

TAX FLASH NEWS

15 August 2020

CBDT amends the E-assessment Scheme, 2019 to implement the Faceless Assessment Scheme

Background

The Finance Minister (FM) while presenting the Budget 2019 stated that the existing system of scrutiny assessments in the Income-tax department involves a high level of personal interaction between the taxpayer and the tax department, which leads to certain undesirable practices on the part of tax officials. The FM further stated that to eliminate such instances, and to give shape to the vision of the Prime Minister (PM), a scheme of faceless assessment in electronic mode involving no human interface will be launched in a phased manner.

Subsequently, in order to impart greater efficiency, transparency and accountability to the assessment process, a new faceless assessment scheme was introduced in 2019. Accordingly, most of the functions of the tax department starting from the filing of returns, processing of returns, issuance of refunds and assessments are performed in the electronic mode without any human interface. In order to take the reforms initiated by the tax department to the next level and to eliminate human interface, the FM in her Budget 2020 speech proposed an amendment so as to enable faceless appeals on the lines of faceless assessments.

On 12 September 2019, the Central Board of Direct Taxes (CBDT) had notified¹ E-assessment Scheme, 2019 under Section 143(3A)² of the Income-tax Act, 1961 (the Act). Further in exercise of the powers conferred by Section 143(3B)³ to give effect to the Scheme, CBDT had also notified⁴ the relevant directions.

On 13 August 2020, the PM launched 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. The PM stated that the faceless assessments/appeals will have technology driven interface (e.g. in case of scrutiny assessments, there will be random selection of cases and selection will not be limited to jurisdictional Assessing Officer). The facility of faceless appeal will be available for citizens across the country with effect from 25 September 2020.

On the same day, CBDT issued a Notification⁵ to amend the E-Assessment Scheme and to implement the Faceless Assessment Scheme under Section 143(3A). Further in exercise of the powers conferred by Section 143(3B) to give effect to the Scheme, CBDT also amended⁶ the relevant directions. The amended Scheme shall come into force on the date of its publication in the Official Gazette⁷.

Recently, CBDT has also issued various orders/Notifications⁸ to implement the Faceless Assessment Scheme.

CBDT Notifications to amend the Faceless Assessment Scheme

Nomenclature of the Scheme

Originally when the Scheme was introduced it was named as 'E-Assessment Scheme'. However, the Scheme has now been renamed as 'Faceless Assessment Scheme'.

¹ Notification No. 61/2019, 12 September 2019

²The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the taxpayer under sub-section (3) so as to impart greater efficiency, transparency and accountability.....

³ The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

⁴ Notification 62/2019, 12 September 2019

⁵ Notification No. 60/2020, dated 13 August 2020

⁶ Notification No. 61/2020, dated 13 August 2020

⁷ Notification has been published in the Official Gazette on 13 August 2020

⁸ CBDT Order (F No. 187/3/2020 -ITA-I), dated 13 August 2020, Notification Nos. 62 to 66 of 2020, dated 13 August 2020

Scope of 'assessment'

The original E-assessment Scheme covered assessments only with respect to total income or loss of the taxpayer under Section 143(3). However, the amended Scheme covers the best judgement assessment under Section 144 also.

Procedure for Assessment

The procedure for e-assessment has been amended as follows:

- The present scope of the Scheme was restricted to regular assessment proceedings for a limited class of taxpayers to whom statutory notice was issued under the said Scheme. The amended Scheme extends it to all ongoing assessment/reassessment proceedings which are being carried on by the jurisdictional tax authority. Such migration to the Scheme can be effective upon intimation to the taxpayer. Thereupon, those proceedings will be concluded in a faceless manner as per the Scheme.
- Under the E-assessment Scheme there was no option to file response to the notice issued by National e-Assessment Centre⁹ (NEC) for obtaining the information, documents or evidence requisitioned by the assessment unit. It has been amended to provide that the taxpayer or such other person shall file a response with NEC within the time specified in the notice or as extended by NEC upon an application made for the same.
- NEC shall send the report received from the verification unit or the technical unit, based on the request made to the concerned assessment unit.
- Where the taxpayer fails to comply with the notice¹⁰, the NEC shall serve upon such taxpayer a notice under Section 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment.
- The taxpayer shall, within the time specified in the notice issued under Section 144 or such time as may be extended on the basis of an application in this regard, file his response to the NEC.
- Where the taxpayer fails to file response to the notice under Section 144 within the time specified in the notice or within the extended time, if any, the NEC shall intimate such failure to the assessment unit.

⁹ A central unit set up under the Scheme to monitor the entire functioning of the Scheme and single point of contact for the taxpayer and the tax authority
¹⁰ Notice issued by NEC for obtaining the information, documents or evidence requisitioned by the assessment unit or notice issued under Section 142(1) or with a direction issued under Section 142(2A) of the Act

- As per the E-Assessment Scheme, mandatorily, a draft assessment order was to be passed by the Assessment Unit¹¹ for all cases. Thereafter, the NAC was to decide whether said draft assessment order requires review on the basis of certain risk parameters. If so, the draft assessment order would be transferred to the Review Unit¹² for review. If the Review Unit provides some modifications to the draft assessment order, then the NAC was to forward such suggestions to the concerned Assessment Unit.

It is now amended to provide that these suggestions will be forwarded to a different Assessment Unit, other than the Assessment Unit which was involved in draft assessment proceedings. Such assignment of work will be undertaken through an automated allocation system. This will introduce one more level of screening of the draft assessment order.

- Under E-assessment Scheme, the NEC shall, after completion of assessment, transfer all the electronic records of the case to the AO having jurisdiction over such case for the following actions—
 - Imposition of penalty
 - collection and recovery of demand
 - rectification of mistake
 - giving effect to appellate orders
 - submission of remand report, other report to be furnished, or any representation to be made, or any record to be produced before the Commissioner (Appeals) [CIT(A)], Appellate Tribunal or Courts
 - proposal seeking sanction for launch of prosecution and filing of complaint before the Court.

However, the new procedure removes reference to the above actions and provides that the AO may take such actions as may be required under the Act.

Penalty proceedings for non-compliance

The E-Assessment Scheme provided that NEC shall levy the penalty as per the draft order of penalty and serve a copy of the same on the taxpayer or any other person, as the case may be. However, the amended Scheme provides that the NEC shall along with draft order of penalty serve a demand notice on the taxpayer or any other person, as the case may be. Thereafter, electronic records of the penalty proceedings shall be transferred to the AO having jurisdiction over the said case for such action as may be required under the Act.

¹¹ A unit set up under the Scheme to conduct various functions of assessment
¹² A unit set up under the Scheme to carry out the function of review of draft assessment orders prepared by various Assessment Units at the direction of the NAC

Appellate proceedings

As per the E-Assessment Scheme, the taxpayer could file an appeal before the jurisdictional Commissioner (Appeals) against an assessment made by the NEC. However, the amended Scheme extends the right to make such appeal even against the penalty orders.

Exchange of communication exclusively by electronic mode

The E-assessment Scheme provided that all communications between NEC and the taxpayer or his authorised representative, shall be exchanged exclusively by electronic mode. Further, all internal communications between the units shall also be exchanged exclusively by electronic mode.

The amended Scheme further provides that the above provision shall not apply to the enquiry or verification conducted by the verification unit in certain specified circumstances.

Authentication of electronic record

The E-assessment Scheme provided that an electronic record shall be authenticated by the originator by affixing his digital signature. However, in case of the originator, being the taxpayer or any other person, such authentication may also be done by electronic signature or electronic authentication technique in accordance with the Scheme.

The above provision has been amended to provide that an electronic record shall be authenticated by -

- NEC by affixing its digital signature; and
- the taxpayer 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.

Request for personal hearing

- The Chief Commissioner or the Director General, in charge of the Regional e-assessment Centre (RAC), under which the concerned unit is set up, may approve the request for personal hearing if he is of the opinion that the request is covered by the specified circumstances.
- The E-assessment Scheme provided that any personal hearing shall be conducted exclusively through video conferencing, including use of any telecommunication application software which supports video telephony, in accordance with the procedure laid down by the Board. The amended Scheme further provides for the approval of the Chief Commissioner or the Director General, in charge of RAC, in the cases where personal hearing requests have been received.

CBDT Notification under Section 143(3B) to further amend the scheme

In line with the above amendments in the Scheme, CBDT, has also amended its earlier Notification¹³ which provided for certain directions from the central government for relaxing few provisions of the Act for smooth functioning of the Scheme. Some of the key amendments in the Notification are as follows:

Transfer of case to jurisdictional AO with the prior approval of CBDT

The Principal Chief Commissioner (Pr.CCIT) or Principal Director General, in charge of the NAC, may at any stage of the assessment, if considered necessary, transfer the case to jurisdictional AO, with the prior approval of CBDT.

Power to specify format, mode, procedure and processes

In the amended Scheme such powers shall be exercised by Pr.CCIT/ Pr.DG, with the prior approval of CBDT. Further such powers can also be exercised in the following circumstances:

- Circumstances with respect to exchange of communication through electronic mode shall not apply
- Circumstances in which personal hearing has been requested with the approval of Chief Commissioner or Director General.

CBDT order – assessment orders to be passed through the Faceless Assessment Scheme, exceptions are provided

In order to ensure that all the assessment orders are passed through the Faceless Assessment Scheme, 2019, CBDT has issued an Order¹⁴ directing that all the assessment orders shall henceforth be passed by NEC through the Faceless Assessment Scheme, 2019, except:

- Assessment orders in cases assigned to Central Charges.
- Assessment orders in cases assigned to International Tax Charges.

Any assessment order which is not in conformity with above, shall be treated as non-est and shall be deemed to have never been passed. The order shall come into force with effect from 13 August 2020.

CBDT Order - Survey action under Section 133A

Section 133A gives power to the Income-tax Authority to conduct survey proceedings. It may enter any place

¹³ Notification No. 62 dated 12 September 2019

¹⁴ Order (F No. 187/3/2020 -ITA-I)

of business or profession during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset. The survey action under Section 133A being an intrusive action, it is expected that the same should be carried out with utmost responsibility and accountability.

Therefore, CBDT had directed that the officers posted in Directorates of Investigation (Investigation Wing) and Commissionerates of TDS, only and exclusively shall act as 'Income-tax Authority' for the purposes of power of survey under Section 133A.

The competent authority for approval of such survey action under Section 133A shall henceforth be DGIT (Inv) for investigation wing and Pr.CCIT/CCIT (TDS) for TDS charges, as the case may be. The order shall come into force with effect from 13 August 2020.

CBDT Order/Notifications re-constituting e-assessment centres and jurisdiction of Income-tax authorities

Recently, CBDT has issued an Order¹⁵ re-constituting RAC with 30 headquarters spread over 20 cities, in pursuance of Faceless Assessment Scheme notified and in supersession of earlier office order issued in October 2019. The Order also announces composition of each RAC. The order states that Principal Commissioner of Income-tax (RAC) (Technical Unit) will be stationed at Delhi, Mumbai, Chennai and Kolkata respectively. However, they will be reporting to Pr.CCIT (NAC), Delhi for administrative purpose.

Further, CBDT has also issued various Notifications (No.62 to 66 of 2020, dated 13 August 2020) amending jurisdiction of income-tax authorities under Section 120. CBDT directed that the Income-tax authorities of RACs, having their specified headquarters shall exercise the powers and functions of AOs concurrently, to facilitate the conduct of Faceless Assessment proceedings in respect of specified territorial areas.

Our comments

Various amendments introduced in the faceless assessments scheme are actions in continuation to the promise made by the government earlier. The faceless assessment scheme will have some key benefits for instance, there is a process for internal review of orders before they are passed (unlike the old system where the AO is the sole authority). There is a concept of team-based assessments and functional specialization which will hopefully help improve the assessment process and minimize disputes.

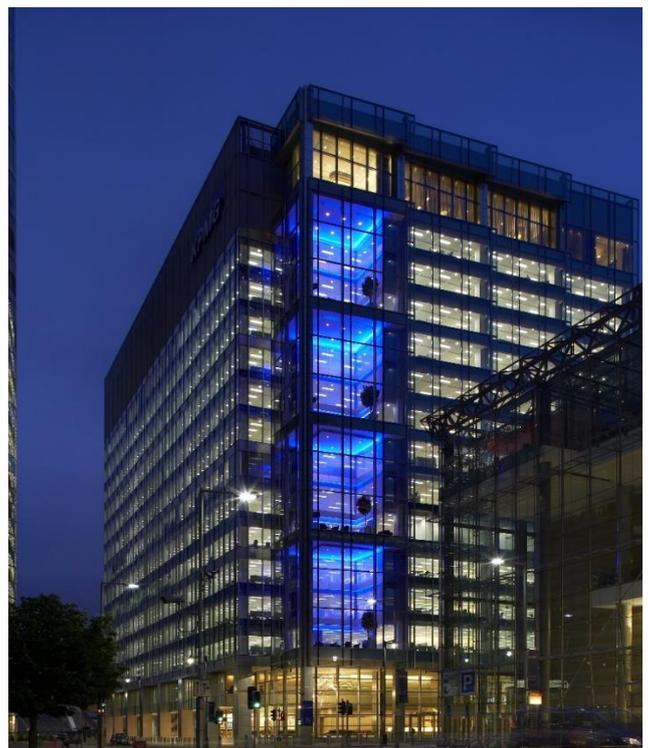
Further the scope of the Scheme for conducting assessment in faceless manner is expanded in detailed manner. It may include all ongoing regular assessments, including reassessment proceedings. It seems that the CBDT order dated 13 August 2020 may also cover the ongoing transfer pricing assessments. However, it would be apt if CBDT clarifies the same.

Even though the amendment in the Scheme has been made effective immediately, migration of ongoing assessment proceedings in between may create inconvenience for taxpayers. It may be noted that the cases of rectification applications, set-aside assessments in appeals and revision and order giving effect to appellate orders are likely to be outside the purview of the Scheme and may be governed by the existing mechanism.

In essence, the faceless e-assessment is a randomised and automated system based on the concept of dynamic jurisdiction and follows a team-based approach. It eliminates undesirable practices that emerge when there is scope for individual discretion and subjective judgment. The anonymous nature of the process will discourage high-pitched assessments and lead to objective, fair and just assessment orders, which can be finalised in a very short time.

The government has notified a revised Form 26AS, which has additional details on taxpayers' high-value financial transactions, like cash deposits/withdrawals and property purchases undertaken during a financial year. This may help in verifying all available information facilitating seamless implementation of the first phase of faceless assessment.

However, filing of bulky submission files through electronic mode may pose challenge before the taxpayer as well as the tax authorities as verification of such electronic file may not be an easy task. Further the success of the Scheme will depend mainly on the availability of video conferencing facility including telecommunication application software which supports video telephony. CBDT should set-up these facilities as soon as possible to provide smooth functioning of the Scheme amongst the taxpayers. Therefore, it would be important to see how the complete on-ground transition would be achieved.



¹⁵ F No. 187/3/2020 ITA-1, dated 13 August 2020

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