeking clarification from AU:** In case of any ambiguity, the VU may seek clarification from the AU. However, it should try to seek all clarifications through a single communication so as to avoid any delay in verification/enquiry process. It may provide the AU time of 3-4 days to respond.
- **Handling of case(s), which are not responding to notices u/s 133(6) of the Act and levy of penalty u/s 272A:** Where the party does not respond to first notice u/s 133(6) by compliance date, then a second reminder notice should be issued. If the second reminder also remains uncompiled, then the party can be issued show cause notice for levy of penalty for non-compliance.
- **Preparation of Verification Report:** The verification report shall invariably contain :
 - a. Reason(s) for verification
 - b. Facts gathered during verification/enquiry
 - c. Whether any statement recorded during verification
 - d. Report on the matter with clear conclusion
 - e. All documents/photographs/evidence collected during verification/enquiry should be included as attachment
 - f. Any issues faced in verification/enquiry should also form part of the report.

(Copy of the SOP as per PDF Enclosed)

SOP for Technical Unit

- CBDT vide SOP dated 19.11.2020 lays down guidelines for Operation of Technical Units in the Faceless Assessment Scheme, 2019.
- As per Faceless Assessment Scheme, 2019, the AU can seek advice/assistance of TU on any legal, accounting, forensic, information technology, valuation, audit, transfer pricing, data analytics, management or any other technical matter.
- The SOP provides guidance on following:
 - **Handling of case received for Technical Assistance on legal matters:** the TU shall examine the proposal which shall have brief background of the issue in dispute, specific question(s) on which advice is sought, and brief contentions of the assessee. The TU can view the all the case records through status monitor and tender its advice considering all the facts and legal issues involved. The report of the TU should be concise, speaking and self-contained. The questions posed by the AU should be replied to specifically and supporting legal decisions/material may also be made available to the AU.
 - **Handling of references received in Technical Unit for assistance in TP Matters:** The role of TU in such matter would not only be to assist in obtaining the order of the TPO u/s 92CA(3), but to coordinate with TPOs to evolve the best practices for smooth flow of work and maintain a qualitative data base of decisions of the TPO so that the data can be used for quality enhancement.
 - **Handling of references received in Technical Unit for assistance in audit u/s142(2A):** On receipt of request to get the accounts audited by an Accountant, the TU shall examine whether the request is accompanied by the copy of approval of PCIT(AU), terms of reference for Audit u/s 142(2A) and proposal of the AO seeking the approval of Pr.CIT(AU).

- **Handling of references received in Technical Unit for assistance in Valuation of asset, property or investment etc:** On receipt of request to get the valuation of any asset, property and investment, the TU shall examine whether the request is accompanied by the prescribed format duly filled along with complete description of the property, location thereof and details of section under which valuation is requested.
- **Handling of case received for assistance in respect of information to be called from Foreign Jurisdictions:** On receipt of the request to seek information from any foreign Jurisdiction, the TU shall examine whether the request is accompanied by the prescribed format duly filled and signed by PCIT (AU). Whether the request for information is from a foreign jurisdiction, with whom India has a DTAA or TIEA.
- **Technical Knowledge Repository:** A comprehensive Technical Knowledge Repository (developed on Insight Knowledge Hub) will be used for knowledge management and capacity building of the technical units. The Technical Knowledge Repository will consist of following components:
 - i. Technical Issue Dictionary (i-wiki and i-forum)
 - ii. Technical Issue Checklist (i-wiki and i-forum)
 - iii. Published Technical Reports (i-Library)
 - iv. Published articles on Technical issues (i-Library)
 - v. Technical Discussion Forums (i-Forum)
 - vi. Technical Queries (i-Query)

(Copy of the SOP as per PDF Enclosed)

SOP for Review Unit

- CBDT vide SOP dated 19.11.2020 lays down guidelines for Operation of Review Units in the Faceless Assessment Scheme, 2019.
- The SOP provides guidance on following:
 - **Handling of case received for Review:** The RU shall examine the case records to ascertain: -
 - a. Whether the relevant and material evidence to support the modification of income proposed by AU has been brought on record;
 - b. Whether the issues on which addition or disallowance ought to have been made have been duly verified;
 - c. Whether the relevant points of fact and law have been incorporated in the draft order;
 - d. Whether the submissions and arguments of the assessee have been duly considered and rebutted
 - e. Whether the judicial decisions brought on record have been considered and applied in the draft order.
 - **Procedure for seeking clarification from AU:** In case of any ambiguity the RU may seek clarification from the AU. However, it should try to seek all clarifications through a single communication so as to avoid any delay in review process. It may provide the AU time of 3-4 days to respond.
 - **Preparation of Review Report:** Review Report should be concise, specific to the point, speaking and self-contained. Vague and impractical suggestions, which are difficult to implement by the AU/VU should not be made in the report.

(Copy of the SOP as per PDF Enclosed)

THANK YOU..!!

Presented by:- CA Sanjay Kumar Agarwal
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