

**Proceedings**  
*of*  
**appeals**  
**preferred u/s 246A and 248 of the Income Tax Act, 1961**  
**has become faceless**  
*vide*  
**Faceless Appeal Scheme, 2020**  
**w.e.f 25.9.2020**

**Procedure in appeal**

1. **Section 250** of the Income Tax Act, 1961 *{hereinafter referred to as the Act}* provides procedure to be followed in an appeal preferred before Commissioner (Appeals).
2. **Sub-section (1)** provides that the Commissioner (Appeals) 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 Assessing Officer against whose order the appeal is preferred.
3. **Sub-section (2)** provides that the following shall have the right to be **heard** at the **hearing** of the appeal —
  - (a) the appellant, either in person or by an authorised representative;
  - (b) the Assessing Officer, either in person or by a representative.
4. **Sub-section (3)** provides that the Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.
5. **Sub-section (4)** provides that the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).
6. **Sub-section (5)** provides that the Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.
7. **Sub-section (6)** provides that the order of the Commissioner (Appeals) disposing of the appeal shall be in writing **and** shall state the points for determination, the decision thereon and the reason for the decision.
8. **Sub-section (6A)** provides that in every appeal, the Commissioner (Appeals), **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 before him under sub-section (1) of section 246A.

- 9 **Sub-section (7)** provides that on the disposal of the appeal, the Commissioner (Appeals) **shall communicate** the **order passed** by him to the assessee **and** to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

### Powers of the Commissioner (Appeals)

10. **Section 251** of the Act bestows certain powers upon the Commissioner (Appeals) in relation to an appeal preferred before him.
11. **Sub-section (1)** provides that in disposing of an appeal, the Commissioner (Appeals) shall have the following powers —
- (a) in an appeal against an order of assessment, he may -
    - (i) confirm,
    - (ii) reduce,
    - (iii) enhance **or**
    - (iv) annul  
the assessment;
  - (aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, -
    - (i) confirm,
    - (ii) reduce,
    - (iii) enhance **or**
    - (iv) annul  
the assessment;
  - (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
  - (c) in any other case, he may pass such orders in the appeal as he thinks fit.
12. **Sub-section (2)** provides that the Commissioner (Appeals) shall not enhance an assessment **or** a penalty **or** reduce the amount of refund **unless** the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.
13. **Explanation to section 251** provides that in disposing of an appeal, the Commissioner (Appeals) may **consider and decide** any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

## Faceless Appeal Proceedings

14. The **Finance Bill, 2020** proposed faceless appeal procedure. In the **memorandum** to the Bill it is stated that in order to impart –
  - greater efficiency,
  - transparency and
  - accountability to the assessment process under the Act

a new e-assessment scheme has already been introduced.
15. With the advent of the e-assessment scheme, most of the functions / processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, **are now in the electronic mode.**
16. This is a result of efforts by the Department to harness the power of technology in reforming the system.
17. All these processes are now **not only faceless but also very taxpayer-friendly.** Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.
18. The **filing of appeals** before Commissioner (Appeals) has already been enabled in an **electronic mode.**
19. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions / processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless.
20. In order to ensure that the reforms initiated by the Department to **eliminate human interface** from the system reach the next level, it is imperative that an **e-appeal scheme be launched** on the lines of e-assessment scheme.
21. Accordingly, it is proposed to insert **sub-section (6B)** in **section 250** of the Act to provide for the following: —
  - (i) Empowering Central Government to notify an **e-appeal scheme** for disposal of appeal so as to impart greater efficiency, transparency and accountability.
  - (ii) **Eliminating the interface** between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
  - (iii) Optimizing utilization of the resources through **economies of scale** and functional specialisation.

- (iv) Introducing an appellate system with **dynamic jurisdiction** in which appeal shall be disposed of by one or more Commissioner (Appeals).
22. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, by notification in the Official Gazette, **to direct** that any of the provisions of this Act relating to **jurisdiction and procedure of disposal of appeal** shall **not** apply **or** shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
23. **Such directions** are to be issued on or before 31st March 2022.
24. It is also proposed that every notification issued shall be required to be laid before each House of Parliament.

### Faceless Appeal Procedure

25. In view of above objectives following sub-sections have been **inserted** in **section 250** of the Act by the Finance Act, 2020 *w.e.f.* **1.4.2020**:
- (i) Sub-section (6B)  
(ii) Sub-section (6C)  
(iii) Sub-section (6D)
26. **Sub-section (6B)** provides that 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).
27. **Sub-section (6C)** provides that 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.
28. **Sub-section (6D)** provides that 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 Appeal Scheme, 2020**  
*{CBDT Notification No. 76/2020 dated 25.9.2020}*

29. Now, the Central Board of Direct Taxes has, *vide* Notification No. 76/2020 dated 25.9.2020 introduced and notified **Faceless Appeal Scheme, 2020** for the purpose of **disposal of appeal** by Commissioner (Appeals) by drawing power **u/s 250(6B)** of the Act.
30. The Scheme has thirteen (13) paragraphs, which are being summarised as follows:

SN	Paragraph No.	Subject
1	1	Short title and commencement
2	2	Definitions
3	3	Scope of the Scheme
4	4	Faceless Appeal Centres
5	5	Procedure in appeal
6	6	Penalty proceedings
7	7	Rectification proceedings
8	8	Appellate proceedings
9	9	Exchange of communication exclusively by electronic record
10	10	Authentication of electronic record
11	11	Delivery of electronic record
12	12	No personal appearance in the Centres or Units
13	13	Power to specify format, mode, procedure and process

31. **Paragraph 3** of the Scheme provides the scope, according to which an **'appeal'** under this Scheme shall be **disposed of** in respect of such -

- territorial area **or**
- persons **or**
- class of persons **or**
- incomes **or**
- class of incomes **or**
- cases **or**
- class of cases,

as may be specified by the Board.

32. As per **paragraph 2(iii)** of the Scheme, **'appeal'** means appeal filed by a person under sub-section (1) of section 246A **or** section 248 of the Act;
33. It means that this Scheme shall apply to –
- **appeal** filed u/s 246(1) of the Act, **or**
  - **appeal** filed u/s 248 of the Act.

34. **Sub-section (1) of section 246A** of the Act comprise clause (a) to (r), which specifies the appealable orders, i.e. an order against which an appeal is allowed to be preferred before Commissioner (Appeals).

35. Section 248 of the Act provides that –

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, **and** such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a **declaration** that no tax was deductible on such income.

### Paragraph 4(1) Setting up Centres and Units

36. **Paragraph 4(1)** of the Scheme provides that for the purposes of this Scheme, the **Board** may –

(a) set up **a National Faceless Appeal Centre** to facilitate the conduct of e-appeal proceedings in a centralised manner.

(b) Set up **Regional Faceless Appeal Centres** to facilitate the conduct of e-appeal proceedings.

(c) Set up **Appeal units** to facilitate the conduct of e-appeal proceedings

### Paragraph 4(1)(i) National Faceless Appeal Centre

37. As per **paragraph 4(1)(i)** of the Scheme, there will be only **one National Faceless Appeal Centre** (NFAC), which will **facilitate** the conduct of ‘e-appeal proceedings’. It means that ‘NFAC’ will **just** facilitate the conduct of **‘e-appeal’** proceedings.

38. As per **paragraph 2(xiii)** of the Scheme, **‘e-appeal’** means the appellate proceedings conducted electronically in ‘e-appeal facility’ through the ‘registered account’ of the ‘appellant’ in ‘designated portal’;

39. It means that the Board may set up **“a”** National Faceless Appeal Centre, which will just facilitate the conduct of e-appeal proceedings, which will be conducted electronically **in ‘e-appeal’** facility through the **‘registered account’** of the **‘appellant’ in ‘designated portal’**.

40. Use of word **“a”** before ‘National Faceless Appeal Centre’ **and** use of word ‘Centre’ in singular means that there will be only **one** ‘NFAC’.

41. As per **paragraph 2(xxi)** of the Scheme, '**registered account**' of the '*appellant*' means electronic filing account registered by the '*appellant*' in the '*designated portal*'. It means that the 'registered account' shall be such which is '*registered*' by the '*appellant*' **in** the '*designated portal*'.
42. As per **paragraph 2(xii)** of the Scheme, '**designated portal**' means the 'web portal' designated as such by the Principal Chief Commissioner **or** Principal Director General, in charge of the 'National Faceless Appeal Centre'.
43. As per **paragraph 2(iv)** of the Scheme, '**appellant**' means the person who files 'appeal' under section 246A or 248 of the Act.
44. It means that the '*e-appeal proceedings*' shall be conducted '*electronically*' in '*e-appeal facility*' through the '*registered*' account' of the '*appellant*' only. It **cannot** be conducted through the '*registered*' account' of any other person. Such '*registered*' account' of the '*appellant*' has to be in the '*designated portal*'.

#### Paragraph 4(1)(ii) Regional Faceless Appeal Centres

45. As per **paragraph 4(1)(ii)** of the Scheme, there may be more than one **Regional Faceless Appeal Centre** (RFAC), which will facilitate the conduct of 'e-appeal proceedings' within the jurisdiction vested with them in accordance with the provisions of this scheme. It means that 'RFAC' will **just** facilitate the conduct of 'e-appeal proceedings' within its jurisdiction.
46. Use of word 'Centres' in plural means that there will be more than one 'RFAC'.

#### Paragraph 4(1)(iii) Appeal Units

47. As per **paragraph 4(1)(iii)** of the Scheme, there may be more than one '**Appeal Units**' (AU). Use of word 'Units' in plural suggests so.
48. The 'Appeal Units' shall perform the following functions:
- (i) **facilitate the conduct** of e-appeal proceedings,
  - (ii) to perform the function of **disposing appeal**, which **includes** –
    - (a) admitting additional grounds of appeal,
    - (b) making such further inquiry as thinks fit,
    - (c) directing the National e-Assessment Centre **or** the Assessing Officer, as the case may be, for making further inquiry,
    - (d) seeking information **or** clarification on admitted grounds of appeal,

- (e) providing opportunity of being heard to the appellant,
- (f) analysis of the material furnished by the appellant,
- (g) review of draft order, **and**
- (h) such other functions as may be required for the purposes of this Scheme;

49. As per **paragraph 4(1)** of the Scheme, the Board may also specify respective jurisdictions of NFAC, RFACs and AUs.

### Paragraph 4(2) All Communication

50. As per **paragraph 4(2)** of the Scheme, **all communication** -

- between the appeal unit **and** the appellant **or**
- between the appeal unit **and** any other person **or**
- between the appeal unit **and** the National e-Assessment Centre **or**
- between the appeal unit **and** the Assessing Officer

with respect to the -

- information **or**
- documents **or**
- evidence **or**
- any other details,

as may be necessary under this Scheme **shall be through** the **National Faceless Appeal Centre**.

### Paragraph 4(3) Authorities in Appeal Unit

51. As per **paragraph 4(3)** of the Scheme, an **'appeal unit'** shall have the following **authorities**, namely:

(a) one or more Commissioner(Appeals);

(b) such other

- (i) income-tax authority,
- (ii) ministerial staff,
- (iii) executive **or**
- (iv) consultant

to assist the Commissioner (Appeals) as considered necessary by the Board.



## Paragraph 5(1) Procedure in appeal

52. As per **paragraph 5(1)** of the Scheme, the ‘**appeal**’ referred to in paragraph 3 of the Scheme shall be disposed of the following procedure laid down in sub-paragraph (1) of paragraph 5 of the Scheme, which is as follows:

- (i) the **National Faceless Appeal Centre shall assign** the appeal to a specific appeal unit in any one Regional Faceless Appeal Centre through **an automated allocation system**;

### Comments

As per **paragraph 2(vi)** of the Scheme, “**automated allocation system**” means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

- (ii) where the appellant has **filed the appeal after the expiration of time** specified in sub-section (2) of section 249 of the Act, the **appeal unit may**,

(a) in case, it is satisfied that the appellant had sufficient cause for not filing the appeal within the said time, **admit** the appeal; **or**

(b) in any other case, **reject** the appeal,

under **intimation to the National Faceless Appeal Centre**;

- (iii) where the appellant has **applied** for **exemption** from the operation of clause (b) of sub-section (4) of section 249 of the Act as per the provisions of its proviso, the **appeal unit may**,

(a) **admit** the appeal **and exempt** the appellant from the operation of provisions of said clause for any good and sufficient reason to be recorded in writing; **or**

(b) in any other case, **reject** the appeal,

under intimation to the National Faceless Appeal Centre;

### Comments

**Section 249(4)** provides that **no** appeal under Chapter XX of the Act shall be **admitted unless** at the time of filing of the appeal,—

(a) where a return has been filed by the assessee, the assessee has paid the **tax due** on the income returned by him; **or**

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of **advance tax** which was **payable** by him:

**Provided** that, in a case falling under clause (b) **and** on an application made by the appellant in this behalf, the Commissioner (Appeals) **may**, for any good and sufficient reason to be recorded in writing, **exempt** him from the operation of the provisions of that clause.

It means that at the time of filing of the appeal it is to be ensured that the appellant has paid tax due as per the return, if such return has been filed. **In case** the return has not been filed, it must be ensured at the time of filing the appeal that the appellant has paid an amount equal to the amount of advance tax **payable** by him. **In case** no advance tax was payable, this condition will not operate. **In case** advance tax was payable, this condition will operate and the appellant shall be required to pay it before filing of the appeal. **In case** the appellant do not want to pay such amount of advance tax, he may file an application before Commissioner (Appeals) seeking exemption from such payment and operation of clause (b).

### Admission or Rejection of appeal

- (iv) the **National Faceless Appeal Centre** shall **intimate** the **admission or rejection** of appeal, as the case may be, to the appellant;
- (v) where the appeal is **admitted**,
  - (a) the **appeal unit may** request the National Faceless Appeal Centre to obtain such further **information, document or evidence** from the appellant or any other person, as it may specify;
  - (b) the **appeal unit may** request the National Faceless Appeal Centre to obtain a **report** of the National e- Assessment Centre **or** the Assessing Officer, as the case may be, on -
    - grounds of appeal **or**
    - information, **or**
    - document **or**
    - evidence

**filed by the appellant;**

### Inquiry before disposal of appeal {A new concept}

- (c) the **appeal unit may** request the National Faceless Appeal Centre to **direct** the National e-Assessment Centre **or** the Assessing Officer, as the case may be,
  - for making **further inquiry** under sub-section (4) of section 250 of the Act **and**
  - submit a **report** thereof;

### Comments

It may be noted that in line of **section 250(4)** of the Act, before disposing of the appeal, the appeal unit may make such further inquiry through the National Faceless Appeal Centre by directing the National e-Assessment Centre **or** the Assessing Officer, as the case may be and seek report of such inquiry.

- (d) the **National Faceless Appeal Centre shall serve** a **notice** upon the appellant **or any other person**, as the case may be, **or** the National e-Assessment Centre **or** the Assessing Officer, as the case may be, **to submit** such information, document or evidence or report, as the case may be, as may be specified by the appeal unit **or** as may be relevant to the appellate proceedings, on a specified date and time;
- (vi) the **appellant or any other person**, as the case may be, **shall** file a **response** to the notice referred to in sub-clause (d) of clause (v), within the date and time specified therein, **or** such **extended date** and time as may be allowed on the basis of an **application** made in this behalf, with the National Faceless Appeal Centre;

### Comments

It may be noted that in line of **section 250(3)** of the Act, the appellant may seek extension of time (adjournment) for responding to the notice issued and served upon him under paragraph 5(v)(d) of the Scheme by making an application to the National Faceless Appeal Centre (NFAC) in this regards.

- (vii) the **National e-Assessment Centre or the Assessing Officer**, as the case may be, **shall** furnish a **report** in response to the notice referred to in sub-clause (d) of clause (v), within the date and time specified therein
- (viii) where **response** is filed by the **appellant or any other person**, as the case may be, **or** a **report** is furnished by the **National e-Assessment Centre or the Assessing Officer**, as the case may be, the National Faceless Appeal Centre **shall** send such **response or report to the appeal unit**, **and** where no such **response or report** is filed, inform the appeal unit;

### **Additional grounds of appeal**

- (ix) the **appellant may** file **additional ground of appeal** in such form, as may be specified by the National Faceless Appeal Centre, specifying therein the **reason** for omission of such ground in the appeal filed by him;
- (x) where the **additional ground** of appeal is filed-
- (a) the National Faceless Appeal Centre **shall send** the additional ground of appeal to the National e- Assessment Centre **or** the Assessing Officer, as the case may be, **for providing comments**, if any, **and** to the appeal unit;

- (b) the National e-Assessment Centre **or** the Assessing Officer, as the case may, **shall furnish their comments**, within the **date and time** specified **or** such extended date and time as may be allowed on the basis of an **application** made in this behalf, to the **National Faceless Appeal Centre**;
- (c) where **comments are filed** by the National e-Assessment Centre **or** the Assessing Officer, as the case may be, the National Faceless Appeal Centre shall **send** such comments to the **appeal unit**, **and** where no such comments are filed, inform the appeal unit;
- (d) the **appeal unit shall**, after **taking into consideration the comments**, if any, received from the National e-Assessment Centre **or** the Assessing Officer, as the case may be,
  - (A) **if** it is **satisfied** that the omission of additional ground from the form of appeal was **not wilful or unreasonable**, **admit** such ground; **or**
  - (B) in any other case, **not admit** the additional ground, for reasons to be recorded in writing **and intimate** the National Faceless Appeal Centre;
- (xi) the National Faceless Appeal Centre **shall intimate** the **admission or rejection** of the additional ground, as the case may be, to the **appellant**;

### Comments

It may be noted that in line of **section 250(5)** of the Act, the appellant may file additional ground of appeal which are not specified in the grounds of appeal.

### Filing of additional evidence under Rule 46A

- (xii) the appellant **may file additional evidence**, **other than** the evidence produced by him during the course of proceedings before the National e-Assessment Centre **or** the Assessing Officer, as the case may be, in such form, as may be specified by the National Faceless Appeal Centre, specifying therein as to how his case is covered by the exceptional circumstances specified in sub-rule (1) of rule 46A of the Rules;
- (xiii) where the **additional evidence is filed**,
  - (a) the National Faceless Appeal Centre **shall send** the additional evidence to the National e-Assessment Centre **or** the Assessing Officer, as the case may be, for **furnishing a report** within the specified **date and time** on the admissibility of additional evidence under rule 46A of the Rules;
  - (b) the National e-Assessment Centre **or** the Assessing Officer, as the case may be, **shall furnish the report**, as referred to in sub-clause (a), to the National Faceless Appeal Centre within the date and time specified, or such extended date and time as may be allowed on the basis of an **application** made in this behalf, by the National Faceless Appeal Centre.

- (c) where the **report**, as referred to in sub-clause (a), is **furnished** by the National e-Assessment Centre **or** the Assessing Officer, as the case may be, the National Faceless Appeal Centre **shall send** such **report** to the **appeal unit**, **and** where no such report is furnished, **inform** the **appeal unit**;
- (d) the **appeal unit may**, after **considering** the additional evidence **and** the report, if any, furnished by the National e-Assessment Centre **or** the Assessing Officer, as the case may be, **admit or reject** the additional evidence, for **reasons** to be recorded in writing, and intimate the National Faceless Appeal Centre;
- (e) the National Faceless Appeal Centre shall intimate the **admission or rejection** of additional evidence, as the case may be, to the appellant **and** the National e-Assessment Centre **or** the Assessing Officer, as the case may be;

**Admission of additional evidence under Rule 46A  
Affording opportunity to National e-Assessment Centre or  
Assessing Officer to furnish remand report**

- (xiv) where the **additional evidence** is **admitted**,
- (a) the **appeal unit shall, before** taking such evidence into account in the appellate proceedings, prepare a **notice** to provide an opportunity **to** the National e-Assessment Centre **or** the Assessing Officer, as the case may be, within the **date and time** specified therein **to examine** such evidence or to cross-examine such witness, as may be produced by the appellant, **or to** produce any evidence or document, or any witness in **rebuttal** of the evidence or witness produced by the appellant, **and furnish a report thereof, and send such notice** to the National Faceless Appeal Centre;
- (b) the National Faceless Appeal Centre **shall serve the notice**, as referred to in sub-clause (a), upon the National e-Assessment Centre **or** the Assessing Officer, as the case may be;
- (c) the National e-Assessment Centre **or** the Assessing Officer, as the case may be, **shall furnish the report**, as referred to in sub-clause (a), to the National Faceless Appeal Centre, within the **date and time** specified, or such extended **date and time** as may be allowed on the basis of an **application** made in this behalf, by the National Faceless Appeal Centre;
- (d) the National Faceless Appeal Centre **shall send the report** furnished by the National e-Assessment Centre **or** the Assessing Officer, as the case may be, to the **appeal unit or** where no such report is furnished, **inform** the **appeal unit**;

**Production of document or evidence  
or  
examination of any witness  
on the request of National e-Assessment Centre or  
the Assessing Officer, as the case may be**

- (xv) the National e-Assessment Centre **or** the Assessing Officer, as the case may be, **may** request the National Faceless Appeal Centre **to** **direct** the production of any document or evidence by the appellant, **or** the examination of any witness, as may be relevant to the appellate proceedings;
- (xvi) where the **request** referred to in clause (xv) is **received**, -
- (a) the National Faceless Appeal Centre **shall** **send** such request to the appeal unit;
- (b) the appeal unit **shall** **consider** such request **and** **may**, if it deems fit, **prepare** a **notice** -
- (A) directing the appellant to produce such document **or** evidence, as it may specify; **or**
- (B) for examination of any other person, being a witness; **and** send such notice to the National Faceless Appeal Centre;
- (c) the National Faceless Appeal Centre **shall** **serve the notice** referred to in sub-clause (b) upon the appellant **or** any other person, being a witness, as the case may be;
- (d) the appellant **or** any other person, as the case may be, **shall** file his **response** to **the notice** referred to in sub-clause (c), within the **date and time** specified in the notice or such extended **date and time** as may be allowed on the basis of **application** made in this behalf, to the National Faceless Appeal Centre;
- (e) where a **response is filed** by the appellant or any other person, as the case may be, the National Faceless Appeal Centre shall send such response to the appeal unit, **or** where no such response is filed, **inform** the **appeal unit**;

**Enhancement of assessment or penalty  
or  
reduction of refund**

- (xvii) where the appeal unit intends to **enhance** an **assessment** **or** a **penalty** **or** **reduce** the amount of refund, -

- (a) the **appeal unit shall** prepare a **show-cause notice** containing the reasons for **such enhancement or reduction**, as the case may be, **and** send such notice to the National Faceless Appeal Centre.
- (b) the National Faceless Appeal Centre **shall serve the notice**, as referred to in sub-clause (a), upon the **appellant**.
- (c) the appellant **shall**, within the **date and time** specified in the notice or such extended **date and time** as may be allowed on the basis of **application** made in this behalf, file his response to the National Faceless Appeal Centre;
- (d) where **a response** is filed by the appellant, the National Faceless Appeal Centre **shall send** such response to the appeal unit, **or** where no such response is filed, **inform** the **appeal unit**.

### Comments

It may be noted that in line of **section 251(1)(a) r/w section 251(2)** of the Act, the appeal unit shall not enhance an assessment **or** a penalty **or** reduce the amount of refund **unless** the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

## Draft appellate order *{A new concept}*

- (xviii) The **appeal unit shall**, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case may be, **or** report furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, **and** after considering any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised in the appeal,
  - (a) prepare in writing, a **draft order** in accordance with the provisions of section 251 of the Act; **and**
  - (b) send such order to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;

### Comments

It may be noted that in line of **Explanation to section 251** of the Act, the appeal unit **may** consider and decide any matter arising out of the proceedings in which the ***order appealed against*** was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

## Review of draft appellate order {A new concept}

- (xix) the National Faceless Appeal Centre **shall** upon receipt of the **draft order**, as referred to in sub-clause (a) of clause (xviii), -
- (a) where the **aggregate amount** of tax, penalty, interest or fee, including surcharge and cess, payable in respect of issues disputed in appeal, is **more than a specified amount**, as referred to in **clause (x) of paragraph 13**, send the draft order to **an appeal unit**, **other than the appeal unit** which prepared such order, in any one Regional Faceless Appeal Centre through an **automated allocation system**, for conducting **review** of such order;
- (b) in **any other case**, examine the draft order in accordance with the risk management strategy specified by the Board, including by way of an **automated examination tool**, whereupon it **may** decide to -
- (A) finalise the appeal as per the draft order; **or**
- (B) send the draft order to an appeal unit, other than the unit which prepared such order, in any one Regional Faceless Appeal Centre through an automated allocation system, for conducting review of such order;
- (xx) **the appeal unit shall review** the **draft order**, referred to it by the National Faceless Appeal Centre, whereupon it **may** decide to -
- (a) **concur** with the **draft order and** intimate the National Faceless Appeal Centre about such concurrence; **or**
- (b) **suggest** such **variation**, as it **may** deem fit, to the draft order **and** send its suggestions to the National Faceless Appeal Centre;

## Finalisation of appellate order in case of concurrence with the draft order

- (xxi) the **National Faceless Appeal Centre shall**, upon receiving **concurrence** of the appeal unit, **finalise the appeal** as per the draft order;

## Assignment of appeal for revised draft appellate order in case for suggestion for variation

- (xxii) the National Faceless Appeal Centre **shall**, upon receiving **suggestion for variation** from the appeal unit, **assign** the appeal to an appeal unit, **other than the appeal unit** which prepared **or** reviewed the draft order, in any one Regional Faceless Appeal Centre through an **automated allocation system**;
- (xxiii) **the appeal unit**, to whom appeal is **assigned** under clause (xxii), **shall**, after considering the suggestions for variation -



(a) where such suggestions intend to enhance an assessment or a penalty or reduce the amount of refund, follow the procedure laid down in clause (xvii) **and** prepare a revised draft order as per the procedure laid down in clause (xviii); **or**

(b) in any other case, prepare a revised draft order as per procedure laid down in clause (xviii);

**and send** the such order to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;

### Passing of final appellate order and communication thereof

(xxiv) the **National Faceless Appeal Centre shall** after finalising the appeal as per item (A) of sub-clause (b) of clause (xix) **or** clause (xxi) **or** upon receipt of revised draft order as per clause (xxiii), **pass the appeal order and -**

(a) communicate such order to the appellant;

(b) communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per sub-section (7) of section 250 of the Act;

(c) communicate such order to the National e-Assessment Centre **or** the Assessing Officer, as the case may be, for such action as may be required under the Act;

(d) where **initiation of penalty** has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act;

#### Comments

It may be noted that in line of **section 250(7)** of the Act, the on passing the final order, the **National Faceless Appeal Centre shall** communicate the order in accordance with the clause (xxiv).

### Paragraph 5(2) Transfer of appeal during the course of appeal proceedings

53. As per **paragraph 5(2)** of the Scheme, notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National Faceless Appeal Centre, **may** at any stage of the appellate proceedings, if considered necessary, transfer, by an order, the appeal with the prior approval of the Board to such Commissioner (Appeals) as may be specified in the order.

**Paragraph 6**  
**Initiation of penalty proceedings in appeal proceedings**  
*{A new concept}*

54. As per **paragraph 6(1)** of the Scheme, **appeal unit may**, in the course of appeal proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the appellant or any other person, as the case may be, send **recommendation** for initiation of any penalty proceedings to the National Faceless Appeal Centre.
55. As per **paragraph 6(2)** of the Scheme, the **National Faceless Appeal Centre shall**, upon receipt of **recommendation** under sub-paragraph (1), **serve** a **notice** on the appellant **or** any other person, as the case may be, calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.
56. As per **paragraph 6(3)** of the Scheme, the **appellant or any other person**, as the case may be, **shall** file a **response** to the show-cause notice referred to in sub-paragraph (2) or in sub-clause (d) of clause (xxiv) of sub-paragraph (1) of paragraph 5, within the **date and time** specified in such notice, **or** such extended **date and time** as may be allowed on the basis of an **application** made in this behalf, **to** the **National Faceless Appeal Centre**.
57. As per **paragraph 6(4)** of the Scheme, the **National Faceless Appeal Centre shall assign** the recommendation for initiation of penalty proceedings, as referred to in sub-paragraph (1), **along with** the response filed, if any, by the appellant or any other person, as the case may be, to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.
58. As per **paragraph 6(5)** of the Scheme, **the appeal unit shall**, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case may be, -
- (a) **prepare** a **draft order and send** a copy of such order to the National Faceless Appeal Centre; **or**
- (b) **drop** the penalty after recording reasons, under intimation to the National Faceless Appeal Centre.
59. As per **paragraph 6(6)** of the Scheme, where the appeal unit has **dropped** the penalty, the National Faceless Appeal Centre **shall** send an intimation thereof, **or** where the appeal unit **sends** a **draft order**, the **National Faceless Appeal Centre** shall pass the order for imposition of penalty as per such draft, and communicate such order, to, -
- (a) the appellant or any other person, as the case may be; **and**
- (b) the National e-Assessment Centre **or** the Assessing Officer for such action as may be required under the Act.

## Paragraph 7 Rectification Proceedings

60. As per **paragraph 7(1)** of the Scheme, with a view to rectifying any **mistake apparent from the record** the **National Faceless Appeal Centre** may amend any order passed by **it**, by an order to be passed in writing.

### Application for rectification

61. As per **paragraph 7(2)** of the Scheme, subject to the other provisions of **this Scheme**, an **application for rectification** of mistake referred to in sub- paragraph (1) may be filed with the **National Faceless Appeal Centre** by the,

- (a) appellant or any other person, as the case may be; **or**
- (b) appeal unit preparing **or** reviewing **or** revising the draft order; **or**
- (c) the National e-Assessment Centre **or** the Assessing Officer, as the case may be.

### Assignment of application

62. As per **paragraph 7(3)** of the Scheme, where any application referred to in sub-paragraph (2) is received by the National Faceless Appeal Centre, it **shall assign** such application to a specific appeal unit in any one Regional Faceless Appeal Centre through an **automated allocation system**.

### Notice for opportunity

63. As per **paragraph 7(4)** of the Scheme, **the appeal unit** shall examine the application **and** prepare a notice for granting an opportunity -
- (a) to the appellant or any other person, as the case may be, where the application has been filed by the National e-Assessment Centre or the Assessing Officer, as the case may be; **or**
  - (b) to the National e-Assessment Centre or the Assessing Officer, as the case may be, where the application has been filed by the appellant or any other person, as the case may be; **or**
  - (c) to the appellant or any other person, as the case may be, and the National e-Assessment Centre or the Assessing Officer, as the case may be, where the application has been filed by an appeal unit referred to in clause (b) of sub-paragraph (2); and send the notice to the National Faceless Appeal Centre.

### Service of notice for opportunity

64. As per **paragraph 7(5)** of the Scheme, the **National Faceless Appeal Centre shall serve the notice** referred to in sub-paragraph (4) upon the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing

Officer, as the case may be, calling upon him to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act.

### **Response to notice to National Faceless Appeal Centre**

65. As per **paragraph 7(6)** of the Scheme, the appellant or any other person, as the case may be, **or** the National e-Assessment Centre or the Assessing Officer, as the case may be, **shall** file a ***response to the notice***, as referred to in sub-paragraph (5), within the ***date and time*** specified therein, or such extended ***date and time*** as may be allowed on the basis of an **application** made in this behalf, **to** the National Faceless Appeal Centre.
66. As per **paragraph 7(7)** of the Scheme, where a ***response***, as referred to in sub-paragraph (6), is **filed** by the appellant or any other person, as the case may be, **or** the National e-assessment Centre or the Assessing Officer, as the case may be, the National Faceless Appeal Centre **shall send** such ***response*** to the **appeal unit**, **or** where no such response is filed, ***inform*** the **appeal unit**.

### **Draft Rectification Order**

67. As per **paragraph 7(8)** of the Scheme, the **appeal unit shall**, after taking into consideration the application and response, if any, filed by the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, ***prepare*** a **draft order**,
- (a) for **rectification** of mistake; **or**
- (b) for **rejection** of application for rectification, citing reasons thereof; and send the order to the National Faceless Appeal Centre.

### **Passing of final Rectification Order and communication thereof**

68. As per **paragraph 7(8)** of the Scheme, the National Faceless Appeal Centre **shall** upon receipt of draft order, as referred to in sub-paragraph (8), **pass an order** as per such draft and communicate such order,
- (a) to the appellant or any other person, as the case may be; **and**
- (b) to the National e-Assessment Centre or the Assessing Officer, as the case may be, for such action as may be required under the Act.

Paragraph - 8  
Appellate Proceedings  
against  
order passed by the National Faceless Appeal Centre

### **Appeal against order of National Faceless Appeal Centre**

69. As per **paragraph 8(1)** of the Scheme, the an appeal against an order passed by the National Faceless Appeal Centre under this Scheme **shall** lie before the Income Tax Appellate Tribunal **having jurisdiction over the jurisdictional Assessing Officer**.

#### **Order in case of set aside or remand of appellate order**

70. As per **paragraph 8(2)** of the Scheme, subject to the provisions of paragraph (3) of the scheme, where any order passed by the National Faceless Appeal Centre **or** Commissioner (Appeals) is **set-aside and remanded back** to the National Faceless Appeal Centre **or** Commissioner (Appeals) **by** the Income Tax Appellate Tribunal **or** High Court **or** Supreme Court, the **National Faceless Appeal Centre shall** pass the order in accordance with the provisions of this Scheme.

#### **Paragraph - 9** **Exchange of communication exclusively by electronic mode**

71. As per **paragraph 9** of the Scheme, for the purposes of this Scheme,
- (a) all communications between the National Faceless Appeal Centre **and** the appellant, **or** his authorised representative, **shall** be exchanged **exclusively by electronic mode**; **and**
- (b) all internal communications between the National Faceless Appeal Centre, the Regional Faceless Appeal Centres, the National e-Assessment Centre, the Assessing Officer and the appeal unit **shall** be exchanged **exclusively by electronic mode**

#### **Paragraph - 10** **Authentication of electronic record**

72. As per **paragraph 10** of the Scheme, for the purposes of this Scheme, an ‘electronic record’ shall be authenticated by the -
- (i) **National Faceless Appeal Centre by** affixing its digital signature;
- (ii) the **appellant** or any other person, **by** affixing **his** digital signature if he is required under the Rules to furnish his return of income under digital signature, **and** in any other case by affixing his digital signature **or** under electronic verification code;

*Explanation* – For the purpose of this paragraph, “**electronic verification code**” shall have the same meaning as referred to in rule 12 of the Rules.

#### **Paragraph - 11** **Delivery of electronic record**

73. As per **paragraph 11(1)** of the Scheme, every **notice or order** **or** any other electronic communication under this Scheme **shall** be **delivered** to the addressee, being the **appellant**, by way of-

(a) placing an authenticated copy thereof in the appellant's registered account; **or**

(b) sending an authenticated copy thereof to the registered email address of the appellant **or** his authorised representative; **or**

(c) uploading an authenticated copy on the appellant's mobile App; **and**

**followed by a real time alert.**

74. As per **paragraph 11(2)** of the Scheme, every **notice or order** **or** any other electronic communication under this Scheme 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.**
75. As per **paragraph 11(3)** of the Scheme, the **appellant** **shall** file his **response** to any **notice or order** **or** any other electronic communication, under this Scheme, through his registered account, **and** once an acknowledgement is sent by the National Faceless Appeal Centre containing the 'hash result' generated upon successful submission of response, the response shall be deemed to be authenticated.
76. As per **paragraph 11(4)** of the Scheme, 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).

### **Comments**

- (1) As per **paragraph 2(xx)** of the Scheme, **"real time alert"** means any communication sent to the appellant, by way of short messaging service (SMS) on his 'registered mobile number', **or** by way of update on his 'Mobile App', **or** by way of an email at his 'registered email address', **so as to alert him regarding delivery of an electronic communication.**
- (2) As per **paragraph 2(xxiii)** of the Scheme, **"registered mobile number"** means the mobile number of the appellant **or** his authorised representative **appearing in the user profile** of the 'electronic filing account' registered by the appellant in the 'designated portal';
- (3) As per **paragraph 2(xvii)** of the Scheme, **"Mobile app"** of the appellant means the application software of the Income-Tax Department developed for mobile devices which is **downloaded and installed** on the registered mobile number of the appellant.
- (4) As per **paragraph 2(xxi)** of the Scheme, **"registered account"** shall mean the electronic filing account registered by the appellant in the designated portal.
- (5) As per **paragraph 2(xxi)** of the Scheme, **"registered e-mail address"** means the e-mail address at which an electronic communication **may be** delivered **or** transmitted to the addressee, including –

- (a) the email address available in the **electronic filing account** of the addressee registered in designated portal; **or**
- (b) the e-mail address available in the **last income-tax return furnished** by the addressee; **or**
- (c) the e-mail address available in the **Permanent Account Number database** relating to the addressee; **or**
- (d) in the case of addressee being an *individual* who possesses the **Aadhaar number**, the e-mail address of addressee available in the database of Unique Identification Authority of India ; **or**
- (e) in the case of addressee being a *company*, the e-mail address of the company as available on the official website of **Ministry of Corporate Affairs**; **or**
- (f) any e-mail address **made available by the addressee** to the income-tax authority or any person authorised by such authority;

## Paragraph - 12

### Personal appearance in the Centres or Units

- 77. As per **paragraph 12(1)** of the Scheme, a person **shall not** be required ***to appear*** either personally or through authorised representative in connection with **any** proceedings under this Scheme before the income-tax authority at the National Faceless Appeal Centre **or** Regional Faceless Appeal Centre **or** appeal unit set up under this Scheme.
- 78. As per **paragraph 12(2)** of the Scheme, the appellant or his authorised representative, as the case may be, **may** request for personal hearing so as to make his oral submissions or present his case before the appeal unit under this Scheme.
- 79. As per **paragraph 12(3)** of the Scheme, 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** referred to in sub-paragraph (2), **if** he is of the opinion that the request is covered by the circumstances referred to in clause (xi) of paragraph 13.
- 80. As per **paragraph 12(4)** of the Scheme, where the request for personal hearing has been approved by the Chief Commissioner **or** the Director General, in charge of the Regional Faceless Appeal Centre, such hearing shall be conducted exclusively through **video conferencing or video telephony**, including use of any telecommunication application software which supports video conferencing **or** video telephony, in accordance with the procedure laid down by the Board.
- 81. As per **paragraph 12(5)** of the Scheme, any **examination or recording of the statement** of the **appellant or any other person shall** be conducted by Commissioner (Appeals) in any appeal unit under this Scheme, **exclusively** through **video conferencing or video telephony**, including use of any telecommunication application

software which supports *video conferencing or video telephony*, in accordance with the procedure laid down by the Board.

82. As per **paragraph 12(6)** of the Scheme, the **Board shall establish suitable facilities** for video conferencing **or** video telephony including telecommunication application software which supports *video conferencing or video telephony* at such locations as may be necessary, so as to ensure that the appellant, **or** his authorised representative, **or** any other person is not denied the benefit of this Scheme merely on the ground that such appellant **or** his authorised representative, **or** any other person does not have access to video conferencing **or** video telephony at his end.

### Comments

As per **paragraph 2(xxv)** of the Scheme, “**video conferencing or video telephony**” means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

## Paragraph - 13 Power to specify format, mode, procedure and processes

83. As per **paragraph 13** of the Scheme, the Principal Chief Commissioner **or** the Principal Director General, in charge of the National Faceless Appeal Centre **shall**, with the **prior approval** of Board, **lay down** the -

- standards,
- procedures **and**
- processes

for effective functioning of the

- National Faceless Appeal Centre,
- Regional Faceless Appeal Centres and
- the appeal unit

**set-up** under this Scheme, in an automated **and** mechanised environment, **including** -

- \* format,
- \* mode,
- \* procedure **and**
- \* processes

in respect of the following, namely:\_\_\_

- (i) service of the notice, order or any other communication;
- (ii) receipt of any information or documents from the person in response to the notice, order or any other communication;



- (iii) issue of acknowledgment of the response furnished by the person;
- (iv) provision of 'e-appeal' facility including login account facility, tracking status of appeal, display of relevant details, **and** facility of download;
- (v) accessing, verification **and** authentication of information **and** response including documents submitted during the appellate proceedings;
- (vi) receipt, storage and retrieval of information **or** documents in a centralised manner;
- (vii) general administration and grievance redressal mechanism in the respective Centres and units;
- (viii) filing of additional ground of appeal;
- (ix) filing of additional evidence;
- (x) specified amount referred to in sub-clause (a) of clause (xix) of sub-paragraph (1) of paragraph 5;
- (xi) circumstances in which personal hearing referred to in sub-paragraph (3) of paragraph 12 shall be approved.

**Directions u/s 250(6C)**  
**CBDT Notification No. 77/2020 dated 25.9.2020**

84. In exercise of the powers conferred by sub-section (6C) of section 250 of the Income-tax Act, 1961, for the purposes of giving effect to the Faceless Appeal Scheme, 2020 made under sub-section (6B) of section 250 of the Act, the Central Government made **directions** vide Notification No. 77/2020 dated 25.9.2020.
85. The directions in all contain six (6) paragraphs.
86. As per **paragraph (1)** of the directions, the provisions of
- clause (16A) of section 2,
  - section 120,
  - section 129,
  - section 131,
  - section 133,
  - section 134,
  - section 136 **and**
  - Chapter XX of the Act

shall apply to the procedure in appeal in accordance with the said Scheme **subject to** the exceptions, modifications and adaptations contained in the paragraph (1) of the directions.

87. As per **paragraph (2)** of the directions, the provisions of

- section 140 **and**
- section 282A of the Act

shall apply to appellate proceedings in accordance with the said Scheme **subject to the** exceptions, modifications and adaptations contained in the paragraph (2) of the directions.

88. As per **paragraph (3)** of the directions, the provisions of

- section 154 **and**
- section 155 of the Act

shall apply to the order passed in accordance with the said Scheme **subject to the** exceptions, modifications and adaptations contained in the paragraph (3) of the directions.

89. As per **paragraph (4)** of the directions, the provisions of

- Chapter XX of the Act

shall apply to penalties imposable in accordance with the said Scheme subject to the exceptions, modifications and adaptations contained in the paragraph (4) of the directions.

90. As per **paragraph (5)** of the directions, the provisions of

- section 282,
- section 283, **and**
- section 284 of the Act

shall apply to the order passed in accordance with the said Scheme **subject to the** exceptions, modifications and adaptations contained in the paragraph (5) of the directions.

91. Though most of the directions are already incorporated in the “Scheme” yet a detailed analysis of the “directions” shall be prepared separately.

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### **Disclaimer**

*This document has been prepared for academic use only to share with fellow professionals and all concerned the scope of Notification No. 76/2020 dated 25.9.2020 and Notification No. 77/2020 dated 25.9.2020 issued by the CBDT in respect of Faceless Appeal Scheme. Though every effort has been made to avoid errors or omissions in this document yet any error or omission may creep in. Therefore, it is notified that I shall not be responsible for any damage or loss to any one, of any kind, in any manner there from. I shall also not be liable or responsible for any loss or damage to any one in any matter due to difference of opinion or interpretation in respect of the text. On the contrary it is suggested that to avoid any doubt the user should cross check the correct law and the contents with the said Notification, Press Release and the texts referred.*

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**By CA. Rajiv Kumar Jain**  
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**27.9.2020**