

## Recent Rulings on Faceless Assessment Scheme

### 1. Introduction:

The E- assessment Scheme was first introduced in the year 2015 on pilot basis in five cities viz. Ahmedabad, Bangalore, Chennai, Delhi, and Mumbai, which was extended to two more metros in year 2016. The Income tax Department rolled out with e-assessment proceeding where the conduct of enquiry is compulsorily made through the e-mails only. A new Rule 127 was inserted by the Income Tax (Eighteenth Amendment) Rules, 2015 w.e.f. 02.12.2015, providing the framework for issue of notices and other communication with the assessee. During the period from 2016 to 2018, the CBDT progressively amended the rules, notified various procedures, and issued the required guidelines to increase the scope of e-proceedings. In the year 2017, the Income-tax Department developed an *integrated* platform, i.e., Income Tax Business Application (ITBA) for electronic conduct of various functions/proceedings including assessments. Scope of e-proceedings assessment was extended vide instruction no. 08/2017 dated 29.09.2017 for all the cases getting time barred during F.Y. 2017-18 with option to the assessee to voluntarily opt-out from e-proceedings. Instruction No.01/2018 dated 12.02.2018 was issued to cover all the pending scrutiny assessments under the e-proceeding scheme with the exception of some cases like search and seizure, re-assessment etc. Instruction No.03/2018 dated 20.08.2018 was issued carving out the way for all cases required to be framed u/s 143(3) during F.Y.2018-19, which were to be compulsorily (mandatorily) completed through e-proceeding only. By the Finance Act, 2018, two new sub sections (3A) and (3B) were inserted in S.143(3) w.e.f. 01.04.2018, which enabled the Central Government to come up with a Scheme for Faceless-Electrical Assessment. Subsequently, "E-assessment scheme 2019" was renamed as faceless assessment scheme vide Gazette notification dated 13-08-2020 bearing F.No. S.O. 2745(E). It came into force w.e.f. the date of its publication in the Official Gazette i.e. 13-08-2020. It is mandated thereunder that all the assessment orders thereafter shall be passed through Faceless Assessment Scheme by National e-Assessment Centre (NeAC). However, two exceptions are made i.e. (i) assessment orders in cases assigned to Central Charges (Block Assessment Cases u/s 153A/153C) (ii) Assessment orders in cases assigned to International Tax Charges.

Faceless Assessment Scheme does not require any physical or personal interface between the assessee and assessing authority. The cases are selected for scrutiny through automated allocation system involving algorithm, and Artificial Intelligence so as to maximise the application of resources for utilization in important and high revenue yielding cases. The e-assessments are often referred as jurisdiction less team of officers at multiple level assessment units i.e. National e-assessment Centre (NeAC), Regional e-Assessment Centre (ReAC), verification units, and review units. The assessment shall not be conducted by any individual jurisdictional officer. The cases after selection will be assigned by NeAC to an assessment unit in any ReAC. A writ filed by an assessee in SUMANDEEP VIDYAPITH THROU REGISTRAR CHANDRAMANI BHAGWAN MORE VERSUS COMMISSIONER OF INCOME TAX (EXEMPTION)2021 (3) TMI 1069 - GUJARAT HIGH COURT challenging the transfer of the case u/s 124 read with 127 to NeAC was dismissed on the ground that transfer of the case u/s 127 is more in the nature of administrative

order rather than a quasi-judicial order and the assessee cannot have any right to choose his assessing authority as no prejudice is caused as to which authority of the department passes the assessment order. In this Article various issues arising in the implementation of scheme shall be discussed in brief.

## **2. Provisions for implementing faceless assessment scheme.**

2.1 Prior to 01.04.2021, assessments were framed u/s 143(3) after issuing notice u/s 143(2). The A.O. had to follow the provisions of sub-section 3A and 3B of section 143(3) where under the Central Government was empowered to notify that any of the provisions of the Act may not apply in respect of computation of income or loss. Sub-section 2 required that a hearing is to be granted to the assessee to produce evidence in support of his return, therefore, where in notice u/s 143(2) was given but no hearing was granted the assessment was set aside. *RKKR Foundation v. National Faceless Assessment Centre, Delhi [2021] 127 taxmann.com 643 (Delhi)*.

2.2 Where assessment was framed after 01.04.2021, the provision of section 144B would apply whereunder assessment is to be framed by NeAC, which would assign the case to any assessment unit in regional assessment centre. Under this section the verification units and technical units were also constituted which were assigned specific functions as under-

- (i) **NeAC (National e-Assessment Centre)**- To facilitate the conduct of e-assessment proceedings in a centralised and coordinated manner, NeAC will be vested with jurisdiction for doing assessments. It is assigned following functions-
  - i. The NeAC shall assign the case, selected for scrutiny through CASS or through RMS to a specific assessment unit in any one of the eight ReAC through automated allocation system.
  - ii. On getting request from assessment unit in ReAC, the NeAC (i) may transfer to ReAC all the information and documents concerning the taxpayer (ii) communication with the taxpayer for information/ documents/ evidence or (iii) asking verification unit for carrying out inquiry and verification.
  - iii. On getting draft assessment order, the NeAC, (i) where no variation with the returned income is proposed finalise the assessment as per draft assessment order and serve a copy thereof to the taxpayer along with notice for penalty proceedings initiated or (ii) where variation with the returned income is proposed, either issue a show cause notice to the assessee as to why the addition proposed by assessment unit be not accepted, or instead of sending a show cause notice to the assessee, send the draft assessment order to the review unit.
  - iv. Where draft assessment order is sent to review unit, if the review unit concurs with the draft order, the NeAC may either finalise the order (as per modification proposed by assessment unit) and serve a copy on the assessee along with demand notice and penalty notices or issue a show cause notice to the taxpayer. After receiving reply from the taxpayer, it will be forwarded to the Assessment Unit which will prepare final draft assessment order and send it back to NeAC. Thus, NeAC will finalise the order served on the assessee. It may also serve a

show cause notice on the assessee as to why the final draft assessment order be not treated as final assessment order.

- v. After finalizing the assessment, the NeAC shall transfer all electronic records to the jurisdictional assessing officer for various other purposes.

(ii) **ReAC (Regional e-Assessment Centre)**- Its main function is to facilitate the conduct of e-assessment proceedings in the cadre controlling region of PCIT. It is assigned following functions-

- i. The ReAC, after allocation by NeAC, of the case for assessment, may request NeAC for (i) information, documents, evidence as required and/or (ii) for conducting inquiry or verification by Verification Unit and/ or (iii) seeking technical assistance from Technical Unit.
- ii. Prepare draft assessment order in writing either accepting or modifying the returned income of the taxpayer and send it to NeAC along with details of penalty proceedings to be initiated.
- iii. In case NeAC decides to obtain the comments of the assessee on the draft assessment order, or comments of the review units, then to prepare final draft assessment order incorporating the comments of the assessee and comments of the review units and to make suitable modification in the assessment proposed and send it to NeAC.

(iii) **Assessment Unit**: Assessment unit is part of ReAC. Its function is to facilitate the conduct of e-assessment, to make the foundation of assessment, to seek information or clarification, to analyse the material furnished by the assessee etc.

(iv) **Verification Unit**- To perform the function of verification including inquiry, cross verification, examination of books, witness, recording of statement etc.

(v) **Technical Unit**- To provide technical assistance in various fields such as legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics or any other technical matter etc.

(vi) **Review unit**- To review the draft assessment order including vetting on the issues such as (i) whether relevant and material evidence has been brought on record (ii) whether the relevant points of facts/ law have been incorporated in draft order (iii) whether issue on which addition or disallowance, should be made have been discussed in the draft order (iv) whether the applicable judicial decisions have been considered and dealt with in the draft order (v) checking the arithmetical correctness of modification proposed etc. The review unit may concur with the draft assessment order or suggest suitable modification.

The review unit may agree with the variation proposed in the draft assessment order and accordingly intimate to the NeAC or suggest suitable modification to the draft assessment order.

**Power of the jurisdictional A.O.** Under Faceless Assessment Scheme the power of the jurisdictional assessing officer is limited to (i) imposition of penalty, (ii) collection and recovery of demand, (iii) rectification of mistakes, (iv) giving effect to appellate orders and (v) to submit remand report called by appellate authorities.

### 3. Inherent requirement to follow the principles of natural justice.

The faceless assessment scheme is based on following principles-

- (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible.
- (b) optimising utilisation of the resources through economies of scale and functional specialisation.
- (c) introducing a team-based assessment with dynamic jurisdiction

During the course of finalisation of assessment, there are 3 stages of draft assessment orders, one is initial draft, second is revised draft (by review unit), and third is final draft (by other assessment unit). It is the discretion of NeAC either to accept the draft sent by original assessment unit or issue show cause notice to the assessee along with the draft order or send the draft order so received to the review unit and obtain from it revised draft order and send it to the assessee along with show cause notice or send it to another assessment unit for further verification or vetting and obtain from it, final draft assessment order and send it to the assessee along with show cause notice. The law requires that opportunity has to be provided to the assessee to object or reply to the proposed draft assessment order. Thus, wherever any variation is proposed in the returned income either in the draft order or revised draft order or final draft order, the objection is to be invited from the assessee and if assessee requires personal hearing the same has to be granted to the assessee or to his authorised representative through video conferencing. The provisions which require the NeAC to grant opportunity to the assessee to object to the proposed variation as per draft assessment order (initial, revised or final) are as under:

- i. *144B(1)(xvi)(b).....(NeAC may) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made;*
- ii. *144B(1)(xvii)....the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;*
- iii. *144B(1)(xxv)(b).....(NeAC may)in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;*
- iv. *144B(7)(vii)in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee 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 income-tax authority in any unit;*

- v. *144B(7)(viii)the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);*

Thus, wherever any variation is proposed in the returned income, the NeAC has to issue a show cause notice along with the draft order (initial, revised or final) inviting objection of the assessee to the proposed additions/disallowances and if assessee requires a personal hearing to him or to his authorised representative then such personal hearing is to be granted through video conferencing. Where no such personal hearing is granted even though asked by the assessee, the courts have held that it is the violation of principles of natural justice and assessment orders/demand notice/ penalty notice were set aside to be passed afresh.

#### **4. Recent judicial pronouncements on assessment orders passed under faceless assessment scheme-**

**4.1. Where no show cause notice was issued even though variation was proposed:** Where no such show cause notice cum draft assessment order was served on assessee in faceless assessment proceedings, even though a variation in returned income was proposed, the assessment order and accompanied notices were set aside by Hon'ble Delhi High Court in *YCD Industries v. National Faceless Assessment Centre, Delhi* [2021] 127 taxmann.com 606 (Delhi). Similar view was taken in *SMART VISHWAS SOCIETY VERSUS NATIONAL FACELESS ASSESSMENT CENTRE DELHI*2021 (6) TMI 335 - DELHI HIGH COURT.

**4.2 Assessment order is passed before expiry of time allowed in the show cause notice:** Where order was passed before expiry of time allowed to submit reply in faceless assessment scheme, Hon'ble Madras High Court remitted back the case to the A.O. to pass a speaking order on merits after considering the reply filled by the assessee. In this case the assessment order was passed on 15.03.2021, whereas show cause notice was issued on 04.03.2021 and assessee was required to file the reply before the end of the day on 15.03.2021 by 23.59 hours. The reply was submitted before the end of the day 15.03.2021 but the order was passed before assessee could submit reply. **(ANTONY ALPHONSE KEVIN ALPHONSE v. ITO 2021 (5) TMI 362 –(MADRAS); EKAMBARAM SUKUMARAN V. ITO 2021 (5) TMI 461 –(MADRAS);Raja Buildersv.National Faceless Assessment Centre [2021] 127 taxmann.com 339 (Bombay) .** Hon'ble Madras High Court referring to another decision of the same court in *S.Velupalandar V. Deputy Commercial Tax Officer***1971 (8) TMI 42 – MADRAS** held that it was incumbent upon an Officer to wait till the end of the working day when the matter was posted to finalize proceedings. Also, in a similar case show-cause notice-cum-draft assessment order calling upon assessee to file its objections were issued. Assessee asked for time vide application dated 27-4-2021, wherein a reference was made to CBDT circular dated 24-4-2021, whereby, limitation for passing assessment order had been extended till 30-6-2021. Since such time was not granted impugned assessment order, notice of demand and notice for initiation of penalty proceedings against assessee were quashed and set aside as no leeway had been granted to assessee to respond

to show-cause notice. **RKKR Foundation v. National Faceless Assessment Centre, Delhi [2021] 127 taxmann.com 643 (Delhi)**. The submission of Revenue that since a notice under section 143(2) was issued followed by several notices under section 142 (1) of the Act, and therefore, no further time was required to be granted to the petitioner, was not found untenable by Hon'ble Delhi High Court. Also, where assessee had sought time to file reply to the show cause notice on the ground that his wife and sons were admitted to the hospital on account of Corona infection and such time was not allowed, Hon'ble Delhi High Court in **SUDHIR DESH AHUJA VERSUS NATIONAL FACELESS ASSESSMENT CENTRE & ORS. 2021 (6) TMI 334 - DELHI HIGH COURT** set aside the assessment and notice for penalty with a liberty to A.O. to pass a fresh order after considering the reply/objection of the assessee.

**4.3 Time allowed to file objection was too short or adjournment was not granted:** Where draft assessment order dated 19.04.2021 along with show cause notice was served on 20.04.2021 by 03.06 hours and assessee was required to file its response by 23.59 hours on 21.04.2021, it was contended by the assessee that time allowed was too short and application for adjournment was filed via the e-portal for granting one day's time till 22.04.2021 but no reply on adjournment was received. The assessee submitted the response to the show cause notice on 22.04.2021 by 15.22 hours but by then assessment order was passed without considering the adjournment application and response filed by the assessee. On these facts Hon'ble Delhi High Court in **KBB Nuts (P.) Ltd. v. National Faceless Assessment Centre Delhi [2021] 127 taxmann.com 194 (Delhi)** set aside the assessment to the file of National Faceless Assessment Centre for considering the reply filed by the assessee.

Where time allowed to file reply/objection to the proposed additions as per draft assessment order, is too short it is a violation of principles of natural justice. Where draft assessment order along with the show cause notice was issued on 12.04.2021 which was received by the assessee on 13.04.2021 and he was required to file reply/objection to the proposed additions by 14.04.2021, the time so allowed of 24 hours is too short and there is the apparent violation of the principles of natural justice, the impugned order is set aside by Hon'ble Madras High Court in **KUMARAN SILKS TRADERS V. ITO, NATIONAL E-ASSESSMENT CENTRE, DELHI, 2021 (5) TMI 736 - MADRAS HIGH COURT**.

**4.4 Where personal hearing was sought by the assessee but was not allowed:** Where Section 144B(7)(vii) & (viii) require the CCIT/DGIT in charge of regional faceless assessment centre to grant personal hearing on request by the assessee/ his authorised representative so that they can make oral submissions or present their case before the Income Tax Authority in that unit then such personal hearing has to be ordinarily granted. Hon'ble Delhi High Court in **LEMON TREE HOTELS LIMITED V. NATIONAL FACELESS ASSESSMENT CENTRE DELHI 2021 (5) TMI 847 - DELHI HIGH COURT** and in **RITNAND BALVED EDUCATION FOUNDATION (UMBRELLA ORGANIZATION OF AMITY GROUP OF INSTITUTIONS) VERSUS NATIONAL FACELESS ASSESSMENT CENTRE & ORS 2021 (6) TMI 17 - DELHI HIGH COURT** stayed the operation of the assessment order as no such personal hearing was granted even though requested. In another case Hon'ble Delhi High Court set aside the assessment order,

consequential demand notice and penalty notices and directed the National E-Assessment centre to grant a personal hearing through video conferencing to the authorised representative of assessee and thereafter pass fresh assessment order. (M/S. LOKESH CONSTRUCTIONS P. LTD. V. ACIT 2021 (6) TMI 15 - DELHI HIGH COURT; DJ Surfactants v. National E-Assessment Center, Income Tax Department, New Delhi [2021] 127 taxmann.com 641 (Delhi) and also in NAINA LAL KIDWAI v. NATIONAL FACELESS ASSESSMENT CENTRE DELHI 2021 (6) TMI 410 - DELHI HIGH COURT where request for personal hearing was rejected by the A.O. and assessment order was finalised without such personal hearing.

In **Sanjay Aggarwal v. National Faceless Assessment Centre, Delhi**

[2021] 127 taxmann.com 637 (Delhi) Hon'ble Delhi High Court observed that "*11.4 A careful perusal of clause (vii) of Section 144B (7) would show that liberty has been given to the assessee, if his/her income is varied, to seek a personal hearing in the matter. Therefore, the usage of the word 'may', to our minds, cannot absolve the respondent/revenue from the obligation cast upon it, to consider the request made for grant of personal hearing. Besides hi under sub-clause (h) of Section 144B (7)(xii) read with Section 144B (7) (viii), the respondent/revenue has been given the power to frame standards, procedures and processes for approving the request made for according personal hearing to an assessee who makes a request qua he same.*"

#### **4.5 Objections filed by the assessee has to be considered in the final assessment order:**

Wherever Assessing Officer proposes additions/disallowances to the assessee's declared income, he is required to issue a showcause notice qua each addition/ disallowance as directed by CBDT through instruction no. 20/2015, dated 29.12.2015. vide para 4 as under (refer- **CLH GASEOUS FUEL APPLICATIONS PVT. LTD. V. NATIONAL E-ASSESSMENT CENTRE, DELHI W.P.(C) 5272/2021 Dated: - 12 May 2021) 2021 (5) TMI 529 - DELHI HIGH COURT**):

*"4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice."*

Thus, the NeAC has to give due consideration to the objections filed by the assessee to the draft order.

#### **5. Conclusion**

In the faceless assessment scheme, jurisdiction for making scrutiny assessment has been vested in NeAC which may assign the case to any of the regional e-assessment centre. Where ReAC agrees with the returned income, the assessment is framed by NeAC on the returned income but where

ReAC disagrees and proposes to make addition or disallowance, it will forward a draft assessment order to the NeAC which may if agrees with the draft assessment order issue a show cause notice to the assessee or get the draft assessment order reviewed by reviewing unit which will forward as revised draft assessment order to the NeAC. The NeAC may get it vetted through another assessment unit which may take assistance from technical unit or verification unit and forward another draft order. It may be called a final draft order, or this order may again be crossed checked by original assessment unit. In any case wherever NeAC sends a draft order or revised draft order or final draft order to the assessee along with show cause notice it has to provide opportunity to file objections which shall be considered while finalising the assessment. Thus, wherever, an addition or disallowance is proposed in the returned income, a show cause notice along with draft assessment order has to be necessarily sent to the assessee. Otherwise, the court may set aside the assessment order. Also, where (i) reasonable time is not allowed to the assessee to file objection or (ii) assessment order is passed before expiry of time allowed in the show cause notice or (iii) personal hearing is not granted when sought by the assessee or (iv) objections filed by the assessee are not considered in the final assessment order, the assessment orders are likely to be set aside.

*(Source: Taxmann.com)*