

**Assignment No: 4**

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**Submitted by: Hitesh Vachhani**

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### **FACELESS ASSESSMENT AND APPEALS UNDER THE INCOME TAX LAW**

The Finance Minister had proposed the introduction of a scheme of faceless e-assessment in her budget scheme on 5<sup>th</sup> of July, 2019 which was subsequently inaugurated on 7<sup>th</sup> of October, 2019. The scheme was introduced to eliminate the human interface between the tax payer and the income tax department. Under this scheme, the tax payers need not see face to face any tax officer or visit an IT office or need not run pillar to post on receiving income tax scrutiny assessment notice. The income tax payer can e- file assessment's reply on the I-T portal without the hassle of visiting any tax officer. On 13<sup>th</sup> of August, 2020, the Hon'ble Prime minister had announced various tax reforms under the *Transparent Taxation*.

The above faceless schemes are arguably the biggest tax reforms that has been witnessed by the Income Tax Act, 1961, in the recent times. It is true that the concept behind this scheme is a game changer as it brings with it a promise to streamline and bring greater transparency and accountability into the tax administration. This is a significant reform in the tax administration process, reducing tax officer's discretion, tax terrorism, and scope for corruption and litigation. The faceless scheme purports to be a step in a correct direction, but has major practical concerns. This scheme aims to bring about transparency by building an opaque wall between the tax payers and the assessment officer.

#### **Faceless Assessment Scheme**

There is no doubt that the scheme builds trust between the tax payer and the authorities, provides a time-bound resolution and provides a complete and accurate information for tax compliance thereby reducing the cost of compliance but the scheme suffers from major practical issues such as the scheme does not grant personal hearing via video conferencing as a default choice which is in violation of the principles of natural justice. The provision of personal hearing via video

conferencing is not seen as a matter of right but as an exception to the well accepted norms of practice.

### **The procedure of assessment as envisaged under the scheme.**

The entire process of assessment is routed through National e-Assessment Centre (NeAC) where it shall allocate cases selected for faceless assessment under the scheme to regional e-assessment centres through an automated allocation system. The assessment proceedings thereafter proceed through all communication, predominantly via written electronic exchanges, routed through the National e-assessment centre. There is also provision for a personal hearing through video conferencing according to the procedure laid down by scheme. However, the personal hearing through video conference is not a matter of right and seems to be an exception rather than the norm.

The faceless scheme necessarily gives rise to the Constitutional Challenges by the very nature of the role that is played by the assessing officer during the assessment. It is a well settled principle of law that the assessing officer is a quasi-judicial authority and it fulfills a judicial function while making an assessment. Thus, when a judicial function is being performed by a quasi-judicial authority such as an assessing officer, the rules of natural justice cannot be given a go-by. The courts have time and again stressed on the principles of natural justice being followed during assessment and that no interference is to be made any superior authority in the assessment. The scheme prima facie does not have a provision for a default personal hearing as a matter of right and secondly, there is a direct encroachment by the National e-Assessment Centres upon the autonomy of the assessing officer.

### **The Scheme seems to violate the Principles of Natural Justice**

The principles of natural justice are those fundamental rules, the breach of will prevent the justice from being seen to be done. They are the rules laid down by the courts as a minimum protection of rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. The faceless scheme seems to violate the most basic principle of natural justice i.e., Audi-Alteram Partem (hear the other side) in the following manner:

- The scheme does not provide the right of personal hearing.
- The officer making the assessment also does not have the power to grant such a hearing.
- Approval has to be obtained from the Chief Commissioner or Director-General of Income-tax in charge of the regional e-assessment centre.
- The scheme leaves no room for solving any queries that the assessing officer may have during the course of assessment.

Therefore, if such approval is rejected, the assessee will not have a right of personal hearing. Moreover, the scheme also states that the opportunity of hearing should be provided only when modification is proposed and not at any other stage nor at the stage when the draft assessment is finalized.

The scheme provides that the National e-Assessment Centre may finalize the assessment as per the draft assessment order, if it does not propose any modification. Therefore, the scheme leaves no room for solving any queries that the assessing officer may have during the course of assessment. Moreover, the assessing officer cannot request for the same and this has the potential to cause a serious miscarriage of justice and leads to a serious violation of the principle 'Audi Alteram Partem'. The lack of constructive engagement with the assessing officer may find justice delivery in the form of assessment of tax liability severely hamstrung. In **Rajesh Kumar v. DCIT [2006] 287 ITR 91 (SC)** the Hon'ble Supreme Court of India had re-iterated that proceedings before Income-tax Authorities are judicial proceedings. The restriction on the right to be heard therefore is a serious violation of the fundamental rights of the Assessee and is prima-facie unconstitutional.

It is true that the assessee has the option to appeal against the assessment order, but the stay on such a demand always comes with a precondition of a percentage deposit. Therefore, not allowing a personal hearing through video-conference may cause substantial prejudice to the assessee. Thus, for such a scheme to be successful, the assessee should be given a right of personal hearing as a default choice and the fact that the permission of a higher authority is to be taken for a personal hearing before the assessment officer is an interference with the due process of law.

**Direct Encroachment by the National e-Assessment Centre at the draft stage may be Unconstitutional.**

The faceless scheme provides that after National e-Assessment Centre has received the copy of the draft assessment order, it has the following options:

- Finalize the assessment as per the draft assessment order and serve the copy of the order to the assessee and initiate the proceedings.
- Provide an opportunity to the assessee in case any modification is proposed.
- Assign the draft assessment order to a review unit in any one regional e-assessment centre through an automated allocation system.

The order passed by the assessment officer is subject to review by either the National e-assessment authority or a review board to which the matter is allocated by the said authority. If the assessee has any quarrel with the assessment order passed by the assessing officer, the option of filing an appeal is always available. Section 263 gives the department an opportunity to revise an order of assessment if it is found to be erroneous and prejudicial to the interest of the revenue. The review of the order of the Assessing officer, in its draft stages is a clear interference in his adjudicatory function and may not stand up to a constitutional challenge.

### **Faceless Appeal Scheme**

The Central Board of Direct Taxes had notified Faceless Income Tax Appeals Scheme w.e.f. 25<sup>th</sup> of September, 2020. Under Faceless Appeals, all Income Tax appeals will be finalized in a faceless manner under the faceless ecosystem with the exception of appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act.

Under the faceless appeal scheme, everything from allocation of appeal, communication of notice/questionnaire, verification, inquiry to communication of appellate orders would be online dispensing with the need for any physical interface between the appellant and the authorities. This enables the appellant to make submissions from the comfort of their home and saves time and resources.

But again, this scheme, as the faceless assessment scheme, does not have any room for physical hearing. The assessee is left at the discretion of the Chief Commissioner or the Director General of Income Tax in granting chance of hearing. The right of being heard, even through the

videoconferencing mode is subject to the approval of the Chief Commissioner or the Director General and therefore, the same is to that extent discretionary, i.e. he "may" or "may not" provide a right of personal hearing in the matter. That's why scheme may be termed as discriminatory, arbitrary and illegal to the extent it provides a virtual hearing as per the circumstances to be approved by the administrative authorities under the Income Tax Act, 1961. Moreover, the faceless appeal scheme is contrary to the provision of the section 250 (1), 250 (2) and 250 (5) of the Income Tax Act, 1961 which state that the right of hearing should be granted to the appeal stage.

The appellant at the appeal stage, under the traditional method of face to face hearings, could explain any technicalities to the adjudicator personally but under the new scheme, much depends upon the submissions of the assessee. If the submissions are not clear, it would be very difficult for the assessee to help the adjudicator understand his side of the case in an easy manner.

### **Conclusion**

The faceless assessments and appeals schemes are a reform in the right direction. It will bring more fairness and confidence in the country's taxation system, as the taxpayer and the tax officer will not know each other's identity. The schemes will provide not only great convenience to the taxpayers but will also ensure just and fair assessment and appeal orders and minimize any further litigation. This scheme is a game changer as it brings with it a promise to streamline and bring greater transparency and accountability into the tax administration. This is a significant reform in the tax administration process, reducing tax officer's discretion, tax terrorism, and scope for corruption and litigation.

Though there are certain practical problems with respect to the right of hearing much depends upon the implementation of the scheme. It is true that the right of being heard is not entirely taken away by the scheme but it has minimized the exercise of such rights only in some important cases. Although, the scheme may seem to be a step in a right direction, it has to face several constitutional challenges.